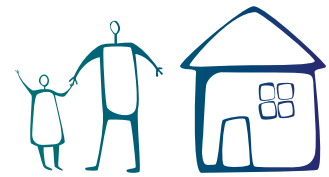


# First Peoples Child & Family Review



*An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples*

## **Self-Determination, Public Accountability, and Rituals of Reform in First Peoples Child Welfare**

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### **Abstract**

*First Peoples continue to face intergenerational harms as a result of settler systems of intervention in the lives of their families, including the forced removal of children. First Peoples resistance includes advocacy for systemic change, in particular, focused on foundations of greater accountability in child welfare systems, and recognition of First Peoples' right to self-determination. However, achieving these necessary structural changes remains a pressing challenge.*

*Using the example of the recent Aboriginal-led review of child welfare in New South Wales (NSW), Australia, 'Family is Culture', this paper explores the cycle of inquiry and response, and the repeated failures to enable self-determination or strengthen public accountability and oversight. Drawing on concepts including legitimacy and the rule of law, we conceptualise this pattern of reviews as a ritual of redemption by settler child – welfare systems, distancing themselves from 'past' wrongs while refusing to address the harmful foundations of these systems, thereby perpetuating the violence imposed on First Peoples children, families and communities. This contrasts with First Peoples' frameworks for child welfare reform, which must be urgently realised in order to establish such systems on more just and effective foundations.*

**Keywords:** *child welfare, self-determination, accountability, legitimacy*

## Introduction

First Peoples,<sup>1</sup> facing intergenerational and ongoing harms through the removal of their children from their families, communities and countries, have responded with calls to stop the cycles of settler-state intervention and violence and for the recognition of their rights to care for and ensure the well-being of their babies, children and youth. Across jurisdictions, there are a number of common threads to this advocacy including the need for structural reform that recognises the inherent jurisdiction of First Peoples in the well-being of their children and families and the transfer of authority to First Peoples within a human rights framework. At the same time, there is recognition of the responsibility of settler states for creating the conditions which underpin the disproportionate need for child welfare support, as they have failed to respond effectively to address these harms and their ongoing impacts on First Peoples children, families and communities.

States have responded to First Peoples' advocacy and demands for accountability of child welfare systems and recognition of self-determination with cycles of inquiries and reviews. Such reviews often shine a light on failings and recommend foundational reforms. However, state parties frequently treat this process as an accomplishment of accountability in itself, and claim righteousness with acknowledgment of *past* wrongs, while refusing to action critical structural reforms to safeguard the rights of First Peoples, their children and families. Instead, state actions to 'improve' child welfare do little to address the structural foundations of settler-state violence targeting First Peoples' families, perpetuating cycles of intervention and further entrenching settler authority over First Peoples' children, families and communities.

Drawing on the example of a recent comprehensive First Peoples-led Review of child welfare in NSW Australia, we analyse how this cycle of review and response inflicts ongoing harm and perpetuates state violence against First Peoples children, families and communities. We conceptualise this cycle, which is characteristic of a pattern of settler-state response to First Peoples' child welfare and policy more broadly, nationally and internationally, as a failure to grapple with two foundational issues: namely the denial of meaningful forms of self-determination and accountability. We argue that these two concepts are not only connected to, but critical for, the effectiveness of child welfare systems in caring for Aboriginal children and communities' safety and well-being. Colonial child welfare systems continue to lack relevance and legitimacy for Aboriginal communities. For child welfare laws and practices to support Aboriginal families, and to be supported by families and communities, they need to be perceived as legitimate and meaningful to those communities. Authorization of the laws, culture and ways in which families grow up children is necessary for Aboriginal child welfare systems to be relevant, effective, accountable and legitimate.

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1 The authors acknowledge the distinct and diverse population of First Peoples internationally. We have chosen to use the term Aboriginal to refer to the numerous distinct peoples in the area now known as New South Wales, given this is the language adopted by those peoples for collective advocacy regarding the recognition and enjoyment of common rights and interests. We have chosen to use the term First Peoples in the international context.

## The Cycle of Review and Response

The Family is Culture review (the Review) examined the circumstances of all Aboriginal and Torres Strait Islander children entering out-of-home care in NSW in 2015-16, in an effort to identify the causes of the “high and increasing rates of Aboriginal and Torres Strait Islander Children and Young People in Out of Home Care in NSW” (Davis, 2019, p. XI). It placed these efforts in the context of an ongoing cycle of inquiries followed by a failure of governments to act to implement recommended reforms, citing numerous state and national processes that had explored similar issues, as well as inadequate action from governments in response – circumstances that are familiar to First Peoples internationally (Blackstock, 2019; Davis, 2019; Kaiwai et al., 2020; Libesman & Cripps, 2017; Royal Commission on Aboriginal Peoples, 1996; Truth and Reconciliation Commission of Canada, 2015; Wood, 2008).

The Review found widespread non-compliance with legislation, policy, and practice intended to safeguard the rights and interests of Aboriginal children and families, findings that resonate with many national and international reviews with respect to colonial child welfare systems’ failures towards First Peoples. Davis (2019) outlined that NSW child protection and out-of-home care systems and practices were characterised by: ‘rituals’ of compliance that masked a widespread culture of non-compliance; including the forced removal of children without adequate justification or proper completion of a risk assessment; the removal of newborns from hospital or soon after without engagement with family and community; family members being overlooked as potential carers resulting in placements outside the family and community; limited ongoing contact with siblings, family, community and culture while in out-of-home care; and the presentation of misleading information to the Children’s Court. The Review also noted ‘rituals’ of engagement with Aboriginal families and communities, but little action taken to deviate from standard practices, and poor application of the spirit and intent of the Aboriginal Child Placement Principle, despite its prominent place in legislation and policy. These failings of systems and practice contributed to the over-representation of Aboriginal children in out-of-home care in poor experiences and care outcomes.

The Review’s recommendations provided a clear reform agenda for child welfare systems and practice; one that is consistent with First Peoples’ approaches internationally (First Nations Child and Family Caring Society, 2019; Kaiwai et al., 2020; SNAICC, 2016). In particular, the reform agenda was grounded on two key principles: self-determination and public accountability. The Review concluded that, if adequately implemented, these two areas “will go a significant way to addressing the entrenched problem of the over-representation of Aboriginal children in the statutory child protection system” (Davis, 2019, p. XXXII).

The government’s response to these findings and recommendations was for many Aboriginal communities disappointing, though not surprising. Rather than engaging openly with the Review’s findings and committing to urgent structural reforms according to the recommendations, the government’s response sought to recontextualise them as historical, and focused instead on the pre-

existing state-led reform agenda. The government argued that “many recommendations are currently being addressed by reforms through the Department of Communities and Justice (DCJ)” (NSW Government, 2020, p.2), and offered limited further commitments related to the Review’s findings, while delaying others in deference to the government’s own reform agenda (NSW Government, 2020). In short, it represents a commitment to ‘stay the course’, rather than responding to the serious issues identified by the Review, and particularly, an unwillingness to engage with the need for self-determination and accountability to Aboriginal communities.

This follows a pattern of inquiries since the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their Families, *Bringing Them Home* (Human Rights and Equal Opportunity Commission, 1997), which have repeatedly found a broken child protection system in need of a complete overhaul, followed by a failure to partner with Aboriginal communities to implement the necessary reforms (Davis, 2019). This occurs in the context of a long history in which Aboriginal peoples have endured the arbitrary removal of their children by settler authorities since colonisation (HREOC, 1997; Libesman et al., 2022; Swain, 2013). Similar experiences are echoed by other First Peoples. For example, a recent Māori-led review of child protection systems noted both the historic and ongoing intervention in their families and communities by the state, as well as state inaction to address these structural challenges, concluding that current systems and practices “are never appropriate for the long-term wellbeing of Māori” (Kawai et al., 2020, p. 74). Whilst the efficacy of Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families* (2019) is yet to be tested, the legislation was drafted after consultation with Canadian First Peoples by Indigenous Services Canada and the Department of Justice rather than jointly with First Peoples. Further, it does not provide funding commitments to enable effective implementation including the development, resourcing and evaluation of diverse existing and developing options for Canadian First Peoples to assume jurisdiction with respect to child welfare, and is being implemented at a time that the Canadian federal government persists in contesting the findings of the Canadian Human Rights Tribunal regarding the failure to equitably fund services for First Nations children and families (Blackstock, 2019). The exercise of state powers under legislation to remove children and intervene in First Peoples family life is built therefore on an ongoing history of violence and deficit of trust. Grounding the reform agenda on foundations of self-determination and public accountability aims to address this deficit of trust, providing an opportunity for reimagining child welfare systems and respecting the diversity of First Peoples within nation states and internationally. However, as the example of Family is Culture demonstrates, governments repeatedly fail to seize the opportunity for transformational reform, and perhaps more disturbingly, present many of the identified shortcomings as supposed solutions.

## The Foundations for Reform

### Self-Determination

The principle that Aboriginal communities have the collective right to determine their political status and their social, economic and cultural future has long been a key theme of relevant reviews, as well as the advocacy of First Peoples. This positioning reflects both relevant international human rights frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples, but also its status as a key evidence-based policy setting in improving outcomes for Indigenous peoples (Cornell & Kalt, 1998; Dudgeon et al., 2016; Harris-Short, 2012; Libesman, 2014). The Review emphasised the contrast between Aboriginal community expectations of a strong form of self-determination, and the government’s existing passive approaches to self-determination, concluding that strong forms of self-determination are needed to achieve substantive changes in systems and practice (Davis, 2019).

The Review was clear, echoing previous inquiries including *Bringing Them Home*, that consultation with, and participation of, Aboriginal families and communities is not sufficient in upholding the right to self-determination. The principle of self-determination requires the transfer of decision-making authority to Aboriginal communities themselves, exercised through their own processes and representatives, and the resources to effectively implement these decisions for their children, families and communities. Despite this clear analysis, the government’s response remained focused on processes of consultation and participation, as well as persisting with the inaccurate use of the term ‘self-determination’ that was criticised by the Review for “creating unrealistic expectations about what the state will permit in terms of autonomous arrangement” (Davis, 2019, p. 85). For example, the government’s initial response to the Review only referred to the key issue of self-determination on one occasion, suggesting that participatory processes of alternative dispute resolution and Family Group Conferences “encourage greater self-determination” (NSW Government, 2020, p.5), although these processes are determined and administered by settler governments, thereby diminishing the concept of self-determination from one of autonomous governance of First Peoples to the mere participation of individuals. This misrepresentation of the principle of self-determination is particularly egregious – conflating it with consultation and participation while simultaneously exercising authority over Aboriginal peoples by controlling the means of that participation, and avoiding scrutiny for the way such systems perpetuate settler-colonialism through the continued exercise of power *over* Aboriginal children and families.

Further, while the Review positioned self-determination as a key structural reform, it is noteworthy that the government failed to engage with Aboriginal communities and their representatives in shaping its Response. This approach contrasts with the recommendations of the Review, and broader government policy to work *with* rather than doing *to* Aboriginal communities (NSW Department of Aboriginal Affairs, 2013).

Diminishing the principle of self-determination in these ways severely limits its intent in enabling First Peoples to shape and administer the systems for the safety and wellbeing of their children, while reinforcing settler authority and intervention in the lives of First Peoples children, families and communities. It co-opts the language of self-determination while failing to engage with its meaning and intent, and the opportunity it represents to transform child protection systems by and for First Peoples.

### **Accountability**

Child protection legislation enables interference with the most intimate and fundamental of common law and human rights, namely the rights of parents to look after their children and for children to grow up in their families and culture. The gravitas of such intervention demands accountability. The rule of law – a foundational common law constitutional principle – requires that powers exercised by government and other officials be accountable (Harlow, 2014). The Review identified that “in order for an agency to be accountable to the public, it is essential for it to be transparent so that its performance can be discussed and analysed, and for there to be sanctions for poor performance” (Davis, 2019, p. 95). Yet, this Review, and numerous prior reviews, found child protection systems and practice, both within the department and in non-government out-of-home care (OOHC), are not accountable (Davis, 2019; Truth and Reconciliation Commission, 2015; Wood, 2008)

The Review argued for significant structural reform, including the establishment of a new independent oversight body, to address failings in public accountability (Davis, 2019). This oversight body would have broad powers of oversight, review, and complaints handling with legislated transparency and reporting requirements that reflected the significant powers of child protection systems, the unique responsibility of the state and non-government agencies to children in OOHC, and the need for a specialised focus to ensure accountability and public confidence. In particular, the oversight body would include an Aboriginal Commissioner and advisory mechanism, promoting engagement with and accountability to Aboriginal communities.

Contrasting with these recommendations, the government pursued a significantly more limited commitment to public accountability, consolidating additional functions with an existing regulator whose oversight of out-of-home care providers was severely critiqued by the Review, but did little to extend the transparency and accountability with respect to the government’s exercise of statutory authority. Given the routine breaches of legislation and policy identified in child protection practice by the Review, greater accountability of the statutory agency is essential. Further, the government took no action, and committed no additional investment, to strengthening transparency of the Children’s Court or providing greater access to legal advocacy, despite their importance in promoting accountability. This is particularly critical given the chronic underfunding of Aboriginal Legal Services and other community legal services, as well as recent reductions in funding to this critical sector (McDonald & Daniels, 2019).

Finally, the Review's recommendation for greater transparency through the publication of regulatory compliance inspection reports and their presentation to Parliament, along with annual summaries and research outcomes, have been deferred, with the regulator committing to provide options as part of the planned review of the standards commencing in 2020 (NSW Office of the Children's Guardian, 2020). The failure to urgently address the need for significantly greater transparency in the monitoring of the out-of-home care system is deeply concerning, particularly in light of media reporting exposing violence, abuse and deprivation experienced by young people in out of home care (Scott, 2016). Similarly, the Review's recommendation to prohibit for-profit service providers given the risk of the potential conflict between the financial interests of such providers and the needs of children in out-of-home care has likewise been deferred (NSW Government, 2020; Office of the Children's Guardian, 2020). If the public is to have confidence in the sector, and the safety and wellbeing of children removed from their families in their name, it is critical that there is transparency from the regulator, and appropriate oversight of this role by parliamentary representatives. Aboriginal community mistrust of child protection systems is deepened by the lack of transparency of systems and oversight by Aboriginal community representatives.

Given these failures to address the significant gaps in transparency and oversight necessary for accountability across the child protection system, the appointment of an Aboriginal Deputy Children's Guardian remains too limited in its focus and function to gain the confidence of the Aboriginal community with respect to the role it is intended to serve. To be clear, greater scrutiny of the circumstances of Aboriginal children in out-of-home care is a positive step. However, the need for effective oversight and mechanisms for recourse is much broader given the challenge presented by non-compliance and routine breaches of the rights and interests of Aboriginal children and families identified by the Review. Such oversight must ensure that the rights of Aboriginal children are upheld from the first involvement of the child protection system and focus scrutiny on the exercise of authority by child welfare authorities throughout, rather than trying to seek redress for the harms inflicted by the statutory system after it has run its course. Simply put, appointing First Peoples officers within an inadequate regulatory framework does not address the significant flaws in the framework. In the absence of legislative, policy and cultural change to strengthen transparency and oversight, and therefore accountability, across the child protection system, such appointments will have only limited impact on safeguarding the rights and interests of First Peoples children in out-of-home care.

Implementing the Review's vision of a one-stop-shop for the effective monitoring and oversight of the child protection system, as well as promoting greater transparency of the regulatory body and Courts, must be prioritised. This includes empowering and resourcing the regulator to respond to complaints regarding breaches in the exercise of statutory power and improving access to advocacy, providing opportunities for recourse where breaches occur, and including clear mechanisms to promote accountability in the eyes of Aboriginal communities. The government's

response offers merely the facade of reform while doing little to address the critical oversight and accountability issues identified by the Review. In particular, the government's response does little to ensure scrutiny where it is most needed to address the concerns of Aboriginal communities – the government's own exercise of statutory authority to intervene in the lives of Aboriginal children, families and communities. Through such approaches, governments continue to exercise significant powers *over* First Peoples' families and communities, while avoiding scrutiny and accountability for those actions, and the harms they continue to cause.

## **Reconceptualising the Recommendations and Response**

It is perhaps of little surprise that the government's Response, falling significantly short of the overhaul urged by the Review, has been criticised as inadequate by Aboriginal stakeholders (NSW Child, Family and Community Peak Aboriginal Corporation [AbSec], 2020; Aboriginal Legal Service NSW/ACT, 2020). As noted above, the current review represents only the latest example of a long-standing pattern of inquiry and inaction from governments in addressing the systemic racism that characterises settler-colonial child welfare systems. The landmark *Bringing Them Home Report* made recommendations for significant reform of contemporary child protection systems, including greater recognition of Aboriginal self-determination, with recommendations for the transfer of laws and their adjudication to Aboriginal communities, however many of these recommendations including those with respect to self-determination were never implemented (Anderson & Tilton, 2017). This issue was anticipated by the current Review, noting the cynicism of Aboriginal community members regarding the process of review which rarely results in the changes needed (Davis, 2019). It is likely that many in the Aboriginal community already fear that the government's Response to the Review, and in particular the narrow focus of reform that reinforces existing systems and authority, represents another missed opportunity for change.

This cycle of review, recommendations and response that fails to address the enduring issues that contribute to over-representation and poor outcomes for those subject to the system, reflect the 'ritual' of listening to First Peoples but failing to "hear" or act on what communities are saying. This is demonstrated in the lack of engagement in the development of the Response, the failure to engage with the Review's key themes, and the narrow response that creates the illusion of action but fails to address the crucial issues identified through the Review.

Through this cycle of acknowledging the harm and inadequacies of "past" practices, and committing to a series of reforms that fail to substantially alter the underlying structures or power dynamics, settler-colonial societies and institutions seek redemption while refusing to relinquish illegitimate power, and even reinforcing it (Tuck & Yang, 2012). These actions ultimately defend and perpetuate settler-colonialism and create barriers for the recognition of Indigenous peoples' sovereignty and futurity (Tuck & Yang, 2012). The rhetoric of reform masks the enduring power imbalances between



the settler-colonial state and First Peoples as well as the refusal to implement reforms that would shift this imbalance, contributing to distrust of statutory child protection systems.

A useful framework through which to consider this pattern is that of legitimacy. Legitimacy refers to the right to exercise power, and is relevant in considerations of the use of statutory child protection powers particularly given the significant and long-lasting impacts on individuals and communities (Cook, 2020). In brief, legitimacy in the exercise of state power requires that the power be exercised in accordance with defined rules, that reflect shared beliefs and values, and that operate with the consent of the broader community (Tankebe, 2013).

Tankebe (2013) challenges an apparent dichotomy between legitimacy and effectiveness, arguing that the perception that power is exercised effectively and to the benefit of the community is a key precondition of its legitimacy which requires being able to demonstrate that the outcomes achieved justify the exercise of significant power. Further, there are benefits associated with legitimacy, such as increased engagement and cooperation from communities, while “dull compulsion” refers to the process whereby the illegitimate exercise of power is “accepted” as a result of fear, powerlessness or pragmatism, including withdrawal from such systems (2013). This withdrawal and lack of cooperation with statutory systems are noted throughout the Review’s report (Davis, 2019). However, rather than framing this as the “acceptance” of the exercise of illegitimate power, this act of withdrawal may be better thought of as strategies of resistance, particularly where the exercise of authority is supported by the use of force (Richardson, 2016; Wade, 1997). Aboriginal communities continue to resist the ongoing removal of their children by statutory authorities through multiple strategies, including advocacy and protest such as those that led to this Review (Davis, 2019).

Through the lens of legitimacy, strong forms of self-determination include key mechanisms to establish laws that reflect the values of the community they serve and operate with their consent (Libesman, 2014). Robust measures of oversight and accountability serve to give communities confidence that systems operate according to those laws, including policy, practice and adjudication, and deliver outcomes that justify the exercise of those powers. This is closely associated with the rule of law, which provides protection and recourse against the abuse of power (Krygier, 2009; Thompson, 1997). For exercises of power to be accountable there needs to be public scrutiny that is transparent, control with respect to how powers are exercised, and recourse when powers are abused (Fuller, 1969; Waldron, 2011). Echoing similar inquiries internationally, the Review found these to be lacking in the NSW child protection system (Davis, 2019).

Similarly, the rule of law is not only a mode of exercising political power but also a mode of association (Krygier & Czarnota, 1999; Stromseth et al., 2006). As Krygier (2009) observes, for the rule of law to be operative, laws must count. It requires not just laws and institutions for administering those laws, but fidelity to those laws; this is a core commitment and responsibility to the people, principles and values – the relationships which underpin those institutions. The rule of law requires reciprocal relations of trust between those who exercise power and those who

are subject to it. The Review made recommendations with respect to accountability to help build institutions that can help to foster fidelity and trust. The NSW government's response, rather than addressing the failure of the rule of law for Aboriginal peoples, further entrenches those flaws. It responds disingenuously to the report's findings and recommendations. The rituals of review and rhetoric of rights continue a long colonial tradition of governments asserting Aboriginal peoples' equality before the law whilst in practice denying their most foundational rights (Behrendt et al., 2019; Manderson, 2008). The NSW Government's response sits squarely in this ignoble tradition.

From this perspective, the findings of the Review can be considered as emphasising the lack of legitimacy in the current systems that exercise statutory powers over Aboriginal children and families. The Review found that the defined rules, outlined in legislation and policy, are routinely ignored without meaningful oversight or consequence, and that the framework for intervention is not consistent with the values of Aboriginal communities, and does not meaningfully operate with their consent. Further, the Review's recommendations can be thought of as belonging to two key categories – those focused on establishing and demonstrating legitimacy, including the key structural reforms of self-determination and public accountability as well as proposed legislative change, and those focused on promoting legitimacy indirectly via the effective achievement of community outcomes, such as proportionate, needs-based investment in family supports, access to advocacy services, data collection and use, and casework policy and practice.

Through this paradigm, the government's response, and the broader pattern of government responses in Indigenous child welfare, demonstrates a fundamental misunderstanding of the relationship between effectiveness and legitimacy outlined by Tankebe (2013). Specifically, governments prioritise efforts to improve effectiveness, while ignoring the need to establish legitimacy through greater self-determination, empowered independent oversight of the exercise of statutory power, and the implementation of key legislative safeguards in the care and protection of Indigenous children. In doing so, governments undermine the efforts to improve the effectiveness of child protection systems for Indigenous children, and further entrench illegitimate and harmful systems grounded in settler-colonial violence and racism.

First Peoples across various jurisdictions have not only resisted the ongoing harmful impacts of settler state child welfare systems and practices, but have also articulated the foundations for a new approach and reform agenda for addressing these structural shortcomings. While differing in language and form across jurisdictions, these frameworks share many common features (First Nations Child and Family Caring Society, 2019; Kaiwai et al., 2020; SNAICC, 2016). First, they are grounded in First Peoples' self-determination and autonomy. Second, they emphasise the importance of culture, grounding both systems and practice in the cultural values and perspectives of the communities they represent and serve. Third, they reinforce the need for healing and early intervention to support families and communities in their sacred caregiving responsibilities, and call for holistic, community-based and responsive child and family supports rather than systems

predicated on removal. Finally, First Peoples' approaches consistently demand oversight by First Peoples' communities, providing transparency and community confidence that such systems are oriented toward and delivering on the best interests of their children. In short, First Peoples' frameworks seek to address the problem of legitimacy, recognising First Peoples' inalienable right to determine the systems and processes to promote their children's wellbeing, and the resources to put them into practice.

It is notable that some jurisdictions in Australia, namely Victoria and Queensland, are exploring the transfer of decision-making authority normally invested in settler child protection authorities to Aboriginal communities through 'delegated authority' (Liddle et al., 2021). Such models are welcome insofar as they enable Aboriginal communities to make decisions that significantly affect the lives of their children, families and communities, in ways that are aligned to community values, perspectives and expectations, and accountable to communities for the outcomes achieved. In some cases, they have been complemented by formal recognition of cultural models of care (see *Meriba Omasker Kaziw Kaziwa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020*, 2020).

)However, there are a number of barriers to their implementation that must be actively addressed in partnership with Aboriginal communities (Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 2021). Further, such 'delegated authority' models fall short of the frameworks outlined by First Peoples by failing to recognise the inherent rights of First Peoples to exercise authority with respect to their children's futures. Instead, the language of 'delegated authority' reinforces settler authority over Aboriginal children and families, without addressing the underlying issues of legitimacy. This delegated notion clearly sets a very precarious footing for the transfer and exercise of such authority; just as the settler state may delegate authority, it may likewise re-assert its authority, terminating the delegation and resuming settler intervention in the lives of Aboriginal children, families and communities. Under such frameworks, First Peoples' communities must constantly demonstrate "appropriate" exercise of this delegated authority to the satisfaction of settler systems, simultaneously reinforcing settler systems while divesting responsibility to First Peoples.

## **Conclusion**

The exercise of power by settler-colonial authorities in the lives of Aboriginal children and families is central to settler-colonialism (Nakata, 2017; Tuck & Yang, 2012). First Peoples have continued to resist this intervention, and advocate for recognition of their political rights as Indigenous peoples including the right to self-determination, as well as greater accountability of governments in their intervention in Indigenous families. In recent decades, a cycle of reviews and inquiries, followed by limited government reform, has emerged. Reviews have emphasised the importance of self-determination and public accountability in addressing the systemic racism that characterises contemporary child welfare systems (Davis, 2019; Kaiwai et al., 2020; Truth and Reconciliation Commission, 2015). Connecting concepts of legitimacy and the rule of law with principles of self-

determination and accountability, this paper has emphasised a persistent failure of governments to grapple with the key structural flaws of these systems in a way that transforms the underlying relationship between settler states and First Peoples, despite stated commitments to change that might achieve better outcomes for Indigenous children, families and communities. Importantly, this lens uses the broader concept of legitimacy in the exercise of state power to suggest that this failure of government is likely to undermine efforts to improve outcomes for First Peoples children and families, perpetuating and exacerbating past harms.

The exercise of statutory authority to intervene in, and even dismember, families, is an extraordinary use of state power. The legitimacy of this use of power is grounded in the trust and confidence of the community that the system operates with integrity, and according to rules and norms reflective of the values of the communities served (Libesman, 2014). In this way, the operation of child welfare systems occupies the intersection of the interests of parents and families and the interest of communities in the wellbeing of children. Statutory child protection systems represent the mechanism by which this collective interest is upheld, ensuring that minimum standards of care, based on the shared expectations and aspirations of a community for their children and understandings of childhood, are extended to all children.

However, rather than grapple with the ‘historical continuity’ of child welfare systems (Davis, 2019) and the ongoing illegitimate exercise of state power to intervene in the lives of First Peoples children, families and communities inherited from settler-colonial violence, government rhetoric and reform continues to focus on more ‘effectively’ wielding this power. This is demonstrated in the NSW Government’s response to this Review, which focuses on strengthening settler systems while ignoring or minimising the need for structural reform grounded on self-determination and accountability. In doing so, the response reflects and perpetuates the failings identified through the Review. It also demonstrates a fundamental misunderstanding of the relationship between legitimacy and effectiveness. In this, it is emblematic of a broader tension regarding child welfare systems, and the ongoing intervention of settler states in the lives of First Peoples’ children, families and communities. A reform agenda focused on addressing the illegitimate exercise of statutory power of current child welfare systems is urgently needed. This can only be achieved through structural change that recognises First Peoples’ right to self-determination, enabling First Peoples-led system design, implementation and ongoing administration of child welfare systems grounded by First Peoples’ values and perspectives, operating with their consent and oversight. This means not only transferring authority to First Peoples in responding to the needs of their children, families and communities, but adequately resourcing communities commensurate with the need to enable the implementation of community-led solutions.

This issue of the legitimate exercise of authority regarding the safety, welfare and well-being of Aboriginal children goes to the heart of the relationship between First Peoples and the settler state. Nakata has argued for the need for democratic renewal, one that opens a place for Indigenous

children in their nation's future, rather than "being made to feel that they are being pulled between a white future and a black past" (Nakata, 2018, p. 112). Nakata (2018, p. 69) notes that "Aboriginal and Torres Strait Islander Peoples have only ever had their claims to the past legitimised; our claims to the future continue to be denied." Reforming child protection systems is an essential part of this renewal. Given the history of settler-colonial intervention in the lives of Indigenous children and families, and the subsequent impact on the lives of individuals, families, and communities across generations, there can be few domains where structural reform of this relationship is more urgent. This can only be achieved by establishing legitimate systems for the care and protection of Indigenous children, by and for their communities, and in some cases may operate informally within communities, although remaining subject to settler intervention and override. Governments must show significantly greater humility and courage, acting with urgency to enable, through legislation and equitable, needs-based resourcing, child welfare systems to be transformed and reimagined by First Peoples to operate consistent with their values, through First Peoples governance, and with empowered First Peoples oversight and accountability. As Davis (2019, p.85) pointed out, such systems should operate "free from unwarranted state interference," enabling community-based responses and services to support families and address enduring socioeconomic disadvantages that contributes to risks in child protection involvement and intervention. Unless and until these foundations change, such systems wielded by settler states will continue to reflect the colonial violence on which they were founded, rather than the need for reparations and healings that settler governments consistently espouse.

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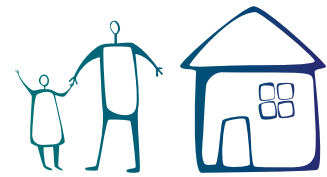
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# First Peoples Child & Family Review



*An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples*

## A Longitudinal Study to Better Understand Child Protection Intervention for First Nations Children

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### Abstract

*This study brings forward new evidence regarding child protection (CP) intervention for First Nations children and contributes to a longitudinal understanding of their trajectories within CP services. It raises questions regarding the persisting, unmet needs of First Nations children, families, and communities by identifying the CP factors associated with a first decision to provide post-investigation intervention and a first decision to close a case following post-investigation intervention among First Nations children. Anonymized administrative data (2002–2014;  $n = 1340$ ) were used to conduct multivariate analyses, including longitudinal analyses using Cox proportional hazards modeling. Among First Nations children, those who were very young, who were reported for serious risk of neglect, and whose situation included indicators of repeated individual or family contact with CP services were more likely to receive post-investigation intervention. Similarly, those who were very young, provided services for neglect or serious risk of neglect, and whose situation was investigated at least twice before intervention was provided were more likely to have a longer first episode of intervention. The longitudinal analyses also revealed that more than one in two First Nations children (51.7%) receiving post-investigation intervention experienced a placement in out-of-home care during their interaction with CP services. This study contributes to a better understanding of intervention for First Nations children in Canada. It highlights how First Nations children receiving CP intervention live in situations in which their needs persist over time and how current services do not appear able to respond to these situations adequately, supporting the move towards autonomous, Indigenous-led CP services.*

*Keywords:* child protection, First Nations, post-investigation intervention, longitudinal trajectories, neglect

## Introduction

First Nations children are overrepresented in child protection (CP) services as compared to non-Indigenous children. The most recent available data indicate that the population rates at different stages of CP services are 3 to 14 times higher for First Nations children living in Canada than for non-Indigenous or White children (Crowe et al., 2021; De La Sablonnière-Griffin et al., 2016; Fallon et al., 2021; Ma, et al., 2019; Sinha et al., 2011). The overrepresentation of Indigenous children occurs across settler nations (Bilson et al., 2015; Rouland et al., 2019; Segal et al., 2019). While various sources documented disparities, the magnitude and trends regarding disparity remain unclear. This is primarily caused by incomplete or poorly populated administrative data and a heavy reliance on cross-sectional data. A longitudinal understanding of CP intervention for First Nations children is required to proceed with changes that will truly benefit Indigenous children, families, and communities in Canada. Australian data show how CP cross-sectional data are a gross underestimation of the number of children who will be investigated by CP before 18 years old. While 5.5% of Indigenous children in Australia experienced a completed investigation in 2005–06 (Tilbury, 2009), 28 to 39% of Indigenous children born between 1990 and 2003 and followed to age 14 to 18 ever experienced the same outcome (Bilson et al., 2015; Segal et al., 2019). In brief, the longitudinal rates were up to seven times higher than cross-sectional rates. The most recent annual rates of First Nations children investigated in Canada are higher than the Australian rate reported above, ranging from 6.4% (De La Sablonnière-Griffin et al., 2016) to 17% (Crowe et al., 2021). While the Indigenous populations and CP systems differ, we can assume that the cross-sectional rates in Canada greatly underestimate the real percentage of children that will experience at least one CP investigation before reaching 18 years of age.

Considering the above, better documenting the longitudinal trajectories of Indigenous children in CP services appears to be of central importance. This type of research would contribute to answering the Truth and Reconciliation Commission's (TRC) Calls to Actions (TRC, 2015). It could uncover challenges still faced in serving Indigenous children, families, and communities, therefore providing pressure to ensure that CP systems remain accountable as changes are implemented. Considering the contemporary developments related to CP in Canada, such as an *Act respecting First Nations, Inuit and Métis children, youth and families*, and considering that the TRC's Calls to Actions were released in 2015, the dearth of research on First Nations children's trajectories in CP services in Canada is deplorable. The current study, by providing a longitudinal analysis of the first provision and first closure of post-investigation CP intervention for First Nations children by a mainstream agency, aims to address the limitations of current research, namely the lack of longitudinal and First Nations-specific (not comparative) CP-related research.

## **Decision-Making in CP for First Nations Children in Canada**

Current research on CP services in Canada and concerning First Nations children has mostly focused on two CP decisions, substantiation, and placement (during or at the conclusion of the investigation). This body of research works towards determining the risk of First Nations children experiencing these decisions compared to non-Indigenous children. Research on substantiation offers two takeaway messages. First, when analyzing all forms of reported maltreatment, the rate of substantiation for First Nations children remains statistically significantly higher than for non-Indigenous children when controlling for characteristics of the report, the child or the household; the higher rate is accounted for by the presence of risk factors for their caregiving figures, including substance abuse, social isolation and caregivers having a history of child maltreatment themselves (Sinha et al., 2013; Trocmé et al., 2004; Trocmé et al., 2006). Second, when considering only neglect cases, the interaction between being First Nations and two risk factors (substance abuse and being a lone caregiver) explains the overrepresentation of First Nations children (Sinha et al., 2013). Research on placement is more equivocal, with early research indicating that risk factors explain the overrepresentation (Trocmé et al., 2004), while more recent research found that the disparity was maintained (Breton et al., 2012; Trocmé et al., 2006). Nonetheless, placement was more likely for all children investigated in agencies in which 20% or more of the investigations involved Indigenous children (Chabot et al., 2013; Fallon et al., 2013; Fallon et al., 2015; Fluke et al., 2010).

Placement is a critical issue for First Nations communities in Canada, as highlighted by the TRC and its Calls to Action (2015). Yet, providing post-investigation intervention in CP includes not only out-of-home care, but also in-home services. Exploring the factors associated with the decision to provide post-investigation intervention in CP among the general population is a slowly emerging field of research in Canada (Jud et al., 2012; Smith et al., 2019) and the US (Jonson-Reid et al., 2017). Globally, provision of post-investigation CP intervention, whether in or out-of-home, aims at preventing future maltreatment and remedying the current maltreatment situation (Capacity Building Center for States, 2018; Trocmé et al., 2019).

Cross-sectional data from Canadian research indicates that between 38% (Ma et al., 2019; Sinha et al., 2011) and 64.5% (Breton et al., 2012) of cases investigated involving First Nations children were transferred to post-investigation intervention, a proportion always higher than for the comparison group (non-Indigenous or White children). Two multilevel (case and agency level) Canadian studies sought to identify factors associated with the decision to provide post-investigation intervention (Jud et al., 2012; Smith et al., 2019). While they did not focus on Indigenous children's experience, they both included an agency-level variable concerning Indigenous children (agencies in which 20% or more of their investigations were about Indigenous children vs. agencies with a lower proportion), and Smith and colleagues (2019) also included Indigenous identity as a case-level variable. None of these variables were found to influence the decision.

Ma, Fallon, Alaggia and Richard (2019), using the same data as Smith and colleagues (2019), explored factors related to this decision among First Nations specifically. This study first documented characteristics of the investigations transferred to post-investigation intervention. Just under half (44.6%) included neglect situations, about three quarters (74.2%) concerned a child that had been previously investigated, and placement occurred in about one-fifth (19.2%) of these cases. An exploratory, tree-based decision model identified 12 decision nodes<sup>1</sup> among investigations concerning First Nations children to predict post-investigation intervention. The characteristics with the greatest influence was low social support for the child's primary caregiver. When the primary caregiver had few social supports, 65% of cases received post-investigation intervention. When the primary caregiver had few social supports, the primary form of maltreatment was not physical abuse, and at least one unsafe housing condition existed or was unknown, 94% of cases were transferred to post-investigation intervention. In contrast, only 15% of cases were provided post-investigation intervention when the primary caregiver had few social supports and the primary maltreatment type was physical abuse or, if following the other path, when the primary caregiver was not noted to have few social supports and alcohol abuse issues, and the child under investigation did not have depressive symptoms.

### Closing the CP Case after Post-Investigation Intervention

Research discussing the decision to close CP services has mostly conceptualized the “end” with regards to placement and through a permanency lens (e.g., family reunification, placement until majority, etc.), with virtually no research focusing on children served in-home and/or through short-term placements. The overall lack of sound and accessible longitudinal data on post-investigation intervention likely plays an important role in the absence of such research (Jenkins, 2017; Jonson-Reid et al., 2017; Trocmé et al., 2019). Nevertheless, it is imperative to address the lack of conceptualization and knowledge pertaining to families served by CP services without out-of-home care experiences, as they tend to represent a larger group of families than those who experience placement (Keddell, 2018). Descriptive data over a period of three years following a screened-in report in the province of Quebec highlighted that 56% of First Nations children did not experience a placement, which appears to support this affirmation for the population of interest (De La Sablonnière-Griffin et al., 2016).

The current study pursued two intricately tied objectives, which were to understand the factors associated with a first decision to 1) provide post-investigation CP intervention (in-home, out-of-home care, or both) and 2) close a CP case after post-investigation intervention, among First Nations children.

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1 A node identifies a characteristic that distinguishes the most between cases transferred to post-investigation services and cases closed at the investigation stage.

## **Methods**

### **Data Source**

Anonymized administrative CP data of Côte-Nord, a northern region in the province of Quebec, have been used. The data configuration was such that the mainstream regional CP organization controlled the access to the data they gathered about First Nations children, which were thus physically possessed by this organization. To ensure a degree of control and in recognition of the ownership of the data by the First Nations, this research was conducted under the guidance of an advisory committee comprised of representatives from the regional CP organization and from the delegated Innu social services agencies. A larger regional consultation mechanism was also used sporadically to validate the research objectives, preliminary results, and interpretations, with delegates from all Innu social services agencies of the region, as not all communities were represented on the advisory committee.

### **Brief Review of CP Decision-Making and Intervention Process in Quebec, Canada**

Alleged situations of child maltreatment are first notified to CP services by diverse reporters (e.g., school personnel, neighbours) and summarily assessed to determine if the situation will be fully investigated or not. Reports that are screened-in are investigated to reach up to two decisions: whether the allegations are substantiated and, if they are, whether the child's safety and development are in danger. When the latter is the case, post-investigation intervention is implemented. Post-investigation intervention is based on court-ordered or voluntary protective measures; it can include home-based intervention and out-of-home care. When the investigation deems the situation unsubstantiated or when the case is substantiated but the security and development of the child are not in danger, the child's family can be referred to public and community resources as needed.

Once a child receives post-investigation intervention, the case is periodically reviewed to determine if the child's safety and development remain in danger. A CP case is closed once the child's safety and development are no longer considered in danger and represent the end of all post-investigation intervention. There are multiple pathways to achieving a situation in which the security and development of the child is no longer in danger, including, but not limited to, parents having taken adequate measures to remedy the situation, reaching 18 years of age, adoption, custodianship, emancipation, and long-term placement.

### **First Provision of Post-Investigation CP Intervention**

#### **First Screened-In Report Cohort**

To answer the first objective, we selected First Nations children (aged 0 to 17) living in a First Nations community, and who experienced a first CP report screened-in for investigation between April 1, 2002, and March 31, 2014, in the region under study. Children who were transferred to or from another

region prior to a first screened-in report, as well as children for whom the investigation was not completed by the end of the observation period (September 9, 2014), were not included in this cohort. This cohort totaled 1,340 children. Because the research interest was the first provision of post-investigation intervention, and because not all children who enter post-investigation intervention do so at their first investigation, additional analyses were conducted on a subset comprised of all cases that did not result in post-investigation intervention at the termination of the first investigation. Children who were transferred to or from another region after the conclusion of the first investigation (with no post-investigation intervention provided) but before their first instance of post-investigation intervention in the region under study were excluded ( $n = 5$ ), resulting in a subset cohort of 720 children for whom no post-investigation intervention was provided following the first investigation.

**Dependent Variable.** The outcome measured for the first screened-in report cohort is provision of post-investigation CP intervention.

## First case closure

### First Post-Investigation Intervention Cohort

To answer the second objective, all First Nations children (aged 0–17) who experienced a first provision of post-investigation intervention (with a start date between April 1<sup>st</sup>, 2002, and March 31<sup>st</sup>, 2013) from the initial pool of 1340 individuals were included. This subsample comprised a total of 702<sup>2</sup> children. The end date was selected to allow a minimal case file length: the minimal observation length is about one year and five months, specifically from March 31, 2013, to September 9, 2014.

**Dependent Variable.** The outcome measured for this cohort is case closure. Given that the analyses on this cohort are longitudinal, time was measured in days. For children with a case closure during the observation period, time is calculated between the date of the decision at the investigation stage and the date at case closure. For censored cases, meaning children still receiving post-investigation intervention at the end of the study period, time was calculated between the date of the decision at the investigation stage and September 9, 2014.

## Covariates

All the covariates were measured at the entry point into their specific cohort, namely at the decision point of the screening stage for the first screened-in reports cohort, and at the decision point of the investigation stage for the second cohort. They all are dichotomous and, unless otherwise

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2 This number is lower than the total number of cases that were opened according to the first cohort of children studied. The reason for this difference is that the observation period for provision of post-investigation intervention is shorter with the second cohort. Concretely, for the first objective, this information is the outcome measured and is observed until September 9, 2014, whereas in the second cohort, it is the entry point into the cohort and is observed only until March 31, 2013.

stated, mutually exclusive. The covariates are divided into three groups: characteristics of the child, characteristics of the CP situation, and interactions between the family and CP services.

Characteristics of the child were limited to gender and age. Gender is a nominal variable identifying if the child is a boy or a girl, with being a girl used as the reference category. Age was measured at the date of the decision and consisted of a series of four dichotomous variables (under 2; 2 to 5; 6 to 11; 12 to 17), and for which the 6-to-11 category acted as the reference group. The characteristics of the situation included: the presence of at least one screened-out report prior to the first screened-in report (yes/no [reference category]); the source of referral, a series of seven dichotomous variables (extended family and neighbours [reference category]; police; education [schools and daycare]; CP agencies; professionals from other public services; professionals from private services; and other/unidentified referral sources) and the alleged reasons for reporting the child. The alleged reasons are a series of five dichotomous variables (physical and/or sexual abuse, including serious risk of physical and sexual abuse [reference category]; neglect; serious risk of neglect; psychological maltreatment, including exposure to intimate partner violence; serious behavioural issues that parents are unable to address), which are not mutually exclusive (a child can have up to three alleged reasons). Two variables pertained to the interaction between the family and CP services. Family known to the CP agency (yes/no [reference category]) identified if one or both parents of the child in the cohort were previously identified as parents of another child for whom an investigation was completed before the reception of the first screened-in report of the child under study. The unidentified parent variable (yes/no [reference category]) indicated case files in which only one parent, or no parent at all, were identified.

For the second objective, we also added two variables pertaining to the situation: the number of investigations prior to provision of post-investigation intervention (one [reference category]/two or more); and out-of-home placement during the investigation stage (yes/no [reference category]).

## Analytical Framework

Descriptive analyses for the two cohorts of children are presented in Table 1. Logistic regression was used for the first objective. Cox proportional hazards modeling was used for the second objective. This type of analysis models time to the event of interest while taking into consideration the different lengths of observations for each individual under study, in addition to allowing for multiple independent variables. For both objectives, all the independent variables were included in the multivariate models given that no multicollinearity issues were noted.

**Table 1**  
*Characteristics of Children in the two Cohorts*

Characteristics at cohort entry	First screened-in report		First post-investigation intervention	
	N = 1,340		N = 702	
<b>Gender</b>				
Boys	679	(50.7)	359	(51.1)
<b>Age</b>				
0–1	437	(32.6)	221	(31.5)
2–5	375	(27.9)	199	(28.3)
6–11	295	(22.0)	154	(21.9)
12–17	234	(17.5)	128	(18.2)
<b>Source of referral (first screened-in report)</b>				
Family	355	(26.5)	190	(27.1)
Police	252	(18.8)	123	(17.5)
Education	139	(10.4)	59	(8.4)
CP agency	172	(12.8)	89	(12.7)
Professional from other public services	350	(26.1)	195	(27.8)
Professional from private services	55	(4.1)	35	(5.0)
Other/unidentified	17	(1.3)	11	(1.6)
<b>Prior screened-out reports</b>				
Yes	435	(32.5)	231	(32.9)
<b>Reasons for investigation or intervention</b>				
Physical and/or sexual abuse (including serious risk of)	262	(19.6)	69	(9.8)
Neglect	600	(44.8)	350	(49.9)
Serious risk of neglect	583	(43.5)	343	(48.9)
Psychological maltreatment	321	(24.0)	220	(31.3)
Serious behavioural issues	178	(13.3)	111	(15.8)
<b># of investigations before intervention</b>				
2 or more	—		172	(24.5)
<b>Placement during investigation</b>				
Yes	—		152	(21.7)
<b>Family known to CP agency</b>				
Yes	550	(41.0)	338	(48.1)
<b>Unidentified parent</b>				
Yes	157	(11.7)	78	(11.1)
<b>Intervention following first investigation</b>				
Yes	615	(45.9)	—	
<b>Intervention following 2+ investigations</b>				
Yes	195	(14.6)	—	
<b>Case closure during observation period</b>				
Yes	—		558	(79.5)



## Results

### First Screened-In Report Cohort

A detailed description of children in each cohort is presented in Table 1. At their first screened-in reports, most First Nations children were below the age of 6 (60.5%). The most frequent source of referral was a family member or someone else from the child's surroundings (26.5%), although a similar proportion of children (26.1%) was reported by a professional from a public service other than the police, the education system, or a CP agency. Just under a third (32.5%) had at least one screened-out report prior to their first screened-in report. Among the alleged grounds for reporting the child, neglect (44.8%) and serious risk of neglect (43.5%) were the most frequent. As up to three reasons could be noted for a single report, the percentages add to more than 100%. Serious behavioural issues was the least frequent alleged reason (13.3%). For 41.0% of the children, their family was known to the CP agency. The security and development of 615 (45.9%) children were considered in danger at the first investigation, resulting in the provision of post-investigation intervention (outcome measured for model 1 in Table 2). Among the 720 children who were not provided post-investigation intervention on their first investigation, 27.1% (n = 195) eventually experienced post-investigation CP intervention following a second, third, or fourth investigation (outcome measured for Model 2 in Table 2).

The results from the first logistic regression model (Model 1, Table 2) indicate the variables associated with a higher or lower likelihood of experiencing the provision of post-investigation intervention based on a first investigation. First Nations children aged under 2 at the decision to screen-in the report were 1.6 times (Odds ratio [OR]: 1.558) more likely to experience post-investigation intervention provision than were children aged 6 to 11. Other variables associated with an increased likelihood of post-investigation intervention included: children with prior screened-out reports (OR: 1.474); those reported by a professional from a public (OR: 1.400) or a private service (OR: 2.544), compared to those reported by the child's family or neighbours; children who were reported for serious behavioural issues (OR: 1.564) or serious risk of neglect (OR: 1.828), compared to those reported for abuse; and those who were from a family known to the CP agency (OR: 1.756). A single variable was associated with a decreased likelihood of post-investigation interventions: having been reported by the police (OR: 0.694). Reversed, this finding indicated that a child reported by their family was 1.44 times more likely to receive post-investigation intervention, compared to a child reported by the police. As reported in Table 2, serious risk of neglect and family known to the CP agency were the most important contributors to this decision according to the Wald statistics (as the value of the Wald statistics increases, so does the contribution of the variable tested).

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**Table 2**

*Logistic Regression Models Predicting Post-Investigation Intervention Provision on a First Investigation (Model 1) or on a Higher-Order Investigation (Model 2)*

Characteristics	Model 1				Model 2			
	All first screened-in reports (N = 1,340)				First screened-in reports with no intervention following a first investigation (N = 720)			
	B	S.D.	Wald	Exp(B)	B	S.D.	Wald	Exp(B)
<b>Gender</b>								
Boys	0.101	0.116	0.767	1.106	-0.183	0.180	1.031	0.833
Girls (ref.)								
<b>Age</b>								
0–1	0.443	0.176	6.338	1.558*	1.108	0.271	16.783	3.029***
2–5	0.133	0.175	0.578	1.143	0.510	0.271	3.543	1.665
6–11 (ref.)								
12–17	0.242	0.202	1.434	1.273	-0.729	0.355	4.215	0.482*
<b>Prior screened-out reports</b>								
Yes	0.388	0.128	9.195	1.474**	0.029	0.204	0.020	1.030
<b>Source of referral</b>								
Family (ref.)								
Police	-0.365	0.180	4.134	0.694*	-0.125	0.256	0.238	0.883
Education	-0.028	0.221	0.016	0.973	-0.667	0.364	3.366	0.513
CP agency	0.108	0.199	0.293	1.114	-0.460	0.3131	2.159	0.631
Professional from other public services	0.336	0.158	4.512	1.400*	-0.079	0.250	0.101	0.924
Professional from private services	0.934	0.330	7.996	2.544**	-0.084	0.587	0.020	0.919
Other/unidentified	0.419	0.512	0.671	1.521	-0.387	0.859	0.203	0.679
<b>Reasons for investigation</b>								
Abuse (ref.)								
Neglect	0.240	0.126	3.621	1.272	0.066	0.203	0.106	1.068
Serious risk of neglect	0.603	0.126	22.874	1.828***	-0.023	0.198	0.013	0.977
Psychological maltreatment	0.277	0.145	3.637	1.320	0.298	0.226	1.738	1.348
Serious behavioural issues	0.447	0.212	4.450	1.564*	0.920	0.351	6.854	2.509**
<b>Family known to CP agency</b>								
Yes	0.563	0.120	21.901	1.756***	0.764	0.189	16.307	2.146***
<b>Unidentified parent</b>								
Yes	-0.249	0.182	1.880	0.780	0.321	0.263	1.500	1.379

Model 1: [X<sup>2</sup> (17, n = 1340) – 111.711, p < 0.000]

Model 2: [X<sup>2</sup> (17, n = 720) – 68.893, p < 0.000]

\*p < 0.05. \*\*p < 0.01. \*\*\*p < 0.001.

The logistic regression model on the subset of cases that did not result in post-investigation intervention following the first investigation is presented in Table 2 (Model 2). These analyses show that three variables, measured at the first screened-in report, increased the likelihood of post-investigation intervention on a second or higher-order investigation: having been under 2 (OR: 3.029), compared to those aged 6 to 11; having been reported for serious behavioural issues (OR: 2.509), compared to those reported for abuse; and coming from a family known to the CP agency (OR: 2.146). One variable, measured at the first screened-in report, was associated with a reduced likelihood of post-investigation intervention: having been aged 12 to 17 (OR: 0.482), compared to those aged 6 to 11 (conversely, children aged 6 to 11 were 2.08 times more likely to eventually experience intervention than those aged 12 to 17). According to the Wald statistics, having been under 2 at the first screened-in report and family known to the CP agency were the most important contributors to this decision.

### First Post-Investigation Intervention Cohort

With regards to the cohort with a first provision of post-investigation intervention, the descriptive analyses (Table 1) show little change on most variables. The distribution of reasons for intervention varied slightly from the reasons for investigation, but the main categories remained neglect (49.9%) and serious risk of neglect (48.9%). The smallest category changed: physical and/or sexual abuse, including serious risk of these types of abuse, was the least frequent reason for intervention (9.8%). About a quarter of all cases with post-investigation intervention were transferred after at least two investigations (24.5%), and just over a fifth (21.7%) of children were placed in out-of-home care (including kinship care) during the investigation. A total of 558 children (79.5%) experienced a case closure during the observation period.

The Cox model for the first case closure is presented in Table 3 on the following page. These analyses show that case closure was associated with having been a teenager (Risk ratio [RR]: 1.442; compared to children aged 6 to 11 at the start of post-investigation intervention) and with having been reported by a professional from a private service at the first screened-in report (RR: 1.890; compared to children reported by family). Four variables were associated with longer duration of intervention before closure. Children under 2 at the start of post-investigation intervention (RR: 0.556); reversed, those 6 to 11 at start of intervention were 1.80 times more likely to experience closure compared to those under 2. Children who were provided post-investigation intervention for neglect (RR: 0.804) or serious risk of neglect (RR: 0.779) were less likely to experience closure, compared to those receiving intervention for physical or sexual abuse; put differently, children receiving intervention for abuse were 1.24 (compared to neglect) and 1.28 (serious risk of neglect) times more likely to experience closure. Finally, children experiencing a first post-investigation intervention after at least two investigations (RR: 0.726) were less likely to experience case closure; reversed, those receiving post-investigation intervention following their first investigation were 1.38 times more likely to experience case closure.

**Table 3**

*Cox Model Predicting Case Closure on First Post-Investigation Intervention*

<b>Characteristics</b>	<b>B</b>	<b>S.D.</b>	<b>Wald</b>	<b>Exp(B)</b>
<b>Gen</b>				
Boys	-0.032	0.087	0.136	0.969
Girls (ref.)				
<b>Age</b>				
0-1	-0.536	0.139	17.771	0.556***
2-5	-0.227	0.128	3.153	0.797
6-11 (ref.)				
12-17	0.366	0.152	5.823	1.442***
<b>Prior screened-out reports</b>				
Yes	-0.054	0.097	0.315	0.947
<b>Source of referral</b>				
Family (ref.)				
Police	0.027	0.137	0.039	1.027
Education	0.015	0.172	0.008	1.015
CP agency	0.084	0.154	0.299	1.088
Professional from other public services	0.054	0.119	0.208	1.056
Professional from private services	0.637	0.217	8.622	1.890**
Other/unidentified	-0.118	0.349	0.114	0.889
<b>Reasons for intervention</b>				
Abuse (ref.)				
Neglect	-0.218	0.096	5.173	0.804*
Serious risk of neglect	-0.250	0.095	6.938	0.779**
Psychological maltreatment	0.129	0.105	1.487	1.137
Serious behavioural issues	-0.523	0.215	5.941	0.593*
Serious behavioural issues *time	0.001	0.000	5.745	1.001*
<b># of investigations before intervention</b>				
2 or more	-0.321	0.109	8.702	0.726**
<b>Placement during investigation</b>				
Yes	-0.172	0.110	2.438	0.842
<b>Family known to CP agency</b>				
Yes	-0.174	0.090	3.751	0.840
<b>Unidentified parent</b>				
Yes	-0.094	0.136	0.481	0.910

Model: [X<sup>2</sup> (20, n = 702) = 100.053, p < 0.000]

\*p < 0.05. \*\*p < 0.01. \*\*\*p < 0.001.

A single variable had a time-varying effect. Having received intervention for serious behavioural issues was initially associated with a decreased prospect of case closure (RR: 0.593, compared to cases involving abuse), but its effects changed over time, meaning that the risk of case closure increased with each passing day. According to the Wald statistics, having been under 2 at the start of post-investigation intervention and entering post-investigation intervention after a minimum of two investigations were the most important contributors to this decision.

Additional descriptive analyses regarding post-investigation intervention are presented in Table 4. The observation length was not equal among all cases, ranging from a minimum of about 17 months to a maximum of about 11 years and 5 months. A small percentage of children (8.4%) were referred to short-term intervention, while the balance of children was almost equally split between voluntary (44.4%) and court-ordered measures (47.4%) at the initiation of the post-investigation services. More cases initially referred to voluntary measures were closed during the observation period (86.2% of 312 cases), than cases referred to courts (69.7% of 333 cases). Among cases still receiving intervention at the end of the observation period, 70.1% had initially been referred to courts. Placement was experienced by about half of the children (51.7%) at any point from their first investigation forward. Placement was highly prevalent in cases with ongoing post-investigation intervention at the end of observation, with 84.7% of children in this group having experienced at least one out-of-home care placement. In terms of case length, most children, among all cases

**Table 4**  
*Descriptive Analysis of Cases Receiving Post-Investigation Intervention*

Characteristics	All cases with intervention N = 702		Cases closed during observation N = 558		Cases with ongoing intervention at the end of observation N = 144	
<b>Initial orientation</b>						
Short-term intervention	57	(8.1%)	57	(10.2%)	—	
Court-ordered measures	333	(47.4%)	232	(41.6%)	101	(70.1%)
Voluntary measures	312	(44.4%)	269	(48.2%)	43	(29.9%)
<b>Placement (from first screened-in report to closure)</b>	363	(51.7%)	241	(43.2%)	122	(84.7%)
<b>Case length</b>						
0–365 days	129	(18.4%)	129	(23.1%)	—	
366–730 days	266	(37.9%)	249	(44.6%)	17	(11.8%)
731–1,095 days	137	(19.5%)	94	(16.8%)	43	(29.9%)
1,096 days or more	170	(24.2%)	86	(15.4%)	84	(58.3%)
<b>Age at case closure</b>						
0–5	300	(42.8%)	254	(45.5%)	46	(32.0%)
6–11	223	(31.8%)	145	(26.0%)	78	(54.2%)
12–17	160	(22.8%)	140	(25.0%)	20	(13.9%)
18	19	(2.7%)	19	(3.4%)	—	

(37.9%) and among cases closed (44.6%), received intervention from CP services for at least a year, but under two. Cases involving children aged 5 and under were the biggest group for both all cases opened (42.8%) and closed (45.5%), and cases involving school-aged children (6 to 11) represented the majority of cases with ongoing intervention (54.2%). Only a small portion of cases were closed when the child reached 18 years of age (3.4% of all closed cases).

## Discussion

The aim of this study was to identify, among First Nations children, the factors associated with a first decision to provide post-investigation CP intervention and a first decision to close the CP case following post-investigation intervention. The results contribute to a better understanding of First Nations children's trajectories within CP services in Canada, as it is one of the first to document and examine factors related to CP decisions and services occurring after the investigation stage. It also supports and extends previous findings regarding the role of neglect and of individual and/or family-level repeated contact with CP services in First Nations children's trajectories.

Children that were more likely to receive post-investigation intervention for the first time were the very young children from families previously known to the CP agency, indicating family-level repeated contact with the CP system. A marker of repeated individual contact, the presence of at least one screened-out report, was also associated with provision of post-investigation intervention at a first investigation. Finally, the presence of serious risk of neglect as grounds for reporting was associated with post-investigation intervention following the first investigation. For some children, serious risk of neglect may serve as an indicator of repeated concerns, as it may relate to previous neglectful behaviours of the parents towards other children. For others, it may be related to the perceived caregivers' capacities. While our study cannot draw firm conclusions, the high prevalence of serious risk of neglect among First Nations children's cases and its association with provision of post-investigation intervention raises questions about how characteristics of First Nations caregivers may be interpreted with regards to assessing future risk to the point of warranting CP intervention. It raises questions about whether these risk factors are weighted differently than in non-Indigenous families, as previous research has shown that some household and parental risk factors were weighted differently when substantiating neglect investigations for First Nations children (Sinha et al., 2013).

Children who were reported by the police on their first screened-in report were less likely to receive post-investigation intervention following their first investigation. Police reports represented a substantial proportion of first screened-in reports (18.8%) for First Nations children, a proportion statistically significantly higher than for the majority group (De La Sablonnière-Griffin, 2020), which is congruent with the Ontarian study (Ma et al., 2019). Combined, these findings raise concerns around a possible visibility bias for First Nations families which may increase the overrepresentation of First Nations children at the investigation stage. A visibility bias refers to the elevated exposure of some groups to public services and mandated reporters, such as the police, because of "structural

issues, such as poverty and violence” (Ma et al., 2019, p.60). The high frequency of police contacts self-reported by Indigenous peoples in Canada (David & Mitchell, 2021) appears to support this possibility. This study identified that Indigenous peoples were more likely to encounter police services for law enforcement issues (being arrested), but also for a host of reasons, including for non-enforcement issues (being a witness of a crime) or behavioural health-related issues (for themselves or their family). Given that police are a source of significantly more reports for First Nations children, but that these reports result in lower likelihood of post-investigation intervention, the exposure of First Nations families to police services may contribute to contact with CP in situations that were not, in fact, CP concerns.

Children entering post-investigation intervention at a very young age (below 2), who were provided services for neglect and/or serious risk of neglect and with repeated individual contact with CP services prior to the intervention (at least two investigations before intervention) were those more prone to a longer first episode of intervention. Situations of neglect under CP services are related to multiple adverse life circumstances, such as a parental history of mental/psychiatric problems and poverty (Mulder et al., 2018). CP agencies have little power to address or effect change regarding these adverse life circumstances (Carlson, 2017; Duva & Metzger, 2010; Morris et al., 2018), which could explain why these cases are less likely to be closed. First Nations families are confronted to many of these adverse life circumstances (Reading & Wien, 2009; Salée, 2006; Viens, 2019), which is likely contributing to longer CP serving time. In addition, the root causes of their adverse life circumstances lie in colonialist and discriminatory policies, both past and contemporary (Bombay et al., 2020; Czyzewski, 2011; Gone et al., 2019; TRC, 2015; Viens, 2019; Wilk et al., 2017), further limiting CP services’ capacity to support families in altering their life circumstances. Discriminatory policies included the federal government’s underfunding of child and family services for First Nations living in First Nations communities (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2). For an extended period, the funding structure concretely deprived First Nations children, families, and communities of resources to offer preventative and support services that could help alleviate situations deemed neglectful or at serious risk of being so (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2; Sinha & Kozlowski, 2013).

Finally, the longitudinal descriptive results shed light on what happens to First Nations children during the post-investigation intervention. In this study, about one fifth (21.7%) of children with post-investigation intervention were placed into care during the investigation leading to the post-investigation intervention (Table 1), a finding similar to Ontarian data (19.3%; Ma et al., 2019). However, the descriptive, longitudinal data revealed that placement is far more prevalent among First Nations children receiving post-investigation intervention; when considering all the interactions between the child and CP services, from their first screened-in report to either the closure of their case or the end of data available, more than one in two children (51.7%) ever

experienced placement in out-of-home care during their interaction with CP services. While placement during the investigation stage was not associated with case closure, the sheer magnitude of placement experienced at any point by the First Nations children receiving post-investigation services warrants us to suggest that additional research on placement as it pertains to post-investigation service and case closure be conducted. Analyses including the types and lengths of placements and the moves while in care are needed to better understand how placement influences post-investigation CP intervention, service trajectories and case closure.

## **Implications for Practice and Policy**

We recognize that First Nations living in Quebec aim to rely first and foremost on their own governance of CP services (Awashish et al., 2017) to ensure the well-being of First Nations children. Recent developments in Canada, most notably an *Act respecting First Nations, Inuit and Métis children, youth and families*, signal some support for these endeavours, albeit with important shortcomings regarding the funding component (Blackstock, 2019; Metallic et al., 2019). Reports and calls to action from two recent Quebec-wide Commissions (on relations between public services and the Indigenous population: Viens, 2019; on CP services: Special Commission on the Rights of the Child and Youth Protection [SCRCYP], 2021) also point to the importance of Indigenous-led and -governed CP services. It is, however, likely that concrete change will take time to occur (Paul, 2016).

The results from our study raise the question of whether CP services compensate for a lack of accessible and effective support and prevention services to meet the families' needs. With children involved in CP coming from families already known at an early age and for reasons of serious risk of neglect, and with children receiving intervention for extended periods when neglect or serious risk of neglect are involved, it appears as though the families are not able to access services that would help address the situation. As such, the results from our study illustrate the discriminatory funding practices acknowledged by the Canadian Human Rights Tribunal (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2). While some prevention and support services have been put in place since 2009 in First Nations communities in Quebec, underfunding continues and important variations in the services offered occur (FNQLHSSC, 2011). In addition, difficulties in accessing mental health (Collin-Vézina et al., 2011; Lefrançois, 2016) and other public services (Viens, 2019) have been repeatedly noted, potentially compounding issues in First Nations families. First Nations children, families, and communities deserve adequately funded services responding to their needs.

Another issue pertains to CP practices around neglect, and more specifically around serious risk of neglect (Caldwell & Sinha, 2020; De La Sablonnière-Griffin et al., 2016). Serious risk of neglect is a sufficient ground for intervention in the Quebec legislation since 2007, although virtually no research has been conducted to document the situations served under this ground. Neglect is a culturally situated concept, intricately tied to parenting norms and expectations (Hearn, 2011).



Parenting norms and expectations among Indigenous populations are known to be different from, but equally as conducive to healthy development as western practices (Cross et al., 2000; Croteau, 2017; Guay, 2015; Neckoway et al., 2007). Nonetheless, discriminatory actions in the CP system are repeatedly based on misunderstandings of Indigenous worldviews and parenting norms (Grammond, 2018; Guay, 2015; SCRCYP, 2021; Viens, 2019). Instead of trying to redefine what neglect, or by extension serious risk of neglect, implies, Caldwell and Sinha (2020) suggest we redesign our interventions to focus on children's well-being. CP interventions towards situations of neglect are limited as they tend to focus on family-level risk factors, even when it is understood that neglect is not directly caused by parents or caregivers but rather embedded in larger structural issues. Using a child well-being lens would support interventions addressing the various levels involved (e.g., the family, but also the community and larger social structures), while better aligning with Indigenous worldviews, and consequently enabling a move towards culturally safer CP services.

### Strengths and Limitations

This study is innovative in studying longitudinally the first trajectory in and out of post-investigation CP intervention for a group of First Nations children. Nonetheless, some limitations must be noted. First, it is possible that children have moved in the region under study during the study period. If these children had previously received CP intervention in another region, it was impossible to know from the data used. Thus, it is possible that the first post-investigation intervention in the study was not a child's first CP intervention.

Second, the group of First Nations children studied was selected according to the data structure, politico-legal criteria regarding funding of First Nations children and family services, and the nature of our partnership. While we wanted to study CP intervention for First Nations children, we could not rely on self-identification given the use of administrative data. We selected children whom the CP workers identified as First Nations (information primarily derived from self-identification) and who resided in a First Nations community (information primarily derived from the address of the family). The residence status was selected for two reasons. The first reason stems from our acknowledgment of the funding discrepancies for children living in First Nations communities. The second reason is based on the nature of our partnership: the partnership was with delegated agencies serving First Nations children living in First Nations communities and did not include organizations representing or supporting First Nations families residing elsewhere. Our results are thus not generalizable to First Nations children residing outside of communities or for whom services are funded through a different mechanism.

Finally, by relying solely on administrative data, this study could not account for some caregivers and household factors identified as playing a role in CP decision-making, such as the family's socio-economic status or substance abuse by a caregiver (Jenkins et al., 2017; Ma et al., 2019; Sinha et al., 2013). An avenue to better understand First Nations children's trajectories in CP services would be

to use a family framework. Henderson and colleagues (2017) illustrated that time to CP intervention was generally longer for the eldest child in a family (according to maternal birth order), leading to consequences such as being older at the time of a first intervention and thus being less likely to gain permanency if placed in out-of-home care. Understanding the eldest child's trajectory and the temporal pattern of CP contacts, decisions, and intervention for siblings in relation to the eldest child's situation would likely provide useful information to better serve First Nations families in contact with CP services.

## **Conclusion**

This study brings forward new evidence regarding CP post-investigation intervention for First Nations children and contributes to a longitudinal understanding of their trajectories within CP services. It raises questions regarding the persisting, unmet needs of First Nations children, families, and communities. First Nations peoples living in Canada comprise a vibrant diversity of peoples; while the paths towards adequate services for First Nations children are likely as diverse as the First Nations themselves, First Nations–led, autonomous, and adequately funded services must be a realistic possibility for all Nations and communities that wish to embark on this path in order to best meet the needs of children and families who come into contact with CP services.

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