



COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

TRANSCRIPT OF PROCEEDINGS

April Lawrie, Commissioner for Aboriginal Children and Young People

Denise Rieniets, Counsel Assisting

Hearing for the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia

Tuesday, 10 October 2023 at 8:00am

Expert Witness:

- **Professor Cindy Blackstock**

Denise Rieniets, Counsel Assisting:

Okay. Good morning, Dr. Blackstock. Thank you for joining us.

Professor Cindy Blackstock:

Good morning.

Counsel Assisting:

Before we start, can I just have my associate have you affirm your evidence, please?

Professor Cindy Blackstock:

Sure.

Carla Ringvall, Assistant to Counsel Assisting:

So I'll just ask you to repeat after me. I solemnly affirm that the evidence I will give will be the truth, the whole truth and nothing but the truth.

Professor Cindy Blackstock:

I solemnly affirm that the evidence that I'm about to give will be the whole truth and nothing but the truth.

Assistant to Counsel Assisting:

Thank you and can you please state your full name, occupation and address?

Professor Cindy Blackstock:

My name is Cindy Blackstock. And I am a professor at McGill University and as well as the executive director of the First Nations Child and Family Caring Society of Canada. [address provided]

Assistant to Counsel Assisting:

Thank you.

Counsel Assisting:

Thank you, Dr. Blackstock. We are conducting an inquiry in South Australia into the Aboriginal Torres Strait Islander placement policies here and we're aware that you've done very extensive research in the Canada arena of indigenous children in state care. Would you mind telling the inquiry something of your experience and your research that you've undertaken in that sphere, please.

Professor Cindy Blackstock:

So I have been working in First Nations child protection for about 40 years. I began as a frontline worker in the province of British Columbia doing child protection and then moved over to a First Nations child and family service agency. Here in Canada we have over 110 First Nations agencies and these agencies are in most cases authorized to do full child protection as well as prevention and guardianship work. They are authorized under the provincial legal framework and are funded for on reserve services by the federal government. I then left out those positions to work in the area of policy and also in area of education.

In my current position as director of the Caring Society. We are a national non-profit organization that was formed by First Nation service providers in 1999 with 3 primary mandates. One is to address inequities in First Nations children's services that were driving the overrepresentation of children in care. Number 2 was to collect and to produce research that was relevant to the experiences of First Nations children, youth and families. And number 3, conduct public education so that the members of the public could better understand why First Nations children were experiencing such serious hardships.

My own academic work is really aligned with all of that and has been shaped out of the necessity of proving a legal case that we launched along with the Assembly First Nations in 2007 against the Canadian government in an effort to end this inequality in federally funded children's services for First Nations kids on reserve. So we've done multidisciplinary work in the area of economics in First Nations child welfare, in mental health, in addictions, and sometimes even touching on things like housing and poverty because those are the major issues that are driving the overrepresentation. So we're trying to go beyond the symptom of the overrepresentation of children in child welfare and really get at the root causes.

Counsel Assisting:

Thank you. And what have been the findings that that you've reached in terms of those root causes.

Professor Cindy Blackstock:

Well, we know that First Nations children are 17.2 times more likely to be placed in foster care than non-Indigenous children in Canada. And through work on the Canadian incident study for reported child abuse and neglect we know that the drivers are poverty, poor housing, caregiver mental health issues related to our residential schools, which is akin to your stolen generations, addictions, also

related to those same colonial factors, and domestic violence. Those are the fires that really drive the First Nations families being at risk and the children being at risk.

That all of this is aggravated by underfunding of First Nations Children's Services, which was found in 2016 by our Canadian Human Rights Tribunal to amount to racial discrimination and the Canadian government was ordered to remedy that discrimination. Because at that time First Nations kids were getting far less than every other child despite the over overbearing nature of the colonial traumas that they were experiencing.

Counsel Assisting:

And what did that remedying look like? By the government.

Professor Cindy Blackstock:

Well, they were ordered to immediately, cease their discriminatory practices back in January 2016, but they failed to do so. We've had now over 23, I believe, noncompliance and procedural orders by Canada, against Canada. The results, however, for children have been significant. So we've, we have something called Jordan's Principle, which is about ensuring First Nations children can get the health, educational, and social supports that they need when they need them.

And though we now got about over 2 billion services provided to First Nations children under Jordan's Principle. We've also had a significant and really for the first time in history, injection funding for prevention services for First Nations families to keep them together. It's in the order of about 20 billion dollars over 5 years. And just actually about a month ago, we received a legal order from the Tribunal, which will result in 23.4 billion dollars in compensation to the victims of Canada's discrimination. In many ways, of course, I see that as a tragic failure because had Canada implemented the solutions that were on the books to remedy those inequalities over 20 years ago there would have been no victims and there would have been no compensation payable.

Counsel Assisting:

Hmm. Thank you. In terms of the preventative measures that that have been funded, what can you tell us something about what those are, what those look like?

Professor Cindy Blackstock:

Yeah, it's a good question. And in many ways, some of these are just getting underway because, Canada did not release the prevention monies until the latter quarter of 2018. So many of these are just becoming developed, but what we're starting to see across the country is really holistic treatment centres, culturally based treatment centres for children and families. For example, family based addictions and mental wellness treatment. We've seen things, like, more mental health supports for young people themselves to recover from the trauma of residential schools. Cultural camps and cultural connections. Repatriations back for youth in care. Parenting supports for parents not only those who are maybe had the chain of parental knowledge broken by residential schools, but also to support parents who are parenting high needs children. Who the children themselves may have mental health supports or other things. So those are just some of the examples. And we're also looking at relief for deep poverty for families. We're aware of the association between deep poverty and failure to meet basic needs, which is a definition of neglect under our, most legal statutes. So, agencies, First Nations agencies and others have been trying to invest in poverty alleviation to see if that will make a difference for kids.

Counsel Assisting:

What are they investing in for that poverty alleviation?

Professor Cindy Blackstock:

Yeah, so sometimes that means things like school lunch programs. It could mean, for example, there's an agency in our country that does great work and they've been doing it for years. For, on on income assistance data provide transportation for all the families to be able to go and get groceries at Costco. I don't know if you have Costco in Australia, but we got Costco here.

Commissioner April Lawrie (Chair):

Yes.

Professor Cindy Blackstock:

And so they all pull their resources and are able to get food at a reasonable value. It's gonna mean investments in housing. So we've had renovations of houses so that they can be made safe for children because many of the houses for First Nations families are in deplorable condition. And so they need to be remediated for things like mould or made accessible for children with disabilities. Those are some of the things that are happening on that front.

Counsel Assisting:

And what are the measures of success? That you see.

Professor Cindy Blackstock:

We're working on that. One of the things that we've been doing is we've been working with a group called the Institute of Fiscal Studies and Democracy. And the goal of this research, which we're doing with First Nations communities and First Nations agencies, is to create a bottom-up evidence-informed funding approach for First Nations children that drives towards measurable outcomes for kids and families. That, and these outcomes are called the Measuring to Thrive Framework. Now there are some 80 odd measures, but we got expert advice about say about 10 of them to kind of follow and then they aligned closely with those structural factors that we just talked about. And in addition to that, software has been created for communities that's available for them free of charge, where they can load up non-identifying software to baseline measure where their kids are at right now and track those changes over time. And in addition to that, we're doing, the funding approach will help adjust to the changing needs of those children over time. That's really the hope of our performance based budgeting. So instead of having an arbitrary budget that no one really knows why it was created in the first place and just gets ruled over year from year, you more closely tie the budgetary needs to the actual realities on the ground for children and families as they change over time. That's the goal.

Counsel Assisting:

Thank you. And you mentioned earlier that, that Canada is after the, the tribunal decision and the, the demand that the government cease their racist attitudes towards your indigenous people, that you've seen significant changes for young people. How has that been measured?

Professor Cindy Blackstock:

There hasn't been a measurement framework because Canada does not have a national database system unlike in Australia and other western industrialized countries. That's why we created this Measuring to Thrive and are beginning to implement it. But there was nothing pre-existing. So what we have in terms of evidence is kind of antidotal qualitative types of evidence about the changes in children's experience from children, families, service providers and by First Nations leadership themselves. What they're telling us is that the things like Jordan's Principle are being able to really support families with before they get into contact with the child welfare system. Let me give you an example of what that looks like. In the tribunal in evidence we saw children with different needs they

may have autism or they may have physical illness. The only way to get those needs met was to bring the child into care because that's the only way the government would pay for it. Now that was a really ridiculous, frankly, inter idea because children are, you know, when they have a loving family, the best place for them to be is with their family. Now under Jordan's principle, it's not necessary to bring children into care to provide those types of supports that those children need. So we know very clearly that those children are much less likely to enter into the child welfare system than they were before the litigation happens. We're also hearing reports from agencies that since the prevention funding has gone in and they've been able to operate these programs or enhance ones they were already running. That in many cases their child in care numbers have significantly reduced and not reduced in an artificial way. You know, you, you reduce the age of number of children requiring intervention, you just you know, you change the standards of what protection looks like. It really is as a result of families having a bigger safety net around them. And in some cases those numbers have gone from over a hundred down to one or 2 children in care.

Commissioner Lawrie:

Dr Blackstock. I've got a question in relation to the way in which, the, I guess the system works in Canada with authorization to First Nations organizations to deliver child protection services. Are you able to expand on that and what have been I guess the strengths or the learnings from those experiences.

Professor Cindy Blackstock:

Certainly. So up until 2020 the mechanism for First Nations to be able to deliver child protection services to their own children was under the delegated model it's called.

Commissioner Lawrie:

Yeah.

Professor Cindy Blackstock:

And this is the model I was speaking about before where the province holds the statutory authority for child protection and then delegates the agency and its employees to act under that authority. The problem was it was funded by the federal government for on reserve, funded by the province for off reserve. So you could literally have 2 siblings receiving different levels of care just simply because of the who funded it. It was highly problematic. Now, since 2020, the federal government passed a federal piece of legislation called the 'Act respecting First Nations, Inuit and Métis, children, youth and families'. We call it C-92. Now, the general goal was to affirm jurisdiction in child welfare and keep in mind that we've had a lot of experience under the delegated model, a lot of these agencies have been doing this work now for 50 years. So, but it was always viewed as an intro model towards self-determination.

Commissioner Lawrie:

Hmm.

Professor Cindy Blackstock:

Now, at the time Canada introduced this bill, First Nations were actually working on their own piece of legislation, that would have, ingrained many of the legal findings of the Canadian Human Rights Tribunal, would have ingrained some of the lessons that we've learned from the development of agencies about the types of capacity workplace development, workforce development, those kinds of things that need to be in place in order to deliver effective programs for children and families. Canada decided not to adopt that and instead to adopt the C-92 legislation. If you take a close reading of that legislation, there is very little that Canada is obliged to do. Indeed, in the funding

issue, which was at the centre of the tribunal case, Canada's only obligation is to discuss funding, and even there, it's not an obligation, they may discuss funding. So the worry is that it can be offloading, i.e. you now have jurisdiction over child welfare, but not the resources in order to ensure the substantive equality and needs-based funding that children have a right to enjoy. So, this has been a long critique of the government and there's also another concern that's arisen, and that is in general federal law has supremacy over provincial law, keeping in mind that in Canada it's the provinces that typically have jurisdiction over child and family services. So if a First Nation draws down jurisdiction, and it has the force of federal law as it says under section I believe 23 of the C-92 Act, then it would theoretically have supremacy over these other provincial governments so that if you had members in another jurisdiction your law would still apply. But Canada is interpreting it differently. Canada is saying If your First Nation is in Alberta, you have to reach an agreement with Alberta along with us and your law will apply in Alberta. If you have members in British Columbia, which is right next door, you have to strike a separate government agreement with the government of British Columbia and so on down the line. For some First Nations, this could mean as many as 13 different types of agreements with provinces of various degrees of willingness. So that is an area of some, some challenges. On the positive side, the idea of having, reclaiming full responsibility for your children and having the freedom to be able to make choices responsive to their needs, has been very much, a positive step for many communities. But because it's early days, we're not able to kind of really document that journey, i.e. how were things before jurisdiction was pulled down and how are things now? We're gonna begin doing some of that research work, but it's not, it's just in the earliest stages at the moment.

Commissioner Lawrie:

Thank you.

Professor Cindy Blackstock:

And of course the Quebec government is challenging the whole constitutionality of C-92 right now and we're awaiting the decision from the Supreme Court.

Counsel Assisting:

And In terms of your development, you said the development of the workforce was, was vital to the effectiveness of self-determination. How has that development been, been undertaken?

Professor Cindy Blackstock:

Uneven across the country because opportunities have been uneven. But I will draw your attention to one kind of very outstanding example. And that is called the Mi'kmaq/Maliseet Bachelor of Social Work Program. This is an offering out of, out of Dalhousie University. And it was done originally in collaboration with one of our most, you know, veteran agencies called Mi'kmaq, Child and, Mi'kmaq Child and Family Services. When that agency was getting underway in the 1980s there was hardly any First Nations social workers out there and the reason for that is that the Indian Act, the same legislation, that forced children into residential schools prohibited First Nations persons from going to post secondary until 1960. So you can imagine with residential schools and this barrier that there weren't a lot of people with a Bachelor Social Work. So, and those graduating from Bachelor Social Work programs really were not that well trained in First Nations realities and they didn't have the authority from community to be able to effectively do the work. So they created this Mi'kmaq/Maliseet BSW program that is taught in community, as well as at the university, and has now graduated literally hundreds and hundreds of social workers in the province of Nova Scotia and has now been expanded to include First Nations in New Brunswick. So that's a one very positive example. There's other types of good partnerships between First Nations and universities, for

example, in British Columbia, Carrier Sekani Family Services is partnered up with the University of Northern British Columbia to do a similar type of endeavour. I think that those types of programs need to be invested in order to ensure that First Nations children receive the culturally based and also very effective and high quality type of care that they require.

Counsel Assisting:

Thank you. Do you have a question?

Commissioner Lawrie:

Are most of the social workers that go through the training from First Nations communities, are they ending up in the care and protection system working or through other sectors as well?

Professor Cindy Blackstock:

Yeah, they some of them will choose to work in other sectors, but the majority of them do end up in the in the child protection system, working for their communities for prevention services or in child protection.

Commissioner Lawrie:

Has there been, by way of evaluation of the impact of having First Nations. Social workers in roles across the child protection service system?

Commissioner Lawrie:

No, there has not been systematic kind of research in that regard. We know from, quite, you know, long community reports that they're more comfortable if it's someone who is First Nations because they know the realities of colonialism, they know the realities of systemic racism and they don't have to explain that. That said, there are also some fabulous non-indigenous social workers working in our communities and agencies. Who have either, had benefited by the very few programs in Canada, the social work programs that have a lot of content on First Nations peoples, or they were self-motivated and went out and learned those things themselves. I would say, and I say this because I teach social work, is I think there's an insufficient emphasis on poverty, addictions, mental health and social justice within our social work curriculums. I think that we need to recalibrate what we're teaching in social work to the actual needs on the ground for people. Because the structural drivers that drive children into care are the same fires that exist for children that are over represented in juvenile justice or not, not being successful as they'd like to be within the education system, its these same causal drivers and we have to calibrate the training towards addressing those and remedying those on an individual, family, nation, and systemic levels.

Counsel Assisting:

Dr. Blackstock I understand that, one of the major problems with the child protection system in Canada was the fact that you held, the system held families responsible for neglect.

Professor Cindy Blackstock:

That's right.

Counsel Assisting:

Can you speak to that, please?

Professor Cindy Blackstock:

Yeah, I saw this as a front-line worker and I continue to see it today. When I look at the provincial legislation, the most problematic piece for me is the codification of structural risk as a parental failure. So, when you unpack the reasons why First Nations children are overrepresented, it's most

often under the category of neglect. So what is neglect? I've been doing this for 40 years and I still can't figure it out.

Commissioner Lawrie:

Hmm.

Professor Cindy Blackstock:

Right? The word tends to evoke images of parents who have the means to care for their children and are choosing not to do it. The reality is quite different. The reality is that we have parents who are experiencing structural discrimination by the Canadian government or other forces, in our cases the Canadian government by underfunding services on reserve, for example, some of our communities don't have even clean drinking water, let alone equitable other services. And then we have things like poverty and poor housing and all these things that flow from colonialism. And what we have in child welfare is we don't look at where those problems are sourced that are putting kids at risk. Instead the child welfare statutes include words like the parent is unwilling or unable to provide the basic necessities for the child or provide supervision for the child, etc. It's that unable part that is that requires more thinking. If it's the system that has made that family unable, then it's the system that requires accountability and must take proactive measures to alleviate that burden off of that parent. That, I think the definition of neglect, in indigenous child welfare is one of the things that requires reform universally across the country. I'm all about holding people's feet to the fire for things that they can change for kids. But far too often we're dealing them an unfairness by holding them accountable for what amount to systemic discrimination or policy failures by provincial or federal governments.

Counsel Assisting:

Thank you.

Professor Cindy Blackstock:

And if I may, I might just expand that the problem, the further problem is when we remove a child under those circumstances with those systemic issues, and we provide often an individual or family based remedy like parenting classes, and not unsurprisingly that will not fix the problem, we then draw the conclusion that the parent is unable to benefit from the interventions we've offered and therefore there's no choice but to retain the child in care, often permanently.

Counsel Assisting:

Thank you for that, Dr. Blackstock. Is there a definition in Canadian law of attachment for children.

Professor Cindy Blackstock:

It's interesting. That's a good question. I'm not, I'm like, I'm not a hundred percent sure. We have something in C-92 called cultural continuity. So, that cultural continuity and connection to family is part of that. So it's not just connection to your parent, it's connection to your broader, cultural community connection, I would argue even to the land, so all of these, and language, all of these things are brought into the piece. I think one of the missing pieces of Bowlby's attachment theory is it really is focused on the attachment to the parent. And one of the things that we have experienced and certainly is my strong belief, is that indigenous children enjoy a number of different important attachments, attachments to ancestors, attachment to land, attachment to culture, attachment to community and attachment to their parents and to their extended families. So all of those pieces have to be a part of the matrix of how we consider I guess wellbeing and the best interests of First Nations children.

Counsel Assisting:

Thank you. Do you have anything else?

Commissioner Lawrie:

Yeah, it probably is something to do with the way in which neglect is constructed in terms of child welfare or child protection. What have been some of the developments around challenging the definition with regard to neglect?

Professor Cindy Blackstock:

Well, we had actually kind of began the work of fashioning an alternative definition of neglect. I mean, we're realistic about the impacts of children, of neglect. But trying to parse out what are those structural sources of the risk from those that are reasonably within the realm of the family to change. And then a really requiring different types of antidotes to each one of those causal sources. You'll see a hint of that in section 15 of the Act respecting First Nations, Métis and Inuit children. Where they say you cannot remove a child for poverty alone. But in the legislation we were working on and I could furnish you a copy if you want to see this draft legislation, we're really trying to go beyond that to say that the the, governments really need to take proactive measures to alleviate the structural drivers that families could find themselves in. For example, if it's a housing issue that there had to be alleviation of the of the housing issue. If it's a matter of meeting basic needs then there would be a proactive injections of funds so that families could feed their kids and clothe their kids for example. Or if it's a supervisory issue, which also flows from poverty, if you're well off, you can afford daycare and all the rest of it but if you're in living in poverty you don't have that luxury that you know there's a there's a provision of that type of service. So that was the more the road we were going down in the act that we were developing collectively at a national level, as First Nations.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

You say you were going down, so that's not being followed?

Professor Cindy Blackstock:

Well, we're still pressing for it. You know, Canada chose to adopt its Act, C-92. That's what's in, that's what's in force right now. But personally, I think the other one is far stronger. And it's not that it was perfect, it's not that it didn't need further consultation, but I think there were many more ingredients for success for kids and families, and for the nations providing the services and for whom those children belong, than in what ended up being adopted into C-92.

Commissioner Lawrie:

And. Whilst there was a discussion before about, about workforce, in terms of the greater care and protection system in looking at the capability of the system in responding, you know, more appropriately to the needs of First Nations children, what have been some of the developments across Canada in regards to building the capability of those, of that sector, in terms of First Nations children and young people.

Professor Cindy Blackstock:

Well, we've had these, First Nations child and family service agencies, as I say, in existence for in many cases, 40, 50 years. And over that time they've developed some exemplary types of human resource models that are really culturally based. They've also developed, different ways of working and conceptualizing family welfare that just generally attract people, you know, you would much rather work in a way that gets at those structural factors, that gets at that preventative work than in

the mainstream system that tends to still be quite reactionary. So, that I think has been a big benefit. And also, I think this widening of the lens. I think it's a mistake to look at child welfare as the problem. Child welfare is just the symptom.

Commissioner Lawrie:

Yeah.

Professor Cindy Blackstock:

And the real problems lie beneath that and require an interdisciplinary approach. So you'll find some of our First Nations child welfare agencies have merged into work with their colleagues at health. And so there's a holistic kind of service provision. And so there's emphasis, for example, on training physicians to work in northern communities. In fact I'm honoured to be the chancellor of the northern Ontario School of Medicine that was established over 20 years ago in northern Ontario for the purposes of training physicians to work up in the north. And they've had a lot of success at retaining those positions in the north. I think the figure is roughly over 80% of them will stay there where we're there tends to be some losing of those folks is when they go on to specialised training they'll have to go down to a larger centre like Toronto to be able to do that work. And so efforts are being made to do that. So I think it's really important to zone out and look at the various needs of families and develop a workforce that can work in an interdisciplinary way to meet those holistic needs of the family and of the child.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

So Dr. Blackstock, if you had a final message for Australia coming out of what, what Canada has learnt, what would it be?

Professor Cindy Blackstock:

Hmm. I would say that, you need to go after the causes of the over representation of Aboriginal and Torres Strait Islander children. need to avoid that codification of those structural barriers as a parental deficit. There needs to be investments that are consistent with substantive equality, the best interests of the children, the needs of the children and that are culturally based. One of the things I from my visits to Australia is such rich diversity among Aboriginal and Torres Strait Islander people. And to avoid that pan-indigenous approach and really make sure that those children from whatever nation they're from are really getting that opportunity to regain their culture and their language. What we have found pragmatically, is changing system reform by changing the way that things are funded seems to have the most catch for the government system. And so that's why we're moving to this performance-based budgeting, and that's why the outcomes of that performance-based budgeting have been developed by First Nations peoples and will be measured by First Nations peoples on an ongoing basis. I think that's really important. So, and, and of course you got some fabulous agencies down there like VACCA, with Muriel Bamblett, the great people at SNAICC, there's so much good work going on down there. And what I've seen over the years in Australia is the same problem we have here, is where there's important work such as the one year undertaking that are studied and recommendations are made only to have them sit on the shelf and then another study is struck to do the same problem. I think we have to get far better at implementing the solutions. We have to do better when we know better for kids.

Commissioner Lawrie:

Thank you.

Counsel Assisting:

Thank you. A very nice way to finish.

Commissioner Lawrie:

Yes.

Counsel Assisting:

Thank you very much for your time, Dr. Blackstock.

Professor Cindy Blackstock:

Thank you for having me and I wish you really well with your work and I hope that when your report is done you can send me a copy of it.

Commissioner Lawrie:

Most certainly will. Thank you so much, Dr. Blackstock. It's been a pleasure to hear from you. Thank you.

Professor Cindy Blackstock:

Thank you. Bye.

Commissioner Lawrie:

Bye.

Counsel Assisting:

Bye.

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