

## 2



### The Family

We believe healthy individuals ensure healthy families, communities, and nations. This is the foundation for any of the successes we are to have now and in the future, be it in settlement of land claims or in self-government.

Eric Morris  
Teslin Yukon 26 May 1992\*

**WE BEGIN OUR DISCUSSION** of social policy with a focus on the family because it is our conviction that much of the failure of responsibility that contributes to the current imbalance and distress in Aboriginal life centres around the family. Let us clarify at the outset that the failure of responsibility that we seek to understand and correct is not a failure of Aboriginal families. Rather, it is a failure of public policy to recognize and respect Aboriginal culture and family systems and to ensure a just distribution of the wealth and power of this land so that Aboriginal nations, communities and families can provide for themselves and determine how best to pursue a good life.

Volume 2 of our report focused on restructuring political and economic relations between Aboriginal people and the rest of Canadian society. The need for structural change forms a backdrop to our discussion of Aboriginal family life and, indeed, all the chapters in this volume. In this chapter, we are concerned principally with the Aboriginal vision of family well-being, the forces that have compromised the attainment of that vision, and the practical steps that can be taken to restore health and efficacy to Aboriginal families struggling to maintain a sense of cohesion and balance.<sup>1</sup>

For many Aboriginal people who spoke about the family at our hearings, families are at the core of the process of renewal in which they are engaged. These witnesses compared their present experiences of family life — of the all-too-common threats of violence and experiences of family breakdown — with the stories, passed down to them in the oral tradition, of a different order that prevailed in previous generations. The first part of this chapter begins with some brief sketches of what life used to be like as told in these stories.

In the following section, “Our Children Are Our Future”, we explore the impact of residential schools, the relatively recent history of interventions by child welfare authorities, and current efforts to create children’s services that are supportive of Aboriginal family life.

Many Aboriginal people consider family violence so pervasive a problem that it is preventing nations and communities from achieving their political and economic goals. Some presenters maintained that community healing from the scourge of internal violence is a prerequisite for self-government. All Aboriginal people would agree that the goals of re-establishing norms of mutual respect and caring for injured spirits must be pursued in concert with that of self-government. Further on in this chapter, we explore avenues to address family violence.

The authority of Aboriginal nations and their communities to exercise jurisdiction is central to specific strategies for protecting children, restoring balance in relations between men and women in families, and establishing ethical standards of respect for vulnerable persons. In the final part of this chapter, we consider aspects of family law that might reasonably fall within the jurisdiction of Aboriginal nations under self-government, the need to harmonize Aboriginal law making with provincial authority in particular, and the internal consultations necessary to the process of framing Aboriginal laws affecting the family.

We conclude the chapter with some observations about the role of public policy in regulating family life, an area considered in Canadian law and policy, as well as by many Aboriginal people, to be a private domain and one in which government intervention should be limited.

## **1. The Centrality of Family in Aboriginal Life**

### **1.1 Views from our Hearings**

Two themes stand out in presentations by Aboriginal people at our public hearings: the overwhelming concern for the well-being of children, and the belief that families are at the crux of personal and community healing.

Aboriginal interveners described in vivid terms their hopes for their children: that education would open opportunities they had never enjoyed; that children would learn their Aboriginal languages and histories; that they would be safe from violence; that they would not have to endure racist insults; that they would gain control over their lives and life conditions; and that they would be able to live with dignity as Aboriginal people in the land of their ancestors.

Detailed presentations on the Aboriginal family were more likely to focus on evidence of distress and breakdown, except when the revitalization of culture and the renewal of community were at issue. Then, family appeared repeatedly as part of a formula for transforming reality, where individual, family, and community are the three strands that, when woven together, will strengthen cultures and restore Aboriginal people to their former dignity. We saw that sometimes individuals undergo healing and strengthen families, while sometimes families nurture healthier individuals, but families consistently occupied the central position between individual and community. We heard that land reform, self-government and social institutions that deal fairly are all important, but it

was the vision of restoring the vitality of individuals, families and communities *in concert* that mobilizes the energy of the vast majority of Aboriginal people who spoke to us. The following excerpts from our hearings illustrate this.

The family is the foundation of Inuit culture, society and economy. All our social and economic structures, customary laws, traditions and actions have tried to recognize and affirm the strength of the family unit....Only positive constructive action by community governments and families and individuals can help recover our vision and zest for life.

Henoch Obed  
Labrador Inuit Alcohol and Drug Abuse Program  
Nain, Newfoundland and Labrador, 30 November 1992

We believe that the Creator has entrusted us with the sacred responsibility to raise our families...for we realize healthy families are the foundation of strong and healthy communities. The future of our communities lies with our children, who need to be nurtured within their families and communities.

Charles Morris  
Executive Director, Tikinagan Child and Family Services  
Sioux Lookout, Ontario, 1 December 1992

## **1.2 Family Life in Various Traditions**

To Aboriginal people, family signifies the biological unit of parents and children living together in a household. But it also has a much broader meaning. Family also encompasses an extended network of grandparents, aunts, uncles and cousins. In many First Nations communities, members of the same clan are considered family, linked through kinship ties that may not be clearly traceable, but stretch back to a common ancestor in mythical time.

Under the rules of clan membership, individuals are required to marry outside the clan to which they belong. Over generations, this resulted in every family in a community being related by descent or marriage to every other family in the community. Indeed, in rural communities whose membership has remained stable over time, family and community represent the same network of persons.

The layers of relationship built up over generations are described in a study of traditional life among the Caribou Inuit who live in the area west of James Bay.

According to Caribou Inuit belief, the best marriages were those of first cousins, and the very best arrangement of all was a brother-sister exchange (*akigiik*) between two sets of cousins; thus a brother and sister of one family would marry a sister and brother of another, the two sibling pairs being cousins to begin with. When a cousin marriage occurred, people who started life as siblings, cousins, nieces, and nephews, suddenly would become spouses and in-laws of various kinds as well, thus building one layer of kin relations upon another.<sup>2</sup>

The practice of marriage between cousins, with restrictions against marriage within the same clan, has been found in other Aboriginal societies as well.<sup>3</sup> The problems of intermarriage with close kin were evidently known historically to Aboriginal people. Elders report that raids on neighbouring nations to steal wives, as well as large seasonal gatherings where marriages of persons from different communities were contracted, were methods used to broaden the gene pool of small communities.

Aside from descent and marriage, Aboriginal people became kin or like kin in other ways as well. For example, adoption was a common practice in most communities. Some nations, such as the Iroquois, adopted captives taken in war, giving family names and full membership privileges to these persons, who replaced a member lost to war or misfortune. It is still common practice in many communities for parents to give a child to another family in the community. In some cases, a fertile couple would agree to have one of their children adopted at birth by a childless couple; in so doing the two families would contract a special bond with each other for life. As well, many traditionalists, having retained their knowledge of Aboriginal language, bush skills and medicine practices, consider it a privilege to have been reared by grandparents within these customary adoption arrangements.

Other forms of bonding within a community included hunting partnerships whereby kin groups or friends would share hunting territories to reduce the impact of the harvest on the land. The entire group would use the territory of one part of the partnership one year, then shift to another partner's territory the following year. These partnerships also often entailed certain obligations to distribute meat from the hunt.

The effect of these diverse, overlapping bonds was to create a dense network of relationships within which sharing and obligations of mutual aid ensured that an effective safety net was in place. As Ernest Burch observed regarding the Caribou Inuit:

A Caribou Inuit society was entirely lacking in politically, economically, or other specialized institutions, such as governments, businesses, churches or schools. Almost all of the functions required to sustain life were performed within the extended family context. Indeed, to a degree that most Canadians could scarcely comprehend, the life of a Caribou [Inuk] revolved around the family — from the moment a person was born until the time one died.<sup>4</sup>

As is the case in contemporary society in Canada, among Aboriginal peoples traditionally it has been the responsibility of the family to nurture children and introduce them to their responsibilities as members of society. However, the extended family continued to play a significant role throughout the lives of its members. When a young man went out on the hill to seek a vision of who he was to be and what gifts were uniquely his, it was not because he was preparing to go out into the world and seek his fortune. Rather, he would come back to the camp or the village to obtain advice from his uncles or his grandfather on the meaning of his experience, and his 'medicine', or personal power, was to be exercised in the service of family and community.

A clear division of labour along sex lines prevailed in most Aboriginal societies. For example, among the Anishnabe (Ojibwa),

...there was a clear distinction made between male and female roles, and public recognition went almost exclusively to the activities of men. The exploits of the hunter, warrior and shaman were celebrated in stories told in the lodge. The legends recording encounters with the supernaturals deal with the affairs of men. The role of women was to send men on their journeys with proper ceremony, to welcome them back with appropriate mourning or rejoicing, to hear and applaud the accounts of their achievements.

Ojibwa women were more, however, than passive complements to the life of their men. They were essential economic partners in the annual cycle of work. They were needed to perform the normal domestic chores of cooking, sewing and child care, but their skills were also essential to weave the fish nets and paddle the canoe during the duck hunt, to construct protective fur robes and roof the birchbark wigwam, to tan the hides and harvest the rice and maple sap.<sup>5</sup> Métis families similarly divided responsibilities between men and women as they ranged on extended hunting expeditions from permanent settlements, such as Red River. A woman from a Montana Métis settlement, who lived a mobile lifestyle with a group that migrated from Manitoba to Montana following the buffalo, recalled camp life in the early part of the twentieth century:

Our men did all the hunting, and we women did all the tanning of the buffalo hides, jerky meat making, pemmican and moccasins. For other supplies, we generally had some trader with us...who always had a supply of tea, sugar, tobacco and so on.<sup>6</sup>

In many Aboriginal nations, women could become warriors, hunters, healers or bearers of chiefly names and titles. But their contribution to the well-being of the community was typically through responsibilities specific to women, including marriage and child rearing. The fact that women did so-called women's work did not necessarily mean that they had minor influence or low status.

Thelma Chalifoux, a Métis woman of senior years who has been honoured for her community service, spoke at our hearings about her experience in a Métis extended family:

I would like to make a couple of little comments here on the role of women.

I was not a product of the Mission school. I was a product of a very strong Métis extended family that lived between the City of Calgary and the Sarcee Reserve.

I went to a public school and was discriminated against there because we were dirty halfbreeds. But the role of women, as I mentioned yesterday, was to take care of the elderly people in our community. We each had a role.

My mother's role was equal to my father's. My mother's role, my aunt's role and my grandmother's roles were that they looked after the whole family, the children, the garden, the berry picking, the food, because the men were away working most of the time. So they had total control and roles.

The man's role in the family was to make the living and bring home the money. When times were hard, everybody stuck together. When my grandmother or my aunts were out of food, everybody joined together and helped them out. We were a very, very proud extended family. There was relief in those days, but we never took it because that was just gifts and we weren't about to take it.

The role of the woman...was an equal role....The women's role within the Elders, my grandmother's role and my aunt's roles we were almost like hidden leaders, as we used to learn in community development days.

Everybody that needed advice went to my mother, went to my aunts, went to my grandmother. Even the men, when they went to the meetings and organizing, they never went before we always had a meeting and a gathering of the total family unit, the total community unit, and the women told the men what to say. It was a consensus of the total family unit.

When I went into community development and went into northern Alberta, I was amazed. It was like another total world, the way the women were treated; it was normal to be beaten every Saturday night. It was normal to have sexual abuse from young children to older children. And when we looked at it and we studied it, it was the demise of the Native culture that caused that. That never happened before.

There was no alcoholism in our community. There was no sexual abuse. I can remember old George \_\_\_\_\_ hit his wife and it was my dad and my uncles and the men in the community that went after him, and he never touched his wife again. It was a justice system that was fair and hard, but it was a good justice system in those days.

And when I went up North and I saw women, for survival, had to dress like men, it was a sad, sad state of affairs....The demise of the Métis and the Indian cultures, a lot of it is the result. Alcoholism and sexual abuse and physical abuse are only symptoms of a much larger problem.

Senator Thelma Chalifoux  
Metis Nation of Alberta  
Winnipeg, Manitoba, 22 April 1992

Senator Chalifoux's comments point to another feature of Aboriginal families that prevailed even in urbanized settings until recent times: families were the seat of both economic and political activities.

In Thelma Chalifoux's generation, the pursuit of the buffalo had given way to waged employment. Métis people continued to be mobile, but the maintenance of community

life then fell to the women.<sup>7</sup> Sharing within the extended family helped ease the effects of economic ups and downs. Women were the decision makers and practical nurses, and they were secure in their skills and knowledge. Decisions in organizations, presumably political, were reached by consensus within the family.

Clearly, Métis culture in the framework of a strong extended family was a source of life skills and confidence for Senator Chalifoux. Many other presentations in the transcripts of our hearings document the vitality of Aboriginal families and their effectiveness in fostering a strong sense of identity and extraordinary resourcefulness in individuals, particularly those who are now elders (see especially Volume 4, Chapter 3).

In Volumes 1 and 2, we described how, in traditional Aboriginal societies, the family was responsible for passing on the skills necessary for the varied round of economic activities, in which each member was expected to fulfil a specific role with competence and self-discipline (see Volume 1, Chapter 15, and the introductory sections of Volume 2, Chapter 5). People were expected to know what was required of them, as failure to learn and practise the lessons of survival could bring dire consequences.

Paulus Maggo, an Inuit hunter from Labrador who shared his life history as part of a research project conducted for the Commission, gave a terse commentary on hunters who neglected the basic necessity to apply knowledge specific to a situation. In one case, Maggo was part of a search party looking for two hunters who failed to return to camp; in another case, he described how the wrong choice of footwear contributed to a hunter's death:

We found that they had fallen through the ice and gone into the water....Where they fell through the ice was the kind of hazard my father used to tell me about. A thin layer of

frozen ice, with water below but not touching it, creates an air pocket between the ice and the water beneath it. This is called a Kauk and it can form at inlets and outlets of any lake, large or small. It's visible if you know what to look for. They had gone straight over it when they could have avoided the dangerous spot by going around it....

It was sad to hear that one of them froze to death but thankfully the other one lived. S. also froze to death when he was lost in the country after having been separated from his hunting party....It was only after he reached the treeline and was travelling along the brook that he froze his feet. It was said that he would have been fine if he was wearing sealskin boots because apparently he was wearing caribou skin moccasins with cotton leggings. He got his feet wet somewhere along the brook when he walked over some freshly fallen snow which covered shallow water underneath. By the time he realized this it was too late to turn back. He got wet and froze to death.<sup>8</sup>

Women's knowledge and proficiency also made essential contributions to survival. As Martha Flaherty explained:

If a woman was a sloppy sewer, her husband might freeze; a man who was a poor hunter would have a hungry family. Everyone in the camp worked hard and everyone had a specific role based on their age, gender and capabilities.

Martha Flaherty  
President, Pauktuutit  
Ottawa, Ontario, 2 November 1993

Among the historical Métis people, entire families participated in buffalo hunting expeditions. As there were large numbers of participants to organize, some of the activities within family units were supplemented by a quasi-military organization in the camp as a whole. Alexander Ross, in an 1856 account, described the discipline enforced during a buffalo hunt involving 1,210 Red River carts and 1,630 men, women, boys and girls. The movement of the camp was under the direction of 10 captains, among whom a senior was named. Under the captains were 10 soldiers and 10 guides, the latter taking turns bearing the flag used to signal directions to move or to stop the entourage. While the flag was up, the guide was chief of the expedition and in command of everyone. The moment the flag was lowered, the captains and soldiers were on duty. They policed violations of the camp rules, for example, “No party to fork off, lag behind, or go before without permission....No person or party to run buffalo before the general order”.<sup>9</sup> As with the more informal rules governing the Inuit hunting party, these injunctions ensured success in the hunt as well as the survival of the group.

As discussed at some length in Volume 2, Chapter 3 on traditions of governance, families and clans were also the principal avenue for political representation in Aboriginal societies. The decision-making forum might be a circle of elders assigning hunting grounds, a formal chiefs’ council to decide on the nation’s business, or a potlatch to formalize succession to a title and accord territorial rights.

The terms ‘institution’ and ‘social institution’ are used throughout this chapter to refer to the social functions of the family. An institution is a social structure that reflects the values of a society and is recognized as the appropriate agency for fulfilling certain purposes within the collective. Institutions such as the family, the education system, and the police force socialize or influence members of the group to conform to group values. The family as a social institution fulfils in some measure all the various roles of social institutions: it performs a mediating or bridging function, helps the individual understand the world and respond appropriately to society’s expectations, and helps society recognize and make a place for the individual.

From the earlier discussion in this chapter, it is evident that the family has fulfilled many functions. It has been co-extensive with the community in many cases, it has provided protection and security for individuals, and it has been the principal avenue for participation in the social, economic and political life of the nation and the local community. In short, the family can be said to be an all-purpose social institution.

### **1.3 The Family as a Mediating Institution**

The family in Aboriginal societies stood between the individual and the larger society, playing an interpretive or mediating role. It helped individuals understand and respond to society's expectations, and it helped Aboriginal society engage individuals in constructive ways and discipline them should they venture on a course that conflicted with prevailing social values and expectations of behaviour.

In urban societies, individuals are involved in many activities not directly related to each other — working, studying, shopping, selling and playing. Numerous social institutions have been created, therefore, to play the mediating role that families continue to fulfil in many Aboriginal societies. In urban centres, families are also counted as mediating institutions, alongside neighbourhoods, schools, unions, churches and voluntary associations.<sup>10</sup>

If an Aboriginal person has been socialized in a situation where the family is the all-encompassing mediator between the individual and the social, economic and political spheres of the larger society, and that family is subsequently lost or disrupted, then the individual has lost not just one support, but also the principal agency that helps him or her make sense of the world. In effect, the person is set adrift. Such individuals can join a church or a union or a club, as many city dwellers do to deal with isolation. But since a process of deep communication is involved, the language of these formal groups may not satisfy individuals' need to understand what is expected in a new situation and may do little to help them interpret who they are and what they have to offer in an unfamiliar environment.

Aboriginal families have undergone all the stresses that any hunter-gatherer or agricultural institution undergoes as it is plunged into an urbanized, specialized and industrial or post-industrial world. There are huge demands on its adaptability. In addition, Aboriginal families have been subjected to disruption and loss at the instigation of the Canadian state.

Several experiences of massive loss have disrupted the Aboriginal family and resulted in identity problems and difficulties in functioning. First is the historical experience of residential schooling in which children, some as young as six, were removed from their families for 10 months of the year or even years at a stretch. They were prevented from speaking Aboriginal languages and taught to reject their 'savage' ways (see Volume 1, Chapter 10 on residential schools, in particular the discussion concerning the vision and policies of residential school education). They lived without intimate contact with adults whom they could trust to make sense of their environment, trapped in a world with other equally confused and deprived children. In their testimony, former residents of these schools stated that their development had been arrested by the experience and it would take years for them to complete their maturation, if they succeeded at all in growing into socially and emotionally mature adults.<sup>11</sup>

A second experience of loss involves children whose parents have relinquished their responsibility to interpret the world for their children. In a study of education among the James Bay Cree, for example, John Murdoch describes a place referred to as "dress-up

creek". It was there that the Cree used to stop to remove their bush clothing and get dressed in European clothes before proceeding to the trading post. Murdoch observes that "While a well-dressed Cree might influence a better bargain in trade, the habit of 'dressing up' was also a social high point of the year." He goes on to suggest, from the vantage point of many years of experience living in the James Bay Cree community and working in the education system, that schools are still predominantly Euro-Canadian institutions in which Cree competence is undervalued:

Consequently, success at school for Cree children has required them to assume or 'dress-up' in behaviours and attitudes, many of which are not part of Cree competence....The children have generally been urged by their parents to 'act properly' and 'try hard', often in fashions not seen as proper or normal at home.<sup>12</sup>

Children in this situation have the world interpreted to them by two institutions, school and family, that may well present contradictory messages. The younger children are when confronted with such contradictions, the less likely they are to succeed in sorting out the confusion or to gain the appropriate life skills required to survive in a complex world.

The third situation in which children suffer from identity confusion and impairment of learning is when they are reared by parents who are insecure in who they are, what their responsibilities are, and how they should fulfil them. Their lack of confidence and life skills may stem from their own deprivation in residential schools. It may be the result of having relocated to an unfamiliar environment where nothing the parent knows is useful, or it may be the result of repeated experiences of failure in a colonial school environment where the demands communicated in a foreign language made no sense to them. This situation, in which parents had difficulty fulfilling their responsibilities, brought thousands of Aboriginal children into foster care and adoption in non-Aboriginal agencies in the past two generations.

Thus arises a fourth situation generating stress on people's personal and family lives. Foster placement outside the Aboriginal community has compounded the identity confusion of children, while their physical characteristics ensure that they will be perceived as 'Indians'. If separation from families and communities occurs after several years of cultural patterning have taken place, the adjustment they are required to make is all the more traumatic. If they are removed while very young, they never learn how to behave and respond in an Aboriginal manner. Yet if their appearance marks them as Aboriginal in a society that makes much of racial difference, the social expectation that they should be Aboriginal would present them with a constant dilemma. Individuals whose childhood socialization was disrupted by foster home placement outside their culture face enormous challenges in assuming nurturing roles as adults.

Evidence of the extent of the damage done to the development of children removed from dysfunctional families is contained in reports such as those we heard from inmates at the correctional facility at Prince Albert, Saskatchewan, where it was reported that 48 per cent of the inmate population was Aboriginal at the time of our visit.

A couple of years ago, the Prince Albert Native Awareness Group took a little survey amongst the Aboriginal prisoners here and we found that over 95 per cent of our people came from either a group home or a foster home. Of course, the survey was by no means scientific. It was based on common sense. We just asked: Were you ever in a group home or in a foster home?

Ken Noskiye  
Prince Albert, Saskatchewan  
27 May 1992

A final situation resulting in stress on family life is the migration out of close-knit communities where individuals have experienced social support from a network of kin. Migration to urban centres gained momentum following the Second World War. The first generation of migrants maintained close ties with their communities of origin, being described in some studies as “commuters”.<sup>13</sup>

There is some statistical evidence that migration in search of education, employment and an improved standard of living has had some success, since the educational and economic status of urban Aboriginal people tends to be higher than that of persons who continue to live in reserve and northern settings. However, our research indicates that while many of these people are intent on retaining their Aboriginal culture and identity, they find few institutional supports to sustain their identity and many impediments to building a sense of community. (Aboriginal cultural identity in urban settings is discussed in Volume 4, Chapter 7.) They experience considerable personal alienation and family stress in settings where they encounter the same expectations as immigrants do — that they should adapt themselves in a one-way process of integration into a predominantly secular, francophone or anglophone, European-based institutional culture.

If disruption of the family and its capacity to mediate between individuals and their world invariably stunted individuals’ development and destroyed their capacity to regulate their own behaviour, there would be few healthy Aboriginal people alive today. However, there is plenty of evidence that the extended family has provided a safety net for many.

I was a victim of a certain amount of abuse within my original home...I don't feel that I'm unique in terms of those abuses. My home was a battleground because of alcoholism. And with that I've carried on that search and questions that I had and went to my elders in my community and I asked my elders different questions as to why my family was different.

My elders became my parents. They were the ones who raised me, because my parents were not parents for me as a young girl.

In being raised with elderly people around you and them being your parents I realized that I was taught the equality of human beings within our nation.

We were equal and I was given a lot of rights at a very young age. I was given a lot of independence and that independence has carried me through.

Karen Pine-Cheechoo  
Moose Factory, Ontario  
9 June 1992

The concept of the family as a mediating institution helps to clarify why people become less vulnerable to disruptions of personal development as they mature and why elders are able to apply their life skills to complex intercultural situations. If the mediating structure functions well, children feel secure in the world. They gain confidence that they are knowledgeable and capable, and they are secure in taking risks to learn more. As they mature, children learn the codes for interpreting the world at large, and their dependence on the family to do the mediating work for them gradually decreases. Finally, they are able to mediate meaning for themselves.

Unlike children who have never internalized the codes and skills to interpret the world on their own terms, individuals with a secure identity and good problem-solving skills are open to new experiences. They can interact in relationships with strangers without being thrown off balance. These qualities of being in balance, of relating to all of life as a learning adventure, of accepting all sorts and conditions of people as they present themselves, make the character of elders attractive to Aboriginal and non-Aboriginal people alike. One such person is Merle Beedie, an elder who spoke to the Commission at Orillia:

One elder, an Anishnawbe-kwe [Ojibwa woman], said, "The next 500 years are for Native people." That is so encouraging. And they say, "Promote talking circles, teaching circles, healing circles to the Native and the non-Native communities. Promote healing lodges in our territories, develop all forms of teaching materials for the schools, TV

programs, plays for the theatres, movies, et cetera, et cetera. Educate all the community about our history, what our history was and is. Invite non-Native people to add to this history because some non-Native people out there know about our history and the part they played in this and they have to match roles, and we did survive together. Get our women into politics of our communities and nations and support women's groups whenever and wherever in our communities because they are our life givers, they are our peace keepers, they are our faith keepers."

Elder Merle Assance Beedie  
Barrie and Area Native Advisory Circle  
Orillia, Ontario, 13 May 1993

Aboriginal families have been at the centre of a historical struggle between colonial governments on one hand, which set out deliberately to eradicate the culture, language and world view of the First Nations, Métis and Inuit children over whom they assumed control, and Aboriginal parents on the other hand, who believe wholeheartedly that they have a sacred responsibility to maintain balance in the world for their children and others not yet born. Many Aboriginal adults have lived through this struggle and come out as whole human beings. Others, however, are serving time in a dead end from which they see no way out.

We quote here two young men who were inmates at the Prince Albert correctional institution at the time of our visit. Victims of family breakdown and multiple foster home placements, they did not plead for themselves, but rather for the children who can and must be kept from walking the path they have walked.

As I heard about this Commission, what was on my heart was the kids....I wondered what I might say to you people today. I wrote some things out here. I said, I don't know the number of people in this institution, but I know it's high, who have gone through that road, that pattern through child welfare....I hear this voice and I hear them pleading for someone to come and help. As we speak, there are children all across this country who need to come home to their people. So I said a prayer that this Commission would help them.

Pat McCormick  
Prince Albert, Saskatchewan  
27 May 1992

What I would like the Commission to do, if possible, is try to have the Native children who are very young to live with their own parents, instead of putting them in a place where there are white people who will molest them. I grew up hating white people because of this and I still kind of resent them, but I've been thinking about this a lot and I wanted to get it out. I hope what I say will be heard a bit....

I hope the people will start paying more attention to the Native children and help them by making sure that they stay with their own families, their own blood families, because when they are separated from their families they just grow up and they end up in places like this. Thanks for listening.

Arthur Darren Durocher  
Prince Albert, Saskatchewan  
27 May 1992

Healing the wounds of Aboriginal families is absolutely essential to achieving the rest of the Aboriginal agenda of self-reliance and self-determination. The family is the mediating structure, the bridge between the private world of the vulnerable child and the unfamiliar, too often hostile world of non-Aboriginal society.

In the next sections of this chapter we take the reader through the harsh realities of family dysfunction, evident in the high rate of children in care outside their biological families and in widespread violence. We examine the limitations and failures of interventions by agencies outside the Aboriginal community and the responses currently gaining ground in Aboriginal communities.

## **2. Our Children Are Our Future**

Today we are in a time of healing for our children, our families, our communities and Mother Earth.

Judy Gingell  
Teslin, Yukon  
27 May 1992

We believe our children are our future, the leadership of tomorrow. If you believe in that, then you have to believe also that you must equip your future with the best possible tools to lead your community and lead your nation into the twenty-first century.

Grand Chief Joe Miskokomon  
Union of Ontario Indians  
Toronto, Ontario, 26 June 1992

## **2.1 The Special Place of Children in Aboriginal Cultures**

Children hold a special place in Aboriginal cultures. According to tradition, they are gifts from the spirit world and have to be treated very gently lest they become disillusioned with this world and return to a more congenial place. They must be protected from harm because there are spirits that would wish to entice them back to that other realm. They bring a purity of vision to the world that can teach their elders. They carry within them the gifts that manifest themselves as they become teachers, mothers, hunters, councillors, artisans and visionaries. They renew the strength of the family, clan and village and make the elders young again with their joyful presence.

Failure to care for these gifts bestowed on the family, and to protect children from the betrayal of others, is perhaps the greatest shame that can befall an Aboriginal family. It is a shame that countless Aboriginal families have experienced, some of them repeatedly over generations. Here we examine the genesis of that shame, the efforts to erase it, and the role of public policy in restoring the trust of children, parents and grandparents in their future.

## **2.2 Historical Overview**

Our children are our future, a maxim of many Aboriginal nations, underscores the great value attached to children. The maxim was adopted as the title of a film that etched in unforgettable images the devastation wrought upon the lives of Aboriginal children by the workings of the child welfare system, a social institution created expressly to protect ‘the best interests of the child’.<sup>14</sup> The film has three story lines. We see the numbed consciousness and aimless violence of a young man who, adopted as a child into a non-Aboriginal family, has lost his way since becoming a teenager. We observe the efforts of an Aboriginal counselling service to help a troubled mother communicate with a court determined to protect her children from neglect. And we see a sign of hope for the future as a young child is restored to health through nurturing by his First Nations foster family, which introduces him to the ceremonial traditions of his people.

The film was one in a series of actions, beginning in the 1980s, aimed at drawing attention to the misdirected and destructive effects of government-sponsored interventions in Aboriginal family life. Another was the assertion of control over child welfare by the Spallumcheen First Nation Community near Vernon, British Columbia.

Chief Wayne Christian, who himself had been in foster care, was moved to action following the suicide of his brother, who had tried unsuccessfully to become re-integrated into the community after a period in foster care. Chief Christian led his community in passing a child welfare by-law in 1980 under the authority of the *Indian Act*. The federal government was persuaded to refrain from overturning it, and the government of British Columbia agreed to co-operate, under pressure from the Aboriginal community. Spallumcheen remains the only First Nation community to have achieved this degree of autonomy in child welfare administration.<sup>15</sup>

The 1983 publication of *Native Children and the Child Welfare System*, prepared for the Canadian Council on Social Development by Patrick Johnston, sent shock waves through child welfare and government systems, particularly those involved in First Nations child welfare.<sup>16</sup> It presented documentary evidence that First Nations people had good grounds for protesting against the massive involvement of child welfare agencies in removing children from their families and communities.

Johnston adopted the phrase ‘Sixties Scoop’ to describe a phenomenon that emerged in the years preceding his study. For example, he reported on the significant increase in the percentage of Aboriginal children in care in the province of British Columbia:

In 1955 there were 3,433 children in the care of B.C.’s child welfare branch. Of that number, it was estimated that 29 children, or less than 1 per cent of the total, were of Indian ancestry. By 1964, however, 1,446 children in care in B.C. were of Indian extraction. That number represented 34.2 per cent of all children in care. Within ten years, in other words, the representation of Native children in B.C.’s child welfare system had jumped from almost nil to a third. It was a pattern being repeated in other parts of Canada as well.<sup>17</sup>

The term ‘in care’ refers to children in the care of child welfare agencies for the purpose of protecting them from neglect or abuse. Care may be provided in foster homes, adoption placements, or in group or institutional settings. Johnston gathered data from the federal department of Indian affairs and from provincial and territorial ministries responsible for social services. Despite some problems of comparability of data, his analysis showed consistent over-representation of Aboriginal children in the child welfare system across the country, the percentage of children in the care of the state being consistently higher than the percentage of Aboriginal children in the total population. Comparisons were done using two criteria:

- the proportion of Aboriginal children in care was compared to the proportion of Aboriginal children in the total child population; and
- the number of children in the care of the state, as a percentage of all Aboriginal children, was compared to the total number of children in care as a percentage of the total child population of Canada.

Within the general picture of over-representation there were wide regional variations. In 1981-82 the percentage of Aboriginal children in care, as a percentage of all children in care in various provinces ranged from a low of 2.6 per cent in Quebec to a high of 63 per cent in Saskatchewan.<sup>18</sup> Child-in-care rates in the Maritime provinces were in the lower range: New Brunswick, 3.9 per cent; Nova Scotia, 4.3 per cent; and Prince Edward Island, 10.7 per cent. An estimate of the number of Aboriginal children in care in Newfoundland and Labrador placed the rate at around 8 per cent. Ontario's overall rate of 7.7 per cent masked the fact that in northern Ontario child welfare agencies the proportion of Aboriginal children in care was extremely high — an estimated 85 per cent in the Kenora-Patricia agency, for example. Intermediate ranges were found in other western provinces: Manitoba, 32 per cent; Alberta, 41 per cent (including delinquent children on probation and children with disabilities receiving special services); and British Columbia, 36.7 per cent. The Yukon, with 61 per cent, still had over-representation of Aboriginal children despite the higher proportion of Aboriginal children in the general population.<sup>19</sup> The Northwest Territories, with First Nations, Métis and Inuit children making up 45 per cent of children in care, was the only jurisdiction where the representation of Aboriginal children was not disproportionate.

When the number of Aboriginal children in care is considered as a proportion of all Aboriginal children, the percentage of children in care ranged from a low of 1.8 per cent in the Northwest Territories to a high of 5.9 per cent in British Columbia.<sup>20</sup> Across Canada, on average, 4.6 per cent of Aboriginal children were in agency care in 1980-81, compared to just under 1 per cent of the general Canadian child population.<sup>21</sup>

Information on where children in care were placed, whether in Aboriginal homes or non-Aboriginal foster and adoption homes, was not available for all provinces. In most provinces, however, placements in non-Aboriginal homes typically ranged from 70 per cent to 90 per cent, with the exception of Quebec, where Cree and Inuit child placements, reported separately, were almost entirely in Aboriginal homes, usually in the children's home communities. Approximately half the other Aboriginal children in care in Quebec were placed in non-Aboriginal homes.

Increased activity on the part of child welfare agencies corresponded with the federal government's decision to expand its role in funding social welfare services and phase out residential schools, which in the 1960s had increasingly assumed the role of caring for children in 'social need'.<sup>22</sup>

It was already accepted at the time in the professional community that apprehension should be strictly a last resort in protecting children from harm and that Aboriginal children were particularly vulnerable to its harmful effects.<sup>23</sup> Johnston explains:

Many experts in the child welfare field are coming to believe that the removal of any child from his/her parents is inherently damaging, in and of itself....The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and

neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. The Native child is placed in a position of triple jeopardy.<sup>24</sup>

Later analysts echoed Johnston's criticism that the interventions of social agencies reflected colonial attitudes and attempts to assimilate Aboriginal children and continue the work begun by residential schools.<sup>25</sup> Hudson and McKenzie argued that the child welfare system devalued Aboriginal culture by not recognizing and using traditional Aboriginal systems of child protection, making judgements about child care based on dominant Canadian norms, and persistently using non-Aboriginal foster and adoption placements.<sup>26</sup>

In a research report prepared for this Commission, Joyce Timpson, a social worker with extensive experience in northwestern Ontario, suggests that the colonialist and assimilationist explanation of the 'Sixties Scoop' may underplay the reality that Aboriginal families were dealing with the severe disruption caused by social, economic and cultural changes. In many communities they were also coping with the stress of relocation. Timpson presents strong evidence suggesting that the federal government's willingness to pay child-in-care costs, along with federal and provincial governments' resistance to supporting preventive services, family counselling or rehabilitation, were major factors in making apprehension and permanent removal of children the treatment applied most often in problem situations.<sup>27</sup> (For a discussion of the extent and consequences of relocation of Aboriginal communities, see Volume 1, Chapter 10.)

### **An Instance of "a System Gone Awry"**

When Cameron Kerley was eight years old he witnessed his father being beaten to death. Cameron and three sisters were apprehended by the Children's Aid Society and placed in foster homes. His mother died two years later as a result of heavy drinking.

Cameron was placed for adoption with Dick Kerley, a bachelor who had previously adopted another Aboriginal boy. Cameron soon began to display social problems, skipping school and getting into trouble with the law.

When he was 19 years of age he murdered his adopted father with a baseball bat. Cameron pleaded guilty to second degree murder and was sentenced to life in prison with no eligibility for parole for 15 years. After being sentenced, Cameron alleged that he had been sexually abused by his adoptive father since shortly after he was placed.

Cameron's appeal for a reduced sentence in January 1985 was denied, but his request to be returned to Manitoba to serve his sentence was granted with the consent of the Canadian government.

*Source:* Review Committee on Indian and Metis Adoptions and Placements, *No Quiet Place: Final Report to the Honourable*

Another milestone in the history of Aboriginal child welfare was the 1985 report of an inquiry by Justice Edwin C. Kimelman on adoptions and placements of First Nations and Métis children from Manitoba. The inquiry was prompted by protests from the Aboriginal community against placement of First Nations and Métis children in adoptive homes in the United States. Justice Kimelman found that the highly publicized case of Cameron Kerley (see box) was only one instance of a system gone awry.

At our hearings in Kenora, Josephine Sandy, who chairs Ojibway Tribal Family Services, explained what moved her and others to mobilize for change:

Over the years, I watched the pain and suffering that resulted as non-Indian law came to control more and more of our lives and our traditional lands. I have watched my people struggle to survive in the face of this foreign law.

Nowhere has this pain been more difficult to experience than in the area of family life. I and all other Anishnabe people of my generation have seen the pain and humiliation created by non-Indian child welfare agencies in removing hundreds of children from our communities in the fifties, sixties and the seventies. My people were suffering immensely as we had our way of life in our lands suppressed by the white man's law.

This suffering was only made worse as we endured the heartbreak of having our families torn apart by non-Indian organizations created under this same white man's law.

People like myself vowed that we would do something about this. We had to take control of healing the wounds inflicted on us in this tragedy.

Josephine Sandy  
Chair, Ojibway Tribal Family Services  
Kenora, Ontario, 28 October 1992

Justice Kimelman's report validated for the people of Manitoba and Canadians at large the pain and suffering being inflicted on First Nations and Métis families and children. To First Nations people, his report constituted an indictment of child welfare services:

The failures of the child welfare system have been made known many years after the fact in the statistics from correctional institutions, psychiatric hospitals, and as former wards of agencies became neglectful and abusive parents themselves....

In 1982, no one, except the Indian and the Métis people really believed the reality — that Native children were routinely being shipped to adoption homes in the United States and to other provinces in Canada. Every social worker, every administrator, and every agency or region viewed the situation from a narrow perspective and saw each individual case as an exception, as a case involving extenuating circumstances. No one fully comprehended that 25 per cent of all children placed for adoption were placed outside of Manitoba. No one fully comprehended that virtually all those children were of Native descent....

Children who entered the [child welfare] system were generally lost to family and community — or were returned with there having been little input to change the situation from which they were taken in the first place....

Every facet of the system examined by the Commission revealed evidence of a program rooted in antiquity and resistant to change.

An abysmal lack of sensitivity to children and families was revealed. Families approached agencies for help and found that what was described as being in the child's "best interest" resulted in their families being torn asunder and siblings separated. Social workers grappled with cultural patterns far different than their own with no preparation and no opportunities to gain understanding. It was expected that workers would get their training in the field.

The agencies complained of a lack of adequate resources, and central directorate staff complained of a lack of imaginative planning for children by agencies....

The funding mechanisms perpetuated existing service patterns and stifled, even prevented, innovative approaches. There was little statistical data and, what there was, was next to useless for program planning purposes. There was no follow-up on adoptions and thus no way to gather the data upon which any kind of evaluation of the adoption program could be based....

The appalling reality is that everyone involved believed they were doing their best and stood firm in their belief that the system was working well....The miracle is that there were not more children lost in this system run by so many well-intentioned people. The road to hell was paved with good intentions and the child welfare system was the paving contractor.<sup>28</sup>

## **2.3 Child Welfare Reform**

Some things have changed as a result of efforts begun in the 1980s. Since 1981, when the first agreement was signed authorizing a First Nation agency to deliver child welfare services, responsibility for delivering child welfare services has been delegated progressively to agencies administered by First Nations and some Métis communities. Emphasis is being placed on supporting increased Aboriginal control of the development, design and delivery of child and family services. In 1990-91, DIAND funded 36 Aboriginal child and family agencies covering 212 bands. Also in 1990-91, a total of \$1.5 million was allocated to First Nations, over a period of two years, for the development of Aboriginal child and family service standards.<sup>29</sup>

Most Aboriginal child care agencies have adopted placement protocols specifying the following placement priorities: first, with the extended family; second, with Aboriginal members of the community with the same cultural and linguistic identification; and third, other alternative Aboriginal caregivers. As a last resort, placement is considered with non-Aboriginal caregivers.<sup>30</sup> Some work has been done to develop culturally appropriate

standards for selecting Aboriginal foster caregivers; however, as discussed later, it has been hampered by funding constraints and limited policy support for developmental work in new Aboriginal agencies.

The following summary illustrates the developments in child welfare in Aboriginal communities:

- Agencies established under the tripartite agreement with the Four Nations Confederacy of Manitoba, signed in 1982.
- Agencies authorized to administer child welfare, particularly in northern and northwestern Ontario under the 1984 *Child and Family Services Act*.
- Child welfare prevention services sponsored jointly by bands and the provincial government in southern Ontario.
- Agreements signed with single bands such as the Blackfoot at Gleichen, Alberta, and the Métis and Cree community of Sandy Bay, Saskatchewan, to provide services under provincial mandates.
- Regional Aboriginal services developed, including Mi'kmaq Family and Children's Service of Nova Scotia and Nuu-chah-nulth Community and Human Services in British Columbia.
- Child welfare and other human services, in regions where land claims agreements have been concluded, delivered through boards under Aboriginal control, such as Kativik Regional Social Services and Cree Regional Health and Social Services Board in Quebec.
- Social services in the Northwest Territories decentralized to increase community control.

Aboriginal child and family services have been established in metropolitan centres such as Toronto and Winnipeg. They report significant success in recruiting Aboriginal foster homes. For example, Native Child and Family Services of Toronto reported that 62 per cent of the agency's placements in 1993-94 were customary care arrangements, signifying voluntary involvement of parents and placement in Aboriginal homes.<sup>31</sup>

Alberta has the distinction of sponsoring the only Métis-specific child welfare agency yet established. Metis Child and Family Services of Edmonton provides foster care placements and emphasizes traditional values as a component of the assessment process in home studies to screen potential caregivers. According to information provided to Brad McKenzie, who conducted a research study for the Commission,

An orientation training program and ongoing support meetings for foster parents are provided. As a private agency [Metis Child and Family Services] did not qualify for a 1994 increase of 5 per cent paid to foster parents providing service within the provincial

system. Barriers to the recruitment and retention of Aboriginal foster care identified by this agency respondent included limited funding, an inadequate training program for foster parents, limitations in the number of potential families who are able to foster, and a failure on the part of the social service bureaucracy to involve foster parents as meaningful partners in meeting the needs of children in their care.<sup>32</sup>

In the study McKenzie notes that such agencies, administered by Aboriginal people, have achieved considerable success in expanding the number of Aboriginal foster home providers, even though provincial agencies in diverse locations acknowledge difficulties in locating a sufficient number of homes.

Several provinces have moved to make their legislation more sensitive to Aboriginal identity in making plans for children. For example, Alberta specifies that an Aboriginal child must be informed of his or her status and that the chief and council of an Aboriginal child's community must be consulted before permanent wardship hearings.<sup>33</sup> Newfoundland's legislation specifies that "the child's cultural and religious heritage" must be considered in determining a child's best interests.<sup>34</sup> In the Northwest Territories, the objective of the 1994 *Aboriginal Custom Adoption Recognition Act* is "without changing aboriginal customary law, to set out a simple procedure by which a custom adoption may be respected and recognized".<sup>35</sup> The adoptive parent or parents simply provide identification papers along with a written statement from the interested parties that an adoption took place in accordance with Aboriginal custom. Once the custom adoption commissioner is satisfied that the information provided is complete and in order, a certificate of adoption is issued and the adoption is registered in appropriate vital statistics files. Records of the adoption are not sealed.<sup>36</sup> The Yukon provides that the child's "own cultural background" and "lifestyle in his home community" be considered in adoption cases.<sup>37</sup> Quebec's *Youth Protection Act* stipulates that "Every person having responsibilities towards a child under this Act, and every person called upon to make decisions with respect to a child under this Act shall, in their interventions, take into account the necessity...of opting for measures in respect of the child and the child's parents...which take into consideration...the characteristics of Native communities".<sup>38</sup>

Ontario has the most extensive provisions in relation to Aboriginal child welfare in its *Child and Family Services Act (1984)*. The act seeks to include both status Indian people and others of Aboriginal ancestry by using the term 'Native'. Special provisions for all children's aid societies serving Aboriginal communities recognize 'Indian' and 'Native' status as a 'best interests' category over and above the obligation to consider cultural background. The act devotes an entire section to Aboriginal child and family service agencies. It also recognizes customary care and permits these agencies to seek exemptions from the application of any part of the law.<sup>39</sup>

Alberta and Manitoba have created a child advocate office to provide impartial investigations into complaints concerning services rendered to children. About 20 years ago Quebec created a youth protection commission with a similar mandate. This commission was recently merged with Quebec's human rights commission to become the province's human rights and youth rights commission. Its mission is "to ensure...that the

interests of children are protected, and that their rights recognized by the Quebec youth protection act are respected".<sup>40</sup>

In many jurisdictions, exceptions are permitted to culturally inappropriate requirements that might screen out Aboriginal people applying to foster or adopt Aboriginal children. Such exceptions may be explicit, as in Ontario's *Child and Family Services Act*; or implicit, as in the practice of agencies that encourage Aboriginal families to provide care for Aboriginal children.

Expenditures to improve the coverage and quality of Aboriginal-specific child welfare services have been increased substantially for services to registered Indians ordinarily resident on-reserve and Indian child-in-care costs charged back to the federal department of Indian affairs. In 1992-93 the department allocated \$159.8 million to child and family services, representing 78 per cent of the welfare services budget, which also includes services to enable adults with functional limitations to maintain their independence. The welfare services budget increased from \$38.7 million in 1981-82 to \$204.8 million in 1992-93 — an annual increase of 16 per cent. Expenditures per child in care increased at an average annual rate of 17 per cent in the same period, rising from \$6,754 in 1981-82 to \$28,260 in 1991-92.<sup>41</sup>

Despite these welcome reforms, and modest successes in placing children in Aboriginal foster homes, which have stemmed the flow of Aboriginal children out of their communities and nations, it is evident that services to care for neglected and abused children are insufficient to repair the ills plaguing Aboriginal families.

In 1992-93, about 4 per cent of First Nations children living on-reserve were in agency care outside their own homes, a reduction from the highs of between 6 and 6.5 per cent in the 1970s.<sup>42</sup> During the same period, however, child welfare agencies serving the general population made an effort to keep children in their own homes, a move that reduced the general child-in-care rate to 0.63 per cent. The percentage of First Nations children in care is six times that of children from the general population in the care of public agencies. This disparity has increased since the 1970s, when First Nations children were placed in care at five-and-a-half times the rate of children in the general population.<sup>43</sup> As with most statistics on social services, only data on First Nations services provided directly or funded by the federal government are available. The extent of service to Métis people cannot be discerned from existing sources.

A November 1994 publication of Alberta's Commissioner of Services for Children states that "While only nine per cent of all children in Alberta are Aboriginal, nearly 50 per cent of the children in care are Aboriginal".<sup>44</sup> The terminology used would seem to imply that Métis and non-status Aboriginal children are included in the figures, despite the prevailing scarcity of data on the Métis population.

In a more localized study prepared for this Commission in 1994, an Aboriginal child and family service agency in southern Manitoba reported an on-reserve child population (0-

18 years) of 2,238 and an in-care figure of 257 at 31 March 1994, which translates to an in-care rate of 11.5 per cent.<sup>45</sup>

Child welfare agencies are set up to protect the interests of children at risk of neglect or abuse. The continued high rates of children in care outside their homes indicate a crisis in Aboriginal family life. In the next section, we explore the sources of stress in family life and the role of child welfare agencies in alleviating distress.

## 2.4 Current Issues

In our hearings, the nature and intensity of concern about child welfare issues varied across the country. In northern Ontario and the western provinces, concern about Aboriginal control of child welfare services predominated. In the north, strong traditions of custom adoption have helped Inuit to keep their children in their communities. Some interveners expressed concern about the encroachment of more formalized procedures of child placement, which they see as interfering with customary placements. Others maintained that informal checks to protect the interests of children in custom adoptions are insufficient and that young mothers may feel pressured by family members to make inappropriate placements.<sup>46</sup> Clusters of youth suicide cause serious concern, and awareness of child sexual abuse is being brought into the open, particularly by the action of Inuit women.<sup>47</sup>

Presentations to the Commission and research conducted for us confirmed the reality that reforms to child welfare services have effected only modest improvements in the well-being of families, chiefly by maintaining the cultural, community and family ties of children in care. We heard reports that in some places Aboriginal people have overcome alcohol abuse and its effects in their communities and instituted more culturally appropriate services, only to find that in a more supportive environment new layers of pain and abuse are revealed.

In *Choosing Life*, the Commission's special report on suicide, we recorded the experience of Canim Lake, B.C., where the people uncovered the widespread experience of sexual abuse in residential schools and the repetitive cycle whereby the abused became abusers. We also reported the collective response of the Canim Lake community in confronting this new challenge.<sup>48</sup>

Joan Glode, executive director of Mi'kmaq Family and Children's Services, was quoted in a research report prepared for the Commission as saying that

The development of an agency is not a happy ending because it is neither happy nor an ending. In our fourth year of operation a flood of disclosures of family violence and child sexual abuse have begun to surface. Many of these happened years ago and were masked by misuse of alcohol and drugs, social and health problems and mental illness. New skills and knowledge are needed, but as a community we have learned that the process involves looking back to our values and traditions and outward to current therapy and practice.<sup>49</sup>

The catalogue of problems and the limitations of current services in resolving them, as revealed in our public hearings and research reports, reads eerily like that presented in Judge Kimelman's analysis in 1985.<sup>50</sup> Among the current issues explored later in this chapter are the following.

- Intergenerational effects. The consequences of past errors continue to be felt in successive generations of Aboriginal families.
- External control of services and inappropriate funding. Child welfare policy is set in provincial institutions and is based on a non-Aboriginal value system and world view.
- The need for community healing. Families are losing their young less frequently to distant non-Aboriginal foster homes and adoption, but they still suffer the effects of highly dysfunctional families and community turmoil.
- Inadequate follow-up and evaluation, as illustrated by the problem of repatriating children seeking to re-establish their Aboriginal identity.
- Marginal and insufficient urban services, despite the increase in the urban Aboriginal population.
- Systemic resistance to change.
- Crisis orientation. Resources are inadequate to go beyond crisis response.
- Inappropriate training of social work personnel.

### *Intergenerational effects*

As Justice Kimelman did in 1985, presenters at our hearings linked current child welfare issues with the history of interventions by non-Aboriginal government in the affairs of Aboriginal families.

Most of our clients — probably 90 per cent of them — are, in fact, victims themselves of the child welfare system. Most of our clients are young, sole support mothers who very often were removed as children themselves. So we are dealing with perhaps the end product of the child welfare system that was apparent in the sixties scoop. Actually the sixties scoop lasted well into the '70s and we are seeing the reality of that on our case loads....We take the approach in our agency that it is time to break that cycle. The other interesting note is that while the mother may have been in foster care the grandmother — I think we all know where she was. She was in residential school. So we are into a third generation.

Kenn Richard  
Executive Director, Native Child and Family Services of Toronto  
Toronto, Ontario, 2 November 1992

The intent of the residential school policy was to erase Aboriginal identity by separating generations of children from their families, suppressing their Aboriginal languages, and re-socializing them according to the norms of non-Aboriginal society (see Volume 1, Chapter 10). The repercussions of the often brutal enforcement of measures to achieve assimilation are still being felt in the lives of former students:

I stayed in that residential school for 10 years. I hurt there. There was no love there. There was no caring there, nobody to hug you when you cried; all they did was slap you over: "Don't you cry! You're not supposed to cry". Whipped me when I talked to my younger brother. That's my brother, for God's sake. We were not supposed to talk to these people.

Jeannie Dick  
Canim Lake, British Columbia  
8 March 1993

I was one of the fortunate ones in the residential school, but the boy who slept next to me wasn't very fortunate. I saw him being sexually abused. As a result, he died violently. He couldn't handle it when he became of age.

Wilson Okeymaw  
Hobbema, Alberta  
10 June 1992

I have heard people who have said, "I left that residential school, and I have been like a ship without a rudder". I have heard people say, "I have left that place, and I left there just like a robot, with no feelings, with no emotions".

Elmer Courchene  
Fort Alexander, Manitoba  
29 October 1992

Chief Cinderina Williams of Spallumcheen recounted the events in her community leading to the take-over of child welfare. She writes:

With the absence of this caring and nurturing environment, [children] lost their identity, their feeling of self-worth, their self-esteem, their place within their own society and their whole reason for being. Some children harboured great resentment toward their parents, grandparents and their whole community for subjecting them to the horrors of the residential schools and found they could trust no one, not even themselves, for self-betrayal was common in order to survive. They had to cheat, lie and steal to avoid punishment, get food to eat and obtain special favours, or avoid hard labour.

Later when these children returned home, they were aliens. They did not speak their own language, so they could not communicate with anyone other than their own counterparts. Some looked down on their families because of their lack of English, their lifestyle, and some were just plain hostile. They had formed no bonds with their families, and some couldn't survive without the regimentation they had become so accustomed to....

Many, after years of rigid discipline, when released, ran amok, created havoc with their new-found freedom and would not listen to their parents, elders or anyone else in a position of authority. Perhaps the greatest tragedy of this background was the unemotional upbringing they had. Not being brought up in a loving, caring, sharing, nurturing environment, they did not have these skills as they are not inbred but learned through observation, participation and interaction.

Consequently, when these children became parents, and most did at an early age, they had no parenting skills. They did not have the capability to show affection. They sired and bred children but were unable to relate to them on any level. This is still evident today.<sup>51</sup>

The family dysfunction of today is a legacy of disrupted relationships in the past, but the effects are broader and more diffuse than can be traced in a direct cause-and-effect relationship. There are entire communities whose members are imbued with a sense of violation and powerlessness, the effect of multiple violations having reverberated throughout kin networks. The treatment of individuals is only part of the healing process that needs to take place. Bonds of trust and hope must be rebuilt within whole communities as well.

### ***External control of services***

As mentioned earlier in the chapter numerous child welfare services have been instigated by Aboriginal people. These are authorized under provincial or territorial legislation, even when they are funded by the Department of Indian Affairs and Northern Development (DIAND) and established through federal, provincial and Aboriginal tripartite agreements or as voluntary agencies.

Under the constitutional division of powers, jurisdiction over child welfare is provincial. Authority is delegated by provincial legislation to local agencies of the province or, in the case of Ontario and southern Manitoba, to private agencies chartered locally with boards of directors appointed by members of the local community.

The agencies have the power to apprehend children who are neglected or in danger of being neglected and to bring the matter before a family court, which can transfer guardianship or parental rights to the agency. Usually after two years of temporary care, if the parents are unable to provide for the child, the court grants an order transferring guardianship permanently to the agency. Agencies can also make voluntary arrangements to care for children with the consent of the parents. Agencies use foster homes that have been screened and approved. They may operate group homes for older children or children with relationship problems and foster homes for children with physical or developmental disabilities. They also use treatment facilities operated by health institutions or private organizations. Agencies have the authority to arrange adoption placement of children placed permanently in their care.

While children are in the care of the agency, per diem rates for maintenance are charged to the province, or in the case of registered Indians, to the federal government. Rates are set by the province or the local agency. These per diem fees usually constitute the bulk of an agency's budget and cover payments to foster parents, clothing and other expenses for children in care, a portion of agency workers' salaries, as well as operating costs. Per diem fees are paid directly in proportion to the days of child care provided and are not subject to an upper limit.

A much smaller portion of agency budgets is allocated to working with families to prevent apprehension, improving the conditions that lead to neglect so that children can return home, or planning adoptions. The budget for preventive and rehabilitative work with families is established with some degree of negotiation, but basically it is set at the discretion of the funder. Since more resources are available for child care, more effort goes into this portion of agency work.

The federal government historically has declined to introduce services (other than education) on Indian reserves in parallel with provincial institutions. The provinces have been reluctant to extend services to reserves principally because of the costs involved, but also because many First Nations have not welcomed provincial involvement, fearing that engaging in a relationship with the province might compromise their relationship with the federal government and their entitlements under treaties. A revision of the *Indian Act* in 1951 provided that all laws of general application in force in a province apply on-reserve unless they conflict with treaties or federal laws. This did nothing, however, to make the federal and provincial governments any less reluctant to work with Aboriginal governments in planning social services on reserves. The federal government has denied responsibility for services to Indians off-reserve, although post-secondary education assistance and non-insured health benefits have been available to some registered Indians off-reserve and Inuit living outside their traditional territory. Provincial governments historically maintained that funding of all services for Indian people, regardless of where they lived, was a federal responsibility. (For a discussion of the policy vacuum affecting urban Aboriginal services, see Volume 4, Chapter 7.)

A major review of government policy on First Nations, led by Harry Hawthorn and published in 1966, criticized both orders of government for their hands-off policy and argued that Indian people were eligible to receive services from both.<sup>52</sup> Federal-provincial dialogue on cost sharing of social welfare programs in general had been going on for several years. The federal government was now pushing for agreement on cost sharing of Indian welfare services. In 1965, it signed a welfare agreement with Ontario, which extended numerous Ontario social services, including child welfare, to Indian people on reserves, with provision for charge-backs to the federal government. Child-in-care costs for Indian children living off-reserve were also eligible for charge-back under the new agreement.

The Canada Assistance Plan (CAP) was introduced in 1966 to ensure that all citizens of the provinces received basic services. It provided 50/50 cost sharing of social welfare costs between federal and provincial governments. Indian people off-reserve were to be

covered by programs supported by CAP. Part II of CAP provided for a separate agreement to clarify off-reserve costs of services to Indian people, but apart from Ontario, no other provinces signed such agreements.<sup>53</sup> Money remained the stumbling block. While the provinces maintained that the federal government was entirely responsible for services to Aboriginal people, the federal government held that since it reimbursed 50 per cent of social program costs under CAP, Aboriginal people should be covered by provincial programs.<sup>54</sup>

CAP funding and the rules of program accessibility incorporated in the plan's guidelines did help to resolve the problem of eligibility for off-reserve Indians, who routinely had had difficulty accessing municipal social services when they moved off-reserve. Non-status Indians, Métis people and off-reserve Indian people were clearly within the ambit of provincial services.

Except on an emergency basis, child welfare services were generally not available to Indian people living on-reserve. The federal government purchased some services, but they were usually for children already in care, and none of the agencies was willing to get involved. Perhaps it was because of the post-war mobility of Indian people moving off-reserve, or perhaps it was because problems were ignored and allowed to deteriorate until apprehension was necessary. Whatever the reasons, the number of Aboriginal children in care continued to grow. The Canadian Council on Social Development sponsored an investigation of Aboriginal child welfare in two studies.<sup>55</sup> Patrick Johnston's study, quoted earlier in this chapter, was highly critical of child welfare practices and helped to fuel the fires of change being lighted elsewhere in the country.

Beginning in 1981, DIAND began to enter into tripartite child welfare agreements with provincial governments and tribal councils or regional groups representing First Nations. As a condition of these agreements, the federal government insisted that child and family services established under the agreements and operating under delegated authority from the province must adhere to provincial regulations.<sup>56</sup> The federal government was entirely responsible for financing on-reserve services and child-in-care costs.

Charles Morris, executive director of Tikinagan Child and Family Services in northwestern Ontario, described the consequences of placing child welfare in his region under provincial control.

Tikinagan Child and Family Services is mandated under the *Child and Family Services Act* to provide service in child welfare, community support and young offender categories....

It was our misfortune to have received our mandate when we did, in April of 1987, because of what has subsequently transpired. A five-year organizational review was conducted in 1990, and it showed the extent of our unpreparedness. We became, for all intents and purposes, a children's aid society which was indistinguishable from other white-operated children's aid societies, and to this date we continue to emulate the practices of these traditional children's aid societies. We adopted a system without

question, we became incorporated to this system, and today we perpetuate the practices of such a system. This is despite our efforts to not do so....

During our second-last annual assembly in Muskrat Dam, our elders directed us to seek more authority and autonomy in the child welfare field based on our natural and treaty rights as the First People of this land. Their rationale was that the Creator bestowed upon us the inherent authority to govern our own relationships amongst ourselves in our communities, and to structure our family support services in accordance with our unique culture and customs and in a manner which respects the genuine needs and priorities of our people.

We state categorically that the above is not possible within the present framework.

Charles Morris  
Executive Director, Tikinagan Child and Family Services  
Sioux Lookout, Ontario, 1 December 1992

### ***The need for community healing***

Conventional treatment services provided under provincial child welfare legislation typically treat children's needs for protection and care on a case-by-case basis, viewing each incident of neglect as though it were a discrete and exceptional occurrence rather than a localized eruption that is symptomatic of more generalized disorder in the organism of extended family and community.

Casework or therapy with a nuclear family is consistent with the western cultural perception that individuals are members of nuclear families that provide economic support and affection and can turn to specialized institutions for problem-specific help. Aboriginal people, on the other hand, often perceive themselves as members of family networks in which everyone is obliged, to the extent of their ability, to share their resources and assist all other members. In rural communities with stable membership over generations, the family and the community may be virtually the same group.

These different concepts of family, community and social obligations can lead to very different notions of how to conduct a helping interaction, as described by an Anishnabe social worker and his colleagues.

Figure [2.1] attempts to illustrate and compare the two distinctly different environmental contexts in which an Aboriginal worker functions. Figure [2.1A] depicts the Aboriginal community as a network. One immediately striking characteristic of this context is the high number and complexity of the interrelationships. Both the worker and the individual (or family) who is the focus of concern...are deeply and equally embedded in this community network. Members of the Aboriginal community potentially (and normally do) play multiple roles in relation to one another — friend, neighbour, relative, and community service volunteer, as well as job-related service giver and receiver roles. All of these roles are reciprocal, each (at least potentially) being played by each person in relation to all others in the community.

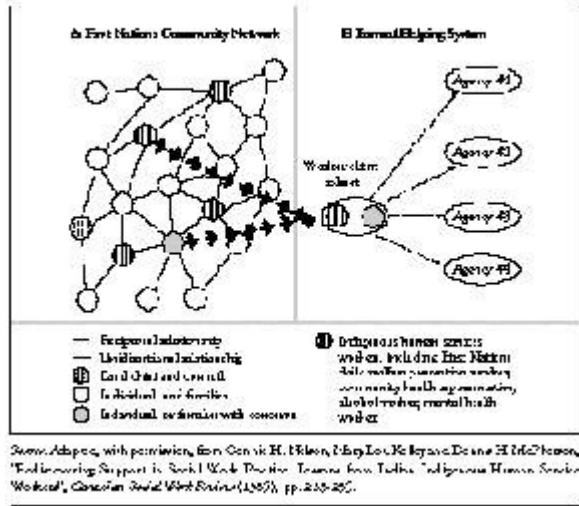
Figure [2.1B] illustrates the Aboriginal worker and his or her client seeking human service outside the Aboriginal community. The individual or family who is the focus of concern assumes the role of ‘client’ [in the] system — a more dependent and generally stigmatized role. In like manner, the community member functioning in the job of human service worker is cast in the role of ‘worker’ — a more powerful and generally more expert role. The worker is not seen by formal human service agencies as an individual simply fulfilling an expected role in the mutual aid system of the Aboriginal community. In the formal system, the worker-client role relationship becomes single faceted rather than multiple, and uni-directional (helper-helped) rather than reciprocal. Both worker and client become removed and isolated from the interpersonal network that gives their needs and behaviour meaning and that will ultimately provide the support and resources, or obstacles, to satisfaction of those needs.<sup>57</sup>

The differences between culturally conditioned Aboriginal ways of helping and services delivered in the conventional manner of professionalized social services are even more pronounced when the worker is also an outsider to the community. Aboriginal workers typically try to modify the mode of service in an ad hoc manner, risking being seen by both the community and the sponsoring agency as acting inappropriately.

Applying this model of helping, in which many members of the community network are conditioned or required to turn to outside agencies for help, weakens internal bonds of mutual aid. Community members are unable to contribute to the agencies that are the source of help, and they begin to doubt that they have the resources to help one another. Such a situation fosters dependent relationships.

External aid may well be required, however, given the poor economic situation of many Aboriginal communities. And Aboriginal nations will undoubtedly choose to respond to some community needs through service institutions similar to agencies operating elsewhere in Canada. We do not wish to imply that either external aid or formal agencies are inappropriate or unnecessary vehicles for meeting needs. We do wish to emphasize that services should be diligent about strengthening the capacity for mutual aid and using local resources, practices that, by all accounts, mainstream child welfare agencies have been slow to adopt.

FIGURE 2.I



In Chapter 3 of this volume we discuss the problems created by a multiplicity of agencies offering help within the confines of narrow bureaucratic regulations and divorced from community influence. At our hearing in Hobbema, Alberta, Wilson Okeymaw described the conflicts he experienced:

When we try to act as white people we have problems. We try to sit behind a desk, and wear a tie and a shirt. That's fine, but in the whole process we run into some difficulty....There is a real strong connection among people in this community, all the extended families. When something happens to an individual, everybody goes over there. And the funding agencies come back to me and say, "You're spending too much time over there. You have to be inside one 10 x 10 office." And [they] stack me with some more papers. There's an underlying family structure that the system has a hard time understanding.

Wilson Okeymaw  
Director, Nayo-Skan Healing Centre  
Hobbema, Alberta, 10 June 1992

Our proposals in Chapter 3 for reorganizing health and social service delivery systems under Aboriginal control will naturally encompass child and family services. We expect that services developed in community healing centres and regional healing lodges will address the need for community healing and mutual support networks, and at the same time acknowledge that professional services and resources from outside the community may still need to be deployed strategically in some circumstances.

### ***Inadequate follow-up and evaluation***

The foster care and adoption practices that removed thousands of Aboriginal children from their families and communities and placed hundreds of them outside Canada disrupted Aboriginal families to an appalling degree. Each situation was seen as an

exceptional case, and no steps were taken to evaluate and adjust the larger picture. Many of the cross-cultural adoptions broke down, setting the adoptee adrift in the process. When these lost children attempt to search for their roots, they are often thwarted by agency rules of confidentiality. Even when adoption placements have been successful, some adoptees are still interested in establishing an identity that encompasses their Aboriginal culture and origins. It is a priority of Aboriginal communities and family service agencies to repatriate Aboriginal children who lack stable family ties and Aboriginal youth who have no community connections, and to help rootless adults find their way home. But it is a priority that the mainstream service system has failed to recognize in a systematic way. In the words of an administrator of a Manitoba child welfare agency:

Since 1982, First Nations leaders have continuously requested that the federal and provincial governments demonstrate their support for resolving the historical injustices against Indian children, families and communities by assisting in the search for adoptees and by facilitating the repatriation for those who wish to return to their families and communities.

The Government of Manitoba provides repatriation assistance only on a case-by-case basis and only to those adoptees under the age of 18. Due to long years of government inaction, many of these children are now over the age of majority, 18, and are once again victims of a system that previously failed them.

The Manitoba Child and Family Services Department will attempt to reunify families only when both parties have registered with the post-adoption registry, a system that is relatively new and largely unknown to Aboriginal people who have lost their children. The Canadian government has failed to accept any responsibility and has refused to release documents critical to the search for adoptees....

Over the past decade, a number of adoptees have found their way home. All of the returning adoptees are searching for a cultural identity and many of them incorrectly perceive that they have been rejected by their own people. Although some of these adoptees have been happy in their adoptive homes, a much larger number were victims of emotional, physical, and sexual abuse....

First Nations child and family service agencies are doing their best to search for adoptees and assist those who are returning home. They have been left with the responsibility of picking up the pieces caused by inhumane child welfare policies of the provincial and federal governments....

No government has recognized responsibility and, consequently, the monumental care and treatment that is required for these adoptees is not available.

Morris Merick  
Director, Dakota Ojibway Child and Family Services  
10 December 1992

At another hearing, a young person who had lost touch with her family of origin described her perspective:

I come from a family that was somewhat dysfunctional and I am a product of the other Child Welfare Services. That Child Welfare Service said that my grandmother was too old and too poor to keep us children, although she wanted us. I met my sister, who managed to miss that system somehow and lived with my grandmother. What she said to me when she met me was: "I have to tell you this because my grandmother and your grandmother wanted me to if ever I found you. That was that she tried for years and years and years to find you — there were two others of us — and bring you back to the family."

Linda Nicholson  
Orillia, Ontario  
12 May 1993

### **Proposals to Support Repatriation of Adoptees**

1. Immediate release of any documents that would assist in the search for adoptees.
2. Financial assistance for those adoptees who wish to return home.
3. Immediate access to essential support services for those adoptees returning to Canada.
4. Appropriate funding for First Nations to allow for the development of a central registry office that would search, track and refer Native adoptees to appropriate agencies.
5. Appropriate funding for First Nations agencies to allow for the establishment of a repatriation home [program] that would provide a temporary shelter for returning adoptees, in addition to services related to developing cultural awareness and identity, preparing for life on the reserve, integrating with the community, counsellng for alcohol, drug, sexual, physical, and emotional abuse, coping and life skills.
6. A public apology to the First Nations people of Manitoba and, in particular, Native adoptees and their families.
7. Monetary compensation to Native adoptees and families for the pain and suffering they have endured.

Morris Merick  
Director, Dakota Ojibway Child and Family Services  
Brandon, Manitoba  
10 December 1992

Morris Merick presented a proposal to support repatriation of adoptees to their families and communities (see box). We urge that the important role of Aboriginal family and children's services in facilitating repatriation be recognized and assisted by appropriate adaptations of regulations in provincial agencies.

Establishing service standards and evaluation procedures will devolve more fully upon Aboriginal governments and service agencies as they gain more autonomy from federal and provincial governments.

Aboriginal agencies currently acknowledge the need to set standards of practice and monitor the effectiveness of their operations, but the history of external assessments, which were often seen as a threat to funding and often imposed inappropriate criteria, has left a legacy of distrust and resistance to assessments. Policy making and evaluation, therefore, are part of the set of skills that will be required in future even more than they are now. In a self-government context, with jurisdiction exercised at the level of the Aboriginal nation, communication skills to foster co-operation, as well as evaluation skills, will be essential. Accountability to members of the Aboriginal nation served will likely be through nation and regional structures, staff and board committees of community members, service agency and government personnel — whether the responsible government is Aboriginal, federal, provincial or territorial.

In our hearings, a number of presenters called for Aboriginal-specific legislation at the federal level in the field of child welfare. We do not discount the need for collaboration across Aboriginal nation boundaries and among networks of sectoral agencies to develop standards of practice. In our view, however, the authority for legislating child welfare and regulating practices should rest with the Aboriginal nation. With Aboriginal jurisdiction in place, there will be greater flexibility to introduce practices in keeping with Aboriginal culture and community realities, and an increased capacity to allocate funding in a way that reinforces family health and community responsibility.

### ***Marginal and insufficient urban services***

Statistics showing projected patterns of migration between rural and urban settings indicate that by the year 2016, the urban Aboriginal population will have increased in absolute numbers from 319,997 in 1991 to 457,000, a 43 per cent rise in 25 years. (Details on current issues in urban services and demographic projections are provided in Volume 4, Chapter 7.)

Our discussion of urban issues in Volume 4, Chapter 7 highlights the policy vacuum that has impeded the development of Aboriginal-specific services in urban settings. In Chapter 3 of this volume, we analyze the threats to people's health and well-being and show how the health of urban Aboriginal people is equally, if not more, at risk.

One predominantly urban concern is the increasing involvement of Aboriginal youth in life on the street. The disadvantaged conditions that Aboriginal people experience with such frequency, and the failure of social institutions and services to respond to the

resulting needs, converge in the lives of street youth. To gain some insight into this phenomenon, we commissioned a research project that worked through the staff of agencies serving street youth to locate and interview Aboriginal youth living on the street in Vancouver, Winnipeg and Montreal.<sup>58</sup> To provide some background to the young people's stories, the researchers also interviewed workers in these agencies as well as a few parents. Eleven young people were interviewed in all. Of these, seven were survivors of the street, two were temporarily in a detention centre, and two had left the street.

No reliable data exist on the number of youth living on the streets of Canadian cities or the proportion of them that is Aboriginal. Local studies and estimates by agency workers based on the use of services put the total number at anywhere from a few hundred to several thousand in the larger centres. There is greater agreement that Aboriginal youth make up a disproportionate number of street youth, with estimates ranging from 30 to 70 per cent of the population using needle-exchange programs for drug users and drop-in centres that provide food, clothing and shelter. Workers in the Montreal agencies serving street youth generally declined to make estimates, although one worker speculated that Aboriginal youth might constitute 10 per cent of the street population. Although there is a significant Inuit population in Montreal, Inuit youth are not visible in the street population.

Our research did not provide quantitative data on which to base pronouncements. Gilchrist and Winchester note, for example, that very young runaways, solvent sniffers, under-age prostitutes, gang members, and youth heavily addicted to alcohol and drugs were not interviewed directly in their study, although their presence on the street was often noted in interviews with others.<sup>59</sup> A range of characteristics and experiences is reported in the data. There is no typical profile of Aboriginal street youth. Some are as young as 11 or 12; others have been surviving on the street for close to a decade. Some have come from rural and northern reserves and settlements, others from families that have been in the city for more than a generation. Most of the youth interviewed had lost touch with their biological families following extended periods in foster or adoption care. The males in particular had experience with correctional institutions.

We found that the reasons youth take to the street can be grouped into three broad categories. Youth were

- products of the child welfare system, correctional system, and family breakdown, fleeing abusive situations or rejection because of homosexuality and, often, demeaning experiences of racism in non-Aboriginal society,<sup>60</sup>
- children who had failed to find meaningful relationships in the family or success in school, perhaps because of undiagnosed learning disabilities; and
- youth from rural reserves and northern communities or economically marginal urban families, seeking excitement but falling into prostitution because they had no job skills.

Children and youth who resort to the street and remain there do so because in their view it is better than what they came from. On the street they find an accepting culture — people who share and look out for one another, a family of sorts. But they also find exploitation, violence and, in some cases, early death. In an effort to mask the pain of their lives they use drugs and alcohol, which only numb their initiative, binding them in an aimless round. The following are portions of the histories of three street youth interviewed for the study.

Karen was 15 years old at the time of the interview in Vancouver and had been drifting between home and the street scene for two years. She was sexually abused by her cousin and relates her running away episodes to flashbacks she has of that prolonged and painful experience. Her mother told the interviewer that five of her 10 children suffer from fetal alcohol syndrome (described in Chapter 3 of this volume). Karen has not been diagnosed but may be one of those affected by her parents' past alcohol abuse. She described her routine on the street:

I just kill time. I'd walk around. I'd go to Carnegie and all that. I'd go on Hastings and then I'd go to Granville and walk there...and see all my friends around Granville. That's about it.<sup>61</sup>

Noella and her brother Axle, interviewed in Winnipeg, were taken into foster care at an early age and placed for adoption when Noella was about four years old. Her adoptive mother died when Noella was 10 years old. Even before her mother's death, her adoptive father had been sexually abusing her. Two years later she stole her adoptive father's car. After being arrested, she was put on probation and sent home. She breached probation and ended up in custody. Her life for the eight succeeding years was spent in and out of custody, completing grade eight in school, travelling to find her biological parents, having two children, both of whom were apprehended by child welfare agencies, and moving on and off the street. At the time of the interview her partner was Travis.

Travis was adopted at the age of six months by non-Aboriginal parents. Regular disputes with his adoptive parents culminated in Travis pulling a knife on his adoptive father at the age of 14. He was forcibly removed from the home and spent two years in a correctional institution. He learned that his biological mother had died in a fire when he was seven, and he spent some time with his biological father, whose drinking was an obstacle to forming a relationship. He drifted onto the streets at the age of 16 and expresses some shame about the criminal activity he has been involved in since then.

For the seven months preceding the interview Travis and Noella had lived in a rented apartment with Noella's brother Axle. They collected social assistance, were jobless, lived in low-rent housing, used soup kitchens and free recreational services, and spent most of their time on the streets of Winnipeg or trying to get off the streets. Their motivation to achieve a different life came from their desire to regain custody of their child who was apprehended at birth, ostensibly because Travis was intoxicated when he accompanied Noella to hospital for the delivery.

The grief and bewilderment of families is captured in the account of a Winnipeg parent whose nine-year-old child became involved with child pornography:

How she started, she met two older girls....She started bringing home things like perfume, gifts, clothing....Well, I didn't find out till she was about 11 when the police came to the house....They had a bunch of pictures of these young girls and pictures of my daughter were in there too....They caught the guy....He got seven years....She never spoke about it again. [They didn't receive counselling]...instead what they did was the family services put the children in the home and that was it. [The daughter went to a group home for two years, from which she ran away twice.] She was okay when she was locked up. She came out when she was 15. She never went back to school....She committed suicide.<sup>62</sup>

Gilchrist and Winchester draw on the work of Abraham Maslow in discussing human needs.<sup>63</sup> However, they consider a person's need for physical survival, protection, self-esteem and spiritual integrity as being of comparable importance, rather than ranked hierarchically as Maslow proposes. For youth living on the street, however, the opportunities to meet their needs are restricted at every turn.

Street youth usually lack the education and employment skills that would enable them to meet their needs for food, clothing and shelter in socially acceptable ways and are driven to panhandling, scavenging in garbage dumpsters, sleeping in stairwells and abandoned buildings, prostitution and petty crime. Children under age 16 are fearful of using street services because the law requires that they be returned to the home situation they are trying to escape. At the most basic level, street youth need safe houses, food banks and health services, including addictions treatment, and, for those who are able to make use of them, facilities to support independent living.

Street youth often need protection from the very people legally responsible for their care, be it their biological, foster or adoptive families. They also need effective protection from sexual predators and the people who profit from the sex trade. The youth themselves acknowledge the valuable assistance extended by street agencies, and Aboriginal youth look for Aboriginal faces in these agencies. At present, only a handful of services, such as the Bear Clan Patrol in Winnipeg, address the particular needs of Aboriginal children and youth on the street.<sup>64</sup>

Many street youth have experienced extreme trauma in their lives. Gaining or regaining the ability to hold a job and profit from counselling and education is often a long, arduous process. Aboriginal youth services, therefore, must include job skills training, alternative education options, and counselling that is relevant to their reality.

For these youth to become mature adults, they will require support to develop their identity, opportunities to learn about their cultures and traditions as Aboriginal people, and critical education that will empower them and enable them to transcend the pain of their past experience. The services needed in this area include repatriation services for adoptees and foster children, education in history and critical analysis, learning circles,

access to elders, and opportunities to experience cultural practices in ceremonies and life on the land.

On reserves and in Inuit villages considerable progress has been made in recent years in developing an array of culturally relevant services, including family and children's services. The development of services in urban settings has hinged largely on volunteer efforts and unreliable and inadequate funding. In Volume 4, Chapter 7 we make a number of recommendations concerning financing of social programs for people living off Aboriginal territory. We also recommend stable support for Aboriginal service agencies and hiring Aboriginal people to design and deliver services for Aboriginal clients in mainstream agencies.

As with all children's services, remedial treatment — mending fractured lives — is necessary but not adequate in itself. We must find the means to support and heal families before they break apart.

Missy, a former street youth, made use of healing services and cultural education to begin her recovery.<sup>65</sup> She now works in street services, and her appeal for immediate action adds urgency to our argument for more humane and effective services on behalf of children at risk, including those who find their way onto the streets of our cities:

If people don't start taking a look at [the street situation], we're going to see a lot more kids dying from overdoses and suicides and violent death....There are kids out there who are dying. We see that every day. But I think that government officials have to come down and take a look too.<sup>66</sup>

#### Service systems resistant to change

Despite persistent pleas from Aboriginal people that their interdependent needs be served by holistic services, the service environment continues to be fragmented between federal and provincial levels of government, between departments and ministries, and among service agencies in the community.

Rix Rogers is a former adviser to the federal government on the sexual abuse of children. Speaking at a Commission hearing, Rogers described the critical situation regarding the lack of services in Aboriginal communities, the financial constraints facing provinces, and the fragmentation of efforts to meet people's needs.

Where I think we've got a problem is in the provincial and federal mechanisms of government where we're organized on a basis of different ministries, different departments, and there's really no way of providing a sort of integration of effort.

Family violence and child abuse issues represent the first wave of very complex and multi-dimensional problems that no longer can be addressed by any one single government ministry. Governments have not caught up with that fact.

So that, if in fact we're going to get serious about meeting these needs, you'd almost have to do away with the current structures of government and create some brand new ones. And I would suggest that probably over the next 10 years that's what's going to have to happen.

Rix Rogers  
Institute for the Prevention of Child Abuse  
Toronto, Ontario, 3 June 1993

The Alberta commissioner of services for children is engaged in efforts to integrate children's services in Alberta. A report by the commissioner gives a summary account of what several provinces are doing to develop integrated service delivery systems that are

- responsive to all issues facing a family or child, rather than just a single problem;
- flexible enough to allow services to be tailored to the needs of the family or child — individualized approaches;
- able to provide an integrated set of services for children and families; and
- capable of assisting people with acute problems, while at the same time providing sufficient resources for early intervention.<sup>67</sup>

In 1994 the government of Ontario announced an Aboriginal health policy that acknowledges that Aboriginal people must play the leading role in designing health and wellness strategies in accordance with their cultures and priorities. The policy supports appropriately funded community health centres, hostels and hospices.<sup>68</sup>

In January 1995 the government of the Northwest Territories circulated a discussion paper, *Community Wellness: Working Together for Community Wellness*, which proposes that:

The Government of the Northwest Territories will honour the inherent ability of the community to care for itself. We will support the well-being of the people we serve by promoting healthy living, lifelong learning and healing.<sup>69</sup>

The document outlines strategies to improve co-ordination of government services and emphasizes early childhood development.

The Alberta commissioner's research revealed, as Aboriginal people have observed, that it is extremely difficult to shift the mode of operation or priorities of complex service systems. In the recommendations in Chapter 3 in this volume, we propose practical ways to initiate a more integrated service delivery system for Aboriginal health and social needs, including child and family services.

### ***Crisis orientation and training***

Crisis orientation and inappropriate training of social work personnel are treated extensively in the discussion of service delivery in Chapter 3.

Most policy makers would agree in principle that early intervention in problem situations is most likely to be effective in preventing severe breakdown and is therefore an efficient use of resources. In practice, however, when a crisis is breaking on every front in a family, service providers cannot afford to turn their backs on urgent needs on the grounds that the children will be better off in the long term. Where children are at risk in violent situations, they may not survive, or they may not remain emotionally healthy enough to be capable of enjoying any long-term benefits.

Given the evidence that the crisis in Aboriginal family life is not subsiding, it follows that services to cope with or avert crises must continue to be provided. They include monitoring children at risk and counselling families, shelters for family members vulnerable to violence, residential treatment for addictions, anger management, respite care to relieve overburdened caregivers, opportunities to learn and improve parenting and problem-solving skills, and alternative care within the extended family or community. Longer-term yet equally essential strategies include mobilizing community support networks, providing early childhood education, and researching ways to articulate modern applications of traditional knowledge.<sup>70</sup>

Our human resources development strategy, set out in Chapter 3, proposes ways of dealing with the challenge of training personnel to implement new approaches to human services. Social workers typically are trained to function within mainstream agencies, which often assume the role of assessing and controlling individual and family behaviour, rather than facilitating the healing of kin networks and whole communities. There are no systematic plans or resources earmarked to train new cadres of Aboriginal workers once child and family services have been established or when service personnel change.

Information from DIAND indicates that an unspecified part of the allocation for administration can be used for staff workshops and training. Training for staff at the start-up of an agency was often built into the global budget. Now, however, agencies report that current budget constraints do not allow them to sponsor training for new staff or orientations for the volunteer committees and governing bodies essential to keeping an agency accountable to the community.

Human resource development, including training Aboriginal personnel for diverse roles in a new integrated service system, will be essential to the success of new approaches to child and family services under Aboriginal control.

## **2.5 Conclusion and Recommendations**

Aboriginal institutions in the field of family and children's services are the way of the future. They will form part of the system for delivering integrated health and social services, described more fully in Chapter 3 in this volume.

Our recommendations here focus on affirming and implementing the authority of Aboriginal nations and their communities to act in the field of family and child welfare, and on resolving the tensions between federal, provincial, territorial and Aboriginal authority that interfere with protecting the best interests of Aboriginal children.

While we consider that protecting children's interests can be achieved best in the context of revitalized Aboriginal families, communities and nations, we do not underestimate the difficulties of turning ideals into reality.

In the recent history of Aboriginal child welfare, the best interests of the child have at times been construed as being in conflict with community goals of self-determination. One highly publicized case was the death of Lester Desjarlais, a child who committed suicide while in the care of an Aboriginal agency in Manitoba.<sup>71</sup>

Associate Chief Judge Dale Giesbrecht concluded from his inquiry into the death that political considerations in the local community had interfered with the agency's discharge of its responsibilities, that policies and lines of responsibility within the agency needed to be clarified and formalized, and that the provincial director of child welfare should take a more active role in monitoring the work of Aboriginal agencies. Concern about issues of political interference, organizational capacity and checks and balances in exercising of community responsibility are not confined to Manitoba.<sup>72</sup>

The tension between individual and group priorities surfaces in another area of child welfare. As discussed later in this chapter, judgements about guardianship and adoption placements of minor children often entail balancing a child's need for stable parental relationships with the equally compelling need to have community support in developing a mature Aboriginal identity.

Aboriginal and non-Aboriginal agencies and personnel bring different perceptions and approaches to the work of child welfare. Tensions emerge precisely because the well-being of children is such a fundamentally important issue in both Aboriginal and non-Aboriginal societies.<sup>73</sup>

As we reiterate often in this volume, non-Aboriginal institutions will have a continuing role in delivering services to Aboriginal people, even when Aboriginal self-government is fully operative across the country. The best interests of Aboriginal children will be served only by determined and sustained efforts on the part of Aboriginal and non-Aboriginal governments, institutions, and people to recognize and support each other's contributions to the common goal.

## **Recommendations**

The Commission recommends that

### **3.2.1**

The government of Canada acknowledge a fiduciary responsibility to support Aboriginal nations and their communities in restoring Aboriginal families to a state of health and wholeness.

### **3.2.2**

Aboriginal, provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Aboriginal nations can undertake self-starting initiatives.

### **3.2.3**

Aboriginal, provincial, territorial and federal governments promptly reach agreements on the authority of Aboriginal nations and their communities for child welfare, and its relation to provincial, territorial and federal laws respecting child welfare.

### **3.2.4**

Block funding be provided to child welfare agencies mandated by Aboriginal governments or communities to facilitate a shift in focus from alternative child care to family support.

### **3.2.5**

Until community of interest governments are established in urban and non-reserve areas, voluntary agencies endorsed by substantial numbers of Aboriginal people resident in the areas be authorized under provincial or territorial law to act in the field of child welfare

(a) where numbers warrant; and

(b) with levels of funding comparable to those of agencies providing comparable services to the general population and sufficient to meet the service needs of Aboriginal people.

## **3. Family Violence**

Aboriginal people perceive that the family as an institution is under severe stress from internal violence, which is both a symptom of stress and a cause of further distress.<sup>74</sup> This message was communicated most powerfully by Aboriginal women and their organizations in our hearings, although men and young people expressed concern as well.

We observed earlier in the chapter that the well-being of children was a prominent theme in the presentations made to us. Presenters made it clear that the safety and healthy development of Aboriginal children are seriously at risk in situations where there is pervasive and unchecked violence. The assessment of many Aboriginal people is echoed in the words of a speaker at Hay River, Northwest Territories:

Family violence is seen as the most rampant social problem of our time. It is probably the most expensive. The costs in terms of human suffering cannot be measured. The cost in dollars can only be guessed at.

Our children are vastly affected by family violence even when they are not the direct victims. The cost to our children is hidden in their inability to be attentive in school, in feelings of insecurity and low-esteem, and in acting out behaviour which may manifest itself in many ways, such as vandalism, self-abuse, bullying; and often these children suffer in silence.

Sharon J. Caudron  
Program Director,  
Women's Resource Centre of Hay River  
Hay River, Northwest Territories, 17 June 1993

Women spoke eloquently of the need to secure the safety and heal the spirit of all those who bear the current brunt and the past scars of family breakdown, alcoholism and violence. They pointed to the need for more effective community services; but even more important, they argued, is the need to reverse the pattern of excluding women that has taken hold in many Aboriginal communities. The experience of exclusion, powerlessness and hence vulnerability of women was especially painful when contrasted with the practice of balanced family-based decision making that traditionally prevailed in many Aboriginal nations. We highlight the perspectives of women on these and other issues in Volume 4, Chapter 2.

### **3.1 Naming the Problem**

Family violence can be defined as a “serious abuse of power within family, trust or dependency relationships”.<sup>75</sup> It has been brought to the fore as a public policy issue in Canada largely through the action of women’s groups since the 1970s.<sup>76</sup> The original focus of family violence discourse was on wife-battering. It quickly expanded to include physical violence against children and, more recently, child sexual abuse. It is now widely recognized that violence against individuals in families and dependency relationships takes many forms: physical violence, including sexual abuse; psychological violence in which vulnerable people are battered by demeaning and humiliating words; and economic abuse in which women and the elderly in particular are controlled or deprived by another family member who withholds or appropriates their money.

Perpetrators of violence are found in every region, every social class and every age group. A 1993 survey by Statistics Canada used random sampling to investigate the incidence of violence against women. ‘Violence’ in the survey was defined as experiences of physical or sexual assault that are consistent with legal definitions of these offences and could be acted upon by a police officer. The survey was the first of its kind anywhere in the world, and the results were startling:

The results of this survey suggest that violence against women is widespread and has serious consequences for victims. One-half (51 per cent) of Canadian women have experienced at least one incident of physical or sexual violence since the age of 16.

Twenty-five per cent of all women have experienced physical or sexual violence at the hands of a marital partner (marital partners include common-law relationships throughout this report). One-in-five violent incidents reported in this survey were serious enough to result in physical injury.<sup>77</sup>

When only women who at some time have had a marital partner are considered, the proportion who have experienced violence rises to 29 per cent. The original concern over the vulnerability of women and children continues to be justified, but disclosures of violence inflicted on elderly people and persons with disabilities are now being made with increasing frequency.

Older people are most likely to be subjected to economic abuse, as described in a research study we commissioned. Elderly persons tend to derive their income from pensions or social assistance, and this is supplemented by food from the bush or gardens. Some children and grandchildren rely on pensioners as part of their sharing network, but others act in more aggressive ways:

They barge in on them; they threaten them. These people [pensioners] are afraid to come out and say anything. And you can't say a thing, nobody will say anything because they don't want to go through the court. They haven't got the money. If it isn't the 'ruffians' it is the stores, because everything costs so much. The pension would be okay if it was just to provide for the pensioners themselves, it's ample. But it's the way the laws are, allows the people that are robbing to get away with it.<sup>78</sup>

Presentations from people with disabilities recounting the violence they had suffered were particularly disturbing:

As far as Aboriginal people with disabilities [are concerned]...we are less recognized and the most violated against by both races, both sexes, and both communities. We are raped by disabled men; we are raped by disabled women; we are raped by Aboriginal women; we are raped by Aboriginal men; we are raped by white women; we are raped by white men. And believe you me we have been raped by our medical attendants, doctors, nurses, occupational therapists — you name it, we've had it. We know what it is like to be down low, but for God's sake, you don't have to keep us there either.

Judi Johnny  
National Aboriginal Network on Disabilities  
Whitehorse, Yukon, 18 November 1992

Some Aboriginal people concerned about violence are pressing to have the definition of the problem expanded to include other situations where violence is likely to be felt personally — in employment situations where women may find it difficult to protect themselves from harassment, in communities where sharp divisions frequently flare up into confrontations, or where alienated youth are a threat to the safety of other community members.<sup>79</sup> Violence against gay men and lesbians and sexual abuse between siblings has received little attention in public policy to this date. The Commission heard

that ritual abuse of children, which has been shielded from investigation by respect for religious freedom, is emerging as a problem in some urban settings.<sup>80</sup>

In the midst of devastating revelations of the violence suffered daily by Aboriginal people, frequently at the hands of the men in their families, we were urged to recognize that men are victims too. One recent study indicated that in the inner city, Aboriginal boys are generally exposed to family violence and suffer physical abuse, while girls are more likely to be subjected to sexual abuse.<sup>81</sup> Revelations of the extent of sexual abuse of both boys and girls in residential schools, the fact that victims of abuse often become abusers, and the shame that leads men in particular to hide these experiences are all coming to the fore. Aboriginal people in the health care field now believe that Aboriginal men have suffered more sexual abuse as children than previously believed, and they are, in all probability, as devastated by these experiences as women have been.

### **3.2 The Face of Aboriginal Violence**

While family violence experienced by Aboriginal people shares many features with violence in mainstream society, it also has a distinctive face that is important to recognize as we search for understanding of causes and identify solutions. First, Aboriginal family violence is distinct in that it has invaded whole communities and cannot be considered a problem of a particular couple or an individual household. Second, the failure in family functioning can be traced in many cases to interventions of the state deliberately introduced to disrupt or displace the Aboriginal family. Third, violence within Aboriginal communities is fostered and sustained by a racist social environment that promulgates demeaning stereotypes of Aboriginal women and men and seeks to diminish their value as human beings and their right to be treated with dignity.

Family violence is perceived to be widespread in Aboriginal communities, but there are few national statistics demonstrating the incidence of violence or whether the situation is improving as a result of greater public awareness and programs to combat the problem. Studies reporting on the incidence of violence are often initiated by groups providing services, raising the possibility that the study group includes a high representation of persons with service needs. Nevertheless, certain studies provide quantitative data that serve as a context for the personal statements made in the Commission's hearings.

A study by the Ontario Native Women's Association, for example, found that 8 out of 10 Aboriginal women had experienced violence. Of these women, 87 per cent had been injured physically and 57 per cent had been sexually abused.<sup>82</sup> According to a London, Ontario, area study, 71 per cent of the urban sample and 48 per cent of the reserve sample of Oneida women had experienced assault at the hands of current or past partners.<sup>83</sup>

For a study reported in 1991, 61 Aboriginal women were recruited by Aboriginal agencies in Lethbridge, Alberta. Of this non-random sample, 91 per cent of the respondents said they had personal experience with family violence. While these women identify psychological and verbal abuse as the most common, (ranging from blaming at 88 per cent to swearing at 82 per cent), a significant number had also been subjected to

slapping (77 per cent), hitting (64 per cent), and punching (54 per cent). Sixteen per cent reported being touched unwillingly and being forced into sex with partners.<sup>84</sup>

Emma LaRocque, a Métis professor at the University of Manitoba, spoke at the Commission's national round table on health and social issues. She confirmed the difficulty of obtaining an accurate picture of the extent of violence affecting Métis people:

Since it is considerably more difficult to get precise statistics on Métis people, it is virtually impossible to say with any exactness the extent of sexual violence in Métis families or communities. However, as more victims are beginning to report, there is every indication that violence, including sexual violence, is just as problematic, just as extensive as on reserves.<sup>85</sup>

Pauktuutit, the Inuit women's association, published a report in 1991 entitled *No More Secrets: Acknowledging the Problem of Child Sexual Abuse in Inuit Communities*. It described the problem of child sexual abuse among Inuit in the Northwest Territories, Quebec and Labrador and promoted disclosure by explaining legal reporting requirements in provinces and territories.

An analysis of data from Statistics Canada's 1991 Aboriginal peoples survey indicated the proportion of Aboriginal people identifying certain social issues as a problem in their communities. As shown in Figure 2.2, 36 to 44 per cent of Aboriginal people saw family violence as a problem; 22 to 35 per cent of Aboriginal people saw sexual abuse as a problem in their community. Unemployment and alcohol and drug abuse were the only problems eliciting higher levels of concern among Aboriginal people in this survey.

Although it is impossible to estimate the frequency of violence in Aboriginal communities, there is clearly intense concern among Aboriginal people, especially women. The panel on violence against women, reporting in 1993, encountered similar difficulties in establishing firm data on the incidence of family violence. A survey conducted in Toronto on behalf of the panel reported that in the general population 54 per cent of women had experienced some form of unwanted or intrusive sexual experience before reaching the age of 16; 51 per cent of women had experienced rape or attempted rape; and 27 per cent of women had experienced physical assault in an intimate relationship.<sup>86</sup> The figures on violence at the hands of a partner are consistent with the results of Statistics Canada's more broadly based national survey conducted in 1993.

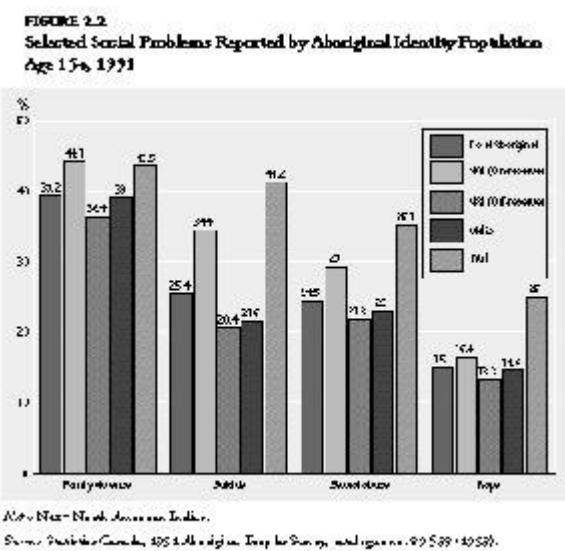
The extent of violence reported in local studies further underlines the severity of the problem and leads us to ask why violence is so pervasive in Aboriginal families and communities. In published work focusing on family violence, as well as in our hearings, Aboriginal people have consistently linked violence with situations in which individuals feel trapped in disadvantage and frustration.

Writing in *Vis-à-vis*, a national newsletter on family violence, Martha Flaherty, president of Pauktuutit, stated:

There are many reasons for family violence. High unemployment, poor housing, child abuse, drug abuse — these have led to a loss of culture — which has in turn led to violence against ourselves and our loved ones.<sup>87</sup>

At public hearings in widely separated locations, Commissioners heard a similar analysis:

I think there needs to be a tremendous stress on education which enhances the pride and abilities of our youth. A good deal is said — and I am sure the Commission has heard this many times — about the plight of Aboriginal women. I don't want to disparage those remarks in any way. I have heard them over and over again. But my own experience is that the group within our society which is suffering the most is Aboriginal men. It is largely our men, both Indian and Métis, who are in the prisons and penitentiaries of this country.



Part of that arises out of the fact that the pride of our people has been killed in many individuals. Our young men have suffered a psychological castration complex for the last 100 years, and it is time that this was stopped so that our young men can turn to positive pursuits by way of education, so that we can break the cycle of criminality and imprisonment, so that we can break the cycle of the mistreatment of women and children in our communities.

Senator James Penton  
Metis Nation of Alberta  
Lethbridge, Alberta, 25 May 1993

A research study of Fort Resolution, Northwest Territories, observed that young single men lived in an environment of high unemployment, considerable dependence on social assistance, and little or no opportunity to participate in traditional subsistence activities. The researcher considered the lack of options a disastrous environment for preserving or strengthening self-esteem:

Men in the prime of their working life may be the most dispossessed group of people in the community, which can be nothing short of a catastrophe for Dene/Métis cultures.<sup>88</sup>

Other Aboriginal people point to the intergenerational effects of the residential school experience as the beginning of learned patterns of violent behaviour. A respondent in a study of family violence in the Treaty 7 area stated:

One good example is my grandpa. His education was up to grade two, I think. From what my father tells me, there was a lot of abuse going on. A lot of name-calling, a lot of put-downs with the priest towards the kids. For every little thing they got the whip. My grandpa grew up with that and he learned that, then he used it on his kids. Then my father used it on us. If I don't try to do something about it, I'm going to use it on my kids. So that's the pattern, where we picked it up from, the boarding school.<sup>89</sup>

The self-rejection and anger, internalized as a consequence of colonial experiences that devalued Aboriginal cultures and languages, were described by another presenter:

When you are talking about oppression, there is a process that goes on. [First] there is a process that demeans us, that belittles us and makes us believe that we are not worthy, and the oppressed begin to develop what they call cultural self-shame and cultural self-hate, which results in a lot of frustration and a lot of anger. At the same time this is going on, because our ways are put down as Native people, because our cultural values and things are put down, we begin to adopt our oppressors' values and, in a way, we become oppressors ourselves....Because of the resulting self-hate and self-shame we begin to start hurting our own people.

When you talk about things like addiction and family abuse, elder abuse, sexual abuse, jealousy, gossip, suicide and all the different forms of abuses we seem to be experiencing, it's all based on [the original] violence. It's all a form of [internalized] violence....[Churches and governments] made us believe that the way we are today is the Dene way. It isn't. That is not Dene culture.

Roy Fabian  
Hay River, Northwest Territories  
17 June 1993

Other respondents in the study of family violence and community stress in Treaty 7 communities thought that the values that guided Aboriginal society in former times had undergone significant change:

It seems like it's more like me, myself, the environment. You don't share with each other. You survive for yourself. You don't share or help people anymore. Not like before. Everything was shared. It's like the 'I' generation and you don't care about the next person. So I think that's all due to residential school and getting brainwashed. Like two generations before me. They lacked nurturing and never nurtured their children....

It's an absence of values. Before the values were so strong, so stringent that to step over those boundaries would mean severe, maybe, ostracization or the family would do something. Because the values were so strong then, individuals would have to think quite hard before they did something. Because they had so much strength and spirited value that such thoughts never entered their mind. But now there are so many things that are eroding our culture.<sup>90</sup>

A resident of Sheshatshiu, Labrador, who spoke at our hearings of the changes introduced to the Innu from outside their culture, speculated that their lives would have been better without the innovations often imposed by external authority.

The Innu didn't change the way they live, or haven't changed. It is the government that [is] changing us, that wants us to live the way they live, but we can't do that, we have to maintain our way of living as well. If they hadn't bothered with the people in our communities in the early days, we would still have what we had in the past. And now it's different. We can't live the way we used to live, and a lot has been taken away, a lot has been destroyed through the governments. There have been a lot of changes, a lot of things brought in by the white man, such as alcohol and other stuff that is destroying us very slowly. In the early days, there was no such thing as alcohol, and there was no such thing as houses being burnt down. There was no such thing as the problems that we are encountering now in our communities. You wouldn't have heard or seen what happened in February when we lost six children in the community of Davis Inlet because of alcohol. There was no such thing as people going to jail, people taking pills and other substances, as are in Canada now, there was no such thing in the early days when we lived in the past, but now it's changed. Now there are courts, people taking pills and abusing alcohol. [translation]

Elizabeth Penashue  
Sheshatshiu, Newfoundland and Labrador  
17 June 1992

Alcohol abuse, often associated with violent episodes, is seen not as a cause of violence but as a parallel means of dealing with deep distress:

It has been identified that alcohol and violence of different kinds have replaced traditional ways of coping in a time when peace, self-value and harmony for the individual and the community were honoured. These problems represent, for me, the grief suffered from losing that structured way of life.

Harold Orton  
Community Care Centre for Substance Abuse  
Orillia, Ontario, 13 May 1993

We were reminded by the young people who spoke to us that recovering that structured way of life will not happen of its own accord. Young people need and want to be trained in the ways of their culture if they are to break the destructive patterns of social life now evident in many communities:

All the things that I've mentioned and a few that I haven't mentioned are things like suicide, AIDS, sex abuse, cultural development, psychological training, self-image, self-esteem, recreation, et cetera. Whenever we talk about youth everybody says, 'Give them some recreation programs. You will pacify them and you'll get them out of your hair. They'll go and play' ....

We are the future leaders. Leaders are not born automatically to become leaders. They are trained. It's a long, drawn out process, so the adult population has to respect the fact that we require training and they have to put us under their wing and they've got to protect us until we become leaders and are prepared to go out into the mainstream society to make some political statement or to become future leaders in economic development or social development.

Raymond Laliberté  
Métis Addictions Council  
La Ronge, Saskatchewan, 28 May 1992

As we discussed in *Choosing Life*, our special report on suicide, many factors contribute to weakening the fabric of a society and loosening the bonds of relationships and self-regulated behaviour: social change that is rapid or beyond the control of a society; family breakdown, which interferes with the nurturing and socialization of children; poverty and economic marginalization, which restrict opportunities for youth and contribute to a loss of hope; loss of respect for the wisdom of Aboriginal people's culture; and learned patterns of self-defeating or self-destructive behaviour passed on from one generation to another.

We pointed out in *Choosing Life* that these depressing conditions afflict Aboriginal people more frequently than others in Canada, and this is no accident. Aboriginal people were not simply caught in an onslaught of development. In fact, they were subjected persistently and systematically to interventions that sought to eliminate or replace Aboriginal institutions with the allegedly better institutions of colonial society. In Volume 1 of our report, particularly chapters 8 to 13, we documented the historical policies that had a devastating effect on the culture and cohesion of Aboriginal nations and communities and lasting intergenerational consequences in the lives of families and individuals.

In our hearings and commissioned research we found further evidence that assaults on Aboriginal identity, culture and community institutions continue today. Aboriginal people recounted racially motivated incidents experienced in their daily lives. The stereotyping and devaluing of Aboriginal women, a combination of racism and sexism, are among the most damaging of attitudes that find expression in Canadian society. These attitudes are not held exclusively by non-Aboriginal people either. Indeed, as Roy Fabian pointed out earlier, members of powerless groups who are subjected to demeaning treatment tend to internalize negative attitudes toward their own group. They then act on those attitudes in ways that confirm the original negative judgement. Donna Sears, speaking to us at London, described the process as she saw it:

The portrayal of the squaw is one of the most degrading, most despised and most dehumanizing anywhere in the world. The squaw is the female counterpart of the Indian male savage and, as such, she has no human face. She is lustful, immoral, unfeeling and dirty. It is this grotesque dehumanization that has rendered all Native women and girls vulnerable to gross physical, psychological and sexual violence.

I believe there is a direct relationship between these horrible racist, sexist stereotypes and violence against Native women and girls.

I believe, for example, that Helen Betty Osborne was murdered in 1972 by four young men because these youths grew up with twisted notions of Indian girls as squaws. Racist and sexist stereotypes not only hurt Aboriginal women and their sense of self-esteem, but actually encourage abuse, both by Aboriginal men and others. Our family violence programs attempt to help both victims and offenders to see beyond the stereotypes.

Donna Sears  
Atenlos Native Family Violence Services  
London, Ontario, 12 May 1993

Not all Aboriginal communities are racked by violence, nor are all Aboriginal people whose lives have been touched by violence necessarily at risk all the time. It can be said, however, that the people who find themselves in high-risk situations are, with shocking frequency, Aboriginal people: pregnant women; children in their formative years; teenaged girls; wives who feel they have no exit from a violent home; and seniors who lack the protection of a functional family. Poverty and all its ills also have an insidious, demoralizing impact on the lives of too many Aboriginal people.

Aboriginal people who asked Commissioners for help in putting an end to violence laid out the ground rules for action: Don't stereotype all Aboriginal people as violent, but make sure that interventions are targeted to those at risk. Don't make social or cultural excuses for violent actions, but attend to the safety and human rights of the vulnerable. Don't imagine that family violence can be addressed as a single problem; rather, root out the inequality and racism that feed violence in its many forms.

### **3.3 Barriers to Change**

#### ***Denial***

Until the persistent efforts of women in mainstream and Aboriginal society brought the secret of violence into the open, the greatest barrier to correcting the problem was denial. While many still feel shame in acknowledging violence in the family, there is a growing awareness of what constitutes healthy and unhealthy behaviours, as the following presenters explained:

[People] are becoming accountable and responsible to self, family and community. There is also a negative side to the journey to wellness, and that is that there is a lot of denial and fear out there. Communities are saying: "No, we don't have sexual abuse. We don't

have an alcohol problem. We don't have child neglect here." But yet there are tragic stories to be told in our communities.

Marcia Mirasty  
Health Promotion Co-ordinator  
Health and Social Development,  
Meadow Lake Tribal Council  
Ottawa, Ontario, 18 November 1993

Aboriginal women experiencing family violence are reluctant to seek medical attention for their mental and physical injuries. The severity of injury suffered as the result of family violence is dangerously high.

Twenty-four per cent of the respondents to our questionnaire indicated that they knew of deaths as a result of Aboriginal family violence. And 54 per cent of the respondents suggested that they knew of cases where a woman sustained injury which required medical treatment as a result of family violence but did not seek medical attention, out of fear and shame.

Catherine Brooks  
Executive Director, Anduhyaun Community School  
Toronto, Ontario, 26 June 1992

There are many reasons why family violence is consistently under-reported:

- the attitude of the family or community that family violence is normal;
- poor self-esteem, shame and acceptance on the part of the abused spouse;
- the fear that children will be taken away by child welfare authorities;
- reluctance to have the abusive spouse charged under the mandatory charging procedures now in place in some provinces;
- fear of loss of income if the bread-winner is incarcerated; and
- a lack of faith in the system to respond or intervene effectively.<sup>91</sup>

In some cases, women who received inadequate or no protection as children have met violence with violence as adults, with more tragedy ensuing.

We need to pay some attention to the security of our female population. Today in this country [Aboriginal] women make up 25 per cent of the federal prison system. Their crimes have been violent crimes. I mean murder and violent assault. And they have told us why they committed these crimes. Many were victims of incest. Many were victims of sexual assault. Many were physically abused as children.

They were pushed to the wall and they responded with violence. Do you hear our men talking of violence against our women? Do you hear our men talking about incest? What is being done in our community about gang rapes? We are suffering in silence.

Sharon McIvor  
Spokesperson, Native Women's Association of Canada  
Toronto, Ontario, 26 June 1992

As is the case with women in the general population, when Aboriginal women overcame their reluctance to speak about their situation they were often met with indifference from police and social agencies, or with advice from family and community to keep silent. First Nations, Inuit and Métis women reported to Commissioners that if they spoke out against abuse they had good reason to fear retaliation, even from those charged with public trust to lead and protect Aboriginal citizens.

Documentation which substantiates these incidents is included in our submission. All these acts of retaliation are forms of violence against Métis women, emotional, financial and political abuse.

Marge Friedel  
Women of the Metis Nation  
Edmonton, Alberta, 11 June 1992

There is abuse in our communities. Women are laid off from work if they speak about their rights or talk about sexual harassment in the workplace. We have to live in those communities. We have families to support....

If we go out and speak publicly, we are threatened over the telephone....Our president in the Indigenous Women's Collective had threatening telephone calls. There are all kinds of ways of trying to silence us.

Joyce Courchene  
Indigenous Women's Collective  
Winnipeg, Manitoba, 3 June 1993

Women endorsed the challenge addressed to male leaders by the Aboriginal justice inquiry of Manitoba:

Most chiefs and council members are male and often exhibit bias in favour of the male partner in a domestic abuse situation. This can effectively chase the woman from her home and community.

The unwillingness of chiefs and councils to address the plight of women and children suffering abuse at the hand of husband and father is quite alarming. We are concerned enough about it to state that we believe that the failure of Aboriginal government leaders to deal at all with the problem of domestic abuse is unconscionable. We believe that there is a heavy responsibility on Aboriginal leaders to recognize the significance of the problem within their own communities. They must begin to recognize, as well, how much their silence and failure to act actually contribute to the problem.<sup>92</sup>

Since 1971, when Jeannette Lavell challenged discrimination against women in the *Indian Act*, the actions of women in asserting their rights and expressing their views in organizations of their own choosing have been viewed by some leaders as a betrayal of the larger mission to exercise and gain recognition of the right of Aboriginal self-government. Aboriginal women appearing before us reported that efforts to isolate them from their nations and silence their voices persist today. These women reject the notion that speaking out as women on behalf of their human and Aboriginal rights is incompatible with being a loyal member in the nation. They are also sceptical of appeals to tradition to support the privileges of insensitive leaders:

Tradition is invoked by most politicians in defence of certain choices. Women must always ask, Whose tradition? Is ‘tradition’ beyond critique? How often is tradition cited to advance or deny our women’s positions?...Some Aboriginal men put forward the proposition that a return to traditional government would remedy the abusive and inequitable conditions of women’s lives. We have no reason to put our trust in a return to ‘tradition’, especially tradition defined, structured and implemented by the same men who now routinely marginalize and victimize us for political activism.<sup>93</sup>

The Coalition is prepared to support the leadership, however, not at the expense of silencing the reality that women, children and men are being abused and killed.

Marilyn Fontaine  
President, Aboriginal Women’s Unity Coalition  
Winnipeg, Manitoba, 23 April 1992

Nor do women want to be considered a special interest group:

Quite often, our association is regarded as a special interest group. That bothers me because we are not a special interest group. We are members of nation[s].

Marlene Pierre  
Ontario Native Women’s Association  
Thunder Bay, Ontario, 27 October 1992

Not all Aboriginal women are able to participate in organized protests. Many are unfamiliar with formal organizational procedures and strategy, even though many women’s organizations consciously attempt to reach out and reflect the values and practices of their cultures. There are also practical reasons why many women do not take part in advocacy organizations. Like the Métis women’s council, they may prefer to work within the structures of organizations that aim to represent the interests of all their constituents, regardless of age or sex. All too often, women who would wish to participate in women’s groups are prevented from doing so by lack of resources, time and transportation. Also, people subjected to violence generally speak out only when they feel safe. Silence perpetuates the problem, however, as each victim — whether wife, child, senior or person with a disability — remains isolated and vulnerable. It is especially important for leaders to break the silence when they become aware of violence in the community, and they must foster a safer climate by supporting groups, including women’s organizations, advocating on behalf of individuals being harmed.

### ***Shift in sex roles***

Male partners, already shaken by shifts in sex roles, may deliberately try to keep their partners isolated, close to home and work.<sup>94</sup> The impact of changing roles on male-female relationships can be discerned in the comments of a respondent in the Treaty 7 study:

Since I've been here [in the city] my role has been the breadwinner. I worked and he didn't have a job. I went to school and he didn't go to school. There was a lot of pressure on me. He never supported me through my job — you know, moral support. He was always trying to stop me from going to work. In my community, the women have the jobs. Men are unemployed. So it's us women who are the breadwinners. That role has changed.<sup>95</sup>

Jeannette Lavell, one of the earliest and most prominent advocates of women's right to fair and equal treatment, has an analysis of how the stress of social change affects men and women differently, apparently placing greater stress on Aboriginal men:

Even as people leave the communities to go outside to work it is often the women who find it easier to get into the non-Native work environment, in business or government. But it doesn't have anything to do with us as Native people and our own expectations of each other. It's how the system was set up, how people have been able to adjust or adapt. Maybe this is where, as Native women, we have that sense of being more flexible, where we can adapt just for survival. Perhaps Native men bump up against things and it's not in their character to bend. They will confront it more and if there is a confrontation they will back off. The value that Native men have, that they should be protectors, perhaps makes it more difficult for them to be flexible because it may be seen as being weak. And maybe this is why there are a lot of Native men who get into alcohol abuse and other abuses, just because of the frustration of events.<sup>96</sup>

Aboriginal women have identified two other barriers to change that relate, paradoxically, to aspects of culture that Aboriginal people have tended to consider their greatest strengths: the extended family and the resurgence of spirituality.

### ***The extended family***

Because almost everyone is related to each other in small communities that have existed over generations, incidents of abuse, particularly those of a sexual nature, are likely to reverberate through the whole kinship network. If the perpetrator is someone of an older generation, there is strong resistance to acknowledging the reality or confronting that person, and the abuse may continue unabated. Maggie Hodgson, executive director of Nechi Institute, wrote a manual on treatment for survivors of child sexual abuse:

On the one hand, the cultural norm is to respect older people and to protect them. But on the other, the caregiver must protect the innocent victims of the abuse. Due to [the] sense of powerlessness [they experienced] as a child, untreated Native caregivers/victims may not see the alternatives open to deal with the disclosure about the family abuse in a

legally correct manner. It is important to assist them in identifying the possibilities of treatment, not only for the victim, but also for the offender.<sup>97</sup>

Even in cases where evidence of abuse is undeniable, the whole family may be so fearful of the shame associated with divulging the abuse that they collude with the perpetrator to deny and cover up the situation. This puts intense pressure on the abused person to maintain silence. On occasion, where children are being sexually abused, assaults have been allowed to continue over time, eventually involving multiple victims. When multiple charges are subsequently laid, grief and anger become treatment issues for the whole community.<sup>98</sup> The fact that disclosure of sexual abuse of boys, usually perpetrated by men, has been slow to surface indicates the degree of discomfort with the whole issue of homosexuality. Shame about such experiences continues to be a factor inhibiting disclosure and recovery.

While the silencing influence of close-knit kin networks is particularly relevant in instances of sexual abuse, including those of a homosexual nature, the analysis applies to other situations of abuse as well. For example, a woman who marries into a close-knit kin network but has no relatives of her own nearby may be less able to defend herself than a woman with many relatives. She may also be more vulnerable to pressure to remain silent about the abuse. Furthermore, if many members of a close-knit family have been subjected to abuse, the extended family may come to see violence as a way of life rather than an aberration. The distorted view held by some non-Aboriginal people, including judges ruling on cases of violence, that family violence has a cultural explanation or justification, must be vigorously denounced.

At one time, many white people accepted the myth that abuse was part of the Native cultures. As a woman and a child who grew up in the North, I say ‘Hogwash!’ It was only accepted because men, Native and white, who controlled the system did not want it changed or did not care. It is totally unacceptable in today’s society and all judges should have mandatory training in this, as well as, cross-cultural [training].

Mayor Pat McMahon  
Yellowknife, Northwest Territories  
9 December 1992

### ***Religion and spirituality***

The problem posed by Aboriginal spirituality has two dimensions: the role of Christian churches, and the resurgence of interest in traditional practices and spiritual ceremonies. Both dimensions involve power relationships.

The lives of many Aboriginal people have been stunted and distorted by their experiences in residential schools operated by the Christian churches in concert with the federal government. The multiple dimensions of violence inflicted on children, families and Aboriginal people as a whole are examined through a historical lens in Volume 1, Chapter 10. The lingering, intergenerational effects of those experiences are seen by

Aboriginal people as contributing to a cycle of violence in contemporary communities. The nature of that connection is articulated in documents cited in that chapter:

Social maladjustment, abuse of self and others and family breakdown are some of the symptoms prevalent among First Nation baby boomers. The ‘Graduates’ of the ‘St. Anne’s Residential School’ era are now trying and often failing to come to grips with life as adults after being raised as children in an atmosphere of fear, loneliness and loathing.

Fear of care takers. Loneliness, knowing that elders and family were far away. Loathing from learning to hate oneself, because of the repeated physical, verbal or sexual abuse suffered at the hands of various care takers. This is only a small part of the story.<sup>99</sup>

The residential school led to a disruption in the transference of parenting skills from one generation to the next. Without these skills, many survivors had difficulty in raising their own children. In residential schools, they learned that adults often exert power and control through abuse. The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children. These children in turn use the same tools on their children.<sup>100</sup>

Despite this painful history, Christian churches continue to play a significant role in Aboriginal community life. Some Aboriginal people would concur with the analysis of the Canadian panel on violence against women that religious institutions in Canada tend to support and reinforce the dominance of men over women and therefore perpetuate the cultural attitudes that tolerate violence against women.<sup>101</sup> Others look tentatively to the churches for assistance in dealing with the problem:

On the subject of the church, we can say that the church has played an important role in bringing us to the situation in which we find ourselves today. Because of the church, we have lost many of our values. I think that if the church wanted to help repair the damage that has been done to us, it could apologize to us. However, that is not really sufficient, because too many people have been traumatized. Many have had their lives ruined.

[translation]

Delima Niquay  
Manawan Council of Women  
Manouane, Quebec, 3 December 1992

When speaking of church involvement in dealing with family violence, Aboriginal people appear to be of two minds, or perhaps what we are hearing are different attitudes from different constituencies. In some communities there is a long history of attachment to the church and, by all accounts, mutually respectful relations. In other communities there is a visible tension between institutions of the Christian faith and proponents of cultural renewal. Speaking about the possibilities of respectful collaboration, a Moravian minister in Labrador offered the following:

And as we find ourselves in a period of transition, in a period of relationship that is mostly political and social, I think it becomes more and more important for us to

recognize that at least one of the answers to the problems that we face as a people, whether they be substance and alcohol abuse, or family violence, or whatever, rests with our spirituality. And I would hope that in recognizing ourselves as members of part of the Christian church, particularly as members of the Moravian church, that we will find in that relationship and that membership some of the answers that we so desperately seek to turn our society around in many ways.

Reverend Walter Edmunds  
Happy Valley-Goose Bay  
Newfoundland and Labrador, 16 June 1992

We explored the affirmation and revitalization of traditional Aboriginal cultures and the spirituality at the core of Aboriginal practices in Volume 1, Chapter 15. With the renewal of confidence in traditional wisdom and the recognition of elders and their special gifts, a new threat has emerged for vulnerable women and children. Many women cautioned us that 'traditions' and 'traditional healers' must not be accepted uncritically, because not all traditions are respectful of women and not all who present themselves as healers are healthy.

Martha Flaherty, president of Pauktuutit, cites the fact that in Inuit society, boys traditionally were valued more highly than girls.<sup>102</sup> Such attitudes, fostered in a hunting society where the group's survival depended on the skills of male hunters, clearly are prejudicial to women. Similarly, the revival of respect for elders must be approached with discretion. Elders who now occupy positions of respect may themselves have been victims of abuse and may still harbour unhealthy attitudes. There are also reports of persons who wilfully abuse the power accorded to them:

We have also come across many self-proclaimed healers who have abused and exploited traditional spirituality in their own Aboriginal people....For controlling the spiritual malpractice, I guess it would be through all the Elders in each community. They would know the ones who are abusing the sweat lodge and abusing the medicines.

Lillian Sanderson  
Aboriginal Women's Council  
Saskatoon, Saskatchewan, 13 May 1993

Brenda Daily gives several examples of the difficulties of confronting the abusive behaviour of someone recognized as a spiritual teacher or leader.<sup>103</sup> She clarifies that denial of abuse in such cases is rooted in fear, and the challenge required is not a challenge to spiritual beliefs but to the offence and the offender. Daily also describes a situation where the behaviour of an abused child — crying, clinging to the non-offending parent, having nightmares, and acting out — was attributed to 'bad medicine' directed against the family. Daily attributed the mother's denial and rationalization of her daughter's symptoms to her own sense of powerlessness at having been abused as a child by the same family member.

Some women report that in healing circles or community justice projects, where the focus is on restoring peace and harmony, they feel uneasy about confronting their abusers.

They do not wish to appear to be violating traditional norms of peacemaking, and they feel the added pressure of having to consider the consequences of disrupting these initiatives, whose goal is to regain control of important dimensions of community life.

The lesson is that Aboriginal people themselves need to temper their faith in tradition with clear-minded judgement to ensure that trust in traditional ways and spiritual leaders does not open the door to abuses of power.

### **3.4 Solutions from the People**

#### *Addressing the structural roots of violence*

Family violence in Aboriginal communities shares many characteristics with violence in Canadian society at large: it is widespread and takes many forms; it has been denied in public discourse until recently; it is suffered predominantly by women, children and those in dependency relationships; it is tolerated and even condoned by social institutions; and, rooted as it is in the values of our society, it can be eradicated only by changing the landscape of our whole society.

The statement by the panel on violence against women holds true for violence in Aboriginal communities as well:

Any analysis of violence against women must include recognition of the complex ways in which inequality and power imbalances structure the lives of Canadian women. Only such an understanding can lead to ways of ending violence against women.<sup>104</sup>

Family violence in Aboriginal communities is distinct, however, in that the unbalanced power relationships that structure the lives of Aboriginal people are not found primarily in the relationships between men and women. The imbalance lies in the powerlessness of Aboriginal people relative to society as a whole, including the social institutions that dominate every aspect of their lives, from the way they are educated and the way they can earn a living to the way they are governed.

Aboriginal people have been politically disempowered and economically marginalized. As their ways of ordering social relationships have been systematically ignored or devalued, they have had few opportunities to express themselves or apply their energies in rewarding, self-affirming ways. As a result, they experience extraordinary levels of frustration and anger.

Human beings feel anger and our self-esteem suffers when we are unable to meet our basic needs. In fact, we are biologically equipped with surges of adrenalin to respond forcefully to such threats to our survival. All cultures have generally found ways to control aggressive behaviour and channel energy into problem solving. But when cultural pathways are undermined, as they have been through Aboriginal people's experience of colonization, then the culture loses its control over individual behaviour and eventually

violence may erupt. Harvey Armstrong, a psychiatrist with long experience in mental health services among Aboriginal people, describes the dynamic this way:

Nature's way of solving problems are many, but when her creatures were threatened with the frustration of their needs, their survival, their territory, their food, their mates, water, shelter, or other things needed for survival, aggression and violence has always been one of the last and most desperate solutions. Violence is different from predation in which prey and predator, usually of different species, supply food for one another. Violence is really a phenomenon that occurs within a species....

The capacity for violence is in all of us and really does require external and internal structures to prevent it from erupting....

Oppressed and disadvantaged groups in society have no security that their needs will be met and meet constant frustration in fulfilling their basic needs. They have more stresses and frustrations, and are more likely to turn these frustrations, at either themselves, or those who are nearest and dearest to them, resulting in violence against spouses, children, and elders.<sup>105</sup>

Armstrong goes on to say that acting out violence is easier for the perpetrator if he can convince himself that the victim is less than human. Most Aboriginal violence is directed at other Aboriginal people, particularly family members — not at the administrators, employers and merchants who are the direct source of frustration. Social scientists' explanation of this phenomenon, which is observed in other colonized peoples and disadvantaged social groups as well, is that not only the self but the whole group with which the individual identifies — in this case Aboriginal people — is held in low esteem.<sup>106</sup>

Clare Brant, a Mohawk psychiatrist, has elaborated further on social factors precipitating violence:

There is an erosion of the self-esteem in Native men by chronic unemployment, [which contributes to] poverty, powerlessness and anomie. Any threat to this fragile self-esteem will be vigorously defended against, usually by aggression....Indian men...unemployed and idle, are constantly humiliated by having their families being supported by the welfare system. The little work which does exist on many Native reserves, such as community health representatives, child protection workers, cleaning staff, and secretarial staff, is often awarded to women. A power struggle ensues when the Native woman is the breadwinner and the exercise of intimidation and violence may be the last resort of the down-trodden warrior.<sup>107</sup>

To say that family violence has its origins in imbalances of power is not to excuse it. Roy Fabian, of Hay River, Northwest Territories, presented an analysis of the origin and expression of cultural self-shame and cultural self-hate that echoes the psychiatric explanation. Fabian went on to state categorically that men who abuse women have to take responsibility for their behaviour and that, by the same token, government and

churches that have abused Aboriginal people have to take responsibility for their actions.<sup>108</sup>

In looking for solutions, we begin by drawing attention to the structural origins of violence in relations between Aboriginal and non-Aboriginal societies. We do so because without changing these power relationships and without alleviating poverty and powerlessness, measures to reduce family violence will be patchwork solutions at best. Solutions based on individual therapy may even be destructive in an unrelentingly oppressive political, economic and social environment, because they can reinforce the perception Aboriginal people have of themselves as being weak and morally inadequate.<sup>109</sup>

Anomie, the third factor in Brant's trilogy of causation, is likewise more than a symptom of personal or family dysfunction. As we explained in *Choosing Life*, our special report on suicide, the rules governing individual and group behaviour have weakened as a result of deliberate interventions by Canadian governments aimed at replacing Aboriginal cultures and norms of behaviour with more 'civilized' ways. The policy agenda of assimilation, as implemented through the *Indian Act*, residential schools and community relocations, is documented in Volume 1 of our report. Among the tragic consequences of this failed policy are the scores of Aboriginal youth and young adults with no attachment to Aboriginal ways — they may even distrust them; yet they do not have a foothold in non-Aboriginal society either, or any sort of commitment to its rules.<sup>110</sup>

In too many Aboriginal communities, or among subgroups within Aboriginal communities, violence has become so pervasive that there is a danger of it coming to be seen as normal. This is another reason why Aboriginal family violence must be addressed as a distinctive phenomenon, with Aboriginal-specific strategies: Aboriginal people are challenged with rebuilding nations and whole communities, as well as restoring the capacity of Aboriginal families to nurture caring, respectful, law-abiding human beings.

As emphasized in the opening chapter of this volume, initiatives to restore the healthy functioning of Aboriginal individuals, families and communities must be undertaken with full awareness of the collective experience of Aboriginal people in Canadian society, the context in which individual problems are generated and in which they must be solved. Poverty, powerlessness and anomie have invaded the homes and hearts of Aboriginal individuals. Poverty prevails because the economic vitality of nations has been undermined through the alienation of traditional lands and their wealth. Powerlessness is rampant because the institutions of leadership and decision making have been displaced, leaving no defence against intrusion and exploitation. Anomie, the breakdown of ethical order, is a direct result of deliberate interventions that undermined the authority and cohesiveness of the family as well as other institutions pivotal to Aboriginal life.

In Volume 2 of our report, we make recommendations for changes in the structure of political and economic relationships between Aboriginal people and Canadian society to dismantle the last vestiges of colonial relationships and give impetus to social, cultural, political and economic revitalization. We are confident that as these structural changes

take effect the conditions that spawn violence will recede. Structural change will take time to implement, however.

### ***Restoring community standards***

At the same time as the larger changes are being implemented, it is urgent that community standards be re-established in the villages, territories and neighbourhoods where women, children, seniors and persons with disabilities are at risk. Elected and appointed leaders, as well as other individuals with perhaps less formal influence in the community, have a critical role in asserting standards. It is now widely accepted that violence is condoned by passivity and other attitudes that may not even be recognized as expressions of hostility toward women and vulnerable persons. At present, women are the most vocal about the need to break the silence. Very few leaders are speaking out on these issues. We hope our report will encourage more people to join the ranks of those speaking out.

‘Zero tolerance’ is a problem-specific strategy based on the notion that no level of violence should go unnoticed or uncensured. Endorsed by women, it has had beneficial effects where it has been invoked. Male leaders who are speaking out about violence concur with women who say that in addition to controlling expressions of violence, a broader change in the attitudes of leaders and community members is also required:

We hear of some judges up North and read about it in the paper where they say, “Well, it’s normal for child abuse; it’s normal to batter women” and sometimes they are very lenient. We don’t agree with that. We think it is not normal to batter women. It is not normal to sexually molest children. Our society has been influenced by alcohol and drugs and we think that judges have to be aware that it is no different for us and it is just as wrong for us to do those kinds of things....

People have rights, women have rights, children have rights....When it comes to abuse of women and children we feel that the law should be fairly firm and it should apply. There should be some discussions on how we are going to deal with it....I think if somebody abuses a child, there is a problem often underlying it. He may need therapy or he may need shock treatment or whatever it is he needs, but *it is not acceptable to us*.

We think that we can be more involved in the justice system. We can have more say and we can make it more adapted to the needs of our people.

Chief Jean-Guy Whiteduck  
Kitigan-Zibi Anishinabek Council  
Maniwaki, Quebec, 2 December 1992

We have been told before, and I am sure that our Elders will continue to tell us all the time, that when we are talking about the regeneration and re-establishment of our nationhood, there is a specific role for the women to play that is very much a direct, powerful role that has to be acknowledged.

This summer, when we were talking with some of the traditional Chiefs of the Iroquois Confederacy, they said: ‘If we are serious about going back to our original structures, then we had better be seriously prepared to change the way we think, the way we act, the way we treat our women, and the way we deal with all those matters surrounding our relationships between men and women.’ I think that is something we have to deal with.

Chief Gordon Peters  
Chiefs of Ontario  
Toronto, Ontario, 18 November 1993

We are convinced that where community standards have been eroded it is possible to re-establish norms of respect for women and protection for vulnerable community members through the advocacy work of community leaders.

### **Recommendation**

The Commission recommends that

#### **3.2.6**

Aboriginal leaders take a firm, public stance in support of the right to freedom from violence of all members in the community, but particularly of women, children, elders, persons with disabilities and others who may be vulnerable, as well as in support of a policy of zero tolerance of actions that violate the physical or emotional safety of Aboriginal persons.

#### ***Inclusive forms of representation in decision making***

Earlier in this chapter we looked briefly at the role of women in traditional Aboriginal societies (see also Volume 4, Chapter 2). We also observed how discriminatory treatment of women under the *Indian Act* has fostered prejudicial treatment of women in Aboriginal communities. This imbalance in relations between the sexes remains prevalent in many communities and has no doubt contributed to the victimization of women, as reported in our hearings from one end of the country to the other. The fear that self-government will reinforce the unjust treatment of women and deny them access to redress is founded in bitter experience:

Presently the women in our communities are suffering from dictatorship governments that have been imposed on us by the *Indian Act*. We are oppressed in our communities. Our women have no voice, nowhere to go for appeal processes. If we are being discriminated against within our community, or when we are being abused in our communities, where do the women go?

Joyce Courchene  
Winnipeg, Manitoba  
3 June 1993

The solution proposed consistently by Aboriginal women to correct current injustices and prevent future ones, is the full, fair representation of women in institutions of self-government and community decision making.

Unfortunately, the imposition of southern values, laws and institutions on Inuit society has resulted in social, political and economic chaos in our communities. Women have suffered doubly for we lost status in our own society and were subjected to the patriarchal institutions born in the south. Until a proper balance is achieved among Inuit men and women, mechanisms must be put into place to ensure that women are equally represented in all decision-making processes and on all decision-making bodies.

Martha Flaherty  
President, Pauktuutit  
Ottawa, Ontario, 2 November 1993

I would say that there is a real need for the entrenchment of women's rights within self-government. The one thing I hear from women in the communities as well is that there is a real lack of enough advocates. There are advocates, but a lack of enough advocates for their concerns. Often times, things are brought forward to band councils at the community band or regional level and their concerns don't go any farther than that.

Sarah Calaher  
Yellowknife, Northwest Territories  
7 December 1992

Aboriginal women say that they and their organizations should be recognized as legitimate voices of the nation and not be regarded as upstarts threatening the status quo:

[Our] initiatives, for whatever reasons, are found to be intimidating and threatening to the male-dominated organizations that claim to represent us. In many situations, these organizations have come to oppose the initiatives of the community-based Métis women. They are in the process of negotiating self-governance while they actively try to exclude their female counterparts.

Melanie Omeniho  
Women of the Metis Nation  
Edmonton, Alberta, 15 June 1993

Instead, said another Métis presenter, Aboriginal leadership and governments should recognize the validity of women's voices and accept and welcome women's views as not just a particular lobby group's views, but as a view of part of the nation, as part of the people, [acknowledging] that women have real needs and have real answers to problems.

Sandra DeLaronde  
The Pas, Manitoba, 19 May 1992

Women are seeking to be included in decision making, to be represented in institutions of self-government, and to have their organizations recognized as legitimate voices in Aboriginal nations. Their full participation in shaping the institutions of self-government holds promise for healing ruptures in relations between the sexes and putting an end to

situations in which women are vulnerable to abuse. As well as representing themselves in institutions of self-government, women will help to secure the well-being of the nation. Traditionally, women assumed most of the responsibility of caring for and protecting children, elders and persons with disabilities in Aboriginal communities, and they continue to carry these responsibilities. Their representation in decision making, therefore, will ensure that social needs have equitable recognition on the political agenda, along with legal and constitutional concerns.

Unless Aboriginal women are guaranteed the right to share equally with men the powers to develop the forms of self-government and the instruments required for dealing with poverty, conjugal violence, incest, the consequences of unemployment, the exclusion of C-31 women and their children from their communities, there will be no significant improvement in living and social conditions. Since women are the main caregivers for the children, the ailing, the disabled and the very old, the organization of educational, health and other social and community services can only be successful where women share in the powers of planning and carrying out those services.

Madeleine Parent  
Montreal, Quebec  
27 May 1993

It must be emphasized, however, that women's participation in decision making is not a substitute for the direct involvement of others whose voices are now muted in decision-making councils. Just as women have asserted that men cannot assume the right to speak for them without their consent, elders, youth and persons with disabilities must also participate in decision making if they are to shed the vulnerability that is reinforced by silence.

Assumptions about proper modes of representation may be redefined as the constraints of the *Indian Act* are lifted and its influence on community life and attitudes recedes. In the past the family was the all-purpose institution mediating connections between individuals and the larger community. The form of the Aboriginal family has changed, however, taking on more of the characteristics of the nuclear family. It seems clear, therefore, that new institutions will be required to mediate between Aboriginal individuals and the body politic. Perhaps family-like or clan-like institutions will emerge to ensure that those who are now voiceless can be heard. We urge that the healing centres and lodges, proposed in Chapter 3 of this volume, seek out new avenues of healing and new forms of organization and participation that unite the wisdom of tradition with the experience of today.

Women's organizations, healing circles, ceremonial lodges, urban housing projects and friendship centres all have structures designed to bring people together to express their needs and provide mutual aid. These may become the cells or models for the cells required to constitute more inclusive, organic forms of representation and governance.

## **Recommendations**

The Commission recommends that

### **3.2.7**

Aboriginal governments adopt the principle of including women, youth, elders and persons with disabilities in governing councils and decision-making bodies, the modes of representation and participation of these persons being whatever they find most agreeable.

### **3.2.8**

The full and equal participation of women be ensured in decision-making bodies responsible for ensuring people's physical and emotional security, including justice committees and boards of directors of healing centres and lodges.

#### ***Enforcing safety***

Caring, respectful, law-abiding behaviour is the result of nurturing in a family or family-like setting where the individual has been able to form stable, trusting relationships with persons who model pro-social behaviour and attitudes. In the normal course of development, children internalize the behaviour and attitudes of their parents or trusted caregivers and in time they go out into the wider world equipped with ethics they can use to evaluate new information and make choices about how to live. Pro-social behaviour is enforced by individuals' internalized sense of right and wrong, reinforced by the expectations of people whose good opinion matters. Law enforcement agencies do not sustain peace and harmony in a community. They discipline the relatively few persons who step outside the rules endorsed and observed by the majority.

In the recollections of Thelma Chalifoux, quoted earlier in this chapter, her male relatives took it upon themselves to discipline a man in the community who had abused his wife. Given her description of the sharing, interdependent relationships that characterized the Métis social network, it is almost certain that it was the vigorous disapproval of his peers that caused the offender to change his behaviour. Community standards of behaviour have been eroded in many places. It is essential that these standards be reinstated so as to secure a safe environment for women, children, elders and persons with disabilities.

Even in a healthy community, rules must be enforced. In some contemporary Aboriginal communities where violence has come to be seen as normal, institutions to enforce the peace are essential. In our report on justice, we documented the failure of mainstream institutions to maintain the peace effectively in Aboriginal communities, to modify the behaviour of offenders and prepare them to assume their place as contributors to community well-being.

Aboriginal people have a right to enjoy security from violence, and individuals who violate that security should face the consequences of their behaviour, as Chief Gordon Peters and others have made clear. Perpetrators of violence also have needs and should have access to culturally appropriate treatment, but the perpetrator's need for rehabilitation should not override the victim's need for safety.

Police and justice institutions in geographically distinct Aboriginal communities should be attentive to the safety needs of women and vulnerable groups.<sup>111</sup> Aboriginal governments should ensure that this becomes the reality in every community. At present, Aboriginal people living in urban centres and non-reserve communities under provincial or territorial jurisdiction rely on public law enforcement and justice institutions for protection. For some Aboriginal communities, this will continue to be the case indefinitely. In these settings, however, as we heard at our hearings, the safety of Aboriginal people is often neglected; in addition, they are often subjected to over-zealous enforcement of control measures and racist treatment. These problems, which bear directly on the management of family violence, have been addressed by the numerous commissions and inquiries reviewed in our justice report.

In our proposals regarding recognition of and support for Aboriginal justice systems in land-based Aboriginal communities, we recommended that Aboriginal women and their organizations be involved in the planning and implementation of community-based justice systems. Further, we recommended that federal, provincial and territorial governments submit annual reports to their legislatures on progress in implementing recommendations made by previous justice commissions and inquiries. Implementing these recommendations will respond to the concerns of women about the need for greater responsiveness on the part of law enforcement and justice institutions.

The authority of Aboriginal governments to establish justice systems must be a core element in their inherent right of self-government, because it is in the community that personal ethics and community standards will be restored. The Aboriginal community is best equipped to make the delicate choices required to balance the victim's needs for protection with the perpetrator's need for rehabilitation. Moreover, the community may be the only forum in which it will be possible to bring alienated youth back into the circle of relations where ethical behaviour brings valued rewards.<sup>112</sup> In view of the time it will take to implement alternative justice measures in many settings, communities should be encouraged to undertake interim measures with the full participation of women to reduce violence within families. For example, communities could endorse and promote observance of codes of conduct that would support law enforcement personnel and guide ordinary citizens in creating safe communities and neighbourhoods. Codes of behaviour endorsed and enforced by popular consent are not meant to replace law enforcement as a means of restraining violence. It seems clear, however, that children and youth who are prone to developing anti-social attitudes and behaviour must be drawn back into the circle of community responsibility. As well, leaders and agencies developing alternative justice measures will benefit greatly from community initiatives to articulate and enforce acceptable standards of behaviour.

The success of the Alkali Lake community in changing behaviour by voluntary community action is well documented.<sup>113</sup> The work of the Bear Clan Patrol in confronting the sexual exploitation of Aboriginal children and youth on the streets of Winnipeg is another example of voluntary action that has changed the moral climate of a community.

Pauktuutit, the Inuit women's association, has taken a more wide-ranging approach to promoting community standards by formulating a set of expectations for Inuit leaders. The "Code of Conduct for Inuit Leaders", adopted at the association's annual general meeting in 1994, encouraged other Inuit organizations to adopt Pauktuutit's or a similar code. The background text called for the full participation of women in decision making and the removal of barriers to their participation. The code itself listed the responsibilities of leaders, among them the following:

Inuit leaders have additional responsibilities as public figures and role models. These include not engaging in conduct which hurts other people, breaking laws, or is harmful to Inuit society....Acts of violence against women and children, including sexual assault, child abuse, child sexual abuse, and wife battering are absolutely unacceptable, and any leader who engages in such conduct should immediately step aside.<sup>114</sup>

Pauktuutit's code of conduct has moral rather than legal authority; however, as noted earlier in this report, when codes of conduct have been endorsed by a nation and its communities in assemblies and promulgated orally, they have tended to carry the moral force of law in many traditional Aboriginal societies (see Volume 1, Chapters 6 and 15).

## **Recommendation**

The Commission recommends that

### **3.2.9**

Aboriginal leaders and agencies serving vulnerable people encourage communities, with the full participation of women, to formulate, promote and enforce community codes of behaviour that reflect ethical standards endorsed by the community and that state and reinforce the responsibility of all citizens to create and maintain safe communities and neighbourhoods.

### ***Community healing and structural change***

The foregoing proposal for self-directed community action builds on a widely held traditional ethic of personal responsibility that derives from the world view described in Volume 1, Chapter 15. This tradition holds that each human being must discover his or her own unique gifts, which originate from a spiritual source. Spirit helpers protect these individuals and lend them power, or 'medicine', in their journey through life. The shared acceptance of and adherence to natural law, sustained by unseen forces, allows human beings to live in harmony with each other and all their relations on the land and without interference at the level of personal relationships. Traditionally, this ethic of personal responsibility was sufficiently effective that Aboriginal societies were able to maintain peace and order without police or jails.

The integrity of this world view and its effectiveness in maintaining order in Aboriginal societies remain dependent on effective moral education within the culture. The family is

the principal agency or institution charged with instilling this education. Deliberate interventions by colonial and later Canadian governments, in concert with Christian churches, sought to undermine the authority of Aboriginal families to educate their children in the values and beliefs of their culture. The extent to which the integrity of Aboriginal families has been compromised is evident in the statistics on family violence, in the number of neglected and damaged children coming to the attention of child welfare agencies, and in the observation we heard across Canada that Aboriginal people have lost their parenting skills.

In traditional Aboriginal societies, when community members were in mourning, hungry, or infirm with age, the stronger members rallied to support them. During the condolence ceremony of the Iroquois, described in Volume 1, Chapter 4, the ‘clear-minded’ members of a community offer solace to those who have suffered loss: they acknowledge the distorted feelings and perceptions that have overtaken the mourners; they mingle their tears with the afflicted; they wipe away any obstructions preventing the mourners from communicating; they point to the sun that still rises to shed warmth and light on the living; and they remind the grieving ones that it is not good to dwell too long on loss and that there is work to be done.

When whole communities and nations have been traumatized by repeated losses, inflicted on them by unrelenting forces beyond their control, it may seem that there are no ‘clear-minded ones’ left to raise up the grief-stricken or remind new generations of the work to be done. Kai Erikson, an American social scientist who has studied the phenomenon of collective trauma in the context of earthquakes, has written about the consequences of overwhelming stress experienced by communities:

By “collective trauma”...I mean to include those kinds of injury that are inflicted not on individuals directly but on the tissues of community life themselves — injuries that act to damage the bonds attaching people to one another, to impair the prevailing sense of group cohesion. Collective trauma works its way slowly into the awareness of those who come to suffer from it, so it may not be visible in the days or even months following discrete moments of disaster. But it is a form of shock all the same, a gradual realization on the part of an already numbed people that their community no longer exists as an effective source of support and that an important part of their world has disappeared without so much as a sound. As people begin to emerge hesitantly from the protective shells into which they had reflexively shrunk at the time of the assault, they learn that they are isolated and alone, living in a kind of social wasteland with no one to turn to. They have lost the solace that comes from being in fellowship with one’s kind. They have lost both the physical and the spiritual health that comes from being in communion with kinsmen and neighbours who can be counted on to care....

Human relations in a true community take their shape, at least in part, from expectations pressing in on them from all sides like a firm but invisible mould. They are governed by the ways of the tribe, the habits of the neighbourhood, the customs of the community. When the mould is stripped away, so to speak, something happens to those relationships. It is as if they existed in a kind of gravitational field. The human particles that make up

the field are held in place by interpersonal charges passing between them, but they are also held in place by all the other magnetic forces — cultural, societal, communal — that constitute the larger field. And when those outer currents lose their force, as can happen when the assault is serious enough, the particles begin to separate because the interpersonal charge, by itself, turns out to be less than sufficient. So marriages break up, friendships dissolve, the bonds of kinship weaken, and, at the outer edges of human despair, parents lose the ability to care for their own children. Whole networks of ties begin to snap noiselessly as the particles, drifting now in a dead gravitational field, move farther and farther apart. And the pity of it is that people do not know why this is happening. They never realized the extent to which the old community validated those bonds and gave them strength, and, partly for that reason, they do not know how to breathe new life and meaning into them by deliberate expressions of affection or by deliberate offers of support.<sup>115</sup>

Some but not all Aboriginal communities have lost the sense of cohesion to an extent that can be described as collective trauma. Some but not all families have lost confidence in their capacity to parent their children. In urban settings, the challenge is not so much one of restoring community bonds as it is of building them for the first time, bringing together people of diverse Aboriginal nations with varied cultural and community experiences.

Forging bonds of community and restoring the capacity of families to care for their members is a work of spiritual healing that can be accomplished only from the inside and with the help of relations who are standing on firm ground and who know the terrain that has to be traversed. A policy document cannot prescribe where the work is most desperately needed, or when and how it should proceed. We can recommend that self-directed community healing initiatives be affirmed and supported and that the vestiges of colonial domination and external control that impede community initiative be dismantled immediately. We present our recommendations for restructuring systems to affirm and support the capacity of Aboriginal communities to care for their own members in the next chapter, on health and healing.

Community healing is proceeding and will proceed on the initiative of countless individuals, leaders, institutions and governments. But particular initiatives, to have their fullest effect, require complementary change in social conditions and political and economic life. Although we have tended to emphasize the need for structural change in political and economic relations to remove the conditions conducive to violence, it is not our intent to ignore or devalue the important work being done at present to heal the injured and protect those at risk. On the contrary, it will be required for some time to come. In Volume 4, Chapter 2, we elaborate on the need for places of refuge for women. In Chapter 3 of this volume, we probe the nature and extent of ill health plaguing Aboriginal people. As we record in those chapters, many creative and successful initiatives are now being denied stable funding and professional legitimacy. Our recommendations for compiling an inventory and building on existing community service initiatives, which more often than not are the result of the work of women, are detailed in those chapters. We also make recommendations to shift services to the jurisdiction and practical control of Aboriginal people, agencies and communities.

As we propose elsewhere in this volume, we see family violence being addressed effectively through an integrated strategy to achieve whole health. Whole health refers to the ideal of harmony and balance at an individual level, involving body, mind, emotions and spirit; at a social level, implying peaceful, caring, mutually supportive relationships; and at an environmental level, enjoying safety and practising respect for the natural world. The elements of the strategy include changing the political and economic conditions that now have negative effects on Aboriginal nations, communities, families and individuals; restructuring service delivery through healing centres and lodges under Aboriginal control; adopting measures to develop Aboriginal human resources to support community planning and self-care; and making the social and institutional environment of Canadian society more hospitable to Aboriginal cultures and identities. The fundamental work of unlocking the wellsprings of health within themselves belongs to Aboriginal people. The role of Canadian governments and public policy is to remove the obstacles under their control and ensure that resources to support whole health are distributed equitably between Aboriginal nations and communities and the rest of Canadian society.

## **4. Aspects of Family Law**

Family matters, including marriage and divorce, adoption, custody of children, and protection of children's welfare will undoubtedly be among the first areas over which self-governing Aboriginal nations will assume jurisdiction. In the commentary and recommendations that follow, we address aspects of family law that are contentious and could be clarified and made more consistent with present laws. Problems arise in a number of areas:

- recognizing Aboriginal custom in adoption and custody matters;
- dividing property on marriage breakdown; and
- protecting the victim's civil interests in cases of family violence.

### **4.1 Continuity of Customary Law**

Section 35(1) of the *Constitution Act, 1982* states that "the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed", and section 35(2) provides that the "Aboriginal peoples of Canada" include the Indian, Inuit and Métis peoples of Canada. Elsewhere in this report we discussed the significance of the word 'existing' and, in particular, the statement of the Supreme Court of Canada in *R. v. Sparrow* that the word 'existing' makes it clear that the rights to which section 35(1) applies are those in existence when the *Constitution Act, 1982* came into effect; rights that had already been extinguished by that time were not revived by the section.

The court said, moreover, that an existing Aboriginal right could not be read so as to incorporate the way it was regulated before 1982, as this would inject into the constitution, as far as the rights of Aboriginal peoples were concerned, "a crazy

patchwork of regulations". Moreover, because a "frozen rights" approach to constitutional interpretation was unacceptable, the rights recognized and affirmed in section 35(1) of the constitution were affirmed in a contemporary form and had to be interpreted flexibly to permit their evolution over time.

Constitutional scholars have concluded that the affirmation of Aboriginal rights in section 35(1) incorporates into Canadian law the common law principle of continuity. Under this principle the customary laws of Aboriginal peoples were deemed to have survived the Crown's acquisition of their territories, provided that this result was not incompatible with the sovereignty of the Crown.

As discussed in Volume 2, Chapter 3, two leading decisions of the United States Supreme Court, *Johnson v. M'Intosh* and *Worcester v. Georgia*, held that Indian tribes in the United States had the status of domestic dependent nations united by special ties to the Crown as ultimate sovereign. In *Sioui*, Justice Lamer of the Supreme Court of Canada used the words of the chief justice of the United States to describe British policy toward the Indians in the mid-eighteenth century:

[S]he considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection, and she made treaties with them, the obligation of which she acknowledged.<sup>116</sup>

It would appear, therefore, that at least to some extent Aboriginal customary laws survived the advent of the colonizers. Constitutional scholars seem to be in agreement that certain aspects of customary law pertaining to the family have survived. Customary laws on marriage and adoption have been upheld even in the face of legislation that might be taken to have abridged such laws.<sup>117</sup> We referred earlier to the Quebec case, *Connolly v. Woolrich*, which upheld the validity of a marriage contracted under Cree customary law between a non-Aboriginal man and a First Nations woman in the Canadian northwest.<sup>118</sup>

In *Re Katie's Adoption Petition*, Justice Sissons held that adoptions "made according to the laws of the Territories" within the meaning of section 103 of the *Child Welfare Act* included adoptions in accordance with Indian and Inuit custom.<sup>119</sup> In *J.T.K. v. Kenora-Patricia Child and Family Services*, the court issued a custody order in favour of relatives of the child's parents over the objections of the Crown.<sup>120</sup> The court found that such an order was in accordance with the tribal tradition of customary adoption among the Ojibwa people.

In *Michell v. Dennis*, however, it was held, in a case brought under the *Family Compensation Act*, that under the common law a customary adoption confers no legal rights on either the adoptive parents or the adopted children, only moral obligations.<sup>121</sup> Neither the adoptive parent nor the child adopted by Indian custom had any right of action under that legislation.

One of the important issues facing courts dealing with the custody and adoption of Aboriginal children is the significance of the children's Aboriginal culture and heritage. How much weight should be given to this factor in applying the 'best interests of the child' test? In 1983 the Supreme Court of Canada faced this issue in *Racine v. Woods*, involving an Ojibwa girl named Letitia.<sup>122</sup> At birth, Letitia had been placed voluntarily in the care of a children's aid society (CAS) by her mother. When her mother wanted her six-year-old daughter back (she had overcome poverty and alcoholism to regain control of her life), she encountered resistance from CAS officials and from Letitia's foster parents, who had cared for Letitia for five-and-a-half years and had applied to adopt her. The court rejected the birth mother's argument that the adoption would interfere with the child's continuing link to her Aboriginal heritage. The evidence showed that the foster father was a Métis person, that both foster parents were active in the Métis association, and that they had been conscientious in instructing Letitia on her background and culture. While the court acknowledged the importance of the child's cultural background and heritage in applying the best interests test, it found that this factor diminished in significance over time as the child bonded with her adoptive parents.

Courts face the issue of cultural diversity in a variety of situations. They may be asked, for example, to determine whether an Aboriginal child is in need of protection and should be removed from its parents. But should judges apply criteria for determining removal that reflect the values of their own culture or those of the Aboriginal community? While the answer may seem obvious, in most cases judges are not familiar with values outside their own culture.

A good example of this type of case is *Re E.*, in which application was made by a child welfare agency for permanent wardship of the two-year-old child of a 24-year-old Cree mother.<sup>123</sup> The judge began by developing a threshold test for intervention. He said:

In my view, in order for a child to be found in need of protection there must be a significant departure from a standard of child care that one would generally expect for a child of the age of the child in question. Furthermore, while there is a minimum parental standard for all society, a secondary standard must be established for parents of the age of the parent in question and for the type of community in which the parent resides. A teen-aged parent cannot live up to the standard expected for a middle-aged parent. Similarly, different standards of parenting apply to parents of Cree ancestry who reside in a small rural community in northern Saskatchewan than would apply to white middle-class parents living, for example, in Regina. What is an acceptable standard for the former might be unacceptable for the latter.

He then proceeded to develop a detailed list of the differences between a northern Saskatchewan Cree community and that of a non-Aboriginal middle-class family living in Regina. The standards of the Cree community were those against which the mother's conduct would be compared to determine whether there had been a "significant departure". The court proceeded on the assumption that a significant departure was necessary before the child could be found to be in need of protection. The standards included cultural differences, acquired community habits, and conditions forced on the

community such as dependence on government assistance. In applying these community standards to the facts of the case, the judge found that a single parent in Pelican Narrows, Saskatchewan, might be expected to live in crowded conditions in a house owned by a relative, to be unemployed (lacking in job skills and employment opportunities), and to have problems with alcohol. He ultimately concluded that a permanent wardship order was indeed required, since the mother had departed significantly from community standards and her situation would not likely improve with time or counselling. The approach taken in *Re E.* marked an important step forward in child protection case law dealing with cultural minorities.

In other cases judges may have to determine custody and access where each parent offers a different cultural environment for the child. How can judges decide what will be best for the child without injecting their own cultural values? Moreover, it is difficult to formulate guiding principles that would enable judges to make consistent and predictable decisions in cases where diverse cultural values come into conflict. Indeed, it may even be impossible, given the diversity in cultural concepts of family. In one culture the family may signify a small nuclear unit, while in other cultures it may encompass grandparents, aunts and uncles, other relatives — perhaps the entire community. Clearly, then, guiding principles cannot be premised on the values of a single culture; hence the maxim, “a prime function of law is to prevent one person’s truth...from becoming another person’s tyranny”.<sup>124</sup>

With the advent of self-government, Aboriginal nations will be in a position to make their own family law. Indeed, they can proceed with initiatives in this area now, since family law falls within the core of Aboriginal self-governing jurisdiction. While their customary laws in some areas have continuing validity under section 35(1) of the constitution, in other areas they have been pre-empted by federal or provincial laws. It seems likely, therefore, in view of the fundamental importance of family and family relationships, that Aboriginal people will wish to have their own laws in place as soon as possible. There would seem to be particular urgency in this regard concerning laws and policies affecting children — laws on apprehension, custody and adoption, for example — as well as other areas with an impact on children, including their quality of life and personal security, parental responsibilities with regard to support and maintenance, protection from violence, and property and inheritance. As Aboriginal people have told us, their children are their future.

## **4.2 Division of Property on Marriage Breakdown**

In marriage, a wife who was abused, who was inadequately provided for by her husband, or who was otherwise unhappy could terminate her marriage simply by announcing that she was leaving. In nations in which a woman was proprietress of the home and its contents, she could dismiss an unsatisfactory spouse with a demand that he vacate the premises or by simply placing his personal effects outside the door. The ousted husband had no alternative but to comply.<sup>125</sup>

There is obviously a vast gulf between the traditional rights of Aboriginal women to hold property and the way those rights have shrunk over the past century. At present, family law, including the division of family assets on marriage breakdown, is governed by provincial law. Two decisions of the Supreme Court of Canada bear witness to the discriminatory impact of the *Indian Act* on Aboriginal women's property rights.<sup>126</sup>

In *Paul v. Paul*, two members of the Tsartlip Indian Band, located near Sidney, British Columbia, had been married for 19 years and had three children, ranging in age from eight to 18. The husband held a certificate of possession for reserve property under section 20 of the *Indian Act*. The couple had built their matrimonial home on the reserve property and had lived there for 16 years. In July 1982, the parties separated and the wife was awarded interim possession of the matrimonial home for herself and the children under British Columbia's *Family Relations Act*. When this order was overturned by the British Columbia Court of Appeal, Mrs. Paul appealed to the Supreme Court of Canada. Two provincial attorneys general intervened on behalf of Mrs. Paul, while the attorney general of Canada intervened on behalf of her husband. The wife sought interim possession of the marital home, not a division of family assets. The Supreme Court held that it had no authority to make such an order, since section 77 of the act had no application to a marital home located on a reserve.

In *Derrickson v. Derrickson*, another case involving a separated husband and wife, the Supreme Court also rejected the wife's appeal of a B.C. appeal court decision, denying that she had any interest in property for which her husband held a certificate of possession under the *Indian Act*. It confirmed that British Columbia's *Family Relations Act* had no application to land on a reserve held by an Indian person. The provincial legislation, however, did apply to the extent of allowing the provincial court to make an order for compensation to the wife for the financial share of the property to which she was entitled under the relevant law of general application.

However, as noted in the report of the Westbank inquiry, the order for compensation may in reality be hollow:

Although some spouses may benefit in future from that aspect of the [Derrickson] decision, it was not of great practical assistance to Rose Derrickson. In order to obtain a compensation order in lieu of division of lands, she would have had to return to the Supreme Court of British Columbia. This would entail further expenditure. Furthermore, it would have to be established that her husband had sufficient liquid resources to comply with any order....If the only substantial asset is real property on a reserve, any enforcement of a compensation order may be practically impossible.<sup>127</sup>

In Volume 4, Chapter 2, with regard to child support, we noted similar difficulties in gaining access to the assets of Indian people, generally men, living on-reserve. Women have reported difficulties with the enforcement of child support and wage garnishee orders directed to men living on-reserve, even when the child for whom support has been ordered or the support recipient is an Indian person. In cases where neither the support recipient nor the child is an 'Indian' as defined by the *Indian Act*, the income earned

on a reserve by an ‘Indian’ cannot be garnisheed or subject to a support order, nor can property on a reserve be seized.<sup>128</sup>

We believe that it is entirely possible to protect the integrity of a nation’s lands while recognizing the interest accumulated by individuals in improvements on designated properties. In Chapter 4, later in this volume, we indicate that a combination of public investment and private contributions by householders is necessary to raise the health and safety standards of the on-reserve housing stock. Policies to support shared investment should clarify ambiguities concerning ownership of houses and private interests acquired in reserve lands held in common by First Nations communities.

Acknowledging that it may be some time before full self-government and a new land tenure system for Aboriginal lands are in place, we recommended in Volume 2, Chapter 3 that, in the transition phase, Parliament pass an Aboriginal Nations Recognition and Governance Act to make explicit what is implicit in section 35 of the *Constitution Act, 1982* — namely, that Aboriginal nations constitute an order of government within the Canadian federation and can exercise law-making authority in areas they deem to be core areas of their jurisdiction. Such legislation would make resources available to proceed with rebuilding Aboriginal nations in anticipation of nation-to-nation negotiations for the full implementation of a new relationship. Legislation recognizing this relationship would also facilitate an early start on resolving the anomalies in the field of civil law that we have begun to describe here.

Aboriginal people and legal scholars agree on the broad objectives required. In a commentary on Aboriginal families and the law, Rita Dagenais sums up the situation this way:

We therefore face a significant legal vacuum. Provincial law does not apply to a matrimonial home located on a reserve. There is no federal legislation governing family residences or other matrimonial matters for Indian persons living on-reserve. The *Indian Act* does not recognize the legislative authority of a band council in the area...

The solution is obvious. Aboriginal communities should be able to legislate in this area. Federal and provincial governments should acknowledge the authority of Aboriginal governments to adopt laws with regard to the matrimonial home and to establish their family law regimes compatible with their cultures and traditions.<sup>129</sup> [translation]

### **4.3 Civil Law and Violence Within the Family**

Aboriginal women have been instrumental in bringing to light the pervasiveness and severity of the violence that has invaded many Aboriginal homes and communities. Like women in Canada generally, Aboriginal women want police protection and recognition from the courts that assaults on women and children are serious crimes. Although women recognize that many abusers are themselves victims, they want the abusers censured for their unacceptable behaviour by the courts, community leaders, family members and peers. Instead, women often discover that reporting abuse causes them more trouble than

it appears to bring the abuser. We noted that many women are reluctant to report assaults because experience has led them to believe that no action — or no effective action — will be taken; because of fear that the violence will escalate; for fear of losing their children; for fear they will lose financial support for the family; and for fear that they might have to relive the violence in adversarial court proceedings. In many cases, they remain trapped in violent situations because they simply have nowhere to go for refuge.

The fact that spousal assault is a criminal offence, while decisions on occupancy of a marital home and child custody are civil matters, creates problems. On reserves, for generations dwellings allocated to individuals were registered by means of certificates of possession (CP). The strong patriarchal bent of policy has meant that most CPs were issued in the name of the eldest male in the household.

The male partner's control of the residence becomes problematic if a woman is assaulted and calls for protection in the form of a restraining order restricting the man's access to the marital home. The assault charge will be dealt with as a criminal matter, but if she wishes to have sole occupancy of the marital home, the woman must also launch a civil action in another court. If the marital home is on a reserve, the provincial court is unable to handle the case because it falls within federal jurisdiction over "Lands reserved for the Indians", yet federal legislation to deal with the matter does not exist. Consequently, women often have no alternative but to leave the marital home. Given the shortage of housing on most reserves, women in these circumstances usually have to choose between moving in with relatives already living in overcrowded homes, or leaving the community. The trauma of abuse is thus compounded by the loss of the woman's home, extended family and familiar surroundings.

Particularly for Aboriginal women in urban centres without an Aboriginal family service agency to advocate on their behalf, to report violence in the home that was witnessed by their children or that they have suffered directly is to face the possibility of losing the children to child welfare authorities. In a 1995 report, the law reform commission of Nova Scotia addressed domestic violence. It recommended that an abused spouse not lose custody of her children solely on the grounds that she did not report she was being abused. The harmful effect of exposing children to violence is not to be dismissed, however. The law reform commission recommended that child protection authorities retain responsibility for intervening to protect a child where circumstances require. The commission also recommended that domestic violence be a determining factor in custody and access decisions under Nova Scotia's *Family Maintenance Act*.<sup>130</sup>

The Nova Scotia commission considered but chose not to recommend that family violence be handled in a unified family court with a mandate to hear all family-related matters. It took the view that enlarging the jurisdiction of a family court to hear criminal charges might detract from the seriousness of violence within families, a point that commissioners thought it essential to reinforce. It did recommend that domestic violence be a consideration in granting an order for exclusive possession of a matrimonial home, that such an order be available to common-law and same-sex couples, and that rented residences be included in such orders.

Recognizing the jurisdiction of Aboriginal nations to legislate, administer and adjudicate civil and criminal matters will presumably resolve problems related to gaps between federal and provincial systems and lack of co-ordination between civil and criminal court processes. Similarly, the problem of applying culturally appropriate standards in decisions about neglect of children or the capacity of parents can give way to community standards applied by Aboriginal adjudicators. As well, the development of new institutions and the full participation of women will help correct the sexist bias now found in some regulations and practices under the *Indian Act*.

## 5. Conclusion and Recommendations

At our public hearings, Aboriginal women spoke at length about their responsibilities, particularly in relation to the family, but they said very little about their rights. Yet it seems inconceivable that Aboriginal women's civil, political and property rights would not be included in the Aboriginal rights recognized and affirmed in section 35 of the constitution. Although women's ability to exercise their rights was subject to extensive regulation under the *Indian Act*, there is no convincing argument that the rights were extinguished before 1982. They were therefore "existing" Aboriginal rights within the meaning of *Sparrow* and protected by the equality guarantee (Aboriginal and treaty rights "are guaranteed equally to male and female persons") in section 35(4).

One of the challenges facing Aboriginal nations will be to give full effect and recognition to these rights by accordin Aboriginal women equal participation in designing and implementing Aboriginal self-governing structures and in creating Aboriginal law and policy. In Volume 4, Chapter 2, we made recommendations concerning this challenge.

Aboriginal nations have an opportunity to start from first principles in creating a family law regime that reflects their cultures, and we believe that they should be encouraged to do so. The courtroom is not a therapeutic institution, nor is law a sufficiently refined tool to define family relationships in culturally appropriate ways. Indeed, law and family do not walk easily hand in hand. As law professor Harry Arthurs has written:

"Law", at least in the formal sense, implies authority, conflict, and if necessary, coercion. "Family" implies partnership, compromise and ultimately, love. "Law" is general, applying to all citizens within a state. "Family" is particular, and is shaped for each of us by our own individual personalities, and by the very different and complex interplay of religion, ethnicity, class and culture. "Law" is form: due process, precision, predictability. "Family" is substance: traditionally home, children and loyalty, or in a more modern idiom, sharing and caring.<sup>131</sup>

It will require a great deal of planning and deliberation to devise laws that reflect the non-coercive cultures that Aboriginal people are determined to preserve and at the same time protect vulnerable people in an often troubled environment. Participation in a wage economy has introduced new ways of holding property and meeting obligations of family support. Aboriginal nations will undoubtedly seek a synthesis of traditions of sharing among kin networks and ways of enforcing the legitimate obligations and protecting the

entitlements of individuals. In view of the legal vacuum that now exists with respect to many of these issues, we urge an early start on addressing the aspects of family law raised in this chapter.

### **Recommendations**

The Commission recommends that

#### **3.2.10**

Federal, provincial and territorial governments promptly acknowledge that the field of family law is generally a core area of Aboriginal self-governing jurisdiction, in which Aboriginal nations can undertake self-starting initiatives without prior federal, provincial or territorial agreements.

#### **3.2.11**

Federal, provincial and territorial governments acknowledge the validity of Aboriginal customary law in areas of family law, such as marriage, divorce, child custody and adoption, and amend their legislation accordingly.

#### **3.2.12**

Aboriginal nations or organizations consult with federal, provincial and territorial governments on areas of family law with a view to

- (a) making possible legislative amendments to resolve anomalies in the application of family law to Aboriginal people and to fill current gaps;
- (b) working out appropriate mechanisms of transition to Aboriginal control under self-government; and
- (c) settling issues of mutual interest on the recognition and enforcement of the decisions of their respective adjudicative bodies.

#### **3.2.13**

With a view to self-starting initiatives in the family law area or to self-government, Aboriginal nations or communities establish committees, with women as full participants, to study issues such as

- (a) the interests of family members in family assets;
- (b) the division of family assets on marriage breakdown;

(c) factors to be considered in relation to the best interests of the child, as the principle is applicable to Aboriginal custody and adoption;

(d) rights of inheritance pertaining to wills, estates or intestacy; and

(e) obligations of spousal and child support.

In this chapter we have attempted to convey our understanding of what Aboriginal people mean when they talk about the family and to emphasize the critical importance of the family in rebuilding the strength of individuals, communities and nations. We have also examined threats to the health of family life.

It is clear that ‘the family’ in Aboriginal discourse signifies not only the household and smaller circle of immediate kin, but also, as it did in traditional times, a broader caring community that acts as a bridge or mediator between individuals and the world at large. In traditional times the family ensured recognition by society of the particular gifts and needs of its members; it instilled respect for self and other beings and for the forces that sustain life; it practised sharing, thereby building durable networks of mutual aid; and it passed on the knowledge and skills necessary for members to fulfil their responsibilities in the natural order.

In some situations, restoring the family to a healthy state will mean making it possible for extended kin networks to make a living from the land and practise sharing and self-reliance in very traditional ways. In many more situations it will mean articulating traditional values and applying them in circumstances that differ radically from the past. In some situations, where Aboriginal people have become alienated and distrustful of any kind of family, recreating a sense of family may entail devising entirely new ways of forging personal connections and community ties.

It is evident that while Aboriginal nations are being rebuilt and the ethical systems that maintain the integrity of community life are being restored to efficacy, public institutions such as child welfare agencies and police will be necessary to enforce responsibility and restrain aggression. Aboriginal people are wary of replicating the institutions of colonial control that have been so intrusive and destructive of family life. It is possible to respect the autonomy of families and communities while protecting the interests of individual members; it is a matter of striking a balance.

In addressing child welfare, family violence and family law in this chapter, we have endorsed early recognition of the authority of Aboriginal nations to act in these areas. Their capacity to achieve a balance between protecting individuals and respecting family autonomy, and their effectiveness in promoting family healing, will be critical tests of the success of self-government.

## **Notes:**

**1** Items in the Commission’s mandate related specifically to family life include social issues of concern to Aboriginal peoples; quality of life concerns, including child care, child welfare and family violence; and cultural issues of concern to Aboriginal peoples, including recognition by Canadian society and institutions of the intrinsic value of Aboriginal family structures and child care patterns. See Volume 1, Appendix A for the full terms of reference.

**2** Ernest S. Burch, Jr., “The Caribou Inuit”, in *Native Peoples, The Canadian Experience*, ed. R. Bruce Morrison and C. Roderick Wilson (Toronto: McClelland & Stewart, 1986), p. 116.

**3** For a look at Innu practices, see José Mailhot, *Au pays des Innus, Les gens de Sheshatshit* (Montreal: Recherches amérindiennes au Québec, 1993).

**4** Burch, “The Caribou Inuit” (cited in note 2), p. 118.

**5** Marlene Brant Castellano, “Women in Huron and Ojibwa Societies”, *Canadian Woman Studies* 10/2&3 (Summer/Fall 1989), p. 47.

**6** Obituary of Clemence Gourneau Berger, *Democrat-News*, Lewistown, Montana, 31 December 1943, quoted in Verne Dusenberry, “Waiting for a Day that Never Comes: The Dispossessed Métis of Montana”, in *The New Peoples: Being and Becoming Métis in North America*, ed. Jacqueline Peterson and Jennifer S.H. Brown (Winnipeg: University of Manitoba Press, 1985), p. 125.

**7** For a description of Métis family and community in recent history, see Maria Campbell, *Halfbreed* (Toronto: McClelland & Stewart, 1973).

**8** Paulus Maggo, “Remembering the Years of My Life”, in Carol Brice-Bennett, “Labrador Inuit Life Histories”, research study prepared for the Royal Commission on Aboriginal Peoples [RCAP] (1994). For more information about RCAP research studies, see *A Note About Sources* at the beginning of this volume.

**9** See Alexander Ross, *The Red River Settlement: Its Rise, Progress, and Present State, With Some Account of the Native Races and its General History to the Present Day* (Edmonton: Hurtig Publishers, 1972), p. 249.

**10** For a fuller discussion of mediating institutions, see Peter L. Berger and Richard John Neuhaus, “To Empower People”, in *People-Centred Development: Contributions Toward Theory and Planning Frameworks*, ed. David C. Korten and Rudi Klauss (West Hartford: Kumarian Press, 1984), pp. 250-261; and Lorna Williams, Sharon Wilson, Adeline Saunders and Patrick Maxcy, “Elementary Education Study: Vancouver Inner City Project, Feuerstein’s Instrumental Enrichment and Related Applied Systems: Case Study Plan”, research study prepared for RCAP (1993).

**11** For testimony on the effects of residential schooling see the section on current issues in this chapter. See also Assembly of First Nations, *Breaking the Silence: An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nation Individuals* (Ottawa: Assembly of First Nations, 1994).

**12** John S. Murdoch, “Education for Cree Children in the James Bay Territory of Northern Quebec: A Retrospective View of Foundations and Processes”, research study prepared for RCAP (1994).

**13** See Donald McCaskill, “The Urbanization of Canadian Indians in Winnipeg, Toronto, Edmonton and Vancouver: A Comparative Analysis”, PH.D dissertation, York University, 1979, pp. 82-89.

**14** Tony Snowsill, producer and director, *Our Children Are Our Future* (Scarborough, Ontario: Direction Films, 1991). The film is available through Canadian Learning Company, 1-800-267-2977.

**15** A discussion of the Spallumcheen child welfare by-law is presented in RCAP, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Supply and Services, 1996), p. 100. Community experience in implementing the by-law is reported in Monique Godin-Beers and Cinderina Williams, “Report of the Spallumcheen Child Welfare Program”, research study prepared for RCAP (1994).

**16** Patrick Johnston, *Native Children and the Child Welfare System* (Toronto: Canadian Council on Social Development in association with James Lorimer & Company, 1983).

**17** Johnston, *Native Children*, p. 23.

**18** As with many statistics relating to First Nations, Inuit and Métis populations, for the most part only statistics for First Nations people ordinarily resident on reserves are available, because funding for services to Indian people on-reserve  $\&$  the costs of maintenance and supervision of children in care  $\&$  flow from the federal government, which maintains statistics on these expenditures. Statistics on services rendered to off-reserve registered Indians, non-status Aboriginal persons, Métis people and Inuit outside the Northwest Territories and territories covered by land claims settlements are not gathered separately from data on the general population. There is no means, therefore, of obtaining figures for Canada-wide comparisons.

Comparisons are also difficult because of the different methods used for collecting data. For example, agencies may gather statistics on the basis of admissions. One family with several members admitted to care several times for short periods will inflate the numbers. Similarly, children in long-term care may not be distinguished from short-term placements in counting numbers of children in care at a particular point in time. Days of care provided may be a clearer quantitative measure but the numbers do not shed light on patterns of care and duration of placements. Johnston uses the term “Native children” to

include status and non-status Indians and Métis people and Inuit, although statistics on non-registered “Native children” are often based on estimates made by service agencies. See Volume 1, Chapter 2 (particularly the endnotes) for a general discussion of the sources of data used by the Commission in this report.

**19** Johnston, *Native Children* (cited in note 16). These figures are summarized from tables appearing on pp. 24-54.

**20** Johnston, *Native Children*, p. 56. The higher figure of 7.3 per cent reported for Alberta is inflated by the inclusion of children in conflict with the law and children with disabilities.

**21** Johnston, *Native Children*, p. 57.

**22** See Volume 1, Chapter 10 of this report; and John S. Milloy, “Suffer the Little Children: The Aboriginal Residential School System, 1830-1992”, research study prepared for RCAP (1996). See also George Caldwell, *Indian Residential Schools* (Ottawa: Canadian Welfare Council, 1967).

**23** ‘Apprehension’ is the term used when a government agency authorized under child welfare law removes a child from parental care to agency control.

**24** Johnston, *Native Children* (cited in note 16), pp. 60-61.

**25** See Peter Hudson, “Une évaluation des services d'aide à l'enfance indienne : le cas du Manitoba”, *Recherches amérindiennes au Québec* 16/1, pp. 29-40. Brad McKenzie and Pete Hudson, “Native Children, Child Welfare, and the Colonization of Native People”, in *The Challenge of Child Welfare*, ed. Kenneth L. Levitt and Brian Wharf (Vancouver: University of British Columbia Press, 1985), pp. 125-141; House of Commons, Special Committee on Indian Self-Government, *Report of the Special Committee* (Ottawa: Queen’s Printer, 1983); and Bradford Morse, “Native Indian and Métis Children in Canada: Victims of the Child Welfare System”, in *Race Relations and Cultural Differences: Educational and Institutional Perspectives*, ed. Gajendra K. Verma and Christopher Bagley (New York: St. Martin’s Press, 1984), pp. 259-277.

**26** McKenzie and Hudson, “Native Children, Child Welfare”.

**27** Joyce Timpson, “Aboriginal Peoples, Child Welfare Policy and the Canadian State: Historical Context and Contemporary Consideration for First Nations’ Controlled Service”, research study prepared for RCAP (1993).

**28** Review Committee on Indian and Metis Adoptions and Placements, *No Quiet Place: Final Report to the Honourable Muriel Smith, Minister of Community Services* (Winnipeg: Manitoba Community Services, 1985), pp. 268, 272-276.

**29** Department of Indian Affairs and Northern Development [DIAND], “Growth in Federal Expenditures on Aboriginal Peoples”, background paper prepared for RCAP (1993).

**30** Brad McKenzie, “Aboriginal Foster Family Care in Canada: A Policy Review”, research study prepared for RCAP (1995).

**31** McKenzie, “Aboriginal Foster Family Care”.

**32** McKenzie, “Aboriginal Foster Family Care”.

**33** *Child Welfare Amendment Act, 1985*, S.A., c. C-8.1, s. 73.

**34** *Child Welfare Act*, R.S.N. 1990, c. C-12, s. 4(2)(g).

**35** *Aboriginal Custom Adoption Recognition Act*, S.N.W.T. 1994, c. 26.

**36** Summary based on *Aboriginal Custom Adoption Recognition Act*, S.N.W.T. 1994, c. 26, ss. 2, 3, 5.

**37** *Children’s Act*, S.Y. 1986, c. 22, s. 107.

**38** R.S.Q., c. P-34.1, s.2.4, (5o)(c).

**39** *Child and Family Services Act*, R.S.O. 1990, c. C-11, ss. 1, 13, 37, 53, 57, 130, 191, 195, Part X, O. Reg. 206/90.

**40** *An Act respecting the Commission des droits de la personne et des droits de la jeunesse*, S.Q. 1995, c. 27, s. 2.

**41** DIAND, “Growth in Federal Expenditures” (cited in note 29).

**42** For a graph representing these statistics and citing sources, see Figure 3.2 in Chapter 3 in this volume.

**43** In *Native Children* (cited in note 16), Patrick Johnston cites the 1981 figures for Aboriginal children in care as 4.6 per cent, compared to nearly one per cent of children in care from the general population. Variations result from differences in ‘Native’ as compared to registered Indian on-reserve population counts and varied reporting categories for children in care. Data are not strictly comparable and should be read as estimates only.

**44** Alberta Commissioner of Services for Children, *Finding a Better Way: The Consultations and Research Leading to the Redesign of Children’s Services in Alberta* (Edmonton: 1994), p. 28.

**45** Pete Hudson, “Politics and Program: A Case Study of a First Nations Child and Family Service Agency”, research study prepared for RCAP (1994).

**46** See Suzanne Manomie, “A Second Look at Custom Adoption. Is an Age-old Tradition Endangering Some Children?”, *Arctic Forum* (Fall 1994), pp. 7-8. Brad McKenzie suggests families providing customary care require training and support if they are to deal with the special needs arising from trauma and neglect suffered by many children needing alternative care. The move toward developing minimum standards for customary care reflects “the growing realization that abuse and poor quality care can occur within alternative care arrangements and that there is a need to protect children in care from these situations”. McKenzie, “Aboriginal Foster Family Care” (cited in note 30).

**47** In 1991, Pauktuutit, the national Inuit women’s organization, published *No More Secrets*, a report acknowledging the problem of child sexual abuse in Inuit communities and promoting community responsiveness to disclosure and the need for healing of all those affected. See Rosemarie Kuptana, *No More Secrets: Acknowledging the Problem of Child Sexual Abuse in Inuit Communities: The First Step Towards Healing* (Ottawa: Pauktuutit, 1991).

**48** RCAP, *Choosing Life: Special Report on Suicide Among Aboriginal People* (Ottawa: Supply and Services, 1994), p. 56 and following.

**49** Joan Glode, quoted in Patricia E. Doyle-Bedwell, “Reclaiming Our Children: Mi’kmaq Family and Children Services”, research study prepared for RCAP (1994).

**50** *No Quiet Place* (cited in note 28), pp. 272-276.

**51** Godin-Beers and Williams, “Spallumcheen Child Welfare Program” (cited in note 15).

**52** H.B. Hawthorn, ed., *A Survey of Contemporary Indians of Canada: A Report on Economic, Political, Educational Needs and Policies* (Ottawa: DIAND, 1966).

**53** See Allan Moscovitch and Andrew Webster, “Social Assistance and Aboriginal People”, research study prepared for RCAP (1993).

**54** On 1 April 1996, under the *Budget Implementation Act, 1995*, S.C. 1995, c. 17, Parts IV and V, the Canada Assistance Plan was replaced by the Canada Health and Social Transfer, a system of block grants from the federal government to the provinces.

**55** H. Philip Hepworth, *Foster Care and Adoption in Canada* (Ottawa: Canadian Council on Social Development, 1980), pp. 111-122; and Johnston, *Native Children* (cited in note 16).

**56** Hudson, *Politics and Program* (cited in note 45).

**57** Connie H. Nelson, Mary Lou Kelley and Dennis H. McPherson, “Rediscovering Support in Social Work Practice: Lessons from Indian Indigenous Human Service Workers”, *Canadian Social Work Review* (1985), pp. 233-235.

**58** Lauri Gilchrist and R. Anthony Winchester, “Kaøptõøtipis, eø-pimohteyahk: Aboriginal Street Youth; Vancouver, Winnipeg and Montreal”, research study prepared for RCAP (1995).

**59** Gilchrist and Winchester, “Kaøptõøtipis, eø-pimohteyahk”.

**60** Gilchrist and Winchester quote an estimate by an agency worker in Vancouver that 70 per cent of the male prostitutes in a district known as ‘Boystown’ are Aboriginal. Gay males experience double discrimination: from Aboriginal people because of their homosexuality and from non-Aboriginal people because of their Aboriginal identity.

**61** Gilchrist and Winchester, “Kaøptõøtipis, eø-pimohteyahk”.

**62** Gilchrist and Winchester, “Kaøptõøtipis, eø-pimohteyahk”.

**63** The following analysis of needs and services is drawn from Gilchrist and Winchester, “Kaøptõøtipis, eø-pimohteyahk”.

**64** See RCAP, *Choosing Life* (cited in note 48), pp. 54-55, for a description of the work of the Bear Clan Patrol.

**65** A summary account of Missy’s story can be found in RCAP, *Choosing Life*, pp. 31-36.

**66** Gilchrist and Winchester, “Kaøptõøtipis, eø-pimohteyahk” (cited in note 58).

**67** Alberta Commissioner of Services for Children, “Focus on Children” (November 1994).

**68** Ontario Ministry of Health, *New Directions, Aboriginal Health Policy for Ontario* (Toronto: 1994), pp. 15 and 31.

**69** Government of the Northwest Territories, *Community Wellness: Working Together for Community Wellness, A Directions Document* (Yellowknife: 1995), p. 2.

**70** In our special report on suicide, *Choosing Life* (cited in note 48), p. 90, we articulate a three-pronged strategy of local prevention and crisis intervention services to offset risk, community development to address the most pressing local causes of suicidal hopelessness and helplessness, and the opportunity to achieve autonomy and self-determination as Aboriginal peoples. The approach is applicable to family support and child protective services as well.

**71** Associate Chief Judge Dale Giesbrecht, *Fatality Inquiries Act: Respecting the Death of Lester Norman Desjarlais* (Brandon, Manitoba: 1992).

**72** Women appearing at our hearings were particularly concerned about abuses of political power that affect their well-being. For our position on the protection of human rights in the context of justice systems under Aboriginal nation authority, see RCAP, *Bridging the Cultural Divide* (cited in note 15), in particular Chapter 4, “Application of the *Canadian Charter of Rights and Freedoms* to Aboriginal Justice Systems” and “Ensuring the Safety of Women and Children in Aboriginal Justice Systems”. On the development of local capacity to deal with child abuse and organizational effectiveness, see presentations on the Grand Lac Victoria Community and Atikamekw Health and Social Services, reported in RCAP, *The Path to Healing: Report of the National Round Table on Aboriginal Health and Social Issues* (Ottawa: Supply and Services, 1993).

**73** The commitment of Canadian governments to the well-being of children gained prominence with Canada’s participation in the United Nations World Summit for Children in September 1990, its involvement in developing the UN *Convention on the Rights of the Child*, and its subsequent ratification of the convention in December 1991. The rights of Aboriginal children are given specific attention by the Canadian government in monitoring actions to implement the convention. See Department of Canadian Heritage, *Convention on the Rights of the Child: First Report of Canada* (Ottawa: 1994).

**74** Madeleine Dion Stout, “The Missing Peace: Family Violence in Aboriginal Communities”, policy paper prepared for RCAP (1995).

**75** Government of Canada, *Family Violence: Situation Paper* (Ottawa: Supply and Services, 1992), p.1.

**76** For a discussion of women’s action to promote non-violence in Aboriginal communities in Quebec, see Clotilde Pelletier, “Un premier colloque autochtone sur la violence”, *Recherches amérindiennes au Québec* 25/1 (1995), pp. 97-98.

**77** Statistics Canada, “The Violence Against Women Survey: Highlights”, *The Daily*, 18 November 1993, catalogue no. 11-001E, p. 2.

**78** Peter Kulchyski, “Community Study: Solutions from Fort Simpson”, research study prepared for RCAP (1994).

**79** Freda Lundmark, Metis Women of Manitoba, RCAP transcripts, Thompson, Manitoba, 31 May 1993; and Tom Lindley, Westbank Indian Band, Kelowna, British Columbia, 17 June 1993.

**80** See presentation by Marilyn Fontaine, President, Aboriginal Women’s Unity Coalition, RCAP transcripts, Winnipeg, Manitoba, 23 April 1992.

**81** Carol La Prairie, *Seen But Not Heard: Native People in the Inner City* (Ottawa: Public Works and Government Services, 1994).

**82** Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence* (Thunder Bay, Ontario: 1989).

**83** Women's Education and Research Foundation, *Native Women's Needs Assessment Survey (Urban and Oneida Reserve Population): Final Report* (London, Ontario: 1986).

**84** Joan Wierzba, Betty Bastien and Elsie Bastien, "Native Family Violence in Lethbridge", *Native Studies Review* 7/1 (1991), p. 136.

**85** Emma D. LaRocque, "Violence in Aboriginal Communities", in RCAP, *The Path to Healing* (cited in note 72), p. 73.

**86** Canadian Panel on Violence Against Women, *Changing the Landscape: Ending Violence & Achieving Equality* (Ottawa: Supply and Services, 1993).

**87** Martha Flaherty, "Family Violence & An Inuit Perspective", *Vis-à-vis: A National Newsletter on Family Violence* 10/4 (Spring 1993), p. 11.

**88** Lynda Lange, "Fractured Vision: Frustration and Hope in Fort Resolution, N.W.T.", research study prepared for RCAP (1994).

**89** Unidentified male respondent, quoted in Brenda ManyFingers, "Treaty 7 Community Study: Family Violence and Community Stress", research study prepared for RCAP (1994).

**90** ManyFingers, "Treaty 7 Community Study".

**91** Dion Stout, "The Missing Peace" (cited in note 74).

**92** Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba, The Justice System and Aboriginal People* (Winnipeg: Queen's Printer 1991), p. 485.

**93** Women of the Metis Nation, "Women Who Own Themselves: Final Report on the Conference on Métis Women and Governance", brief submitted to RCAP (1993), pp. 25-27. For more information about briefs submitted to RCAP, see *A Note About Sources* at the beginning of this volume.

**94** See Jacques Leroux, "Les métamorphoses du pacte dans une communauté algonquine", *Recherches amérindiennes au Québec* 25/1 (1995), p. 58.

**95** Quoted in ManyFingers, "Treaty 7 Community Study" (cited in note 89).

**96** Jeannette Lavell, quoted in Marlene Brant Castellano and Janice Hill, “First Nations Women: Reclaiming Our Responsibilities”, in *A Diversity of Women: Ontario, 1945-1980*, ed. Joy Parr (Toronto: University of Toronto Press, 1995), p. 244.

**97** Maggie Hodgson, “Where to From Here? Developing Effective Treatment Programs for Sexual Abuse in Native Communities”, in Tony Martens, ed., *The Spirit Weeps: Characteristics and Dynamics of Incest and Child Sexual Abuse* (Edmonton: Nechi Institute, 1988), p. 130.

**98** Hodgson, “Where to From Here?”, p. 127.

**99** Letter from Chief Ed Metatawabin to Tom Siddon, minister of Indian affairs, 15 November 1990.

**100** DIAND File E6757-18, Vol. 13, Memorandum for the Deputy Minister from J. Cochrane, 6 June 1992 and the attached First Nations Health Commission Proposal, May 1992.

**101** Canadian Panel on Violence Against Women, *Changing the Landscape: Ending Violence & Achieving Equality*, Executive Summary/National Action Plan (Ottawa: Supply and Services, 1993), Part V, p. 88.

**102** Martha Flaherty, RCAP transcripts, Ottawa, Ontario, 2 November 1993.

**103** Brenda Daily, in *The Spirit Weeps* (cited in note 97), p. 117.

**104** Canadian Panel on Violence Against Women, *Final Report of the Canadian Panel on Violence Against Women* (Ottawa: Supply and Services, 1993), p. 4.

**105** Harvey Armstrong, “An Overview on Family Violence”, in *Family Violence, A Native Perspective*, Transcribed and Edited Proceedings of the 1987 Meeting of the Canadian Psychiatric Association, Section on Native Mental Health, London, Ontario, 1987, pp. 9 and 11.

**106** See Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1965) for a widely recognized analysis of the effects of colonial experience on collective self-esteem.

**107** Clare Brant, “Violence in the Native Community”, in *Proceedings of the Third Symposium on Violence and Aggression* (Saskatoon: University of Saskatchewan and Regional Psychiatric Centre (Prairies), 1990), p. 63.

**108** Roy Fabian, RCAP transcripts, Hay River, Northwest Territories, 17 June 1993.

**109** For a discussion of the dangers of individual therapies for personal dislocation resulting from powerlessness and exploitation, see Roland D. Chrisjohn and Sherri L. Young, “The Circle Game: Shadows and Substance in the Indian Residential School

Experience in Canada”, research study prepared for RCAP (1994), Chapter 6: The Forest and the Trees.

**110** The over-representation of Aboriginal youth in the justice systems across Canada is another manifestation of the problem of alienation from the cultural norms of both Aboriginal and non-Aboriginal society. For a fuller discussion of this issue see Chapter 2, “Current Realities”, in RCAP, *Bridging the Cultural Divide* (cited in note 15).

**111** See RCAP, *Bridging the Cultural Divide*, in particular, “Ensuring the Safety of Women and Children in Aboriginal Justice Systems” in Chapter 4, and recommendations 7, 8 and 10. For an example of a regional effort to change the way conflicts and violence in the family and community are dealt with, see Makivik Corporation/Kativik Regional Government Task Force, *Blazing the Trail to a Better Future* (1993). The task force was established by Inuit of Nunavik to examine all aspects of the justice system as it operates in their territory. It consisted of six people and consulted extensively in all member communities. It made specific recommendations to incorporate Inuit values and customs in the adjudicative, sentencing and detention phases of the existing justice system, pending development of a more complete Inuit system of justice.

**112** For examples of culture-based community experience in rehabilitation, see Volume 1, Chapter 15, as well as the case studies of Aboriginal Legal Services of Toronto and Hollow Water First Nation’s holistic circle healing project in RCAP, *Bridging the Cultural Divide*, Chapter 3.

**113** See *The Honour of All: The Story of Alkali Lake* (Phil Lucas Productions, 1985, video, 56:48 min.)

**114** Pauktuutit, “Code of Conduct for Inuit Leaders”, annual general meeting, Cambridge Bay, Northwest Territories, 1994.

**115** Kai Erikson, foreword, in Anastasia M. Shkilnyk, *A Poison Stronger than Love: The Destruction of an Ojibwa Community* (New Haven: Yale University Press, 1985), pp. xvi-xvii.

**116** *R. v. Sioui*, [1990] 1 S.C.R. 1025 at 1054.

**117** *Re Noah Estate*, [1961-62] 36 W.W.R. 577 (N.W.T. Terr. Ct.) dealt with the application of the *Northwest Territories Act* to Inuit living in the Territories. Section 22(2) of that act provides: “All laws of general application in force in the territories are, except where otherwise provided, applicable to and in respect of Inuit in the Territories.”

It was held in *Re Noah Estate*, at 600, that this section did not succeed in providing blanket application of territorial ordinances to Inuit. In a line of cases starting with *Re Noah Estate* and dealing with customary marriage and adoption, the courts have not felt compelled to apply the section strictly in accordance with its terms. In the words of

Justice Sissons: “Vested rights are not to be taken away without express words of necessary intendment or implication”. It was held in this line of cases, therefore, that rights created through customary law were unaffected by section 22(2) and other similar legislation.

**118** *Connolly v. Woolrich* (1867), 17 Rapports judiciaires revisés de la Province de Québec 75 (Que. Sup. Ct.). See Volume 2, Chapter 3, in particular the section on an Aboriginal order of government.

**119** *Re Katie’s Adoption Petition*, [1962] 38 W.W.R. 100 (N.W.T. Terr. Ct.).

**120** *J.T.K. v. Kenora-Patricia Child and Family Services*, [1985] 4 C.N.L.R. 76 (Ont. Prov. Ct.).

**121** *Michell v. Dennis*, [1984] 2 W.W.R. 449 (B.C.S.C.).

**122** *Racine v. Woods*, [1983] 2 S.C.R. 173 at 174.

**123** *Re E.*, [1980] 4 W.W.R. 296 at 296-297.

**124** Joseph Goldstein, Anna Freud and Albert J. Solnit, *Before the Best Interests of the Child* (New York: The Free Press, 1979), p. 93.

**125** Verna Kirkness, “Emerging Native Woman” (1987-1988) 2 C.J.W.L. 408 at 411 [note omitted].

**126** *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; and *Paul v. Paul*, [1986] 1 S.C.R. 306.

**127** *Report of the Commission of Inquiry Concerning Certain Matters Associated with the Westbank Indian Band* (Ottawa: Supply and Services, 1988), pp. 524-525.

**128** Correspondence to RCAP Commissioner Mary Sillett from the Ontario Ministry of the Attorney General, 9 September 1993, concerning the enforcement of support orders.

**129** Rita Dagenais, “Le droit de la famille autochtone”, in *Droit civil et droits autochtones: confrontation ou complémentarité* (Association Henri-Capitant, 1992), pp. 32-33.

**130** Law Reform Commission of Nova Scotia, *Final Report: From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Halifax: February 1995) pp. 90, 102.

**131** H.W. Arthurs, “The Future of Family Law”, in *Family Law: Dimensions of Justice*, selected papers presented at the Judicial Conference on Family Law, 1981, ed. Rosalie S. Abella and Claire L’Heureux-Dubé (Toronto: Butterworths & Co., 1983), p. 295.