



2018

# Issue 1: Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations Children in the Child Welfare System

Vandna Sinha

*School of Social Work, McGill University*

Ashleigh Delaye

*School of Social Work, McGill University*

Brittany Orav-Lakaski

*School of Social Work, McGill University*

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/jlsp>



Part of the [Indian and Aboriginal Law Commons](#), and the [Social Welfare Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

## Citation Information

Sinha, Vandna; Delaye, Ashleigh; and Orav-Lakaski, Brittany. "Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations Children in the Child Welfare System." *Journal of Law and Social Policy* 28:1. (2018): 10-38. <https://digitalcommons.osgoode.yorku.ca/jlsp/vol28/iss1/2>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in *Journal of Law and Social Policy* by an authorized editor of Osgoode Digital Commons.

## **Reimagining Overrepresentation Research: Critical Reflections on Researching the Overrepresentation of First Nations Children in the Child Welfare System**

VANDNA SINHA, ASHLEIGH DELAYE & BRITTANY ORAV-LAKASKI\*

Cet article s'appuie sur les expériences du premier auteur dans la recherche sur la surreprésentation des enfants des Premières Nations dans les systèmes de protection de l'enfance au Canada. Six leçons sont présentées: (1) la surreprésentation est une construction intrinsèquement quantitative; (2) la surreprésentation est une construction intrinsèquement comparative; (3) l'accent mis sur la surreprésentation attire l'attention sur les besoins de groupes spécifiques, mais peut masquer le besoin d'une réforme systémique plus large; (4) les données disponibles reposent sur les perspectives des décideurs, mais ne les représentent pas complètement; (5) les données disponibles mettent l'accent sur les décisions ponctuelles; et (6) l'ambiguïté des données doit être très clairement reconnue. En nous appuyant sur la discussion de ces leçons, nous explorons les implications pour les futures directions de recherche et mettons en évidence les considérations relatives à la politique et à la pratique en matière de protection de l'enfance.

This paper builds on the experiences of the first author in doing research on the overrepresentation of First Nations children in child welfare systems in Canada. Six lessons are presented: (1) overrepresentation is an inherently quantitative construct; (2) overrepresentation is an inherently comparative construct; (3) a focus on overrepresentation draws attention to the needs of specific groups, but may obscure the need for broader systemic reform; (4) available data relies on, but incompletely represents, decision-maker perspectives; (5) available data emphasizes point-in-time decisions; and (6) ambiguity in data must be very clearly acknowledged. Building on discussion of these lessons, we explore implications for future research directions and highlight considerations for child welfare policy and practice.

*IN 2007, AS A NEW PhD and a recent transplant from the United States, I joined the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-2008) research team, accepting responsibility for the First Nations component of that study (FNCIS-2008).<sup>1</sup> The goals of the*

---

\* Vandna Sinha is an Associate Professor in the School of Social Work, McGill University. She leads the Children's Services Policy Research Group. Ashleigh Delaye (MA, MSW) is a researcher with the Children's Services Policy Research Group (McGill University School of Social Work) and a social work practitioner. Brittany Orav-Lakaski (MA) is a Masters of Social Work candidate at the McGill University School of Social Work.

<sup>1</sup> Recollection of the first author.

*FNCIS-2008 were to generate new knowledge about the nature of and response to maltreatment of First Nations children in Canada and to increase the capacity for future research on child maltreatment in First Nations communities.<sup>2</sup> Building on an informal partnership with the First Nations Child and Family Caring Society (which facilitated the inclusion of eight Aboriginal agencies in the CIS-2003) and supported by a gracious and principled CIS research team, I developed an advisory committee that brought together Aboriginal child welfare practitioners, policy specialists, and academics from across Canadian jurisdictions.<sup>3</sup>*

*Guided by OCAP® principles—which are designed to ensure that First Nations peoples retain Ownership, Control, Access, and Possession of research conducted in First Nations contexts—but also constrained by available resources and the existing CIS framework, the advisory committee and research team sought to maximize advisory committee ownership of and control over the project. Committee members were generous with their time, resources, and wisdom. They informed the development of a framework for sampling Aboriginal agencies—First Nations, urban Aboriginal, and Métis agencies that are designed to serve Aboriginal children, are operated by Aboriginal communities, and function in complement with the larger network of provincially/territorially operated child welfare agencies. The research team and advisory committee, working together, collected data from twenty-two Aboriginal child welfare agencies, roughly one quarter of the Aboriginal child welfare agencies that were conducting investigations in 2008.<sup>4</sup> The collaboration continued beyond the data collection stage; advisory committee members guided the framing and interpretation of study findings, and supported diverse forms of knowledge translation.*

*FNCIS-2008 validated and built on results from prior cycles of the CIS, solidifying a now familiar narrative about the overrepresentation of First Nations children in the child welfare system. First Nations children are overrepresented from the point of first contact with child welfare agencies; their overrepresentation is driven primarily by neglect and associated family*

---

<sup>2</sup> We use “First Nations” to describe a group that includes both Indigenous people recognized by the federal government as having First Nations status and all others who identify as First Nations. The term “First Nations agency” is used to describe child welfare agencies operated by First Nations communities. The emphasis on First Nations in this article reflects the focus of the first author’s work and the existing literature; but, as there are important similarities between the experiences of First Nations and other Indigenous children, we draw on both the literature specific to First Nations children and the literature that focuses on Indigenous children more generally. We use both “Aboriginal” and “Indigenous” to refer to a larger group of people, including First Nations, Inuit, Métis, and other Indigenous people. We use Aboriginal when drawing on existing research/policy documents that use this term, and Indigenous in other cases. The term “Aboriginal agencies” is used to describe child welfare agencies run by Aboriginal communities that serve: First Nations, Métis, and urban Aboriginal children. The terminology used to describe Indigenous peoples is both evolving and contested and we hope our choice of terminology does not offend or distract from the focus of this article.

<sup>3</sup> Nico Trocmé et al, “Mesnmimk wasatek: catching a drop of light: Understanding the Overrepresentation of First Nations Children in Canada’s Child Welfare System: An Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-2003)” (Toronto: Centre of Excellence for Child Welfare, 2005) [Trocmé et al, “Understanding”].

<sup>4</sup> Vandna Sinha et al, *Kiskisik Awasisak: Remember the Children. Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2011) [Sinha et al, “Remember”].

risk factors.<sup>5</sup> While the anticipated funding for a 2013 cycle of the CIS did not materialize, I continued to pursue research on the overrepresentation of Aboriginal children in the child welfare system, building on the knowledge and partnerships formed through FNCIS-2008 to explore patterns of overrepresentation using FNCIS-2008 and other data. The advisory committee established for FNCIS-2008 still functions and we are currently developing a 2018 follow-up study.

The development of the FNCIS, use of the resulting data, and presentation of the results were necessarily shaped by my perspectives on and understandings of overrepresentation, which have evolved over time. As we move towards a 2018 study, I have undertaken critical analysis of my work on the FNCIS-2008 and, more fundamentally, of the concept of overrepresentation, in order to enhance my own understanding of the ways that we might build and improve on past work in the new study. In this article, my co-authors and I present several lessons on the concept of overrepresentation that emerged through the FNCIS-2008 process in the hopes that they may contribute to continued critical discourse that seeks to reimagine child welfare.

## I. BACKGROUND

Over the last two decades, there has been increasing attention to the overrepresentation of children from minority groups in North American child welfare systems.<sup>6</sup> In comparison with White children, Black children first became overrepresented in the child welfare system in the 1950s and, starting in the late 1960s, concern emerged over the potential links between service disparities and institutional racism.<sup>7</sup> By the mid to late 1990s, the over-inclusion of children from racialized families was among the critical concerns motivating calls for reform to the child welfare system in the United States.<sup>8</sup> The focus on Black children has continued, with sometimes

---

<sup>5</sup> Trocmé et al, “Understanding,” *supra* note 3; Sinha et al, “Remember,” *supra* note 4; Vandna Sinha et al, “Understanding the Investigation-Stage Overrepresentation of First Nations Children in the Child Welfare System: An Analysis of the First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect 2008” (2013) 37:10 *Child Abuse and Neglect* 821 [Sinha et al, “Investigation-Stage”]; Nico Trocmé, Della Knoke & Cindy Blackstock, “Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System” (2004) 78 *Social Service Review* 577 at 594.

<sup>6</sup> John D Fluke et al, “A Research Synthesis on Child Welfare Disproportionality and Disparities” ( Paper delivered at ‘Definitional Clarity’ in Alliance for Racial Equity in Child Welfare Research Symposium on Racial Disparities in Child Welfare, July 2010), in *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (Centre for the Study of Social Policy, Alliance for Racial Equity in Child Welfare & The Annie E. Casey Foundation, 2011) 1, online: <[cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare\\_An-Analysis-of-the-Research-December-2011.pdf](http://cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare_An-Analysis-of-the-Research-December-2011.pdf)> [perma.cc/XK6J-K3Z7] [Fluke et al “A Research Synthesis”].

<sup>7</sup> Carrie Jefferson Smith & Wynetta Devore, “African American Children in the Child Welfare and Kinship System: From Exclusion to Over Inclusion” (2004) 26:5 *Children and Youth Services Review* 427; Andrew Billingsley & Jeanne M Giovannoni, *Children of the Storm: Black Children and American Child Welfare* (New York: Harcourt, Brace, Jovanovich, 1972) at 9; Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2002).

<sup>8</sup> Frank Farrow, *Building Community Partnerships for Child Protection: Getting From Here to There* (Washington DC: Community Partnerships for Protecting Children, Center for the Study of Social Policy, 1997); Jane Waldfogel, *The Future of Child Protection: How to Break the Cycle of Abuse and Neglect* (Cambridge, MA: Harvard University Press, 1998) at 59; Jane Waldfogel, “Rethinking the Paradigm for Child Protection” (1998) 8:1 *The Future of Children* 104.

fierce debate over the meaning of and reasons for overrepresentation.<sup>9</sup> Recently, studies demonstrating high rates of both reported and actual maltreatment of Black children, and linking these rates to family and community risk factors such as poverty, have supported a conclusion that the overrepresentation of Black children in the child welfare system is due to increased risk rather than reporting bias.<sup>10</sup> This conclusion however, does not preclude the possibility of bias within specific areas or aspects of the child welfare system. Moreover, a contextualized understanding of Black families and communities must take into account the ways in which the conditions affecting them are shaped by ongoing and historical oppression. It must also consider the interactions between persistent racial segregation, poverty, low social capital, other neighbourhood social conditions, and negative media representation of Black mothers that institutionalize racism within our social infrastructures.<sup>11</sup> The focus of US research has also expanded over time to discuss the over or underrepresentation of other minority groups such as Native Americans, Latinos, and Native Hawaiians in the child welfare system.<sup>12</sup>

In the Canadian context, public documentation of the overrepresentation of Indigenous children first emerged in the 1980s, and though data remained limited until the 2000s, the issue of Indigenous overrepresentation has been a persistent concern for community leaders, advocates, policy makers, and researchers.<sup>13</sup> The overrepresentation of First Nations children (the largest of the three federally recognized Indigenous groups) has received particular scrutiny

---

<sup>9</sup> See e.g. Elizabeth Bartholet, “The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions” (2009) 51 *Ariz L Rev* 871; Terry Cross, “Disproportionality in Child Welfare” (2008) 87:2 *Child Welfare* 11 at 12. Shaw et al, “Measuring Racial Disparity in Child Welfare” (2008) 87:2 *Child Welfare* 23.

<sup>10</sup> Elizabeth Bartholet, “Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-Assessing the Facts, Re-Thinking the Policy Options” (Harvard Law School, July 2011), online: <law.harvard.edu/faculty/bartholet/rdconceptpaper---final.pdf> [perma.cc/64CC-N92D]; Elizabeth Bartholet et al, *Race and Child Welfare* (Chicago: Chapin Hall, 2011) at 4, online: <chapinhall.org/sites/default/files/publications/06\_27\_11\_Issue%20Brief\_F.pdf> [perma.cc/8KE4-WQBB] [Bartholet et al, *Race and Child Welfare*]; Allan Dettlaff, “The Evolving Understanding of Disproportionality and Disparities in Child Welfare” in Jill E Korbin & Richard D Krugman, eds, *Handbook of Child Maltreatment* (New York: Springer, 2014) 149 at 159 [Dettlaff, “The Evolving Understanding”]; Brett Drake, Sang Moo Lee & Melissa Jonson-Reid, “Race and Child Maltreatment Reporting: Are Blacks Overrepresented?” (2009) 31:3 *Children and Youth Services Review* 309.

<sup>11</sup> Sheila D Ards et al, “Racialized Perceptions and Child Neglect” (2012) 34 *Children and Youth Services Review* 1480 [Ards et al, “Perceptions”]; Sheila D Ards et al, “Racial Disproportionality in Reported and Substantiated Child Abuse and Neglect: An Examination of Systematic Bias” (2003) 25:5–6 *Children and Youth Services Review* 375; Robert B Hill, “Institutional Racism in Child Welfare” (2004) 7:1 *Race and Society* 17 [Hill, “Institutional Racism”]; Stephanie L Rivaux et al, “The Intersection of Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children” (2008) 87:2 *Child Welfare* 151; Alan Dettlaff et al, “Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare” (2011) 33 *Children and Youth Services Review* 1630.

<sup>12</sup> Fluke et al, “A Research Synthesis,” *supra* note 6; Robert B Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update* (Casey-CSSP Alliance for Racial Equity in the Child Welfare System, 2006) [Hill, “Synthesis”].

<sup>13</sup> Patrick Johnston, *Native Children and the Child Welfare System* (Toronto: Canadian Council on Social Development in association with James Lorimer & Co, 1983); Sinha et al, “Remember,” *supra* note 4; Trocmé et al, “Understanding,” *supra* note 3; Canadian Council of Child and Youth Advocates, *Aboriginal Children. Canada Must Do Better: Today and Tomorrow* (Canadian Council of Child and Youth Advocates, 2011); Canada, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services Canada, 1996); Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) [“TRC”]; *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 [“Caring Society”].

in conjunction with a Canadian Human Rights Tribunal (CHRT) case focused on the underfunding and discriminatory administration of on-reserve child welfare services.<sup>14</sup> Additionally, more geographically specific concerns about the overrepresentation of African Canadian/Black children in the child welfare system have been raised by researchers, and recent work also examines the representation of other minority groups.<sup>15</sup>

Discussions on the overrepresentation of racialized and/or ethnic minority children in child welfare systems have revolved around two distinct, but closely related concepts: disproportionality and disparity. Disproportionality is determined by comparing the representation of a specific ethnic or racial group within the child welfare system to the representation of the same group within the general child population.<sup>16</sup> Overrepresentation is a form of disproportionality that exists when children from a minority group, such as First Nations children, comprise a greater percentage of the child welfare population than they do of the general child population. Thus, for example, the 2011 National Household Survey (NHS) findings that First Nations children make up 4.6% of the general child population in Canada, but 39.6% of the foster child population, demonstrate the overrepresentation of First Nations children in foster care.<sup>17</sup> Disparity has, in recent years, been defined as “the comparison of the ratio of one race or ethnic group in an event to the representation of another race or ethnic group who experienced the same event.”<sup>18</sup> NHS data can also be used to calculate the disparity in foster care rates for First Nations and non-Aboriginal children: in 2011, the rate of First Nations children in foster care was fifteen times higher than the rate of non-Aboriginal children.<sup>19</sup> Thus, the measure of disparity also demonstrates the overrepresentation of First Nations children in foster care.

In order to support calculation of overrepresentation statistics, in terms of disproportionality or disparity, data must:

---

<sup>14</sup> *Ibid.*

<sup>15</sup> The Child Welfare Anti-Oppression Roundtable, “Anti-oppression in Child Welfare: Laying the Foundation for Change” (Discussion paper delivered at the Child Welfare Anti-Oppression Roundtable, Toronto, 2009); Barbara Fallon et al, *Child Maltreatment-Related Service Decisions by Ethno-Racial Categories in Ontario in 2013* (Toronto: Canadian Child Welfare Research Portal, 2016), online: <cwrrp.ca/sites/default/files/publications/en/176e\_v\_0.pdf> [perma.cc/V5QN-PNNH]; Gordon Pon, Kevin Gosine & Doret Phillips, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 2 *International Journal of Child, Youth and Family Studies* 385; Barbara Lee, Wendy Rha & Barbara Fallon, “Physical Abuse Among Asian Families in the Canadian Child Welfare System” (2014) 23 *Journal of Aggression, Maltreatment & Trauma* 532; Sarah Maiter & Carol Stalker, “South Asian Immigrants' Experience of Child Protection Services: Are We Recognizing Strengths and Resilience?” (2011) 16:2 *Child & Family Social Work* 138.

<sup>16</sup> Hill, “Institutional Racism,” *supra* note 11; Samuel L Myers, “What Does the Research Tell Us about Racial and Ethnic Disproportionality and Disparities in the Child Welfare System?” (Paper delivered at ‘Definitional Clarity’ in Alliance for Racial Equity in Child Welfare Research Symposium on Racial Disparities in Child Welfare, July 2010), in *Disparities and Disproportionality in Child Welfare: Analysis of the Research* (Centre for the Study of Social Policy, Alliance for Racial Equity in Child Welfare & The Annie E Casey Foundation, 2011) 107, online: <cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare\_An-Analysis-of-the-Research-December-2011.pdf> [perma.cc/XK6J-K3Z7].

<sup>17</sup> Michael Wray & Vandna Sinha, *Foster Care Disparity for Aboriginal Children in 2011* (Toronto: Canadian Child Welfare Research Portal, 2015) at 3, online: <cwrrp.ca/sites/default/files/publications/en/165e.pdf> [perma.cc/H6AS-5WGB].

<sup>18</sup> *Ibid.*; Fluke et al, “A Research Synthesis,” *supra* note 6 at 8.

<sup>19</sup> Wray & Sinha, *supra* note 17.

- allow for counting the number of children experiencing a specific child welfare event (e.g., investigation, having a file opened for ongoing service, or placement in foster care);
- include ethno-racial identifiers;
- include data about both the group of interest and a comparison group (e.g., children of all other ethno-racial backgrounds); and
- be paired with data on the general child population within the geographic area or social unit from which the child welfare engaged population was drawn.<sup>20</sup>

In the US, the study of overrepresentation is enabled by the existence of a relatively rich range of administrative, child welfare focused, and other datasets. Federal regulations require child welfare agencies to regularly report case-level foster care and adoption data.<sup>21</sup> The voluntary reporting of additional case-level information is supported by federal-state partnerships.<sup>22</sup> Large-scale, cyclical child welfare studies, such as the National Incidence Study of Reported Child Abuse and Neglect (NIS), provide additional information about the incidence and reports of maltreatment, as do other studies that include child welfare focused questions.<sup>23</sup> In addition, several states have developed sophisticated administrative datasets, based on information collected during child welfare agency operations, which is also used for analysis.<sup>24</sup> Such data is increasingly drawn from client information databases that are set up to track individual client trajectories across a series of child welfare decision points, and to record the services received and decisions made.<sup>25</sup>

In the Canadian context, the range of data that can be effectively used to examine overrepresentation is expanding, but still limited. The CIS is the only national-level child welfare focused study, and though it collects detailed information about child, caregiver, and household

---

<sup>20</sup> Michael Lawler et al, “Overrepresentation of Native American Children in Foster Care: An Independent Construct?” (2012) 21:2 *Journal of Ethnic & Cultural Diversity in Social Work* 95 at 175; Cory Morton, Kerrie Ocasio & Cassandra Simmel, “A Critique of Methods Used to Describe the Overrepresentation of African Americans in the Child Welfare System” (2011) 33:9 *Children and Youth Services Review* 1538; Shaw et al, *supra* note 9.

<sup>21</sup> US Department of Health & Human Services, Children's Bureau, *The Adoption and Foster Care Analysis and Reporting System (AFCARS)* (2017), online: <[acf.hhs.gov/cb/research-data-technology/reporting-systems/afcars](http://acf.hhs.gov/cb/research-data-technology/reporting-systems/afcars)> [perma.cc/6THR-T8PX].

<sup>22</sup> US Department of Health & Human Services, Children's Bureau, *What is the National Child Abuse and Neglect System (NCANDS)?* (2015), online: <[acf.hhs.gov/cb/resource/about-ncands](http://acf.hhs.gov/cb/resource/about-ncands)> [perma.cc/HSV5-ANNE].

<sup>23</sup> Child Welfare Information Gateway, *The National Incidence Study (NIS)*, online: <[childwelfare.gov/topics/systemwide/statistics/nis/](http://childwelfare.gov/topics/systemwide/statistics/nis/)> [perma.cc/VD72-H7E5]; William P O'Hare, *Data on Children in Foster Care from the Census Bureau* (The Anne E Casey Foundation, 2008), online: <[acef.org/m/pdf/FosterChildren-July-2008.pdf](http://acef.org/m/pdf/FosterChildren-July-2008.pdf)> [perma.cc/Y4YB-9ZYU].

<sup>24</sup> See e.g. Minnesota, Department of Human Services, *Child Welfare Data Dashboard: Child Protection* (2016), online:

<[dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16\\_148137](http://dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_148137)> [perma.cc/R5V5-2ZCX]; Webster et al, *California Child Welfare Indicator Project Reports* (University of California at Berkeley, 2017), online: <[http://cssr.berkeley.edu/ucb\\_childwelfare/](http://cssr.berkeley.edu/ucb_childwelfare/)> [perma.cc/4AN4-7MHW].

<sup>25</sup> Marni Brownell & Douglas Jutte, “Administrative Data Linkage as a Tool for Child Maltreatment Research” (2013) 37 *Child Abuse & Neglect* 120; Tonino Esposito et al, “The Placement Trajectories of Youth Served by Child Protection for Sexual Abuse” (2016) 10:63 *Journal of Child and Adolescent Trauma* 63; J McGhee et al, “Taking a Long View in Child Welfare: How Can We Evaluate Intervention and Child Wellbeing Over Time?” (2015) 24 *Child Abuse Review: Journal of the British Association for the Study and Prevention of Child Abuse and Neglect* 95.

risk factors, these data cover only the initial six to eight week investigation period.<sup>26</sup> The recent addition of a question about the presence of foster children in the home to the National Household Survey holds the promise of developing a richer understanding of foster homes than has previously existed.<sup>27</sup> At the provincial level, the capacity to use administrative data for research purposes is still developing, but important strides have been made in supporting child welfare agencies in building their capacities to use administrative data to understand the trajectories of the children they serve.<sup>28</sup>

The limitations on data that allow for assessment of the overrepresentation of First Nations children in the child welfare system have been even more pronounced than the limitations on data for other children. Challenges in using and interpreting administrative data to describe the overrepresentation of First Nations children include the undercounting of children who are First Nations but may not be identified as such by the child welfare system, and inconsistencies in information entered into shared electronic data storage systems.<sup>29</sup> Additional challenges stem from insufficient attention to legal and ethical questions about data ownership and use; these questions have added weight in light of the disrespectful and damaging ways in which First Nations have been used and depicted in research.<sup>30</sup> Rather than meaningfully engaging with these critical questions and constructing research in true partnership with First Nations, many national studies that had the potential to shed additional light on First Nations child welfare and child well-being have simply excluded on-reserve populations. These include: the Survey of Young Canadians, Aboriginal Children's survey, and the National Longitudinal Survey of Children and Youth.<sup>31</sup>

The limitations on data that describe the overrepresentation of First Nations children in care were even more severe during the twentieth century, and only a basic and very limited picture of the overrepresentation of First Nations children before 2000 can be constructed from existing data. Johnston drew attention to the “phenomenal increase of Native children being

<sup>26</sup> Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect–2008: Major Findings* (Ottawa: Public Health Agency of Canada, 2010) [Public Health Agency].

<sup>27</sup> Annie Turner, *Living Arrangements of Aboriginal Children Aged 14 and Under* (Ottawa: Statistics Canada, 2016); Wray & Sinha, *supra* note 17.

<sup>28</sup> See e.g. Tonino Esposito et al, “La Gestion Fondée sur les Indicateurs de Suivi Clinique en Protection de la Jeunesse” in Marie-Andrée Poirier, Sophie Léveillé & Marie-Ève Clément, eds, *Jeunesse en Tête* (Quebec: Presses de l'Université du Québec, 2015); Fallon et al, *Service Recurrence Performance Indicators in Ontario Children's Aid Societies: Contextual Considerations* (Toronto: Canadian Child Welfare Research Portal, 2016), online: <[ocas.org/wp-content/uploads/2016/08/Fact-Sheet-Service-Recurrence-SPI-4-and-5-FINAL-March-2016.pdf](https://ocas.org/wp-content/uploads/2016/08/Fact-Sheet-Service-Recurrence-SPI-4-and-5-FINAL-March-2016.pdf)> [perma.cc/3FFG-JZEJ]; Drake, Lee & Jonson-Reid, *supra* note 10.

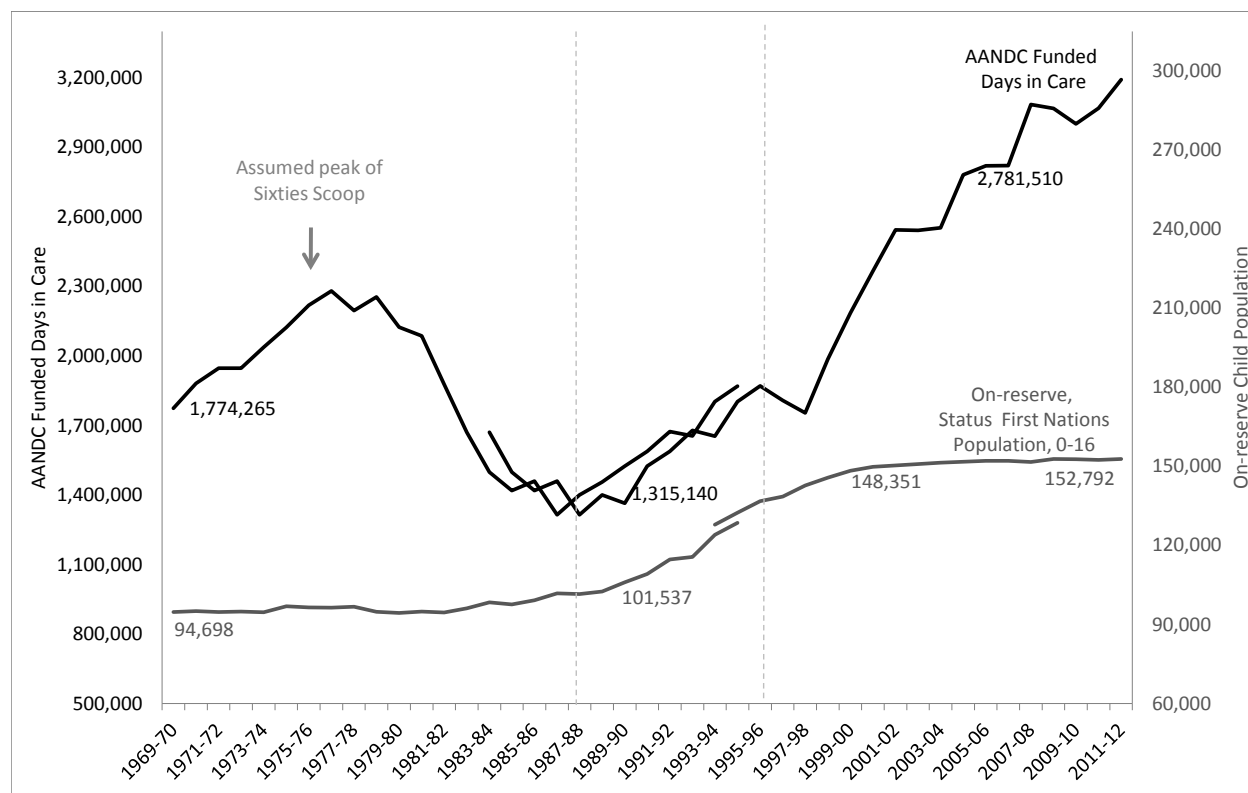
<sup>29</sup> Mireille De La Sablonnière-Griffin et al, *Trajectories of First Nations youth subject to the Youth Protection Act. Component 3: Analysis of mainstream youth protection agencies administrative data* (First Nations of Quebec and Labrador Health and Social Services Commission, 2016), online: <[static1.squarespace.com/static/57320457ab48dea767e5e69f/t/599ce501e6f2e1277db80c78/1503454483817/Analysis+project+on+the+trajectories+++Component+3+++eng.pdf](https://static1.squarespace.com/static/57320457ab48dea767e5e69f/t/599ce501e6f2e1277db80c78/1503454483817/Analysis+project+on+the+trajectories+++Component+3+++eng.pdf)> [perma.cc/WU2T-Z4V4].

<sup>30</sup> Brian Schnarch, “Ownership, Control, Access, and Possession (OCAP) or Self-Determination Applied to Research: A Critical Analysis of Contemporary First Nations Research and Some Options for First Nations Communities” (2004) 1:1 *International Journal of Indigenous Health* 80; Marianne Nielsen & Larry Gould, “Non-Native Scholars Doing Research in Native American Communities: A Matter of Respect” (2007) 44:3 *The Social Science Journal* 420; Jones & Sinha, *A Brief Review of the Engagement of First Nations Communities by National Level Surveys* (Public Health Agency of Canada Report, 2015), internal memorandum on file with author, shared with permission..

<sup>31</sup> *Ibid.*



apprehended from their families and taken into the care of child welfare authorities”<sup>32</sup> across the provinces and territories in his ground-breaking work about the period that has now come to be known as the Sixties Scoop. Available data after that point is largely limited to on-reserve counts of the days that children spent in out-of-home care and point-in-time counts of the number of children in care. These data suggest that the overrepresentation of on-reserve First Nations children in care began to climb at a rate that outpaced population growth in the mid-1990s (Figure 1) and have continued to increase since then.



**Figure 1.** Estimates of Aboriginal and Northern Development Canada (now Indigenous and Northern Affairs Canada) of funded days in care and First Nations child population (1969–2013).<sup>33</sup>

Starting in the mid-2000s, analyses of data from the CIS and FNCIS provided a more detailed, but still incomplete, picture of the trajectory of cases served by First Nations agencies. FNCIS-2008 data on the assessments made by child welfare workers during the first four to six weeks of the child welfare process demonstrated that, in the geographic areas served by sampled agencies, the overrepresentation of First Nations children started at the point of first contact with the child welfare system and grew with each decision made during the investigation period (Figure 2). The rate of investigations involving First Nations children was four times higher than

<sup>32</sup> Johnston, *supra* note 13 at 23.

<sup>33</sup> Jones & Sinha, *supra* note 30.

the rate for non-Aboriginal children, the rate of cases in which children remain at home but receive ongoing services was almost seven times greater, and the rate of formal out-of-home placements during the investigation period was more than twelve times higher for First Nations children than for non-Aboriginal children.<sup>34</sup> Across cycles, the study has demonstrated that the overrepresentation of First Nations children is driven by neglect, and associated with household and caregiver risk factors. However, analyses of the relationship between household and caregiver risk factors and out-of-home placement or substantiation of neglect yield mixed results. While some studies find that overrepresentation is fully explained by case or organizational factors, others find that being First Nations remains a significant risk factor for out-of-home placement and substantiation of neglect (but not for other forms of maltreatment), even in models that include comprehensive risk factors as controls.<sup>35</sup>

Presentation of these findings has highlighted the historical and structural context of First Nations child welfare, linking present-day overrepresentation to the current underfunding of on-reserve child welfare, the Sixties Scoop, and to the residential school system. The CIS and FNCIS played a key role in the development of a narrative about First Nations overrepresentation that has informed the Truth and Reconciliation Commission (TRC) reports, the abovementioned Canadian Human Rights Tribunal case, and advocacy by First Nations leaders and service providers.<sup>36</sup> Government policies systematically targeting First Nations people because of their race/ethnicity have created social conditions and life circumstances associated with increased child welfare involvement. This understanding of the overrepresentation of First Nations children has been given legal weight by the CHRT's recent ruling that the federal government has discriminated against First Nations children through its funding and administration of on-reserve child welfare services. In their ruling, the CHRT delineated a standard of *substantive equality* in the provision of child welfare services. Under this standard, the federal government must take into account the disadvantages that have accrued to First Nations children because of policies like the residential school system, and must provide services that both "meet the real needs of First Nations children and families and do not perpetuate historical disadvantage."<sup>37</sup>

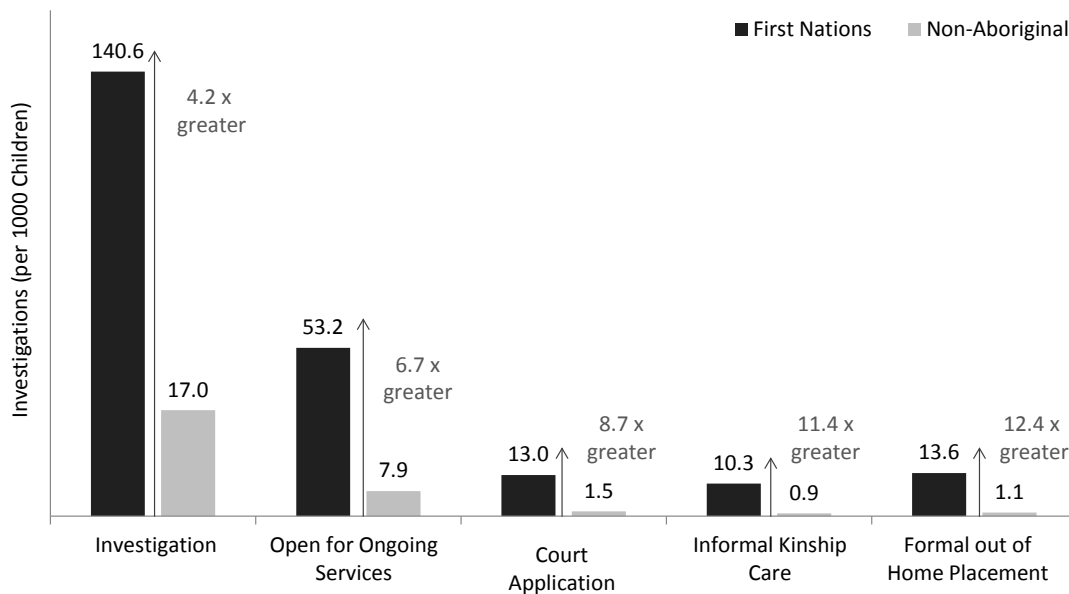
---

<sup>34</sup> Sinha et al, "Remember," *supra* note 4; Sinha et al, "Investigation-Stage," *supra* note 5; Trocmé, Knoke & Blackstock, *supra* note 5; Trocmé et al, "Understanding," *supra* note 3.

<sup>35</sup> Vandna Sinha, Stephen Ellenbogen & Nico Trocmé, "Substantiating Neglect of First Nations and Non-Aboriginal Children" (2013) 35:12 *Children & Youth Services Review* 2080; Trocmé et al, "Understanding," *supra* note 3; Trocmé, Knoke & Blackstock, *supra* note 5; Kofi Antwi-Boasiako et al, *Ethno-racial Categories and Child Welfare Decisions: Exploring the Relationship with Poverty* (Toronto: Child Welfare Research Portal, 2016), online: <<http://cwrp.ca/sites/default/files/publications/en/178e.pdf>> [perma.cc/VBU9-8KAU].

<sup>36</sup> TRC, *supra* note 13; *Caring Society*, *supra* note 13; Kenn Richard, *Our heads above water* (Ottawa: Native Child and Family Services, 2012), internal memo in possession of author shared with permission; Assembly of First Nations, "Submission of the Assembly of First Nations on the Rights of the Child" United Nations (Ottawa: AFN, 2012), online: <[afn.ca/uploads/files/afn\\_submission\\_to\\_committee\\_on\\_the\\_rights\\_of\\_the\\_child\\_final.pdf](http://afn.ca/uploads/files/afn_submission_to_committee_on_the_rights_of_the_child_final.pdf)> [perma.cc/GJ6F-TSYL].

<sup>37</sup> *Caring Society*, *supra* note 13 at para 455.



**Figure 2.** Investigation-stage child welfare disparities.<sup>38</sup>

In this article, we draw on lessons taken from the first author’s work on the FNCIS-2008, and from the work of other scholars who critique the methodological, structural, institutional, and systemic biases that can be present in overrepresentation research. We focus on research on the overrepresentation of First Nations children, while also referring to research on other racialized minorities overrepresented in child welfare. Using a framework that emphasizes close collaboration with First Nations, adherence to OCAP® principles, and a critical approach to the validation of quantitative research, we advocate for moving beyond research that documents the fact of overrepresentation and towards research that identifies and advances the systemic reforms needed in order to reduce the overrepresentation of racialized and minority children in child welfare systems. To do this, we outline key conceptual and technical (data driven) features of research on overrepresentation that shape our understanding of child welfare systems and the need for systemic reform.

## II. LESSON ONE: OVERREPRESENTATION IS AN INHERENTLY QUANTITATIVE CONSTRUCT

Conceptually, overrepresentation (and its counterparts, disproportionality and disparity) focus on the *number* of children, from a specific group, who are engaged with the child welfare system at specific points in the child welfare trajectory. Thus, overrepresentation is a quantitative construct that does not, in and of itself, provide any information about the nature of the child welfare experiences of an overrepresented group.<sup>39</sup> However, as has been pointed out, the choice to focus research on the overrepresentation of any group indicates an implicit concern that child welfare engagement may be harmful, inappropriate, or not meeting the needs of members of the

<sup>38</sup> Sinha et al, “Investigation-Stage,” *supra* note 5.

<sup>39</sup> Hill, “Synthesis,” *supra* note 12; Myers, *supra* note 16; Fluke et al, “A Research Synthesis,” *supra* note 6.

overrepresented group.<sup>40</sup> Moreover, the current definition of disparity, as a measure that compares the disproportionality of one group to the disproportionality of another, is often implicitly linked with an earlier understanding of disparity as the unequal treatment of racialized families engaged by the child welfare system.<sup>41</sup> Thus, though indices of overrepresentation and disproportionality are statistical measures of observable facts, interpretations of these statistics may be imbued with implicit assumptions about the causes of observed differences, with possibilities ranging from greater needs of overrepresented groups, to individual-level discrimination or bias, to systemic racism and other institutional factors shaping child welfare systems, to geographic context.<sup>42</sup>

Making these assumptions explicit would, in our view, further the critical analysis of existing child welfare systems and processes, and contribute to the goal of reimagining child welfare. With specific reference to the overrepresentation of First Nations children, a framing of Canada's child welfare system within its colonial context would link it to patterns seen in other countries with colonial histories similar to Canada, particularly those with current or former commonwealth ties (*e.g.*, Australia, New Zealand, and the US). These countries also developed legal and quasi-legal systems for removing Indigenous children from their families for purposes of cultural assimilation, and some argue that contemporary child welfare systems, and the political inertia that prevents the disparities leading to overrepresentation from being addressed, are reformulations of those colonial systems.<sup>43</sup> While scholarship on overrepresentation in Canada has focused on First Nations and Indigenous populations due to the demographic context, other non-White and minority communities are also, or have historically been, overrepresented in the child welfare systems of ex-colonies and commonwealth countries. This suggests that child welfare systems may not be designed to redress the disadvantages that accrue to non-White communities due to racially discriminatory practices and policies (past and present).<sup>44</sup> In the Canadian context, the CHRT's recent establishment of a standard of substantive equality in the provision of child welfare services explicitly directs the federal government to facilitate the development of child welfare practice and policy that do not

---

<sup>40</sup> Shaw et al, *supra* note 9; Melissa Jonson-Reid, Brett Drake & Patricia Kohl, "Is the Overrepresentation of the Poor in Child Welfare Caseloads Due to Bias or Need?" (2009) 31:3 *Children and Youth Services Review* 422.

<sup>41</sup> Hill, "Synthesis," *supra* note 12.

<sup>42</sup> Fluke et al, A Research Synthesis," *supra* note 6.

<sup>43</sup> Cindy Blackstock, "Residential Schools: Did They Really Close or Just Morph into Child Welfare?" (2007) 6:1 *Indigenous LJ* 71; Chris Cunneen & Terry Libesman, "Postcolonial Trauma: The Contemporary Removal of Indigenous Children and Young People from their Families in Australia" (2000) 35:2 *The Australian Journal of Social Issues* 99; Donald Grinde, "Taking the Indian out of the Indian: U.S. Policies of Ethnocide through Education" (2004) 19:2 *Wicazo Sa Review* 25; Raven Sinclair, "The Indigenous Child Removal System in Canada: An Examination of Legal Decision-Making and Racial Bias" (2017) 11:2 *First Peoples Child & Family Review* 8.

<sup>44</sup> Cunneen & Libesman, *supra* note 43; Paul Delfabbro et al, "The Over-Representation of Young Aboriginal or Torres Strait Islander People in the South Australian Child System: A Longitudinal Analysis" (2010) 32:10 *Children and Youth Services Review* 1418; Drake, Lee & Jonson-Reid, *supra* note 10; Rivaux et al, *supra* note 11; Kathy Lemon Osterling, Amy D'andrade & Michael J Austin, "Understanding and Addressing Racial/Ethnic Disproportionality in the Front End of the Child Welfare System" (2008) 5:1-2 *Journal of Evidence-Based Social Work* 9; Charlie Owen & June Statham, "Disproportionality in Child Welfare: The Prevalence of Black and Minority Ethnic Children Within 'Looked After' and 'Children in Need' Populations and on Child Protection Registers in England" (Thomas Coram Research Unit: Institute of Education, University of London, 2009), online: <dera.ioe.ac.uk/11152/1/DCSF-RR124.pdf> [perma.cc/3FQL-RHJU]; Smith & Devore, *supra* note 7; Clare Tilbury, "The Over-Representation of Indigenous Children in the Australian Child Welfare System" (2009) 18:1 *International Journal of Social Welfare* 57.

compound historical disadvantage.<sup>45</sup> In our view, the failure to adapt the child welfare system to meet the real needs of First Nations children may, in and of itself, be seen as discriminatory under this standard.

### III. LESSON TWO: OVERREPRESENTATION IS AN INHERENTLY COMPARATIVE CONSTRUCT

The calculation of overrepresentation relies on finding either the disproportionality of a particular group with reference to the general child population, or in comparison to a reference population within a child welfare context (referred to as a disparity index), which is usually a White demographic.<sup>46</sup> The reliance on comparison to a reference population highlights the lack of normative standards for the appropriate rates of engagement in the child welfare system.<sup>47</sup> Across jurisdictions, variations in child welfare agency approaches, mandates, and resources, as well as differences within a population's socio-economic conditions and culturally determined thresholds for maltreatment, make it difficult to define standards for appropriate levels of engagement for specific populations.<sup>48</sup>

As depicted in Figure 3, the comparative approach means that, even when the calculation of overrepresentation seems only to deal with the number of children in the overrepresented group, the calculation of statistics is inextricably tied to the level of representation of other groups. For example, Figure 3 depicts a hypothetical example in which an increase of 394 Aboriginal children in care results in the overrepresentation of Aboriginal children in out-of-home care. Expressed in terms of disproportionality, the placement of these additional children in care means that Aboriginal children, who are fifteen per cent of the population, would shift from comprising fifteen to forty per cent of the children in out-of-home care. This increase in the number of Aboriginal children in out-of-home care also has an impact on the representation of non-Aboriginal children in out-of-home care. Though there is no change in the number of non-Aboriginal children in out of home care, the 394-child increase in the total number of children in out-of-home care means that non-Aboriginal children, who represent eighty-five per cent of the general child population, move from being eighty-five per cent of the children in out-of-home care to being sixty per cent of the children in out-of-home care. Thus, the *overrepresentation* of Aboriginal children in out-of-home care directly results in an *underrepresentation* of non-Aboriginal children. The transformation of statistics on overrepresentation to measures of disparity makes the comparative nature of these constructs more explicit. The hypothetical example presented in Figure 3 moves from no disparity, to pronounced disparity; with the addition of 394 Aboriginal children, the rate of Aboriginal children in out-of-home care becomes 3.8 times that of non-Aboriginal children.

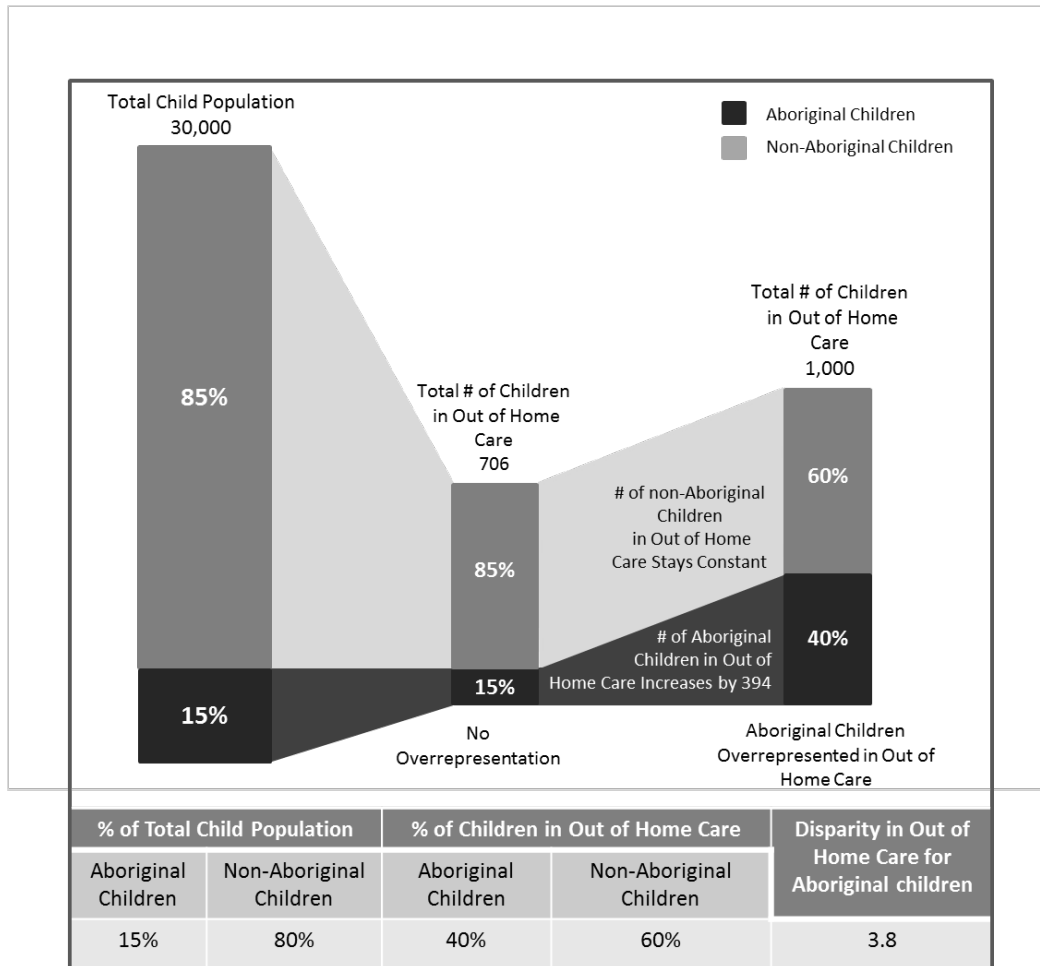
---

<sup>45</sup> *Caring Society*, *supra* note 13.

<sup>46</sup> Bartholet et al, *Race and Child Welfare*, *supra* note 10; Dettlaff, "The Evolving Understanding," *supra* note 10; Fluke et al, "Disproportionate Representation of Race and Ethnicity in Child Maltreatment: Investigation and Victimization" (2003) 255:6 *Children and Youth Services Review* 359; Lawler et al, *supra* note 20; Morton, Ocasio & Simmel, *supra* note 20; Shaw et al, *supra* note 9.

<sup>47</sup> Lawler et al, *supra* note 20; Shaw et al, *supra* note 9.

<sup>48</sup> Fallon et al, "Invited Paper: Provincial Comparisons in the Canadian Incidence Study of Reported Child Abuse and Neglect - 2008: Context for Variation in Findings" (2015) 3:1 *International Journal of Child and Youth Resilience* 125; Lawler et al, *supra* note 20; Shaw et al, *supra* note 9.



**Figure 3.** Disproportionality and disparity.<sup>49</sup>

The FNCIS-2008 described the disparity in representation of First Nations children by comparing the rates at which First Nations children experience specific child welfare events to a singular “non-Aboriginal” group, which excludes all other Aboriginal children, in recognition of the elements of shared colonial history that impact diverse Aboriginal groups.<sup>50</sup> This approach grew out of partnerships with an advisory committee comprised of experts with direct experience working with First Nations children, families, and communities. The focus of this partnership was on the representation of First Nations children in the child welfare system, and historical information that contextualized the situation. As intended, this focus drew attention to the

<sup>49</sup> Sinha et al, “Remember,” *supra* note 4.

<sup>50</sup> *Ibid*; Sinha et al, “Investigation-Stage,” *supra* note 5; Sinha, Ellenbogen & Trocmé, *supra* note 35.

profound overrepresentation of First Nations children and has supported ongoing efforts to achieve policy changes that are required to reduce this overrepresentation.<sup>51</sup>

However, an approach that highlights the unique situation of First Nations children without also drawing attention to other overrepresented groups carries the risk of *othering* First Nations children and families. The *other* is the social category produced by the narrative told about Indigenous peoples through “institutions, vocabulary, scholarship, [and] ... even colonial bureaucracies and colonial styles,”<sup>52</sup> which sets them apart from a hegemonic colonial culture. Describing First Nations overrepresentation, and its unique social and historical context, without also placing it in the context of the overrepresentation of other ethno-racial minorities risks perpetuating the narrative of First Nations as *others*, and further entrenching the divisive “us and them” ideology that has marginalized First Nations people in Canada.<sup>53</sup> While resources to support the responsible analysis of multiple overrepresented groups simultaneously may not always be available, researchers can, at minimum, draw on existing literature on overrepresentation of ethno-racial groups within Anglo-American child welfare systems (e.g., Canada, the US, New Zealand, Australia, and the UK) to contextualize overrepresentation. The recognition that Indigenous children are overrepresented in multiple child welfare systems, as well as the explicit recognition that other ethno-racial minority groups are also overrepresented within these systems, broadens the scope for theorizing/contextualizing the systemic and structural factors that perpetuate overrepresentation, and moves research away from the unintentional othering of First Nations children and families.

#### **IV. LESSON THREE: A FOCUS ON OVERREPRESENTATION DRAWS ATTENTION TO THE NEEDS OF SPECIFIC GROUPS, BUT MAY OBSCURE THE NEED FOR BROADER SYSTEMIC REFORM**

The focus on the overrepresentation of First Nations in child welfare systems has been a launching point for researchers and advocates attempting to draw attention to systemic inequities for First Nations children. This research has been used in advocacy efforts at the national and local levels, contributing to efforts to achieve positive changes in funding, policy, and public perception of the challenges faced by First Nations families. However, the emphasis on First

---

<sup>51</sup> Assembly of First Nations, *supra* note 36; Gabrielle Lindstrom & Peter Choate, “Nistawatsiman: Rethinking Assessment of Aboriginal Parents for Child Welfare Following the Truth and Reconciliation Commission” (2017) 11:2 First Peoples Child & Family Review 45; Richard, *supra* note 36; Nico Trocmé et al, “Learning From one Another: How Variations in Child Welfare Services to First Nations and Children in Foster Care can Inform Policy and Practice in Canada” (Presentation to the National Directors of Child Welfare, Banff, AB, 2012) [unpublished]; United Nations Committee on the Rights of the Child, *Canada’s Response to the list of issues adopted by the Committee on the Rights of the Child in advance of the examination of Canada’s combined Third and Fourth Report on the Convention on the Rights of the Child (CRC) (CRC/C/CAN/3-4)*, UNCRC, 61st Sess, CRC/C/CAN/Q/3-4/Add.1 (2012).

<sup>52</sup> Edward Said, *Orientalism* (London: Vintage Books, 1978) at 2.

<sup>53</sup> Mike Evans et al, “Common Insights, Differing Methodologies: Toward a Fusion of Indigenous Methodologies, Participatory Action Research, and White Studies in an Urban Aboriginal Research Agenda” (2009) 15:5 Qualitative Inquiry 893; Annette J Browne, Victoria L Smye & Colleen Varcoe, “The Relevance of Postcolonial Theoretical Perspectives to Research in Aboriginal Health” (2005) 37:4 Canadian Journal of Nursing Research 16; Said, *supra* note 52; Linda Tuhwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books Ltd, 1999).

Nations overrepresentation has done little to advance broader systemic changes in child welfare. Take, for example, research on the focus and findings of child welfare investigations involving First Nations children. Data from FNCIS-2008 shows that seventy-one per cent of maltreatment-related investigations involving First Nations children focused solely on concerns about: possible neglect (29% of investigations); a risk of future maltreatment (no allegation or suspicion that maltreatment already occurred, 26% of investigations); or exposure to intimate partner violence (IPV) (15% of investigations).<sup>54</sup> As depicted in Figure 4, the rate of neglect investigations was six times higher for First Nations children than for non-Aboriginal children, the rate of risk investigations was 4.5 times higher, and the rate of exposure to intimate partner violence was 4.1 times higher. Workers documented physical harm in only 2.9 per cent of investigations involving First Nations children.<sup>55</sup> These results, in combination with findings that workers confirm household and caregiver risk factors—such as housing problems, low income, mental health concerns, substance abuse, and social isolation—in a much greater proportion of investigations involving First Nations children than in non-Aboriginal investigations, suggest a pattern in which the overrepresentation of First Nations children is driven by cases involving chronic family needs, rather than urgent child protection cases.<sup>56</sup>

While overrepresentation research highlights the divergences between the First Nations and non-Aboriginal population, research more broadly focused on the Canadian child welfare system suggests important similarities between these groups. Trocmé et al classified non-urgent investigations including those focused on: neglect (for children over the age of four); IPV; emotional maltreatment (over the age of four); and risk assessment. In analyses using CIS data, they found that, between 1998 and 2008, there was a 220 per cent overall increase in this category of investigation, while urgent cases (physical abuse, sexual abuse, and neglect and emotional maltreatment in children under the age of four) remained steady for all populations (Figure 4).<sup>57</sup> Thus, neglect, risk, and other non-urgent child welfare concerns represent the majority of cases investigated by the child welfare system, both for First Nations and for the larger child welfare engaged population in Canada.

---

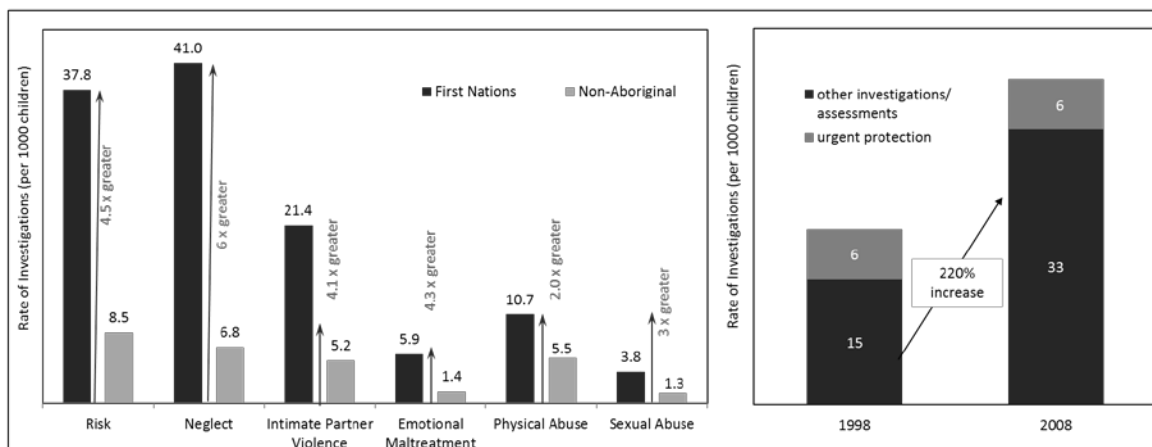
<sup>54</sup> Sinha et al, “Investigation-Stage,” *supra* note 5.

<sup>55</sup> Sinha et al, “Remember,” *supra* note 4.

<sup>56</sup> *Ibid.*

<sup>57</sup> Trocmé et al, “Urgent Protection Versus Chronic Need: Clarifying the Dual Mandate of Child Welfare Services across Canada” (2014) 3:3 Social Sciences 483 [Trocmé et al, “Urgent”].





**Figure 4.** First Nations overrepresentation by investigation type,<sup>58</sup> and urgent protection vs. non-urgent investigations.<sup>59</sup>

Despite the overlaps between FNCIS-2008 research on overrepresentation and research focused on the nature of child welfare investigations more broadly, these two streams of research have very different policy implications. The findings from overrepresentation research draw attention to the specific needs of First Nations families, highlighting the ways in which the impacts of systemic discrimination against First Nations peoples—such as intergenerational trauma, socio-economic contexts shaped by colonial policies and practices, and the discriminatory funding of on-reserve child welfare services—are linked to the current overrepresentation of First Nations children in the child welfare system. Accordingly, they facilitate a focus on the policy, program, and practice reforms that may serve to address the specific needs of First Nations children in the context of the child welfare system. These might include shifts in funding, development of special guidelines and trainings focused on work with First Nations families, and the development of legislative provisions supporting the development of special programs for First Nations families and communities.<sup>60</sup>

In contrast, the broader research on non-urgent investigations connects with a large body of research highlighting the limited ability of North American, protection-focused child welfare

<sup>58</sup> Sinha et al, “Remember,” *supra* note 4.

<sup>59</sup> Trocmé et al, “Urgent,” *supra* note 57.

<sup>60</sup> TRC, *supra* note 13; *Caring Society*, *supra* note 13; Sinha et al, “Remember,” *supra* note 4; Sinha et al, “Investigation-Stage,” *supra* note 5; Sinha, Ellenbogen & Trocmé, *supra* note 35; Vandna Sinha & Anna Kozlowski, “The Structure of Aboriginal Child Welfare in Canada,” online: (2013) 4:2 *The International Indigenous Policy Journal* 2 <ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1127&context=iipj> [perma.cc/N2DC-9CDL].

systems to support families with their chronic needs.<sup>61</sup> Accordingly, it highlights the need for systemic reforms that would shift the child welfare system from one focused primarily on urgent child protection to one that is also designed to identify and engage with families that have chronically unmet needs, in a supportive fashion. In particular, existing literature consistently associates the overrepresentation of racialized children in child welfare systems in Canada and the United States with chronic needs linked to poverty, which can manifest as insecurity in housing, food, or other material goods that can contribute to findings of neglect.<sup>62</sup>

Research that focuses on the overrepresentation of First Nations children without making clear, explicit, and comprehensive links to the broader child welfare literature risks promoting First Nations specific solutions at the cost of attention to the need for even more expansive, system-wide reforms. In contrast, research that does make these links may support greater recognition that the overrepresentation of First Nations children in the child welfare system grows out of the interactions between a specific socio-historic context that has resulted in First Nations families facing chronic challenges, and a child welfare system that is fundamentally ill-equipped to support families in addressing those challenges; thus, both First Nations specific and system-wide reforms are needed.

## **V. LESSON FOUR: AVAILABLE DATA RELIES ON, BUT INCOMPLETELY REPRESENTS, DECISION-MAKER PERSPECTIVES**

The data available to support overrepresentation research consists primarily of records of the assessments and decisions made by health and social service professionals; administrative datasets are designed to record this type of data. Quantitative child welfare focused studies also tend to collect data from child welfare workers or other child-focused professionals, who are typically easier to access than children and families. Barriers in reaching youth and families can include transience, non-cooperation from workers asked to connect researchers to participants, lack of consent from parents and youth themselves, and the perceived vulnerability of the youth

---

<sup>61</sup> Juliana Carlson, “Child Welfare Workers’ Constructions and Causal Explanations of Poverty” (2016) 22:1 *Journal of Children and Poverty* 41; Mark E Courtney, Steven L McMurtry, & Andrew Zinn, “Housing Problems Experienced by Recipients of Child Welfare Services” (2004) 83:5 *Child Welfare* 393; Jonson-Reid, Drake & Kohl, *supra* note 40; Mary Keegan Eamon & Sandra Kopels, “For Reasons of Poverty: Court Challenges to Child Welfare Practices and Mandated Programs” (2004) 26:9 *Children and Youth Services Review* 821; Leory Pelton, *For Reasons of Poverty: A Critical Analysis of the Public Child Welfare System in the United States* (New York: Praeger, 1989); Corey Shdaimah, “CPS is Not a Housing Agency; Housing is a CPS Problem: Towards a Definition and Typology of Housing Problems in Child Welfare Cases” (2009) 31:2 *Children and Youth Services Review* 211; Trocmé et al, “Urgent,” *supra* note 57.

<sup>62</sup> Adam J Zolotor & Desmond K Runyan, “Social Capital, Family Violence, and Neglect” (2006) 117:6 *Pediatrics* 1124; Brett Drake & Shanta Pandey, “Understanding the Relationship Between Neighborhood Poverty and Specific Types of Child Maltreatment” (1996) 20:11 *Child Abuse & Neglect* 1003; Chantal Lavergne et al, “Visible Minority, Aboriginal, and Caucasian Children Investigated by Canadian Protective Services” (2008) 87:2 *Child Welfare* 59; Vernon Carter & Miranda R Myers, “Exploring the Risks of Substantiated Physical Neglect Related to Poverty and Parental Characteristics: A National Sample” (2007) 29:1 *Children and Youth Services Review* 110; Pelton, *supra* note 61; Rivaux et al, *supra* note 11; Trocmé et al, “Urgent,” *supra* note 57.

targeted for research.<sup>63</sup> Worker/professional-reported data typically capture point-in-time decisions that represent the escalation or cessation of child welfare involvement, and may sometimes also include assessment of risk and protective factors.<sup>64</sup> Increasingly, such assessments may be recorded using structured decision-making instruments that are designed to reduce worker subjectivity through empirical validation.<sup>65</sup>

The decision-making process captured in worker-reported data is sometimes represented by the decision-making ecology framework.<sup>66</sup> In this framework, each child welfare decision is made by comparing an assessment of risk, which is based on worker-identified case factors, to a decision threshold (*i.e.*, the point at which the assessed risk of harm to a child is deemed sufficient to merit further/ongoing child welfare intervention). As depicted in Figure 5, the worker's approach to identifying case factors, assessment of risk based on these case factors, and internal decision-making threshold, are all shaped by interactions between:

- factors related to a worker's experiences, beliefs, or child protection orientations;
- factors related to the child welfare organization; and
- community/external factors such as the availability of alternate services, community norms, or legislation and standards.<sup>67</sup>

---

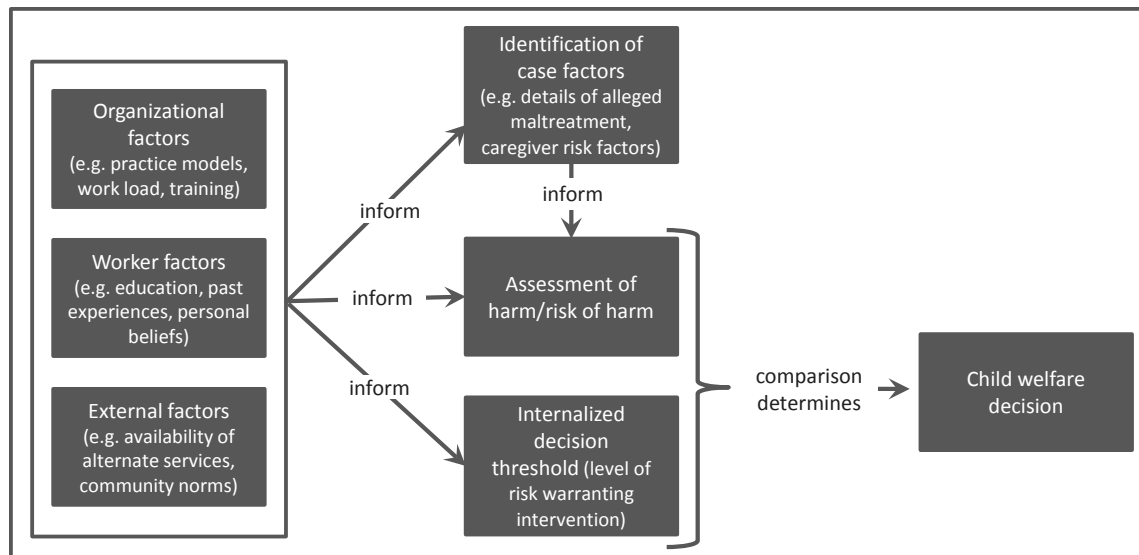
<sup>63</sup> Robyn Gilbertson & James G Barber, "Obstacles to Involving Children and Young People in Foster Care Research" (2002) 7 *Child and Family Social Work* 232; Rebecca G Mirick, "Challenges in Recruiting Parents to Participate in Child Welfare Research: Implications for Study Design and Research Practice" (2016) 21:4 *Child and Family Social Work* 484.

<sup>64</sup> Bilhah Davidson-Arad & Rami Benbenishty, "Contribution of Child Protection Workers' Attitudes to Their Risk Assessments and Intervention Recommendations: A Study in Israel" (2010) 18:1 *Health & Social Care in the Community* 1; Fluke et al, "Family Preservation or Child Safety? Associations Between Child Welfare Workers' Experience, Position, and Perspectives" (2016) 69 *Children and Youth Services Review* 210; Sarah Font & Kathryn Maguire-Jack, "Decision-Making in Child Protective Services: Influences at Multiple Levels of the Social Ecology" (2015) 47 *Child Abuse & Neglect* 70.

<sup>65</sup> Christopher J Graham et al, "The Decision Making Ecology of Placing a Child into Foster Care: A Structural Equation Model" (2015) 49 *Child Abuse & Neglect* 12; Aron Shlonsky & Dennis Wagner, "The Next Step: Integrating Actuarial Risk Assessment and Clinical Judgment into an Evidence-Based Practice Framework in CPS Case Management" (2005) 27:4 *Children and Youth Services Review* 409.

<sup>66</sup> Donald J Baumann et al, "The Decision-Making Ecology" in Aron Shlonsky & Rami Benbenishty, eds, *From Evidence to Outcomes in Child Welfare: An International Reader* (London: Oxford University Press, 2014) 24; Donald J Baumann, Homer D Kern & John Fluke, "Foundations of the Decision-Making Ecology and Overview" in H Kern, ed, *Worker Improvements to the Structured Decision and Outcome Model* (Austin: Texas Department of Protective and Regulatory Services, 1997); John Fluke et al, "Placement Decisions and Disparities Among Aboriginal Groups: An Application of the Decision Making Ecology Through Multi-Level Analysis" (2010) 34:1 *Child Abuse & Neglect* 57.

<sup>67</sup> Baumann et al, *supra* note 66.



**Figure 5.** Decision making ecology.<sup>68</sup>

Both institutional and individual-level bias may be reflected in worker reports of case factors, risk assessments, and the resulting child welfare decisions. At the institutional level, these biases may be reified through the use of standardized assessment instruments that are generally derived from a Western-European model of child rearing and may not be relevant in Indigenous contexts.<sup>69</sup> Child welfare decisions likely reflect and incorporate workers' "racialized perceptions."<sup>70</sup> That is, their perceptions of a case may differ based on the race of the family being assessed. Ards et al captured these racialized perceptions by recording worker assessments of photo vignettes that depicted an unkempt bedroom with bottles of alcohol visible and either (1) no baby on the bed, (2) a White baby on the bed, or (3) a Black baby on the bed. They found that workers were significantly more likely to indicate that the photo depicted a reportable offence when the Black baby was featured. The authors suggest this indicates that workers hold racialized beliefs based on the unconscious perception that Black parents and caregivers are naturally more neglectful.<sup>71</sup> Alternately, it may represent an implicit assumption that the family of the Black child has fewer protective factors and resources to mitigate risk than the family of the White child.

Research documenting qualitative reflections on decision making suggests that workers assess non-White families from a White, Anglo-American normative perspective, and that they may do so even when aware that this is not the best approach. However, workers also report feeling that they have few resources, personal or professional, to support the consideration of

<sup>68</sup> Based on *ibid.*

<sup>69</sup> Cindy Blackstock, "The Occasional Evil of Angels: Learning from the Experiences of Aboriginal Peoples and Social Work" (2009) 4:1 *First Peoples Child & Family Review* 28 at 35 [Blackstock, "Occasional Evil"]; Peter Choate & Sandra Engstrom, "The "Good Enough" Parent: Implications for Child Protection" (2014) 20:4 *Child Care in Practice* 368; Peter Choate & Amber McKenzie, "Psychometrics in Parenting Capacity Assessments—A Problem for First Nations Parents" (2015) 10:2 *First Peoples Child & Family Review* 31; Holly A McKenzie et al, "Aboriginal Grandmothers Caring for Grandchildren: Located in a Policy Gap," online: (2010) 21:4 *Indigenous Policy Journal* 4; Raymond Neckoway et al, "Rethinking the Role of Attachment Theory in Child Welfare Practice with Aboriginal People" (2003) 20:1 *Canadian Social Work Review* 105.

<sup>70</sup> Ards et al, "Perceptions," *supra* note 11.

<sup>71</sup> *Ibid.*

factors such as historical trauma, systemic barriers, and cultural differences that may shape the experiences of non-White families.<sup>72</sup>

While research using case vignettes and documenting worker reflections suggests that bias may be built into worker assessments, it is not possible to assess the existence of bias solely using worker-reported data. The case factors and risk assessment captured in worker-reported data are merely simplified proxies for the complex factors that workers may actually consider when making child welfare decisions. Because of this, it is not possible to distinguish between a situation in which differences in the assessments a worker makes for different families reflects racialized perceptions, and one in which assessments reflect actual differences in case factors observed by a worker, which are not reflected in the available data. Accordingly, while it may be possible to use alternative data sources to triangulate/validate the relationship between overrepresentation and risk factors, it is not possible to rule out the possibility of direct bias based on worker-reported data alone.

Consider the example of a child welfare worker who makes the decision to substantiate neglect (*i.e.*, to render a finding that a child did experience neglect), based on an assessment that a child was placed at risk of harm because of parental substance abuse. The FNCIS-2008 would have asked this worker to report the key decisions made during the investigation period and to provide their best clinical assessments of child, caregiver, and household risk factors.<sup>73</sup> More specifically, FNCIS-2008 asked workers to report whether caregiver substance abuse was “confirmed,” “suspected,” or “unknown.” However, workers were not asked to report on the observations or disclosures on which their assessment was based. Additionally, a report of substance abuse being confirmed or suspected does not capture additional information, such as the severity, chronicity, or specific form of substance abuse, which workers might take into account when assessing risk. Thus, if we were to use FNCIS-2008 data to compare the decisions made in two cases involving children from different ethno-racial groups, but with identical recorded case characteristics, we could never really distinguish the possibility that different decisions in the two cases were a result of racialized perceptions/bias, from the possibility that the case characteristics differed in meaningful ways that were not represented in the available data. The reliance on reports of risk and case factors by workers, in combination with the incomplete representation of the factors that inform decisions, means that it is not possible to rely solely on worker-reported data to draw conclusions about the role that worker bias/discrimination might play in decision making.

FNCIS-2008 explicitly acknowledged the subjective nature of the data collected through statements such as: “The study is based on assessments provided by the investigating child welfare workers, which cannot be independently verified.”<sup>74</sup> However, studies of overrepresentation that rely on worker-reported data may benefit from more explicit acknowledgement of the potential for bias to be embedded in the data, and a specific discussion of the ways in which personal beliefs/experiences and institutional bias could potentially impact worker assessments and decision making. In addition, such studies may draw from qualitative literature on the experiences of families who are engaged by the child welfare system in order to incorporate their perspectives on interactions with workers, decision making, and agency processes. Indeed, there is research indicating that First Nations families feel discriminated

---

<sup>72</sup> Marion S Harris & Wanda Hackett, “Decision Points in Child Welfare: An Action Research Model to Address Disproportionality” (2008) 30 Children and Youth Services Review 199.

<sup>73</sup> Sinha et al, “Remember,” *supra* note 4; Public Health Agency, *supra* note 26.

<sup>74</sup> Sinha et al, “Remember,” *supra* note 4.

against by child welfare service providers and, whether or not discrimination is empirically demonstrable, perceptions of discrimination may limit opportunities to connect with families in a supportive fashion.<sup>75</sup> First Nations perceptions and experiences of child welfare services are partially shaped by a legacy of state-sponsored mass removals of First Nations children from their families and communities, and by the strong evidence that institutionalized discrimination against First Nations people continues today.<sup>76</sup> Working with First Nations communities to recognize and respond to perceived discrimination through the provision of supportive and culturally grounded child welfare services must be the priority, whether or not bias in child welfare decision making can be empirically demonstrated.

## VI. LESSON FIVE: AVAILABLE DATA EMPHASIZES POINT-IN-TIME DECISIONS

Experiences with the child welfare system are often described as trajectories; as children move through the system, their individual pathways are shaped by a number of key decisions, such as whether or not to investigate a child welfare concern, substantiate child maltreatment, open a case for ongoing service, or place a child in out-of-home care.<sup>77</sup> While the investigation-stage overrepresentation captured by studies like the FNCIS-2008 is of critical importance, the overrepresentation of minority children in the child welfare system may also accumulate through: post-investigation out-of-home placement; more frequent recurrence of maltreatment after an initial case closing; extended durations of out-of-home placement; or more frequent failure of family reunification efforts.<sup>78</sup> Thus, overrepresentation may accumulate across full child welfare trajectories. Research on overrepresentation however has often reduced these trajectories to a series of discrete and disconnected point-in-time decisions, which obscures the causes of overrepresentation and may also underestimate the total incidences of contact First Nations children have with child welfare.<sup>79</sup>

The impact of this can be seen in the limited research on Indigenous children in other countries that has taken a longitudinal perspective. Figure 6 presents research examining the overrepresentation of Aboriginal and Torres Strait Islanders (ATSI) in Southern Australia.<sup>80</sup> It traces the number of notifications (child welfare reports) made for all children born in 1991, dividing these data between ATSI children and all other children. The data shows that each year, on average, four to five per cent of ATSI children are reported to child welfare authorities. As demonstrated in Figure 6, the cumulative impact of these new reports means that (depending on

<sup>75</sup> Blackstock, "Occasional Evil," *supra* note 69; Cindy Blackstock et al, *Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families* (British Columbia: First Nations Child and Family Caring Society of Canada, 2006); Lindstrom & Choate, *supra* note 51; Sinclair, *supra* note 43.

<sup>76</sup> Billie Allan & Janet Smylie, *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada* (Toronto, ON: The Wellesley Institute, 2015); *Caring Society, supra* note 13; Kelly Gallagher-Mackay, Annie Kidder & Suzanne Methot, *First Nations, Métis, and Inuit Education: Overcoming Gaps in Provincially Funded Schools* (Toronto: People for Education, 2013); Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Toronto: Ipperwash Inquiry, 2005).

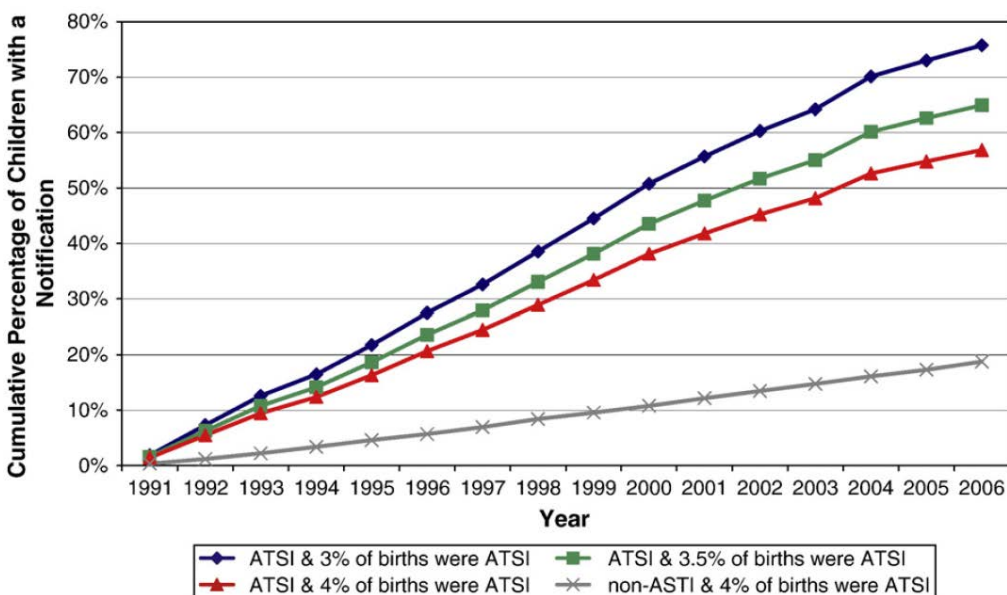
<sup>77</sup> Public Health Agency, *supra* note 26; Jaime Wegner-Lohin, Alicia Kyte & Nico Trocmé, *Ontario's Child Welfare System* (Toronto, Canadian Child Welfare Research Portal, 2014), online: < [cwrp.ca/sites/default/files/publications/en/ON\\_infosheet\\_final\\_0.pdf](http://cwrp.ca/sites/default/files/publications/en/ON_infosheet_final_0.pdf) > [perma.cc/38ZK-ASYK].

<sup>78</sup> Fluke et al, "A Research Synthesis," *supra* note 6.

<sup>79</sup> Harris & Hackett, *supra* note 72.

<sup>80</sup> Delfabbro et al, *supra* note 44.

the estimate of the proportion of the child population that is ATSI) somewhere between fifty-five percent and seventy-five per cent of ATSI children were reported to child welfare by the time they were fifteen. Thus, the use of longitudinal data, which allowed Delfabbro et al to distinguish between new and recurrent reports, more explicitly reveals the staggering rates of ATSI children coming into contact with child welfare agencies than is revealed by point-in-time data.



**Figure 6.** Cumulative percentage of children with a notification/child welfare report.<sup>81</sup>

FNCIS-2008 data indicating that fifty-five per cent of investigated First Nations children had previously been investigated points to important questions that could be addressed through longitudinal analyses. For example, how often do children come back into contact with the child welfare system after their cases are closed? How do the characteristics of their cases change over time? Are there specific child welfare trajectories, or specific case profiles, that are commonly associated with repeat reports? Unfortunately, FNCIS-2008 data only reflects the decisions and assessments made during the six to eight-week investigatory period following initial contact with a child welfare agency, and as such, cannot be used to answer such questions.

In contrast, administrative data often tracks children longitudinally and could, in theory, be used to answer such questions.<sup>82</sup> In practice, however, the ability to use administrative data to study overrepresentation is limited, particularly in the Canadian context, which lacks a federally supported child welfare data collection infrastructure like that which exists in the United States.<sup>83</sup> In Canada, administrative data systems designed for the purpose of capturing performance indicators and outcomes may not be used to record the reasons or rationales behind child welfare

<sup>81</sup> *Ibid.*

<sup>82</sup> Sinha et al, "Remember," *supra* note 4.

<sup>83</sup> US Department of Health & Human Services, Children's Bureau, *Reporting Systems*, (2017), online: <acf.hhs.gov/cb/research-data-technology/reporting-systems> [perma.cc/45FJ-QDVS].

decisions.<sup>84</sup> In addition, the time and effort required to understand, re-structure, re-code, and construct variables generated by the datasets of administrative systems may be prohibitive.<sup>85</sup> When it comes to data on First Nations children, these technical challenges are compounded by issues of identification and data collection capacity. Children may not be identified as being First Nations in the early stages of child welfare involvement and First Nations agencies may have inconsistent access to data management systems.<sup>86</sup>

Further, the use of administrative data raises complex legal and ethical questions in terms of security, confidentiality, permissions, and appropriate use of data.<sup>87</sup> The complexity of these issues is magnified by the complex structure of child welfare for First Nations children. Sensitive data about First Nations children and families is collected by both provincial/territorial and First Nations agencies. These agencies may be independent organizations or they may be nested within ministerial or band council structures.<sup>88</sup> As a result, they may use either independent, provincial/territorial, or federally supported data management systems. In addition, the standards and protocols around data use and permissions may differ by province/territory, type of agency (First Nations or mainstream), or community standards. Thus, data collection capacity may vary between agencies, further complicating the utilization of such data even when other conditions are ideal.

Consequently, though analysis of longitudinal data is key to advancing understanding of overrepresentation, the barriers to this type of analysis are many. In the Canadian context, there is a dearth of studies that examine the child welfare trajectories of First Nations children longitudinally, which may be, in part, because the use of administrative data is complicated by both ethical questions and research/data collection capacity limitations. At present, the ability to appropriately respond to the overrepresentation of First Nations children in the child welfare system is limited, in part, by a lack of longitudinal data that better illuminates the specific points, post-investigation, at which the overrepresentation of First Nations children accumulates. The TRC has recently called for immediate efforts to address the overrepresentation of Aboriginal children in the child welfare system, highlighting the need for resources, education, and annual reporting of child welfare statistics.<sup>89</sup> From our perspective, the development of agreements and capacities that enable the collection and analysis of longitudinal child welfare data by First Nations, in keeping with the OCAP® principles that have been identified as a critical element of self-determination for First Nations peoples, should be among the goals prioritized by researchers.<sup>90</sup>

## VII. LESSON SIX: AMBIGUITY IN DATA MUST BE VERY CLEARLY ACKNOWLEDGED

---

<sup>84</sup> McGhee et al, *supra* note 25.

<sup>85</sup> Scott Long, *The Workflow of Data Analysis Using Stata* (TX: Stata Press College Station, 2009); Catherine Marsh & Jane Elliott, *Exploring Data: An Introduction to Data Analysis for Social Scientists* (Polity, 2008); Michael Mitchell, *Data Management Using Stata: A Practical Handbook* (TX: Stata press College Station, 2010).

<sup>86</sup> De La Sablonnière-Griffin et al, *supra* note 29.

<sup>87</sup> Paul G Stiles et al, "Ethically Using Administrative Data in Research Medicaid Administrators' Current Practices and Best Practice Recommendations" (2011) 43 *Administration & Society* 171.

<sup>88</sup> Sinha & Kozłowski, *supra* note 60.

<sup>89</sup> TRC, *supra* note 13.

<sup>90</sup> Schnarch, *supra* note 30.



As is clear from the discussion above, the data available for assessing and understanding overrepresentation is limited and imperfect. In addition to reliance on decision maker perspectives and limited representation of the factors that inform child welfare decision making, there are challenges in ethically accessing, and appropriately using and interpreting administrative data. Gaps in data also present challenges; for example, missing or incorrect information on ethno-racial backgrounds may compromise estimates of representation and overrepresentation. Indeed, when it comes to determining the overrepresentation of First Nations children, both the child welfare and the population data are likely to undercount First Nations children. Though there have been marked improvements across cycles, undercounting of reserve populations by the NHS remains a concern, and other major sources of population data—such as the Indian register—may also undercount (*e.g.*, through the exclusion of non-Status children).<sup>91</sup> Further, because First Nations children are often served by child welfare agencies that are independent from provincial/territorial systems, even the basic information needed to inform and assess sampling decisions may be lacking.<sup>92</sup> For example, in designing the sampling plan for FNCIS-2008, it was a challenge to develop a basic understanding of the number of Aboriginal agencies in operation and the range of services they provided; compiling this information often required contacting individual agencies. Ten years later, we still lack the systematic understanding of key sources of variation among Aboriginal agencies that would be needed to select a sample that could yield nationally representative estimates of First Nations overrepresentation. Collectively, these challenges manifest as uncertainties and ambiguities that, if not properly acknowledged, have the potential to compromise the validity of overrepresentation research.

This potential is demonstrated by the cautionary tale of overrepresentation research based on the National Incidence Study of Child Abuse and Neglect, the US study after which the CIS was loosely patterned. The NIS collects data on abuse and neglect known to “sentinels:” child welfare authorities, schools, physicians, and other community workers. Over the first three cycles of the study, NIS results found “no race differences in maltreatment incidence”<sup>93</sup> for Black and White children. These findings stood in contrast to findings on the victimization rates based on cases investigated by child welfare services; administrative data showed that Black children were “1.85 times as likely as White children to be officially reported to child welfare agencies and classified as victims of maltreatment.”<sup>94</sup> The difference in findings for rates of maltreatment observed by sentinels versus those reported to and confirmed by child welfare services has been interpreted as indication that, “[t]he different races receive differential attention somewhere during the process of referral, investigation, and service allocation, and that the differential representation of minorities in the child welfare population does not derive from

---

<sup>91</sup> Sablonnière-Griffin et al, *supra* note 29.

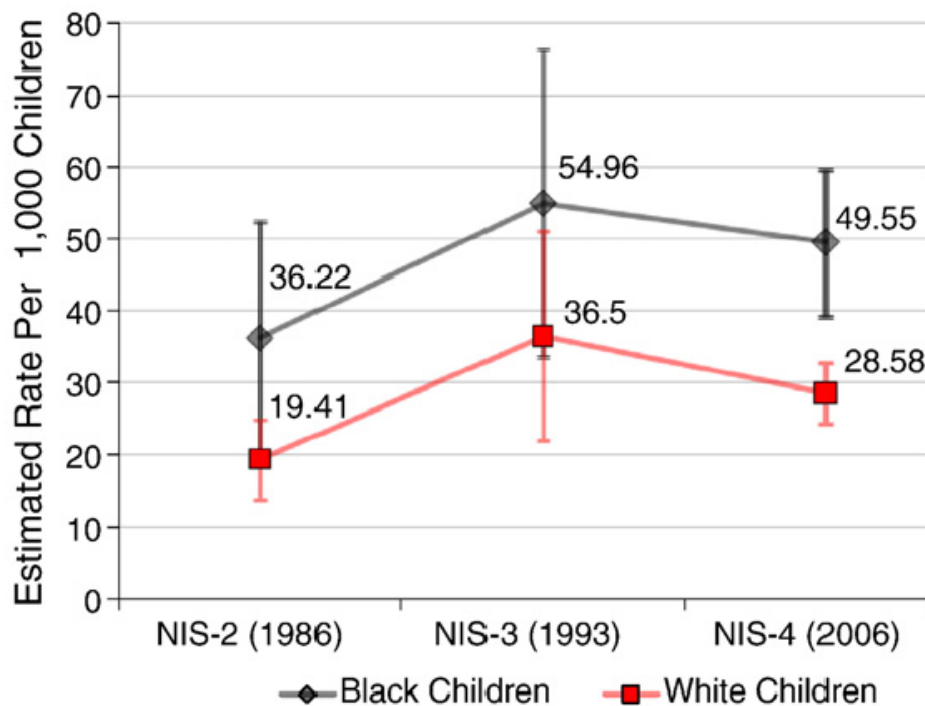
<sup>92</sup> Sinha & Kozłowski, *supra* note 60.

<sup>93</sup> AJ Sedlak & DD Broadhurst, *The Third National Incidence Study of Child Abuse and Neglect* (Washington, DC: US Department of Health and Human Services, 1996) at 87.

<sup>94</sup> Brett Drake & Melissa Jonson-Reid, “NIS interpretations: Race and the National Incidence Studies of Child Abuse and Neglect” (2011) 33:1 *Children and Youth Services Review* 2 at 17.

inherent differences in the rates at which they are abused or neglected.”<sup>95</sup> These findings fueled widespread attention to the apparent problem of front-end bias in the child welfare system.<sup>96</sup>

In contrast, the fourth cycle of the NIS reported a significant difference in actual maltreatment rates for Black and White children, shifting the focus to underlying risk factors—such as poverty—for Black children. This shift in findings with the fourth cycle has largely been attributed to the increased statistical power achieved by NIS-4, which had a larger sample and more sophisticated sampling framework than earlier studies.<sup>97</sup> Indeed, as represented in Figure 7, Drake and Jonson-Reid’s reanalysis of data from earlier NIS cycles shows that the gap in maltreatment rates for Black and White children, though not statistically significant, was observed in prior cycles.<sup>98</sup> The gap between estimates of Black and White maltreatment rates remained quite similar across cycles, but the uncertainty around estimates of these maltreatment rates was greatly reduced in the fourth cycle of the study. Thus, more careful interpretation and presentation of data from prior cycles could potentially have supported earlier development of consensus on the central role that poverty and other underlying risk factors play in contributing to child abuse and neglect.



<sup>95</sup> Sedlak & Broadhurst, *supra* note 93 at 7–8, as cited in Drake & Jonson-Reid, *supra* note 94.

<sup>96</sup> Harris & Hackett, *supra* note 72; Hill, “Institutional Racism,” *supra* note 11; Hill, “Synthesis,” *supra* note 12; Drake, Lee & Jonson-Reid, *supra* note 10; WG Lane et al, “Racial Differences in the Evaluation of Pediatric Fractures for Physical Abuse” (2002) 288:13 *Jama* 1603; Lawler et al, *supra* note 20; Pon, Gosine & Phillips, *supra* note 15; Shaw et al, *supra* note 9.

<sup>97</sup> Andrea J Sedlak, Karla McPherson & Barnali Das, *Supplementary Analyses of Race Differences in Child Maltreatment Rates in the NIS-4* (Washington, DC: US Department of Health and Human Services, Administration for Children and Families, 2010) at 46, online: <[acf.hhs.gov/sites/default/files/opre/nis4\\_supp\\_analysis\\_race\\_diff\\_mar2010.pdf](http://acf.hhs.gov/sites/default/files/opre/nis4_supp_analysis_race_diff_mar2010.pdf)> [perma.cc/BL5S-KYY6].

<sup>98</sup> Drake & Jonson-Reid, *supra* note 94.

### Figure 7. Are Black children overrepresented?<sup>99</sup>

The story of NIS reanalysis demonstrates that thorough presentation of descriptive data is critical in overrepresentation research. Given the ambiguity in available data on overrepresentation and the importance of the topic, it is essential that descriptive analyses be formally produced, disseminated, and subjected to rigorous scrutiny and critical validation. There are important gains to be made from more sophisticated multivariate analyses, particularly those that place child welfare data in an ecological context.<sup>100</sup> However, this type of analysis must be built on a foundation of descriptive analyses that allows and encourages readers, researchers, and policy analysts to assess and contest any claims that are made.

## VIII. CONCLUSIONS: INTER-SECTORAL COLLABORATION IN OVERREPRESENTATION RESEARCH IS ESSENTIAL

Overrepresentation research has played, and (from our perspective) must continue to play, an important role in shaping critical debate about child welfare systems. It serves to draw attention to the situations and needs of specific groups of minority children and to support discussion on the policy changes required to reduce their overrepresentation within child welfare systems. We believe that the critical contribution of this research can be enhanced through more explicit acknowledgement of, and attention to, the assumptions embedded in, perspectives privileged by, and ambiguities inherent to overrepresentation research. In addition, more concerted attention to the technical and ethical barriers to longitudinal research and more comprehensive connections to the broader literature on child welfare and to other strains of research on First Nations child welfare are required.

On all fronts, we believe that collaborative approaches to the design, interpretation, framing, and dissemination of overrepresentation research are the key to moving in meaningful directions. Actively engaging diverse stakeholders—such as policy makers, child welfare workers and administrators, parents, and youth—in overrepresentation research may facilitate more rigorous validation of findings and more appropriate interpretation of results. Though there is a growing body of overrepresentation research, the requirements of, and challenges to, such research means that we still have a relatively limited range of perspectives and of research findings. For example, most existing research relies on, and therefore privileges, worker perspectives, which may reflect worker and organizational bias. We cannot simply rely on existing overrepresentation research for validation of specific findings for specific subgroups.

In particular, engaging parents, caregivers, and youth may push us to more meaningfully engage with the limitations of existing approaches to overrepresentation research, encourage accountability, and provide important perspectives that are obscured by worker-reported data. It

---

<sup>99</sup> Drake, Lee & Jonson-Reid, *supra* note 10.

<sup>100</sup> M Chabot et al, “Exploring Alternate Specifications to Explain Agency-Level Effects in Placement Decisions Regarding Aboriginal Children: Further Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part B” (2013) 37 *Child Abuse & Neglect* 61 at 65; Fallon et al, “Placement Decisions and Disparities Among Aboriginal Children: Further Analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part A: Comparisons of the 1998 and 2003 Surveys” (2013) 37 *Child Abuse & Neglect* 47; Fallon et al, “Opportunities for Prevention and Intervention with Young Children: Lessons from the Canadian Incidence Study of Reported Child Abuse and Neglect” (2013) 7 *Child and Adolescent Psychiatry and Mental Health* 1; Sinha, Ellenbogen & Trocmé, *supra* note 35.

may also help to ensure that research focuses on overrepresentation-related questions of specific interest to stakeholders, that the limitations of overrepresentation research are expressed in ways that are easily interpretable, and that overrepresentation research is framed in ways that resonate with their lived experiences. The involvement of child welfare workers, administrators, and policy makers in overrepresentation research can help build a foundation for well-designed and implemented research. It may enhance validity and reliability as well as take up, retention, and form/item completion rates. In addition, it may foster conditions for personal and professional investment in, acceptance of, and attunement to research findings, leading to more innovative, evidence-based practice. Collectively, this means that collaboration around overrepresentation research can help develop and strengthen the shared understanding and strong partnerships needed to reimagine child welfare.

However, building meaningful collaboration is not easy, and there is no clear roadmap for moving forward. There is limited existing knowledge about the use of participatory approaches to quantitative and administrative data analysis, and researchers may need to draw inspiration and instruction from approaches more typically associated with qualitative research.<sup>101</sup> One key hurdle that must be overcome is the current attitude towards ownership of sensitive data about children and families by governments, child welfare organizations, and researchers. We must collectively create a culture that problematizes data ownership and, accordingly, prioritizes partnership. The challenges to building such a culture include a lack of clarity on who to engage in collaboration. There are often no clear guidelines on who the key stakeholders in overrepresentation research are, and who can or should represent them. In addition, engaging diverse stakeholders in ways that are both meaningful and appropriate, in the sense that they do not impose unreasonable burden or risk of harm, can be challenging. Attention to these issues, grounded in research rationale, resources, and jurisdiction, should be incorporated in pre-study ethics considerations for all overrepresentation studies.

Though the scale, scope, and seriousness of overrepresentation very rightly create pressure to move quickly, collaborative work is inherently relational, and requires the slow development of trust and consensus. It is also resource intensive; financial, human, and cultural resources are needed in order to facilitate meaningful engagement. This is particularly true given the thorny issues of confidentiality involved, and the level of technical acuity that may be required in order to critically engage with overrepresentation research. Accordingly, while meaningful engagement of stakeholder groups is always advisable, it may not always be feasible. In such cases, scholars may, at minimum, draw on qualitative or primary sources (such as interviews, essays, oral traditions, documentaries, memoirs, or even poetry and well-researched/first-hand fiction) for insight and perspective. They must also commit themselves to building the capacity for collaboration in future work. Indeed, the FNCIS-2008 achieved a relatively high level of engagement of child welfare workers, administrators, policy makers, and researchers, but it built on the gradual development of a First Nations focus across two prior CIS cycles, and still there was much room for additional engagement. For example, the study did not directly engage families, caregivers, or youth, and expanding engagement to these groups may be

---

<sup>101</sup> See e.g. Katherine Etmanski, Budd L Hall & Theresa Dawson, *Learning and Teaching Community-Based Research: Linking Pedagogy to Practice* (Toronto: University of Toronto Press, 2014); Community-Campus Partnerships for Health, *Community-Campus Partnerships for Health: Promoting Health Equity & Social Justice* (2017), online: <ccphealth.org/> [perma.cc/U8KR-P4HB]; Kerry J Strand et al, *Community-Based Research and Higher Education: Principles and Practices* (San Francisco: John Wiley & Sons, 2003).

an important goal for future research on the overrepresentation of First Nations children in the child welfare system.

We believe that collaborative research on overrepresentation is vital to reimagining the child welfare system, but we are also very cognizant of the challenges to realizing collaborative approaches. For children, families, communities, and society at large, the stakes are high and, as a result, tensions around the approach to and interpretation of overrepresentation research can easily emerge. Mistakes will inevitably be made, and as we move forward, collective commitment to fostering collaboration and to actively seeking to engage with and understand diverse perspectives is essential.