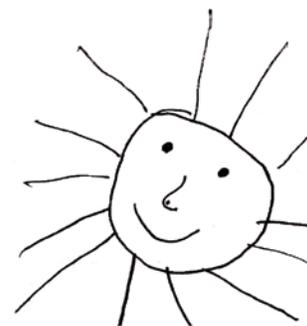


Honouring the Children

SHADOW REPORT
CANADA 3RD AND 4TH PERIODIC REPORT TO
THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
OCTOBER 24, 2011

Submitted by:
First Nations Child and Family Caring Society of Canada
& *KAIROS: Canadian Ecumenical Justice Initiatives*



"I am profoundly disappointed to note in Chapter 4 of this Status Report that despite federal action in response to our recommendations over the years, a disproportionate number of First Nations people still lack the most basic services that other Canadians take for granted."—Auditor General, June 2011 *Status Report*, Matters of Special Importance

aboriginal peoples. [See *R. v. Badger*, [1996] 1 S.C.R. 771, at para. 41; *R. v. Marshall*, [1999] 3 S.C.R. 456.] It is not a mere incantation, but rather a core precept that finds its application in concrete practices.”

“The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably.”⁴

Canada’s failure to act honourably is apparent in the two-tiered system that exists whereby First Nations children on reserve receive a lesser level of service for health, welfare and education. On reserve these services come under federal jurisdiction, but federal levels of funding are consistently inequitable when compared to provincial/territorial levels provided to children and families off-reserve. This phenomenon is widely documented including in the Auditor General’s 2011 report.

One of the ways the Canadian Government supports the unjust allocation of funds is by claiming it has inadequate information to accurately compare off-reserve provincial funding and on-reserve federal funding for the same service. For example, when Indian and Northern Affairs Canada (INAC)⁵ came before the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development in November 2010 and was asked if it underfunds First Nations Child and Family Services by a level of 22%, its response was that **“it is virtually impossible to make any accurate comparison of the level of funding due to... the absence of reliable data.”**⁶

Improving services to vulnerable populations by more accurately

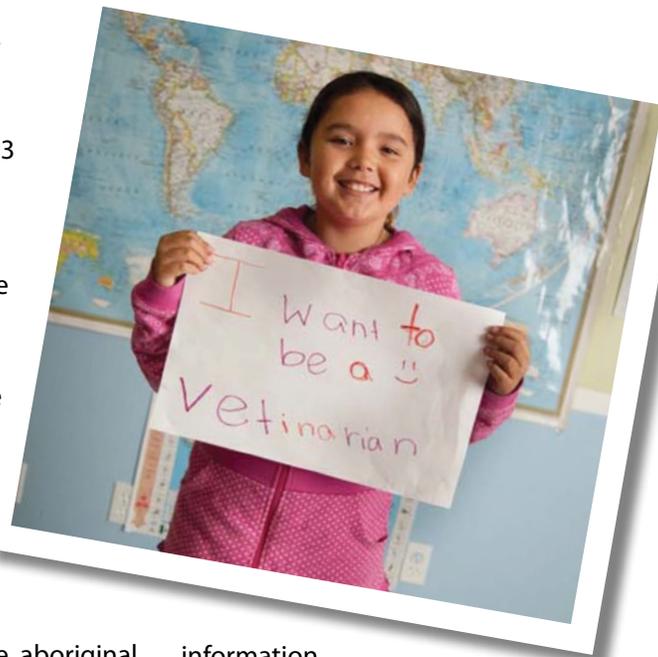
collecting information was a key recommendation made to Canada by the UNCRC following their 2003 submission:

“The Committee recommends that the State party strengthen and centralize its mechanism to integrate and analyze systematically disaggregated data on all children under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups (i.e. aboriginal children...). The Committee urges the State party to use these indicators and data effectively for the formulation and evaluation of legislation, policies and programmes for the implementation, resource allocation and monitoring of the Convention.”⁷

The Canadian Government is not demonstrating a commitment to collect better and more accurate data. In fact, it took a large step in the other direction when it announced in 2010 that it would be terminating the mandatory long-form census. This alarmed many Indigenous communities. A number of First Nations Chief and Councils on the east coast formed a coalition to take the issue to Federal Court where, eventually, their claim was overturned.

These communities argued that “because this data is used to formulate and implement policies, programs, and services for aboriginal peoples, the decrease in the quality of data will likely impact the quality and availability of these programs and services, resulting in unequal treatment vis-à-vis the non-aboriginal population.”⁸

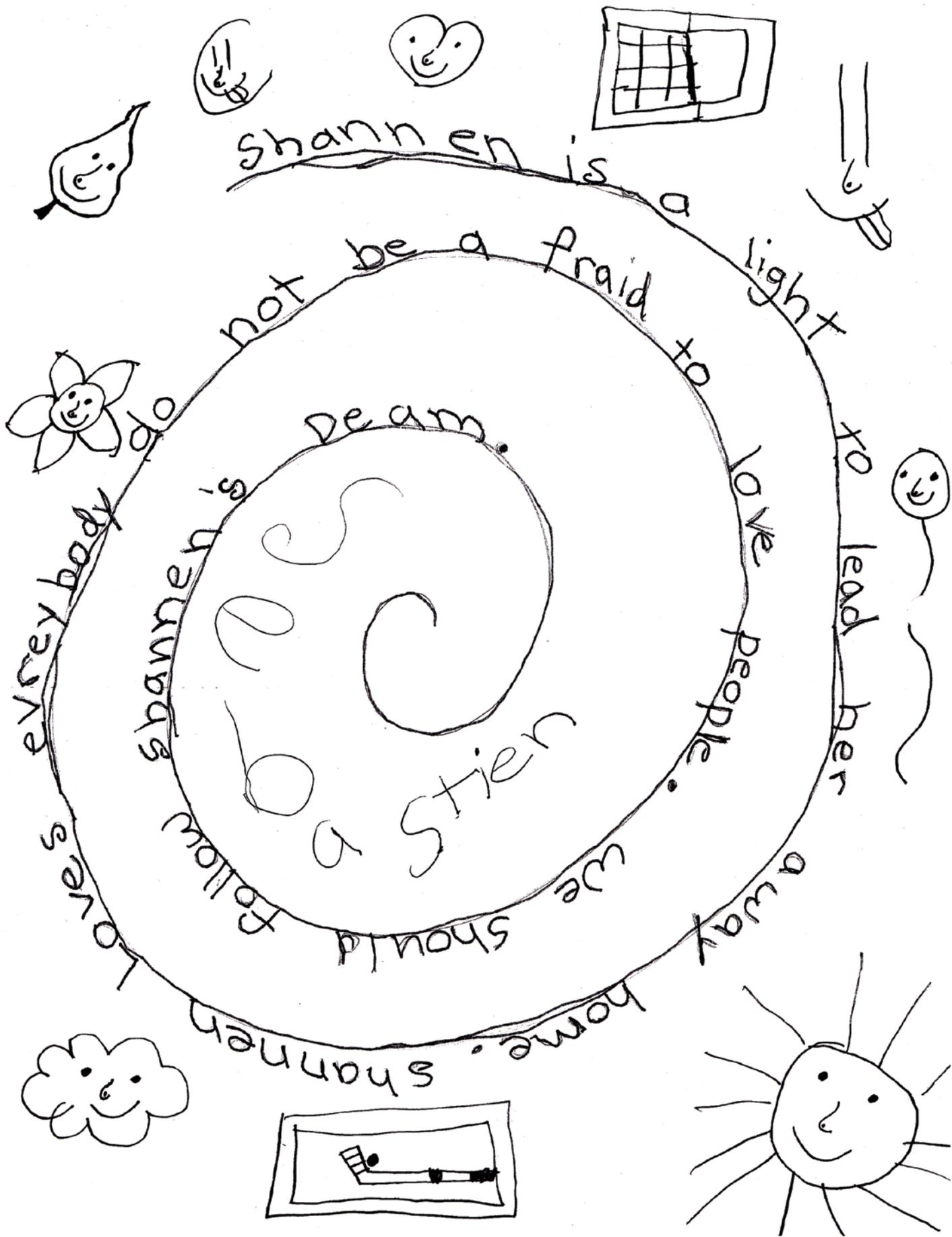
First Nations infant mortality is another area where there is a serious lack of services because Canada is not making a concerted effort to collect enough



information on the issue. In its submission to the UNCRC the Government of Canada claimed to fund “evidence-based programs and services to support the development of children in an effort to address gaps in life chances between Aboriginal and non-Aboriginal children.”⁹

However, in 2010, the Public Health Agency of Canada (PHAC) and First Nations and Inuit Health Branch of Health Canada (FNIHB) were involved in a joint working group that found “striking and persistent disparities”¹⁰ with infant mortality rates twice as high on reserve when compared to the rest of Canada.¹¹ They also identified “significant deficiencies in the coverage and quality of infant mortality data for First Nations.”¹² The goal of the working group was to improve this situation, but before this could be accomplished, the PHAC and FNIHB withdrew from the group without consulting any of the five national Aboriginal organizations that were also involved.

Though internal government documents demonstrate an awareness that First Nations services are being chronically underfunded, Canada’s failure to collect appropriate and relevant information on the distinct needs of Indigenous communities allows the government to claim ignorance.



PART ONE

Shannen's Dream for Safe and Comfy Schools and Equitable Education

"We would like to ask the Government of Canada why there are no schools in many of our communities and why so many of our schools are in such poor condition. We want to know why the level of funding we receive for education is less compared to communities in other parts of Ontario and Canada." (letter to UN Committee on the Rights of the Child from Non-Aboriginal and First Nations children and youth)

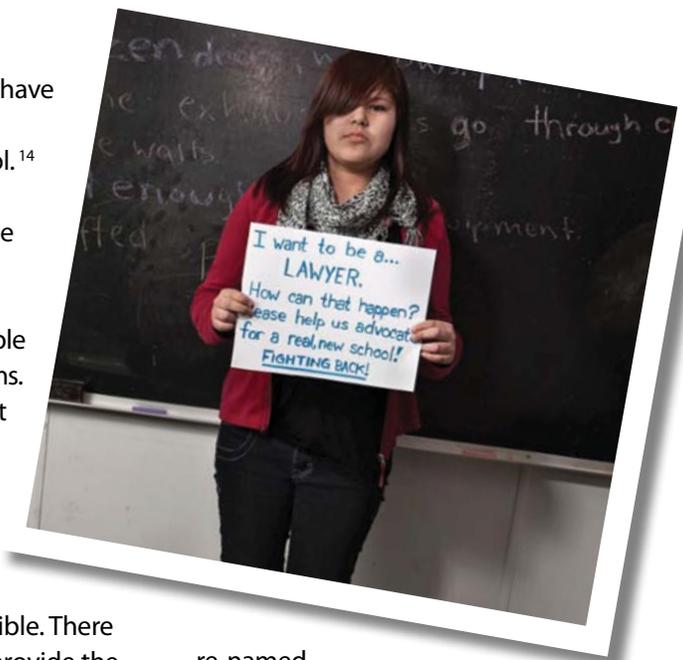
"I think it unfair that I have a school where I can do lots of activities and where there is a proper environment. The kids at Attawapiskat have a right to the same kind of school that I do. That's what I learned in my classroom when we studied that Charter of Rights. I want Stephen Harper to give more priority to all the First Nations children." (youth Clara)

The school in Attawapiskat First Nation in northern Ontario is condemned because the land it's built on is contaminated by 50,000 liters of diesel fuel. For ten years the students have used run-down portables that are freezing in winter, are fire traps, and are infested with mice. According to a 2007 internal INAC document, "existing portables are in need of extensive repair" and there is "student overcrowding in classrooms."¹³

Since 2001, three federal Ministers of Indian Affairs have promised the students of Attawapiskat a new school.¹⁴ Those students are still waiting. By 2008, the grade eight students had had enough of the broken promises and the deplorable condition of their classrooms. Led by 13 year old student Shannen Koostachin, they travelled to Ottawa to ask for a new school, but then Minister of Indian Affairs Chuck Strahl said it was not possible. There is no timeline in place to provide the community with a new school.¹⁵

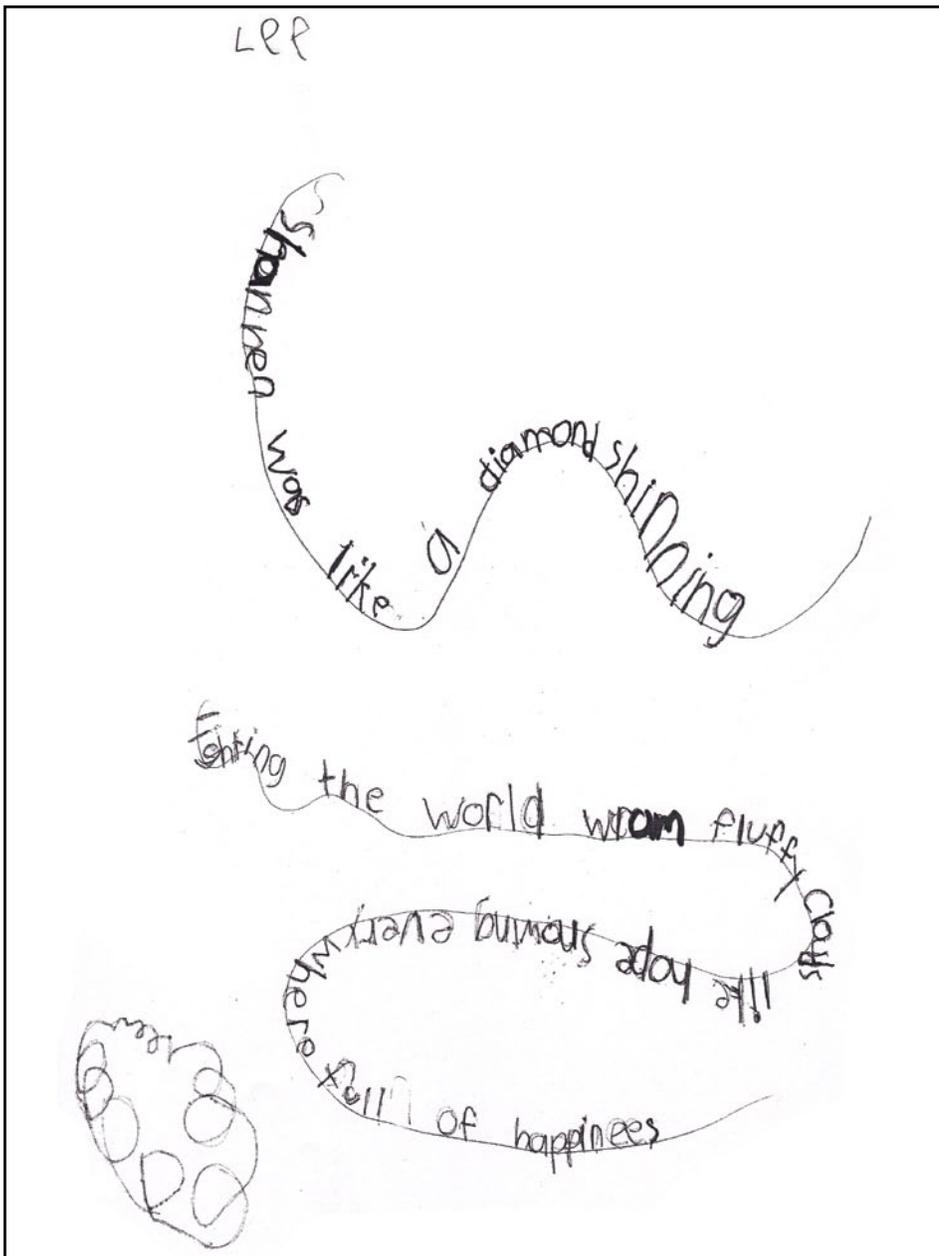
"I would like to bring attention to a slightly different situation that occurred recently, in Oliver BC, a newly renovated high school endured extreme damage during a fire on September 12, 2011 (Strachen, 2011). According to the recent school district website, portables have already been set up and ready to go for October 5, 2011 (SD53, 2011) less than four weeks following the fire their temporary buildings will be ready for use. Comparing it with the Attawapiskat community; this had diesel fuel contaminated soil surrounding their school for 21 years before the government would bring in temporary portables. The difference being the disaster at Attawapiskat was on reserve land and the Oliver school was not." (Research paper by student Trish)

Shannen's goal of becoming a lawyer meant she had to leave home to attend high school in a community hundreds of miles away. Tragically, while away at school, she died in a car accident. She was 15. Before her death she was nominated for the International Children's Peace Prize. She also spearheaded a campaign that continues to gain momentum and has been



re-named "Shannen's Dream" in her honour. Thousands of Indigenous and non-Indigenous children and youth have rallied behind "Shannen's Dream," which calls for "safe and comfy schools and culturally-based and equitable education" for First Nations students (<http://www.fncfcs.com/shannensdream/>).

"I would like to talk about the inequalities that most First Nations communities have. First of all, the government doesn't seem to care for them, it almost seems as if they have forgotten about our Northern people, the government doesn't take action making matters even worse. If there was trouble with the education, housing, or even playgrounds down where I live, the government would fix things right away and have it done with... For the past year, I have been raising money and awareness for these communities: doing charity events, attending events, promoting my charity, so that I may build a playground in these communities which lack a right to play. I really believe that I shouldn't have to be doing all this because they should not have already been discriminated in the first place." (youth Wesley, supporter of "Shannen's Dream")



“4.17 Based on census data from 2001 and 2006, the education gap is widening. The proportion of high school graduates over the age of 15 is 41 percent among First Nations members living on reserves, compared with 77 percent for Canadians as a whole... 4.22 More than six years after our previous audit, we found that INAC has taken various actions but has not maintained a consistent approach to education on reserves. It has yet to make progress in closing the education gap.”¹⁹

Attawapiskat is only one of many First Nations communities desperately in need of a new school. As noted in the 2009 Parliamentary Budget Officer’s Report, only about 49% of First Nations schools are in good condition and yet the number of new schools being built has dramatically decreased in the last five years.²⁰ Thirty-five new reserve schools were built between 1990 and 2000 while only 8 schools have been built since 2006.²¹

Some First Nations schools on reserve are contaminated by black mould and are not properly heated. The school on the Lake St. Martin First Nation reserve in Manitoba was closed due to an infestation of snakes. In Little Buffalo, Alberta, the Lubicon Lake First Nation school is closed an average of 22 days annually due to a lack of running water.

In its 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child, the Government of Canada says it **“continues to support culturally relevant elementary, secondary and post-secondary education for First Nations and Inuit students, with overall education expenditures increasing from \$1.4 billion in 2003-2004 to \$1.7 billion in 2007-2008.”¹⁶**

Notwithstanding this \$300 million increase over 4 years, federal funding for schools on reserve is still not adequate to meet provincial standards or to offer culturally based education. In fact, on average, First Nations

schools receive \$2000-\$3000 less funding **per student** than provincially run schools.¹⁷ This funding gap is due, in part, to the 2% cap on annual federal funding increases to First Nations that has been in place since 1996, despite consistently higher inflation rates and a burgeoning Indigenous population. To put things in perspective, between 1996 and 2003, it would have been necessary to increase funding by 3% annually just to keep pace with inflation.¹⁸ The Auditor General’s 2011 report finds INAC’s efforts to address the education gap between First Nations and non-Indigenous Canadians to be unsatisfactory:

“There’s a light on the other side of the pump house that goes red. That tells us that there’s no water and that’s when we can’t go to school on some days.” (Douglas, Little Buffalo student)

When the unacceptable condition of these school buildings is combined with a lack of basic supplies and culturally appropriate curriculum, it is not surprising that many students lose hope and drop out as early as grade 5.

"As an individual I am scared for my own education and how my life that's ahead of me is going to be like, if I don't qualify to get into college. Life for us will gradually get worse, as yours gets easier, that's not fair for us. We deserve better, much, much better." (Vicky, First Nations student)

Many reserves do not have high schools. For some First Nations students this means their formal education ends at Grade 8. For others, it means moving to cities far from their home to attend high school, and living there for most of the year. This is the case for some of the Nishnawbe Aski Nation (NAN) students living in northwestern Ontario who attend Dennis Franklin Cromarty High School in Thunder Bay. This school is run by the Northern Nishnawbe Education Council for First Nations students living in remote communities.

Kyle Morriseau, age 17, went missing while attending this school in 2007 and two weeks later his body was found in the river. It was his first time living away from his family and although his father had wanted to board with him, it had not been possible to find the funds to do so.

Kyle was an artist like his father, and grandfather, the famous First Nations artist Norval Morriseau who was the first Indigenous artist ever to have a full art exhibition at the National Art Gallery in Ottawa in 2006. According to Christian Morriseau, Kyle's father, "He (Kyle) had a very good heart, a very forgiving heart as well and he really enjoyed the outdoors and he loved to paint... I had my first art show with [Kyle] in the spring of 2008 in Ottawa. That night he sold nine paintings and I only sold four- that's one of the proudest moments I ever felt with my

son. I just knew that he deserved it- he worked very hard listening and learning from me. He was very patient at it."²²

Since it opened in 2000, six other First Nations students have died tragically while enrolled at Dennis Franklin Cromarty High School in Thunder Bay. The latest death was Grade 9 student Jordan Wabasse from Webequie, who died in February 2011. An inquest that was scheduled to begin in 2007 following the death of another student, Reggie Bushie, was delayed due to legal arguments. It is set to resume this year and may include recommendations about how to avoid student deaths at the school. Unfortunately, these recommendations will come too late for the two students who have died since the inquest was first announced.²³

NAN Deputy Grand Chief Terry Waboosie, who holds their education



portfolio, says that "each of these deaths is a tragedy and they must stop. We demand that the governments of Ontario and Canada work with First Nation leaders and educators to ensure that adequate support services are in place for students who must travel away from home for secondary school and to work with us to develop education services in all First Nations that are on par with the rest of Canada."²⁴



Photo credit: Cindy Blackstock



PART TWO

Canada failing First Nations children in child welfare

"When I learned of the Tribunal for the Rights of Aboriginal children I was astounded... The government is taking what seems to be a backwards stance on this issue. They should be supporting the fight for Aboriginal rights because they dare to say that we are a society of equals; clearly this is not the case." (I Am a Witness reflection by youth Leslie)

In 2008, the Auditor General's Report found that INAC **"had no assurance that its First Nations Child and Family Services Program funded child welfare services that were culturally appropriate or reasonably comparable with those normally provided off reserves in similar circumstances."**²⁵ In the 2011 follow-up audit, progress to address this issue was found to be unsatisfactory.²⁶

Documents from the Department of Indian and Northern Affairs Canada obtained under Access to Information suggest this failure to provide a comparable level of child welfare services on reserve is of concern to the

Canadian Government not because First Nations child welfare service providers are not funded at provincial levels, but because this could lead to litigation:

"[C]ircumstances are dire... as a consequence of providing inadequate prevention resources, it is foreseeable that civil proceedings could be initiated against the Government of Canada as a result of neglect or abuse of children in care."²⁷

The underfunding of First Nations child welfare has entered the legal arena. In 2007 the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society of Canada (FNCFCS) brought a complaint before the Canadian Human Rights Tribunal alleging that First Nations child welfare services on reserve are structured and funded in ways that result in inequitable and discriminatory impacts for First Nations children, youth and families. A First Nations Child and Family Services Joint Policy Review released in 2000 suggested that the federal government underfunds child welfare by 22% compared to what other children receive.²⁸ A subsequent review done in 2005 suggested that an additional \$109 million per year was needed to meet basic parity excluding the Territories and Ontario. The Auditor General has reviewed Canada's enhanced funding arrangement, identified by the Canadian Government as the solution

to the problem, and found it to be flawed and inequitable.²⁹ The complaint says that contrary to section 5 of the *Canadian Human Rights Act*, Canada is discriminating based on race and national ethnic origin by failing to provide First Nations children with equitable and culturally based services. The case is historic because it is the first time the federal government is being held to account before an entity capable of changing the way services are delivered. This proceeding is also the most watched legal case in Canadian history, with over 8100 individuals, particularly children and youth, following the case through the "I am a witness" campaign (www.fnwitness.com).

Instead of fighting the case on its merits, Canada claimed that since the services are being delivered by First Nations child welfare agencies, the government cannot be held accountable for inadequate and culturally inappropriate services. In addition, Canada argues its funding and policy regimes for children cannot be compared to those provided by the provinces even when the children are subject to the same laws. This amounts to the unloading of responsibility to agencies with no control over funding levels and that are severely constrained in their ability to deliver programming and allocate resources.

In March of this year, the government-appointed chair of the Canadian

Human Rights Tribunal, Shirish Chotalia, finally issued a ruling on the complaint just a few weeks after being the target of public criticism for taking so long to render a decision.³⁰ After nearly 18 months of deliberation, Ms. Chotalia essentially dismissed the case on a technicality, claiming in her 67-page ruling that “[i]n order to find that adverse differentiation exists, one has to compare the experience of the alleged victims with that of someone else receiving those same services from the same provider.”³¹ In other words, Ms. Chotalia was saying the Tribunal was not able to decide if Ottawa’s funding is discriminatory because it had nothing to compare it to.

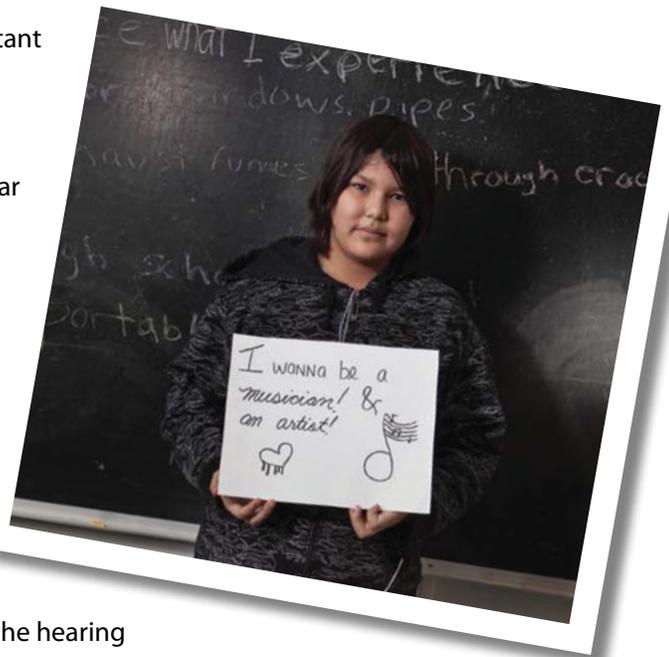
One reason this decision is cause for concern is that if the Tribunal’s decision stands, “it would allow the federal government to provide a lesser level of service to First Nations children on reserve without any recourse under Canadian human rights law.”³² The process which led to this decision is also cause for concern. The Canadian Human Rights Commission (CHRC) referred the complaint to the Human Rights Tribunal in September 2008

and considered it so important that it became an active participant in the process. Canada challenged the Tribunal’s jurisdiction to hear the complaint in Federal Court but the claim was dismissed—a decision that was upheld on appeal. Ms. Chotalia took office two weeks prior to the scheduled November 2009 start of the Tribunal hearings. With no notice, and without application by any of the parties, Ms. Chotalia vacated all of the hearing dates for reasons that are still not clearly understood, causing a further delay in the proceedings. In December of 2009, Canada again filed to have the complaint dismissed, this time with success, even though this same argument had already been dismissed by the CHRC and Federal Court.

An appeal by the AFN and the FNCFCSC to the Federal Court is underway. A small inroad was made when the Federal Court overturned the Tribunal’s decision to deny the Aboriginal Peoples Television Network’s (APTN)



Photo credit: Suzanne Ure



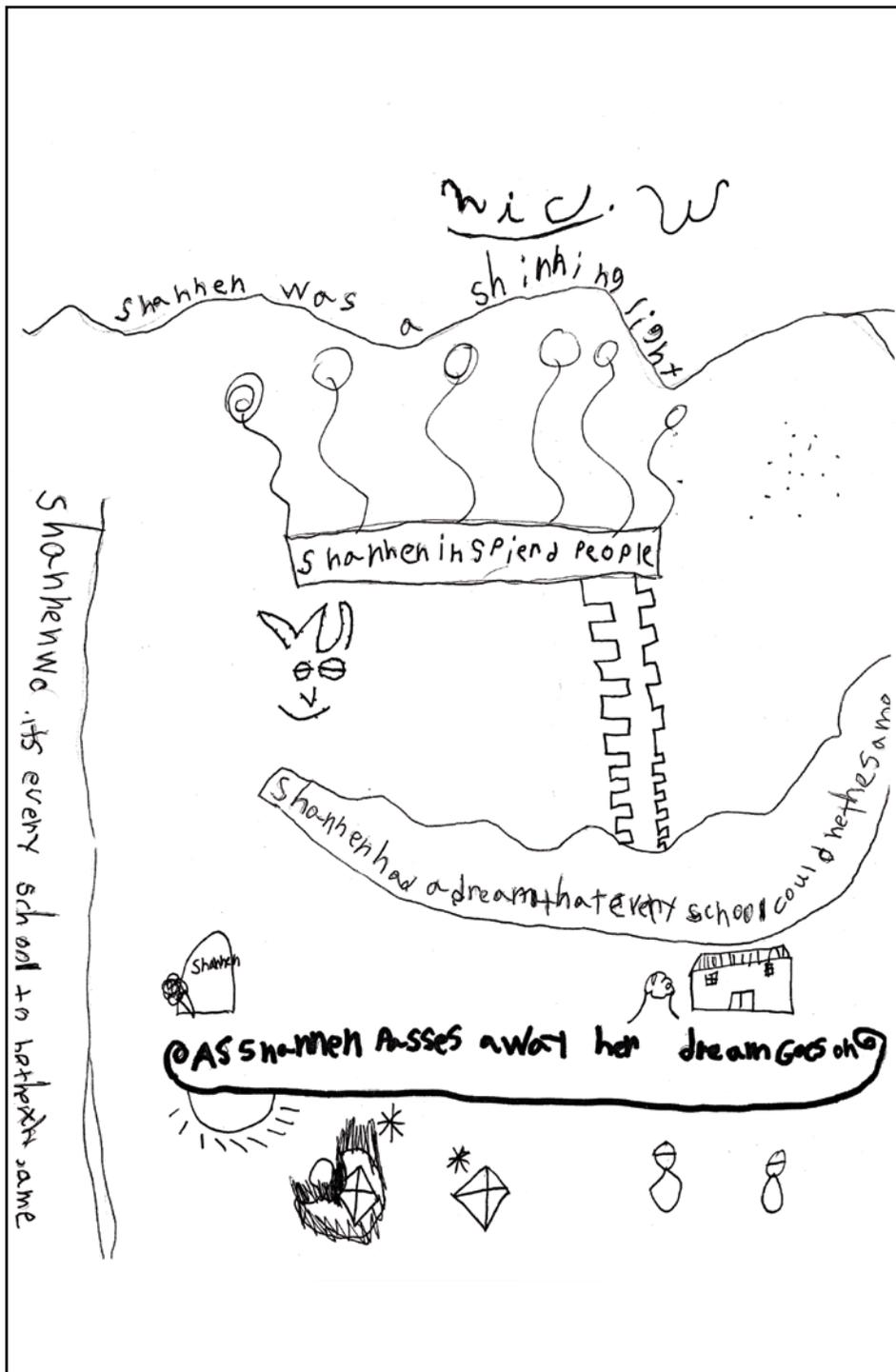
permission to film its proceedings. In its request, the APTN argued that the Tribunal’s decision would profoundly affect the lives of First Nations living on reserve and that it was “an historic opportunity for transparency to prevail.”³³ A single mother of the Opaskwayak Cree Nation in Manitoba explained how televising the hearings could have a positive

“The injustices I experienced while under welfare protection continue to affect me in a way that is impossible for me to convey. I believe that viewing the proceedings will help validate the feelings of injustice I have experienced all my life... I am hopeful that if our stories are heard, things will change for First Nations children.”³⁴ (single mother, Opaskwayak Cree Nation)

impact on children’s lives. While transparency did not prevail at the Tribunal, it did prevail at the Federal Court.

In Canada’s report to the UNCRC, there is no mention of this serious allegation of discrimination in child welfare.

As of 2007, there were about 8,300 on reserve children in care which,



according to the Auditor General's 2008 report, is approximately 8 times the number of off reserve children in care.³⁵ In this same report, the Auditor General highlighted that the formula used to determine funding levels for child and family service agencies on reserve is inequitable. It is based on the assumption that 6% of children are in care when in fact that number varies widely from 0% to 28%.³⁶

Deputy Grand Chief of the Union of Ontario Indians Glen Hare said "now that Canada has finally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples*... it needs to understand that forcibly removing children from one group of peoples to another is considered genocide by the standards of international law."³⁷

First Nations child welfare is another area where Canada is not compiling

adequate information. The Attorney General's 2008 report says the data that does exist indicates poor outcomes for children in care.³⁸ In her award winning series on missing and murdered First Nations women in *Indian Country Today*, Navajo journalist Valerie Taliman, wrote that children on reserve who enter foster care off reserve become disconnected from their communities and, if they suffer abuse, they have nowhere to go. Some children escape but end up homeless and can be forced into child prostitution, as young as 11.³⁹

"Stripped of family, language, culture and a proper education, many children have nowhere to turn once they leave foster care, and end up in vulnerable situations seeking shelter and food on the streets."⁴⁰

The Native Women's Association of Canada (NWAC) has collected data on 582 missing and murdered Aboriginal women in the last two decades. Children have been deeply affected by this gendered, racialized violence in a number of ways. Of the documented murders and disappearances, nearly 100 were girls under the age of 18.⁴¹ In addition, when it was possible to obtain the information, the overwhelming majority of the missing and murdered women were mothers; more than 440 children are known to have suffered the loss of their mother.⁴² It is widely believed that these numbers represent only the tip of the iceberg. More information on the way that the loss of these women may be causing children to enter state care is needed. This is evident in a statement made by INAC when it appeared before the Standing Committee on the Status of Women in March 2011:

*"Because we don't collect this kind of information, we have no way of knowing how many children who lose their mothers or grandmothers or other relatives, come into contact with the child welfare system as a result."*⁴³

PART THREE

Jordan's principle not being upheld

Shannen was a crystal and you BROKE
her. So why did you do that?
And she had a very strong heart.
Never give up hope that's what Shannen said.
Never give up **faith** to. And last of all...
Every one should be able to
Never give up.

Shannen
changed the country.

^ ^

*"Children shouldn't have to suffer for the Government's negligence and ignorance. Each child is unique in their little ways, even when their challenges are far greater than the normal children's. What is normal in this day and age? Children with any type of disability shouldn't have to suffer from the present system. It's heart breaking and it's all about love."
(Tahoe Niin, Maurina Beadle)*

In its report, Canada states that "[t]he Federal Budget 2005 provided \$1.3 billion over five years to be dedicated to First Nations and Inuit health programs, including new investments for nursing and human capital development on reserve."⁴⁴ What the report fails to mention, however, is that First Nations on reserve are continuing to lose out; they do not have access to the same health services as other children in Canada. Furthermore, the Canadian government is aware of this short-coming but again, as with child welfare, INAC is framing their concerns not in terms of a child's right to health care, but as a situation to be managed with the goal of avoiding litigation:

"Although we have not found... situations where the federal government has been found liable because of child fatalities or critical incidents relating to failure to provide necessary medical services, we believe that they exist and that, unless solutions are found, they will continue to occur."⁴⁵

Jordan River Anderson was from Norway House Cree Nation in Manitoba. Due to complex medical needs he



Photo credit: Cindy Blackstock

spent the first two of years of his life in hospital. When he was ready to go home all the services he would need for home care were available, but the federal and provincial government could not agree on who should pay. For more than two years the dispute between the two levels of government continued despite pleas from Jordan's family, medical staff and the First Nation to stop blocking Jordan's homecoming. Just before his 5th birthday Jordan tragically died, never having known anywhere but the inside of a hospital.

His family was grief-stricken but they turned their painful experience into an opportunity to end this type of discrimination for other children through Jordan's Principle. This child-first principle says that the government of first contact will pay the health care costs for a First Nations child on reserve, and that disputes between levels of government will be a secondary matter and not act as a barrier to accessing care. Member of Parliament Jean Crowder tabled Jordan's Principle as a private member's bill in 2007 and it was unanimously adopted (<http://www.fncfcs.com/jordans-principle>).

On the day Jordan's father, Ernest Anderson, witnessed the parliamentary adoption of the principle named for his son's memory he warned that unless it was immediately put into practice the act would be nothing more than a symbolic gesture.⁴⁶ Sadly, Jordan's Principle remains unimplemented by the majority of Canada's provinces and territories and the federal government has attempted to narrow its use by having it apply only to children whose conditions require the involvement of numerous service providers.⁴⁷ First Nations children on reserve continue to be denied care because they are caught in the middle of jurisdictional disputes.

Maurina Beadle is a single mother and a band member of the Pictou

Landing First Nation in Nova Scotia. She has lovingly cared for her 16-year old son Jeremy his whole life. Jeremy has hydrocephalus, cerebral palsy, spinal curvature and autism. His mother recently suffered a stroke and is no longer able to provide Jeremy with the care he needs. The provincial government has refused to provide home care because it considers this to be the responsibility of the federal government, while the federal government provides health care funding that is inadequate and inconsistent with provincial standards.⁴⁸

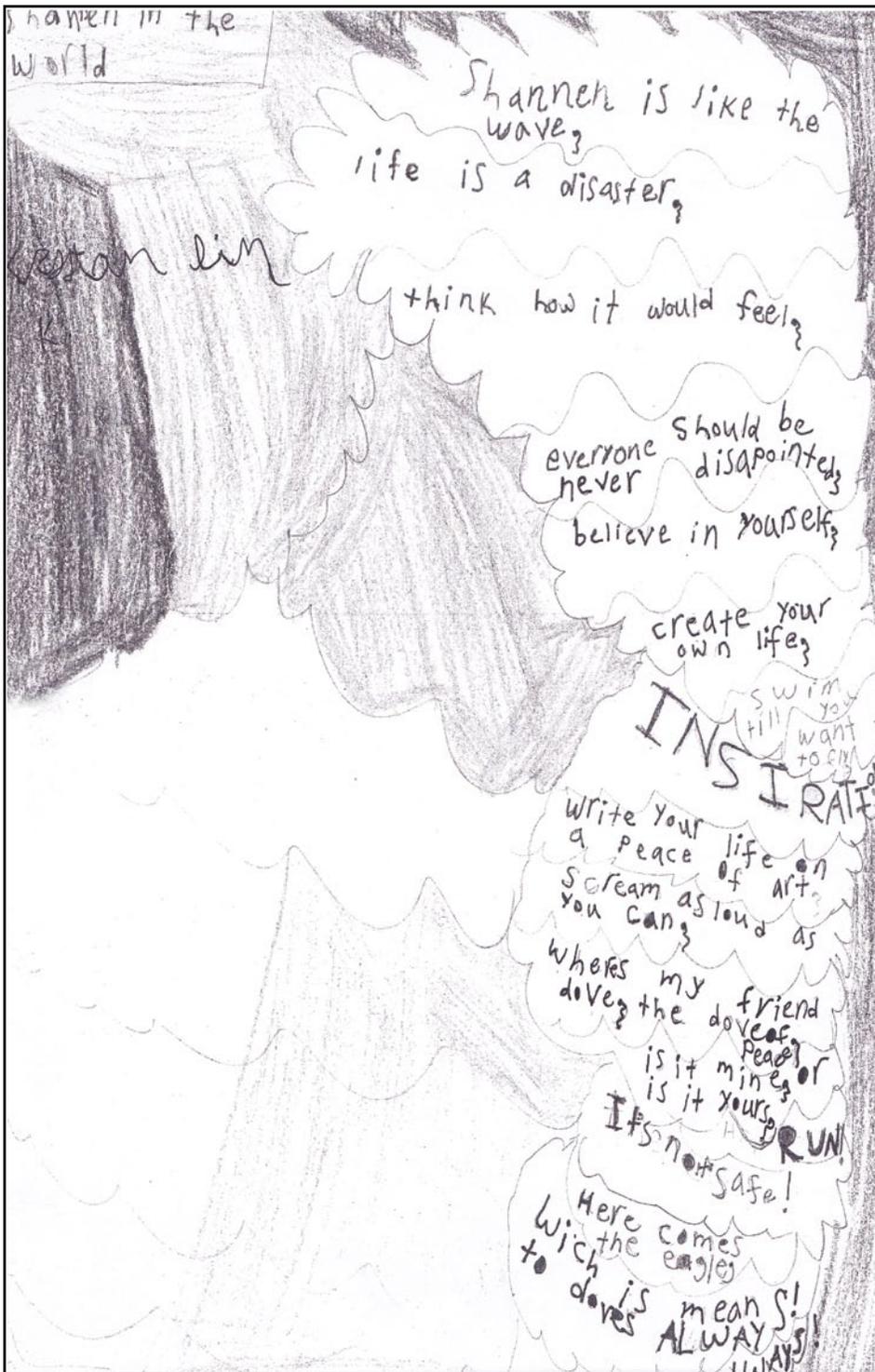
"Nationally, the Canadian government does not provide Assisted Living funding for children and youth with special needs, although it recognizes its obligation to do so. This has resulted in some First Nations parents giving up custody of their children to provincial authorities so that assisted living services can be accessed off reserve."
(Pictou Landing Band Council and Maurina Beadle v. Attorney General of Canada)

If the Pictou Landing Band Council does not receive the funds to provide Maurina and Jeremy with home care services, Jeremy may be sent hundreds of miles away to an institution. There is no doubt Jeremy and his mother would not be facing this predicament if they were non-Indigenous people or living off reserve. Jordan's Principle should protect them, but instead they are forced to challenge the government in Federal Court in order to get services that are readily available to other Canadians.



Some First Nations children on reserve are not only denied access to health care, but are unable to access safe drinking water and are faced with housing conditions that can be detrimental to their health. A 2006 Assembly of First Nations report found that 1 in 3 First Nations people consider their main drinking water unsafe while 12% of communities have to boil their water.⁴⁹ As for housing, Canada's report states that "Aboriginal housing remains a priority for the Government of Canada. An estimated \$272 million a year is provided to address housing needs on reserve." However, according to INAC data included in the Auditor General's 2011 report, between 2003 and 2009, there has been a 135% increase in the need for on reserve housing:⁵⁰

"[P]oor housing on reserves has been shown to have a detrimental effect on the health, education, and overall social conditions of First Nations members and communities... For several years, mould contamination has been identified as a serious health and safety problem in First Nations reserves, liable to cause respiratory illnesses such as asthma. In this audit, we found that housing conditions on reserves are worsening. We also found that federal organizations have not taken significant direct actions to remediate mould contamination."⁵¹



Land rights and children's rights

In its 3rd and 4th Periodic Report to the UNCRC, Canada acknowledges the link between land rights and the well being of children.

"Within land claims and self-government agreements, the Government of Canada ensures that the best interests of the child are taken into account."⁵²

Unfortunately, Canada's policies and practices continue to be an obstacle towards the conclusion of land rights and self-government agreements by forcing Indigenous peoples and communities to agree to never assert their rights as a condition of settlement. These policies remain in place despite repeated requests by various UN human rights committees to revise them because they violate Indigenous peoples' rights.

Canada's Comprehensive Land Claims Policy applies to Indigenous lands not covered by Treaty. It requires Indigenous people to relinquish their rights or title to significant shares of their traditional lands as a condition of settlement.

In 1999, the UN Human Rights Committee asked that this federal practice of extinguishing inherent Indigenous rights be abandoned because it violates the International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. In 2002, the UN Committee on the Elimination of Racial Discrimination also raised the issue of extinguishment.⁵³

In its subsequent report in 2005, the Human Rights Committee noted Canada's efforts to establish "alternative policies to extinguishment of inherent



Photo credit: John MacDonald

aboriginal rights in modern treaties” but expressed concern “that these alternatives may in practice amount to extinguishment of aboriginal rights.” Specifically the UNHRC said Canada “should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights.”⁵⁴

In 2006, in its response to the list of issues taken up in connection with the consideration of its fourth periodic report to the UN Committee on Economic, Social and Cultural Rights, Canada said there is no longer an extinguishment requirement in the settlement of land rights.

However, in its Concluding Observations, the UN CESCR expressed concern that Canada’s new approaches, namely the “modified rights model” and the “non-assertion model,” “do not differ much from the extinguishment and surrender approach.” It also expressed regret that it had yet to receive “detailed information on other approaches based on recognition and coexistence of rights, which are currently under study.”⁵⁵

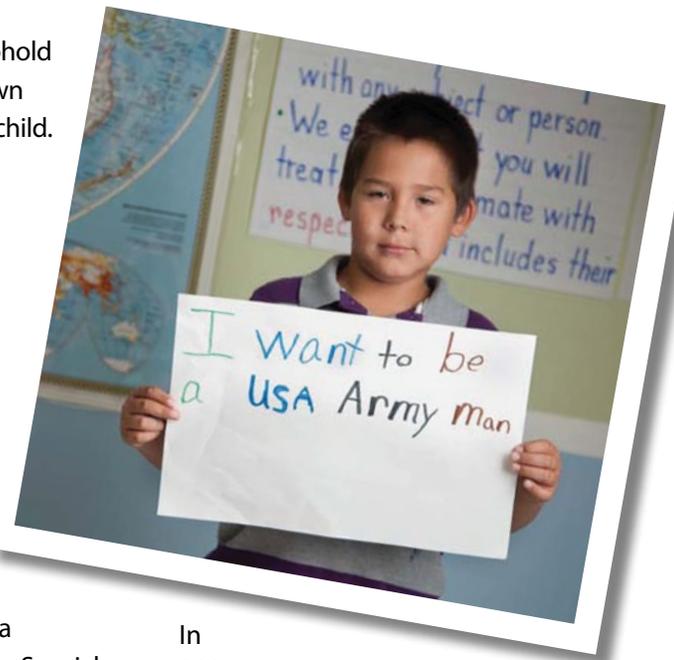
In 2007, the UN Committee on the Elimination of Racial Discrimination said it “remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach.” It recommended that Canada “ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights.”⁵⁶

While it is encouraging that the Comprehensive Land Claims Policy is one of the issues identified in the recently announced Assembly of First Nations – Government of Canada Joint Action Plan (www.afn.ca), Canada’s decision not to act on the recommendations of the UN committees

demonstrates a failure to uphold both the honour of the Crown and the best interest of the child.

Significantly, the failure to conclude land rights negotiations is not limited to situations where the Comprehensive Land Claims Policy applies. For example, there has been little progress in resolving the Lubicon Lake Cree First Nation’s outstanding land rights, which the federal government sees as a specific claim. United Nations Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in his examination of the Lubicon case, urged the government to move forward with the land rights negotiations, citing lack of services as an outcome of this unresolved settlement agreement:

“[The Lubicon] community does not receive adequate basic services or access to water. Because of the non-resolved status of these lands, federal and provincial authorities do not agree on their competencies and responsibilities.”⁵⁷



In 2005, the UN Human Rights Committee expressed concern “that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue.”⁵⁸

Six years later, Lubicon land rights remain unresolved.



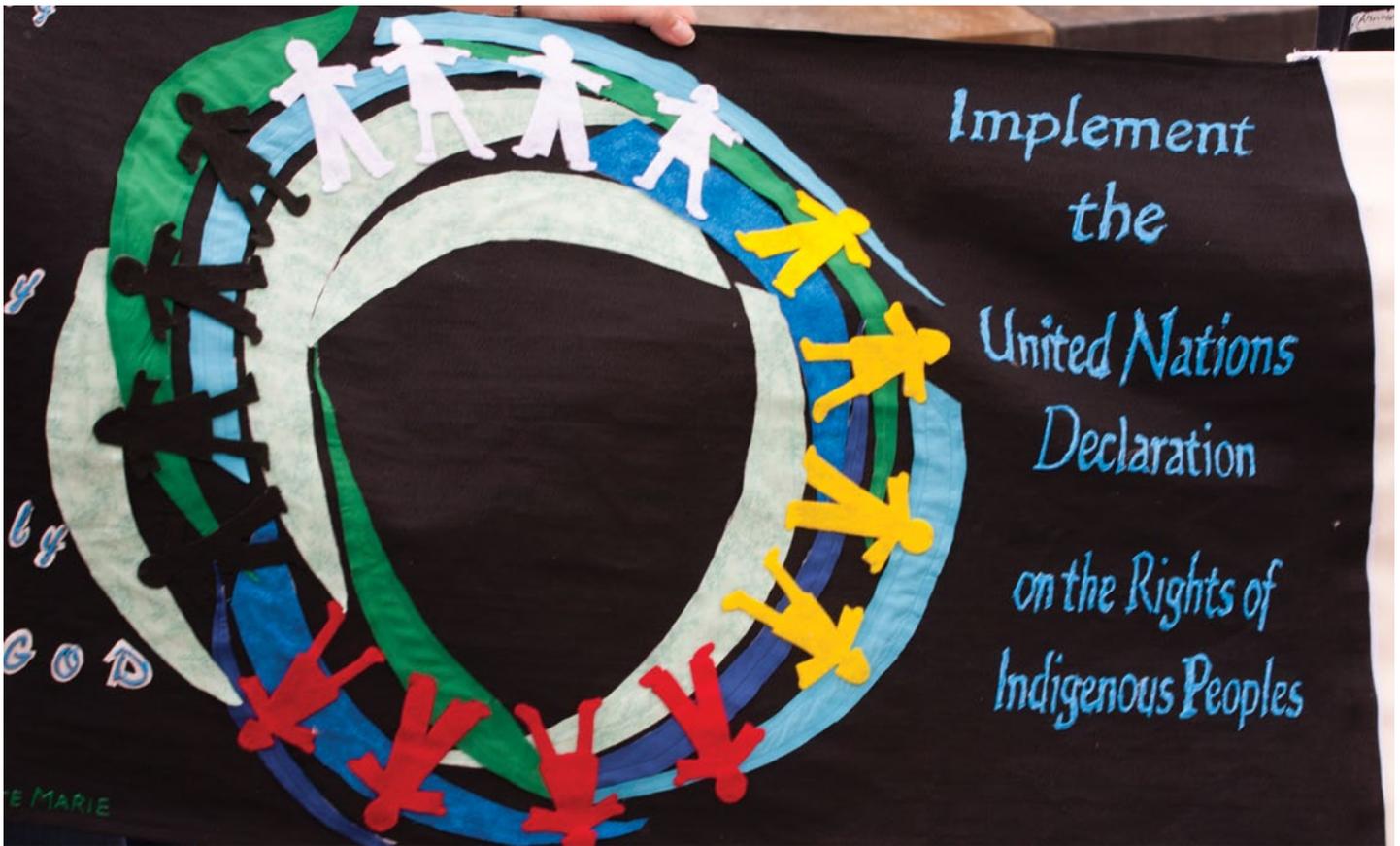


Photo credit: Susanne Ure

CONCLUSION AND RECOMMENDATIONS

“As a young Canadian child, it makes my heart break to think that the First Nations don’t have the same rights and opportunities that I have. Simply because I am a non-aboriginal child means that I get to receive a proper education in a nice, safe, warm school? And they inherit a school with gallons of diesel fuel in the ground, on a toxic waste land, with no heating inside and only a fence to ‘separate’ the two? Canada is supposed to be a free country,

therefore includes free healthcare, free education and equal rights, so why are they the exception? I would also like to know, why this is being allowed, why are they being put aside? And an effortless apology won’t make the gruesome problem disappear. The First Nations have waited nine years to have the same rights as we do, nine years is long enough so please don’t let a tenth go by.” (Kayla, in a letter to Canadian Prime Minister Stephen Harper)

In 2004, UN Secretary-General Kofi Annan opened the third session of the UN Permanent Forum on Indigenous Issues by stating: “For far too long the hopes and aspirations of indigenous peoples have been ignored; their lands have been taken; their cultures denigrated or directly attacked; their languages and customs suppressed; their wisdom and traditional

knowledge overlooked; and their sustainable ways of developing natural resources dismissed. Some have even faced the threat of extinction... The answer to these grave threats must be to confront them without delay.”

In 2005, Rodolfo Stavenhagen, as United Nations Special Rapporteur on the situation of the human rights and

fundamental freedoms of Indigenous people, presented a report to the UN Commission on Human Rights that urged governments in Canada to do more to close the human rights gap between Indigenous and non-Indigenous people in Canada. His report, published in 2004 following his official visit to Canada, listed numerous instances of where the failure of federal, provincial and territorial governments to fulfill their obligations to Indigenous peoples has contributed to impoverishment, ill-health and social strife.

In 2006, on the occasion of the 10th anniversary of the Report of the Royal Commission on Aboriginal Peoples (RCAP), the Assembly of First Nations (AFN) published a Report Card that assessed the response and actions of the federal government to the RCAP recommendations. According to the AFN, the key restructuring initiatives

recommended by the RCAP have not been implemented by the federal government and as a result, "the reality for First Nations communities today is ongoing poverty," and an increasing gap in living conditions with non-Indigenous Canadians.

In February 2009, at its first examination under the Human Rights Council's Universal Periodic Review, the United Nations raised concerns about Canada's performance on a number of human rights issues, including the welfare of Indigenous peoples. These concerns were detailed in the United Nations most recent publication, *State of the World's Indigenous Peoples*, which was released in January 2010. At 238 pages, it is the most thorough publication the UN has published on the plight of the world's Indigenous peoples. *State of the World* notes that "Canada recognizes that key socio-economic indicators for Aboriginal people are unacceptably lower than for non-Aboriginal Canadians," and that while the living standard of Indigenous peoples have improved over the past 50 years, they still "do not come close to those of non-Aboriginal people."⁵⁹

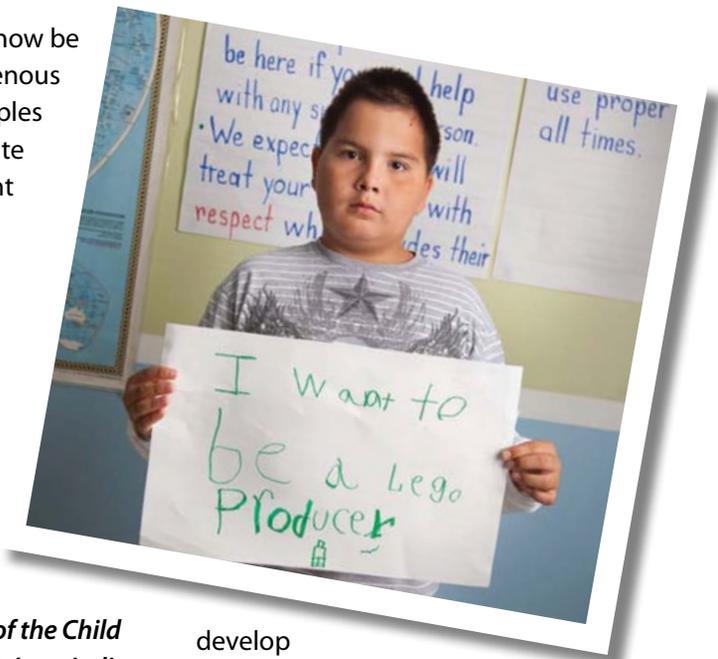
Canada is one of the world's richest countries, and consistently ranks among the best places to live. Unfortunately, this is not the reality for far too many Indigenous people who live in Canada, in particular Indigenous children. There are few countries with the same capacity to fully implement the United Nations Convention on the Rights of the Child. Implementation of the Convention would address the increasing gap in living standards identified by the UN's *State of the World's Indigenous Peoples* report.

When the Government of Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2010, it made a great leap forward towards positive

change. But words must now be turned into action. Indigenous and non-Indigenous peoples in Canada must collaborate to ensure the Government of Canada works with Indigenous peoples to fully and meaningfully implement the UN Declaration in order to bring equity and justice.

The following recommendations are respectfully made to the United Nations Committee on the Rights of the Child in consideration of Canada's periodic review:

1. Canada act immediately on the recommendations put forward by the UNCRC following its review of Canada in 2003, in particular those relevant to Indigenous children in paragraphs 13 (rights-based national plan of action); 20 (integrate and analyse systematically disaggregated data ... for the formulation and evaluation of legislation, policies and programmes); 22 (strengthen its legislative efforts to fully integrate the right to non-discrimination in all relevant legislation concerning children); 25 (that the principle of "best interests of the child" contained in article 3 be appropriately analysed and objectively implemented with regard to individual and groups of children in various situations, e.g. Aboriginal children); 35 (that the State party undertake measures to ensure that all children enjoy equally the same quality of health services, with special attention to indigenous children and children in rural and remote areas); 42 (that further research be carried out to identify the causes of the spread of homelessness, particularly among children); 43 (that the State party continue to address the factors responsible for the increasing number of children living in poverty and that it



develop programmes and policies to ensure that all families have adequate resources and facilities); 45 (that the State party further improve the quality of education); 59 (The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children ... The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up).

2. The Committee engage a special study on Canada's implementation of the UNCRC with respect to the rights of Indigenous children pursuant to section 45 (c).

3. Canada work in collaboration with Indigenous peoples in Canada on the full and effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples, in particular those articles relevant to Indigenous children.

4. Canada work with Indigenous peoples to allocate and structure sufficient financial, material and human resources to ensure the safety, best interests and cultural and linguistic rights of Indigenous children.

5. Canada act immediately to allocate and structure sufficient financial, material and human resources to ensure the full enjoyment of education, cultural and linguistic rights for Indigenous children.

6. Canada, in full partnership with Indigenous peoples, act immediately to ensure that government jurisdictional disputes do not impede or delay Indigenous children from receiving government services available to other children, including the full and proper adoption and implementation of Jordan's Principle.

7. Canada act immediately to establish, in collaboration with Indigenous peoples, a national, independent mechanism empowered to implement reforms, and available to receive, investigate and respond to reports of individual and systemic child rights violation.

8. Canada allocate adequate resources and work with Indigenous peoples to devise and implement a comprehensive strategy and action plan to ensure that Indigenous housing is improved to a decent and healthy standard.

9. Canada base future governance discussions on Recommendation 2.3.2 of the Royal Commission on Aboriginal Peoples: All governments in Canada recognize that Aboriginal peoples are nations vested with the right of self-determination.

10. Canada use Recommendation 2.4.2 of the Royal Commission on Aboriginal Peoples as the basis for revising future governance discussions with First Nations: Federal, provincial and territorial governments, through negotiations, provide Aboriginal nations with lands that are sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.

11. Canada use RCAP Recommendation 2.2.6 as the basis for a new Comprehensive Land Claims Policy: With regard to new treaties and agreements, the Commission recommends that the federal government establish a process for making new treaties to replace the existing comprehensive claims policy, based on the following principles:

(a) The blanket extinguishment of Aboriginal land rights is not an option.

(b) Recognition of rights of governance is an integral component of new treaty relationships.

(c) The treaty-making process is available to all Aboriginal nations, including Indian, Inuit and Métis nations.

(d) Treaty nations that are parties to peace and friendship treaties that did not purport to address land and resource issues have access to the treaty-making process to complete their treaty relationship with the Crown.

12. When negotiating land rights, Canada's policy should conform to the guiding principles in RCAP recommendations 2.4.1, specifically sections (a) to (d):

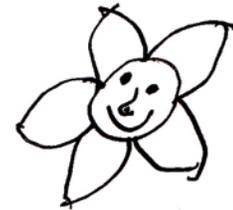
(a) Aboriginal title is a real interest in land that contemplates a range of rights with respect to land and resources.

(b) Aboriginal title is recognized and affirmed by section 35 (1) of the Constitution Act, 1982.

(c) The Crown has a special fiduciary obligation to protect the interests of Aboriginal people, including Aboriginal title.

(d) The Crown has an obligation to protect rights concerning lands and resources that underlie Aboriginal economies and the cultural and spiritual life of Aboriginal peoples.

13. Canada ensures its domestic laws, government policies and practices are fully consistent with the UN Convention on the Rights of the Child and implements immediate and effective measures to ensure Indigenous children, young people and families are aware of their rights under the Convention.



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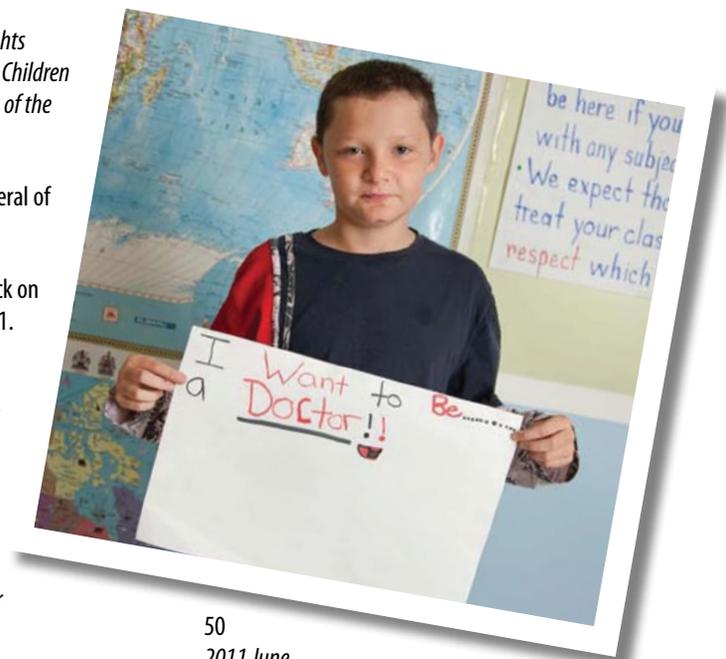
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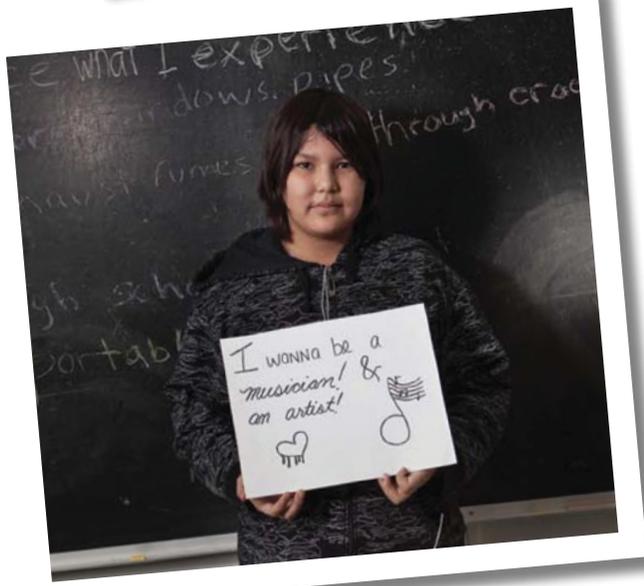
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