`CHAPTER THREE

Traditional Decision-Making in Contemporary Child Welfare:

Relying on Dane-zaa Laws to Care for and Protect Children and Families

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Abstract

This paper describes the efforts of Dane-zaa people in northeastern British Columbia, Canada, to bolster the authority and legitimacy of their traditional decision-making (TDM) practices in the context of child welfare, where, today, the impacts of colonialism have resulted in as many as 70% of Indigenous children, including Dane-zaa, in regional foster care system. We review the unique history of the Dane-zaa people, the way that colonization of child welfare in British Columbia has eroded Indigenous cultural decision-making practices, and critique the legislative and policy frameworks that make space for traditional decision-making processes. In the final section, we describe the community-based engagement process that the Dane-zaa used to bring their TDM practices into the child welfare system. We conclude that the increased use of TDMs for the Dane-zaa in the context of child welfare will contribute to strengthening their social and psychological infrastructures, and will support their attempts to regain control of services affecting the welfare of their children.

My grandfather lived to be 105. He left a lot of things with me. One of the big things my grandfather always said was, "Look at your people. Look at what you got, the resources, what each person is made of. We're sent here by the Creator with a gift. Some kind of gift that we have to find ourselves. Maybe we're good with hunting, maybe with fishing, maybe teaching the youth, maybe making provisions for the community." He said, "The people are like a woven rawhide." He said," like snowshoe rawhide. They're all working together." He said, "If one breaks, you got to stop and mend that." If we strengthen our nation the land will be blessed.

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--Gerry Hunter, Halfway River First Nation elder (Ridington, 2013a)

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Introduction

The beliefs and values inherent in the worldview of the Dane-zaa of the northeast of British Columbia, as well as their precedents, customs, and experiences are deeply rooted in Indigenous decision-making processes. A fundamental premise of this paper is that indigenous decision-making processes are a crucial means of providing support and protection to aboriginal children and their families; these processes are an integral part of indigenous law. The Supreme Court of Canada (SCC) has recognized that Aboriginal peoples in Canada have their own legal traditions. The SCC has stated that the challenge of defining aboriginal rights stems from the fact "that they are rights peculiar to the meeting of two vastly dissimilar legal cultures [but that] a morally and politically defensible conception of aboriginal rights will incorporate both legal perspectives" (*R v. Van der Peet* [1996] 2 S.C.R. 507, para. 42 ("*Van der Peet*"). The SCC has further stated that the courts must take into account the Aboriginal perspective which must ground the Court's analysis when considering Aboriginal rights (*Van der Peet*, para 42;

Delgamuukw v. The Queen [1997] 3 S.C.R. 1010, para 149). Within this context, Napoleon

(2013) tells us that, "[t]hinking about Indigenous law is fundamentally different from western

law. Although we often come to think of law with formal, centralized state processes that entail

power, punishment, hierarchy, and bureaucracy, there is a different way to think about law,

including Indigenous law that requires thinking about the sources of Indigenous law and what its

functions are" (p. 269). Thus, recognition of customary laws is both entrenched in Canadian law

and distinct. In this regard, Indigenous "law can be found in how groups deal with safety, how

they make decisions and solve problems together, and what [they] expect people 'should' do in

certain situations (*their obligations*) . . .They are often passed down through individuals,

families, and ceremonies" (Friedland, 2009, p. 15). This paper will describe the efforts of Dane-

zaa people in northeastern British Columbia, Canada, to bolster the authority and legitimacy of

their customary law and decision-making practices in the context of child welfare. These

processes are deeply rooted in Dane-zaa culture.

Indigenous decision-making processes are essential to enable indigenous cultures to

continue to flourish (Borrows, 2010). Research supports this belief. For example, in a ground-

breaking study, Cornell and Kalt (1995) found that effective decision-making institutions that

were a cultural match for that particular community were a decisive factor contributing to

economic success and well-being for Indigenous peoples.[1] Building on this work, Aboriginal

self-determination literature also shows that adherence to traditional cultural practices is crucial

for capacity building, sustaining economic and social development, and ensuring more resilient

communities (Harvard Project on American Indian Economic Development, 2007). And more

pointedly, Ladner (2009) found similar positive results derived from using traditional decision-

making, including assisting capacity-building and building stronger communities even in those

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[1] The other key factors were practical sovereignty, strategic orientation, and leadership.

communities most in crisis. Together, these findings support the aim that indigenous peoples retain their Indigenous laws—which include traditional decision-making processes— to resolve contemporary conflicts and ensure safety and protection (Cornell, 2009).[2]

This body of research resonates with Tuso's warning that "negligence of indigenous processes of conflict resolution . . . has had negative consequences for peoples of traditional societies . . . " (2011, p. 266), and practically, it urges a reassessment of Western decision-making mechanisms that have replaced traditional decision-making processes.[3] Without access to their decision-making processes, Indigenous cultures may be unable to safeguard sustainable community development, meaningful public administration, and good governance, which may lead to continued challenges and serious cultural dislocation. Although the importance of traditional decision making (TDM) processes for Indigenous communities is now recognized, they often continue to be demoted in favor of Western legal decision-making processes. Importantly, practical strategies to reassert traditional decision-making processes are not well understood (Fallon et al., 2013). The aim of this paper is to address this knowledge gap and describe how the Dane-zaa have revived the authority and legitimacy of their traditional decision-making (TDM) practices in the context of child welfare.

We begin this paper by introducing the unique history of the Dane-zaa people and provide a glimpse into relevant aspects of their worldview. We then describe the way that colonization of child welfare in British Columbia has evolved, and how this has eroded Indigenous cultural decision-making practices. This is followed by a critique of the legislative

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[2] A critique of this work is that "localizing" solutions may be used to "responsibilize" already over- burdened aboriginal communities for service provisions, supporting a neoliberal economic agenda that may restrict aboriginal peoples' access to adequate economic resources (Mowbray, 2006). Though we acknowledge there is merit to that critique, this paper takes the view that Indigenous law is fundamentally about rebuilding citizenship (Napoleon, 2013).

[3] This would include imposition of Band Councils by the *Indian Act*, sentencing practices under the Criminal Code, and child apprehension practices by the Ministry of Children and Families and its predecessors.

and policy frameworks that make space for TDM processes. In the final section, we discuss the community-based engagement process that the Dane-zaa used to bring their TDM practices into the child welfare system. We conclude that the increased use of TDMs for the Dane-zaa in the context of child welfare will contribute to strengthening their social and psychological infrastructures, and will support their attempts to regain control of services affecting the welfare of their children. This reclamation of their children's destinies will ultimately ensure that the Dane-zaa people and their culture will continue to flourish.

The Dane-zaa in British Columbia: History

> *"You people are from other places - Korea, Mexico. But us, we are not from anywhere else -- we're from here. We've always been from here."*
>
> Sam Acko, Doig River First Nations' elder, May 29, 2013 (Ridington, 2013b)

To understand the current circumstances of the Dane-zaa people, and the importance of reinvigorating their TDM processes within the current-day child welfare system, we must explore their culture and deep ties to their traditional territory. First Nations people have lived in northeastern British Columbia and northwestern Alberta, Canada, and successfully raised families there for over 10,500 years. Archaeological remains located at a site adjacent to Charlie Lake (outside Fort St. John) confirm this (Driver et al., 1996). Anthropologists Robin Ridington and Jillian Ridington have documented stories shared by Dane-zaa for decades. They begin their recent book, *Where Happiness Dwells: A History of the Dane-zaa First Nations,* as follows:

In some ways, Dane-zaa history is like the history of all the First Nations of

Canada. Yet it differs in one critical way. At the time when the Iroquoian nations

of Quebec and Ontario, the Cree, and many other First Nations of this country adapted to (or, like the Beothuk of Newfoundland, were exterminated by) the newcomers, the Dane-zaa followed the trails of their ancestors. They first learned of the changes that were to come in the late 1700s when their Dreamers prophesized the coming of the white men. The loss of land and the threats to traditional culture that began to impact the Indigenous people of eastern Canada three and a half centuries ago have challenged the Dane-zaa for little more than a hundred years . . . Fur traders came to the area in 1794 and Catholic priests arrived. . . "Pioneers" began coming to live in Dane-zaa territory early in the twentieth century, but they were too few to impact heavily on the traditional way of life. Many Dane-zaa, especially the women, who had little contact with the fur traders, rarely encountered white people until the building of the Alaska Highway in 1942. The fathers and mothers of today's Doig elders spoke little or no English, had no driver's licenses, and lived most of their lives without a telephone, electricity or indoor plumbing.

Today, the Dane-zaa language is written by tribal linguists but not spoken by most Dane-zaa children, and the trails of the people are invisible beneath the roads, highways and seismic lines that bring opportunity, but also threaten the extinction of the traditional ways of the Dane-zaa.. (2013, pp. 5-6).

Importantly, the delay in settler contact allowed the Dane-zaa people to retain and continue to use much of their traditional beliefs and practices. Other circumstances also helped to ensure the preservation of their culture. Fortuitously, the Dane-zaa people were not subject to the Canadian Government's Residential School policy of the 1890s to 1960s. Under that policy as

many as 150,000 First Nations, Inuit, and Metis children were taken from their families and tens of thousands of children were abused and/or died. And although the reservation policies of the Department of Indian Affairs and Northern Development did curtail the ability of Dane-zaa families to follow their seasonal rounds throughout their traditional territory, ties to the land and the knowledge of oral history remained intact. (Ridington & Ridington, 2013, p. 197).

The fact that the Dane-zaa culture remains relatively intact is significant to their efforts to revive their TDM process, since deeply rooted values and traditional practices may be retrieved to inform the new application of their TDM. In the next section, we will describe Dane-zaa values around the notions of autonomy, leadership, and kinship that undergird and inform how a TDM process is carried out.

Dane-zaa Worldview

A hundred years ago the Native people were just like water. They see the river going that way, all the Native people going the same way, thinking the same way, we eat the same way, just like we read each other's minds. We don't plan, put it on the agenda. We don't do that. From my grandma, died in late seventies, her story was from when she was a girl, we go back maybe to 1600. The story all the way passed on to each generation. From your mind to here (your heart) is eighteen inch. You put it in your mind, you put it in your heart, the story, it's in you.

Billy Attachie, Doig River First Nations Elder (Ridington, 2013d)

In western thought, as a philosophical concept, *worldview* can be traced to Kant, Hegel, and Wilhelm Dilthey (Naugle, 2002), and has been defined as "a semiotic system of world-interpreting stories" that provide "a foundation or governing platform upon or by which people think, interpret, and know" (291). In this way worldview can be thought of as one's view or

perspective of his or her relationship to the world and reality (like nature, institutions, other people, things, etc.) (Redfield, 1952; Sue, 1978), and is understood to reflect and shape beliefs, assumptions, as well as behaviors like problem-solving, decision-making, and conflict resolution (Ibrahim, 1991). For Dane-zaa people, worldview is the touchstone that shapes the elements and habits of day-to-day life—quite simply, as Bill Attachie describes in the quote above, "it's in you". In this section, we tease out a selection of beliefs and values of Dane-zaa worldview that are relevant to the TDM process.

Autonomy

The Dane-zaa notion of autonomy and its relevance to decision-making is best understood by recognizing how they view individualism. Ridington (1988b) tells us that the notion of "individualism" for the Dane-zaa, who live in an egalitarian society, is fundamentally different from that of Western people who live in a system of social hierarchy. Western individualism is the belief and practice that every person is unique and self-reliant, and must take responsibility for their own needs and the needs of their dependents. Of course, there is always a tension between individual rights and the collective good. The Dane-zaa, in contrast, seek a balance between individual autonomy and community well-being. Individual decisions are made in consideration of "other human and trans-human persons of a sentient social environment" (Ridington, 1988b, p. 168). Individual judgment is respected, but it is negotiated in a context of "cultural intelligence" and not individual needs, as is the case in Western notions of individualism. For the Dane-zaa, an individual's judgment and choice requires others to respect individual autonomy, and not intervene unnecessarily. An individual's judgment is kept in check within the social context. People are described as individualistic because, as Ridington (1988b) notes, "each person is expected to inform, and thereby empower, him or her self, within the

mutually understood context of shared knowledge and a shared code of communication" (p. 168).

This concept has direct implications for how members speak and listen at decision-making circles today. Elders and other traditionally-trained individuals lead TDM sessions, acting as guides or facilitators to help support the family through their path of healing and problem solving. Rather than providing direction, orders, or prescribed advice, stories are shared and guidance given through more indirect means that nonetheless connect the family to the cultural values.

Leadership

Dane-zaa notions of individualism are carried through to the practice of leadership. In traditional Dane-zaa culture, there were no elected leaders or bosses. Small family-based bands travelled throughout the year, moving from one camping place to another as the year turned and seasonal plants and animals were available for harvest. The person who had demonstrated the greatest skill with the task at hand, be it berry-picking or buffalo hunting, suggested the best campsites and guided the group. Dreamers dreamed for all the people, foretold the future and led the way forward. Song-keepers and storytellers preserved oral history and honored ancestors and those who had departed on the trail to heaven. As Halfway River First Nation Elder Gerry Hunter explains, "Everyone has different weaknesses so we go to the one with strength" (Ridington, 2013a). This concept of leadership fostered a form of governance where all community members shared their knowledge and authority in particular areas, rather than one person or governance body having complete control or leadership over a group at all times. Thus, all adults used their skills to teach children how to survive on the land. In a straightforward way, Ridington (1988b) captures the distinction between Dane-zaa and Western notions of leadership:

"leaders in the subarctic demonstrate knowledge and the ability to negotiate with human and non-human persons, while leaders in hierarchical societies often demonstrate an ability to command and control others" (p. 168).

The Dane-zaa notion of leadership has implications for how decision-making is carried out in the context of child protection. For example, when problems arose in the past, such as the death of parents on a trap line, those with knowledge of the families' interests and needs would come together to decide how best to support the children. Decisions would be made collaboratively, with all knowledgeable input weighed. A deep sense of connection and understanding between the people helped these decisions to be made.

Kinship

The Dane-zaa and their ancestors are the original peoples of the Peace River country. Cree, Saulteau, and Metis communities established themselves in the area during the 19th and 20th centuries. In all these communities, child rearing is a shared responsibility. As one West Moberly First Nation elder shared, "We all stand together, we are a circle, we help one another, we never look down on each other." (Ridington, 2013d). Every person is related to every other through a network of kin ties, and each person knows the appropriate kin term to call every other member of the band, or those who have married into the band. Even when an actual genealogical relationship is not known, young people learn from their elders the proper ways to relate to their many relations, and the proper kin term to call them by. Each person has many cousin-brothers and cousin-sisters, as well as people their parents call brothers and sisters, who are like parents or parents-in-law to them. Dane-zaa kinship classifies the siblings of parents as either parents or parents-in-law. Elders are also a resource that the entire community shares and play an important

role in child rearing. In short, the Dane-zaa continue to depend on a wide circle of relatives for support.

In addition to support, kinship is also important for sharing knowledge between generations. For example, grandparents played a particularly valuable role in raising and educating children. In Dane-zaa stories, a wise grandmother stands at the center of the world; she is represented by a single spruce tree, and is the source of wisdom and wise stories. That knowledge remains vital today (Ridington, 2013e). Fundamental values that emphasize shared responsibility for child protection are central to the survival of First Nations communities. It becomes evident that the presence and participation of kin and elders in decision-making processes is critical.

Colonialism and Child Welfare

In spite of their relatively late exposure to settlers, Dane-zaa governance and decision-making were challenged and altered by the imposition of colonial laws and policies as well as the actions of legal and administrative regimes. This included the passing of the Constitution Act 1867, the imposition of the reserve system, and the implementation of the *Indian Act* (R.S.C., 1985, c. I-5). The *Indian Act* governs from a distance, and has had a devastating impact: it changed the governance structure in Dane-zaa communities and was used to determine who was "Indian" and who could be a member of an Indian Band. Further, it restricted the movement of traditionally nomadic people, and limited traditional gatherings. Loss of habitat due to massive industrial development of Dane-zaa territory has also impacted their traditional ways of hunting and gathering food and sustaining their local economies. The broader impacts of these colonial policies have led to social dysfunction, and this has compromised the fabric of Dane-zaa social

and political systems. Their well-being has been denigrated, their culture marginalized, and the ability of Dane-zaa to care for their children understandably compromised (Blackstock, 2009).

The impact of these policies becomes particularly noticeable in the area of child welfare. In First Nations communities in British Columbia, provincial child welfare authorities have been powerful and visible agents of state power. The province began asserting jurisdiction over the welfare of children living on reserves (including Dane-zaa children) after amendments were made to the *Indian Act* in 1951.[4] There is no evidence that Dane-zaa communities were consulted about the province's assumption of jurisdiction for child welfare in their communities. There is also no evidence that steps were taken by the Province to understand Dane-zaa culture, and their laws, practices, customs, or traditions with respect to children and families.

The assertion of provincial jurisdiction meant that the Protection of Children Act 1939 (PCA)[5] was now applied to Dane-zaa children and families (Foster & Wharf, 2007). Changes to this Act in 1967 established that children could be made either temporary or permanent wards of the Province. Further amendments allowed for the adoption of permanent wards. In 1981, the *Protection of Children Act* was replaced by the *Family and Child Service Act* (S.B.C. 1980, c. 11 ("FCSA"). In 1996, this Act was replaced with the *Child, Family and Community Service Act* (S.B.C. 1998, c. 46 "CFCSA"),[6] which remains the provincial child welfare legislation operating in British Columbia today, with a number of amendments since 1996. One of the results of the province's assertion of jurisdiction over Aboriginal children is that, during the 1950s and up until

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[4] Section 88 (then section 87) was added to the *Indian Act* in 1951. Section 88 provides that, subject to any treaty or other Act of Parliament, provincial laws of general application are applicable to Indians in the province, except if those laws are inconsistent with the Indian Act, or Federal laws. Federal Parliament has not passed child welfare legislation to apply to First Nation children in British Columbia, so British Columbia takes the position that provincial child welfare law applies to First Nation children in the province. See *Dick v. R.*, [1985] 2 S.C.R. 309 for the Supreme Court of Canada's decision on the application of provincial laws pursuant to section 88 of the Indian Act.

[5] For an overview of these changes, see "Appendix 1: Key Events in British Columbia Child Welfare, 1863 to May 2006" in Foster & Wharf, 2007, p. 251.

[6] The CFCSA was proclaimed in 1994 but came into force in 1996.

early 1970s, large numbers of Aboriginal children entered the child welfare system in British Columbia for the first time, culminating in what is now infamously called the "Sixties Scoop" (Johnston, 1983).

Beginning in the 1960s, the child welfare response to problems in First Nation's communities, such as alcoholism and child neglect, was to remove First Nations' children from their homes and put them into foster homes, or to have them adopted into primarily non-Indigenous families. Evidence of the devastating consequences of these policies and practices are readily apparent today. In 1955, only 29 Indian children were in the care of the BC Superintendent of Child Welfare. By 1960, this number had risen to 849, and in 1964 to 1,446. In a period of 10 years, Aboriginal children went from making up less than 1% of the total number of children in care in British Columbia to comprising about 32% (Foster, 2007). This upward trend continues today. Aboriginal children are dramatically overrepresented in British Columbia's child welfare system: 9% of children in the province are Aboriginal, but aboriginal children make up 56% of children in Ministry care (British Columbia Ministry of Children and Family Development, 2013). In the northeast of British Columbia, where the Dane-zaa live, the numbers of children in government care are even more disproportionate: 22% of children in the northeast are Aboriginal, yet in 2012, they made up fully 70% of children in the regional foster care system—a dramatically higher number than other parts of the province (Nenan, 2013a, p. 7).

In recent years, the policy of "removal without support" and the "enforcement focus" of the child protection system have included more collaborative approaches in response to stringent critiques of enforcement-focused practices and consequences (Fluke, Chabot, Fallon, MacLaurin, & Blackstock, 2010). Still, the current child protection system is premised on an ethnocentric paradigm that largely invalidates Indigenous perspectives in defining problems and prescribing

responses to them (Blackstock & Trocme, 2005; Bauman, Dalgleish, Fluke, & Kern, 2011). This paradigm overrides collective sensibilities with individualistic values, and privileges bureaucratized protection models over informal approaches that build on family and community child-rearing practices (Bissell, Boyden, Cook, & Myers, 2007). For Indigenous peoples, a paradigm that focuses solely on "risk", "rescue", and "service" belittles or co-opts the efforts of Indigenous families and communities to provide their own protection and care, while at the same time stigmatizing and socially excluding them (Callahan & Walmsley, 2007). Benevolent in its intent, and perhaps appropriate in some instances, when adopted uncritically the Western model of child protection and decision-making in the northeast of BC undermines the social units of small kin-based bands. And, it displaces the rich resources the Dane-zaa people have previously used to care forand protect their children.

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Decolonizing Child Welfare

> "*Change is coming now for the survival of our culture.*"

Gerry Hunter, Halfway River First Nation Elder (Ridington, 2013a)

Despite the imposition of federal and provincial laws and policies, as well as a lack of recognition and respect from governments, the legal system, and the general public, Indigenous laws, practices, and traditions continue to exist and operate. They govern the lives of Indigenous peoples and their relationships to the land, to one another and to non-aboriginal people (Napoleon, 2013). These laws, practices, and traditions are recognized by section 35 of the *Constitution Act 1982*,[7] which affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada (Borrows, 2010). As well, there are a variety of cases, starting in the 1800s and continuing today in which the courts have recognized various Indigenous laws and practices

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[7] See section 35 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

relating to family matters, including the validity of a customary marriage and laws relating to customary adoption.[8]

One of the goals of the TDM is to prevent Dane-zaa children and families from having to encounter the provincial child protection system and the Courts. However, given the current reality—that the Province continues to assert jurisdiction over the welfare and protection of Dane-zaa children, and that the Child and Family Services Act (CFCSA) is the law that applies to Dane-zaa children who may be in need of protection—there is the possibility that Dane-zaa children and families will encounter the provincial child protection system and have the practices and policies derived from the CFCSA applied to them. Thus, there is a need to consider how frontline social workers and those who administer the CFCSA might recognize and affirm Dane-zaa laws and practices with respect to the care and protection of children and families, even if the CFCSA is relied upon in child protection proceedings.[9]

As described in the previous section, although the CFCSA is not a true recognition of Indigenous laws, the CFCSA does have provisions that can be used to make space for the operation of Dane-zaa decision-making and other laws and practices. Section 22 of the CFCSA states that the parties can agree to mediation, or *other alternative dispute resolution mechanisms*, if a Director or any other person is unable to resolve any issue relating to a child or a plan of care. In this regard, the TDM can be understood as an "alternative dispute resolution

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[8] See *Connolly v. Woolrich*, (1867), 17 R.J.R.Q. 75, 1 C.N.L.C. 70 for customary marriage. See *Casimel v. Insurance Corporation of British Columbia*, 58 BCLR (2d) 316 and *B.C. Birth Registration No. 1994-09-040399 (RE)*, [1998] B.C.J. No. 1421 for cases recognizing customary adoption.

[9] One way of approaching this task is to consider the shared values of Dane-zaa traditional laws and practices and those set out in the CFCSA. For example, the guiding principles set out in section 2 of the CFCSA reflect many of the same values contained in Dane-zaa law as we have discussed, and part of the TDM model that will be described below. These shared values include: the need to ensure the safety and well-being of children; supporting families to provide a safe and nurturing environment for a child; considering the child's views and perspective in making decisions; preserving the child's connection to extended family; and preserving cultural identity.

mechanism" grounded in Dane-zaa laws and practices. Section 23 of the CFCSA allows court proceedings to be adjourned one or more times, for a total period of up to three months, in order for a family conference, mediation or "*alternative dispute resolution* to occur".[10]

What is instructive about the case law as well as the CFCSA is that Dane-zaa laws and practices, as provided for in TDM, can be formally recognized and applied when child protection matters arise, even when Ministry of Child and Family Development (MCFD) and the Courts are involved. But we see that these statutory frameworks are limited in their ability to guarantee that traditional practices are implemented. Reasons for this are many: Western practices of decision-making in child protection may dominate and co-op traditional practices (Ney, Stoltz, & Maloney, 2011); front-line workers who have discretion to implement TDMs may not have time, knowledge, or capacity to implement; and, TDMs may be conflated with other ADR processes (like FGCs and mediation) that are not deeply rooted in Indigenous culture (Ney, Bortoletto & Maloney, 2013).

In summary, we have shown how legislation, court decisions, and research have recognized the right and value of First Nations people to use traditional decision processes to care for their children. This overview also shows that these processes can be used within the jurisdiction of the existing provincial child welfare legislations, though we have also noted the limitations of these legislations. In the next section we show how the Dane-zaa have revived their TDM to ensure that it resonates deeply with their culture.

Community Ownership of Child Welfare

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[10] Section 23(3) also states that when a child is in need of protection, if an agreement is reached by the parties through one of these methods of dispute resolution after a court proceeding has started, the Director may file the agreement with the court.

"Good communication is number one, and respect for other people, and love one another. If you have a problem with one person - don't blame everything on that one person, you have to solve it."

Maisie Metecheah, Halfway River First Nation, Elder (Ridington, 2013c)

Developing a Community-Based Organization

To bolster family and social infrastructures that have been so negatively impacted by colonialist agendas, and to address the disproportionate number of Aboriginal children in Ministry care, the Dane-zaa sought to bring their strong traditions and active cultural practices into a formal child welfare service system. A key feature of this child welfare system is a TDM model that is deeply rooted in their culture. In this section we describe *how* the Dane-zaa people have sought to revive their TDM processes.

Several Dane-zaa communities are members of an organization called Nenan Dane-zaa Deh Zona Children and Family Services Society (aka Nenan [11]). In 2007, Nenan was mandated by the Aboriginal and Metis peoples and organizations of northeast British Columbia to represent their interests in child welfare. One of Nenan's specific purposes was to develop and then assume jurisdiction for a culturally-based and community-managed child welfare service delivery system that would replace the services presently administered by the provincial MCFD (Nenan, 2013b).

The development of this community-driven child and family services system began in 2009, when Nenan partnered with the International Institute for Child Rights and Development

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[11] Nenan's name represents the historic unification for the best interests of children and is inclusive of the Dane zaa (Beaver), Slavery, Cree and English dialects, translating to, "All of us people working together for our children and families."

(IICRD) to implement a participatory action research methodology called the Circle of Rights (COR). Over the course of three years, Nenan staff listened to children, youth, parents, elders, and service providers across the northeast to learn about and document the issues, gaps, needs, interests, strengths, and assets that support communities to protect and nurture their children and families (Nenan, 2013b, p. 6). Community information was gathered and mapped using participatory tools such as children's walking tours, youth photo framing, focus groups with adults, and tea with elders. These simple but innovative activities were effective in building trusting relationships, as well as assisting in understanding people's day-to-day lives. Engagement of elders and traditionally-trained individuals provided rich information about the cultural practices that have supported families for generations. Once this comprehensive data was gathered, community members participated in data analysis and helped Nenan to prioritize community needs. In addition, they helped to develop and implement community action plans to address these needs. Importantly, the values and principles that underpin the stories, traditions and teachings of the peoples, were incorporated into the operations of Nenan.

Over a period of three years, Nenan was able to engage close to 2,000 community members in over 500 community engagement activities. An international review of literature around protecting children at the community level concluded that ". . . communities that felt *collectively responsible* for addressing locally defined child protection issues and *experienced a sense of ownership* over the group's process and activities were more effective than groups that had less or no sense of ownership" (Wessells, 2009, p. 9, emphasis added). Importantly, "collective responsibility" and "sense of ownership" were observed here, as community members began to trust the staff and share their concerns about the ongoing removal of children by MCFD and the "enforcement-focused" approach to working with families (Fluke et al., 2010).

In time, community members asked Nenan for specific assistance to develop better and more culturally-tuned ways to support their children and negotiate their difficulties with the MCFD.

From the outset, community-based groups of accountability, such as Community Committees and Youth and Elders Councils were instituted to ensure that community members continued to guide the organization (Nenan, 2013b).The importance of taking the time to constitute this community infrastructure is essential, as Wessells (2009) tells us that "[c]ommunity-based child protection mechanisms are at the forefront of efforts to address child protection in emergency, transitional, and development contexts worldwide . . .These groups are a vital means of mobilizing communities around children's protection and wellbeing" (p. 1). The importance of this preliminary work cannot be understated: in our experience (and consistent with international community development in child protection as per McKay, Veale, Worthenet , & Wessells, 2009), *building community capacity that is rooted in cultural traditions is key to the success and sustainability of subsequent program development*.

Thus, from this organic process a new child welfare service delivery system rooted in the traditions and culture of the First Nations, Aboriginal and Metis peoples of the northeast began to emerge. Within this context the TDM was developed, as we will describe in the next section.

Developing a Dane-zaa Traditional Decision-Making Model

Consistent with the consequences of the Indian Act described above, community members explained how their traditional practices had been replaced with Western governance and legal systems, as well as court structures that undermine and dismantle their families, communities, and culture. They also shared stories of how their families had not been well served by what are called "alternative dispute resolution" methods like Family Group

Conferences (FGCs) and mediations used in child protection decision-making processes. They reported that these processes were dominated by government practices and authority, and lacked the safeguards of the courts. Ultimately, community members were troubled by the decision-making practices within the child welfare system that stripped families of the right to care for their own, to make important decisions about how children will be raised, and ensure children remain with their kin and communities.

Accordingly, Nenan assisted the development of the TDM focused on creating a contemporary decision-making process that mirrors the specific cultural traditions of the Dane-zaa.[12] In keeping with the COR methodology, Nenan engaged youth, elders, adult family members, and service providers in numerous sets of focus groups and one-on-one consultations (Nenan, 2013b). This enabled Nenan staff to understand the values and worldviews related to TDM, as well as how the Dane-zaa experienced the current decision-making processes (e.g., FGCs and mediation as described above) implemented by MCFD. The extensive work undertaken in advance of the development of the TDM, combined with the deep engagement to understand and map TDM was crucial to informing the TDM model. Further details of the development of this project may be found in *The Circle: Traditional Decision Making* (Nenan, 2013a).

In sum, from these consultations Nenan gained a wealth of information that helped to inform how the TDM process would be undertaken. Some of the most important lessons included:

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[12] With community support, Nenan determined to develop one TDM per cultural group in the northeast, beginning with the Dane-zaa.

1)   Families did not always experience current decision making processes (FGCs, mediations, court processes) as inclusive, empowering, or participatory, nor did these processes respect or reflect their cultural values;

2)   Elders must be recognized as experts within the process, and space made for them to share traditional stories, songs and teachings that support the family;

3)   Cultural practices, traditional values, and language are the foundation of the process, and provide the platform through which the elders guide the process through story and song;

4)   Kin must be present during the TDM, to be part of planning the stages of transition and support developed by the family;

5)   Efforts need to be made to ensure that young people have a voice and the opportunity to meaningfully participate;

6)   In facilitating TDM processes, Nenan staff must respect and continually utilize a cultural approach to decision-making, with a strong focus on building trust and strong relationships;

7)   Families, with the support of staff, need to co-create flexible and adaptable plans that support families as their circumstances require and as they evolve; and,

8)   Staff need to be available before, during, and after the TDM to support families through the healing process and continually build strong relationships.

The Dane-zaa TDM Model

The Purpose

The objective of the TDM model is to provide a culturally-based child and family centered decision-making process that ensures the safety and well-being of Dane-zaa children and families. The TDM provides a process through which Dane-zaa families can continue to use their cultural practices within the context of the child welfare system. This is not only fundamental to assisting families to achieve better outcomes and stay out of MCFD and court processes, but also contributes to strengthening family and social infrastructures that have been so negatively impacted by colonialist agendas (Cornell, 2009). Some key principles of the TDM that were identified through the community consultations include:

- Connection to the land, language and cultural practices;

- Strong role of elders and knowledge keepers- maintaining connection with the traditional ways families supported one another;

- Trust, support, and understanding from known community members rather than impersonal professionals;

- Accountability to one another and to future generations;

- A web of support around families (both community support and outside support, i.e., financial, social, training);

- Meaningful involvement for children and youth, ensuring their voices are heard;

- Children are kept within kinship groups whenever possible;

- Prevention and early intervention, to assist families before they reach a crisis; and

- The little things count (sharing a cup of tea, giving a drive, helping with the laundry).

The TDM is also grounded in powerful metaphors that exist in Dane-zaa culture and guide people through their daily lives. For example, the Circle represents life, connection with

the Ancestors, the seasons, seasonal rounds, the movement of the sun, the migration of animals, and the dance circle, and is a key metaphor used to guide the TDM process. The Circle becomes the space where families gather together over two or three days, surrounded by supportive individuals who help to make important decisions and develop a path forward for their children.

Another key metaphor is the Trail, which is the path families develop to ensure the best outcomes for the child and family. The Trail suggests a journey, not a rigid "plan." The Trail may guide those at the Circle, sometimes with practical but flexible steps, calling on the image of the hunter whose flexibility is crucial to his success in the hunt. The Trail also refers back to the Dreamers or prophets, the "people who knew *Yagatunne,* the Trail to Heaven" (Ridington, 1988a, p. 18). The Dreamers "had gone to heaven and seen things and brought that information back to the people" (Ridington, 1988a, p. 18). In doing so, they provided a channel for communication between the knowledge of the ancestors and the decision-making of the living. As mentioned earlier, in Dane-zaa society, leaders were those whose knowledge and skills enabled people to make their own decisions, based on the advice of "those who know" (Ridington, 1987, p. 18); Dreamers were natural leaders in traditional culture, and the Trail metaphor honors the Dreamers' role in TDM.

And, finally, elders spoke often of Suunéch'ii Kéchi'iige, "The Place Where Happiness Dwells," which refers to their traditional gathering place and former reserve (IR172, near Montney, BC). The name speaks to the importance of land. Prior to 1945, it was the place where Dane-zaa families came together each summer to greet relatives, sing and dance together, arrange marriages, and introduce new babies. Each person played an important role in supporting the group, and worked together to make the best decisions as issues arose. This is also how TDM

might take place, with families, extended family, and elders sharing and listening to stories, and working together to respond to the unique needs of each family.

Premised on these values and worldviews, Nenan mapped out the following protocol for implementing the TDM.

Recruitment and Preplanning

Families can self-select or be referred to participate in the TDM Circle. These families may be in need of prevention and early intervention, or may need help due to family crisis. Preparation and planning for the TDM, individualized to fit the unique circumstances of each family, is undertaken by Nenan staff, including the Guide (coordinator or facilitator) and the Nenan Staff Elders, "who are steeped in tradition and are able to be the cultural guides throughout the process" (Nenan, 2013b p. 26.) The logistical requirements are fulfilled by the Nenan Guide, including setting the time and place, securing drummers, traditional foods and cultural supplies, arranging transportation for family members and support people, organizing translation, and childcare as well as preparing young children or those with special needs to participate.

The Process

On the first day of the TDM, participants gather together to share an evening meal (ideally of traditional food such as moose meat). After dinner, elders and the Dane zaa drummers share songs and stories to set the stage for the day(s) ahead. A traditional tea dance may also be held. The first day is designed to be an opportunity for young people and adults to experience their culture, to learn about the traditional practices associated with caring for one another and for resolving conflicts. It is informal yet reflects the traditional values about the importance of

kinship and practices of support, sharing, listening, and of visiting. It is a time for the family, children, and elders to interact together (e.g., preparing the traditional meal, practicing working together in a supportive but not controlling environment, and hearing stories and receiving guidance from elders). Consistent with the notions of leadership mentioned earlier, everybody, including the children, has an important role to play in the process. These roles are determined by their interests and capacities, and are guided by the elders.

While the first day of the TDM focuses on laying the foundation for collaborative thinking and draws upon the strength of culture and tradition, the second (and sometimes third) day of the TDM is dedicated to holding the Circle and developing the Trail—the family's positive path forward. In the morning, participants prepare and share breakfast before the Circle begins. The process opens with ceremony such as prayer, drumming and song. The Guide, with support from the elders, sets the tone and outlines the purpose of the Circle. The Circle is designed to be an inclusive, safe, and supportive space in which each person, including young children, has the opportunity to have their voice heard. To ensure this supportive and safe space, the family first decides on a family agreement, or rules of conduct they would like to hold one another accountable to throughout the Circle. This agreement is a cornerstone for discussions that unfold.

Throughout the Circle, elders may intervene at any time to share a story or offer guidance, to help guide the family. As people talk, their individual voices are respected, and nobody interrupts. Talk is supportive and accountability is expected. The autonomy of each individual is respected. Family members, elders, and support staff discuss issues and design solutions within the Circle. The primary goal of the Circle is to determine the Trail or path

forward to address both immediate and long-term issues: within the context of the Dane-zaa worldview, communication, collaboration, and healing become the focus of the work.

The Guide, acting as facilitator rather than leader (in line with traditional practices), raises specific topics that the family has mentioned they want to address during the Circle, encouraging the family to move towards the development of the Trail. Further, community members with experiential knowledge about specific subjects are consulted for advice. Neither the Guide nor elders boss the family; seldom is direct advice or direction provided outright, but rather stories that weave the values and principles of the peoples are shared to help guide the family. It is ultimately up to the individual to interpret and apply the teachings.

A key component of the Circle is holistic support; that is, support of all kinds from elders, community, and Nenan staff, both before, during, and after the Circle. Unlike mainstream family planning strategies, the TDM recognizes that family wellness is not an event; it is an ongoing process. When the Trail has been established, the Circle is closed with prayer. Once again, a meal is shared, followed by stories, song, and drumming to solidify the importance of the gathering and give thanks for what has transpired.

Follow-up

Nenan staff work with the family after the Circle to ensure the proper supports are in place for the family to achieve success with the objectives set out during the Circle. This may include formal services and supports, increased access to cultural activities, and/or little things such as phone calls to check in or a drive to the doctor, all aimed at continuing the supportive relationship and moving with the family along their Trail.

Conclusion

Dane-zaa traditions, like other Indigenous laws, have existed since time immemorial. Extensive research with Dane-zaa elders reveals that Dane-zaa legal traditions relating to the care and protection of children and families, as well as to decision-making, continue to exist and be practiced (Ridington & Ridington, 2013). Further, these legal traditions are a necessary though not sufficient condition to the economic and social sustainability of Indigenous cultures (Cornell & Kalt, 1995; Ladner, 2009; Napoleon, 2013).[13] Other conditions include operationalizing sovereignty through good governance, strategic thinking, leadership that envisions and can communicate a different future, and institutions that resonate with indigenous political culture (Cornell, 2002). To be clear, child protection institutions may not need to literally return to the "tradition" but these institutions must resonate with what people view as appropriate for them—they need to believe in their institutions of governance. Thus, grassroots processes, as used in this project, that engage community members to revive local knowledge and rebuild child protection capacity and protocols are critical (McKay, Veale, Worthen, & Wessells, 2011). In this project, we show *how* the Dane-zaa have revived their laws and practices in a contemporary context to ensure the sustainability of their people and culture.

A fundamental aspiration of the Dane-zaa is that they continue to assert control over the well-being of their families to preserve their dignity and sustain their culture: when dignity is affronted, it must be restored. Expressions of dignity can sometimes be seen as ". . . the insatiable desire for self-governance, in a context of freedom and equality" (Richardson & Wade,

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[13] The view of this paper is that ensuring the Dane-zaa have access to their traditional decision making is not about "localizing responsibilities" (Mobray, 2006), nor do we mean to be so simplistic to say or imply that there is a *direct* link to ending Indigenous poverty; our assertion is that recognizing indigenous laws is a necessary but not sufficient condition for sustainable development.

2010, p. 138). In this sense, the decolonization movement, which we describe as the process of "revealing and dismantling colonialist power in all its forms," (Ashcroft, Griffiths, & Tiffin, 2000, p. 63) can be understood as an expression of resistance and the reclamation of dignity. More specifically, the movement toward the decolonization of child welfare and the reinstatement of TDM practices is an assertion of dignity; it is a restorative healing process that will support Indigenous cultures to flourish.

Some courts have recognized the strength and benefit of relying on Indigenous laws to resolve family matters, including matters involving the care and protection of children.[14] Of course, making space for and relying on Dane-zaa laws and practices to assist in the care and protection of Dane-zaa children will only take place when all parties recognize that Dane-zaa practices are equal or preferable to the Western common law and the CFCSA when resolving child protection matters involving Dane-zaa children and families. This paper shows how the Dane-zaa have revived their TDM and positions government, Nenan, and other Dane-zaa advocates to now bolster the use of the TDMs to protect and care for Dane-zaa children and families.

The importance of these efforts cannot be overemphasized, as Napoleon (2007) attests "[r]ethinking Indigenous legal orders and law is fundamentally about rebuilding citizenship" (p. 19). We know that colonial history cannot be undone, but it is time to terminate the historically detrimental colonial relationship that has targeted Dane-zaa children as subjects of colonial discourse and policies, and implement culturally appropriate family services to Aboriginal communities. Friedland (2009) observes that ". . . some Indigenous laws are sleeping . . . " and

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[14] See *Thomas v. Jones*, July 13, 1988, Unreported decision of the Provincial Court of British Columbia File No. F-2808 (Parksville) for the recognition and use of Indigenous law in a child custody dispute and see *(RE) DJ*, [2003] 4 C.N.L.R. 1 for the recognition and use of a Cree/Metis Council of Elders (Opikinawasowin) in a child protection case.

urges that "[i]t's time to awaken them" (p. 16). TDM is a crucial resource for the Dane-zaa people to revitalize themselves individually and collectively. The TDM thus represents not only Dane-zaa's efforts to apply their laws and practices with respect to the care and protection of their children, but also the reclamation of jurisdiction over Dane-zaa children and families.

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