

'It's the same story': How Australia and Canada are twinning on bad outcomes for Indigenous people

The statistics are almost identical because 'English settler colonialism works the same way' in different places, says Canadian expert on trip to Sydney



Two men walk past a mural depicting the Aboriginal flag in Sydney. 'If it's something people want, Aboriginal people have less of it, and if it's something people don't want Aboriginal people have more,' said Jonathan Rudin. Photograph: Torsten Blackwood/AFP/Getty Images

Calla Wahlquist

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Aboriginal disadvantage in Canada mirrors that of Indigenous people in Australia because both are survivors of colonialism, a leading Canadian advocate has said.

Aboriginal peoples in Canada were grappling with record numbers of their children being placed in the child welfare system and a huge over-representation in the criminal justice system – the same issues that faced Australia, said Jonathan Rudin, head of Aboriginal Legal Services of Canada.

"It's the same story," he said at a Legal Aid Victoria event in Melbourne on Tuesday. "And the reason it's the same story is English settler colonialism works the same way, which is that you find a place with an indigenous population and then you destroy them as a people."

The statistics were almost identical. Aboriginal peoples make up 4% of the Canadian population and 25% of its prison population. In Australia, the 3% of the population who identify as Aboriginal or Torres Strait Islanders make up 27% of those in prison.

Aboriginal women make up a third of the female prison population in both countries. The only significant difference in incarceration rate is among juvenile detainees, where Australia is markedly worse: 59% of all children in detention in Australia are Indigenous, compared with 40% of children in Canadian youth jails.

In the child welfare system, which Rudin said was the most significant concern for most Aboriginal peoples, almost 50% of children were Aboriginal. The Australian rate is 51%.

"If it's something people want, Aboriginal people have less of it, and if it's something people don't want Aboriginal people have more," he said.

In both countries, Rudin said, the trauma of colonisation was compounded by a government policy of taking children away. Australia's stolen generation saw an estimated 10,500 children forcibly removed and placed on missions to be trained as domestic servants between the late 1800s and the 1970s. In roughly the same period (though the last school did not close until 1996) roughly 150,000 Canadian Aboriginal children were placed in residential schools.

"There are actually more Aboriginal children in the care of the state today numerically than there were at any one time in the residential schools," he said.

"Now we don't have residential schools. What we have is child welfare, and when you graduate from child welfare we have jails."

The difference, he said, has been in the legal response. In 1999, the Canadian supreme court ruled in a case known as *R v Gladue* that the courts had “failed” Aboriginal peoples and required “the circumstances of Aboriginal offenders” be paid particular attention in sentencing. Rudin said that decision was used to found Aboriginal-run Gladue courts and a system of Gladue reports, a pre-sentencing report that details family and personal history. The process could be painful (“We have had two clients who while we were writing the report killed themselves,” he said) but it allowed the judge to properly take account of their circumstances.

“The crisis is not that Aboriginal people commit crime,” he said. “The crisis is that the response to Aboriginal people who commit crime is jail. And that is not the fault of Aboriginal people.

“Our Gladue reports have made a huge difference to how people are sentenced ... and it all changes because the person becomes a person.”

Effective solutions, he said, were those that were led by Aboriginal communities. “It’s the non-Aboriginal community recognising that the Aboriginal community has the capacity, and the skills, and the knowledge, to do that work, and that builds the capacity of the Aboriginal community,” he said.

In a subsequent interview with Guardian Australia, Rudin said that formal federal targets to reduce Aboriginal imprisonment could work if they were applied like any other justice targets, such as targets around diverting people to drug courts.

The Canadian prime minister, Justin Trudeau, has asked the justice minister, Jody Wilson-Raybould, to try to reduce the rate of Aboriginal incarceration. In Australia, Malcolm Turnbull pointed to the high incarceration rate in his February update on closing the gap between Indigenous and non-Indigenous Australians, but the Indigenous affairs minister, Nigel Scullion, has said the government won’t set national justice targets.

“The attorney general and the justice department should report on these things and they should be told that we’re going to evaluate you based on how this goes,” Rudin said. “And I know that some crown attorneys, prosecutors [will say] that’s not good because really we have to just pursue justice wherever justice goes, but governments, set all sorts of targets for courts and that would be a perfectly legitimate target.”

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