FINAL REPORT ON

GOVERNMENT ENGAGEMENT MECHANISMS

ON AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

NATIVE WOMEN'S ASSOCIATION OF CANADA

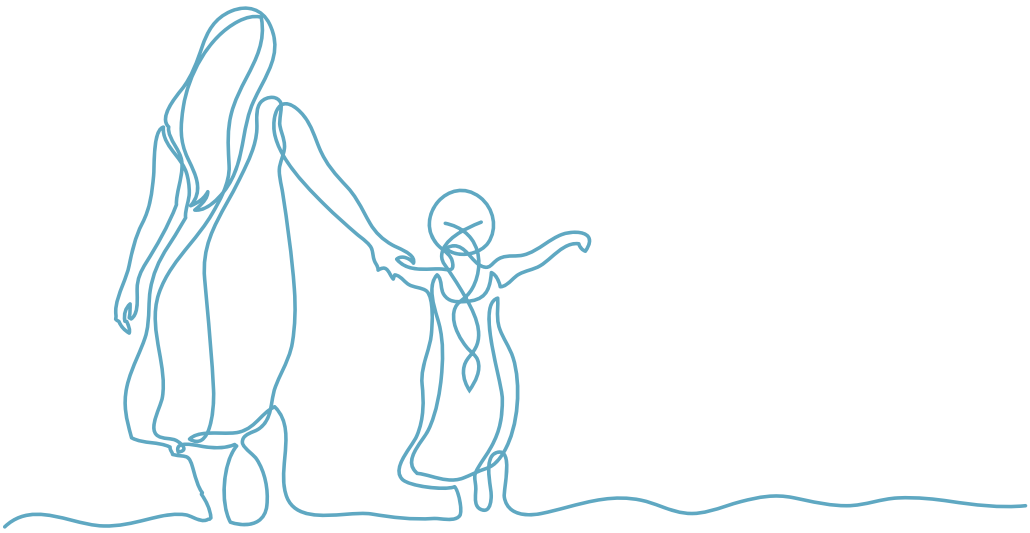
NATIVE WOMEN'S ASSOCIATION OF CANADA

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS



GLOSSARY

2SLGBTQ+ – Two-Spirit, Lesbian, Gay, Trans, Queer+ people

The Act – An Act respecting First Nations, Inuit and Métis children, youth and families

Bill C-92 – name of the bill that introduced the Act

BIOC – best interests of the child

CAS – Children's Aid Society

CFS – Child and family services

CHRT – Canadian Human Rights Tribunal

CRC – United Nations Convention on the Rights of the Child

East – Includes Nova Scotia, Newfoundland, New Brunswick, and Prince Edward Island

GEMs – Government engagement mechanisms

IGB – Indigenous governing body

IPV – Intimate partner violence

ISC – Indigenous Services Canada

MMIWG – Missing and Murdered Indigenous Women and Girls

North – Yukon, Northwest Territories, and Nunavut

NWAC – Native Women's Association of Canada

South – Ontario and Quebec

TRC – Truth and Reconciliation Commission

Trilateral agreement – an agreement between local (indigenous governing body), provincial, and federal governments

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

UNDRIPA – Canadian legislation making UNDRIP Canadian law

West – British Colombia, Alberta, Saskatchewan, and Manitoba

WG2STGD+ – Indigenous women, girls, Two-Spirit, transgender, and gender-diverse people

ABOUT THE NATIVE WOMEN'S ASSOCIATION OF CANADA (NWAC)

The Native Women's Association of Canada (NWAC) is a national Indigenous organization established in 1974 representing the political voices of Indigenous women, girls, Two-Spirit, transgender, and gender-diverse+ ("WG2STGD+") people in Canada. NWAC is inclusive of First Nations—on- and off-reserve, status, non-status, and disenfranchised—Inuit, and Métis peoples. An aggregate of Indigenous women's organizations from across the country, NWAC was founded on a collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Indigenous WG2STGD+ people in their respective communities and Canadian societies.

Today, NWAC engages in national and international advocacy aimed at legislative and policy reforms to promote equality for Indigenous WG2STGD+ people. Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance Indigenous WG2STGD+ people's well-being, and their families and communities.

BACKGROUND

BACKGROUND OF THE ACT

Canadian Census data from 2021 indicates that Indigenous children in care make up 53.8% of the children in foster care, despite representing 7.7% of the population.[1] In some regions, Indigenous children make up 90% of children in care.[2] This means over 14,000 Indigenous children are growing up away from their families of origin, language, and culture.[3] This harms children and their broader community. The Minister of Indigenous Services has referred to the state of child and family services (CFS) for Indigenous children as "a humanitarian crisis."[4]

While CFS aims to protect children from abuse, Canada's legacy of colonial harm, including Indian residential and day schools and the Sixties Scoop, lives on for Indigenous children and families. The lack of a comprehensive federal CFS framework creates jurisdictional

1 Statistics Canada, 'The Daily — Indigenous Population Continues to Grow and Is Much Younger than the Non-Indigenous Population, Although the Pace of Growth Has Slowed'.
2 Indigenous Services Canada, 'Minister Philpott Speaks at the Assembly of First Nations Special Chiefs Assembly'.
3 Sarah Frier and Marlisa Tiedemann, 'Legislative Summary of Bill C-92: *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*'.
4 Indigenous Services Canada, 'Minister Philpott Speaks'.

issues, as provinces and territories individually determine CFS's scope as applied to Indigenous children and the degree of autonomy exercised by Indigenous CFS agencies. *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act)[5] aims to reform the existing model by restoring jurisdiction over child welfare to Indigenous governing bodies (IGBs) that choose to exercise this inherent right.

THE CARING SOCIETY'S HUMAN RIGHTS COMPLAINT

In 2007, the Assembly of First Nations and the First Nations Child & Family Caring Society filed a complaint to the Canadian Human Rights Tribunal (CHRT) alleging the Canadian federal government underfunded CFS for Indigenous children.[6]

In 2016, the CHRT ruled in favour of the complainants, finding the government's underfunding patterns systemically racist and discriminatory against Indigenous children,[7] and financially incentivized the removal of Indigenous children from their families and communities a "first resort rather than a last resort."[8] The CHRT ordered that Canada immediately cease all discriminatory funding practices and take measures to redress and prevent it.[9]

In a related decision in 2019,[10] the CHRT ordered Canada to compensate discriminatory funding victims for their pain and suffering to the maximum amount allowed by statute—$40,000. Canada failed to comply with this and over 20 additional procedural and non-compliance orders before negotiating a $40-billion settlement agreement in 2022.[11] At the time of writing, this settlement has not been finalized. The CHRT rejected the government's offer because it left some children out and did not guarantee the $40,000 compensation per child and caregiver ordered by the court.[12]

5 *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families* S.C. 2019, c. 24

6 *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)* 2016 CHRT 2 [Caring Society].

7 *Caring Society* at 456.

8 *Caring Society* at 344.

9 *Caring Society* at 474.

10 *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* 2019 CHRT 39.

11 'CHRT Orders', The Caring Society.

12 Olivia Stefanovich, 'Canadian Human Rights Tribunal Says Ottawa's $20B First Nations Child Welfare Compensation Still Falls Short', CBC News.

LEGISLATIVE HISTORY IN BRIEF

The Act was introduced as Bill C-92 in the House of Commons on February 29, 2019. After undergoing Senate review, the House approved a portion of the Senate's recommended amendments. In brief, the proposed amendments that were **not** approved included:

- expanding the definition of "child and family services" to include "adoption services, reunification services, and post-majority transition services"
- adding a requirement that health care facilities, health care providers, or social workers **demonstrate** the preventive care services provided to support a child's family before taking steps to apprehend a child
- adding a requirement that if a child is at risk of being apprehended due to socio-economic conditions, **positive measures be taken** to remediate neglect related to those conditions
- adding a requirement that as part of the mandatory five-year review of the Act, that the Minister of Indigenous Services **examine "the adequacy and methods of funding and assess whether the funding has been sufficient** to support the needs of Indigenous children and their families"[13] (emphasis added)

The Bill received Royal Assent on June 21, 2019,14 and came into force on January 1, 2020.

As of the time of writing, 37 IGBs have sent notices of intention to exercise legislative authority and 27 IGBs have issued requests to enter into a coordination agreement.[15] However, the implementation process has generally been delayed, in part due to the COVID-19 pandemic. At least one First Nation has reported being prevented from taking control of CFS for its children due to difficulty in reaching a coordinated agreement with the provincial government.[16] They have since coordinated an agreement with the federal government that did not include the province.[17]

13 Frier and Tiedemann, 'Legislative Summary of Bill C-92'.

14 Frier and Tiedemann.

15 Indigenous Services Canada, 'Notices and Requests Related to An Act Respecting First Nations, Inuit and Métis Children, Youth and Families'."plainCitation":"Indigenous Services Canada, 'Notices and Requests Related to An Act Respecting First Nations, Inuit and Métis Children, Youth and Families', notice, 21 December 2020, https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367."."noteIndex":15},"citationItems":[{"id":30,"uris":["http://zotero.org/users/5695931/items/MGFAX2UY"],"itemData":{"id":30,"type":"webpage","abstract":"The tables below display the notices and requests received by Indigenous Services Canada (ISC

16 Brittany Hobson, 'First Nation Says Alberta Government Is Preventing It from Taking Control of Child Welfare', *The Canadian Press - Global News*.

17 Danielle Paradis, 'Louis Bull First Nation Taking over Child Welfare System', *APTN News*, 2 February 2023, https://www.aptnnews.ca/national-news/louis-bull-nation-signs-agreement-with-federal-government-to-begin-delivering-child-services/

PROJECT INFORMATION

Indigenous Services Canada (ISC) funded NWAC to conduct a series of government engagement mechanisms (GEMs) to gather input from stakeholders on *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act)[18] and its implementation. ISC recommended 17 topics to be discussed, which are among the topics included in this report.

NWAC organized and hosted six expert round tables and a series of one-on-one interviews to discuss the Act, with a focus on gender-based issues. Participants in the sessions included First Nations, Métis, Inuit, status, non-status, on-reserve, and off-reserve Indigenous populations from Canada's North, South, East, and West geographic regions, as well as legal experts, professional social workers, academics, community leaders, Elders, young people, gender-diverse people, and people with lived experience in care.

This report reflects the feedback and recommendations gathered from participants in the GEM sessions and individual expert interviews held in autumn 2022. We anonymized all statements quoted to protect participants' identities and to ensure that they felt safe to speak freely during the interviews and roundtables.

INTRODUCTION

The humanitarian crisis in Indigenous CFS is Canada's responsibility to solve. After all, "children don't put themselves in care," and centuries of colonial harms sit at the root of the crisis. The Canadian public has a role to play in creating the political will to push for urgent action. As one participant said, "I would like us all to be as committed to everyone else's children as we are to our own. I think there are things tolerated for other kids that I would never tolerate for mine. I think the public has to have that collective accountability and responsibility."

While the Act is a step in the right direction and "well-intentioned," participants raised serious concerns and identified the need for "practical and expedient solutions" because "kids are being taken away from their parents while the legislation is being tinkered with." IGBs in the process of developing their CFS infrastructure need support as soon as possible, but the implementation process moves slowly.

18 An Act respecting First Nations, Inuit and Métis children, youth and families S.C. 2019, c. 24.

Experts who practise in CFS said the Act was "written by people who do not work in CFS and do not understand the context." This leads to concerns over "death by bureaucracy," as the Act could "add innumerable layers of bureaucracy, which can perpetuate colonization." If the coordination process is too cumbersome, IGBs and new Indigenous CFS agencies will be unable to function under the circumstances. Without adequate support and resources, IGBs could be "set up for failure."

One of the gender-based concerns raised by participants was the issue of labour of "social reproduction" and child-rearing disproportionately falling on women in Indigenous communities.[19] They will, for the most part, be the ones trying to navigate this legislation. Indigenous women will also likely also be at the front lines of implementation dealings with the provinces and in legal proceedings. Gendered issues are important to bear in mind when considering the Act since women (and children) are most impacted.

SUMMARY OF RECOMMENDATIONS

1) The federal government must clarify funding formula minimums and commit to needs-based funding for developing and carrying out services. Families need streamlined referrals to provide rapid access to services as they are required; long waits cause further harm. To realize the Act's vision requires adequate funding, given the constellation of systemic factors that create poverty for Indigenous families. Without funding, IGBs are "set up for failure."

2) Education and training on the Act should be mandatory for lawyers, judges, and CFS providers. For the Act to have a meaningful impact on Indigenous children and families, service providers and the mainstream legal system need to understand it and take their obligations seriously. Intercultural learning must be a part of this training.

3) Governments must trust IGBs. When IGBs are required to sign non-disclosure agreements (NDAs) in order to begin the coordination process, it tarnishes their relationship and prevents collaboration. Furthermore, governments must let go of expectations of perfection and trust IGBs to respond to their own mistakes and shortcomings as they implement the Act.

19 For further reading on how the labour of social reproduction falls on Indigenous women and the relationship to the Act, see: Adam King et al., 'Determining the "Core of Indianness:" A Feminist Political Economy of NIL/TU,O v. BCGEU', *Aboriginal Policy Studies* 10, no. 1.

4) The federal government should fund a national oversight body, such as an Indigenous child advocate, and a tribunal (separate from the CHRT) dedicated to Indigenous CFS cases. This would provide recourse for people harmed by the system, and foster transparency and accountability. The child advocate should also be tasked with informing children of their rights.

5) A database of contact information and laws for IGBs should be available online to facilitate communication, such as a provision of notice. A registry could be helpful, as notice must be given in an appropriate way for each IGB (phone, fax, in-person visit, etc.) and to the correct contact person. Forms should be available online, because each IGB will likely have its own standardized forms.

6) In cases where no IGB claims a child, the provincial and federal governments should ensure access to mainstream services to avoid service gaps. To avoid service gaps, IGBs must clearly indicate who is covered under their jurisdiction.

7) The definition of "care provider" should exclude foster parents. Their inclusion in the definition is contrary to the purpose of the Act.

8) The Canadian government must ensure that Indigenous WG2STGD+ people are included in consultations about the Act and in its review process. This requires removing barriers to participation, including holding meetings in neutral, accessible spaces, providing childcare, and compensating participants, for example.

9) Canada and IGBs should work together to develop regulations (or amend the Act) to include minimum standards that address privacy concerns around the collection, retention, use and disclosure of personal information.

KEY RECOMMENDATIONS AND ANALYSIS BY TOPIC

TOPIC 1: Notice to Indigenous governing bodies (IGBs) (section 12)

A SIGNIFICANT MEASURE AS PER SECTION 12 OF THE ACT

Participants held diverse perspectives on what constitutes a significant measure under the Act. No "one size fits all" answer exists, and it can vary by geographic region. As one lawyer said, "Some people want to know every time their child gets a haircut," while others might find that excessive and onerous.

IGBs need to be able to make their own decisions about what counts as a significant measure. Another lawyer suggested service providers should have space to develop their own significant measures lists which could be outlined in their own CFS policy. This could allow for regional variations in the definition. Currently, judges tasked with interpreting s. 12 of the Act might look to existing jurisprudence and legislation for guidance. However, participants indicated the need for flexible definitions of significant measures due to regional differences, so the current case law is not always helpful.

Despite some differences, there was widespread agreement that any significant change to a child's housing and care arrangement, including moving from a foster home to a group home or kinship placement (or vice versa), and changes to the child's visit schedule, health, and routine would be considered significant measures. Significant changes in these areas can trigger the need for re-assessment or for specific supports and resources.

Significant changes can create an opportunity for children in care to connect with their Indigenous community of origin, whether to family, culture, territory, land, language, or other supports. Multiple participants also identified developmental milestones, such as reaching puberty, as a significant change that should be reported. Many Indigenous groups have ceremonies in which children coming of age can learn about respecting their bodies, consent, gender identity, and related issues specific to their Nation or community. Children in urban settings or living in non-Indigenous foster families may not have access to these ceremonies if the community is not made aware that the child has reached puberty.

NOTICE

Participants need clarification about what constitutes notice, and guidelines and accountability around what giving notice entails. Currently, many Nations are not receiving notice at all or are receiving improper and inadequate notice. Sending a fax or email to a general band inbox is not enough and poses problems. The information could be seen by unauthorized band employees, which is a serious privacy concern given that notices can contain sensitive personal information. The notice could also be lost if no one is tasked with regularly checking for faxes and emails.

Notice forms may vary across Nations, and some IGBs may wish to create their own standardized forms. Numerous models exist that could be used for reference when developing notice forms, such as the examples submitted to the Senate by the Assembly of Nova Scotia Mi'kmaq Chiefs.

A national online registry containing each IGB's laws, designated contact person, notice forms, and preferred method of contact could help facilitate the appropriate provision of notice. This would help mitigate the concern identified by participants that since each IGB may have unique laws, forms, and procedures, frontline workers may work within several different frameworks within one day. These new CFS laws will likely be as complex as the current provincial laws, creating challenges for frontline CFS providers. This could be overwhelming and difficult without a way to access each IGB's laws quickly and efficiently, such as a database.

Many communities do not have reliable internet access, so there will be cases where notice must be given in person. The notice provider may have to physically go to the community if the proper channels cannot be found online. The database of laws, forms, and procedures consequentially should also be available to download and access offline or as a physical copy. Funding must be provided to ensure communities can contribute to and access the database.

Another challenge is that some smaller bands, such as those in the Yukon, do not have the resources to respond to notices they receive. As one participant in the North regional session indicated, such bands may lack the finances to keep a full-time employee on staff with the necessary expertise to complete the paperwork and handle incoming notices.

Parents and families may also not receive notice of what is happening with children in care either from the government, CFS agency, or the IGB (if they are involved). One young participant reported her band wasn't notified, and not even her grandmother was notified:

"She told me that she didn't know that I was apprehended, and she would have come and got me." When families are unaware of where their children are, they are deprived of the right to appeal and have their say.

No matter how the notice is delivered, there must be appropriate follow-up by the provider to ensure the notice was received and considered by the correct person at the relevant IGB or band office. Judges need to understand notice requirements and hold agencies accountable for not providing adequate notice and appropriate follow-up.

SENSITIVE INFORMATION SHARING AND PRIVACY CONCERNS

While participants said communicating significant measures concerning a child in care is important, some information presents privacy and safety concerns. For example, if a child experiences suicidal ideation, is receiving mental health or psychiatric care, or is questioning their gender identity, there could be a risk to the child in disclosing this information to their community. However, sharing this information can also allow for personalized services and supports tailored to the child's needs. One expert recommended that, whenever possible, the child should provide consent before sharing such information, and information sharing should reflect best interest of the child (BIOC) considerations.

One expert said while privacy concerns are elevated in the 10–15% of cases where a child is in urgent need of immediate protection for their safety, they will be lower in cases where the information in the notice is less sensitive, such as when a family is receiving preventative services, how a child is doing in school, or certain medical records. Experts suggested that legislation developed around information sharing must account for these very different scenarios and concerns, so laws do not prevent information sharing in less-urgent cases where sharing is beneficial, while still protecting child and family privacy in more serious protection cases.

While privacy-related safety concerns are lower in less urgent cases, even the information that children are involved with CFS can be harmful when not shared on their own terms. Many participants with lived experience in CFS discussed experiencing stigma regarding being in care, including negative judgment from peers. "I've lost friends when they found out I was in foster care," one young participant told us. Having peers find out they were in care led to such severe bullying that one young participant reported not wanting to return to their home community and described how this led to being isolated from cultural supports, since involvement with CFS is stigmatized and many people have justifiable fears associated with social workers. One participant suggested that changing the language could help change perspectives: "What if we didn't call social workers social workers? What's another name we could use?" Words and names matter.

To protect sensitive information and mitigate risk of privacy harms, a lawyer suggested CFS agencies could use an online portal with privileged access that enables information sharing between provinces, IGBs, and service providers. Another recommendation was that certain data can be anonymized. For example, initials could be used for children rather than full names on some reports. However, if the information is too anonymized, then it becomes impossible for the IGB to act. Balancing privacy concerns with the benefits of information sharing is a challenge, given the conflicting issues of stigma around involvement with CFS and the need for inter-organizational communication to best support children and families.

Inconsistent information-sharing practices across Canada, such as provincial privacy laws, create further challenges. One participant noted in Ontario, that any First Nation (whether identified as an IGB or not) is automatically a party to CFS-related court proceedings involving a child from their Nation, which allows them full access to information disclosed in that proceeding. However, this is not the case in provinces with more stringent privacy laws, such as Manitoba.

There seems to be a legislative gap regarding privacy concerns. Canada can also actively collaborate with IGBs to develop regulations per s. 32(1) of the Act respecting the collection, retention, use, and disclosure of personal information under s. 12(2) and s. 28. An amendment to the Act itself may be needed to establish protections for personal information that can help address concerns about improper handling of sensitive information, which, in turn, can undermine confidence in the system.

TOPIC 2: Approaches for child intake systems, cross-jurisdictional communication

CHILDREN RISK "FALLING THROUGH THE CRACKS" WHEN JURISDICTIONAL RULES CHANGE

An unintended consequence of the Act is that when jurisdictional rules change as Nations create new CFS laws, children can be displaced, forcing other agencies to step in without the necessary resources. One participant from Manitoba explained that when one First Nation created its own CFS law under the Act, it decided to stop providing care to non-status children living on-reserve to whom it previously provided care. This created a sudden influx of new children in need of care for other CFS agencies, but there was no funding provided for those children. In theory, funding follows the child, but in practice, there can be delays and conflicts between agencies. This puts immense strain on the agency who must assume responsibility for new children without the financial and staffing resources to do so.

A related issue between provinces and Indigenous CFS agencies occurs when provinces quickly and eagerly "offload" jurisdiction and withdraw their support in cases where a child has special needs or requires higher-cost supports. This leads to "really sudden, ugly" transitions and service gaps, which can leave children without protection.

Smooth transitions between agencies take time. One Ontario participant said it took three years to transfer cases from five mainstream CFS agencies to an Indigenous agency. Funding delays contribute to this concern. The participant explained that funding is given yearly on April 1 for cases under an agency's jurisdiction at that time. The cases are not all transitioned at once on April 1, but trickle in slowly during the year. Meanwhile, funding for new cases the agency accepts as part of the transition process do not follow until April 1 the next year. This often forces agencies to assume and carry debt to provide care for the unfunded caseloads they acquire during transition periods.

CONSTITUTIONAL ARGUMENTS OVER JURISDICTION BETWEEN PROVINCES, FEDERAL GOVERNMENT, AND IGBS

Participants shared concerns about constitutional arguments arising between the provinces and the federal government. Québec has already challenged the Act's constitutionality in a case before the Supreme Court of Canada.[20] NWAC participated as in intervenor in this hearing. One participant noted provinces treat CFS as a source of revenue because they receive federal transfer payments for it, which could be one reason they are bringing these legal challenges.

Disputes arise between provinces and IGBs exercising jurisdiction over CFS. Louis Bull First Nation, for example, continues to face opposition from Alberta, which refuses to recognize its CFS jurisdiction or participate in drafting a coordination agreement.[21] Given the power imbalance between the state legal apparatus and the resources available to First Nations and IGBs to fight jurisdictional battles in court, these disputes could cause smaller Nations to go bankrupt, one participant noted.

JORDAN'S PRINCIPLE SHOULD APPLY TO PREVENT SERVICE GAPS

The CFS "jurisdictional hot potato," as one participant described it, must not create service gaps for children. In cases where no IGB claims an Indigenous child, the provincial and federal governments should ensure access to mainstream services. In a dispute about who should provide funding, Jordan's Principle must apply. Jordan's Principle is the child-first principle holding that where a government service is available

20 *Supreme Court of Canada, Attorney General of Québec, et al. v. Attorney General of Canada, et al.*, No. 40061 - decision pending.
21 Hobson, 'First Nation Says Alberta Government Is Preventing It from Taking Control of Child Welfare'.

to other children and a jurisdictional dispute arises between Canada and a province or territory, or between government departments regarding services to a First Nations child, the government department of first contact must pay for the service and seek reimbursement from the other government or department afterwards. This prevents First Nations children from being denied essential public services or experiencing delays in receiving them.[22]

One expert discussed BC's health care delivery model as a trilateral agreement/ memorandum of understanding between federal, provincial, and First Nations. The B.C. First Nations Health Authority is a model that could be used to help inform how CFS arrangements may work, so long as the federal government provides the appropriate funding and legal support and the provinces are prepared to engage.

IDENTIFY INDIGENOUS CHILDREN

Indigenous children entering care are sometimes misidentified on their forms as being Caucasian. Historically, many Indigenous people's names were changed, erasing their heritage. Sometimes this was for nefarious reasons (racism, assimilation, genocide) and other times it was intended to protect people from discrimination. For example, one participant noted that bishops and priests who did not want Indigenous families to experience discrimination would record that the family was non-Indigenous. Of course, the *Indian Act*,[23] Indian residential schools, and the Sixties scoop robbed many Indigenous children of connection to their families and home communities. Today's misidentification problems are an extension of colonization. The problem is also intergenerational: many children apprehended at a young age did not learn their Indigenous background, and thus could not pass the connection down to their children.

Indigenous children who are misidentified on their forms are denied support from their band or Nation. IGBs who are not given notice that one of their children is in care cannot offer support, follow, or participate in the case.

22 *Caring Society* at 351.
23 *Indian Act*, RSC, 1985, c I-5.

Young participants with lived experience in care shared the following regarding their loss of connection:

> "I knew I was Brown, but I didn't know that there was a word for that or the culture. I didn't know about powwow and ceremony until I was probably 13, until I started asking questions of who I was and my ancestry and all that. I started asking questions on my own." (Manitoba)

> "We never talked about my Indigenous side. We never mentioned it. I was not presenting myself as an Indigenous because I couldn't. I didn't feel safe saying it. I felt that Indigenous status was more associated with stereotypes and having 'issues' than with culture." (Québec)

LIVING AWAY FROM HOME RESERVE

IGBs should have access and funding to care for their children regardless of a child's on or off-reserve status or location. Many people have been forced to relocate due to colonialism, while others choose to move to other areas; this should not inhibit their ability to access their community's services if they desire. One participant called on the government to "take the hooks out" of funding so that the funding can support children regardless of geographic location.

One participant discussed the unique challenges faced by Indigenous people who do not live on their home territory, but rather in other Indigenous communities. She expressed a preference to receive services from the Indigenous community where she currently resides, rather than mainstream services, since doing so would not require relocation. However, she noted that some IGB policies make this complex, because providing services to Indigenous residents who are not band members may not be funded. Although she mentioned that changing bands is a potential option to access funding for local services, she said it was unfair to ask people to change bands, since membership in their home band is closely tied to identity, even when they live away from their home territory.

COLLABORATION BETWEEN IGBS

Several participants shared ways that IGBs are working together to develop protocols for cases where children have ties to multiple Indigenous communities or where children from other bands reside on their territories. Participants described these collaborative efforts as supportive. Even in cases where parties may have some disagreement, a lawyer participant described that "nine times out of ten we can come to an agreement, since both parties want what is best for the child. We can bring in Elders and have a circle, and we are almost always able to solve it without going to court." The importance of this approach was stressed by other experts as well: "How we approach child welfare law, especially when it comes to Indigenous children and Bill C-92, has to be more collaborative … to get better outcomes. It doesn't have to be so adversarial. It doesn't have to be 'us versus them.'"

Nations are also working together to fill service gaps when children are geographically far from home through conversations with the home community about what they want and what support the local community can offer. IGBs should receive funding to continue to develop their inter-jurisdictional protocols in a collaborative way. A participant suggested that an organization could be hired to work with the communities to develop best practices and protocols.

While the overwhelming majority of participants described collaboration, one participant from Ontario said this is not always the case: "There are other agencies who are not like that, who want to say, 'these are our geographical boundaries, and it's our jurisdiction inside of here, and we will serve all of the people in here.'" However, she said, "that's not the way that it's unfolding politically," and collaboration is the norm.

A database of each Nation's law and procedures (as discussed in Topic 1: **Notice to Indigenous governing bodies** (IGBs) (section 12) would also be useful, as each Nation may have its own interjurisdictional expectations and protocols. One participant whose organization serves over 100 Nations reiterated the need for a way to look this up, since each Nation may have different rules on who is and is not covered (i.e. on-reserve, off-reserve, people from other Nations).

URBAN INDIGENOUS CHILDREN

More Indigenous people live in urban areas than on reserves. In some regions, as much as 85% of the Indigenous population has relocated to urban areas.[24] This is due to both colonial impacts and choice, as "not everyone is aspiring to be back home on a reserve." One service director in Winnipeg pointed out that urban agencies and their role have largely been overlooked in this legislation, and that despite being a large, established service provider serving many children, NWAC was the first organization to consult with them about the Act at all.

An urban service provider asked, "What does it mean for people living away from home, or who don't want a connection with their Nation, or to have them involved in planning, or who don't know where they came from, or their Nation doesn't claim them? How do we make sure no child is left behind?" Urban agencies are sometimes the *de facto* "catch-all" agencies and are the likely service provider when these situations arise.

One participant said there can sometimes be tension between urban and on-reserve agencies, but they should "be locking arms! Nations need to advocate loudly for urban people." Participants also noted that urban services are particularly important for the Métis community, which has been continually displaced throughout history.

DISCRIMINATION

While a more detailed discussion of discrimination appears throughout this report, multiple participants sensed racist undertones to this prescribed GEM topic. They said an "expectation of chaos here, rooted in racism" is detached from the reality of respectful collaboration between Indigenous groups. Nation-to-Nation dialogues between the federal and provincial governments and IGBs must be based in mutual respect. When IGBs are treated "like children," communication can break down, and issues could arise.

24 National Association of Friendship Centres, 'Urbanization and Indigenous Peoples in Canada - Responses for the Questionnaire from the Special Rapporteur on the Rights of Indigenous Peoples'.

TOPIC 3: Clarifying key terms and definitions, including care provider (section 1), reasonable efforts (section 15.1)

Liability to ensure section 15.1 has been met should fall to government. Section 15.1 is an impossible endeavour unless the federal and provincial governments ensure systemic causes of poverty are addressed. Relieving systemic poverty is well beyond what CFS providers can offer in terms of support and prevention. See further discussion in Topic 6: **Clarifying socio-economic conditions under section 15**.

In addition to a meaningful and serious effort to address poverty and its causes, a process should govern section 15.1's implementation requiring agencies to prove reasonable measures have been taken, rather than relying on individual case workers judging for themselves. Social workers should also receive mandatory training on discrimination. However, one lawyer said that "reasonable efforts will be very context-dependent and subjective for each child's circumstances," and that "it's not something that necessarily lends itself well to very precise, specific rules, because it is very much very much a case-by-case situation depending on what the situation of the family is like, and what resources are in the community."

One participant said reasonable effort requires CFS providers to engage in active and ongoing measures, including problem-solving with the family, to find ways to keep the child with the family, and the provider should demonstrate this to comply with the Act. Best practices and education around this could be put forward by a proposed national child advocate, which is addressed in Topic 5: **Identifying the need for child and family services institution(s)**.

FOSTER PARENTS

Participants agreed that the definition of "care provider" should exclude foster parents. Many said they submitted briefs to the Senate on this topic. Including foster parents contrasts the legislation's purpose to protect Indigenous families. It gives them the same protections as families of origin, allowing them to access information about biological families and potentially take part in (and delay) court proceedings. Not one participant supported their inclusion in the definition.

TOPIC 4: Overall system oversight to support a five-year review (section 31(1))

When conducting consultations and reviews, the Government of Canada should meet Indigenous communities where they are. Organizers must ensure people know consultations are happening, and actively seek input from those experiencing multiple forms of oppression, such as Indigenous WG2STGD+ people. Organizers must also ensure people are receiving information about the Act, as many community members do not even know about it, let alone fully understand this complex piece of legislation and its implications. For community members to participate, they must be informed. Participants offered the following suggestions:

- Hold community educational sessions.
- Use existing community groups to spread information about the Act and opportunities to provide input in consultations.
- CFS workers should provide children with updates about the Act and opportunities to share input during the review process.
- Share information about consultations on child-friendly platforms to reach a large audience.

Canada can support the review by providing adequate funding and by removing barriers to participation. Participants described the following solutions to overcoming common barriers:

- Hold meetings in neutral spaces. Many meetings are set up around CFS offices, on their office hours, and in their spaces. This is a barrier due to distrust between many Indigenous people and groups being viewed as government agencies.
- Ensure meetings are geographically accessible and there is compensation for transportation costs.
- Provide childcare so that parents can attend meetings.
- Provide compensation for time and sharing expertise.
- Ensure spaces are welcoming and safe for marginalized voices.

They also suggested offering prizes to participate in surveys and focus groups, incentivizing participation and encouraging more people to take part. Including community role models and mentors can also help women's voices be heard both by making spaces feel safer for people to speak themselves and by them acting as a spokesperson for their community.

Another option discussed in the Northern roundtable was to appoint a women's committee or advisory group. This was discussed in the context of domestic violence responses in the North, where a group of expert women were consulted and given decision-making authority. Northern participants suggested this would ensure women were not only consulted to "check a box," but respected and equipped with decision-making power behind their voices.

Children's perspectives must be included in the review. CFS workers can provide information on the Act and share input directly with the children under their care. While Western cultures overlook young children, some Indigenous cultures regard younger children as closer to the spirit world, and thus having their own wisdom to offer. Young people should have the chance to give input and make choices about the Act and their own lives. As one participant said, "In many Indigenous communities you do listen to a baby."

To ensure organizers access these voices, one could explicitly ask what they have done to include diverse groups. Just asking may remind well-intended organizers to widen their reach. Including this question on funding applications reminds everyone to include young voices.

Some barriers are systemic. An individual with lived experience and front-line worker experience from B.C. said, "Patriarchy is going to be the barrier. People don't listen to me when I'm in the store talking to the clerk, so I don't know how someone's going listen to me in a political office … I don't know how to make people listen because it's not me who is the issue." Another participant raised the need to counteract the "internalized *Indian Act* stuff" and internalized colonial oppression when working with communities trying to implement the Act.

Multiple experts said a five-year period was too long to wait before reviewing such an important piece of legislation. One service provider and academic said a three-year period would be more appropriate if regular communication between stakeholders and an established oversight body could ensure accountability. Another expert questioned the wait period at all, suggesting feedback and discussions with IGBs should be ongoing.

TOPIC 5: Identifying the need for child and family services institution(s)

Most participants said an Indigenous-led institute to ensure accountability, transparency, and respect for rights would be beneficial. The institute could also ensure Indigenous children in care understand their rights. However, this oversight body should not create unnecessary bureaucracy and delay; some participants were wary of this and opposed the idea of an oversight body altogether.

Almost every individual with lived experience said their rights were not respected and their voices were not heard while in CFS care. The current CFS system lacks transparency and accountability, and limited access to justice further harms children. An oversight body such as a national institute for Indigenous children in care could provide a partial solution.

One participant referenced the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Report).[25] Call to Action 12.9 calls for establishing a Child and Youth Advocate in each jurisdiction with a specialized unit with the mandate of Indigenous children and youth, and a National Child and Youth Commissioner to strengthen accountability to act as national counterpart to the child advocate offices in provinces and territories. This section highlights some of the experiences and recommendations participants shared.

NEED FOR TRANSPARENCY AND ACCOUNTABILITY

Several participants called for greater transparency. As one participant from the national roundtable put it, what is going on "behind the scenes" in CFS should be known to the public. Participants also stressed the need for transparency in developing the institute and its operations. Oversight is necessary, whether via an institution designed for this purpose, or another means, to reduce children in care who experience mistreatment with few options for recourse.

25 *National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volume 1a.*

REPORTS OF MISTREATMENT IN CARE

Multiple young participants with lived experience shared egregious but consistent mistreatment. Participants who lived in CFS group homes reported particularly disturbing and dehumanizing experiences. Many reported "being treated like a criminal" in these facilities, being prevented from accessing cultural events in their Indigenous communities, being denied necessary medical care, and having difficulty reaching their social workers when in need.[26]

ARBITRARY AND UNFAIR RULES

One rule in a B.C. group home required children to keep receipts for any purchases to prove to staff the items were not stolen. Another participant described her experience after staff found contraband on her: "They found it, and then I had to get strip-searched every time I came home … I was 14 and that was the first time I was naked in front of anybody … and I knew they weren't supposed to do that, but they did it anyways. Otherwise, I wasn't allowed to come in." Rather than be subjected to this daily, this young person would often run away back to her mother's home where she described feeling unsafe, but less so than at the group home.

Another young person with lived experience who now works as a social worker said the rules made it difficult to join in cultural activities since "one of the restrictions was that if I went out anywhere, I had to physically come and check in … but with some of these programs I was going out 45 minutes to an hour out of town, to attend sweats, or feasts, or whatever, so some staff would say, 'Well you can't go, because you can't check in,' and then some staff would say 'Well, you know, it's cultural, so we should try to work around it,' and it was just this constant pushback. No one was on the same page."

DENIED ACCESS TO MEDICAL CARE

Another participant said they did not receive proper medical or dental care, leaving their mental illness and fetal alcohol spectrum disorder (FASD) undiagnosed and untreated until adulthood. "People just thought I was crazy because I was a kid in CFS when I did in fact have a mental illness. And I found that out on my own, when I was 22, so I was unmedicated all those years when I should have been on medication."

26 For further information, see, for example: 'Child Welfare Archives', APTN News - Child Welfare; Michael Wrobel et al., 'How Global News/APTN Exposed Alarming Conditions in Ontario's Child-Welfare System', *Global News / APTN.*

POOR COMMUNICATION BETWEEN SERVICE PROVIDERS, CHILDREN, AND FAMILIES

Children in both group and home care reported struggling to access proper care from their case workers. One young person reported not seeing a social worker for approximately three years while being abused in their kinship care placement. Another reported having to call multiple times for days before reaching their case worker and having to advocate for themself in many situations.

Participants also described a lack of information shared with them. One participant said, "I didn't really know what was happening or when I could go home. None of these questions were answered." Another reported finding out they were entitled to money for clothing from another young person in the group home, rather than their worker.

They also discussed poor information sharing with families of children. One young person didn't know she had a sibling who was adopted out and said another sibling was told untrue things about their family, and consequently will not talk to them to this day.

The perception of ill intentions was also discussed in a young person's story about their sister: "Essentially the social work person that met with her mom misled her purposefully. They met in a really dark, dingy restaurant, and at this tiny little table there are just papers spread out, and he was flipping papers, and confusing her. And he got her to sign something that she didn't understand and that's how she got into the system."

LACK OF CULTURALLY APPROPRIATE SUPPORTS

One participant said the Manitoba Child's Advocate worked to provide information about children's rights, but the information was not Indigenous-specific, and children were still often unable to have their rights respected. Many young participants reported separation from their community and culture: "I'm still spiritual. I still go to ceremony and like to take care of that part of myself. I wish I had those opportunities when I was a child. I feel like I missed out on a lot of things, a lot of teachings, that could have helped me earlier in life like during puberty and stuff."

Another young person noted that just because a child is placed in an Indigenous foster or kinship family, it does not mean they will have access to culture because these families can also isolate children from culture if they themselves are not involved. A young person from Eastern Canada recommended that "every social worker should have to ask every child if they would like to join their First Nations communities" regardless of where they are placed.

NO EFFORT MADE TO LISTEN TO CHILDREN OR PROVIDE MEANINGFUL CHOICES

Children said they were not given choices regarding their cases and their voices were not heard. One young person described wanting to live with a "friend whose family had a house with an extra room and were fully willing to take me in. I went to the same school system. I could have easily transitioned to that home and not have a disruption. But instead, I was sent to live 12 hours up north."

INCONSISTENCY AND INJUSTICE

Ensuring children have access to the services they need is important not only for the obvious reason of ensuring children have what they need, but also because being denied access to these things creates a lasting sense of injustice. Every person with lived experience compared their case to other cases they were aware of, such as siblings, cousins, or other children in group homes. Through this comparison, they found unfairness and injustice when they noticed other children receiving opportunities and services unavailable to them.

The stories these participants generously and courageously shared identify some of the ways CFS systems are failing children. Some of these failures go unaddressed due in part to the lack of an appropriate accountability and oversight mechanism or body anywhere in Canada at present.

SUGGESTIONS FOR A NATIONAL INSTITUTE TO OVERSEE CFS FOR INDIGENOUS CHILDREN

Several participants recommended developing a national child welfare advocate for Indigenous children to coordinate with provincial advocates. Currently, no national body oversees the provinces. The proposed national child welfare advocate could create a best/wise practices resource to educate service providers and ensure compliance.

An academic and former service provider identified the need for a body to hold both the government and those enacting the Act accountable. He suggested this body should be populated by majority (over 50%) Indigenous people who have a real stake in in how the Act is implemented (or not). Echoing the recommendations of other participants, he suggested this could be a national body with regional subcommittees. He said, "It has to have teeth and not be controlled by the government. It needs to be able to hold all stakeholders accountable, from service providers up to government."

The general agreement among those participants who supported developing a national child advocate that it should inform children of their rights and assist in ensuring these rights are respected. As noted, every young person reported not being informed of their own rights, and not being heard regarding decision making around their case. Some reported trying to engage in cultural activities and being prevented by caretakers, in direct opposition to the requirements of the Act and other existing legislation concerning the rights of Indigenous children to maintain connections to their culture.

IMPORTANCE OF CAPACITY-BUILDING

Practical solutions involve both oversight (making sure service providers are following the rules) and legal capacity-building so that people have access to justice. While most participants agreed a national oversight body would be useful, one lawyer said this would be a resource-intensive process and that legal capacity-building is an equally important piece of the puzzle. She said some issues require regional voices because "you can't have an 'Atlantic' voice because there are at least four different pieces of legislation in the Atlantic provinces, including privacy legislation which can be quite onerous. So, is this where we want to allocate resources right now? We need to focus on practical solutions." She asked, "What are we doing to help people develop these laws and provide the infrastructure that is needed to develop lawyers who are capable of acting in [Indigenous CFS cases]?" She cited the need to move away from litigious CFS cases to be more collaborative.

Canada must provide resources to create a national institute and educate the public and professionals on its function. One lawyer and academic said for the *Family Homes on Reserves and Matrimonial Interests or Rights Act*,[27] the government created an entire institute for its implementation, complete with many resources, supports, and training, with nothing comparable for the Act. She pointed out existing bodies could work on this, such as the Wahkohtowin Law and Governance Lodge.

Should a national institute be developed, its development must be transparent. Participants said it should not be left just with chiefs and band council, but rather a special, independent oversight body. One participant suggested looking to the National Indian Child Welfare Association in the U.S. as a potential model.

While developing a national institute, a participant suggested that court reporters could monitor Indigenous CFS cases in the interim. They could work with Lexum or CanLII to create

27 *'Family Homes on Reserves and Matrimonial Interests or Rights Act*, SC 2013, c 20.

a notification function or a specific search field criteria. Although not a comprehensive solution to the oversight and accountability problem, court reporters could shed light on what transpires behind the scenes. Without a fulsome picture of what is happening in the courts, creating solutions to fully target the problems becomes difficult, which participants with lived experience said can be dire.

NEED FOR A TRIBUNAL SPECIFIC TO INDIGENOUS CFS ISSUES

Another suggestion was to create a new tribunal with expertise specific to CFS issues, separate from the CHRT. The government has thus far not complied with numerous CHRT orders to compensate First Nations children and caregivers for the discrimination they suffered, highlighting the need for a separate venue for people to make complaints.

Subject matter experts referenced previous recommendations that these institutes be developed. For an extensive in-depth discussion, see the *Doing Better: Jordan's Principle Accountability Mechanisms Report*,[28] where the authors recommend three levels of accountability mechanisms, which correspond closely to the suggestions made during the GEMs: a National Indigenous Child and Family advocate, a National Indigenous Child and Family Tribunal, and a National Legal Services for Indigenous Children and Families.

The proposed tribunal would differ from the CHRT in that it would be fully independent and have the power to craft its own procedures and rules of evidence tailored to the Indigenous CFS context, making it more accessible.[29] Adjudicators would have expertise in discrimination issues faced by Indigenous children and families.[30] It would enforce orders against Canada and the provinces for non-compliance with Jordan's principle, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),[31] the Act, substantive equality principles, and other relevant legislation and legal principles.[32] It would have the power to issue binding orders on government and public service agencies, as well as broad remedial powers.[33]

It remains to be seen whether a new tribunal would be more effective than the CHRT, given Canada's history of non-compliance with the court's orders. However, a new, specialized tribunal working in conjunction with the proposed national Indigenous children's advocate could provide Indigenous children and families with an alternative venue for complaints and increase accountability.

28 Naiomi Metallic, Hadley Friedland, and Shelby Thomas, *Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report*, Reports & Public Policy Documents, 31 March 2022 at p. 14.
29 Metallic, Friedland, and Thomas.
30 Metallic, Friedland, and Thomas.
31 *United Nations Declaration on the Rights of Indigenous Peoples* : Resolution / Adopted by the General Assembly', Pub. L. No. A/RES/61/295.
32 Metallic, Friedland, and Thomas, *Doing Better for Indigenous Children and Families.*
33 Metallic, Friedland, and Thomas.

TOPIC 6: Clarifying socio-economic conditions under section 15

"Poverty, it's a choice. We accept it. I mean ... we accept that a portion of the population will live significantly below a standard of living that most people enjoy and in ways that are very profound and very detrimental, certainly to children, but also to families." - Participant

NEED FOR SYSTEMIC CHANGE TO ADDRESS POVERTY'S ROOT CAUSES

Section 15 is an important step toward honouring section 12.4 of the MMIWG Report, which calls upon "all governments to prohibit the apprehension of children on the basis of poverty and cultural bias."

Systemic factors create poverty for Indigenous families and s. 15 requires systemic changes. Without proper funding, this section of the Act is a meaningless and impossible obligation to place on Indigenous communities and service providers. All levels of government must work to resolve issues of poverty, inadequate and substandard housing, lack of financial support for families, and food insecurity to ensure that Indigenous families can succeed.

These words from the Senate recommendations provided by the First Nations Child and Family Caring Society of Canada capture this need: "This section appears to acknowledge the structural drivers of child maltreatment without imposing any positive obligation on the Canadian state to redress the inequalities that deepen those drivers, namely poverty, poor housing, addictions related to multigenerational trauma and domestic violence ... no provincial/territorial child welfare law allows for removal based on 'poverty.' Instead, it is an under-current to neglect."[34]

The following recommendations assume a positive obligation to provide appropriate funding to combat poverty.

34 Cindy Blackstock and First Nations Child and Family Caring Society of Canada, 'Preliminary Briefing Sheet to Canadian Senate Standing Committee on Indigenous Peoples, 42nd Parliament, 1st Session - Bill C-92 An Act Respecting First Nations, Métis and Inuit Children, Youth and Families' at p. 7.

PREVENT POVERTY

Canada must make an initial investment to battle poverty. Though alleviating poverty is not initially "revenue neutral," one expert cited James Heckman's research estimating that every dollar invested in childhood will save seven to twelve dollars once that child reaches adulthood.[35] The costs of not having access to needed services are exponential, as children grow and require more expensive and intensive supports. This can manifest as hospitalization, addictions, and contact with the criminal justice system. The correlation between childhood involvement with CFS and later incarceration has been dubbed the "child welfare to prison pipeline."[36] While the economic costs of these outcomes are astronomical, the non-financial costs of keeping children in poverty are immeasurable.

Several frontline experts described the benefits of a preventative approach. One expert whose agency serves a small eastern community has four full-time social workers. One is focused entirely on prevention, while the others focus on mental health, multiple barriers, and protection work. She said, "Prevention is where it's at. You want to be proactive and not reactive. I guess that's why our numbers are the way they are for children in care. We have no children in care, only in kinship arrangements, which is very different." A big part of this success was the ability to flag families for services such as mental health and addictions before reaching the point where child protection needs to be involved.

Other experts said:

- "Child welfare is significantly underfunded—there is no substantive equality for Indigenous children. But, many other related services are also underfunded. Underfunding has kept Indigenous communities in poverty ... the other services need to be funded in order to alleviate poverty and prevent this continuing."
- "Families go from okay to crisis. And there are many, many points along that timeline where interventions could help, but the problem is that those interventions are too difficult to access or they don't exist."
- "The pendulum is always swinging between preserving the family and protecting the child. But the best way to prevent apprehension is for CFS not to be there in the first place by providing early support to families. You address the poverty and offer social support and ensure that the baby's family is wrapped around by services, so you prevent them from needing CFS intervention."
- "I am convinced if we just gave people a reasonable standard of living that there would be lot less stressed parents, and a lot more nurturing parental relationships. If they're not worried about putting food on the table or paying rent, then they can parent better."

35 James J. Heckman et al., 'The Rate of Return to the High/Scope Perry Preschool Program', Journal of Public Economics.
36 Nation to Nation, "'Child Welfare to Prison Pipeline" Feeding Rising Indigenous Incarceration Rates', *APTN News*.

SECTION 15 IN PRACTICE

While some judges work to ensure the Act is being respected (those in Kenora and Fort Francis, Ontario, were heralded), participants said others continue to act as if it does not exist.

Several legal experts suggested that a regulated process for proving reasonable efforts were made could ensure proper steps are taken. This could take the form of a checklist requiring multiple signatures from within the agency before it comes before a judge. Participants report witnessing entire offices working together to create a story that "crosses their T's and dots their I's" to show that every effort was made, when in fact, efforts were not made.

A Northern participant suggested the First Nation act as the "judge" in determining if the measures taken seem reasonable to them.

Experts suggested that in their opinion, while some judges appear uninterested in the Act, the majority simply require further education. Several resources exist to facilitate this learning. It would be beneficial to create practice notes, judicial guides, and education around this topic. Wahkohtowin Law and Governance Lodge has done extensive work in this area and developed a **Judicial Workbook,** which has helped judges in Alberta.

One participant told us that "Indigenous people were in communities where it might not be a parent who's doing the direct supervision, but members of the community. But you may have a white worker say, 'This kid is kind of wandering all over the place. No one's looking at them.' Well, maybe they are being supervised by the community, you know?" Different cultural practices, such as eating on the floor, eating raw foods, or sleeping in a family bed can be seen as "neglect" by judges who do not understand the Indigenous context. Cultural knowledge of this nature "can't be taught in a one-hour webinar."

See judicial education discussed further in the section on Judicial education.

POVERTY REDUCTION CHALLENGES

CFS amendments cannot solve poverty. The Act fails where it holds social workers accountable for not taking "reasonable measures" to prevent apprehension based on poverty alone because they do not have the tools to lift people out of poverty.

Preventative measures can include providing food vouchers, and providing meals and baby formula in a predictable way so those on fixed income can plan accordingly. One lawyer said they used funding for first and last months' rent to get a single mother an apartment and avoid apprehension. The band used money to get her some furniture and assist her to get on Ontario Works. The lawyer said the family is now thriving, but a key factor was the ability to secure some provincial funding to support the family. While the financial cost was lower to provide two months of rent than it would be to place the child in foster care, this option required ongoing support from the province.

An Ontario service director said some provincial money can "address the things that their poverty is creating for them in terms of their child's well-being, that doesn't go away. Just because you help them in November doesn't mean they're going to suddenly be able to make rent in December, January, February, March, or April. Where does the ongoing funding come from to address poverty? Because we can't from our provincial funding … And yet it's the legislative obligation."

Poverty also impacts priority placement because Indigenous families, during a housing crisis, cannot necessarily provide the prescribed one bedroom per child. This standard may disqualify many loving kinship homes. A lawyer suggested regulations could address this gap.

APPREHENSION DRIVES FAMILIES DEEPER INTO POVERTY

Care cannot stop with the child; it must extend to the family. Child apprehension is extremely traumatic and destabilizing for families and can exacerbate harm and poverty.[37] Poverty is closely related to factors that bring children into care, such as addiction, homelessness, mental health struggles, and intimate partner violence. Removing children is "going to lead to a lot more traumatic responses."

When children are apprehended "you've just decimated [the mother's] mental health even more. What are you going to do to build that back up? What are you going to do to help her get her children back, right? What are you going do to help her heal and recover? I think it's appropriate for some children to be removed, but it shouldn't stop there."

Another expert critiqued how women can lose their Canada Child Benefit when children are apprehended, leading to worse financial instability, and sometimes to losing their housing.

37 Kathleen S. Kenny et al., 'Health Consequences of Child Removal among Indigenous and Non-Indigenous Sex Workers: Examining Trajectories, Mechanisms and Resiliencies', *Sociology of Health & Illness*.

One young participant shared, "I know some of my mom's past and it's honestly kind of understandable that she went to drugs. But if anything were to help, maybe counselling to those types of parents that's unbiased. Teach them how to be independent, to help themselves, but still be able to see their children, not just full-on take them away, because one of my family members said that [my mom] was already hurt enough from her past and me being taken away full-on broke her."

ROOT CAUSES AND COMMUNITY HARMS

CFS issues do not exist in a vacuum. Rather, the problems that result in Indigenous children being apprehended are deeply intertwined with these larger issues, many of which are directly related to poverty. Harms done to one family reverberate through communities and generations and can become cyclical. Consider the collective impact of trauma, grief, and loss on a community level. Colonialism's toxic legacy created conditions that see Indigenous communities disproportionately burdened with violence, poverty, and unresolved intergenerational trauma.

Addressing poverty's root causes by committing to ensure Indigenous communities and families basic needs are met is a start, but more is needed for them to thrive. Section 15 of the Act aims to prevent apprehension based on poverty alone, but several participants said there would be no need for CFS intervention if conditions of poverty were addressed. The Act should not put the onus on CFS service providers to solve problems created by poverty when they do not have the resources to do so. In this sense, s. 15 misses the point.

TOPIC 7: Considering the need for clearer program authorities between existing program and the implementation of the Act respecting First Nations, Inuit and Métis children, youth and families

Agency funding needs will vary depending on whether communities have existing CFS agencies or are developing them from scratch. Some common costs in implementing the Act include hiring consultants, lawyers, data experts, new staff both for frontline and administrative roles, workers and materials to construct new buildings to host programming, and creating resources.

Communities know best what their unique and specific funding needs are, and they should work with consultants to lay out their budget. Funding should come from the federal or provincial governments, as IGBs cannot be expected to develop entirely new legal frameworks without the budget to do so.

Some experts and participants expressed concern a new program would increase bureaucracy, making the system more difficult to navigate with longer wait times. One lawyer asked, "Why not fund communities directly and provide adequate services with existing programs?"

TOPIC 8: Requirements for developing a data strategy

Data is essential to identifying service gaps and monitoring progress. One expert said, "What gets measured, gets done." Data is also essential for accountability to ensure the provinces and Canada meet their obligations under the UNDRIP and other human rights laws. Data collection over the last 20 years "has been seminal to being able to make the case that over-representation is the problem that it is."

Data, however, can also cause harm. Moving forward, data strategies should respect OCAP principles (ownership, control, access, and possession). Data is a complex area, and funding should be provided to CFS agencies and IGBs who wish to hire outside consultants to work on the development of data strategies. Some participants reported already engaging experts to assist them.

When asked about their biggest concern regarding the Act, an Ontario CFS director mentioned data first. Her words provide insight into how to balance the importance of data with the importance of sovereignty:

We need a "data system that would work for prevention and protection that the community-based agency on-reserve offers that would be accessible by First Nation representatives, children, families, and First Nations agencies—you know—that that there would be different users with different access to the information and that information would be pullable for data analysis trending issues, etc. It would be usable in the collective and the aggregate, but then with more specific access and availability to First Nations of their own data so that they would then be able to look at it in more detail."

SAFETY

Returning information control to Indigenous communities could help ensure that those with lived experience have their data kept safe while still having access to their own stories. Participants with lived experience shared concerns their future employers or courts could obtain their records and use their struggles in CFS care against them. Other participants reported being unable to access their own care records to learn what happened to them. They described information redacted from their files to the point they could not make sense of the information.

Safeguarding sensitive information may be particularly difficult in small communities where "everybody knows everybody." Even if information leaks just seem like "gossip," stigma colours CFS involvement, and if people in the IGB know families' and children's situations, that information could spread to cause shame and embarrassment. In higher-risk cases where intimate partner violence or direct abuse to a child is present, data leaks could risk people's lives. If people feel their private family information is not being respected, it may discourage them from accessing preventative services.

Existing Indigenous CFS providers use confidentiality agreements and have consequences in place for employees who breach them. Service providers said strict confidentiality policies can help mitigate data leaks and prevent liability issues.

WHAT SHOULD BE COLLECTED AND HOW

A set of national regulations under the Act could be made that includes general principles such as minimum standards for the collection, storage, use, and disclosure of personal information. This could work in collaboration with regulations respecting personal information specific to the relevant IGBs set out under coordination agreements.

CFS data experts recommend data should focus on demographic information, documenting interventions, and outcome-based measures. One expert expressed concern valuable data is not being captured or is lost when workers do not fill out forms correctly. For example, if the ethnicity boxes are not checked, it is not recorded that the child is Indigenous, which creates ongoing problems with the data and the child's care plan.

Social workers and those filling out the forms must understand why the data is being collected. One data expert said currently, many do not understand data's importance, and view it as just something they need to do to check a box rather than as something with the power to change policy and regulation.

Another expert said the forms can be problematic if they only use census categories, which do not adequately capture the lived realities of children.

Some participants said agencies should not be collecting more information than is needed, as it is onerous on children to share, and there is no need for "all of their life history, and all their tragedy, [to be] somewhere in some government document."

Conversely, some participants said gathering as much data as possible would be positive if managed by an external body (like the proposed national child advocate for Indigenous children discussed in Topic 5: **Identifying the need for child and family services institution(s)** obliged to look at it with a systemic lens, rather than by a provincial or federal government. One area where data is not currently collected, but could be, is at the community level, since CFS trauma impacts the community. Participants said this data could be used to evaluate and assist CFS agencies in their service provision.

RESOURCE REQUIREMENTS

People require the skills to collect, input, and manage data, and the software and tools to build capacity. Rural Nations may face difficulties due to poor internet access. A data system that runs offline but syncs when brought into an area with internet access may resolve this challenge.

Even with proper resources, developing a national strategy when each province and territory has its own privacy legislation in Canada is an added complexity. One lawyer said that "if the RCMP can't figure out how to share info with Canadian Border Services, how are small IGBs supposed to figure it out?" She estimated it may take 20 years of work to get a data system completely in place.

A leading CFS data expert warned a good data strategy must be put in place because poor data and data sharing mean losing capacity to monitor whether things are improving or not. "My concern is that the data systems will become increasingly fragmented," said the expert. "I think there's a reasonable chance that in five to ten years from now it'll be impossible to answer some of the questions that we were able to answer before, because everyone will be collecting data in a different way. It'll be impossible to know whether rates of placement for First Nations kids have gone up or down relative to the rest of Canada."

The expert cited Québec's two-tiered data system, which separates protection and services, as an example of a poor data sharing strategy. Since the systems do not work together or share data, it becomes difficult to determine service outcomes. This lack of communication hinders professional collaboration.

TOPIC 9: Clarifying what constitutes a notice under section 20(1) and what information is required for notice of intent (section 20(1)) and request to enter into coordination agreement discussion (section 20(2)

Participants said that resistance from provinces—Québec and Alberta in particular—has caused issues moving forward with coordination agreement discussions. As one expert said, "One of the dance partners isn't on the floor."

One reason for this resistance was alleged ambiguity over what (and who) is an IGB, which can lead some parties to not adhere to the Act's requirements. One lawyer from the west said an Alberta judge attempted to avoid complying with the Act by claiming no IGBs exist in the province. If Alberta does not consider an Indigenous group an IGB, parties may mistakenly think they do not have to comply with the Act. Participants said this happens in Ontario as well. Participants said these parties acted in bad faith and simply did not want to put in the effort to seek out further information about their obligations, nor who to contact at the IGB.

"So for Alberta—with so many First Nations—they consult all the time with oil and gas, no problem. There's no question of who to consult about oil and gas. Then they suddenly say that they don't know who to consult with regarding children, and don't know what an Indigenous governing body is."

Participants said, "Money was thrown at the new Divorce Act in Alberta," but none to educate judges, with no judicial guides or practice notes produced to guide their interpretation of UNDRIP and the Act. This has led to inconsistency because courts and governments are left to interpret the Act on their own.

Developing a database of contacts for IGBs across the country and clarifying party obligations under the Act could help prevent them from claiming ignorance. See further insight on steps for education in the Need for systemic reform and education section.

TOPIC 10: Overview of existing funding, gaps, and overlaps in order to identify long-term, sustainable, complementary funding

> "I'm tired of begging. Like I've said to the partners here, my people have been begging since the beginning of contact to have enough to survive, to have enough to take care of our people. And just because it looks different now, just because you come to the table differently, doesn't mean that the same process isn't in place. I'm still standing there with my hands out begging. This no different than when our people were stuck on a res and had to beg for food to the Indian agent. We're still begging. Our people are still dying. Our kids are still being removed at higher rates than any other ethnicity in this country. And we're always expected to make miracles happen from the shit pile. It infuriates me because I'm tired of our children, and my people, being viewed as disposable."

LEGAL BACKGROUND TO FUNDING NEEDS

The MMIWG Report,[38] the Truth and Reconciliation Commission of Canada ("TRC") Calls to Action,[39] and over 20 CHRT orders[40] call on the government to provide adequate, non-discriminatory funding to Indigenous child welfare services. To date, Canada has not complied.

The first line of the Act's preamble affirms Canada's commitment to implementing UNDRIP.[41] UNDRIP, which is now part of Canadian law, is another relevant consideration guiding how the Act is interpreted. UNDRIP's preamble recognizes "the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,"[42] and states that "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group."[43] These provisions pertain directly to the Act and its intention to restore jurisdiction to IGBs over CFS.

In 2021, Canada enacted the *United Nations Declaration on the Rights of Indigenous People's Act* (UNDRIPA)[44] to bring its laws into alignment with UNDRIP's terms. UNDRIPA states, "The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP."[45] The language is not permissive; UNDRIPA compels government to ensure its laws are consistent with UNDRIP and compels courts to interpret statutes in alignment with UNDRIP. The Act is a step towards bringing UNDRIPA's promises to life in the Indigenous CFS context. Accordingly, CFS funding needs must be viewed through this legal tool.

Participants said substantive equality principles and recognition that CFS funding is a human rights issue should guide the Act's interpretation.

38 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice - Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Ottawa) s. 12.2.
39 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action.*
40 'CHRT Orders'.
41 Act at preamble.
42 UNDRIP at preamble.
43 UNDRIP art. 2.
44 *United Nations Declaration on the Rights of Indigenous Peoples Act* SC 2021, c 14.
45 UNDRIPA s. 5.

SPECIFIC COSTS

Funding should not be tied to the number of children in care or caseloads per worker, but rather should be flexible and based on the needs of the community. Participants said access to programs must be expanded and funded extensively. Some children and families experienced wait times of months or even years to access services. One young participant said she waited a year for a funded independent living program in Winnipeg to escape unsafe group home living conditions and shelters. Similarly, some parents wait several months for addictions treatment. These delays risk lives and extend children's separation from their families.

Both provincial and federal governments have a positive obligation to provide funding for programs and services and they should be transparent about their funding formulas. Flexible "single envelope funding" may allow agencies to allocate funds as required, such as increasing addictions support spending during an opioid crisis.

NEW COORDINATION AGREEMENT CONCERNS

Some service providers are concerned about what is **not** going into coordination agreements. Chronic underfunding has left Indigenous communities unable to estimate the true cost of operating services, making it difficult to negotiate an agreement, especially for IGBs with little experience providing CFS. Experts said they worried IGBs developing budgets for the first time may overlook many costs and underestimate operational funding like HR, technology, and office administration. Without allocated funding for these needs, IGBs will face significant challenges exercising their jurisdiction.

Agencies developing agreements for the first time will need funding for exploratory measures—i.e., to decide if they even want to create their own CFS laws, what amount of authority they want to assume, etc. If they are under pressure to develop a law quickly due to a lack of funding for the exploratory phase, they may end up using a template or copying another law that does not suit their community.

If provinces refuse to cooperate, IGBs that must fight in court for provinces to recognize their jurisdiction could go bankrupt. One participant brought up the example of (repealed) Bill S-11, the *Safe Drinking Water for First Nations Act*,[46] which required communities have access to clean water. The government imposed an obligation on First Nations to ensure clean drinking water but did not provide the resources needed to meet that obligation.

46 *Safe Drinking Water for First Nations Act* SC 2013, c 21 (repealed).

Many First Nations still do not have clean drinking water to this day.

Concerns like providing clean drinking water or COVID-19-related issues may displace litigation as a priority, making jurisdiction assertion impossible. This is especially true for smaller Nations with small budgets.

One participant said the government's *de facto* approach is to fight First Nations every time they assert rights, consuming their resources, which takes away from their ability to support children. Litigating CFS matters is expensive. One participant asked, "Who is paying for these jurisdictional battles? There are Indigenous children dying by suicide and all of these other issues, and IGBs have to pay for lawyers, go to court, and put together evidence, and all of that is taking away resources, energy, and time from Indigenous children—all because the government wants to fight IGBs from having a say in how their children are treated."

LAND-SPECIFIC PROVIDER COSTS

Smaller communities with fewer people over larger geographic areas may require extra funding for capacity building to train, attract, and retain social workers. Multiple service providers described difficulty filling even part-time roles. Transportation is a barrier in remote areas without public transit, as is lack of infrastructure. Northern participants said their short building season and increased cost of building supplies are the main barriers to building in their communities.

Larger communities serving large populations will incur more costs to hire more staff, manage larger amounts of data, and facilitate communication between urban Indigenous service providers and IGBs.

URBAN PROVIDER COSTS

Urban participants said, since the Caring Society case, there is a two-tiered funding system that leads to funding discrepancies between on-reserve and urban agencies. Most funding is provided to agencies on-reserve (as needs-based funding which is a good thing). On-reserve agencies present their business plans, based on the needs of their communities, to ISC. Urban agencies' funding, however, remains tied to the number of children in care. This funding model does not provide access to funds for prevention, HR, administration, finance, policy, or on-reserve programming, which urban Indigenous children should have access to if they desire. This means urban providers work "off the side of their desks," which takes up time they could be investing elsewhere, like responding to acute mental health crises and heavy drug use. They cannot hire extra practitioners, administrative staff, or Elders.

Urban service providers supporting young people aged 19-27 are not operationally funded, so these programs consume agency resources that could be going elsewhere. Participants said provinces treat these programs as a transactional program/financial agreement with the young person, but the agency knows these children still require a tremendous amount of support, which is unfunded.

> "The province can take away funding at any time without consulting the agency. Meanwhile, numerous youth in care are dying of overdoses, and they have no budget to deal with that head on. The team is working to the point of harming their own health just to try to support people in these terrible crises," however, "if the agency was federally funded, the situation would be different. Other agencies have been able to reduce their caseloads to 1:8 or 1:4 depending on the needs of their community vs. the 1:20 standard for urban providers."

PREVENTION

Increasing preventative funding is essential. One national expert said only about 10 to 15 percent of CFS cases have an actual "protection" concern where the parent is a threat to the child. The other cases are families requiring support. Participants recommended the following prevention programs:

- Remove parents rather than children, bringing in aunties, uncles, a support worker (full or part-time, depending on parents' ability to provide care). "Train people to go in and parent. People from the community. Not people who went to university." One agency with a program like this in Eastern Canada mentioned this also provides additional benefits, such as teaching parents life skills, helping them find work, giving parents a break from caregiving, and allowing the support person to identify and provide support for "yellow flags" before they become serious issues.

- Fund proper housing. Emergency services like women's shelters are not set up or funded to deal with children and families. One participant said that "if a Mom had a safe place to stay with her kids," a lot of problems would be solved.

- Indigenous family therapy, for 30–60 days, with specific services for families struggling with addiction and past traumatic experiences.

Many shared challenges accessing mental health resources. One lawyer said their client had been "ordered to take a psychological test, but it's expensive and she's on social assistance. Without funding, how can she comply with the order? Her kids will likely be apprehended because of this." Young people also face challenges accessing care. Experts said Jordan's Principle must apply to mental health services because currently, children approved for therapy may wait a year for governments to decide who will pay.

One service provider reported receiving funding of only $2,500 per child, which was not enough to provide preventative care services for families with more complex service needs.

PROGRAMMING NEEDS

Many participants said kinship and customary care placements should receive the same funding as foster parents. MMIWG Report Call to Justice 12.6 says "[s]tate funding of child welfare services incentivizes the apprehension of Indigenous children and youth. This is exemplified by the state's prioritizing funding for foster homes over economic and support services to families." A Western service provider said, "In 2012, I started out as a

place of safety for my grandchildren and didn't get a whole lot from the agency, but when I became a foster parent, I got three times more than when I was a place of safety."

Participants stressed the importance of funding this care equally so that it can be "more community based" as in the past. "If one sibling had five kids and another had none, one of the kids could be given to the other sibling to raise, for example. Or if someone died, a sibling would look after their children." Another said, "There's a role for everybody in our communities, and each community has to search back at our history and look at what those roles were and find a way to bring the essence of it into our contemporary way of life."

Our young participants also suggested supports would have helped them:

- Health-geared programs providing food and physical activity.
- Access to mental health supports. One young participant suggested action therapy for children because "it provided acceptance that it's not my fault that I don't have connection to my culture."
- Music and art programs.
- Programs teaching the practical skills they missed out on at home, such as financial, employment and how to apply for post-secondary schools.
- 24-hour drop in or recreation centers for children to ensure a safe space when they need it.
- Resources for 2SLGBTQ+ children, especially outside of urban centres. One participant in Winnipeg said, "I am Two-Spirited and I wasn't able to find anybody else who's like that or access any type of like services or a ceremony."
- Access to supports for aging out of care. One BC participant said she received about $1,000 dollars a month after aging out of care, which does not even cover shelter costs in cities like Vancouver or Toronto.
- Resources to reduce stigma and combat the discrimination and judgment children face, such as creating informational resources for the public.
- Have Elders and Knowledge Holders regularly visit elementary schools, so children learn about Indigenous culture and do not have to seek it out on their own.

FUNDING FRONTLINE POSITIONS

IGBs need enough funding to hire and retain enough social workers to run programming properly. Both those with lived experience and those with front line experience explained the damage from high caseloads; burnout and turnover lead to a lack of stable relationships with the children in care (see **High burnout rates and turnover** section for more on this). One service provider estimated a caseload of 20 children entails managing over 200 relationships with the family, extended family, and the First Nation.

This is not news. For years, social workers have advocated for reduced caseloads, as they are "hanging on by the skin of their teeth." Reducing mandated caseloads would create more stability. When workers burn out, they accept other positions or leave the agency, bringing with them their institutional knowledge. One service provider estimated it takes one year to "establish yourself in a new position and get to know the rules" on top of funding for a new employee to undergo this learning period again.

When caseloads are manageable, workers can invest in relationship-building and adapt services to each child and family's needs. Every young participant described the importance of having a worker invest in building a relationship with them. As one young person said, "When I was a kid and they only came for 15 minutes, I couldn't trust them."

BEYOND CFS

Equitable funding is important because families are shaped by the communities they live in.

Participants said many Indigenous people continue to live in communities with no drinking water, internet, or shelters with space for children. This especially impacts remote, rural, and Northern communities, as it means women must leave their community if they want to access help, safe water, or Internet. Women facing this choice will not leave their children to access services, so they go without.

Indigenous women must have access to safe spaces to escape violence. As one leading expert in intimate partner violence (IPV) said, "Often women and children just need to be away from violence and in a safe place" to avoid the child being apprehended. She cautioned against assuming support services like counseling are needed, because sometimes what they really need may just be housing away from an abuser. IPV is interconnected to poverty, housing insecurity, mental health, and addictions, so equitable funding must address these to meet preventative goals.[47]

47 See, for example: Allison Groening et al., *Housing Needs of Indigenous Women Leaving Intimate Partner Violence in Northern Communities*, Canadian Centre for Policy Alternatives Manitoba.

Young people accepted into IPV shelters described overcrowding challenges. One said a shelter had "children screaming while women are having mental health crises, but youth under 15 had to be supervised so even as a teenager you aren't allowed to go to your room by yourself and play on your phone."

Expanding access to resources in communities could also alleviate CFS staffing issues since communities without resources often have difficulty retaining a workforce. One participant suggested a program to target high school students to facilitate post-secondary education for these positions.

RISK OF CORPORATIONS ASSUMING AUTHORITY OVER CFS

Participants said the government enacted regulations to devolve its authority to corporations to carry out CFS. This allows agencies to profit from CFS transfer payments because they take funds intended to pay for children's care. This profit incentivizes apprehension of children, which is contrary to the purpose of the Act. This framework also incentivizes taking Indigenous children "from the federal market into the provincial market" where corporations can receive CFS contracts. This race to the bottom harms kids and families.

Participants said for-profit agencies cut costs on things like dental, new clothes, and transportation to maintain profit margins and appease shareholders. One participant said, "I used to work at a couple of group homes, and the way they did their scheduling was that they had four full-time staff with salary positions. They have benefits and this and that, then everyone else was part-time, except they weren't part-time. They got 40 to 60 hours a week, but it was called part-time so that they didn't have to give you benefits, better pay, or time off for anything."

One young person who lived in one of these types of homes said, "You had staff constantly just going through. And that was hard on me. You've made a connection with somebody, and then they just leave. Like, it's really, really emotionally damaging." A joint investigation by Global News and APTN provides a further look at the harm associated with for-profit child and family service facilities. [48]

48 Andrew Russell et al., 'Inside Ontario's "Scary" Child-Welfare System Where Kids Are "Commodities"', *Global News / APTN.*

TOPIC 11: Developing a dispute resolution mechanism for coordination agreement discussions outlined in 20(5)

Dispute resolution as a mechanism for coordination agreement discussions received mixed feedback among participants, with some feeling it unnecessary.

Most said dispute resolution is necessary and suggested:

- creating a national oversight body to ensure accountability and resolve disputes (see Topic 5: **Identifying the need for child and family services institution(s)**)
- having a nationwide discussion on protocol
- involving more Indigenous lawyers and judges trained in these issues
- inviting Elders, Knowledge Holders, and Nations to take the lead

One participant who supported a dispute resolution mechanism shared a concern over "lateral violence" from within the community as the implementation process unfolds. They described a "hostile" takeover of the CFS board in their community by a new set of members. If a community is unhappy with the way an existing CFS agency is operating, a mechanism must exist to give input and select new representatives in a collaborative way. The mechanism can be unique to the community, but the details of how it will operate should be laid out in coordination agreements.

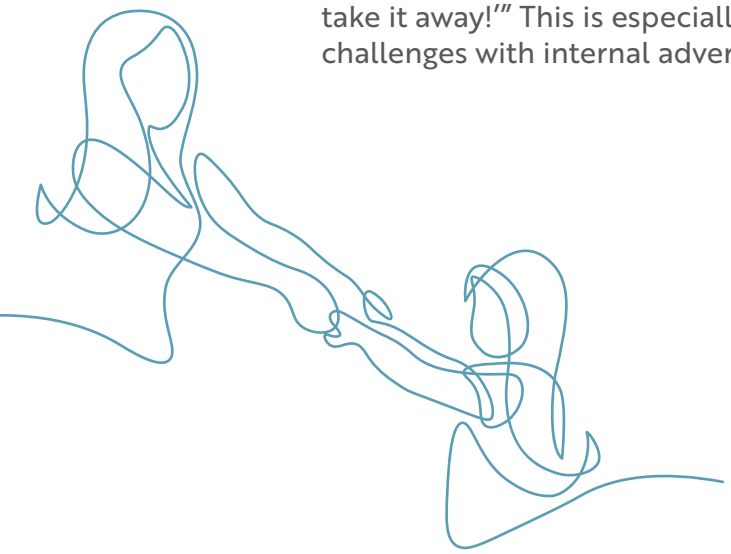
Disagreement and failures should be expected, as with any new endeavor. Once an IGB has control of CFS, problems will not suddenly be solved. Problems will arise, and there must be ways to work them out, whether within the community or involving an outside institute's assistance.

TOPIC 12: Child and family services liability

Many CFS agencies already deal with liability and accountability and have insurance in place. One agency said they are working with lawyers to revisit their liability framework and ensure their insurance is comprehensive as they create their own laws under the Act, rather than working within provincial frameworks.

Participants raised the following concerns:

- Providers must create a system to notify parents of their rights, such as their right to appeal decisions.
- Data violations should be a liability consideration.
- There must be adequate funding for agencies to secure insurance, including for Nations with agencies that choose not to become delegated under the province.
- Daunting reporting mechanisms will bog down IGBs and new CFS agencies and should not be imposed by provincial or federal government. Rather, the government should let them take control of their own services and understand that it will take time.
- Coordination agreements should allow for IGBs to partially assume responsibilities/jurisdiction rather than an "all or nothing approach."
- A gradual transition should be available. Rushing the process without adequate time and resources to build capacity is dangerous, which could lead to IGBs being blamed for mistakes.
- Concern exists over the punitive nature of the relationship between First Nations and government—"there's a layer of surveillance and a layer of judgment and a layer of colonialism about [the process]: 'if you screw up, we're going to take it away!'" This is especially relevant in contexts where there may be existing challenges with internal adversarial band politics.



ROOM TO LEARN

Participants shared concerns that IGBs would be held to a standard of immediate perfection. Instead, a compassionate, realistic, and patient approach to mistakes will help IGBs develop a new set of laws.

> **"The fact is, the current state-run system makes devastating mistakes whose ripple effects on the community are far-reaching. And a new system might also make mistakes, some which will harm children. But the danger is in comparing an idealized version of the state system with an obviously imperfect, new, community-based system that will take time to find its feet. The goal is to harm zero children, but that's unrealistic—it's about reducing harm and mitigating risks. The state systems such as courts will have to work very hard to adapt to this and let go [of expectations of perfection]."**

One participant said the media focus on tragedies creates a public panic that things will go wrong, though that is rarely the case. One said, "The one thing we probably can't do in child welfare is to prevent the death of a child, but it's really the only metric that we're held accountable to when we miss something. That's really what the public are aware of in our child welfare failures."

Public panic is dangerous because it leads CFS agencies to perceive "we can't make any mistakes. And when you operate from that stance, you do nothing but make mistakes, because there's no room for reflexive growth or open discussions about what's working and what's not working."

TOPIC 13: Funding sustainability

Funding must be flexible to enable communities and CFS providers to use funds for their unique needs and adapt to changes over time.

Participants said a sizeable initial investment will support the Act's implementation to prioritize prevention and early intervention for community wellness.

Preventative and related services that address housing, mental health, and addictions services impact CFS outcomes greatly. When parents' basic needs are met, children are far less likely to encounter CFS. When parents are supported by wrap-around services, early interventions can prevent children from being removed. Taking a parent's children away for life because the parent struggles with addiction is punitive, and harms children, parents, extended family, and community.

TOPIC 14: Funding review cycle

One service director at an Indigenous CFS agency in the East region said when funding is tied to the number of children in care, it does not accurately reflect the actual funding needs of agencies focusing on prevention and placements in kinship homes. She said, "When we do reporting, which is when you look at money … they want the number of children in care. That doesn't tell me anything, really. What I mean is, if we have no children in care … are we doing anything less?"

Asking exclusively about the number of children in care is not the right question. "We have no children in care. There was a lot of money for dealing with protection, but we wouldn't get [that funding] because we don't have children in protection." Her agency is financially penalized for succeeding at doing exactly what it should be doing: keeping children in kinship placements rather than foster homes. She suggested measuring things like community addiction rates can better indicate the need for funding in her community.

An additional concern this participant shared is that the financial reports take a long time to complete, which places strain on busy agencies.

TOPIC 15: 12-month period to conclude coordination agreement discussions

NEED FOR TIMELINE FLEXIBILITY

Participants said they need flexibility on the 12-month timeline for coordination agreement discussions, as the process could take longer given the scope of the task. As one participant said, "It's not just a matter of drafting laws. It's drafting laws and customs that are unique to each community."

A lawyer and academic participant said the discussion process is prohibitively expensive for many IGBs. "Everyone knew C-92 was coming and had years to start preparing. And yet, only four or five Nations have actually got through the process since the law came into force. And this is probably because they have not had the resources. It will take many more years before this is up and running. Without resources, most Nations will never get there. If there was support, everyone would have already done it who wants to."

So far, participants said "everybody knows that it's taking longer [than 12 months]," so IGBs in the process of concluding a coordination agreement discussion have been receiving timeline flexibility from the government. Given the challenges, this flexibility should be encouraged.

RISKS OF RUSHING THE PROCESS

One lawyer/academic said the tight time limits will create a "cash grab" if IGBs are rushed. IGBs might fear funding for developing these laws is limited to a short time period, so they might rush to hire a legal team from outside to do the necessary drafting. This could lead to hiring "Bay Street lawyers" who lack the necessary expertise and familiarity with the community and Indigenous ways of knowing and being. This could create laws seen as illegitimate by the community, defeating the Act's purpose.

Participants said appropriate community consultation with key stakeholders "takes a really long time." Indigenous women and children who are most affected by CFS laws **must** be involved. Statistically, IGBs tend to be male-dominated,[49] so mechanisms amplifying marginalized voices (i.e., children and women) must be included.

The risks of rushing the coordination agreement discussions are serious. One participant recommended that best practices (perhaps developed by the national Indigenous

49 Gender Results Framework: Data Table on the Representation of Men and Women in First Nations Band Councils and Chiefs in First Nations Communities in Canada, 2019, Statistics Canada.

child advocate proposed in Topic 5: **Identifying the need for child and family services institution(s)**) could help guide this process.

TOPIC 16: Applying the Act's minimum standards

Participants said the Act's minimum standards should be read as "a floor, not a ceiling." To ensure the standards are met, community support services need flexible, stable funding, as discussed in Topic 6: **Clarifying socio-economic conditions under section 15** and Topic 10: **Overview of existing funding, gaps, and overlaps in order to identify long-term, sustainable, complementary funding**. Furthermore, it is service providers and courts who will apply the Act, so participants suggested mandatory training for judges and social workers. See the section on Need for systemic reform and education for a detailed discussion.

NEED FOR STABILITY

Placing an additional obligation on CFS agencies to take all reasonable measures to ensure stability of caseworkers assigned to children would be an additional positive minimum standard. Every single young participant said having an inconsistent point of contact/support person was a barrier to proper service, and a source of additional trauma. While staff turnover and high burnout rates in the field make this a challenge, agencies should strive to provide children in their care with the opportunity to develop stable relationships with longer term caseworkers, rather than frequently bumping children from worker to worker. To facilitate this, caseworkers should be provided appropriate compensation, benefits, and work-life balance to reduce turnover.

NEED TO ADDRESS THE UNDERLYING REASONS WHY SOMETIMES KINSHIP PLACEMENTS ARE NOT POSSIBLE

One service provider said, despite best efforts to place Indigenous children with Indigenous families, this is not always possible. "What we continuously hear, which is one of the priorities in the federal legislation, is the placement with Indigenous care providers, which we absolutely agree with. Keeping them at home is the number one priority. It's the thing that we spend all of our time trying to do, but in the end, it is [often] not possible."

Part of the reason for this is systemic. Communities are suffering colonialism's harmful impacts, such as poverty and intergenerational trauma, which means many families do not have the capacity to take in children. As discussed in Topic 6: **Clarifying socio-economic conditions under section 15**, the Act's minimum standards mean nothing without funding to make it possible to meet them. This means tackling poverty, mental health, addictions, and violence that many Indigenous communities struggle with due to systemic racism and intergenerational trauma.

Some lawyers said numerous CFS providers are not attempting to first place an Indigenous child with an Indigenous foster family, but rather jump straight to placement with a white family. If courts do not challenge this practice (providing the case even gets to court, which it often will not, due to access to justice barriers), then the Act's minimum standards around priority placements will go unmet without recourse. The priority of placement should be assessed and reviewed in every case, alongside an explanation for why it was not acceptable before moving on to the next option.

NEED FOR BEST INTEREST OF THE CHILD TO BE DEFINED IN COMMUNITY CONTEXT

Interpreting the best interest of the child (BIOC) should be defined and interpreted from within the community. An academic/ lawyer participant said BIOC can be a loaded term, especially if judges, social workers, and lawyers lack cultural competency. "There is so much potential for people to substitute their conception of good child-rearing for other people's." See section on Need for judicial education for more details.

INTERSECTIONALITY OF BIOC

Two participants with lived experience said BIOC needs to consider gender. They said some people are uncomfortable around men, and BIOC should considered this seriously. The other young person found herself in high-risk situations due to naivety. She said young Indigenous women and children need to be educated about situations where they face safety risks through "a program for Native girls, or Two-Spirit young people, for empowerment, self-protection, and education as well. And don't just empower, make them aware."

Multiple participants of mixed-race ancestry with lived experience in care said discrimination played a role in their cases. One young participant with an Indigenous father and a Dutch mother was placed with her mother, despite her preference for being in her Indigenous family's safer and more stable home. She experienced racism within the white religious community where she was placed. She suggested mixed race children's vulnerability to racism should be a consideration when determining the BIOC.

NEED FOR ACCOUNTABILITY

An academic and lawyer participant said regulations could ensure minimum standards are being met, and provide for additional oversight from a national child welfare advocate for Indigenous children and a tribunal, as discussed in Topic 5: **Identifying the need for**

child and family services institution(s). This participant suggested the national child advocate, perhaps liaising with a provincial counterpart, could serve as an educational resource and support to agencies that fail to meet the minimum standards. "They can also be authorized to pick up the phone and say, 'Look, we're seeing that there's this issue—what do you need? Do you need us to come in to do more education with your staff?' I think they're going to need that level of intervention as opposed to just regulations. I'm not saying that regulations are necessarily a bad thing, but they're not a panacea."

NEED FOR MEANINGFUL CONSEQUENCES FOR BREACHING THE ACT'S MINIMUM STANDARDS

Provinces that refuse to acknowledge or cooperate with IGBs with their own CFS laws, or to ensure provincial laws and agency practices comply with the Act's requirements must face consequences. One participant said, "It is very concerning that even right now in Ontario, you have both the provincial and federal legislation currently applicable to all services to First Nations, and yet the CAS [Ontario Children's Aid Societies] and even the Indigenous children's well-being agencies are not complying with the federal legislation [i.e., the Act], even though it's been there for how long now."

This participant explained Ontario laws require foster care homes to be licensed. Therefore, the Act's requirement that children be placed by priority in family kinship homes is not followed. Children can only stay for 60 days in a "place of safety" (for example, with a relative or in another Indigenous home) before these homes need to be licensed. Many kinship placements will not meet the licensing requirements and, consequently, children are moved to white foster families, against the Act's requirements.

The participant said, "The province would tell me you can't extend past 60 days anymore. You need to move those children. And I'm saying, 'Nope, the federal legislation gives me these priorities for placement. These children are in one of the first two priorities in the federal legislation, and I'm leaving them there because that's in the best interest of an Indigenous child, according to the federal legislation, and the best interest of continuity of culture."

Such conflicts between provincial laws and the Act are a live issue practitioners face daily. When provincially-run CFS agencies disregard the Act's minimum standards, children and families are denied the rights the Act is designed to protect. There appears to be little consequence to those who ignore the Act. When breaches occur, people who are harmed have few options for legal recourse, given the challenges around access to justice.

TOPIC 17: Process for coordination agreement discussions

GOOD RELATIONSHIPS AND COMMUNICATION CREATE BETTER OUTCOMES

Participants who have begun the coordination agreement process said building and maintaining good relationships between IGBs and governments is important. Governments should build these relationships over time, ensuring good communication and trust is established from the outset.

One Director of Services from the East said, "The province has been a good partner, has given what was needed, and been at the table to help and discuss things such as what good indicators are." However, she said the process is unduly long even when the provincial government is being a good partner. She would prefer to deal directly with the federal government in this process rather than through the province as the "middleman." She said, "I do not feel like I need a babysitter. I know this community. We know ... what we need."

NON-DISCLOSURE AGREEMENTS SHOULD NOT BE FORCED ON IGBS

Imposing NDAs removes transparency in the coordination agreement process and is another factor participants said validates a national oversight body, as discussed in Topic 5: **Identifying the need for child and family services institution(s)**.

Good communication and relationships must be fostered between IGBs starting the coordination agreement process; collaboration and information-sharing should be encouraged. When CFS providers and leadership from different communities meet to discuss methodologies and protocols, they can learn from each other.

Some participants said the government has compelled them to sign NDAs as part of the coordination agreement process to prevent them from sharing information about their negotiations with other IGBS or groups such as the Assembly of First Nations. This is counter-productive and was described as a "divide and conquer" approach. The process should be transparent and collaborative. Developing new CFS frameworks is resource-intensive and costly. Forcing each IGB to "reinvent the wheel" causes them to waste resources that could be saved if they communicated with groups who have already done this work. Governments should discontinue the practice of using NDAs in the coordination agreement process. Good relationships between IGBs are also a safeguard against children "falling through the cracks" as jurisdictional changes occur (as discussed in Topic 2: **Approaches for child intake systems, cross-jurisdictional communication)**.

INCENTIVIZE PARTICIPATION AMONG THOSE MOST IMPACTED BY CFS

One way to incentivize community participation in coordination agreements is to reduce barriers to their participation, as discussed in Topic 4: **Overall system oversight to support a five-year review (section 31(1))**. Provide childcare and host meetings in accessible spaces during hours when the people most impacted by CFS decisions, such as parents and children, can attend.

NEED FOR FUNDING

Funding is a crucial part of the coordination agreement process. One participant referred to the Advocates' Wisdom Workshop document created by Wahkohtowin Law and Governance Lodge: "There are cost pressures and timeline pressures as funding needs to be secured before a coordination agreement is signed." Funding must also be available for third-party experts, such as legal counsel.

ADDITIONAL ISSUES

NEED FOR SYSTEMIC REFORM AND EDUCATION

DISCRIMINATION IN CHILDREN'S AID SOCIETIES (CAS) AND COURTS OFTEN GOES UNINVESTIGATED

Several participants identified discrimination and prejudice in Children's Aid Societies (CAS), although "[CAS] deny this." One young participant said CAS removed their sibling from their Indigenous father due to assuming a large birthmark was a bruise. CAS placed the child with their white mother, where the sibling experienced harmful treatment. When discrimination like this happens, the Act provides parents with little recourse.

One participant said if someone complains about the discriminatory way CAS handled a case, CAS does its own internal investigation and consider it closed once the case goes to court.

One lawyer we spoke with told us that CAS will double up on the length of their court submissions (sometimes submitting over 500 pages of duplicated reports) just to make it harder for the judge to find the relevant documentation that would prove they discriminated against an Indigenous person. Hence, a full investigation is never done.

CAS also makes determinations about who is Indigenous or not, which is problematic. If it argues a child is not Indigenous, then it could not have discriminated against them on that basis. According to one participant, CAS uses "interinstitutional discrimination to essentially allow for de facto apprehensions."

LACK OF PROFESSIONAL REGULATION LEAVE COMPLAINANTS WITHOUT RECOURSE

Participants said because not all frontline workers are registered with a professional order, complaints may not hold all workers accountable. In Ontario, for example, CAS workers do not have to register with the College of Social Workers. This means no external complaint mechanism exists when an unlicensed social worker does something wrong, only internal investigations. Much like when police investigate themselves, they may be unwilling to hold their peers accountable for wrongdoing, as one participant noted.

JUDICIAL EDUCATION AND REFORM

IGNORANCE OF THE ACT

Participants stated that serious gaps continue to exist in judges' knowledge of the Act. A lawyer said when the Act came into force, there was no judicial education resources provided. She said, "Even though the agency should have an 'honor of the Crown' or a higher fiduciary sort of obligation, they don't see that role, and you have to nudge them. The judges also don't necessarily always … have the tools in their toolbox to help counsel move it along … So it falls on lawyers to educate the judges, but when you have 150 clients, how much time do you have to make a case plan for each, including having to educate the judge?"

Participants said judges in different regions apply the Act differently and that some do not realize that minimum standards apply even if no IGB is involved. "I've heard multiple times, and even judges in in different jurisdictions, say, 'Well, the community hasn't been identified as an Indigenous governing body' and consequently assumed that the Act does not apply, which is untrue."

A lawyer who worked on creating training resources for judges said, "Judges said to us, 'we have no idea [what to do with the Act].' We did judicial education in B.C., and there was a judge from Ontario there, and they said, 'You have to go and talk to Ontario judges, because no, we don't have a clue.'"

Participants said many judges also seem unaware of UNDRIP and other international conventions Canada has signed, and "if you cite TRC principles in submissions in family court, the judge rolls their eyes—they don't see the relevance."

There is a "huge problem with judges not understanding what systemic discrimination is." Judges are generally senior in their legal careers and considered expert decision makers. And yet, "they were brought up in a very racist and toxic culture. Some even sent Indigenous children to residential schools earlier in their careers. Yet they think they are unbiased, despite having no anti-bias and prejudice training … These biased judges are the ones interpreting the Act, and they have a lot of power: the Act puts all of this power from the legislation and how it gets interpreted into the hands of people who are professionally incompetent, whether consciously or unconsciously."

> "So, you have this system of literally incompetent people all over the board, rife with biases and prejudices, who don't understand the nature of the law, or how it came to be … there needs to be training for the people who are supposed to interpret [the Act]—the judges, lawyers, CAS workers and others, on biases, prejudices, social contracts, the nature of law and how it evolved, how recent human rights law is, how there is a complete misconception of what justice is and what the legal system is and how those two things don't jive in Canada. And so you need money for training. Otherwise, it's just bureaucratic genocide."

It can be challenging for judges to recognize subconscious bias. They may lack Indigenous intercultural learning. Challenges discourage mandating judicial training, especially if judges must "physically go somewhere and do something experiential such as visiting communities to get a sense of how things work there from the inside." Several participants said that "it is not enough to do a one-hour webinar and carry on with business as usual."

Participants said judges reading the Act should take its instructive obligations seriously. "You don't need to understand why and what a relationship to land is … because now we have legislation that says it." One academic and lawyer pointed out the need to educate professionals working in CFS around the recognition of Indigenous laws as laws, not merely "law-adjacent" principles.

One participant suggested the government to pay for an *amicus curae*, or court assistant, in cases where judges must interpret the Act. "Because otherwise it will not be done right, and Indigenous children and families will be harmed. It [bad legal precedent] is hard to undo once it's done."

ACCESS TO JUSTICE ISSUES

Limited government funding for legal aid prevents access to legal services, especially in rural areas. Experienced legal aid lawyers leave when funding is limited, resulting in "young lawyers representing the most vulnerable people and going up against the government in a legal system that is biased."

Many Indigenous parents are ineligible for legal aid and go to court unrepresented by counsel. Even though the MMIWG calls for implementation of family liaisons and court workers,[50] the federal government only funds criminal court workers and leaves family court workers to provinces. Indigenous court worker programs are underfunded. Family law courts generally do not have Indigenous liaisons.

Lack of early access to legal counsel is a serious problem. Indigenous parents, often without a lawyer (or sometimes with an over-burdened legal aid lawyer managing a heavy caseload) face a well-funded colonial adversary.

JUSTICE RESPONSE TO INTIMATE PARTNER VIOLENCE (IPV)

CFS needs to work with other systems, such as police, victim services and probation, to address the issue of IPV. Women experiencing IPV can be scared to report, seek help, or go to a shelter because mandatory reporting to child protection services puts their children at risk of apprehension. "If there's legislation about this, it should specify that if the woman is in a shelter or safe place, they don't need to call CFS necessarily. [Legislation should] give flexibility on the reporting, and frontline workers need to be well-trained to know how to respond" as misconceptions around IPV can lead to child apprehensions. One IPV expert said, "Sometimes a woman staying [with her abusive partner] is protective of the children because perpetrators can get visitation/access/custody. So sometimes staying with the perpetrator is the most protective thing a woman can do."

This expert also said, "There's a lack of programs for perpetrators, or the waitlist is long. Intergenerational violence is complicated, and a criminal justice response may not be what communities want."

Some lawyers tell women not to bring up IPV or child abuse in court because judges may not take it seriously. Indigenous clients were told to "hide it if you can pass, because you will face discrimination … The message is to hide abuse, hide breaches of the law, don't mention your human rights, because judges will laugh you out of court if you make human rights arguments." A recent report on IPV responses in the legal system cited by a participant said, "nearly half of the women we surveyed were told that they should not bring up the family violence in court, partly because [j]udges[51] The report's authors also heard "countless" in court.[52]

50 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Calls for Justice - Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* s.10.1(iii).

51 Haley Hrymak and Kim Hawkins, *Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger,* Rise Women's Legal Centre at p. 69.

52 Hrymak and Hawkins at p. 80.

Some abusive exes use the court system to perpetuate abuse. "The myth is that after a woman leaves, the abuse stops. But exes can still abuse them through the court system."

Special training for judges on IPV may help. One participant stated that, "judges are untrained on IPV. If you add Indigeneity as a factor, it's a real problem."

THE ACT IS A POWERFUL TOOL WHEN ENGAGED

Judges who have educated themselves on the Act and implement it in their decisions can create positive impacts. "Judges have started pressing and demanding to know about notice. [For example, they will ask] 'what kind of notice? What efforts have you made to give notice? We will wait. Oh, you haven't done these things that are required in the [the Act]? Go back and come back when you've shown us evidence that you've done these things.' And that's really powerful, because so much of child welfare never hits the courts … We have seen a change over the last two years where that information is being sought out actively by judges."

Another participant said, "Substantive equality provisions are important tools in the hands of judges and lawyers who know how to argue them … I think substantive equality could be unpacked more, to give it even more authority … it could be made clear that [substantive equality] requires governments to provide services in accordance with Jordan's Principal."

SHIFTING THE ADVERSARIAL SYSTEM TOWARD A COLLABORATIVE APPROACH

Multiple participants suggested a *Gladue* court equivalent for family courts, "with judges who will understand that there's going to be mental health issues because of all the trauma from the history, and so the way we do court has to be totally different going forward, with more of a circle approach, and a huge amount of mental health support."

The court system is adversarial, but participants said better outcomes are possible when parties collaborate, and align with some Indigenous traditions. Currently, "you collaborate and discuss with other practitioners and service providers and try to come to consensus on what's the best choice, but ultimately in a lot of cases it is just one person [deciding]. And back in the day, in our villages it wouldn't have been like that. It would have been a roundtable circle with 10 to 20, people discussing every aspect of the case, like, 'What do you see?' What's been their experiences with the child? And keep in mind these people have been living with the child for their whole lives."

Instead of having one judge make decisions, "we could invite wise Elders from the community into family courts and settlement conferences to help with the process, to reach compromise, to find solutions borrowing from a circles approach." Alternately, there may be ways to avoid court "if you could coordinate mental health service providers, social workers, violence against women workers, court support workers, and all get them all together to meet, they could identify all the problems and start finding solutions for each one [vs. taking a siloed approach.] This wouldn't involve judges at all."

One suggested that "the process should start with a circle right when a child is apprehended—not after a year of court processes when there's little hope of the child returning." Participants pointed to the family decision-making program in New Zealand.[53] There, families are offered family group counselling, and everyone supporting the family can be involved in creating a plan. If multiple IGBs are involved, dispute resolution could be handled between bands.

LEGAL EDUCATION REFORM

Legal educators said law school curricula are changing to include mandatory Indigenous law classes. Some provincial bar associations, such as the Law Society of British Columbia, mandate Indigenous cultural learning courses for members. Other provincial professional orders should create and mandate similar programs.

NEED FOR SOCIAL WORK AND CURRICULUM REFORM

Participants said changes in the social work profession and curriculum updates for university social work programs are necessary. The first TRC Call to Action calls on governments to ensure social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools[54] and about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.[55]

Participants said Indigenous-specific and anti-oppressive practices must be part of social work curriculum. Participants with experience in social work university programs as educators or learners said many social work programs do not address Indigenous children and children in foster care. A frontline social worker said she was required to take "barebones" training on working with Indigenous children, only three hours.

53 For more information on this model, see, for example: 'About Family Group Conferencing', Practice Centre - Oranga Tamariki.
54 TRC Calls to Action 1(ii).
55 TRC Calls to Action 1(iv).

Localized training is better than a "pan-Indigenous" approach. Indigenous peoples' diversity makes it difficult to provide community-specific training. One participant said, "—ven as a Native person myself, I would not go to a different band, and start telling them what to do, and what's what … [in school] it seem[ed] like they were giving them everything that you need to know, 'here you go. Now you know everything.'… not taking into account the fact that each tribe has different histories, oral and written, as well as each individual band's history. It's just so complex, you can't possibly learn everything."

CHALLENGES FOR INDIGENOUS SOCIAL WORK STUDENTS

CFS agencies want to hire Indigenous social workers but have difficulty finding and retaining candidates. Aspiring Indigenous social workers face many barriers to completing the educational requirements. One participant said, "We need to decolonize university admissions. They shouldn't focus solely on GPA, but rather on experience," reducing barriers for Indigenous students with lived experience "so that children who grew up in care or have no connection to their land, people, or teachings can still get in."

Another participant said, "If an Indigenous student who is receiving funding from their band for university studies gets a low GPA [grade point average], then they are required by their band to go to each faculty member and get them to sign off and confirm that the student was in class every week, did their homework and completed their readings. No one else has to do that … the Indian Act is patronizing and patriarchal, and that can be internalized." Further, "we need to recognize that for Indigenous social work students, there can be triggers regarding our own families."

Lack of access to training is another barrier. "There needs to be more opportunities for learning for remote communities." Indigenous people in fly-in communities who do not want to move to the city may be unable to get a university degree, especially if their region has poor internet connectivity. "In a community of 200 people, how can we find ways to enable people to study and receive training and mentorship from where they live so that they can then take on leadership roles [in CFS]?" This participant suggested training could mean Indigenous people "do their own research to develop their own practices and policies for our children [that are] inclusive and transparent."

Students who can access training, such as in an Indigenous social work program, become frustrated if their credits (and degrees) are not accepted in other "mainstream" programs. One academic and service provider suggested credits should transfer more easily between institutes.

"The goal is to partner with different communities to grow academic studies in different departments within the university such as language, land education, Indigenous studies, and social work to provide support to Indigenous students to finish their degrees."

Universities may resist decolonizing admissions because of the financial cost. Universities benefit financially from more students paying tuition. However, larger class sizes mean fewer personalized supports for individual students. "The university may want 300 students admitted (for financial reasons) but to really decolonize and respond to the TRC and make it equitable, then realistically they can only admit 200."

CHALLENGES FACED BY INDIGENOUS SOCIAL WORKERS

Indigenous social work graduates can face judgment from Indigenous communities, and discrimination from non-Indigenous peers and colleagues. "There's actually a lot of stigma about being a Native social worker, like your community might not take it well." One Indigenous service provider had an uncle accuse her of "stealing" children. Another said:

> "We serve our own families. [There are] cultural expectations, value expectations, and the pressure to perform and handle it … Child welfare has such a bad reputation. We are attacked all the time in the media, and by the government, and by First Nations leadership. We are attacked all the time, [including] by our children, youth, and families that we're serving and trying to help. I think that weighs very heavily on our staff. We have a lot of internal wellness efforts that we do in our in our organization as a result of that."

Vicarious trauma goes hand-in-hand with being an Indigenous social worker. One said, "Anybody who works in child welfare is going through vicarious trauma. But if that vicarious trauma also attached to your identity—like into your Indigeneity, to your historical context, your oppression, to your experience of racism, and discrimination in the world—it's just that much exacerbated. It's exponentially worse vicarious trauma if all of the trauma is also connected to you as a person."

Stereotypes about Indigenous Peoples persist in the field. One participant said a court worker shook the hand of everyone on the team but ignored a young Indigenous social worker until another team member spoke up.

HIGH BURNOUT RATES AND TURNOVER

The difficult nature of social work, combined with the discrimination and racism many Indigenous social workers experience can lead to burnout. One participant took three years off from her role as a frontline CFS worker after experiencing burnout at age 25 due to racism, stress, and being treated poorly by management. "We are so underfunded and overstressed. I'm only 25. I feel very jaded. I've actually taken quite a bit off from working in social work."

When social workers become burnt out but work through it, they cannot do their job properly. This negatively impacts the children they're working with.

ISSUES FOR SERVICE PROVIDERS

Social workers face challenges because "the way the child welfare is set up in provinces is a punitive process. The training of social workers needs to move away from policing model to a healing model."

Workers need to be able to determine the context to distinguish between a child that needs protection and a family that needs support. It is difficult to determine if an incident is "the worst parenting moment of their life, or just a Tuesday morning."

The legislative framework requires reporting and an investigative approach when what is really needed is a referral to services. The current approach damages relationships between care providers and families, and often leads to a loss of services rather than the access needed. In most places, especially Northern Continental European countries, the approach tends to focus more on family support. Protection is left to the police and family support is done by CFS.

A service provider said balancing age-appropriate disclosures to children requires sensitivity. A young participant shared their story of social workers disclosing information in a disrespectful way: "they were always talking bad about my mom to me." Ontario uses a story book so children can follow what happened while in care in a way that is accessible to them.

A participant suggested the UN Convention on the Rights of the Child (CRC)[56] is a helpful guide to help service providers maintain children's rights lens, so any new policies and CFS frameworks implemented under the Act should apply the CRC lens.

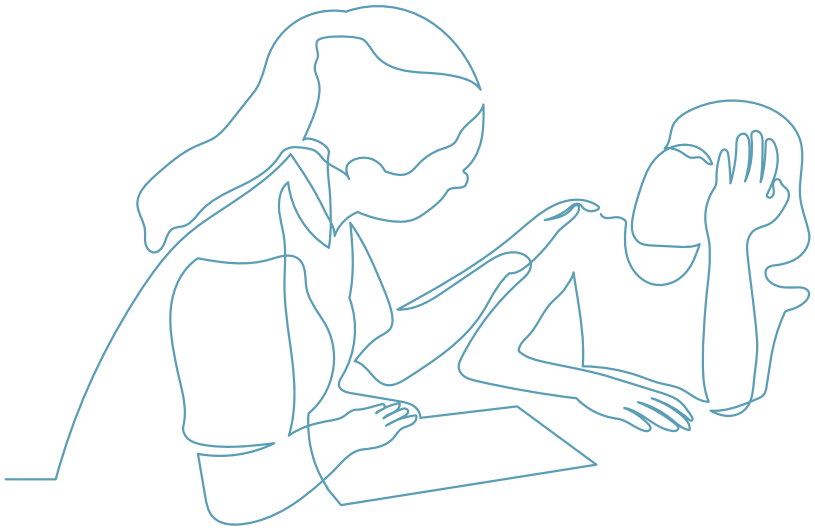
56 *United Nations Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3.

Service providers must receive the training, knowledge and safe space to check their personal biases. A participant suggested service providers need training on personal bias, including how it can impact intake and assessment.

As discussed in the Judicial education and reform section, differences between Indigenous and European worldviews can create misunderstandings between non-Indigenous social workers and Indigenous families. One participant said more than 85% of workers are non-Indigenous and do not have the Indigenous worldview or perspective. As such, non-Indigenous service providers need to "meet people where they are at, not judge them and bring them down."

SOCIAL WORKERS' POSITIVE IMPACTS

When social workers provide stability and consistency for children in care, positive relationships can be established. "That helped me so much just to have someone to listen because I had like 10 and more people who were just writing notes," said a young participant whose social worker listened to her problems with compassion and understanding, rather than judgment. "When I think of workers that have touched me personally, only a small few come to mind, who would have one on ones with me and talk to me about like my future and my past, and hear me out and, you know what I mean, like who would actually genuinely connect with me as opposed to just doing their job."



PRENATAL HEALTH CARE REFORM: "SYSTEMIC DISCRIMINATION HAS LED TO FEAR OF ACCESSING SERVICES"

Participants accessing health care fear more surveillance, scrutiny, and interference from CFS than non-Indigenous people. "A lot of the practices that happen, whether that's health care, social services or education are very patriarchal in a sense that there continues to be surveillance on how we grow and flourish," said one service provider.

The continued use of birth alerts (the practice of nurses or social workers flagging pregnant people for immediate apprehension upon birth of the child) is another fear. One participant with lived experience in CFS shared her own experience of having her baby apprehended in the hospital:

> "They took my baby from me at the hospital and they said that I'm unfit even though I already took parenting programs. I wasn't using when I was pregnant or anything like that, but they took my baby anyway. Because my baby was special needs at the time, he was having feeding issues and we were so burnt out from the hospital. They were expecting us to be there all the time, and we weren't. We weren't given any transportation or meals, or anything like that at the hospital, so we had to do that all on our own, and we were just like running out of money and we were running out of mental capacity in order to do this. Having a sick child, there was a lot of systemic racism in the hospital. Nobody taught me anything. So they took my baby, saying that we couldn't take care of him in the hospital, just because we didn't show up on a certain day.
>
> I'm so traumatized from the hospital.

> It was systemic racism. I got people in trouble at the hospital that's why they called CFS ... my partner overheard this group of doctors making fun of my son's, name and I told the hospital about it, and that doctor got in trouble. And then all, of a sudden, the social worker says she's calling CFS on us.
>
> They made us go to court and say he needed to be taken away. And if we didn't say that then there would have been more court. It's like they twisted our arm even more. This wouldn't have been happening if we weren't Indigenous. Usually CFS is a punishment or a consequence. But we didn't even do anything. Our son just came home for the first time maybe three weeks ago."

Another participant said in Québec, "I got lucky, I guess because I do speak French properly. Like, my accent is super strong. I gave birth in a French hospital, and I think that helped me a lot. I think if I was speaking English in an environment where it's French I would have been treated differently, for sure."

Although accessing preventative prenatal care can risk "net-widening" and increased surveillance/policing of pregnant people, cases where people want to work with CFS also exist. One participant said some people want to plan their birth with their family, but when they contact CFS, they are met with resistance to collaboration and are told that "we can't get involved until the fetus hits air and breathes." Most people at this stage are past the worry about over-surveillance, but fear invisibility and the erasure.

Participants said addiction treatment programs may not accept pregnant people. A lawyer and former service provider said she is only aware of one in the country: The 2nd Floor in Alberta. With a collaborative, science-based harm reduction approach, parents struggling with addictions may play a role in the child's life. For example, they can breastfeed to help children born with addiction through withdrawal.

Distrust within prenatal health care means providers must build better relationships with expecting Indigenous parents. Pregnant people may not ask for help, fearing unwanted child protection interventions. One expert suggested creating a university course between nursing students and social workers may address some of these problems.

NORTHERN AND RURAL CHALLENGES

Participants from the North discussed several challenges unique to their geographical remoteness, such as, lack of resources, from stable internet to emergency care. Northern participants calling 911 may wait a day for emergency responders to arrive. This is a challenge in IPV cases since women and children are unsafe, essentially trapped with their abusers, then face blame from CFS for not leaving.

A lack of medical and addictions treatment means young people must travel alone south for treatment, with no supports or case worker to accompany them. This can lead to them ending up at risk or on the street.

One participant said poverty represented the average living conditions in her home community in Nunavut. She said some families take on several foster kids to receive the payments to afford food and other necessities. She said, "It's not even that I need a mall or like, my nails need to be done. It's not about this, it's about surviving, like being able to live our life." Severe resource limitations in her community led her to prefer living in Québec, despite facing discrimination. "[In Quebec] I still had access to someone to talk with. Even if it was not the best, I had options and I was able to go at the hospital. I was able to still go to high school."

Hiring and retaining the CFS staff is an acute challenge in northern and rural communities. One lawyer said in Northern Ontario, a child could stay in their home with a part-time parent aid, but after six months of searching they could not fill the position. When someone fills a position for a term, they often do not stay long. This is an issue with non-Indigenous employees in particular because it takes times to learn about a community, and if this knowledge is not learned, it can lead to employees misunderstanding situations and "unintentional racism."

Participants from small, remote communities said people can be scared to seek services because other people will know and see them as "weak" or judge them. A participant from Nunavut said if services could be brought to the people, such as discreet food bank deliveries, this may encourage people avoiding services.

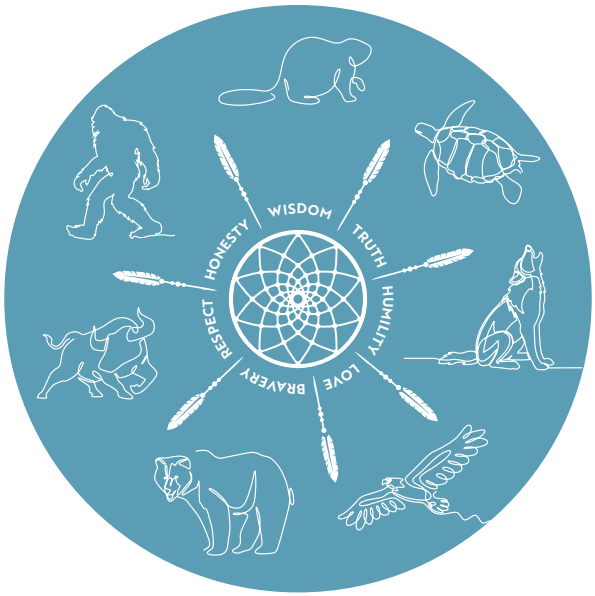
HOPE FOR THE FUTURE

"Our people had intricate systems of caring for and protecting children—that most sacred gift given to our people, and we honoured it as such. So I think it's beautiful to see the laws that are coming forward, and you know, really stepping outside of these laws and current systems that have just caused so much damage in our communities, because they don't honour and recognize the community responsibility and raising children that we once had in our community."

"If people start learning Indigenous culture and putting it forward, it's going to challenge Western culture, and it might actually become a blend of something good."

"It's exciting that lots of young people are taking on leadership roles, learning language, learning land-based education, ceremony, taking pride in creating new songs and dances. Older generations may not have imagined themselves going to university or travleling, but the youth are excited about it, and they can bring things back to the community."

While this report primarily focuses on the Act's room for improvement and the challenges Indigenous communities face in developing CFS frameworks, we conclude with some words from participants about the Act's potential and power to be lifechanging. NWAC encourages the federal and provincial governments to honour the Seven Grandfather Teachings: *Zaagidwin* (Love), *Mnaadendimowin* (Respect), *Aakwa'ode'ewin* (Bravery), *Debwewin* (Truth), *Gwekwaadziwin* (Honesty), *Dbaadendiziwin* (Humility), and *Nbwaakaawin* (Wisdom).[57] These teachings can serve as guiding principles to ensure the Act reaches its full potential.



57 For more on the Seven Grandfather Teachings, see, for example: Benton-Banai, Edward, 1988, *The Mishomis Book : The Voice of the Ojibway.*

RESOURCES AND FURTHER READING

These are the materials our participants shared as referenced in this report:

- A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the Caring Society Case
- Determining the "Core of Indianness:" A Feminist Political Economy of NIL/TU,O v. BCGEU
- Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms
- Issue 1: Federal Legislation on Indigenous Child Welfare in Canada
- Judicial Workbook Bill C-92 - An Act Respecting First Nations, Inuit and Métis Children, Youth and Families
- Knowledge Portal – First Nations Child & Family Caring Society
- Preliminary Briefing Sheet Bill C-92 An Act respecting First Nations, Métis and Inuit children, youth and families
- Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a
- Research and Public Resources by Wahkohtowin Law and Governance Lodge (includes Bill C-92 for Lawyers and Advocates Wisdom Workshop Shared Conclusions among many other useful resources.)
- Truth and Reconciliation Commission of Canada: Calls to Action
- Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger
- Wrapping Our Ways Around Them - Indigenous Communities and Child Welfare Guidebook

BIBLIOGRAPHY

'About Family Group Conferencing', Practice Centre - Oranga Tamariki. 1 October 2022. https://practice.orangatamariki.govt.nz/our-work/interventions/family-group-conferencing/about-family-group-conferencing/

An Act respecting First Nations, Inuit and Métis children, youth and families S.C. 2019, c. 24 (2020). https://laws-lois.justice.gc.ca/eng/acts/f-11.73/fulltext.html

APTN News - Child Welfare. 'Child Welfare Archives'. Accessed 28 February 2023. https://www.aptnnews.ca/topic/child-welfare/

Attorney General of Québec, et al. v. Attorney General of Canada, et al., No. 40061 SCC (decision pending).

Benton-Banai, Edward, *The Mishomis Book : The Voice of the Ojibway*. Saint Paul Minn: Red School House, 1988.

Blackstock, Cindy, and First Nations Child and Family Caring Society of Canada. 'Preliminary Briefing Sheet to Canadian Senate Standing Committee on Indigenous Peoples, 42nd Parliament, 1st Session - Bill C-92 An Act Respecting First Nations, Métis and Inuit Children, Youth and Families'. 9 March 2019. https://sencanada.ca/Content/Sen/Committee/421/APPA/briefs/FNCFCCindyBlackstock_e.pdf

The Caring Society. 'CHRT Orders'. Accessed 26 August 2022. https://fncaringsociety.com/chrt-orders.

Family Homes on Reserves and Matrimonial Interests or Rights Act, SC 2013, c 20. https://www.canlii.org/en/ca/laws/stat/sc-2013-c-20/208742/sc-2013-c-20.html

First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), CHRT 6 2019

First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada CHRT 26 2016.

Frier, Sarah, and Marlisa Tiedemann. 'Legislative Summary of Bill C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families'. 1. Accessed 25 August 2022. https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C92E

Gender Results Framework: Data Table on the Representation of Men and Women in First Nations Band Councils and Chiefs in First Nations Communities in Canada, 2019. Statistics Canada, 13 April 2021. https://www150.statcan.gc.ca/n1/daily-quotidien/210413/dq210413f-eng.htm

Groening, Allison, Colin Bonnycastle, Marleny Bonnycastle, Kendra Nixon, and Judith Hughes. *Housing Needs of Indigenous Women Leaving Intimate Partner Violence in Northern Communities*. Winnipeg, Manitoba: Canadian Centre for Policy Alternatives Manitoba, June 2019. https://mra-mb.ca/wp-content/uploads/Housing-Needs-of-Indigenous-Women-Leaving.pdf

Heckman, James J., Seong Hyeok Moon, Rodrigo Pinto, Peter A. Savelyev, and Adam Yavitz. 'The Rate of Return to the High/Scope Perry Preschool Program'. *Journal of Public Economics* 94, no. 1–2, 1 February 2010: 114–28. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3145373/

Hobson, Brittany. 'First Nation Says Alberta Government Is Preventing It from Taking Control of Child Welfare'. *The Canadian Press - Global News*, 9 January 2022. https://globalnews.ca/news/8499755/first-nation-alberta-government-preventing-taking-control-child-welfare/

Hrymak, Haley, and Kim Hawkins. *Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger*. Vancouver, British Columbia: Rise Women's Legal Centre, January 2021. https://womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf

Indian Act, RSC, 1985, c I-5. (n.d.). https://laws-lois.justice.gc.ca/eng/acts/i-5/

Indigenous Services Canada, 'Minister Philpott Speaks at the Assembly of First Nations Special Chiefs Assembly'. Speeches, 7 December 2017. https://www.canada.ca/en/indigenous-services-canada/news/2017/12/speech_for_jane_philpottministerofindigenousservicesattheassembl.html

Indigenous Services Canada 'Notices and Requests Related to An Act Respecting First Nations, Inuit and Métis Children, Youth and Families'. Notice, 21 December 2020. https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367

Kenny, Kathleen S., Andrea Krüsi, Clare Barrington, Flo Ranville, Brittany Green, Ronald Bingham, and Kate Shannon. 'Health Consequences of Child Removal among Indigenous and Non-Indigenous Sex Workers: Examining Trajectories, Mechanisms and Resiliencies'. *Sociology of Health & Illness* 43 (2021). https://pubmed.ncbi.nlm.nih.gov/34468044/

King, Adam, Veldon Coburn, Leah Vosko, Rebecca Hall, Olena Lyubchenko, and Andie Noack. 'Determining the "Core of Indianness:" A Feminist Political Economy of NIL/TU,O v. BCGEU'. *Aboriginal Policy Studies* 10, no. 1, 31 March 2022. https://doi.org/10.5663/aps.v10i1.29399

Metallic, Naiomi, Hadley Friedland, and Shelby Thomas. *Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report*. Reports & Public Policy Documents, 31 March 2022. https://digitalcommons.schulichlaw.dal.ca/reports/15

National Association of Friendship Centres. 'Urbanization and Indigenous Peoples in Canada - Responses for the Questionnaire from the Special Rapporteur on the Rights of Indigenous Peoples'. NAFC, 27 February 2021. https://nafc.ca/downloads/un-questionnaire-from-the-special-rapporteur-on-the-rights-of-indigenous-peoples-2021.pdf

National Inquiry into Missing and Murdered Indigenous Women and Girls. *Calls for Justice - Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. Ottawa. Accessed 26 August 2022. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

National Inquiry into Missing and Murdered Indigenous Women and Girls. *Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volume 1a*. Ottawa, 2019. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

Nation to Nation. '"Child Welfare to Prison Pipeline" Feeding Rising Indigenous Incarceration Rates'. *APTN News*, 23 January 2020. https://www.aptnnews.ca/national-news/child-welfare-to-prison-pipeline-feeding-rising-indigenous-incarceration-rates/

Paradis, Danielle. 'Louis Bull First Nation Taking over Child Welfare System'. *APTN News*, 2 February 2023. https://www.aptnnews.ca/national-news/louis-bull-nation-signs-agreement-with-federal-government-to-begin-delivering-child-services/

Russell, Andrew, Carolyn Jarvis, Michael Wrobel, Elizabeth Sargeant, and Kenneth Jackson. 'Inside Ontario's "Scary" Child-Welfare System Where Kids Are "Commodities"'. *Global News / APTN*, 28 May 2022. https://globalnews.ca/news/8874449/ontario-child-welfare-system-serious-occurence-reports/

Safe Drinking Water for First Nations Act SC 2013, c 21 (repealed). https://www.canlii.org/en/ca/laws/stat/sc-2013-c-21/latest/sc-2013-c-21.html

Statistics Canada. *The Daily — Indigenous Population Continues to Grow and Is Much Younger than the Non-Indigenous Population, Although the Pace of Growth Has Slowed,* 21 September 2022. https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm

Stefanovich, Olivia. 'Canadian Human Rights Tribunal Says Ottawa's $20B First Nations Child Welfare Compensation Still Falls Short | CBC News'. CBC News, 25 October 2022. https://www.cbc.ca/news/politics/chrt-decision-20-billion-child-welfare-final-agreement-1.6612624

Truth and Reconciliation Commission of Canada. *Truth and Reconciliation Commission of Canada: Calls to Action*. Winnipeg, 2015. https://www.documentcloud.org/documents/2091412-trc-calls-to-action.html

United Nations Convention on the Rights of the Child, United Nations, Treaty Series, vol 1577, p 3. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, Pub. L. No. A/RES/61/2952007 https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

United Nations Declaration on the Rights of Indigenous Peoples Act SC 2021, c 14. https://www.canlii.org/en/ca/laws/astat/sc-2021-c-14/latest/sc-2021-c-14.html

Wrobel, Michael, Andrew Russell, Carolyn Jarvis, and Kenneth Jackson. 'How Global News/APTN Exposed Alarming Conditions in Ontario's Child-Welfare System'. *Global News / APTN*, 1 June 2022. https://globalnews.ca/news/8882161/how-global-news-aptn-exposed-alarming-conditions-in-ontarios-child-welfare-system/

FINAL REPORT ON

GOVERNMENT ENGAGEMENT MECHANISMS

ON AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

NATIVE WOMEN'S ASSOCIATION OF CANADA