



Native Women's
Association of Canada



L'Association des
femmes autochtones
du Canada

Backgrounder on *An Act
respecting First Nations, Inuit
and Métis children, youth and
families*

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 political voices of Indigenous women, girls, and gender-diverse people in Canada. NWAC is inclusive of First Nations—on- and off-reserve, status, non-status, and disenfranchised—Inuit, and Métis. An aggregate of Indigenous women’s organizations from across the country, NWAC was founded on a collective goal to enhance, promote, and foster social, economic, cultural, and political well-being of Indigenous women, girls, and gender-diverse 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 women, girls, Two-Spirit, gender-diverse, and LGBTQQAI+ people. Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the wellbeing of all Indigenous women, girls, and gender-diverse people, as well as their families and communities.

Background

Project Information

In January 2020, the Canadian government passed *An Act respecting First Nations, Inuit and Métis children, youth and families*¹ (the “Act”). This Act allows Indigenous Governing Bodies (“IGBs”) to control their own child and family services (“CFS”) programs either by working together with the provincial and/or federal governments, or by developing their own frameworks.

Indigenous Services Canada (“ISC”) has proposed a series of discussions called government engagement mechanisms (“GEMs”) to gather the opinions of Indigenous people, including people with lived experiences, subject matter experts in CFS, Elders, youth, women, and people from across the country. NWAC has received funding from ISC to host these discussions.

NWAC’s project will include three parts:

- 1- analyzing how Indigenous women and other groups facing discrimination will be impacted by the Act,
- 2- providing background information and
- 3- hosting GEM discussions, and then providing ISC with a report on the findings and recommendations from the discussions.

¹ *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24 [the “Act”].

You are invited to take part in the third part of the project which will help to inform NWAC's reports to ISC.

Engagement Sessions

NWAC is organizing and hosting six roundtable discussions. We will discuss the 17 topics with a focus on gender-based issues. Participants will include legal experts, professional social workers, academics, community leaders, people with lived experience, and Elders. We have also organized engagements with youth and other stakeholder groups. NWAC will try to create groups representing Canada's geographic regions, gender-diverse, First Nation, Métis, Inuit, status, non-status, on-reserve and off-reserve Indigenous populations. Due to the Covid-19 pandemic, all engagements will take place through video calls.

Issues in the Act re: Indigenous Women, Girls, and Gender-Diverse People

NWAC has identified 8 key issues to discuss about the Act as it relates to Indigenous women, girls, and gender-diverse people. By considering gender, we can look at the ways in which people's intersecting identities such as gender, sexual orientation, age, disability, Indigeneity, and history, must be considered in implementing the Act in order to prevent further unfair treatment of people who have been treated unfairly for so long.

Issue 1: Existing CFS services operate in a way that is discriminatory

The Preamble (introduction) part of the Act recognizes the legacy of harms caused by colonialism and residential schools. It specifically affirms the need to eliminate the over-representation of Indigenous children in CFS systems.

Over half of the total number of children in care are Indigenous, despite making up only 7.7% of the population.² This reflects Canada's long history of discriminating against Indigenous people, which has been described as a "humanitarian crisis" by the Minister of Indigenous Services.³

² 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), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>> Last Modified: 2022-09-21.

³ Indigenous Services Canada, "Minister Philpott speaks at the Assembly of First Nations Special Chiefs Assembly", (7 December 2017), online: <<https://bit.ly/3RfN2vFl>> Last Modified: 2017-12-15.

In 2007, several Indigenous advocacy groups sued the Canadian federal government⁴ and in 2016, the Tribunal ruled that the government discriminated against Indigenous children and communities by underfunding Indigenous CFS⁵, and financially encouraging the removal of Indigenous children from their homes.⁶ In 2019⁷, the court ordered Canada to pay the victims for their pain and suffering, but Canada has not yet paid.⁸ After receiving over 20 additional orders, the government reached a settlement agreement in 2022 which also has not been enacted.⁹

Issue 2: Poverty plays a significant role in Indigenous children being apprehended:

The Act says that an Indigenous child should not be taken from their family due only to poverty.¹⁰ This is important since Canada's history of discrimination against Indigenous people has led to Indigenous people in Canada facing higher rates of poverty than other groups.¹¹ Indigenous women, youth, and single mothers are statistically more likely to experience poverty than Indigenous men.¹² Children in foster care experience poverty at above average rates.¹³

Poverty also has serious effects on health and family relationships. Sadly, it can also be linked to family violence. Indigenous women experience this violence at much higher-than-average rates.¹⁴ Exposure to family violence leads to many children being taken by CFS, continuing a cycle that is difficult to end, because mothers whose children are taken often experience

⁴ *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 (CanLii).

⁵ *Ibid* at para 456.

⁶ *Ibid* at para 344.

⁷ *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 (CanLii).

⁸ *Ibid* at para 474.

⁹ See for ex: "CHRT Orders", online: *Caring Society* <<https://fncaringsociety.com/chrt-orders>>

¹⁰ Branch, *supra* note 1. at s. 15.

¹¹ Statistics Canada, *supra* note 2.

¹² Statistics Canada "Indigenous people in urban areas: Vulnerabilities to the socioeconomic impacts of COVID-19", (26 May 2020), online: <<https://bit.ly/> Modified: 2020-05-26.

¹³ *Ibid*.

¹⁴ *Poverty Reduction Strategy: The Native Women's Association of Canada Engagement Results*, by NWAC (2017). Online: <<https://www.nwac.ca/assets-knowledge-centre/Poverty-Reduction-Strategy-Revised-Aug23.pdf>>

depression and grief and fall deeper into poverty.^{15 16 17} Many Indigenous women have negative experiences with poverty support offices, as they often do not provide culturally appropriate programs.¹⁸

Issue 3: Removal by CFS harms Indigenous girls

The gendered harms of child welfare intervention are well documented (and recognized in the Preamble of the Act). 81% of Indigenous women who had been in the child-welfare system have been physically or sexually assaulted in their life.¹⁹ Being taken from their family home also increases Indigenous girls' rates of contact with the criminal justice system²⁰, homelessness²¹, and sexual exploitation²². In fact, research has shown that involvement in child welfare is the most common feature among girls who are sexually exploited, and that this most often starts at the age of 14 while they are still in the care of the state.²³

Issue 4: Removal impacts Indigenous children facing discrimination for multiple aspects of their identity such as LGBTQ+, Two-Spirit, and disabled children at even higher rates

The Act's Preamble affirms the need to "take into account the unique circumstances and needs of Indigenous elders, parents, youth, children, persons with disabilities, women, men and gender-diverse persons and two-spirit persons". Two-Spirit and LGBTQ+ people are placed in

¹⁵ Anne Blumenthal, *Child Neglect I: Scope, Consequences, and Risk and Protective Factors*, by Anne Blumenthal (2015). Online: <<https://cwrp.ca/sites/default/files/publications/en/141E.pdf>>

¹⁶ Statistics Canada, "Violent victimization and perceptions of safety: Experiences of First Nations, Métis and Inuit women in Canada", (26 April 2022), online: < <https://bit.ly/3xYsX6p> > Last Modified: 2022-04-26.

¹⁷ Kathleen S Kenny et al, "Health consequences of child removal among indigenous and non-indigenous sex workers: Examining trajectories, mechanisms and resiliencies" (2021) 43 *Sociology of Health & Illness*.

¹⁸ NWAC, *supra* note 14.

¹⁹ Statistics Canada, *supra* note 15.

²⁰ Anette Sikka, "Trafficking of Aboriginal Women and Girls in Canada" (2010) 8 *Aboriginal Policy Research Consortium International (APRCi)* 32.

²¹ Amy Alberton et al, "Homelessness among Indigenous peoples in Canada: The impacts of child welfare involvement and educational achievement." III:104846 *Children and Youth Services Review*, online: <<https://scholar.uwindsor.ca/socialworkpub/118>>.

²² Sikka, *supra* note 20.

²³ *Ibid*.

foster care at higher-than-average rates, while Two-Spirit women in particular are more likely to experience foster care placement, abuse, and neglect.^{24,25}

A US study found that youth in care are three times more likely to be LGBTQ+ than the general population, and even higher for young, racialized women.²⁶ The most common reasons for their involvement with CFS were physical abuse and conflict with parents, which is different from the most common reason for non-LGBTQ+ youth whose most common reason was found to be "neglect".²⁷

Children with disabilities are also much more likely to be placed in foster care than children who do not have disabilities.²⁸ Fetal alcohol spectrum disorder (FASD) was diagnosed in approximately 34% of children in care with disabilities, or 11% of all children in care in Manitoba.²⁹

Issue 5: Removal harms mothers, especially Indigenous mothers

The Preamble to the *Act* acknowledges the specific harm to Indigenous women and girls in relation to CFS, as well as Canada's responsibility to support Indigenous women and girls in overcoming this historical disadvantage. The *Act* does not go into further detail on this issue, but removal causes harm for Indigenous mothers who then experience depression, grief, and drug and alcohol misuse. Child removal can also alter women's daily lives by worsening poverty, including homelessness, removing their connections to family, friends, and communities, and making it hard for them to access positive supports, such as resources for health and rebuilding their families.³⁰ This is even more of a problem if they are already experiencing challenges.

A Vancouver-based study of vulnerable women (sex work and HIV service users) found that experiencing child removal increased the chance of accidental overdose by 55%. Indigenous

²⁴ Nicole P Yuan et al, "Alcohol misuse and associations with childhood maltreatment and out-of-home placement among urban two-spirit American Indian and Alaska Native people." (2014) 11:10 Int J Environ Res Public Health.

²⁵ *Ibid.*

²⁶ Angela Irvine & Aisha Canfield, "The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population" (2015) 24 Social Policy 20.

²⁷ *Ibid.*

²⁸ Don Fuchs et al, "Children with FASD- Related Disabilities Receiving Services from Child Welfare Agencies in Manitoba" (2010) 8:2 Int J Ment Health Addiction 232–244.

²⁹ *Ibid.*

³⁰ Kenny et al, *supra* note 17.

women who had experienced child removal had twice the odds of an unintended overdose when compared to non-Indigenous women who had not had a child apprehended.³¹

Issue 6: Indigenous women face extreme discrimination in healthcare

The *Act* prioritizes prenatal and preventive care if it is consistent with the best interests of an Indigenous child.³² However, there are many reasons why Indigenous mothers may hesitate to seek prenatal medical care. The Canadian healthcare system has a longstanding history of racism against Indigenous women that continues today. For example:

- In 2020, Joyce Echaquan livestreamed the racist abuse she suffered from hospital staff while she lay dying, giving rise to major protests across Canada.³³
- A social worker who feels that an expectant parent may put their newborn at risk can flag that parent to hospital staff without the parent's knowledge or consent under a birth alert. This practice has ended on paper in several provinces because it discourages women from seeking prenatal care, but data shows that hundreds of babies are still apprehended each year under birth alerts.³⁴
- Over 100 Indigenous women in Canada report being sterilized without their informed consent as recently as 2018.³⁵

In this context, Indigenous expecting parents may have concerns about the *Act's* prioritization of prenatal care.

Issue 7: Most CFS workers are women. Changes to CFS impact a woman-dominated workforce

Although it is not stated in the *Act*, an important issue is that CFS providers are mostly women. CFS is a female-dominated job, with women making up as much as 90% of the workforce.³⁶ This

³¹ Meaghan Thumath et al, "Overdose among mothers: The association between child removal and unintentional drug overdose in a longitudinal cohort of marginalised women in Canada" (2021) 91 *International Journal of Drug Policy* 102977.

³² *Act supra* note 11 at section 14.

³³ Melissa Godin, "Protests In Canada Over Treatment Of Dying Indigenous Woman", online: *Time* <<https://time.com/5898422/joyce-echaquan-indigenous-protests-canada/>>.

³⁴ The Canadian Press, "Birth alerts have ended but babies still being apprehended in Manitoba", (6 June 2022), online: *APTN News* < <https://bit.ly/3rdxGgM> >

³⁵ Avery Zingel, "Indigenous women come forward with accounts of forced sterilization, says lawyer | CBC News", (18 April 2019), online: *CBC* <<https://www.cbc.com/news/indigenous/indigenous-women-sterilization-1.5244444>>

³⁶ Hae Jung Kim & Karen M Hopkins, "The quest for rural child welfare workers: How different are they from their urban counterparts in demographics, organizational climate, and work attitudes?" (2017) 73 *Children and Youth Services Review*.

means that changes to funding, and liability will have a bigger impact on women since they are the ones working for these new CFS organizations.

Concerns about how CFS will be paid for under the *Act* have been raised by several groups. It is unclear where the money will come from. This is especially concerning since provinces such as Quebec and Alberta have taken action to show they may not follow the law passed at the country-wide level.³⁷ While this has an obvious and significant impact on the children and families accessing CFS, it also could mean that women working for CFS organizations face employment that may be unstable and temporary.

Another issue is that responsibility will be shifted back to Indigenous communities, and more specifically to the Indigenous women representing the CFS. This means that the colonial government responsible for failures and overrepresentation in the past can now shift responsibility (and blame) onto Indigenous women. If control over CFS is granted without the funding to allow them to operate properly, communities will be set up for failure, and then blamed for this failure.

Issue 8: Indigenous band councils responsible for decision-making are dominated by men

The *Act* defines an Indigenous governing body (“IGB”) as “a council, government or other entity that can act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*”. IGBs are very important in the *Act*, as they have the right to operate CFS in their communities. Therefore, we must consider who is in the IGBs. Although it may vary between communities, research reveals that they are often male-dominated.

Most First Nations are formally represented by a band council made up of councillors and chaired by a chief (elected or hereditary). These councils have many more men than they do women. In 2019, only 19% of chiefs and 27% of councillors were women despite women making up 50% of people living on reserve.³⁸ However, it is not just the lack of gender equality that causes concern about who will represent Indigenous communities.

³⁷ Brittany Hobson, “First Nation says Alberta government is preventing it from taking control of child welfare | Globalnews.ca”, *The Canadian Press* (9 January 2022), online: < <https://bit.ly/3UVuWmN> >.

³⁸ Statistics Canada, “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”, (13 April 2021), online: < <https://bit.ly/3Skhzd1> > Last Modified: 2021-04-13.

Band councils and the Indigenous peoples they serve sometimes have tense relationships, as the band is seen as something the colonial government created without asking Indigenous peoples what they wanted. For example, Six Nations is the reserve in Canada with the largest number of people, with 27,559 registered band members, 12,892 of whom live on-reserve.³⁹ The current Chief won his position with a total of only 700 votes.⁴⁰ We must question not only whose voice the councils represent, but perhaps more importantly, whose voices they may *not* represent.

Clarification is needed on who is eligible to claim control over CFS and what steps will be taken to ensure that women's voices will be included.

17 topics for discussion

ISC identified 17 topics for discussion. The full list of discussion topics is available as an attachment with this document for your reference. Please feel free to review the document and speak to the topic or topics that best resonate with your expertise - do not worry about trying to address them all. We have highlighted the following topics as being most connected to gender-based concerns as a starting point, but any of the 17 topics are open for discussion, along with any additional issues you may wish to address regarding the *Act*. Please refer to the attachment for the context and discussion questions accompanying these and all other topics.

- Topic 1: Notice to IGBs (section 12) including: when IGBs have not yet been identified including information sharing and identification of level of information to be shared (section 12(2)).
- Topic 2: Approaches for child intake systems, cross jurisdictional communication and case management mechanisms
- Topic 4: Overall system oversight to support a five-year review (section 31(1))
- Topic 6: Clarification of socio-economic conditions under section 15
- Topic 8: Requirements related to the development of a data strategy (a requirement under section 28 of the *Act*)
- Topic 10: Overview of existing funding, gaps and overlaps in order to be able to identify long term, sustainable, complementary funding
- Topic 11: Development of a dispute resolution mechanism as related to coordination agreement discussions outlined in 20(5)

³⁹ Cody Groat, "Six Nations of the Grand River" in *The Canadian Encyclopedia* (2020).

⁴⁰ "Mark Hill elected chief of Six Nations", *The Hamilton Spectator* (10 November 2019), online: < <https://bit.ly/3ULBSSv> >.

- Topic 12: Child and family services liability
- Topic 16: Application of minimum standards in the *Act*
- Topic 17: Process for coordination agreement discussions

Concluding Observations and Next Steps

If Indigenous women, girls, and gender-diverse people are not directly included in the process of making the changes initiated by the *Act*, there is a great risk of continuing the existing unfairness they face and causing harm. It is important that their concerns are built into the plan and continually revisited throughout the process to ensure that this happens.

It is not enough to say that their voices are valued - active steps must be taken to make them heard and address their concerns. NWAC will work to hear these voices moving forward by centering the concerns of Indigenous women, girls, and gender-diverse people in this series of GEM discussions.