SUMMARY REPORT ON

GOVERNMENT ENGAGEMENT MECHANISMS

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

NATIVE WOMEN'S ASSOCIATION OF CANADA

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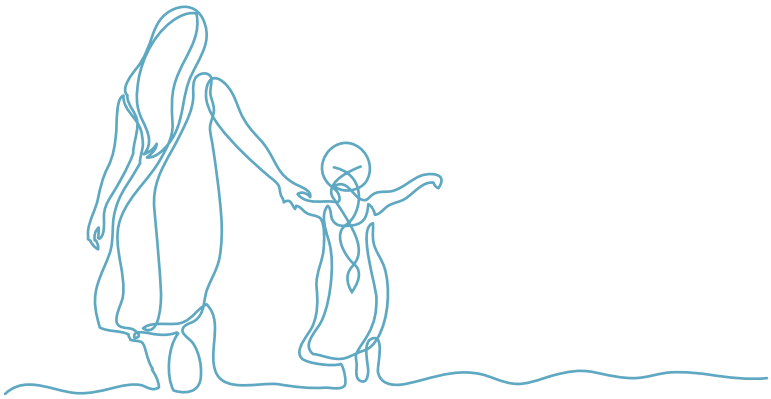


ABOUT THE NATIVE WOMEN'S ASSOCIATION OF CANADA (NWAC)

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.

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*[1] (the Act) and its implementation. The Act aims to restore jurisdiction over child and family services (CFS) to Indigenous communities. We discussed 17 topics identified by ISC in addition to several other topics that came up during the GEMs sessions and interviews.

NWAC organized and hosted six expert round tables and a series of one-on-one interviews to discuss the 17 topics 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, youth, gender-diverse people, and people with lived experience in care.

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

EXECUTIVE SUMMARY

In this summary we highlight the top recommendations that were part of a larger 60-page report prepared for ISC. All quotes are anonymous to protect the identity of the speaker. Please see the full report for additional recommendations and in-depth discussions.

SUMMARY OF RECOMMENDATIONS:

RECOMMENDATION ONE:
COMMIT TO NEED-BASED FUNDING

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. Without funding, IGBs are "set up for failure."

Systemic factors create poverty for Indigenous families, and s. 15 of the Act 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.

"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 is no different than when our people were stuck on a rez 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."

"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."

"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."

RECOMMENDATION TWO:
MANDATE PROFESSIONAL TRAINING

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.

While some judges work to ensure the Act is being respected, participants said others require further education as they continue to act as if it does not exist. 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."

There is also a "huge problem with judges not understanding what systemic discrimination is." Judges are generally senior in their legal careers and considered to be expert decision makers, 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… 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."

RECOMMENDATION THREE:
FACILITATE COMMUNICATION BETWEEN IGBS

Governments must trust Indigenous governing bodies (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.

Using NDAs is counter-productive and was described as a "divide and conquer" approach. The coordination 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.

Furthermore, 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]."

RECOMMENDATION FOUR:
CREATE A NATIONAL INDIGENOUS CFS OVERSIGHT BODY

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.

Almost every individual with lived experience with whom we spoke said their rights were not respected and their voices were not heard while in CFS care. 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.

A participant who spent time living in a group home told us, "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."

Another reported being given no information about her own case: "I didn't really know what was happening or when I could go home. None of these questions were answered."

Children's rights must be honoured and these rights infringements must be addressed. An oversight body such as a national institute for Indigenous children in care could provide a partial solution.

RECOMMENDATION FIVE:
CREATE A DATABASE OF IGB INFORMATION

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.

This database would help mitigate the concern identified of 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 without a way to access each IGB's laws quickly and efficiently, like 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.

RECOMMENDATION SIX:
ENSURE CHILDREN HAVE ACCESS TO SERVICES

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.

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. The CFS "jurisdictional hot potato," as one participant described it, must not create service gaps for children.

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 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.

Another related issue here is that Indigenous children entering care are sometimes misidentified on their forms as being non-Indigenous. IGBs who are not given notice that one of their children is in care cannot offer support, follow, or participate in the case.

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."

> "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."

CFS workers must make a greater effort to ensure they are correctly identifying Indigenous children so their Nation or IGB has an opportunity to offer support.

RECOMMENDATION SEVEN:
EXCLUDE FOSTER PARENTS FROM DEFINITION OF "CARE PROVIDER"

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.

RECOMMENDATION EIGHT:
INDIGENOUS WG2STGD+ PEOPLE MUST BE INCLUDED

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

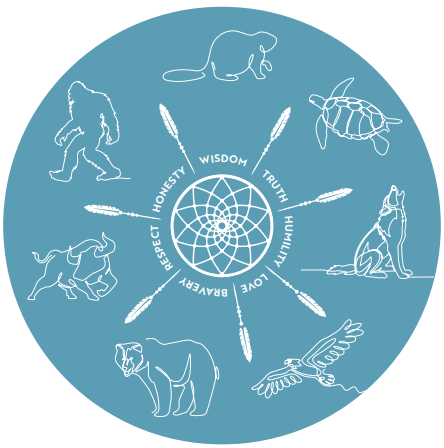
RECOMMENDATION NINE:
DATA AND PRIVACY ARE BOTH ESSENTIAL

Canada and IGBs should work together to develop regulations (or amend the Act) to include minimum standards addressing data and privacy concerns around the collection, retention, use, and disclosure of personal information. 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 human rights laws such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). 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. Data strategies should respect OCAP principles (ownership, control, access, and possession). Funding should be provided to CFS agencies and IGBs who wish to hire outside consultants to develop data strategies. Some participants reported already engaging experts to assist them.

CONCLUSION

While we primarily focused on the Act's room for improvement and the challenges that Indigenous communities face in developing CFS frameworks, we want to acknowledge 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).[2] These teachings can serve as guiding principles to ensure the Act reaches its full potential.



2 For more on the Seven Grandfather Teachings, see, for example: Edward Benton-Benai, *The Mishomis Book : The Voice of the Ojibway.* Saint Paul Minn: Red School House, 1988.

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