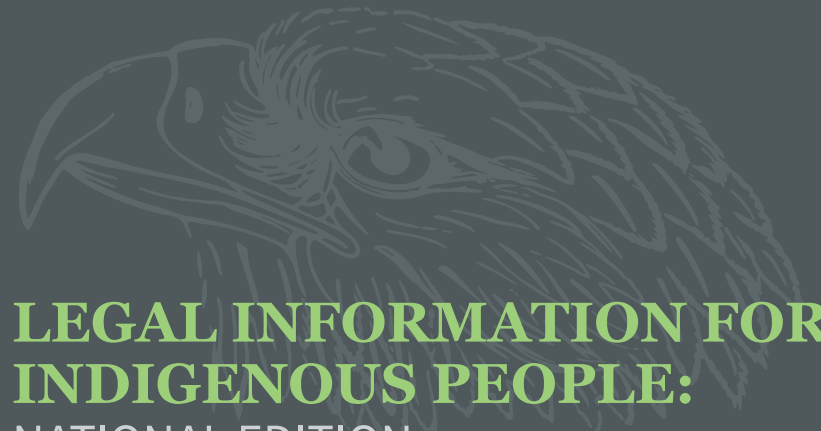




**LEGAL
INFORMATION FOR
INDIGENOUS PEOPLE**
NATIONAL EDITION

A Project of the Bella Coola Legal Advocacy Program



**LEGAL INFORMATION FOR
INDIGENOUS PEOPLE:**
NATIONAL EDITION

Acknowledgments

Published in Bella Coola on the traditional and unceded territory of the Nuxalk Nation

Anne Fletcher, Editor, BCLAP Legal Advocate
Marion Anderson, Editorial Assistant
Kylie Schadt, Scott Leslie and Tania Wang, Legal Researchers 2022/2023
• law students at UBC Allard School of Law and ProBono Students Canada volunteers
Frances Rosner, Supervising Lawyer 2022-2024
Lorna Lam, Designer, Allegra Marketing Print Mail Signage, Vancouver

Legal Reviewers: Frances Rosner | Jennifer Metcalfe | Lisa Crossly | Kevin Love

With continued thanks to original Legal Reviewers (2022 edition): Tim Howard | Kevin Love (CLAS) | Alison Ward (CLAS) | Chris Heslinga (ICLC) | Chelsea Leung (ISC Estates) | Kathy McCue (NALMA) | Rob Dhanu | Meghan Wallace | Kyla Lee (Acumen Law) | Alex Peel (Legal Aid BC) | Joanne Taylor (NIDUS) and to 2022 edition PBSC UBC law students Laura Beaudry, Grace Hermansen, Lauren Ferguson, and Avery Pasternak.

Funding provided by the Law Foundations of BC, Ontario, Saskatchewan, Newfoundland & Labrador, Yukon, PEI, Manitoba, Nova Scotia, New Brunswick, Northwest Territories and (pending) Nunavut.



This booklet is available for download on Facebook @BCLegalAdvocates and on Clicklaw Wikibooks at <http://wiki.clicklaw.bc.ca>

For copies contact BCLAP, Box 309, Bella Coola, BC, V0T 1C0

©2024 BCLAP

Acknowledgments

Many Thanks to:

Colleen Mustus and Barb Barclay of Bear Paw Media and Education for their encouragement and for sharing their publication “(Re)Claiming Indian Status” <https://bearpawlegalresources.ca>

-with acknowledgment also to Alberta Law Foundation for all their support of Bear Paw



Christa Big Canoe, Legal Advocacy Director, for sharing their plain language publications about Border and Status



Colleen Hanasyk, University of Manitoba law student with the Prison Law Clinic, and to Marc Kruse, Indigenous Legal Studies Coordinator at UMLS, for their assistance with the Prison Rights section



Mona O'Brian and the staff of the Mi'kmaw Legal Support Network for all their contributions



Jennifer Metcalfe, E.D. and Staff lawyer and Lisa Crossley, Staff Lawyer @ Prisoner Legal Services (a program of West Coast Prison Justice Society) for their legal review of the Prison Law sections



Sheila Wildeman for her help with the Prison Law section



This booklet may not be commercially reproduced but copying for non-commercial purposes, with credit, is encouraged.

This document does not contain legal advice. This document was prepared with the assistance of PBSC UBC law student volunteers. PBSC volunteers are not lawyers and they are not authorized to provide legal advice. This document contains general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.

Front Cover photo a synthesis of photos by **Laurie Julian**, the Indigenous Courtworker covering Antigonish and Pictou court in Nova Scotia. Her picture (Eagle feather) taken at Parish Beach at Bayfield in Antigonish county in Nova Scotia. Laurie is a Mi'kmaw woman from the Paqtnkek First Nation, Nova Scotia, and by **Corrina Smiley**, Caseworker for Victim Services, Communities of Care with the Mi'kmaw Legal Support Network. Her picture (Sunrise), Shore Road in Eastern Passage, Nova Scotia.

Back cover photo Outside Prince Rupert. “Fog was just starting to lift. Right before I picked up my last set on the opening yesterday. Too nice not to capture.” Sunset (with Sockeye net) by **Dylan Popek**, Nuxalk Nation.

Table of Contents

Foreword

Frances Rosner

Introduction 1

Rights and Protections

Constitutional Rights 5

Harvesting Rights 6

DFO's and CO's 7

Human Rights 8-10

Freedom of Information 11

Know Your Civil Rights

Government Authorities 14

Police Encounters 15

Police Custody and Arrests 16

Youth Rights 17

RCMP Complaints 18

Criminal Records & Pardons 19

Indigenous Justice Resources

Restorative Justice 22

Indigenous Court Workers 23

Indigenous Social History 24-25

Children and Families

Child Protection Law 28-31

Child Protection Resources 32

Jordan's Principle 33-34

Family Homes on Reserve 35

Prisons

CSC and your Rights 39

Indigenous-Specific Options ... 40-41

Parole 41

Indigenous Women 42

Human Rights 43

Trans Rights 43

Discipline 44

Structured Intervention Units/
Administrative Segregation 45

Visitation and Transfers 46

Conditional Release 47

Health Care 47

Prisons (Cont'd)

Resources 48

Book Programs 49

The Border

Crossing The Border 52

Jay Treaty 52

Necessary Documents 53

While in the U.S. 54

Indian Act

Status 58-62

Wills 63

Estates 64

Income Security

Employment Insurance 68-69

Canada Pension Plan 70

Retirement pension 70

Disability benefit 71

Old Age Security (pension) 72

Guaranteed Income Supplement 72

“The Allowance” 72

Allowance for Survivor 72

Survivors pension

(spouse and children) 73

Death benefit 73

Resources 74

Employment Standards 75

Class Actions 78-81

Legal Descriptions 82-83

Plain Language Legal

Education 84-86

What do these mean?

Acronyms/Initialisms 87

Afterword

Mary Brown 88

BCLAP Map 89

Notes 90

FOREWORD

This booklet was created by frontline advocates to help Indigenous Peoples understand how federal laws impact their lives and the special legal protections that exist within the national framework. Despite that Indigenous Peoples are subject to federal laws, understanding their rights is daunting, particularly as the legal landscape changes in response to systemic racism and discrimination. As the journey continues to have their inherent rights recognized and upheld in every legal system in Canada, **there are even fewer legal supports to help Indigenous Peoples navigate the laws that govern their relationship with the federal government.** The provinces offer legal aid lawyers and resources for laws administered by the province, particularly in the family and criminal law systems but there is no automatic right to a lawyer in the federal system. For Indigenous Peoples situated in remote areas, geographic barriers pose a further challenge in accessing the legal help needed to ensure their rights are understood and upheld.

As an Indigenous lawyer working in the legal system, very often on behalf of Indigenous Peoples who are impacted by federal laws, I am grateful to the collective efforts of those involved in the creation of this booklet as it provides practical information and guidance on federal legal issues in easy-to-understand terms. Given the need to help Indigenous Peoples learn about their federally protected rights and the national application of federal laws, the reach in this booklet extends beyond the borders of British Columbia and will benefit Indigenous Peoples across Turtle Island, otherwise known as Canada.

Frances Rosner, Red River Metis Lawyer

Introduction

Legal Information for Indigenous People: National Edition

- provides quick access to basic legal information that is not always easy to find
- eases the first hurdle for people - knowing what questions to ask
- makes complex information easier to understand
- directs people to the many resources that are available
- lays out the first steps for people navigating legal issues.

**Human rights Constitutional rights Justice resources
Children and families Prison rights Border rights Status rules
Wills and Estates on reserve Income security Class actions
Legal definitions Public Legal Education resources**

Although laws are often the same for all people, many laws can vary for people based on their being Indigenous. For example, human rights, constitutional, child protection and criminal laws all offer different legal processes and remedies to better support Indigenous peoples' situations. This publication is meant both for Indigenous people and for the legal advocates and Justice workers who support them.

There is information here for everyone. Some universally relevant legal issues include: “What benefits am I entitled to?” “What are my rights with the police?” or “Where can I find legal help?”

This booklet is dedicated to help inform people of their rights and assist people in asserting them. We recognize that legal “rights” are simply one way to support people seeking fair treatment, dignity and respect under the existing system.

Although we consulted with many organizations across the Continent, any misunderstanding of what laws impact different communities or of the many differences in the organization of Indigenous communities is ours.

RIGHTS AND PROTECTIONS

Constitutional Rights

Harvesting Rights

DFO's and CO's

Human Rights

Freedom of Information

CONSTITUTIONAL RIGHTS

Why Do Indigenous People Have Special Rights?

Indigenous people have special rights under Canadian law because their ancestors had distinct legal traditions and rights in their lands before Europeans began to colonize what we now call Canada.

While ancestry is an integral part of Indigenous identity, it is incorrect to describe Indigenous Peoples' rights as 'race-based'. Indigenous people have special rights because they are part of a distinct Indigenous nation with its own language, culture, political systems and its own land base and legal orders.

Indigenous Peoples' rights were not bestowed on them. They are inherent rights that pre-existed colonization and are not limited to "Aboriginal rights" identified by Canadian courts. Some Indigenous Nations entered into treaties with Britain and later Canada. As part of the treaty, the Crown agreed to honour and respect the Indigenous Nation's pre-existing rights. Later, s. 35(1) of the Constitution Act, 1982 provided constitutional protection to these treaty rights and other rights, but s. 35(1) is not the source of these rights.

- Bruce McIvor, "Indigenous Rights in One Minute"



<https://www.firstpeopleslaw.com/public-education/indigenous-rights-in-one-minute/why-do-indigenous-people-have-special-rights>

First Peoples Law: <https://www.firstpeopleslaw.com>



"Aboriginal rights" are unique legal rights held only by Indigenous peoples. They are protected by section 35 of the Constitution. Aboriginal rights protect activities and practices that are important to the distinctive cultures of Indigenous people and include a range of cultural, social, political, and economic rights including the right to land, as well as to fish, to hunt, to practice one's own culture, and to establish treaties. Aboriginal rights are held by Indigenous communities and exercised by members of those communities.



Instituted in 1982, Section 35 of the Canadian Constitution "recognizes and affirms existing aboriginal and treaty rights including land claim agreements, and guarantees those rights equally to "both male and female persons." It also clarifies that "aboriginal peoples of Canada" includes "Indian, Inuit, and Métis" peoples.



Indigenous people may rely on an Aboriginal right as a defense to charges of illegal fishing or hunting. If you have been charged, it is best to talk to a lawyer. Key issues include: were you exercising the right in your community's territory? Is the right an historic practice that is important to your community? Did the government interfere in how you can exercise the right? If yes, you may have a defense.



Aboriginal rights can be limited - or "infringed" - by governments. However, governments have to prove an infringement is legally justified. This involves asking: was the Aboriginal right given priority over other users? Is the infringement as minimal as possible? Did the government consult with the Indigenous rights holders? If yes, the government's law may still be legally valid even though it infringes an Aboriginal right.



Treaty rights are Aboriginal rights that have been written down and defined in a treaty. They are also constitutionally protected and can be used as a legal defense.



HARVESTING RIGHTS

Indigenous people have inherent rights to fish, hunt, trap and gather for sustenance and for ceremony within their traditional territories. They also have section 35 constitutional and (often) treaty rights, including Self-Government and other Land Claims Agreements. This means:

- You do not need to obtain license or a permit.
- While harvesting, carry your Status card to support this right and firearms license (P.A.L.) if using a gun.
- For commercial fishing, you need to obtain a commercial fishing license from the Department of Fisheries and Oceans.

Indigenous harvesters may be subject to Provincial public health, safety and conservation regulations.

If Non-Status or Métis, carry proof of citizenship or membership in a Nation, or Métis harvester card and a letter of permission from the First Nation (if you're harvesting in a First Nation's territory).

CHARGED WITH A HARVESTING OFFENCE?

YOU MAY HAVE A DEFENCE BASED ON YOUR INDIGENOUS RIGHTS



Speak to a lawyer to decide your best course of action



IF YOU CANNOT AFFORD A LAWYER:

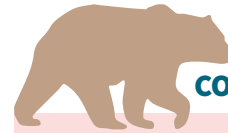
- Legal Aid - check eligibility under provincial rules
- Your Nation may be able to help if you don't qualify for legal aid

DFO & COS

Government Authorities: On Land & Water

DEPARTMENT OF FISHERIES AND OCEANS (DFO)

DFO officers conduct regular patrols on land and sea to catch violations of the *Fisheries Act*. A DFO officer's job is to ensure that individuals who are fishing are doing so subject to a recreational or a commercial fishing license. Indigenous people have an inherent and Constitutional right to fish.



CONSERVATION OFFICER SERVICE (C.O.S.)

C.O.'s enforce multiple federal and provincial statutes related to hunting, gathering (e.g. wood, medicines), trapping and human-wildlife conflict. Indigenous people have established rights to harvest for food, social and ceremonial purposes in their traditional areas.

Further, C.O.'s have legal powers of search and seizure, similar to those of police officers. In certain circumstances, a C.O.'s conduct may violate your civil liberties. If you believe a C.O.'s actions constitute misconduct you can submit a complaint within one year to the Conservation Officer Service. Speak to a lawyer.



If you are questioned by DFO or a C.O. for a harvesting activity, indicate that you are exercising your Indigenous right to harvest and present your status card or other proof. Although these are government authorities with a job to do, you have rights same as with any police agency.

<https://bccla.org/wp-content/uploads/2019/02/powers-of-conservation-officers.pdf>



HUMAN RIGHTS

International, federal and provincial legislation all exist to protect human rights, creating a number of systems for human rights complaints within Canada and internationally. Which system you can file your human rights complaint with will depend on the source of the discrimination.



United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

“The most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.” - United Nations

UNDRIP was adopted by Canada in 2021. A number of Provinces have also adopted UNDRIP. There is still debate over how to genuinely implement UNDRIP in Canadian and Provincial jurisdictions.

“It is currently unclear what role the Declaration plays in Canadian law: some governments have concluded the Declaration has no or very little role, while the courts have found that rights and principles in the Declaration must inform the interpretation of any law or government action relating to First Nations peoples.”

- Assembly of First Nations



Federal Human Rights Protection: Canadian Human Rights Act



The *Canadian Human Rights Act* prohibits discrimination based on religion, age, sex, sexual orientation, marital status, family status, disability, and conviction for which a pardon has been granted. Discrimination based on Indigeneity is likewise prohibited.

It is illegal for federally regulated employers and service providers to discriminate against people, or treat them unfairly, based on these grounds.

Discrimination is an action or a decision that results in the unfair or negative treatment of person or group based on these grounds.

If there is a decision, policy, or practice that applies to everyone but affects you differently because you are Indigenous, you might be experiencing discrimination.

HUMAN RIGHTS

The *Canadian Human Rights Act* provides a complaint process for those who have experienced discrimination and/or harassment from a federally regulated employer or service provider. This includes discrimination in the course of being employed or receiving services from:

- (a) the federal government;
- (b) First Nations governments; or
- (c) private companies that are regulated by the federal government (such companies include banks, airlines, phone companies, and trucking companies).



<https://www.chrc-ccdp.gc.ca/en/resources/your-guide-understanding-the-canadian-human-rights-act-page1>

Which Law to Use Federal or Provincial



Indians and lands reserved for Indians are federally regulated, but not every organization run by First Nations people or located on a reserve is federally regulated. For example, a band office is federally regulated, but a gas station or a corner store on a reserve is regulated by the provincial or territorial government. A complaint against the gas station or corner store would be handled by the provincial or territorial human rights commission under its own human rights laws. To find out if your case is federal or provincial, talk to a human rights officer at the Canadian Human Rights Commission. They will direct you to the right place.



Early Resolution Options

If you file a complaint with the Commission, it will look first to see how you have tried to solve the problem within your organization or community. If it is possible to deal with a complaint there, the Commission will, in most cases, ask you to do that before it will proceed with your complaint.

Community-based and other internal dispute resolution processes can sometimes resolve a situation quickly and easily within the organization or community. Some examples:

- using a customary process, such as asking elders for guidance or using a healing circle; or
- filing a grievance, if you have a union at your workplace.

Note: if this does not work, you have only 12 months from when the discrimination happened to file a complaint with the Commission.

- CHRC

HUMAN RIGHTS

A couple more things to know about the *Canadian Human Rights Act*:

1. Special Treatment

There are times when the *Canadian Human Rights Act* may allow **special treatment**. For example, it is not discriminatory for an employer to give preferential treatment to an Indigenous person in hiring, promotions or other aspects of employment when the primary purpose of the employer is to serve the needs of Indigenous people (like, a Band Office). You will see words like this on job postings: "Preference will be given to applicants with Indigenous (or name of Nation) ancestry."

2. Sec. 35 Rights

The *Canadian Human Rights Act* has a **special clause to ensure that it doesn't affect the constitutionally protected rights of Indigenous peoples** in section 35(1) of the *Constitution Act, 1982*, which protects Indigenous rights such as the right to fish, to hunt or to Indigenous title.



How to Submit Complaint

Complaints can be submitted via an online form on Canadian Human Rights Commission's website or by mail. To learn how to file a complaint with the Canadian Human Rights Commission: Call Toll Free: **1-888-214-1090** or <https://www.chrc-ccdp.gc.ca/en/complaints/how-file-a-complaint>



Provincial and Territorial Human Rights Agencies

Each province and territory has its own Human Rights Tribunal or Commission. These agencies generally handle complaints of discrimination against privately-run businesses or provincial or territorial governments. This includes dealing with discrimination in restaurants, stores, schools, housing, and most workplaces. The Provincial human rights laws may vary by jurisdiction.

To learn more about your province or territory's human rights agency



<https://www.chrc-ccdp.gc.ca/en/complaints/provincial-territorial-human-rights-agencies>

FREEDOM OF INFORMATION Access to Information and Privacy Laws

What Government records are people allowed to access

How do you request them?

Freedom of Information Acts are important because they promote Government transparency and accountability by enabling people to:

- request government records
- scrutinize government decisions, policies and spending
- address misuse of power

Records held by the Canadian (and Provincial) Governments can potentially help groups or individuals to understand government activity or to assert claims.

FEDERAL LAWS:

If you want to access government records or your personal information held by the government of Canada:



There are two federal laws under which you can make requests for information. "The **Access to Information Act** gives Canadian citizens, permanent residents and any person or corporation present in Canada a right to access records of government institutions that are subject to the Act.

The **Privacy Act** gives Canadian citizens, permanent residents and individuals present in Canada the right to access their personal information held by government institutions that are subject to the Act."

- Government of Canada website

To access Canadian government records:

- Online: You can file most Access to Information Requests or Personal Information Requests online at <https://atip-aiprp.apps.gc.ca/atip/welcome.do>
- By phone: For general information about *Access to Information* or *Privacy Act* requests, or to ask for a request form to be mailed to you, phone the Canadian government customer service line at **1-800-622-6232**
- By mail: complete an Access to Information Request form or Personal Information Request form and send it to the Access to Information and Privacy (ATIP) coordinator for the government body that holds the information you want.
- The forms and list of all ATIP coordinators, including their phone numbers, are at <https://www.tbs-sct.canada.ca/tbsf-fsct/350-57-eng.asp> and <https://www.tbs-sct.canada.ca/tbsf-fsct/350-58-eng.asp>



PROVINCIAL LAWS:

The Provinces have their own Freedom of Information laws and Privacy Commissioners that administrate them. Contact local government agencies or search Online for Privacy and Access to Information laws for your province or territory.

KNOW YOUR CIVIL RIGHTS

Government Authorities

Police Encounters

Police Custody and Arrests

Youth Rights

RCMP Complaints

Criminal Records

GOVERNMENT AUTHORITIES

Think Before You Speak

The *Canadian Charter of Rights and Freedoms* (the “Charter”) is part of the *Constitution Act, 1982* of Canada. Sections 7 to 14 of the Charter set out rights that protect Canadians when dealing with the justice system. They ensure that individuals who are involved in proceedings are treated fairly, especially those charged with a criminal offence. These sections are where your legal rights come from: right to silence, right to a lawyer, right against unreasonable searches, etc.

Q What do the RCMP, Provincial police, child protection agencies, and the DFO/COS all have in common?

A They are all government agencies who investigate situations where there may be fault or liability or safety concerns. They all have jobs to do. However, with each of these agencies you are well advised to know your rights before you speak.

You are always allowed to say, **“I want to speak with a lawyer before I speak with you.”**

This is not an admission of guilt or fault, just a way to make sure you are safeguarding your rights. Get legal advice to learn about your rights and responsibilities when you are being confronted by government agencies.

If you are charged with a criminal offense

- Do not speak to the police
- Get legal advice as soon as possible
- You are not required to make or sign a statement with police
- Do not talk in public or on any social media such as Facebook about the charges

POLICE ENCOUNTERS

“The RCMP must suspect you of committing a crime, have seen you committing a crime, or you must be driving a vehicle before they can stop you and question you.”



BC FIRST NATIONS
JUSTICE COUNCIL

www.bcfnjc.com

When responding to a police officer on the street:

- Be polite, note the officer’s badge number or name
- Ask if you are free to go: **If YES** – leave
If NO – ask if you are under arrest

If you are under arrest:

Ask WHY: it is your right to know why you are being arrested

Ask for a lawyer and then remain silent: you have the right to do both

If the police say you are not free to go, but that you are not under arrest, you're being detained.

- You should only be detained briefly.
- The police are only allowed to detain you if they have reasonable grounds to suspect you've been involved in a crime.

The police have different powers depending on whether they have detained or arrested you (see link, below).

REMEMBER

You do not have to answer their questions at any point. You always have the right to silence even if you have to speak to clear something up or be dismissed.

“I want to remain silent. I want to speak to a lawyer.”

You do not have to identify yourself to a police officer, unless:



You are under arrest



You are driving – if you do not have your license on you, you can provide your name and date of birth



You are issued a ticket

POLICE CUSTODY AND ARRESTS

If you are **arrested** or **detained**, you are protected by Section 10 of the **Charter**.

- **You have the right to silence** - speak to a lawyer before the police
- The police **must inform you of the reasons for your arrest or detention**
- You have the **right to retain and speak to a lawyer** without delay and the police are required to inform you of this right

If you are released on bail or with a Promise to Appear, there may be conditions attached (rules for behaviour) such as:



Reporting to a bail supervisor



Not being able to leave town



Must avoid certain areas or people



Cannot carry a weapon



No consumption of alcohol

If you think your conditions are **too restrictive** (unfair or unrealistic) call your lawyer for help as soon as possible because breaching conditions can mean another criminal charge.

For more information about your rights with the police see <https://www.cleo.on.ca/en/publications/polpower/what-are-my-rights-if-i-am-arrested-or-detained>



YOUTH RIGHTS

If you are a youth charged with committing a crime, you should be aware of your rights, including the right to:

- Be told why you are being charged and what your rights are in a way that you understand
- Talk to a lawyer, parent or other adult about your situation before you give a statement to police
- Have a lawyer, parent or other adult with you if you give a statement
- Not answer any questions about the crime and be warned that, if you do say something, it may be used against you in court

The Youth Criminal Justice Act (YCJA) is the law that governs Canada's youth justice system. It applies to youth who are at least 12 but under 18 years old, who are alleged to have committed offenses. Youth who are charged with a crime and identify as Indigenous are entitled to the same rights as other young people and, as well, at all stages of the youth criminal justice system, the courts must consider the unique circumstances of Indigenous peoples and of the particular Indigenous youth.



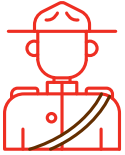
YCJA has special provisions that allow police and Crown to deal with a youth without using the formal youth court system. These are called extrajudicial measures and extrajudicial sanctions. Also, ask about local Restorative Justice or Indigenous Court.

Youth are automatically eligible for Legal Aid to pay for a lawyer.

Personal information of a youth offender is kept confidential. This means the identity of a youth offender cannot be published and access to youth records is very limited.



RCMP COMPLAINTS



“You deserve to be treated with dignity and respect by all people working within the justice system. Formal complaint processes exist for police, lawyers and judges.” – BC First Nations Justice Council*

IF YOUR RIGHTS ARE VIOLATED BY THE POLICE:

Document the time, place and details of what happened. Document police names or badge numbers. Try to get contact information for witnesses. Take pictures of injuries and upload them. Seek legal advice.

COMPLAINTS PROCESS

Making a Complaint about the Police

The Civilian Review and Complaints Commission for the RCMP is an independent agency that reviews complaints made by the public about the on-duty conduct of RCMP members.

Complaints can be filed at their website:
www.crcc-ccetp.gc.ca/en/make-complaint

*Information taken from the BC First Nations Justice Council website: www.bcfnjc.com

Civilian Oversight in Canada

Most provinces in Canada have some form of civilian oversight of law enforcement. Although agency size, statutory authority and responsibilities vary from province to province, civilian oversight agencies share a common goal: a positive relationship between the public and the police.

This is achieved through an accessible and transparent complaint process, conscientiously monitored by independent and impartial civilian agencies. Commissions and provincial agencies responsible for civilian oversight of investigations into alleged police misconduct are mandated to ensure complaint investigations are thorough, fair and balanced to both the complainant and the respondent.



<https://cacole.ca/resources/links/civilian-lien-eng.shtml>

CRIMINAL RECORDS and Pardons

If you have been charged with or convicted of a crime, you will have a criminal record. A criminal record can have many impacts on your life.

- **EMPLOYMENT:** Employers, volunteer agencies may require criminal record checks to use in hiring decisions
- **INSURANCE:** Insurers may choose not to insure you
- **EDUCATION:** You may be disqualified from attending or graduating college/university
- **CHILDREN:** You may be subject to vulnerable sector search, not allowed to adopt children, or a Judge may consider criminal record in family law, child custody disputes
- **IMMIGRATION:** You may be denied citizenship if applying, you may be deported if not a citizen
- **TRAVEL:** You may be rejected entry to other countries. Need to obtain a waiver to enter USA with a criminal record
- **FUTURE:** If charged with another crime, criminal record often leads to harsher sentences

Record Suspensions/“Pardons”



After a certain waiting period, you may apply for a record suspension which removes your record from the Canadian Police Information Centre database so that it does not appear in a criminal record check. This will remove almost all of the restrictions of having a criminal record, though it does not guarantee entry into other countries and sexual offences will still appear in a vulnerable sector check.

The waiting periods are:

- 10 years for indictable offence
- 5 years for summary offence

If you were convicted only of simple possession of cannabis, you are exempt from these waiting periods.

In deciding whether to approve your application, the parole board considers the nature of the offence, your conduct since release, and whether the suspension will help your continued rehabilitation. The fee to apply for a suspension is \$50, but you are also responsible for costs involved in your application such as requesting fingerprints and criminal record checks.

You are ineligible for a record suspension if you have committed 3 or more indictable offences each with a sentence of 2 or more years, or if you were convicted of a schedule 1 offence and do not fit the exception criteria.

Parole Board fact sheet on record suspensions

<https://www.canada.ca/en/parole-board/corporate/publications-and-forms/applying-for-a-record-suspension.html>



INDIGENOUS JUSTICE RESOURCES

Restorative Justice Programs
Indigenous Court Workers
Indigenous Social History

RESTORATIVE JUSTICE

Restorative Justice refers to justice systems that focus on accountability, healing and the restoration of balance. The justice systems of Indigenous people have traditionally drawn their justice practices from cultural values such as these. As colonization replaced Indigenous systems with a criminal justice system prioritizing punishment and incarceration, restorative justice outcomes for Indigenous peoples plummeted. There have been attempts to reform the justice system with diversion programs that take criminal matters from the courts and divert them to alternative processes. This is often seen with Youth offenders.

More recently, we increasingly see Indigenous community-based justice programs offering culturally-based responses to harms (crimes) that occur in their communities.

This can still involve the diversion of situations from the criminal justice system but, in addition, it can also involve placing these matters back within the traditional legal practices of the community.

Restorative Justice practices can be different in every community.

Restorative Justice programs allow for justice processes such as restitution, healing circles, circle sentencing, peace keeping circles, participation in community or cultural events, isolation, banishment, etc.

For a listing of Restorative Justice Programs:

<https://www.justice.gc.ca/eng/cj-jp/rj-jr/sch-rch.aspx>



In more and more jurisdictions there are Indigenous Courts, Gladue Courts, Justice Workers within Nations, Indigenous Court Workers, First Nations Justice Strategies, Metis Justice Strategies, Treaty and Tribal Council Justice Workers, etc.

INDIGENOUS COURT WORKERS (ICWs)

Colonial criminal justice systems can be difficult to understand and frightening for the Indigenous people caught up in them. Ongoing colonization, cultural differences in dispute resolution, and historical abuses in law have resulted in an understandable lack of trust in the system and the people who run it and a serious under education regarding basic rights and responsibilities under the law.

The purpose of the Indigenous Courtworker programs is to facilitate and enhance access to justice by assisting Indigenous people involved in the criminal justice system to obtain fair, just and equitable outcomes.

Indigenous Courtworkers help reduce barriers to justice by:

- providing culturally- and trauma-informed support
- educating about legal rights and responsibilities
- helping people navigate the complexity of the justice system and court proceedings

Indigenous Courtworkers assist people at every stage of the Court process and provide accurate information as soon as possible about:

- the nature of your charges
- your rights and responsibilities
- your options
- the court processes

ICWs can help you get legal information, legal advice and potentially legal representation from Legal Aid Organizations. Legal Aid is different in every Province but usually will cover family and child protection matters, criminal and harvesting offences, Youth charges and Prisoner's rights.

ICWs can also support the use of Indigenous Social History factors by lawyers and other Court personnel. ICWs can educate the person charged (and their lawyer!) about these rights.

Contact information for Courtworkers in different Provinces see:
<https://www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html>



INDIGENOUS SOCIAL HISTORY

formerly known as "Gladue Rights"

“Gladue’ Reports document an offender’s unique struggles as a survivor of colonialism. The purpose of these reports is to assist the court in finding alternatives to prison, and in turn, decrease the overrepresentation of Indigenous people in Canadian jails.”

“THE OVER-REPRESENTATION OF INDIGENOUS PEOPLE IN PRISON”

First Peoples Law

November 24, 2021
The Honourable Harry S. LaForme.

Indigenous people have specific rights, Indigenous Social History (ISH) rights, when they become involved with the criminal court or are serving time in prison. It is important to know about these rights and make use of them if you are facing jail time, either at bail hearings or sentencing after a conviction. Ask your lawyer about these rights. You want to have a lawyer who knows about these rights.

ISH rights come from the Supreme Court of Canada decision *R. v. Gladue* (1999). This case involved the sentencing of an Indigenous woman convicted of manslaughter. In that decision, the Court said “In sentencing an aboriginal offender, the judge must consider: (A) The unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and (B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.”

If you identify as Indigenous and are charged with a crime, the judge must apply these ISH principles when you’re in a criminal court. This means the judge must consider your personal and unique circumstances as an Indigenous person when they make a number of decisions about you, such as your bail or sentence.

ISH reports could include background factors that may have contributed to bringing an Indigenous offender before the courts, for example Residential school, 60’s scoop, intergenerational trauma, etc.



<https://www.onwa.ca/gladue-program>



If you do not want an ISH Report, you are still covered by section 718.2(e) of the Criminal Code:

Courts are to consider Indigenous backgrounds and consider all available sanctions besides imprisonment. Sanctions must be reasonable and consistent with harm done to the victim or community.

INDIGENOUS SOCIAL HISTORY

Indigenous People in Prison

Corrections Services Canada must consider ISH principles in regard to decisions about things like pen placement, security level, parole, discipline, administrative segregation etc.

HOW TO OBTAIN A REPORT:

www.bcfnjc.com/information-for-the-public

- Anyone who self-identifies as First Nations, Métis or Inuit has ISH rights and can request a ISH report.
- Indigenous rights apply whether you live on or off reserve.
- ISH reports can be prepared for bail, sentencing, appeals, long-term offender hearings, dangerous offender hearings and parole hearings.
- Ask your lawyer to request an ISH report.

Please note they can take up to 8 weeks to complete. It is your right to request a report, but they are not required.

Caution: Gladue reports can be traumatic for some individuals and their families. Family and community members may be interviewed to help with the report.

How to become a ISH Report Writer

Below are some links to Indigenous Social History training



<https://www.vcc.ca/applying/apply-now/info-sessionstours/gladue-report-writing>

<https://ipsociety.ca/training/justice-equity/gladue-writing-training>

<https://www.onwa.ca/gladue-program>

For more information talk to your Nation’s Justice Workers

CHILDREN AND FAMILIES

Child Protection Law

Child Protection Resources

Jordan's Principle

Family Homes on Reserve

CHILD PROTECTION LAWS

The legal landscape of child protection law is changing in Canada.

There are different laws to consider in a child protection matter. It is important to know about the different laws that could apply to your situation. Ask your lawyer about this.

Federal Act (Bill C-92):
An Act respecting First Nations, Inuit and Métis children, youth and families

Provincial and Territorial Legislation
Treaty provisions
Self-Government Agreements

Indigenous laws and legal orders regarding children, family and community wellness.
If there is a conflict between two laws, the law from the community to which the child has stronger ties prevails.

This section will look at the Federal Act (Bill C-92) because this is the law that could be used everywhere in Canada, as one way to assert rights in child protection situations. The other laws mentioned in the boxes above apply in their specific regions (jurisdictions).

The Federal Act was enacted in part to lessen the over-representation of Indigenous children in the child welfare system.

Whereas Parliament recognizes the legacy of residential schools and the harm, including intergenerational trauma, caused to Indigenous peoples by colonial policies and practices;

Whereas Parliament recognizes the importance of reuniting Indigenous children with their families and communities from whom they were separated in the context of the provision of child and family services

-from Preamble, An Act Respecting First Nations, Inuit and Metis children, youth and families (Bill C-92)

The Federal Act:

- sets out national standards for the provision of child and family services in relation to Indigenous children
- creates a pathway for Indigenous Peoples to exercise their inherent right of self-government over child welfare matters

CHILD PROTECTION LAWS

the "Federal Act"

Key Highlights:

- Affirms the inherent right of Indigenous self-government in relation to child and family services
- Emphasizes cultural continuity and the need to preserve a child's connections to family, community and culture
- Introduces substantive equality and the right of Indigenous children, their families and respective Indigenous Governing Bodies to have their views and preferences heard without discrimination
- Prioritizes preventative care over apprehension, including prenatal interventions to avoid apprehension of a child at birth
- Prevents apprehensions "solely on the basis" of socioeconomic conditions, poverty, lack of housing or the state of health of the parent,

What does the Act mean to me as an Indigenous group, community or people?

- The Act affirms the jurisdiction of Indigenous Peoples over child and family services. It encompasses all section 35 rights holders, which includes First Nation, Inuit and Métis.
- In exercising this jurisdiction, you can enact your own laws respecting child and family services. These laws could extend to all of your members wherever they are located in Canada.
- If you conclude a coordination agreement with the federal and provincial governments or make reasonable efforts to do so, your Indigenous laws will have force of law as federal law and prevail over conflicting federal, provincial and territorial laws with respect to child and family services.
- For a child from your community, you have the right, through the Indigenous Governing Body (more on IGB's below), to:
 - have a say in decisions affecting that child;
 - to receive notice of any significant measures to be taken in relation to that child; and to
 - make representations in any civil proceedings regarding that child's care.
- An Act respecting First Nations, Inuit and Métis children, youth and families Technical Information Package

https://publications.gc.ca/collections/collection_2020/sac-isc/R5-747-2020-eng.pdf



CHILD PROTECTION LAWS

the “Federal Act”

The Federal Act sets out a process for how Indigenous Governing Bodies (IGB’s):

- are authorized to represent a group, community or people that holds section 35 rights
- can articulate their own child and family service laws, administer and enforce their laws, and provide dispute resolution mechanisms under those laws

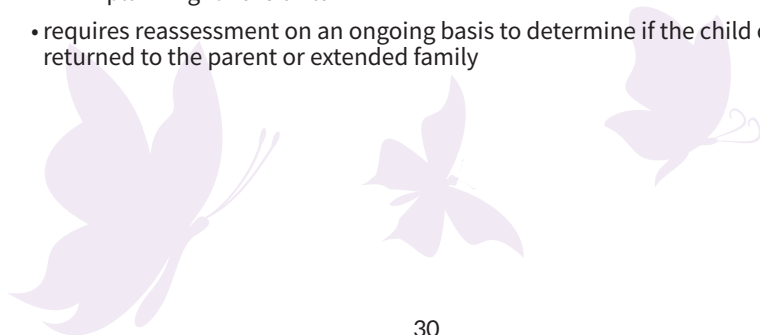
The Federal Act does not impact existing treaty or self-government agreements about child welfare, including agreements and treaties that allow for the Indigenous groups to give notice to pass child welfare laws.

The Federal Act sets out that the best interest of an Indigenous child is the paramount consideration and includes the following cultural protections:

- the importance of cultural continuity as essential to the well-being of a child, family and community to which the child belongs
- the importance of the child having an ongoing relationship with his or her family and community and preserving the child’s connections to their culture
- the importance of preserving the child’s cultural identity and connections to the language and territory

The Federal Act:

- promotes keeping Indigenous children in their families and communities by setting out the following priority placement of a child, with:
 - 1st: One of the child’s parents
 - 2nd: Another adult member of the child’s family
 - 3rd: An adult from the same Indigenous community
 - 4th: An adult from another Indigenous group
 - 5th: Finally, any other adult.
- requires that Notice must be given to
 - parents, or care providers who provide care in accordance with Indigenous customs and traditions, and to
 - Indigenous Governing Bodies about “significant measures” or interventions into a child’s life which gives them the right to be involved in planning for the child
- requires reassessment on an ongoing basis to determine if the child can be returned to the parent or extended family



CHILD PROTECTION LAWS

the “Federal Act”

Indigenous Governing Body – Section 12 Repository of Notices

The Importance of Indigenous Governing Body (IGB) status for the Purpose of Receiving Notice of Significant Measures under the Federal Act.

An Indigenous Governing Body (IGB) means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution

The Federal government is maintaining a centralized repository of contact information for Indigenous Governing Bodies to help ensure that IGB’s receive notice of significant measures involving their children under section 12 of the Federal Act.

Even if your community is not in a position to give notice of self-government or enter the coordination agreement process, deciding who at the community level (council, government or entity) will be authorized to receive notice under the Federal Act confirms the community’s IGB for child and family services agencies across Canada.

This is an easier step than deciding who will be authorized on behalf of s. 35 rights holders to draft child and family services laws for self-government or enter the coordination agreement process.

The IGB entity could be the designated band representative, chief and council, or other department or entity authorized by the community for the purpose of receiving notice.

Once the IGB is identified, submit the name of the IGB. Once the IGB is authorized, submit the contact information of the IGB and any updates to Indigenous Services Canada by email to: partenariats.partnerships@sac-isc.gc.ca.

Identifying the IGB is helpful in two ways:

The Federal Act confers certain rights specifically on IGB's

It makes clear who must be notified when child and family services agencies in Canada become involved with a child/youth connected to your Indigenous community

The process of being recognized as an IGB for the purpose of notice is simple and an important step to consider as the Federal Act confers specific rights and protections specifically on IGB's and the centralized repository helps child protection agencies know who the IGB is and how to contact you.

Key resources re IGB process, rights and policies:

Repository for Notices under s. 12 of the Federal Act

<https://www.sac-isc.gc.ca/eng/1669758273613/1669758318689>



CHILD PROTECTION RESOURCES

WRAPPING OUR WAYS AROUND THEM

By Ardith Walkem QC

A resource that empowers Indigenous Nations and community involvement in caring for Indigenous children. It provides advice about Bill C92 “the Federal Act” to lawyers, judges, children, family, community members and social work teams.

 <https://aboriginal.legalaid.bc.ca/child-family-rights/child-protection>

Most Provinces and Territories will have child protection resources available (Justice workers, Legal Aid etc.) specific to their laws. See **Resources** section at the end.

Indigenous Peoples can access the **Hope for Wellness Help Line** by phone at **1-855-242-3310** or via online chat through the website at www.hopeforwellness.ca.



For Indigenous people across Canada who need immediate emotional support, crisis intervention or referrals to community-based services. Experienced and culturally sensitive help line counsellors can help if you want to talk English and French and, on request, in Cree, Ojibway and Inuktitut languages.

The National Indian Residential School Crisis Line

provides 24-hour crisis support to former Indian Residential School students and their families toll-free at **1-866-925-4419**.

Kids Help Phone: Call **1-800-668-6868** (toll-free) or text **FIRSTNATIONS** to **686868**. Available 24 hours a day to anyone in Canada aged 5 to 29 who wants confidential and anonymous care from trained responders.

JORDAN'S PRINCIPLE

Jordan's Principle is a legal rule that ensures all Indigenous children living in Canada can access the products, services and supports they need when they need them. Eligibility for Jordan's Principle support used to be narrowly defined and limited to children with disabilities and complex medical needs. But, the 2016 Canadian Human Rights decision made in favour of Indigenous children led to the expansion of Jordan's Principle including:

substantive equality
(giving extra help when
extra help is needed)

culturally
appropriate
services

any product or service needed
to safeguard the best interests
of Indigenous children

Best Interests of Child Expansion



Framing the cultural, social, educational, sports, medical/dental, or family need as safeguarding the child's best interests means there are several products, services and supports that should be made available to Indigenous children through Jordan's principle. Further, a child's best interests could be served, for example, by providing supports to the family such as childcare/respite for the caregiver, help with food and utilities, or other needs that would help the family thrive, and therefore, benefit the child.

Tips for Applications



The key to a successful application is to gather letters of support from bands, elders, daycare providers, school teachers/staff, coaches, doctors/dentists, counsellors, social workers or other community advocate to help establish the need and show how the support will safeguard the child's best interests.



Jordan's
Principle

Ensuring First Nations children
receive the public services they need
when they need them

JORDAN'S PRINCIPLE

CRITERIA FOR ACCESS

The child must be under 19 years old, a permanent resident of "Canada," and meet one of the following criteria:

- Registered or eligible to be registered under the Indian Act; or
- Has a parent or guardian registered or eligible to be registered under the Indian Act; or
- Recognized by their Nation for the purposes of Jordan's Principle; or
- Is ordinarily resident on reserve.

Who can submit a request?

- Parent or guardian of an Indigenous child
- Indigenous child over the age of 16
- Authorized representative of the child, parent, or guardian

To apply:

- Contact your local Jordan's Principle Service Coordinator at www.jordansprinciplehubbc.ca



Family Homes on Reserve and Matrimonial Interests or Rights Act (FHRMIRA)

Learn about the *Family Homes on Reserve and Matrimonial Interests or Rights Act*.

FHRMIRA provides basic rights and protections to individuals on Reserve during a marriage or common-law relationship breakdown: **separation, divorce, or death**. Many of the legal protections relating to matrimonial real property applicable off reserve are now available to individuals on reserves.

RIGHTS PROTECTED UNDER THE ACT:

- Spouses or common-law partners are entitled to a fair division of matrimonial real property, interests, or rights.
- Each spouse has an equal right to occupancy of the family home during the conjugal relationship, no matter whose name is on it and no matter if FN or Band member.
- Spousal consent is required for the sale or disposal of family home.
- An application for division must be made within three years after the day on which the parties ceased to cohabit.
- Courts can order the transfer of or enforce agreements about matrimonial real property between spouses or common-law partners.
- Courts can order that a spouse or common-law partner be excluded from the family home on an urgent basis through Exclusive Occupation Orders.
- If you are married or common-law and your partner passes away, you have the right to stay in the family home for 180 days (at least), even if you are renting and/or not a Band member.



Jordan's Principle is a child-first principle to ensure First Nations children get the services they need when they need them.

To submit a request for services through Jordan's Principle, call the Jordan's Principle 24-hour Call Centre: **1-855-JP-CHILD (1-855-572-4453)** or visit <http://www.canada.ca/jordans-principle>.

PRISONS

CSC and your Rights
Indigenous-Specific Options
Parole
Indigenous Women
Human Rights
Trans rights
Discipline
Structured Intervention Units/
Administration Segregation
Visitation and Transfers
Conditional Release
Health Care
Resources
Book Programs

“People sent to

prison

have rights.

Prison rights include peoples’

Civil rights

under the Canadian Charter of Rights and Freedoms. Violations of Civil rights can occur during situations such as solitary confinement, involuntary transfers, parole suspensions, disciplinary hearings and more.

Prison rights also include

Human rights,

including the rights to be free from discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, gender identity and expression, sexual orientation, marital status, family status and mental or physical disability.

For example, prisons have “... a duty to accommodate your Indigenous spirituality to the point of undue hardship.” This means that they must take steps to make sure that you can practice and participate in your Indigenous culture and spirituality. The only exception is where it would cause undue hardship on CSC, such as an unmanageable security risk.”

-West Coast Justice Society, Prisoners Legal Services

<https://prisonjustice.org/pamphlets>



CORRECTIONAL SERVICES CANADA AND YOUR RIGHTS

“When someone is sent out to prison, they come back at a whole other level. They have shame, a loss of identity. There is a stigma of having been in prison. Prison adds to the trauma. Prison is not a place for Indigenous people.”

-Mary Brown, Heiltsuk Gvi-ilas Community Justice Program Coordinator
from “Decarceration through Self-Determination”, p7,
Prisoners’ Legal Services, a project of the
West Coast Prison Justice Society



These sections are meant to let people know:

- what legal rights people in prison have
- which laws create these rights
- how people in prison and their families can assert these rights
- what specific rights that Indigenous people in prison hold.

Correctional Services of Canada (CSC)



Federal corrections deals with people who have sentences of two years or more, while Provincial corrections handles those who have been sentenced for two years less a day, or less.

If you are sentenced to prison time, the CSC is in charge of how your time is managed. They can decide things like:

- which prison you go to
- your security level
- transfers
- punishment for rule violations

For most decisions the CSC has to give you reasons, typically in writing within 3-5 working days. If you don’t agree with a decision made by the CSC, you can contest it using the CSC grievance process within 30 days.

The time limit for challenging decisions through judicial review (court) is 30 days after the rejection of your grievance. If your grievance is turned down, you can seek legal advice and assistance to explore the possibility of taking the matter to court.

In many provinces, there are groups that support prisoners and can check if the CSC is doing its best to limit restrictions on you and to make sure that your civil and human rights are respected.



<https://prisonjustice.org/wp-content/uploads/2023/07/Federal-Grievance-2023.pdf>

<https://prisonjustice.org/wp-content/uploads/2023/09/Federal-File-Correction-2023.pdf>

INDIGENOUS-SPECIFIC OPTIONS

Indigenous Social History previously “Gladue” Considerations

If you are Indigenous, the CSC has to take into account the same Gladue principles in decisions about your incarceration as judges do during your trial. CSC must not consider your Gladue factors to assess your risk, unless doing so could decrease your risk level. If the CSC’s reasons for a decision show that they have not considered your Indigenous Social History, or have done so inadequately, it is likely a reason for a grievance.

Help within prison for Indigenous people

Indigenous Liaison Officers:

- provide leadership, cultural awareness, counseling and general services
- serve as a link between you and your community
- serve as a link between you and your Case Management Team, and should help communicate your cultural and spiritual needs with case management and correctional program staff

Indigenous Community Development Officers:

- can help you find support in an Indigenous community for your release.
- can help an Indigenous community make a release plan for you

Indigenous Community Liason Officers

- based in the community, not in CSC institutions
- can give you support in the community
- can help you connect with Indigenous community resources, ceremonies and events

Cultural Programming and Elders

The CSC must make sure that they offer culturally appropriate options, accommodate Indigenous spiritual practices where possible, and provide programs that are specific to Indigenous cultures. As part of these responsibilities, Indigenous Elders can help in various ways during an Indigenous person’s time in prison.

You can ask for an Elder to help in a few ways.

- Elders can make recommendations about how to incorporate traditional knowledge and practices into your correctional or healing plan.
- Elders should be part of spiritual and cultural programs and services.
- Elders can help you with things like parole hearings and informal disciplinary resolutions.

If you want to work with an Elder, you will need an Elder Review report (the Elders perspective of you based on traditional teachings). The Elder Review will become part of your Correctional Plan and guide CSC staff in supporting you and measuring your progress.

INDIGENOUS-SPECIFIC OPTIONS

Serving your sentence in an Indigenous community

Transfers: Healing Lodges

Under section 81 of the CCRA, you could request a transfer to an Indigenous Healing Lodge, which certain Indigenous communities have established. These lodges are minimum security facilities that focus on Indigenous culture and healing. You can be accepted to a Healing lodge if you are classified as minimum security or “on a case by case” basis if you are classified as medium security.

There are currently only six Indigenous-led healing lodges across Canada, and there are very few available spots. To improve your chances of getting into a healing lodge, it is a good idea to participate in programs like **Pathways** programs or other cultural healing programs. It is also recommended to express your intention to apply for a transfer as early as possible, ideally when you first enter prison, so that it can be part of your correctional plan. Pathways is an Elder-driven intensive healing initiative based on the Indigenous Medicine Wheel, also known as the Four Directions Medicine Wheel. Pathways goes above and beyond the CSC services already available to all Indigenous offenders. It is for inmates who show genuine motivation and commitment to making emotional, mental, physical and spiritual changes.

In extremely rare cases, an inmate may be allowed to serve part of their sentence in an Indigenous community without a healing lodge. However, for this to happen, the community must have an agreement with the CSC and be able to provide the necessary programming and ensure both your safety and the public’s safety.

Parole

Under Section 84 of the CCRA, Indigenous people in prison can request to serve their eventual conditional or statutory release in an Indigenous community, or in an urban area with the support and direction of an Indigenous organization. However, this requires the agreement of the Indigenous community. To facilitate this process, it is advisable to express your intention to serve parole in an Indigenous community to your institutional parole officer as early as possible, as the preparation can be time-consuming. You can raise Indigenous Social History also at Parole hearings. In addition to ISH, the Parole Board is obliged to consider systemic and background factors under their own policy, and in line with case law.



Resources

Explanation of Section 84 Process

<https://www.csc-scc.gc.ca/002/003/002003-1011-en.shtml>

CSC Website on Pathways Programs and Indigenous Programming

<https://www.csc-scc.gc.ca/002/003/002003-1011-en.shtml>

INDIGENOUS WOMEN IN PRISON

The rate of mass incarceration of Indigenous people in Canada continues to rise, despite decades of calls to action to end this appalling trajectory. The latest statistics reveal that Indigenous people represent 5% of the total population in Canada, and 32% of people in federal prisons. **Fifty percent of women in prison are Indigenous.**

- Decarceration through Self-Determination, p7,
Prisoners' Legal Services, West Coast Prison Justice Society*

In Canada, CSC operates five women's institutions, and a healing lodge for women. All women's institutions are multi-level. Most house women offenders classified at minimum-, medium- and maximum-security levels. The healing lodge, however, is only for women classified as minimum or medium security.(CSC)



Kimisinaws (Cree term for Older Sister) work on the front lines of the correctional system. They are the primary, daily contact for women offenders at a Healing Lodge. They work at CSC's Okimaw Ohci Healing Lodge for Aboriginal women offenders on the Nekanee First Nation near Maple Creek, Saskatchewan.



CSC has a Mother-Child Program that could allow for Mothers to have their children with them for a period of time. This is for Mothers who are classified minimum, medium or maximum but being considered for medium.

This is for mothers who are classified as minimum or medium. Mothers who are maximum security but who are being considered for medium security may also be considered for the mother-child program.

Advocacy in Prisons Designated For Women:

Canadian Association of Elizabeth Fry Societies

National Advocacy Line 1-800-637-4606

<https://caefs.ca/advocacy-in-prisons-designated-for-women>



*<https://prisonjustice.org/wp-content/uploads/2023/04/Decarceration-through-Self-determination-w.pdf>

HUMAN RIGHTS & TRANS RIGHTS

Human Rights

While in prison, you have the same human rights protections as people outside of prison. Although being in prison limits your freedom and allows for certain search and seizure practices that wouldn't be acceptable in regular circumstances, the CSC must still ensure that your rights are protected to the fullest extent possible within the scope of their responsibilities and to not infringe upon rights unrelated to your incarceration.

If you believe that your human rights have been violated while in prison, you have options to address the issue. You can file a grievance using the CSC's grievance procedure. Additionally, you can submit a claim to the Canadian Human Rights Commission, although they often require you to go through the grievance process first. To support both processes, it is essential to make detailed notes about the incident, and to keep all documents relating to the claim.

The 11 grounds of discrimination under the Canadian Human Rights Act are:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex (includes pregnancy, gender identity or expression, and sexual orientation)
- Marital status
- Family status
- Disability
- Genetic characteristics
- Conviction for an offence for which a pardon has been granted or a record suspension has been ordered.

See more details about Human Rights claims on pages 8-10

Trans Rights



If you are sent to prison and identify as a transgendered person, the CSC is obligated to make sure you have certain rights, and to have your needs met without being discriminated against because of your gender identity or expression. This includes the right to be treated with dignity, to live and work in conditions that are safe, and to be free from verbal harassment or violence because of your gender.

For more information about your rights as a Trans person in prison see "Trans Rights in Prison," produced by Prisoners' Legal Services, a project of the West Coast Prison Justice Society.



<https://prisonjustice.org/wp-content/uploads/2023/09/Federal-Trans-Rights-2023.pdf>

<https://prisonjustice.org/booklets-for-federal-prisoners>

DISCIPLINE

There is a list of 21 offences for which the CSC can impose disciplinary sanctions listed in section 40 of the Corrections and Conditional Release Act (CCRA). The CSC must also follow certain rules in imposing these sanctions:

- The CSC has to try their best to solve the problem without going through a formal process. They do this by helping you and the staff, or the other inmate involved in the incident reach an agreement.
- The CSC must tell you in writing about any charges within 2 days of it being made against you.
- Your first hearing would normally (but not always) happen within 10 working days, and you must get at least 3 days notice of it beforehand.

The CSC has the power to determine whether the charge will be serious or minor.

- Minor charges are dealt with by a hearing before the warden or their “delegate” (someone chosen by them). All the rights you have for a serious charge also apply to minor charges, with the exception of having a lawyer represent you.
- “Serious” charges can stem from a wide range of offenses from security breaches, violence or repeat offenses to failed urinalysis tests, not following orders, possession of contraband, etc. When there are serious charges, there is a hearing in front of an independent chairperson and the hearing must be recorded.
- You have a right to be at your own hearing, but if you seriously disrupt the hearing or the decision-maker believes you pose a threat to somebody at the hearing, they can take away this right. You can also choose to not attend the hearing.
- At your hearing, your rights to bring evidence, call witnesses and question CDC witnesses are often up to the discretion of the Independent Chairperson.
- If you say you are not guilty at your first hearing, you can ask for a delay to give yourself time to get legal advice or representation, gather witnesses and collect evidence.



You can argue against minor decisions by using the CSC grievance process. If it is a serious decision, you can challenge it through a judicial review, but make sure to apply within 30 days of receiving the decision.

Any decisions CSC makes in regard to indigenous people must consider Indigenous Social History (ISH). You can raise ISH factors at a disciplinary hearing. ISH rights extend to CSC decisions on pen placement, security level, parole, disciplinary sanctions, administrative segregation.

You do not have a right to have a lawyer at minor, disciplinary hearing, but Prisoner advocates and legal aid programs can help you get ready for your hearings. Indigenous people can request for an elder to help with the informal resolution process.

STRUCTURED INTERVENTION UNITS/ ADMINISTRATIVE SEGREGATION

“Imprisonment may take away a prisoner's freedom, but it does not nullify a prisoner's right to equal treatment under the law, and it must never be allowed to sever the ties that link a prisoner to the brotherhood and sisterhood the Universal Declaration of Human Rights accords us all.”

Michael Jackson, QC, *Justice Behind the Walls*

<http://www.justicebehindthewalls.net/book.asp?cid=1>

Also known as Solitary Confinement, administrative segregation was eliminated in 2019 and replaced with “Structured Intervention Units” (SIU's).

- The CSC cannot use these units as a form of punishment; they can only place you in SIUs for safety reasons or in rare cases such as when investigating a crime.
- Being placed in a SIUs is supposed to be a last resort, and your time in an SIU must be as short as possible. While there, you should have meaningful human contact with as few physical barriers as possible.
- You should also be given access to programs and services that you need. This includes spending at least 4 hours outside your cell each day, with 2 of those hours allowing interaction with other people.
- When you are placed in an SIU, you should get a mental health check within a day, and a medical professional should visit you every day. The mental health professional can recommend ending your time in SIU if it is harming your health.

Solitary confinement is harmful to mental health. If the CSC wrongly puts you in an SIU, keeps you there for too long, or does not provide what it is supposed to during your stay, you may be able to challenge the decision through an SIU review, grievance, application to court or human rights complaint.

It is a good idea to keep any documents relating to your time in an SIU and writing down what the CSC does and your time interacting with others during your placement. The CSC should give you written reasons for putting you in an SIU and keep records of your stay and the rules they give you. These records can help if you need to make a grievance, court application or human rights complaint.

For more information on the implementation of SIU's:

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap/index-en.aspx>

SIU Fact Sheet from CSC

<https://www.csc-scc.gc.ca/acts-and-regulations/005006-3003-en.shtml>



VISITATION AND TRANSFERS

Visitation

The CSC is required to give every inmate a fair chance to have visits without any physical barrier. This obligation can only be broken if there are safety concerns, in which case you should be allowed to visit with a glass barrier unless this also creates safety issues. The warden can also require the visit to be supervised if there is a safety concern, but this must be done in the least intrusive way possible.

If your right to a visit has been revoked, the CSC must tell you right away, and you have 5 days to argue against the decision. If they still say no, you can make a complaint or fill out a new visit application form with different details that may change the decision.

A private family visit (PFV) lets inmates have a private meeting with their family for up to 72 hours. The visits are usually allowed every 2 months. "Family" includes immediate family, a spouse or common-law partner, and other very close personal relationships. For Indigenous inmates, PFV rights also apply to extended family members such as grandparents, uncles, and aunts, even if they are not blood related.

Every inmates can have these visits, except if the CSC thinks they might commit family violence, already have permission to go with family without supervision, or are in a special handling unit.

Transfers

- When deciding whether to move someone in prison, the CSC must consider access to programs that can help you, cultural needs, family access and the safety and security of everyone in the prison.
- How easy it is for you to access programs that can help you, your cultural customs, your language, your family, and the safety and security of everyone in the prison. This helps make sure you are in a good place for your needs and everyone's safety.
- The CSC can move inmates to a hospital, to a different prison or to a different location within a prison. They must let you know in writing why they want to move you. You can give your response to this move within 2 days.
- Even if you do not want to move, they can still transfer you, but they must explain why. You can request an extension of up to 10 working days to provide submissions in response to an involuntary transfer. You can use their reasons to make a complaint or ask a judge to review the decision.
- You can ask to be moved if you want to. They will tell you their decision within 60 days.

CONDITIONAL RELEASE HEALTH CARE

CONDITIONAL RELEASE

There are four types of conditional release, which allow you to serve part of your sentence outside prison:

- Day Parole allows you to leave the prison and live in a halfway house or institution. While on day parole, you have freedom during the day but you are required to return to the facility each night.
- Full Parole means being released from prison, with certain conditions to follow until the end of your sentence, like staying away from drugs, taking part in programs, etc. When you reach your eligibility date for full parole, you are automatically scheduled for a parole hearing, which Elders and legal services programs can help with. Unlike day parole, full parole allows you to live in the community without returning to a halfway house each night, unless that is a condition of your full parole.
- Escorted temporary absences let you leave prison with CSC staff supervision for rehabilitation, medical appointments, administrative tasks and other reasons. These absences can last up to 5 days, and if the commissioner approves, up to 15 days, or unlimited if it is for medical reasons.

Unescorted temporary absences (UTA'S) are absences without supervision. They are granted for various reasons, including allowing you to work through a work release program, attend medical, administrative and rehabilitative appointments, or to have short visits with your family.

For more information on the types of conditional release, and for guidance on the parole hearing process and how to prepare for one, see:



https://prisonjustice.org/wp-content/uploads/2019/01/Federal-Conditional-Release-2018_1.pdf

HEALTH CARE IN PRISON

The CSC is responsible for giving you necessary healthcare during your time in prison. This includes both physical and mental healthcare, as well as treatment for addictions.

The CSC also needs to offer reasonable access to non-essential healthcare.

The CSC also has to consider any health conditions, including mental health conditions when making decisions about things like transfers and which cell you are placed in. If CSC doesn't fulfill these responsibilities, you might have a reason to file a grievance.

The quality of healthcare must be as good as what is available outside prison. The CSC has to respect the professional judgment and decision-making of the medical professionals and your right to make choices about your treatment. If you get poor treatment, you can make a complaint about the medical professional to the medical college they belong to. If you believe that you have been denied your right to proper health care because you are Indigenous then you could have the basis for a human rights complaint.

For information on filing complaints to medical colleges, see:

<https://prisonjustice.org/wp-content/uploads/2023/07/Medical-College-Complaints-2023.pdf>

RESOURCES

for people in Prison and Their Families

“People are often in prison because of issues related to poverty, colonialism, mental health or drug use. Prisons often exacerbate these issues, exposing people to violence and harsh treatment, isolation, poor medical care, and other violations of their rights.”

West Coast Justice Society/Prisoners Legal Services

Prisoner advocacy groups are in most provinces. These groups can help you see if the CSC is taking reasonable steps to ensure you are restricted as little as possible and that your civil and human rights are being met.

West Coast Prison Justice Society pamphlets

Federal Prisoners: 1-866-577-5245

<https://prisonjustice.org/pamphlets>

East Coast Prison Justice Society Resources

<https://www.eastcoastprisonjustice.ca/resources.html>

Canadian Association of Elizabeth Fry Societies

National Advocacy Line 1-800-637-4606

<https://caefs.ca/advocacy-in-prisons-designated-for-women>

Human Rights in Prison: In Action

https://caefs.ca/wp-content/uploads/2022/04/HRIA_2021_WEB_English_FINAL.pdf

Innocence Project Canada

Toll Free 1-800-249-1329

<https://www.innocencecanada.com>

John Howard Society

(613) 384-6272

<https://johnhoward.ca/services-across-canada>

Yukon

1-(867) 393-9200

<https://cyfn.ca/services-2/justice-programs>

Nunavut

1-866-286-0546

<https://www.nunavutcourts.ca/index.php/prisonerappeals>

Canadian Civil Liberties Association

1-(416) 363-0321

<https://ccla.org/our-work/criminal-justice/prisons-jails>

Books to Prisoners Programs

<http://prisonjustice.ca/books-2-prisoners>

RESOURCES

Books to Prisoners CANADA



Vancouver Books to Prisoners

<https://bookstoprisoners.ca/request-books>

bookstoprisoners.bc@gmail.com

Greater Edmonton Library Association (GELA) Women's Prison and Reintegration Committee

<https://gela.ca/gela-prison-project>



Books To Prisoners

<https://www.facebook.com/B2POttawa>

b2pottawa@gmail.com

613-520-2757

Book clubs and Book Exchanges for Prisoners at the Edmonton Institution for Women (EIFW) through Edmonton Public Library

780-496-7000

<https://www.epl.ca/volunteer/edmonton-institute-women>



Book Clubs to Inmates

“Book Clubs for Inmates (BCFI) is a registered charity that organizes volunteer-led book clubs within federal penitentiaries across Canada. Currently, BCFI is facilitating 36 book clubs from Nova Scotia to British Columbia.”

<https://www.bookclubsforinmates.com>

Open Door Books (ODB)

bookstoprisoners@gmail.com

<https://opendoorbooks.wordpress.com>

<https://www.qpirgconcordia.org>

514-848-7585



Books Beyond Bars

<https://booksbeyondbars.wordpress.com/about>

booksbeyondbars@gmail.com

Other Books/Reading Programs and Resources

<https://www.womensprisonnetwork.org/Resources.htm#pbr>



Certain Days Freedom for Political Prisoners Calendar 2024

<https://www.certaindays.org>

Books Through Bars: Stories From the Prison Books Movement

Edited by Moira Marquis, and Dave “Mac” Marquis, 2024

<https://www.akpress.org/books-through-bars.html>



THE BORDER

Crossing The Border

Jay Treaty

Necessary Documents

While in the U.S.

CROSSING THE BORDER

What is the issue? The Canada-United States border affects First Nations' daily movements, traditional practices, economic opportunities, and their family and cultural ties with Native Americans from the United States. In fact, a number of Nations such as the Ojibway, Blackfoot, and Mohawk have been split by the border.

- Assembly of First Nations
AFN-Fact-Sheet-Registration-and-the-Canada-US-Border

A number of laws set out the rules for who can cross the US/Canada border, but the law most relevant to Indigenous people and their rights to cross is the Jay Treaty.

What is the “Jay Treaty” and what does it mean?

- The Jay Treaty is an agreement signed by the U.S. and Great Britain in 1794 that affirms the right of those with 50% blood of the 'American-Indian race' to cross the Canadian-U.S. border without restriction.
- The Jay Treaty recognizes the pre-existing right of Indigenous peoples to move freely across their traditional lands, which were separated by the newly created border.
- The U.S. recognizes the Jay Treaty. This means that any Canadian-born Indigenous person that can prove 50% blood quantum can cross the border freely, and live and work in the U.S. without immigration restrictions.
- It is important to note that the U.S. doesn't treat Inuit or Métis differently. As long as an individual can show proof that they are 50% Indigenous, they can also make use of these rights.
- Canada does not recognize the Jay Treaty. This means that American-Indians crossing into Canada will be treated like all other non-Indigenous American travelers

Note: You can request a Jay Treaty pamphlet from U.S. Border officers to get up-to-date and detailed information on your Jay Treaty rights.

What do I do if the person working at customs does not know about my right to enter the U.S.? Tell the person that as a First Nation member, you have the right to enter the U.S. The legal source for this right is Section 289 of the Immigration and Naturalization Act (8 U.S.C. 1359).

NECESSARY DOCUMENTS

What You Need to Travel to the U.S. by Land or Sea

Under the Jay Treaty, anyone with 50% Aboriginal blood can cross the border without restriction. At the Border, U.S. Officials can ask for any of the following:

- **Declaration of Blood Quantum**, such as a letter issued by either your First Nation or Indigenous Services Canada declaring that you have at least 50% Aboriginal Blood

NOTE: This is the most requested and most effective document.

- **Valid Status Card** The U.S. often accepts the Secure Certificate of Indian Status or the Certificate of Indian Status as satisfactory documents, but

NOTE: Having a Status card does not guarantee border crossing.

- **Long form birth certificate**
- **Inuit Enrolment card** from one of the regional Inuit land claim agreements
- **Haudenosaunee ID card**
- **Metis Citizenship card**

You will also need some sort of Photographic identification such as a Status card, driver's license or passport.

If you travel by **Air** between the U.S. and Canada, **a valid Passport is required**. The Secure Certificate of Indian Status and the Certificate of Indian Status are not official travel documents for air travel.

If you have trouble obtaining a letter of blood quantum you might be able to use one of the following instead:

- A copy of your parents' birth certificates proving they have a combined 100% Blood quantum (BQ)
- A signed declaration made before a judge affirming 50% BQ
- A letter from Indigenous Services Canada stating that your parents and all 4 of your grandparents have Status

If you are transporting EAGLE ITEMS you must:

- Have Indian Status
- Declare your goods
- Complete USFWS Form 3-177 (on arrival)

INUIT, MÉTIS, & NON-STATUS TRAVELLERS:

Because border crossing is linked to Blood Quantum NOT status, Inuit, Métis, and Non-Status Indigenous travellers will be asked to prove at least 50% Aboriginal Blood. Métis travellers may be asked to provide personal or family histories.



For more information on crossing the border into the U.S. visit:
<https://www.uscis.gov/greencard/american-indian-born-in-canada>

WHILE IN THE U.S.

If You Want to Work, Live, or Study in the U.S.

Indigenous people with at least 50% blood quantum have, in addition to the right to entry to the U.S., the right to stay to work, live, or study.

Once you've been given entry to the U.S.:

- You don't need to obtain a work permit or register for an alien registration card.
- You should have access to public benefits.
- You can register in a college or university as a domestic student.

To work in the U.S. or to be able to collect certain benefits you will need to get a Social Security Number. You can apply for this at a Social Security Office in the US. This is free.



To Find a Social Security Office:



1-800-772-1213 or <https://secure.ssa.gov/ICON/main.jsp#officeResults>

If you find work in the U.S., you may also need to give your employer a letter from your Nation on letterhead, or other equivalent document, stating that you have 50% blood quantum.

Resource:

The North American Indian Center of Boston's guide on "Rights of First Nation Members in the United States" specifies documents needed at each stage and how to access various benefits.



http://www.naicob.org/uploads/4/6/9/1/46918873/jay_treaty_guide__1_.pdf

Be aware: Traveling with a criminal record

If you have a criminal record there is the possibility that you will be considered inadmissible to the United States and not be allowed to cross the U.S.-Canada border unless you obtain a U.S. Entry Waiver.

Even if you've crossed the border without issue before, there is a chance that you will be stopped in the future. U.S. Entry Waivers can be valid for a number of years, so if you plan to cross the border in the coming years, it may be advisable to start the process for a U.S. Entry Waiver sooner rather than later.

To apply for a U.S. Entry Waiver you'll need to file U.S. Customs and Border Protection Form I-192. Go to:



<https://www.cbp.gov/travel/international-visitors/admission-forms/form-i-92-application-advance-permission-enter-nonimmigrant>

Canadian "Pardons" or Record Suspensions are not recognized by the U.S. Border guards but it may be helpful with applying for a U.S. Entry Waiver before you travel.

Not all crimes make you inadmissible so get legal advice if you are concerned.

INDIAN ACT

Status

Eligibility

Changes

How to Apply

How to Appeal

Wills

Estates

STATUS Eligibility

Prior to the arrival of Europeans, the question of whether a certain person “belonged” to a First Nation was determined by the cultural rules and practices of that particular nation. In the 1850s, however, the governments of the Canadian colonies began to use laws to establish which individuals, in the government’s view, validly belonged to a particular group of First Nations people. These rules, which eventually became part of the first Indian Acts, had little or nothing to do with the cultural practices and family structures of First Nations peoples.

-Assembly of First Nations: Guide to Membership Codes. Legal Affairs and Justice, p5, March 31, 2020


The *Indian Act* has enabled the Canadian government to define who qualifies as an “Indian” in the form of “Indian” Status. Under the *Indian Act*, **Status** is the legal standing of a person who is registered under the *Indian Act*. To make it more complicated, an Indigenous person could be eligible to be registered under either Section 6(1) or (2) of the *Indian Act*.

A person may be registered under section 6(1) if both of their parents are, or were, registered or entitled to be registered, regardless if their parents were registered under 6(1) or 6(2). If a person who is registered under section 6(1) has a child with someone without status, their children will be able to register under 6(2)

Indigenous people with “Status” may be eligible for programs and services such as education funding, non-insured health benefits programs, Treaty payments and potential tax benefits. While these 6(1) or 6(2) designations have no effect on the services, benefits, or rights that an individual possesses, **they could affect their ability to pass on Status to their children.**

For example, if a person is registered under section 6(2) has a child with someone without status, their children will not be able to register for Status. This is known as the “second generation cut-off” and means that a person loses their right to pass on Status after two consecutive generations of parenting with a person who is not entitled to Status.

Comparative table of Indian status



		Second Parent		
		6(1)	6(2)	No Status
First Parent	6(1)	Child has status under 6(1)	Child has status under 6(1)	Child has status under 6(2)
	6(2)	Child has status under 6(1)	Child has status under 6(1)	Child does not have Indian status
	No Status	Child has status under 6(2)	Child does not have Indian status	Child does not have Indian status

Credit: Assembly of First Nations: Guide to Membership Codes. Legal Affairs and Justice, p5, March 31, 2020

STATUS Bill S-3 Changes to Indian Act

The law about eligibility for Indian status changed significantly between 1985 and 2019 in response to Indian Act amendments that remedied gender discrimination against women, many of whom lost their Indian status for marrying non-Indian men — The discrimination impacted thousands of women and their descendants.

The most recent of the changes to the *Indian Act* are under Bill S-3 and have expanded further who may be eligible for Status. These changes could mean that you or someone you know may now be entitled to registration.

Generations of persons, including those who may have been previously denied entitlement, are now able to register.

The changes in registration rules for these individuals mean that their children might also become allowed to register.

Bill S-3 ensures the entitlement of all descendants of women who lost status or whose names were removed from band lists for marrying a non-entitled man going back to 1869.

To know if you are entitled to registration, ask yourself:

- Did my mother, grandmother, or great-grandmother lose status due to:
 - marriage to a non-entitled man before April 17, 1985?
 - being born outside of marriage between an entitled father and non-entitled mother between September 4, 1951 and April 16, 1985?
- Did one of my parents, grandparents or great-grandparents:
 - lose status because of their mother's marriage to a non-entitled man before April 17, 1985?
 - have their name removed from the Indian Register or from a band list because their father was not entitled to status?

Further, under Bill S-3, individuals registered under section 6(2) could be entitled to register under section 6(1)(c) and be able to pass on Status if they meet all of the following conditions:

- They are a direct descendant of a woman who lost her status or was removed from band lists because of marriage to a non-Indian man.
- They were born prior to April 17, 1985, and are a direct descendant of a man who lost his status or was removed from band lists because of marriage to a woman who was not eligible for Indian status.
- They are a direct descendant of a person who was enfranchised, or their spouse or common-law partner.

In addition, anyone previously entitled under the 6(1)(c) paragraphs of the *Indian Act* are now being entitled under the new 6(1)(a) paragraphs.

Lastly, if you, your mom or your grandmother were unmarried and voluntarily enfranchised as a result between September 4, 1951 and April 16, 1985 you may be eligible for a Category amendment (ISC will automatically do this but if you applied and were denied then you will need to reapply).

STATUS

Bill S-3 ADDITIONAL CHANGES

If your parent is not listed on your birth certificate:

Bill S-3 added a new provision to the *Indian Act* that allowed for greater flexibility in the case of unknown or unstated parentage.

The applicant can present various forms of evidence and the Indian Registrar is to make a determination on *whether it is more likely than not* that the applicant has a parent, grandparent, or ancestor entitled to Status. This decision will effect your eligibility for Status.

Adoption:

A child can be registered under the *Indian Act* through their birth parents or through their adoptive parents as long as they were adopted as a minor. For an adopted person to be registered, at least one parent, either adoptive or birth, must be registered or entitled to be registered under section 6(1) of the *Indian Act*.

Legal or Custom Adoption:

A legal adoption is a court process that includes legal documents and an adoption order. A custom adoption follows Indigenous cultural traditions. If you were adopted as a minor (17 years of age, or less in Alberta) by “Indian” parents through legal or custom adoption you can register for Indian Status.

For Identity issues, you may:



- use your traditional name on your Status card.
- select a non-binary gender marker on your application or status card. Your gender marker does not need to match the gender listed on other documents you submit with your application.



Assembly of First Nations Fact sheets about Band Membership vs. Indian Status

<https://afn.ca/wp-content/uploads/2020/11/20-03-31-Draft-Membership-Guide-final.pdf#>

APPYLING FOR STATUS

STEP 1: Get the Application Forms

Online, in person (ISC Regional Office), request by mail or at Band Office.

STEP 2: Do you need a Guarantor?

- Are you applying by mail?
- Are you using a photo ID that doesn't meet all the requirements?
- Are you submitting on behalf of an applicant?

Your Guarantor MUST:

- Not be your parent or guardian
- Be 18 years or older
- Reside in Canada or the U.S.
- Have known you personally for at least 2 years
- Be reachable to verify information
- Have a Secure Status Card that they applied for when they were 16+

OR

- is one of the listed qualified professions

STEP 3: Gather Proof of Identity

If you are applying for a Secure Certificate of Indian Status (SCIS), you must include **2 copies** of a **Canadian passport-style photo** in your application.

*** You are not required to apply for an SCIS if you are applying for status

If **anyone** listed on the application has a different name from the one on the required documents, you must provide **EITHER**:

- An **original** document linking the previous name to the current name. eg. marriage certificate.
- OR
- a photocopy of the above document with valid ID that has the current name as it appears on the application

Include the **Guarantor Declaration** in your application.



IN PERSON:

1. Original Birth Certificate with the parents' names
2. Original acceptable valid ID

BY MAIL:

1. Original birth certificate with the parents' names
2. Photocopies of ID, signed by a guarantor
3. A Guarantor Declaration



IN PERSON:

1. Original Birth Certificate with the applicant's parents' names
2. Original acceptable valid ID of parent/legal guardian

BY MAIL:

1. Original birth certificate with applicant's parents' names
2. Photocopies of ID for each of the applicant's guardians, **both** signed by a guarantor
3. A Guarantor Declaration

APPYLING FOR STATUS

STEP 4: Gather Proof of Ancestry

- Primary evidence about your parents or grandparents
 - Birth/marriage/death certificates
- Secondary evidence
 - Church records, newspapers, sworn statements about your ancestry relevant to entitlement for Status

Try to have as much information as you can about your parents and grandparents.

Requested information Includes:

Legal names, dates of birth, band names or First Nations, registration numbers, contact information, and adoption information (if applicable) but even if you don't know it all you can still apply!

STEP 5: Sign and Date your Application

***NOTE: A parent/guardian will need to sign the application for a dependant

STEP 6: Submit your Application

In person or by mail:

IN PERSON:

At any ISC Regional Office or First Nation or Band Office (if applicable)



IN MAIL:

General Applicants

National Processing Unit Indigenous Services Canada
10 Rue Wellington Gatineau QC, K1A 0H4



IN MAIL:

Bill S-3 Applicants

Application Processing Unit Indigenous Services Canada
Box 6700 Winnipeg MB, R3C 5R5

Use this address if you're applying based on previously denied or revoked status that was discriminatory



If the Registrar denies you Indian status, you can protest the decision.

If you feel you are entitled under a different category of the *Indian Act*, or if your name is taken off the Indian Register, or you disagree with your addition to, omission or deletion from a particular band, you may be able to file a protest against the Registrar's decision.

You must submit your protest within three years from the date of the Registrar's decision.

If you are worried about missing this deadline, get your application in asap and then follow that with the documents or proof you need.

Keep in mind: it can take at least 6 months to receive a decision on your application.

A Status application can be **expedited** for elders or in cases of serious illness

Indigenous Services Canada's Website. Find out how to apply for Status



<https://www.sac-isc.gc.ca/eng/1100100032472/1572459733507>

WILLS

Under the Indian Act

To be valid, a will under the *Indian Act* must:

1. Be in writing (*audio/video wills/oral instructions are not accepted)
2. Be signed by the will-maker
3. Give away something the will-maker owns
4. Be intended to take effect upon death
5. Have 2 adult witnesses (not beneficiaries or their spouses)
6. Be dated

The person writing the will must be:

- A "Status Indian" under the *Indian Act*
- Considered "ordinarily resident on-reserve"
- 16 and older
- Free from pressure or influence



In addition to these requirements, it is important to include the following in your will:

- Name executor and alternate to manage your estate
- Name who you want to care for your children
- Funeral directions
- Make gifts of specific assets (e.g. your house, boat, car, jewelry, art, television etc.)
- The residue/remainder (what is left over after payments of debts and gifts of your estate)

For step by step directions use the template in "Writing Your Own Will"
- *A Guide for First Nations People Living on Reserve* (Revised 2019).

<https://afoabc.org/wp-content/uploads/2023/07/AFOA-BC-Wills-and-Estates-Booklet-2019.pdf>



Indigenous people on Reserve can leave their home in a Will to people who are members of their Band or entitled to be, as long as the house is located on a Certificate of Possession lot ("CP"). Although a CMHC "rent to own" house cannot be given away in a will, putting this in your Will still helps inform your family and the Band of your wishes.

First Nations peoples not living on a Reserve at the time of death, are subject to the Wills legislation under the jurisdiction of the province, territory or country where they lived.

ESTATES

Under the Indian Act

An **Estate** is all of the money and property (and debts) left after someone dies. Estates fall under federal jurisdiction with Indigenous Services Canada (ISC) when someone passes away who is “ordinarily resident” on reserve (meaning if they were living away from the reserve, it was only for school, medical etc.).

The person named in the Will as the **Executor** has the job of settling the affairs of the deceased: paying the bills, filing taxes, closing accounts, and generally following the wishes of the deceased in their will.

If there is no will, then the family (and ISC) will appoint an Administrator. ISC will send the Administrator a certificate showing their appointment.

Executors and family members are **not Liable** for the debts of the deceased. The Executor’s role will be to pay bills from money in the Estate before any beneficiaries are paid. If no money, then no bills get paid.

If your common law partner or spouse has passed and you are wondering how your home on reserve is effected, the **Family Homes on Reserve and Matrimonial Interests or Rights Act** will likely apply. If so, you:

- are entitled to remain in the home for 180 days, even if renting and even if not a Band member
- can apply under the Act for exclusive occupation of the home beyond the 180 days (depends on situation)
- may apply within 10 months of the death for a court order to determine entitlement

Indigenous Services Canada (ISC) is responsible for estate services for First Nations in all provinces. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is responsible for estate services for First Nations in the Yukon and Northwest Territories.

Supporting First Nations estate claims in class action settlements

If you think **your family member or friend’s estate is impacted by a settlement, please contact ISC to discuss options that may be available for the estate at Estate Services.**

For a step by step description of what needs to be done see “Estate Administration On Reserve.”

Available at <https://aboriginal.legalaid.bc.ca>

For questions contact Indigenous Services
<https://www.sac-isc.gc.ca/eng/1100100016936/1534342668402>
Canada, GET #s for canada wide, CIRNAC



If a First Nations person was not living on a Reserve at the time of death, the Estate is under the jurisdiction of the province, territory or country where they lived.

INCOME SECURITY Service Canada benefits +

Employment Insurance

Canada Pension Plan

Retirement pension

Disability benefit

Old Age pension

Guaranteed Income Supplement

“The Allowance”

Allowance for Survivor

Survivors pension (spouse and children)

Death benefit

Resources

Employment Standards

EMPLOYMENT INSURANCE (EI)

The EI Application is online and takes about 40 minutes. As a general rule, apply within 4 weeks of stopping work <https://www.canada.ca/en/services/benefits/ei.html>



ELIGIBILITY CONSIDERATIONS INCLUDE:

Regular Benefits

- Eligible if you lose work through no fault of your own (shortage of work, laid off, etc.) and
- You have the required amount of hours in the last 52 weeks # of hours required to qualify varies by the province or territory and based on the unemployment rate of your area(420 to 700 hours)

Sickness Benefits

- Eligible if unable to work for medical reasons
- Have enough hours
- Medical note

Maternity

- Eligible when pregnant or caring for newborn
- Have enough hours

Caregiver Benefits

- Providing care for critically ill or injured family member
- Have enough hours
- Medical note

Parental Benefits

- Eligible when parents are away from work to care for their newborn or newly adopted child
- Have enough hours

Fishing EI

- Have made the required earnings \$2500 from fishing
- Apply within four weeks from end of fishing

Compassionate Care Benefits

- Providing care for family member in need of end-of-life care
- Have enough hours
- Medical note

EMPLOYMENT INSURANCE (EI) General Tips

Apply ASAP. You do not need to wait for your ROE. You will want to confirm that it has been sent. You will not get money from EI until the ROE is received.

If quit or fired or late applying call a Legal Advocate to assist. Do not assume you are not eligible.

If you return to work, even temporarily, report the income because you could owe money back if you double-dip and you may have a harder time getting EI in the future.

If fired, you will be ineligible for EI unless you can show that you did not lose your job due to your own misconduct.

If you quit, you will be ineligible unless you show that there was no reasonable alternative to quitting (e.g. hostile work environment) and that quitting was the only reasonable solution.

If late, file an Antedate Request to claim retroactively, if you can show good reason for the delay.

If denied, call a Legal Advocate: to assess and help with an appeal You must file within 30 days after the date the decision was communicated to you.



See People's Law School website for plain language publications about Employment Standards and E.I. and many more legal topics!
www.peopleslawschool.ca

CANADA PENSION PLAN

Retirement

The **Canada Pension Plan (CPP) Retirement pension** is a monthly, taxable benefit that replaces part of your income when you retire. If you qualify, you'll receive the CPP retirement pension for the rest of your life.

To qualify you must:

- be at least 60 years old
- have made at least one valid contribution to the CPP

The standard age to start the pension is 65. However, you can start receiving it as early as age 60 or as late as age 70.

It is possible to receive pension credits from a former spouse or former common-law partner at the end of the relationship.



If you apply online takes one month



If by mail can take six months

TIPS:

Not all Bands contribute to CPP for their employees. Check your paystub or talk to your Band Payroll person. You may also have an Employment pension plan with Canada Life etc.

If your employment income is exempt from tax, any income that stems from this employment income, such as Employment Insurance, Canada Pension retirement benefits is also exempt from income tax.

CANADA PENSION PLAN

Disability Benefits (CPP-D)

To qualify for CPP-D, you must:

- Be under **65 years of age**
- Have made the required amount of **contributions** from your paychecks
- Have made contributions to the program in four of six years before you became disabled, with minimum levels of earnings in each of these years, or
- For those with 25 or more years of contributions, have made contributions in three of the prior six years
- Have not collected CPP Early Retirement for more than 15 months and
- Have a “severe and prolonged” disability as defined in the CPP legislation: **Severe** is a condition that makes “a person incapable of regularly pursuing any substantially gainful occupation.” **Prolonged** is defined as “likely to be long continued and of indefinite duration or is likely to result in death...”

You can apply online or by mail

<https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit/apply>



Talk to your Doctor about filling in the forms.

Call a Legal Advocate for help applying or if you are denied. There are different kinds of Disability Benefits that people may be eligible for. It is important that you check the requirements so you apply for the best one for you. In addition to CPP Disability benefit you may also be eligible for ISC Persons with Disabilities (PWD), Provincial PWD or Disability benefits from your employer benefit plan (Canada Life, etc).



CANADA PENSION PLAN

Old Age Security Benefits

Old Age Security

Your employment history is not a factor in determining eligibility. You can receive this pension even if you have never worked or are still working.

If you are living in Canada, you must:

- be 65 years old or older
- be a Canadian citizen or a legal resident at the time we approve your OAS pension application
- have resided in Canada for at least 10 years since the age of 18

Guaranteed Income Supplement (GIS)



The GIS is for lower income elders to help increase their monthly pension amount.

You may be eligible for the GIS if:

- you are 65 or older
- you live in Canada
- you get the Old Age Security pension
- your income is below the maximum annual income threshold for the GIS based on your marital status

You apply for the GIS at the same time as you apply for the OAS pension.

TIP: On Reserve, Tax-exempt income is NOT to be used by the government to calculate your income to determine eligibility for GIS. If you get denied GIS or see that your GIS benefit drops at some point, make sure your income is being tax-exempted correctly. Talk to the Canada Revenue Agency.

The Allowance

If you are eligible to receive GIS your spouse or common-law partner may be able to receive the Allowance if they meet these criteria:

- is 60 to 64 years of age
- is a Canadian citizen or a legal resident
- resides in Canada and has resided in Canada for at least 10 years since the age of 18
- your combined annual income is less than the maximum annual income threshold for the Allowance

Allowance for the Survivor

You could receive the Allowance for the Survivor if:

- you are 60 to 64 years of age
- your spouse or common-law partner has died and you have not remarried or entered into a common-law relationship
- your annual income is less than the maximum annual income threshold for the Allowance for the Survivor

CANADA PENSION PLAN

Survivor and Children Benefits

The Canada Pension Plan (CPP) **Survivor's pension** is a monthly payment paid to the legal spouse or common-law partner of the deceased contributor.

The Canada Pension Plan (CPP) **Children's benefits** provide monthly payments to the dependent children of disabled or deceased CPP contributors.

CPP Death benefit is a one-time \$2500 payment, payable to the estate of a deceased CPP contributor or other eligible individuals for expenses related to burial. To qualify for the death benefit, the deceased must have made contributions to CPP. Apply within 60 days of death.

If no estate exists or if the executor has not applied for the death benefit, payment may be made to other persons who apply for the benefit in the following order of priority:

- the person or institution that has paid for or that is responsible for paying for the funeral expenses of the deceased
- the surviving spouse or common-law partner of the deceased, or
- the next-of-kin of the deceased

TIP:

You must apply on your own for these:

the Allowance,
Survivor's and Children's Benefits,
and Death Benefits.

Service Canada will not automatically inform you that you may be eligible. Call the Service Canada phone resources listed on next page.



RESOURCES

Service Canada and Canada Revenue Agencies: Get Help

Service Canada covers:

- Employment Insurance (EI)
- Canada Pension Plan benefits, including:
 - Old Age Pension (OAS)
 - Guaranteed Income Supplement (GIS)
 - CPP Retirement
 - CPP Disability
 - Survivors “Widow’s” Pension

Canada Revenue Agency (CRA) covers:

- Income Tax
- Canada child benefit
- GST/HST credit
- Canada workers benefit
- Disability tax credit
- Child disability benefit
- Canada caregiver credit

Service Canada Outreach Officers provide **scheduled and mobile outreach services** that can help you understand and access the services and benefits available to **Indigenous people** in both urban and remote or rural centers.

In addition to these services, they will work with individual communities to design regional outreach services that respond to the specific needs of the people who live there.

If you need help completing your Service Canada forms, (OAS, GIS, CPP application or renewals), you can receive help from Service Canada Outreach Support Centres by calling telephone number according to the province you live in.

Ontario: **1-877-355-2657**

Quebec: **1-877-760-2657**

Yukon / N-W T / Nunavut / BC / Alberta / Sask / Manitoba: **1-877-631-2657**

N-F Labrador / PEI / NB / NS: **1-877-464-2657**

Canada Revenue Agency CRA Outreach officers can

- help your community learn about taxes, and about the benefit payments and credits you can receive by doing your taxes
- help make sure people get free help filing their taxes
- help connect people to a Community Volunteer Income Tax Preparer (CVITP).

CVITP staff can complete taxes in person or virtually, by videoconference, by phone, or through a drop off clinic. To be eligible, a person must have a modest income and a simple tax situation.

Contact a CRA Outreach worker by calling **1-866-837-1531**

EMPLOYMENT STANDARDS

Federal or Provincial Employment

The Canada Labour Code sets federal labour standards for people employed in federal industries, which often includes First Nations Bands and other employment on Reserve. If you have a Complaint: Call Canada Labour to confirm if jurisdiction is Federal **1-800-641-4049** and to speak with a Labour Program Officer about your rights and the options you have if your rights have been violated.

Note time limits for filing complaints:

- Monetary and Non-Monetary Complaints must be filed within 6 months
- Unjust Dismissal Complaints must be filed within 90 days

The deadline starts running from the last day the employer was required to pay you or from when you were aware of the issue.

Special Note: Sometimes people are inaccurately defined as Contractors instead of as Employees. This misclassification can result in not getting proper employee benefits (like vacation pay, overtime, severance pay etc.) and not paying into unemployment benefits like EI.

TIP: “Having a contract” does not necessarily mean you are a contractor; it could simply mean you are an employee with a contract.

The relationship is more likely that of an employer & employee if:

- You perform work for another for wages,
- the person who pays you controls the material and tools of the job, and directs the activities (sets the hours and the tasks).

Canada Labour can help get you classified properly, especially because there can be other factors to consider.

If you were misclassified the employer may owe you money retroactively.



CLASS ACTIONS

LEGAL DESCRIPTIONS

RESOURCES

Plain Language Legal Education

What do these mean?

AFTERWORD

BCLAP MAP

NOTES

CLASS ACTIONS

Lawsuits Filed by an Individual Acting on Behalf of a Group

The “Millennium Scoop” and “Child Welfare” Class Actions

Millennium Scoop class actions are referring to a time period covering January 1, 1992 to December 31, 2019, when Indigenous children were taken from their families and placed in non-Indigenous care. The Millennium Scoop is not a single class action. There are several class actions concerning this time period. Any of those cases might be called a Millennium Scoop case.

The largest of these related actions is the First Nations Child and Family Services and Jordan’s Principle and Trout Class Settlement. Aka Moushoom v. Canada (Attorney General), 2021 FC 1225



This is a child welfare class action. It is also a millennium scoop class action. This action represents several cases that have been combined into a single action. As of writing this, it **not yet open for claimants**. It is for:

- children who were removed from their homes under the First Nations Child and Family Services Program between April 1, 1991 and March 31, 2022
- First Nations children who did not receive or were delayed in receiving an essential public service, product or support between April 1, 1991 and December 11, 2007
- First Nations individuals living on-reserve or in the Yukon, while under the age of majority, who were, based on the involvement of a child welfare agency, sent off-reserve by a caregiving parent or caregiving grandparent to stay with a non-family member in a placement not funded by ISC, between April 1, 1991, and March 31, 2022

The Agreement-in-Principle on compensation included \$20 billion. The Agreement-in-Principle on long-term reform included in addition approximately \$20 billion, over five years, for the long-term reform of the First Nations Child and Family Services Program, totaling about \$40 billion.

Deloitte is the third-party administrator responsible for implementing the final settlement. Deloitte is also responsible for addressing questions related to the settlement, and are maintaining a website with additional information. Information on the class action and claims process is available on www.fnchildclaims.ca to read more and sign up for updates. You can also contact the Class Action Administrator, Deloitte, by telephone at 1-833-852-0755 or email fnchildclaims@deloitte.ca.

The website <https://millenniumscoopcan.ca> serves as starting place for claimants to determine which action they might be eligible for. There seem to be eight separate child welfare/millennium scoop actions being brought against the Federal Government, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. These could all be called child welfare and millennium scoop actions. Claimants can use this website to help narrow down which action they might be eligible, and to sign up for updates about that particular action.



CLASS ACTIONS

Another action concerning Indigenous child welfare during the millennium scoop is *Stonechild v Canada, 2022 FC 914*

Murphy Battista LLP and Gowling WLG have brought a class action proceeding against the Government of Canada concerning the apprehension of Indigenous children and youth, living off-reserve, by child welfare agencies, and their placement in the care of individuals who were not members of their Indigenous community, group or people.



You are a class member in this proposed class action if:

- You are a First Nations (Status or Non-Status Indian), Inuit, or Métis person who was removed from their home in Canada, off-reserve, between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not part of the Indigenous community, group, or people to which you belonged (“Primary Class Member”).
- You are the parent or grandparent of a Primary Class Member (“Family Class Member”).

If you have questions or would like to be included in our database of class members and kept apprised of developments, please email us at childwelfare@murphybattista.com.

Website: <https://www.murphybattista.com/practice-areas/class-action-lawsuits/indigenous-child-welfare-class-action>

Phone: 1-888-683-9621



Canada has appealed and this action is currently paused.

CLASS ACTIONS

The phrases “Sixties Scoop” and “Millennial Scoop” describe two distinct periods in Canada during which Indigenous children were disproportionately removed from their families and communities and placed into the child welfare system.

The Sixties Scoop Métis and Non-Status Indian Class Action is on behalf of Métis and Non-Status Indian individuals affected by the Sixties Scoop.

There was an earlier “60’s Scoop class action” for

- registered Indians (as defined in the Indian Act) and Inuit as well as for people eligible to be registered Indians; and who
- Were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents
- the deadline for submitting applications was November 28, 2019.
- Any questions contact [1-844-287-4270](tel:1-844-287-4270) | SIXTISSCOOP@COLLECTIVA.CA



Sixties Scoop Métis and Non-Status Indian Class Action

Now there is a class action against Canada on behalf of Métis and Non-Status Indian survivors of the Sixties Scoop. The Court defined the following persons as members of the class:

All Indigenous persons (as referred to by the Supreme Court of Canada in Daniels v. Canada (Indian Affairs and Northern Development, 2016 SCC 12, at para. 6,), who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and who were placed in the care of non-Indigenous foster or adoptive parents. (excluding Indian persons (as defined in the Indian Act) and Inuit persons.

For further information, or if you are a class member, you can contact the lawyers

Koskie Minsky LLP at [1-866-778-7986](tel:1-866-778-7986), or email at metisnonstatus60sscoopclassaction@kmlaw.ca



CLASS ACTIONS

“Indian Hospitals” Class Action

Compensation for this Class action is not yet available. The claims process is currently being determined, and will be announced as soon as possible.

This Class Action alleges that Canada’s operation of “Indian Hospitals” was negligent and breached fiduciary duties owed to Indigenous People.

The classes are defined as follows:

- Primary Class means all persons who were admitted to an Indian Hospital during the Class Period; and
- Family Class means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Primary Class and the spouse of a child, grandchild or sibling of a member of the Primary Class.

For more information, contact Klein Lawyers | Website: www.callkleinlawyers.com
Vancouver phone: [604-874-7171](tel:604-874-7171)
Toronto phone: [604-874-7171](tel:604-874-7171)



“Indian Boarding Homes” Class Action

Claims process now open! The Indian Boarding Home Program was an “educational program” in which the Government of Canada removed Indigenous children and adolescents from their families and Indigenous communities. These children were transported to distant communities to stay with boarding families while attending public schools. The program was implemented as part of Canada’s policy of culturally assimilating Indigenous persons into mainstream Canadian society.

The Indian Boarding Home Program began during the 1950s as Canada began to dismantle the Indian Residential Schools program. Canada continued to operate the Indian Boarding Home Program into the early 1990s.

The class action alleges that Canada’s actions in creating, operating, and maintaining the Indian Boarding Home Program created an environment where abuse, harassment, and other harms would occur. The prolonged absence from family and community also caused loss of culture, language, and community bonding. Canada’s conduct, and that of its servants, was negligent and in breach of the fiduciary duties that Canada owes to its Indigenous Persons. Class Members have suffered serious and lasting harms as a result.

If you believe you were placed in a boarding home pursuant to the Indian Boarding Home Program, please contact Klein lawyers at phone: [604-714-6531](tel:604-714-6531).

This class action section is taken from the website of the Indigenous Community Legal Clinic in Vancouver, and also includes some clarification from ICLC lawyer Daniel Sinclair <https://allard.ubc.ca/community-clinics/indigenous-community-legal-clinic>

LEGAL DESCRIPTIONS



When compiling legal information we are hoping is relevant to Indigenous people and advocates across “Canada,” there can be conflicting or confusing identifiers for people or groups.

We share here the “Notes on Terminology” from *Bringing Balance to the Scales of Justice: Fulfilling Our Responsibility to Indigenous People Involved in the Justice System* Prepared by MCPEI’s Indigenous Justice Program in partnership with Justice Canada’s Indigenous Justice Program.



“The preferred terminology when referring to Canada’s Indigenous peoples can be confusing and is constantly evolving. This is intended as a quick glossary to some of the common terms.

Aboriginal Peoples: refers to the original peoples of Canada. It is the term that is recognized in the Canadian Constitution. Section 35(2) of the Canadian Constitution Act recognizes three groups of Aboriginal people — Indians, Métis and Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

First Nations: refers to the Indian peoples of Canada, both Status and Non-Status. Although it has no legal definition, it can be preferable in some situations to using the legal term “Indian” as it is considered offensive.

Indian: describes Aboriginal people who are not Inuit or Métis. The term “Indian” is considered offensive by many, and often the term “First Nation” is preferable except when it is necessary to make precise legal distinctions, for example when referring to how a person is defined under the Indian Act.

There are three types of *Indians* in Canada.

Status Indians are First Nations people whose names are included on the Indian Registry—a list maintained by the federal government. Status Indians are recognized under the Indian Act and are entitled to specific rights and benefits.

Non-Status Indians are people who are members of a First Nation community but are not recognized as Indians under the Indian Act. Many First Nations people lost their status rights through past discriminatory practices.

Treaty Indian is a Status Indian who belongs to a First Nation that signed a treaty with the Crown.

Indigenous: is often used interchangeably with Aboriginal and is used to refer to First Nations, Métis and Inuit peoples. It is the term most commonly used in the International context and by the United Nations in, for example, the United Nations Declaration on the Rights of Indigenous Peoples. The term “Indigenous” is replacing “Aboriginal” in many contexts. It should be noted however, that the term does not have a specific legal definition in Canada, while the term “Aboriginal” does.

LEGAL DESCRIPTIONS

Inuit: describes the Indigenous peoples of Arctic Canada. Inuit are not covered in the Indian Act, but the Supreme Court has interpreted the federal government’s power to make laws affecting “Indians, and Lands reserved for the Indians” to include the Inuit. Inuit never lived on reserves, therefore the terms “on-reserve” and “off-reserve” do not apply. It should be noted that “Inuit” means “the people” in Inuktitut, so one should avoid using the term “Inuit people” as “people” is redundant.

Métis: describes people with mixed First Nations and European ancestry who choose to identify themselves as Métis. Many Canadians have mixed Aboriginal and non-Aboriginal ancestry, but do not identify as Métis. It should be noted that Métis organizations have differing criteria about who qualifies as a Métis person.

Native: is similar in meaning to “Aboriginal” and “Indigenous” and can refer to First Nation, Inuit and Métis peoples. In the United States, the term “Native American” is commonly used to describe Aboriginal people, but in Canada the terms “Aboriginal” or “Indigenous” may be preferable to “Native.”

Reserve (on-reserve/off-reserve): A reserve is land, legally owned by the Crown, set aside for the use and benefit of an Indian Band. On-reserve refers to a First Nations person who lives in the Band community, and off-reserve refers to a First Nations person who does not live within a Band community. They should not be confused with the terms “Status” or “Non-Status.”

Edited by Joanne MacKinnon “Note On Terminology,” p3 and 4
<https://mcpei.ca/wp-content/uploads/2023/10/Bringing-Balance-to-the-Scales-of-Justice-Resource-Guide.pdf>



PLAIN LANGUAGE LEGAL EDUCATION

National Resources

<p>National Association of Friendship Centres https://nafc.ca/friendship-centres/find-a-friendship-centre</p>	<p>Indigenous Courtwork Program https://www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html</p>
<p>Women's Legal Education & Action Fund (LEAF) https://www.leaf.ca/legal-resources</p>	<p>Canadian Bar Association: Public Legal Education and Information Canada https://www.cba.org/For-The-Public/Public-Education-and-Information/Public-Legal-Education-and-Information-in-Canada</p>
<p>Neighbourhood Legal https://neighbourhoodlegal.ca/legal-resources</p>	<p>Public Legal Education https://www.plecanada.org/major-ple-organizations-canada</p>

Provincial Resources

<p>Alberta</p> <p>Bear Paw Media and Education https://www.ncsa.ca/programs/bearpaw-media-and-education</p> <p>Centre for Public Legal Education Alberta (CPLA) https://www.cplea.ca</p> <p>Legal Aid Alberta https://www.legalaid.ab.ca</p>	<p>British Columbia</p> <p>People's Law School https://www.peopleslawschool.ca</p> <p>Legal Aid BC https://legalaid.bc.ca</p> <p>Aboriginal Legal Aid https://aboriginal.legalaid.bc.ca</p> <p>West Coast Prison Justice Society https://prisonjustice.org/pamphlets</p>
--	--

PLAIN LANGUAGE LEGAL EDUCATION

Provincial Resources

<p>Manitoba</p> <p>Community Legal Education https://www.communitylegal.mb.ca</p> <p>Legal Aid Manitoba https://www.legalaid.mb.ca</p> <p>Manitoba Law Library https://lawlibrary.ca/category/indigenous-law</p>	<p>New Brunswick</p> <p>Public Legal Education and Information Service of New Brunswick(PLEIS-NB) https://www.legal-info-legale.nb.ca/en</p> <p>Legal Aid http://www.legalaid-aidejuridique-nb.ca/home</p> <p>New Brunswick Aboriginal Peoples Council https://nbapc.org/home</p>
<p>Newfoundland and Labrador</p> <p>Public Legal Information Association of Newfoundland and Labrador (PLIAN) https://publiclegalinfo.com</p> <p>Legal Aid Newfoundland and Labrador https://www.legalaid.nl.ca</p>	<p>Northwest Territories</p> <p>Legal Aid Northwest Territories https://www.justice.gov.nt.ca/en/legal-aid</p> <p>Law Society of the Northwest Territories https://lawsociety.nt.ca/for-the-public/resources</p>
<p>Nova Scotia</p> <p>Mi'kmaq Legal Support Network https://mlsn.ca</p> <p>Legal Aid Nova Scotia https://www.nslegalaid.ca</p> <p>Legal Information Society of Nova Scotia https://www.legalinfo.org/lawyers-legal-help/free-and-low-cost</p>	<p>Nunavut</p> <p>Law Society of Nunavut https://www.lawsociety.nu.ca/en/access-legal-knowledge?language_content_entity=en</p> <p>Legal Aid Nunavut https://nulas.ca</p> <p>Nunavut Courts https://www.nunavutcourts.ca/library</p>

PLAIN LANGUAGE LEGAL EDUCATION

Provincial Resources

<p style="text-align: center;">Ontario</p> <p>Community Legal Education Ontario (CLEO) https://www.cleo.on.ca/en 180 Dundas Street West, Suite 506 Toronto, Ontario M5G 1Z8 416-408-4420 / info@cleo.on.ca</p> <p>Aboriginal Legal Services/Resources Page https://www.aboriginallegal.ca 416-408-3967 / 1-844-633-2886 info@aboriginallegal.ca</p> <p>Legal Aid Ontario https://www.legalaid.on.ca</p>	<p style="text-align: center;">Prince Edward Island</p> <p>Community Legal Information https://legalinfopei.ca</p> <p>Native Council of Prince Edward Island https://ncpei.com/programs-services</p> <p>Mi'kmaq Confederacy of PEI https://mcpei.ca/program/indigenous-justice</p> <p>Prince Edward Island Legal Aid https://www.princeedwardisland.ca/en/information/justice-and-public-safety/legal-aid</p>
<p style="text-align: center;">Quebec</p> <p>Legal Aid Quebec https://www.csj.qc.ca/commission-des-services-juridiques/lang/en</p> <p>The First People's Justice Center of Montreal https://cjppm.org/en/homeen</p> <p>Cree Justice https://www.creejustice.ca/index.php/ca/department/our-team/27-docjs-eng/resources-eng</p> <p>Native Para-Judicial Services of Quebec https://boussolejuridique.ca/en/resource/native-para-judicial-services-of-quebec-spaq/</p> <p>Centre for Access to Services in English, Legal Resources https://www.casemcq.com/legal-resources</p>	<p style="text-align: center;">Saskatchewan</p> <p>Public Legal Education Association of Saskatchewan (PLEA) https://www.plea.org</p> <p>Legal Aid Saskatchewan https://legalaid.sk.ca</p> <p>Aboriginal Courtworker Program https://www.saskatchewan.ca/residents/justice-crime-and-the-law/courts-and-sentencing/aboriginal-courtworker-program</p> <p>Saskatchewan Government, Freelaw https://publications.saskatchewan.ca/#/freelaw/links</p>
<p style="text-align: center;">Yukon</p> <p>Yukon Public Legal Education Association (YPLEA) https://yplea.com</p> <p>Council of Yukon First Nations Justice Programs https://cyfn.ca/services-2/justice-programs</p> <p>Yukon Public Law Library https://yukon.ca/en/public-law-library</p> <p>Yukon Legal Services Society https://www.yukonlegalaid.ca</p>	

What do these mean?

Bill C-92

An Act respecting First Nations, Inuit and Metis children, youth and families
 This is a Federal (Canadian) law, pg 28

Bill S-3

An amendment to the Indian Act re Status that allows many more people to be eligible for Status, pg 59, 60, 62

CCRA

Corrections and Conditional Release Act
 The Law that contains prison rules, pg 41, 44

CIRNAC

Crown-Indigenous Relations and Northern Affairs Canada, pg 64

COS

Conservation Officers Service
 The People who enforce wildlife laws, pg 7, 14

CP

Certificate of Possession
 A legal description of a type of home/lot on Reserve, pg 63

CPP

Canada Pension Plan, pg 70-74

CPP-D

Canada Pension Plan- Disability, pg 71

CRA

Canada Revenue Agency
 The Agency that controls taxes and can help with Tax-exempt income classification, pg 74

CSC

Corrections Services Canada
 The Agency that runs prisons, pg 25, 38-48

CVITP

Community Volunteer Income Tax Program, pg 74

DFO

Department of Fisheries and Oceans
 The Agency that enforces fishing rules, pg 7, 14

EI

Employment Insurance, pg 68-70,74

FHRMIRA

Family Homes On Reserve or Matrimonial Rights and Interest Act
 The Law that effects who can stay in the family home on Reserve after separation or death, pg 35

FOI(A)

Freedom of Information (Act)
 The Law that can allow access to some government records, pg 11

GIS

Guaranteed Income Supplement, pg 72,74

IGB

Indigenous Governing Bodies, pg 29-31

ISC

Indigenous Services Canada (formerly INAC), pg 59-62,64

Jay Treaty

Treaty of Amity, Commerce, and Navigation
 Indigenous peoples' rights at the Border, pg 52-53

OAS

Old Age Security/Old Age Pension, pg 72,74

PAL

Possession and Acquisition License
 A Gun license, pg 6

PLEA or PLEI

Public Legal Education Activities or Information, pg 84-86

RCMP

Royal Canadian Mounted Police, pg 14-15, 18

Section 35 rights

Canadian Constitutional protection for Aboriginal and Treaty Rights
 pg 5-6, 10, 29

SIU

Structured Intervention Units, pg 45

UNDRIP

Universal Declaration on the Rights of Indigenous People, pg 8

YCJA

Youth Criminal Justice Act
 The Law for youth charged with a crime, pg 17

AFTERWORD

Our communities in the north central coast are isolated areas and we have limited access to lawyers. We have a 3-month Circuit Court that sits in the community to hear family, child protection and criminal matters. We can see family and criminal lawyers then and apply for Legal Aid.

We have restorative justice and legal advocacy in our communities to help meet our legal needs. Due to the isolation, we have developed our restorative justice program as an alternative to the criminal justice system, bringing together the victim, offender and some members of the community to discuss the effects of the crime. Everyone involved must agree to the meeting, at which they talk about the impact of the crime and how to address the harm that was done. We use mediation and conflict-resolution programs, family group conferences, victim-impact panels, victim-offender mediation, circle sentencing, and community reparative boards.

Each restorative justice program within BC is unique to the needs of their communities and is knowledgeable of the resources within their communities. The Heiltsuk Gvi'las Restorative Justice program is very broad and diverse, which serves the needs of our community. The program works for us because it is inclusive of Cultural accountability and has greater accountability to elders & leadership, family and selves. It encompasses our Heiltsuk Values and integrates the provincial court system laws.

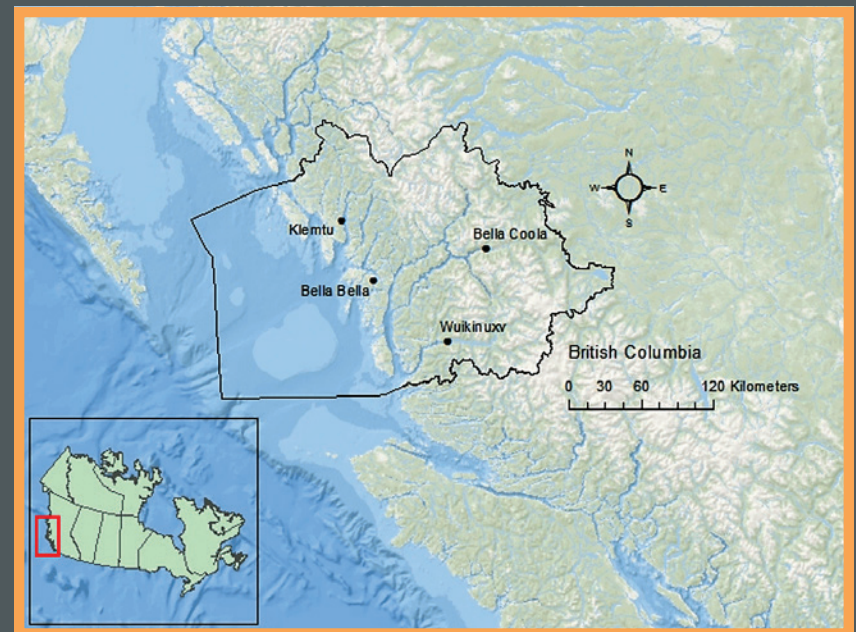
In addition, we build relationships with educational and outreach programs within the Central Coast. For example, the Bella Coola Legal Advocacy Program has served many people in our communities through their 15 years of outreach here. The idea for this booklet comes from their work.

Legal Information for Indigenous People: National Edition provides a wealth of information and is an amazing guide. Our people can access this booklet as a navigation tool when legal problems happen. This booklet will serve the needs of northern and isolated people across the continent, where our access to information and legal supports is limited.

Mary Brown, Coordinator, Heiltsuk Gvi'las Restorative Justice Program
Bella Bella

Legal Information for Indigenous People

A project of the Bella Coola Legal Advocacy Program



Providing free and confidential services in the communities of Bella Coola, Anahim Lake, Bella Bella, Klemtu and Wuikinuxv, the traditional territories of the Nuxalk, Ulkatcho, Heiltsuk, Kitasoo/Xai'xais and Wuikinuxv peoples, respectively.



Legal Information for Indigenous People: National Edition

comes from the heart of the Bella Coola Valley and reaches across the continent to share basic legal information for Indigenous people and their advocates. 2 years in the making, we crossed paths with many people doing justice work in their own communities who kindly:

- shared the legal issues they were seeing amongst their people
- shared resources they were using
- discussed justice education strategies
- offered to help us distribute this booklet in their own agencies and amongst their own people.

We are so thankful for this collaboration and for the time people shared with us. This resource couldn't have happened without it.