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Submission to the Senate Standing Committee on Energy, the Environment and Natural Resources (ENEV) Study on *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice (Bill C-226)*

17 November 2023

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SUBMISSION TO THE SENATE STANDING COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES (ENEV)

Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4
VIA EMAIL: enev@sen.parl.gc.ca

17 November 2023

Executive summary

FCSS-FESC & our position

The FCSS-FESC is a youth-led charity that advances an equity-based and anti-oppressive mandate in service of students in secondary schools across Canada.

The FCSS-FESC strongly endorses the immediate adoption of Bill C-226 in its current form.

Environmental racism & injustice affect women & girls differently

Racialized women and girls face different forms of environmental racism. This includes: higher cancer rates as a result of pollution exposure, increased incidence of gender-based violence following disasters, and reproductive harm. Indigenous women are particularly impacted. Resource projects disproportionately expose them to violence. Their roles as water protectors and leaders are critically under-valued, despite key benefits in engaging their expertise.

Canada is committed to an intersectional GBA+ lens, including for climate change policy. Our international commitments recognize the links between gender, race, and a clean environment. Section 15 equality rights under the *Charter* demand that our policies are developed and implemented to advance substantive equality, without producing adverse effects on any group.

Our recommendations

Recommendation 1: formally recognize the existence of environmental racism in Canada by quickly passing Bill C-226 into law

- This Act is many years in the making and cannot wait any longer to become law. It incorporates adopted recommendations made by previous studies in the House of Commons.
- The FCSS-FESC fully endorses the actions required by this Bill. The systemic impacts of environmental racism in our society, particularly when gendered, are chronically under-studied. Failing to recognize environmental injustice and its nexus with human

rights in the legislature and the courts has put Canada increasingly out of step with global trends.

Recommendations 2 & 3 may, in lieu of amendment, be achieved by GBA+-focused implementation of Bill C-226 in its current form.

Recommendation 2: include gender as an environmental risk factor in the National Strategy's study

- An environmental racism bill is the best place to address gendered environmental injustice.
- The FCSS-FESC fully supports Bill C-226's requirement in subparagraph 3(3)(a)(i) to study the links between race, socio-economic status, and environmental harms.
- Without diminishing the importance of subparagraph 3(3)(a)(i)'s enumerated factors, we recommend that paragraph one of the preamble be amended as follows:
 - “Whereas the Government of Canada recognizes the need to advance environmental justice across Canada and the importance of continuing to work towards eliminating racism and racial discrimination in all their forms and manifestations, ***including its nexus with gender and other relevant grounds of identity;***”

Recommendation 3: recognize that gendered environmental injustice also happens at multiple scales during policy implementation

- The FCSS-FESC recommends that this Committee engage with the full policy lifecycle. Only then can the full effects of environmental racism be captured.
- We recommend that paragraph four of the preamble be amended to read:
 - “Whereas the Government of Canada recognizes that it is important to meaningfully involve all Canadians — and, in particular, marginalized communities — in the development, ***implementation, monitoring, and enforcement*** of environmental policy and that racial discrimination in the development, ***implementation, monitoring, and enforcement*** of environmental policy would constitute environmental racism;”

Honourable Members of the Senate Standing Committee on Energy, the Environment and Natural Resources,

The FCSS-FESC welcomes Bill C-226, the *National Strategy Respecting Environmental Racism and Environmental Justice Act* and is pleased that it has passed from the House of Commons for study in the Senate. This is the first time that this Bill, in its third iteration, has entered this Chamber for review. We thank you for your time in studying Bill C-226, and respectfully submit the following comments and recommendations to highlight the importance and benefits of passing this Bill into law.

About FCSS-FESC

The FCSS-FESC is a youth-led charity that focuses on empowering and educating high school students to tackle social justice issues affecting young Canadians. Our work is grounded in intersectional, anti-oppressive perspectives that challenge systems perpetuating social disadvantage. We emphasize anti-racism and reconciliation in our programming. Tackling environmental racism is essential to achieving these goals.

This brief highlights the gendered dimensions of environmental injustice and underscores the importance of passing this Bill quickly. Further, we caution that only strong GBA+ alignment will lead to effective implementation of Bill C-226. Women and girls have unique experiences with environmental racism, and efforts to study and plan this phenomenon must reflect that.

How is environmental racism gendered in Canada?

Bill C-226 accurately affirms that race is the key marker of environmental injustice in Canada. However, it must not be treated as a monolithic experience. Racialized women and girls often face different, and sometimes worse, forms of environmental racism. At the same time, they are often excluded from environmental policy development: the Pan-Canadian Framework on Clean Growth and Climate Change did not solicit or receive any gender-based submissions.¹

Pollution and climate change produce unique health impacts on racialized women. The UN Special Rapporteur on hazardous substances noted that women and children are differently impacted by toxic chemical exposure, harming reproductive rights and health from birth.² Sexual and physical violence against women is three times higher following natural disasters.³ Women are also less able to access disaster-mitigation resources or relocate, increasing precarity and mortality disproportionately during climate events such as heat waves.⁴ Overall, climate change is increasing gaps between men and women.⁵

Indigenous women hold invaluable knowledge and roles as environmental protectors, but are systematically excluded from policy-making.⁶ Environmental injustices disproportionately and uniquely affecting Indigenous women include higher cancer rates from industry pollution and

¹ Nathalie Chalifour, “How a Gendered Understanding of Climate Change Can Help Shape Canadian Climate Policy” in Marjorie Griffin Cohen, ed, *Climate Change and Gender in Rich Countries: Work, Public Policy and Action* (London: Routledge, 2017).

² *Visit to Canada: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, UNGA HRC, 45th sess, UN Doc A/HRC/45/12/Add.1 (2020); see also Dayna Nadine Scott, “Body Polluted: Questions of Scale, Gender and Remedy” (2010) 6:5 CLPE Research Paper Series 1.

³ Vanita Sahni et al, “Public health surveillance response following the southern Alberta floods, 2013” (2016) 107:2 Can J of Public Health 142 at 145–46.

⁴ Taylor Wormington, “The Disproportionate Impact of the Climate Crisis on Women and Girls in Canada” (24 January 2020) online: *inter alia* <web.archive.org/web/20200529145300/https://inter-alia.ca/2020/01/24/the-disproportionate-impact-of-the-climate-crisis-on-women-and-girls-in-canada/>.

⁵ Lewis Williams et al, “Women and Climate Change Impacts and Action in Canada: Feminist, Indigenous, and Intersectional Perspectives” (February 2018), online: *Canadian Research Institute for the Advancement of Women* <www.criaw-icref.ca/wp-content/uploads/2021/04/Women-and-Climate-Change_FINAL.pdf> at 8.

⁶ *Ibid.*

sexual violence due to proximity to fossil fuel extraction projects.⁷ Their roles as water defenders often subjects them to additional psychological and physical violence. Protests against resource projects such as pipeline developments are violently policed.⁸

Bill C-226 advances Canada's GBA+ goal of intersectional gender equality

Canada has committed to make all environmental decisions through a GBA+ lens.⁹ GBA+ recognizes that no one identity category acts alone, requiring nuance and careful planning to ensure that no one is left behind.¹⁰ It is the practical embodiment of the *Charter's* s 15 promise of substantive equality. Bill C-226 explicitly acknowledges the intersections of race and socio-economic status in environmental planning. The FCSS-FESC believes that this strongly aligns with the GBA+ mandate and inherently furthers the goals of equality and environmental justice.

Applying a gender-based lens to Bill C-226 would strengthen GBA+ application. *Charter* rights to s 15(1) gender equality and the s 7 right and life, liberty, and security of the person are intimately tied to a healthy environment.¹¹ Canada's international commitments, including the *United Nations Declaration on the Rights of Indigenous Peoples*, the *Convention on the Rights of the Child*, and the Paris Agreement recognize the racialized, gendered, and age-based dimensions of the nexus between human rights protection and the environment.¹² Bill C-226 takes essential steps to meet these obligations.

Environmental justice cannot be achieved without explicitly recognizing that racism causes injustice in Canada. True justice for all Canadians is impossible if we cannot recognize our biases and how they disproportionately harm certain people, even though everyone is affected. **This is why an environmental racism bill is the best place to address gendered environmental injustice:** although all women are differently vulnerable to pollution and climate change, it is Indigenous and other women and girls of colour that experience it most acutely.¹³

⁷ Patricia E Perkins, "Canadian Indigenous Female Leadership And Political Agency On Climate Change" in Marjorie Griffin Cohen, ed, *Climate Change and Gender in Rich Countries: Work, Public Policy and Action* (London: Routledge, 2017) 282; Maya K Gislason et al, "The Complex Impacts Of Intensive Resource Extraction On Women, Children And Aboriginal Peoples: Towards contextually-informed approaches to climate change and health" in Marjorie Griffin Cohen, ed, *Climate Change and Gender in Rich Countries: Work, Public Policy and Action* (London: Routledge, 2017) 215 at 221–23.

⁸ Allison Lalla & Hayat Shariff, *Environmental Racism: Looking to the Past, Present and Future to Measure Progress Towards Environmental Justice*, 1st ed (Kitchener: FCSS-FESC, 2022).

⁹ Justin Trudeau, "Minister of Environment and Climate Change Mandate Letter" (13 December 2019), online: *Prime Minister of Canada* <pm.gc.ca/en/mandate-letters/2021/12/16/minister-environment-and-climate-change-mandate-letter>.

¹⁰ "What is Gender-based Analysis Plus" (16 June 2022) online: *Government of Canada* <women-gender-equality.canada.ca/en/gender-based-analysis-plus/what-gender-based-analysis-plus>.

¹¹ Nathalie J Chalifour, "Environmental Justice and the Charter: Do Environmental Injustices Infringe Sections 7 and 15 of the Charter?" (2015) 28 J Env L & Prac 89.

¹² *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; *Convention on the Rights of the Child*, 20 November 1989, UNTS 1577; *Paris Agreement*, 22 April 2016, Can TS 2016 No 9.

¹³ Williams et al, *supra* note 5.

Recommendation 1: formally recognize the existence of environmental racism in Canada by quickly passing Bill C-226 into law

The FCSS-FESC strongly encourages this Committee to recommend Bill C-226 for immediate passage. This *Act* is many years in the making. It includes the revisions adopted by the Standing Committee on Environment and Sustainable Development in the House of Commons during the 43rd Parliament. It builds on a legacy of activism in Nova Scotia led by Lenore Zann and Ingrid Waldron since 2015 to recognize environmental racism in law.¹⁴ It helps acknowledge Indigenous peoples' fight to assert their rights to self-determination and healthy relations with their lands and waters.

Canada has long struggled to recognize the systemic impacts of racism in our society. Its nexus with environmental harms, particularly when gendered, are chronically under-studied.¹⁵ We are falling behind on the international stage. Failing to recognize environmental injustice and its nexus with human rights in the legislature and the courts has put Canada increasingly out of step with global trends.¹⁶ Our inability to achieve basic forms of equality such as access to clean water violates our international human rights commitments.

The FCSS-FESC recommends that the Senate expedite this Bill with a view to advancing substantive equality. Formal recognition of the issue is only the first step. The actions required by this Bill to bridge our informational gaps and identify measures to advance environmental justice are what will begin substantively fulfilling the promises our *Charter* made 31 years ago. Our *Charter* equality jurisprudence is promising, but lags on environmental issues.¹⁷ Bold legislative action is needed to push the dial forward. In an era of climate crisis, we cannot afford to wait until someone is left behind to begin to act. Indigenous peoples and Canadians of colour have already been left behind by our environmental policies.

Recommendation 2: include gender as an environmental risk factor in the National Strategy's study

The FCSS-FESC fully supports Bill C-226's requirement in subparagraph 3(3)(a)(i) that "the link between race, socio-economic status and environmental risk" must be studied. Furthering our understanding of the nexus between poverty, race, and environment is critical for comprehensive action and advances the *Paris Agreement's* preambular framework.¹⁸

However, **it fails to require further analysis of GBA+ factors, including gender, age, and disability.** Canada has recognized the disproportionate impacts of climate change on women and

¹⁴ Ingrid Waldron, *There's something in the water : environmental racism in indigenous and black communities* (Winnipeg: Fernwood Publishing, 2018) at 16 [Waldron, "There's something in the water"].

¹⁵ *Ibid* at 19–25.

¹⁶ Nathalie J Chalifour, Jessica Earle & Laura Macintyre, "Coming of Age in a Warming World: The Charter's Section 15(1) Equality Guarantee and Youth-Led Climate Litigation" (2021) 1:17 J of L & Equality 1.

¹⁷ *Ibid.*

¹⁸ *Paris Agreement*, *supra* note 12.

girls.¹⁹ The Minister of Environment and Climate Change is specifically tasked with working through an intersectional, GBA+-aligned lens.²⁰ Consequently, the study should disaggregate its examination of these links wherever possible to identify any disparities along gender, age-based, and other grounds of disadvantage.

Increasing the scope of analysis must not dilute Bill C-266's focus on race and socio-economic status. Rather, it must strengthen that focus by recognizing the plurality *within* these categories. Recognition of difference is a core tenet of substantive equality, whether as a *Charter* right or as a core Canadian value.²¹ We encourage this Chamber to consider that engaging with substantive equality as if it were an unwritten constitutional principle deepens our obligations to address adverse effects driven by difference.²²

We recommend that paragraph one of the preamble be amended as follows:

“Whereas the Government of Canada recognizes the need to advance environmental justice across Canada and the importance of continuing to work towards eliminating racism and racial discrimination in all their forms and manifestations, ***including its nexus with gender and other relevant grounds of identity,***”

Incorporating these grounds in the preamble infuses the entire Bill with an intersectional lens without diluting the strength of subparagraph 3(3)(a)(i). It advances the intent and spirit of environmental justice.²³ Given that the environmental movement in Canada and abroad is largely dominated by wealthy and white Canadians,²⁴ this Bill must not allow any co-optation of environmental justice, remaining focused on environmental racism as the primary driver of injustice.²⁵

Recommendation 3: recognize that gendered environmental injustice also happens at multiple scales during policy implementation, not just policy development

We applaud the preambular recognition that the establishment of “environmentally hazardous sites” and the development of environmental policy are key drivers of environmental racism. Indigenous peoples in particular have suffered from these two action areas. At the same time, Indigenous peoples, especially Indigenous women, offer expertise and leadership in

¹⁹ “Women and climate change” (10 April 2019) online: *Environment and Climate Change Canada* <www.canada.ca/en/environment-climate-change/services/climate-change/women.html>.

²⁰ Justin Trudeau, *supra* note 9.

²¹ Patricia Hughes, “Recognizing Substantive Equality as a Foundational Constitutional Principle” (1999) 22:2 Dal LJ 5.

²² *Ibid.*

²³ Ingrid Waldron, *Environmental Racism in Canada* (Ottawa: The Canadian Commission for UNESCO's IdeaLab, 2020) at appendix 2.

²⁴ Lalla & Shariff, *supra* note 8.

²⁵ Waldron, “There's something in the water”, *supra* note 14 at 37.

environmental stewardship and management.²⁶ Time and again, co-management initiatives have led to transformative and fruitful conservation and development that advances reconciliation, conservation and Indigenous self-determination.²⁷

However, Implementation of the Act, particularly the plan and study, must deeply engage with how environmental racism is created not just by individual acts or projects, but how these acts come to form a web of compounding effects acting on multiple scales. It is these adverse effects that form the bulk of insidious and systemic racism in Canada that undermine our promise of substantive equality. The FCSS-FESC recommends that this Committee engage with the full cycle of environmental justice, examining how they arise not just at the planning state, but also in implementation and follow-up.

Plans to begin undoing these webs of harm must be created with the communities affected, engaging women and youth, on terms that will be meaningful and compatible to them.²⁸

We recommend that paragraph four of the preamble be amended to read:

“Whereas the Government of Canada recognizes that it is important to meaningfully involve all Canadians — and, in particular, marginalized communities — in the development, **implementation, monitoring, and enforcement** of environmental policy and that racial discrimination in the development, **implementation, monitoring, and enforcement** of environmental policy would constitute environmental racism;”

Legislative preambles elaborate upon the elements that bills seek to address. Courts consequently turn to preambles as an interpretive element of the intent and scope of a law.²⁹ While it is unlikely that this Act would be intensely litigated, if it were to be challenged on *Charter* or *vires* grounds, Parliament should show that it has turned its attention to matters beyond mere consultation. Specifically targeting injustice at all policy stages within Federal competence would effectively demonstrate that Parliament seeks to combat both direct and adverse inequalities.

Reconciliation efforts are only effective when the Federal government engages deeply with Indigenous law and governance methods.³⁰ All efforts to remedy environmental injustice must engage with capacity-building and holistic planning methods that allow local leadership to come to the fore, inclusive of women and youth. This is even more critical when engaging with Indigenous communities, given that supporting and advancing environmental stewardship and relations with nature are core components to advance reconciliation.³¹

²⁶ Nicole Latulippe & Deborah McGregor, “Zaagtoonaa Nibi (We Love the Water): Anishinaabe community-led research on water governance and protection” (2022) 13:1 The International Indigenous Policy J 1.

²⁷ Aimée Craft & Rachel Plotkin, “Shared Governance” online: *David Suzuki Foundation* <david Suzuki.org/science-learning-centre-article/shared-governance/?utm_source=twitter&utm_medium=weet-link&utm_campaign=nature-sharedGovernance-en-30mar2023>.

²⁸ *Ibid.*

²⁹ Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law, 2016) at 53.

³⁰ Latulippe & McGregor, *supra* note 26.

³¹ *Ibid.*

Further, plans must consider the structural and financial support that is necessary for programs to be successful in the long run.³² As part of “implementation, monitoring, and enforcement,” we strongly encourage this Act to be implemented with a listening-first approach and a willingness to identify and remediate harms that communities identify, even where specific, causative data is absent.³³ This cannot be an excuse to discount instances of environmental racism at any stage. Research into the gendered effects of environmental racism is even more rare; however, women may be more negatively impacted by late-stage environmental policy than at the development stage.³⁴ Consulting with, listening to, and empowering women is therefore even more important.

Our recommendations

First and foremost, the FCSS-FESC encourages the immediate passage of Bill C-226. Canada must act quickly to begin addressing environmental racism, an injustice which has stood for too long. We have sought to highlight the important gender and age-based dimensions of environmental injustices, and provided recommendations to incorporate these concerns in the text of the Bill. However, these concerns may equally be addressed if the Bill, in its current form, is carefully implemented in the spirit of GBA+. We wish to reiterate that this progressive Bill **cannot wait any longer to become law** and do not want to delay its adoption.

Sincerely,



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³² *Ibid.*

³³ Sarah Lewis & Dayna Nadine Scott, “Regulating toxics: sex and gender in Canada’s chemicals management plan”, (2014) 10:8 Osgoode Legal Studies Research Paper Series 1.

³⁴ Perkins, *supra* note 7.