



Native Women's
Association of Canada



L'Association des
femmes autochtones
du Canada

Brief on Bill C-226

An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice

Prepared for the Standing Senate Committee on Energy, the Environment and Natural Resources

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Summary

The Native Women's Association of Canada ("NWAC") supports Bill C-226, (the "Bill") with suggested amendments. The Bill proposes to enact legislation to develop a national strategy responding to environmental racism. In its current form, the Bill does not respond to Indigenous gender-specific concerns and impacts.

Bill C-226 Background

Bill C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, is a Private Member's Bill introduced by MP and former Green Party federal leader Elizabeth May.

The purpose of the Bill is to develop, in consultation with any interested persons, bodies, organizations or communities, a national strategy to promote efforts across Canada to address the harm caused by environmental racism. The preamble acknowledges that there is a "disproportionate number of people who live in environmentally hazardous areas" who are "members of an Indigenous, racialized or other marginalized community."¹

The Bill calls on the Government of Canada to respond to environmental racism and to provide affected communities with the opportunity to participate in finding solutions to address harm caused by environmental racism.² This includes a framework for recognizing and implementing Indigenous Peoples' rights.

When passed, Bill C-226 will require the Minister of Environment & Climate Change to develop a strategy that must include measures to:

- Examine the link between race, socio-economic status, and environmental risk.
- Collect information and statistics relating to the location of environmental hazards.
- Collect information and statistics relating to negative health outcomes in communities that have been affected by environmental racism.
- Assess the administration and enforcement of environmental laws in each province.
- Address environmental racism, including in relation to:
 - Possible amendments to federal laws, policies, and programs.
 - The involvement of community groups in environmental policymaking.

¹ Bill C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, 1st Sess, 44th Parl, 2023 (Third Reading 29 March 2023).

² *Ibid.*

- Compensation for individuals or communities.
- Ongoing funding for affected community.
- Access of affected communities to clean air and water.

NWAC's position

Indigenous Women, including the Two-Spirit, Trans and Gender-Diverse people NWAC represents, carry gender-specific responsibilities to and connections with the lands and waters. Environmental racism has harmed this relationship for generations of Women before and to come. The path forward to reconciling these harms must include a targeted accounting for these gender-specific harms.

NWAC supports the development of a strategy to address environmental racism and advance environmental justice. It especially applauds this Bill for proposing a framework for recognizing and implementing Indigenous Peoples' rights. NWAC calls on this Committee to ensure that Indigenous Women and Indigenous-led organizations are not precluded from the consultation processes of this framework. This framework must also align with Canada's commitments to uphold international laws protecting the environmental rights of Indigenous Peoples, including the *United Nations Declaration on the Rights of Indigenous Peoples*.

Environment racism impacts Indigenous People

Environmental racism refers to the disproportionate siting of polluting industries and other environmental hazards in Indigenous, Black, and other racialized communities, and uneven access to nature and environmental benefits.

Environmental racism is not new. In Canada, Indigenous communities have fought against colonial law and policies to protect the air, land, water, species, and cultural connections to the land. Environmental racism is a form of systemic racism, which is the result of institutional policies and practices.³ Systemic racism is embedded in the laws, policies and institutions that govern our lives – and has been since European settlers first colonized these lands.⁴

In her book on environmental racism, McMaster University humanities faculty professor Ingrid Waldron calls on policymakers to view environmental racism as a form of “state-sanctioned racial” violence similar to police brutality. She told CBC News,

³ “Environmental Racism in Canada: What Is It & Its Impacts” *Ecojustice*, 1 Sept. 2020.
<https://ecojustice.ca/news/environmental-racism-in-canada/>

⁴ *Ibid.*

“There’s a kind of racist ideology that gets written into an environmental policy where we tend to [exclude] people that we think don’t hold the most value right in this world.”⁵

Canada is host to numerous examples of environmental racism in Canada. Hazardous resource extraction and industrial sites and long-term land and water pollution in Indigenous and other racialized communities shaped the way Canada broke treaty promises and harmed its relationships with the people Indigenous to these lands.

Between 1962 and 1970, Dryden Chemicals Ltd. dumped mercury into the English-Wabigoon river system, upstream from Grassy Narrows. The mercury poisoned fish in the river, a primary source of food and income for the Indigenous community.⁶ The Ontario provincial government subsequently advised the community to stop eating fish and, in 1970, closed their commercial fishery.⁷ Concerns about health effects of mercury contamination remain. And river-based income has plummeted. In April 2020, the federal government committed to fully fund a care home in Grassy Narrows for those suffering from mercury poisoning.⁸

Indigenous communities that have experienced environmental racism for generation face long-term, intergenerational health impacts such as asthma, cancer, and congenital disabilities.⁹ They report mental health impacts such as suicide ideation, depression and anxiety. Harms are not limited to the direct health impacts of breathing in toxic air; Pollution seeps into food sources, cultural practices, and even the words people use to communicate ideas and describe the world.¹⁰

Colonial harms inform environmental degradation

Colonialism has led to structural and institutional racism that shapes environmental policies and practices, to the detriment of Indigenous people. Canada’s history has included broken treaty promises, discriminatory acts and policies aimed at assimilation, and the appropriation of land and resources to the exclusion of Indigenous peoples.¹¹ For example, dozens of First Nations communities in Canada continue to have long-term drinking water advisories because Canada appropriated Indigenous peoples’ lands and the relocated them to reserves, resulting in complex political jurisdictions for responsibilities such as water management.¹² It is now the federal

⁵ David Thurton, “Commons could soon pass legislation to study environmental racism” (22 June 2022), online: CBC < <https://www.cbc.ca/news/politics/racism-environment-bipoc-1.6496767>>.

⁶ Maya Venkataraman et al, “Environmental Racism in Canada” *Canadian Family Physician* (August 2022) Vol 68, no 8, pp 567-69.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Supra* note 3.

¹⁰ *Ibid.*

¹¹ *Supra* note 6.

¹² *Ibid.*

government's responsibility to address the lack of clean drinking water for many Indigenous communities; however, it has to achieve long lasting, realistic solutions.

Understanding colonialism as an important determinant of health helps illustrate why we must actively work to deconstruct the colonial harms that remain lingering in our laws and policies. Bill C-226 begins work to redress these harms but fails to account for Indigenous Women's gender-specific harms.

Indigenous Women are a marginalized group

In 2018, the National Inquiry into Missing and Murdered Indigenous Women and Girls final report identified a link between resource extraction projects and violence against Indigenous Women and girls, as well as increased sex industry activities in those areas. The following Calls to Justice relate to the resource extraction and development industry¹³:

1.2 We call upon all governments, with the full participation of Indigenous Women, girls, and 2SLGBTQQIA people, to immediately implement and fully comply with all relevant rights instruments.

- This includes ICCPR (right to life), ICESCR (adequate standard of living), and UNDRIP (Article 29).

4.1 We call upon all governments to uphold the social and economic rights of Indigenous Women, girls, and 2SLGBTQQIA people by ensuring that Indigenous Peoples have services and infrastructure that meet their social and economic needs. All governments must immediately ensure that Indigenous Peoples have access to safe housing, clean drinking water, and adequate food.

13.1 We call upon all resource-extraction and development industries to consider the safety and security of Indigenous Women, girls, and 2SLGBTQQIA people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring.

13.4 We call upon the federal, provincial, and territorial governments to fund further inquiries and studies in order to better understand the relationship between resource extraction and other development projects and violence against Indigenous Women, girls, and 2SLGBTQQIA people. At a minimum, we support the call of Indigenous Women and leaders for a public inquiry into the sexual violence and racism at hydroelectric projects in northern Manitoba.

Environmental harms uniquely impact Indigenous Women

¹³ *National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a, Ottawa, 2019.

Indigenous Women hold unbreakable and sacred connections with the lands and waters. Indigenous Women hold scientific and technical knowledge instrumental in water and land conservation efforts. They hold traditional teachings about land-based medicines and foods, and they are responsible for preserving their cultures and languages.¹⁴ Sophisticated and interwoven, these systems of distinct and diverse knowledges protect and perpetuate Indigenous roles and responsibilities that vary among Indigenous communities. The women are the land and waters' first responders, Indigenous science stewards, and experts in intergenerational scientific and technical knowledge transfer.¹⁵

Indigenous Women are therefore disproportionately affected by environmental degradation because they bear the brunt of coping with environmental shocks and stresses. These stresses include indoor and urban pollution, which add to their care burden.¹⁶ As land, forest, and water resources are limited, privatized, or 'grabbed' for commercial investment, Indigenous communities, particularly the women whose livelihoods depend on environmental health, are doubly marginalized.¹⁷

Indigenous Women experience gender-specific harms associated with systemic environmental racism. Changes in domestic and familial roles, perceptions of gender and identity, child-rearing and parenting norms, spiritual life, work and social activities impede their right to practice and revitalize their cultural traditions.¹⁸ Disproportionate numbers of Indigenous Women experience violence, abuse, loss of culture, traditions and language, unemployment, poverty, lower levels of educational attainment, and reduced access to resources.¹⁹

Indigenous Women, girls, and gender-diverse people recognize the injustices that are harming the Earth and its people and have taken charge to protect the land and their relationship with it. These gender-specific experiences place them at the forefront of environmental racism's harms.

Canada's environmental racism breaches international human rights law

¹⁴ "Indigenous Women and our relationship with water" (July 28, 2022), PDF online: *Office of the United Nations High Commissioner for Human Rights*, <<https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/callforinputsindigenouswomen/2022-07-28/EnvironmentandClimateChange-Canada.pdf>>.

¹⁵ *Ibid.*

¹⁶ "Climate change: policy brief" pdf online: *Native Women's Association of Canada* <https://nwac.ca/assets-knowledge-centre/FNIHB_Climate_change_policy-brief.pdf>.

¹⁷ *Ibid.*

¹⁸ *Supra*, note 7.

¹⁹ *Ibid.*

The United Nations Special Rapporteur on Human Rights and Toxics' report tabled at the 45th session of Human Rights Council presents troubling findings about the state of environmental racism and disparate health risks caused by toxic chemicals and pollution in Canada.²⁰

The report summarizes Special Rapporteur Baskut Tuncak's observations made during his official visit to Canada in Spring of 2019. His report brings to light Canada's deep rooted and grave failures within its federal laws, including the *Canadian Environmental Protection Act (CEPA)*²¹, in protecting Indigenous communities and vulnerable populations from the harmful impacts of toxic chemicals and pollution.²²

In addition to Canada's *Canadian Charter of Rights and Freedoms*, *Canadian Human Rights Act*, and provincial and territorial human rights codes, the Special Rapporteur found Canada, "does not give appropriate regard to implementation of relevant international obligations and recommendations. Various recommendations of United Nations Human Rights mechanisms, including on justiciability of economic, social, and cultural rights, have not been cohesively implemented."²³

This report identifies Canadian toxic pollution cases as a racial and environmental justice problem disproportionately impacting Indigenous people and other marginalized communities. The Special Rapporteur describes numerous incidents of persistent and health-devastating exposures to toxic pollution as discriminatory decisions to place polluting industries and landfills near Indigenous and Black communities across Canada.

The Special Rapporteur makes several recommendations Canada address environmental injustice and prevent toxic exposures in the following ways:

- Recognize the legal right to a healthy environment;
- Establish legally binding and enforceable air quality standards;
- Restrict chemicals banned in other jurisdictions;
- Increase transparency of chemicals in consumer products; and
- Protect vulnerable populations, including workers, in assessing and regulating toxic chemicals.

²⁰ *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, UNHRC, 45th Sess, Annex, Agenda Item 3, UN Doc A/HRC/45/12/Add.1 (2020), pdf online at: < https://www.srtoxics.org/wp-content/uploads/2020/09/Canada-HRC-45_AUV.pdf>.

²¹ *Canadian Environmental Protection Act*, 1999, SC 1999, c 33.

²² Human Rights Council, "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" (2020), UN DOC A/HRC/45/12/Add.1.

²³ *Supra* note 20 at p 4.

These recommendations are consistent with the recommendations proposed by the Parliamentary Standing Committee on Environment and Sustainable Development, when it extensively reviewed *CEPA* in 2017.²⁴

The UNDRIP affirms Indigenous Peoples' right to environmental health

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)²⁵ is an international human rights instrument that Canada implemented by enacting the *UNDRIP Act*²⁶ to ensure all laws align with Indigenous Peoples' inherent and affirmed rights. One of the UNDRIP's guiding principle of UNDRIP is "free, prior and informed consent."²⁷

The declaration clearly affirms Indigenous peoples' right to a meaningful say in the decisions that impact their land, territories, languages, cultures and way of life. These may include land development, resource extraction on traditional territories, or changes to laws that affect how Indigenous peoples access their rights on their traditional territories. Though not yet tested in litigation, the UNDRIP affirms Indigenous Peoples' right to say "no" to government and industrial actions that will harm their languages, cultures, and community well-being.²⁸

Canada committed to implementing UNDRIP's principle of free, prior and informed consent. NWAC advocates that there can be no reconciliation without adopting and implementing UNDRIP's principles.

The following UNDRIP Articles protect Indigenous Peoples' right to conserve and protect the environment and holds Canada responsible for taking effective measures to affirm these rights²⁹:

Article 29

- (1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
- (2) States shall take effective measure to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

²⁴ House of Commons, *Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999: Report of the Standing Committee on Environment and Sustainable Development* (June 2017) (Chair: Deborah Shulte).

²⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/61/49 (2007).

²⁶ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

²⁷ *Supra* note 25.

²⁸ *Ibid.*

²⁹ *Ibid.*

- (3) States shall also take effective measure to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 22(1) also pays special attention to the rights and needs of Indigenous elders, *women*, youth, children and persons with disabilities.

Recommendations

Nowhere in this Bill's debates are Indigenous Women's unique concerns reflected, let alone amplified. Indigenous Women are already marginalized. In an era of reconciliation, the needs of the vulnerable must be championed, not left to be perpetuated time and again under the status quo. As such, NWAC recommends Bill C-266 be amended to:

- Include mandatory consultation with Indigenous environmental experts;
- Include mandatory consultation with Indigenous Women, Two-Spirit, Gender-Diverse people and Elders;
- Prepare a culturally relevant and gender-based analysis that honour Indigenous Women, Two-Spirit, Gender-Diverse people distinct experiences as members of an historically marginalized group;
- Address barriers that directly impact Indigenous Women, Two-Spirit, Gender-Diverse people in the context of environmental racism.

About NWAC

NWAC is a national Indigenous organization representing political voices of Indigenous Women, Girls, Two-Spirit, Transgender, and Gender-Diverse+ (WG2STGD+) People in Canada. NWAC is inclusive of First Nations—on- and off-reserve, status, non-status, and disenfranchised—Inuit, and Métis. An aggregate of Indigenous Women's organizations from across the country, NWAC was founded on a collective goal to enhance, promote, and foster social, economic, cultural, and political well-being of Indigenous WG2STGD+ People in their respective communities and Canadian societies.

Since 1974, NWAC established strong and lasting governance structures, decision-making processes, financial policies and procedures, and networks, to achieve its overall mission, vision, and goals. Today, NWAC engages in national and international advocacy aimed at legislative and policy reforms to promote equality for Indigenous WG2STGD+ and LGBTQQAI+ People. Through advocacy, policy, and

legislative analysis, NWAC works to preserve Indigenous culture and advance the wellbeing of all Indigenous WG2STGD+ People, their families and communities.

NWAC advocates on a variety of issues, including: employment, labour and business, health, violence prevention and safety, justice and human rights, environment, early learning childcare, and international affairs. NWAC provides support much like a “Grandmother’s Lodge.” We—as aunties, mothers, sisters, brothers, and relatives—collectively recognize, respect, promote, defend, and enhance our Indigenous ancestral laws, spiritual beliefs, language, and Traditions provided by the Creator.³⁰

³⁰ The Native Women’s Association of Canada, *About Us* (2023), online: <<https://nwac.ca/about-us>>.