



SENATE
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CANADA

DECEMBER 2024

RESPECTED AND PROTECTED

Towards the establishment of an Indigenous
human rights framework

Interim report of the Standing Senate Committee
on Indigenous Peoples

The Honourable Brian Francis, Chair
The Honourable David M. Arnot, Deputy Chair



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ACKNOWLEDGEMENT

The Standing Senate Committee on Indigenous Peoples greatly appreciates the recommendations made by all of the witnesses as a part of its study to examine the establishment of an Indigenous human rights framework in Canada. The committee strongly agrees with witnesses that the establishment of an Indigenous human rights mechanism in Canada should be an immediate priority as Indigenous peoples' human rights have not been appropriately upheld. The committee also strongly agrees that an accountability mechanism must be quickly established to ensure the safety and well-being of Indigenous women, girls and 2SLGBTQI+ people who continue to experience alarmingly high levels of violence.

THE COMMITTEE MEMBERSHIP

The Honourable Brian Francis, *Chair*

The Honourable David M. Arnot, *Deputy Chair*

The Honourable Senators

The Honourable Mary Coyle

The Honourable Margo Greenwood

The Honourable Nancy J. Hartling

The Honourable Yonah Martin

The Honourable John McNair

The Honourable Donald Neil Plett

The Honourable Paul J. Prosper

The Honourable Karen Sorensen

The Honourable Scott Tannas

The Honourable Judy A. White

Ex-officio members of the committee:

The Honourable Marc Gold P.C. or the Honourable Patti LaBoucane-Benson

The Honourable Donald Neil Plett or the Honourable Yonah Martin

The Honourable Raymonde Saint-Germain or the Honourable Bernadette Clement

The Honourable Scott Tannas or the Honourable Rebecca Patterson

The Honourable Pierre J. Dalphond or the Honourable Judy A. White

Other Senators who have participated in the study:

The Honourable Michèle Audette

The Honourable Gwen Boniface

The Honourable René Cormier

The Honourable Renée Dupuis (retired January 2024)

The Honourable Patti LaBoucane-Benson

The Honourable Dennis Patterson (retired December 2023)

Research and Education, Library of Parliament:

Sara Fryer, Analyst

Antoine Csuzdi-Vallée, Analyst

Robert Mason, Analyst

Senate Committees Directorate:

Sébastien Payet, Committee Clerk

Debbie Larocque, Administrative Assistant

Andrea Mugny, Committee Clerk (until September 2024)

Florence Blanchet, Administrative Assistant (until September 2024)

Senate Communications, Broadcasting and Publications Directorate:

Jérémie Spadafora, Communications Advisor

Chelsea DeFazio, Communications Officer

ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Thursday, March 3, 2022:

The Honourable Senator Francis moved, seconded by the Honourable Senator Cordy:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Métis peoples and any other subject concerning Indigenous Peoples;

That the documents received, evidence heard and business accomplished by the committee since the beginning of the First Session of the Forty-second Parliament be referred to the committee; and

That the committee submit its final report no later than December 31, 2023, and that the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

The question being put on the motion, it was adopted.

Gérald Lafrenière
Interim Clerk of the Senate

Extract from the *Journals of the Senate* of Thursday, October 26, 2023:

Resuming debate on the motion of the Honourable Senator Francis, seconded by the Honourable Senator Gerba:

That, notwithstanding the order of the Senate adopted on Thursday, March 3, 2022, the date for the final report of the Standing Senate Committee on Indigenous Peoples in relation to its study on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and

Métis peoples and any other subject concerning Indigenous Peoples be extended from December 31, 2023 to September 1, 2025; and

That the committee be permitted, notwithstanding usual practices, to deposit with the Clerk of the Senate its reports relating to this study, if the Senate is not then sitting, and that the reports be deemed to have been tabled in the Senate.

The question being put on the motion, it was adopted.

Gérald Lafrenière
Interim Clerk of the Senate

LIST OF RECOMMENDATIONS

Recommendation 1

A gap in data related to missing and murdered Indigenous women and girls 2SLGBTQI+ people hinders the public's understanding of the scale of the crisis, and limits effective responses to prevent violence. Therefore, the committee recommends:

That the Government of Canada ensure that Indigenous-specific data and information should be collected, accessed and used by Indigenous peoples for accountability and transparency.

Recommendation 2

In the interest of making better quality information publicly available to Indigenous women, girls and 2SLGBTQI+ people for transparency and accountability, the committee recommends:

- **That Statistics Canada provide the committee with semi-annual progress reports starting in June 2025 on its Missing Persons Data Standard Project;**
- **That Statistics Canada provide the committee with semi-annual progress reports starting in June 2025 and preliminary data outcomes on the Disaggregated Data Action Plan;**
- **That Statistics Canada increase funding to Juristat for more in-depth analysis of disaggregated Indigenous data, based on the priorities of Indigenous governments, organizations and Indigenous women, girls and 2SLGBTQI+ people; and**
- **That Crown-Indigenous Relations and Northern Affairs Canada provide an overview to the committee of statistical and data outcomes from the Indigenous-led Data Projects program.**

Recommendation 3

The committee therefore recommends:

That the Canadian Human Rights Commission, in partnership with Indigenous peoples, undertake broad consultations to identify existing barriers preventing Indigenous peoples from bringing complaints to the Canadian Human Rights Commission and develop an Indigenous-led strategy that is culturally responsive and inclusive to remove those barriers and increase access to justice; and

That the Canadian Human Rights Commission provide the committee with semi-annual progress reports on its work to reduce barriers experienced by Indigenous peoples starting in June 2025.

Recommendation 4

The committee therefore recommends:

That the Government of Canada table amendments to the *Canadian Human Rights Act* to better support all complainants, including amendments to:

- **refer to the *United Nations Declaration on the Rights of Indigenous Peoples* and Canada's other international human rights obligations to ensure that these instruments inform the *Canadian Human Rights Act's* interpretation and application;**
- **expand the mandate of the Canadian Human Rights Commission to directly support individuals with systemic complaints before the Canadian Human Rights Tribunal; and**
- **explore the need to increase the cap on compensation for pain and suffering that may be awarded by the Canadian Human Rights Tribunal.**

Recommendation 5

That the Government of Canada ensure that the Canadian Human Rights Commission and Canadian Human Rights Tribunal are adequately funded, and that the Canadian Human Rights Commission receive additional funding for the additional responsibilities proposed in the preceding recommendation to support individuals with systemic complaints.

Recommendation 6

That the Government of Canada provide the committee with an update on any efforts it has made towards the implementation of the *American Declaration on the Rights of Indigenous Peoples* and related inter-American human rights instruments.

Recommendation 7

That the Government of Canada table legislation which:

- **Establishes an Indigenous Human Rights Ombudsperson and Tribunal that is grounded by Indigenous expertise, laws, cultural values, the rights enshrined by the *United Nations Declaration on the Rights of Indigenous Peoples*, and which meets the international minimum standards for oversight of states actions like the *United Nations Paris Principles* and the *Venice Principles*;**
- **Places the development, leadership and governance of the Indigenous Human Rights Ombudsperson and Tribunal in the hands of diverse Indigenous peoples;**
- **Enables the Indigenous Human Rights Ombudsperson to investigate, compel documents, information and testimony, conduct systemic inquiries, facilitate resolution of complaints, including complaints of reprisal and provide education and legal services;**
- **Empowers an Indigenous Human Rights Tribunal to establish its own operating procedures, provide remedies – including in cases of retaliation, impose sanctions, make and enforce binding orders, and award costs; and**
- **Ensures that the Indigenous Human Rights Ombudsperson offices have regional reach and are accessible to Indigenous peoples in their languages.**

Recommendation 8

The committee further recommends that Crown-Indigenous Relations and Northern Affairs Canada provide the committee with semi-annual progress reports on steps taken toward implementing recommendations made in the *Call for Justice 1.7 Report* beginning in June 2025.

EXECUTIVE SUMMARY

The Standing Senate Committee on Indigenous Peoples issues this report, *Respected and Protected: Towards the establishment of an Indigenous human rights framework*, to provide advice to the Government of Canada as it considers creating a new institution. The recommendations made by the committee are guided by 46 witnesses who reflected on the mandate and powers that a new Indigenous human rights mechanism could have.

The committee makes eight recommendations, intended to promote, respect, protect and fulfill the human rights of Missing and Murdered Indigenous Women and Girls and 2SLGBTQI+ people. All witnesses who testified before the committee agreed that a new Indigenous-focused human rights mechanism was required, and several made recommendations to improve the current human rights protection system and its operations.

The fundamental recommendation made in this report is that the Government of Canada should table legislation to establish a new Indigenous human rights ombudsperson and tribunal. The committee is of the view that this mechanism should be governed, led and operated by Indigenous peoples and have the power to investigate, compel information, conduct systemic inquiries, facilitate the resolution of complaints and provide education and legal services. A new mechanism should be able to make and enforce binding orders, including in relation to remedies, and award costs. Such a mechanism should be independent, transparent and informed by the principles enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Paris Principles*. Ultimately, such institutions should be based on the traditions, cultures and laws of Indigenous peoples.

It is our sincere hope that the Government of Canada will respond to the key finding of the National Inquiry into Missing and Murdered Indigenous Women and Girls to better promote, respect, protect and fulfill Indigenous peoples' human rights.

Introduction

Having an institution that is survivor-centred and accountable to communities is imperative, with the understanding that justice looks different for each family and survivor.

Laura Aguiar, Native Women’s Shelter of Montreal

The Final Report of the National Inquiry on Missing and Murdered Indigenous Women and Girls (the National Inquiry) identified many structural and systemic factors that lead to the “promotion of violence against Indigenous Peoples generally, and Indigenous women, girls and 2LGBTQQIA people specifically.” The National Inquiry highlighted a need for “basic tools of accountability that will keep governments from perpetuating this crisis for many more generations.”¹ Generally, the National Inquiry’s Final Report made note of how different human rights instruments can support the promotion of the rights of Indigenous women, girls and 2SLGBTQI+ people as a key factor in addressing “the crisis of missing and murdered Indigenous women and girls.”²

In its 2022 report, *Not Enough: All Words and No Action on MMIWG*, the Standing Senate Committee on Indigenous Peoples (the committee) specified its intention to examine the federal government’s role in the implementation of the National Inquiry’s Call for Justice 1.7.³ The committee agreed to prioritize a study on the call to establish an independent Indigenous and human rights ombudsperson and tribunal with the powers to investigate complaints.

¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report Volume 1: Reclaiming Power and Place*, 2019, p. 181-186.

² *Ibid.*, p. 182.

³ *Ibid.*, Call for Justice 1.7 is as follows: “We call upon the federal, provincial, and territorial governments, in partnership with Indigenous Peoples, to establish a National Indigenous and Human Rights Ombudsperson, with authority in all jurisdictions, and to establish a National Indigenous and Human Rights Tribunal. The ombudsperson and tribunal must be independent of governments and have the authority to receive complaints from Indigenous individuals as well as Indigenous communities in relation to Indigenous and human rights violations, and to conduct thorough and independent evaluations of government services for First Nations, Inuit, and Métis people and communities to determine compliance with human and Indigenous rights laws. The ombudsperson and the tribunal must be given sufficient resources to fulfill their mandates and must be permanent.”

Subsequently, in January 2023, the Minister of Crown-Indigenous Relations announced the appointment of a Ministerial Special Representative to provide advice and recommendations on the establishment of an Indigenous and Human Rights Ombudsperson. The resulting report, *Call for Justice 1.7 Final Report* was issued in June 2024. A model was proposed and sets out a framework by which a decentralized model of regional and national ombudsperson offices could be appointed, governed and convened. This model was developed after extensive consultations with over 600 Indigenous peoples, governments and leaders.⁴ It is worth noting that the recommendations in her report were also vetted by Indigenous peoples prior to its release.

Learning from witnesses' reflections, the committee has prepared a report that summarizes the testimony of 46 expert witnesses regarding the possible powers and mandate of an Indigenous human rights mechanism. The committee makes several recommendations to improve the current human rights system. Existing federal accountability mechanisms are also raised in the report. A key finding of the committee is that an Indigenous-specific accountability mechanism does not exist to oversee Indigenous peoples' human rights. The committee heard from witnesses during this study that there are real concerns with the way the Government of Canada promotes and upholds the rights of Indigenous peoples. This gap calls for the need to establish exceptional mechanisms for specific Indigenous human rights violations, like those experienced by missing and murdered Indigenous women and girls and 2SLGBTQI+ people.

The participation of all Indigenous peoples and communities on an equal basis is critical to the establishment of an Indigenous human rights ombudsperson and tribunal to ensure it reflects their values and aspirations. The committee agrees with witnesses who supported the establishment of an independent Indigenous human rights ombudsperson and tribunal. Canada would be the first country to establish such mechanisms.⁵ Consistently, Indigenous experts stated that any new Indigenous human rights organization must capture federal, provincial or territorial rights violations in its mandate and structure.⁶ The committee heard from several

⁴ Ministerial Special Representative, *Call for Justice 1.7 Final Report*, 2024.

⁵ APPA, *Evidence*, José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples, Special Procedures of the Human Rights Council, November 21, 2023.

⁶ APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023; APPA, *Evidence*, Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada, April

witnesses that the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration or UNDRIP) must be the organizing framework to understand, interpret and implement Indigenous human rights in Canada. Any new Indigenous human rights institution should therefore be informed by the rights enshrined in UNDRIP.⁷ The committee agrees with witnesses that existing human rights mechanisms should also refer explicitly to the rights of the Declaration.

Several witnesses suggested that an ombudsperson should provide support for individuals filing complaints, while a tribunal should have the power to make binding rulings on complaints and order substantive remedies. Providing free legal services are an important part of this model. Naomi Metallic, Professor, observed that a new Indigenous human rights mechanism, “provide[s] systemic oversight of government activities and can conduct own-motion inquiries and studies and also provide education.”⁸ As stated by Joanna Bernard, Interim National Chief of the Assembly of First Nations, “There must be the ability to make orders ... to remedy both current and historic cases. There must also be the ability to evaluate legislation and policies.”⁹ Aluki Kotierk, President of Nunavut Tunngavik Inc. noted, “An Indigenous human rights commission would be responsible for monitoring federal compliance with the rights affirmed by [...] UNDRIP, and promote and assess implementation of those rights nationally.”¹⁰

This report also lists the key features raised by witnesses of an independent Indigenous and human rights ombudsperson and tribunal according to the United Nations’ *Paris Principles*, a set of international standards for human rights institutions. The report further outlines some barriers raised by witnesses within the current human rights system and steps taken in Alberta, British Columbia, Nova Scotia and Ontario as these jurisdictions attempt to make their human rights institutions more accessible and culturally relevant to Indigenous peoples. We trust that this report will provide useful advice to Canada as it considers how to promote, respect and protect the human rights of Indigenous peoples, particularly those of Indigenous women and girls.

25, 2023; APPA, *Evidence*, Elizabeth Blaney, Director of Policy Development, Congress of Aboriginal Peoples, May 3, 2023.

⁷ APPA, *Evidence*, Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission, April 19, 2023.

⁸ APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023.

⁹ APPA, *Evidence*, Joanna Bernard, Interim National Chief, Assembly of First Nations, December 6, 2023.

¹⁰ APPA, *Evidence*, Aluki Kotierk, President, Nunavut Tunngavik Incorporated, November 28, 2023.

Why are Indigenous Women and Girls Experiencing Violence?

The National Inquiry found that the root causes of the high rates of violence experienced by Indigenous women and girls are “persistent and deliberate human and Indigenous rights violations and abuses.”¹¹ The testimony of families and Survivors at the Inquiry established that nothing less than monumental changes in the legal and social standing of Indigenous peoples will bring about the changes to end the crisis of violence. Violence is rooted in multi-generational trauma brought about by the devastating impacts of colonialism and the federal policy of assimilation. The National Inquiry described four ways that “colonial violence” is perpetuated:

[H]istorical, multigenerational and international trauma; social and economic marginalization; maintaining the status quo and institutional lack of will; and ignoring the agency and expertise of Indigenous women, girls and 2SLGBTQIA people.¹²

In addition to violence, the federal policy of assimilation and colonialism has contributed to Indigenous women and girls experiencing poverty and homelessness and having significant unmet needs in the areas of personal and familial security, education, employment, health care and culturally appropriate services and supports. As explained by Laura Aguiar, Iskweu Project Coordinator, Native Women’s Shelter of Montreal, when individuals struggle to access food, housing, shelter or clothing:

[T]here is often not enough space or time in the day to find recourse or justice for these violations that many human rights institutions would require. This is why any Indigenous-specific human rights institution must be low-barrier and easily accessible to the most marginalized.¹³

¹¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report Volume 1: Reclaiming Power and Place*, 2019.

¹² Ibid.

¹³ APPA, *Evidence*, Laura Aguiar, Iskweu Project Coordinator, Native Women’s Shelter of Montreal, November 22, 2023.

Being an Indigenous woman is a risk factor for violent victimization.¹⁴ They are more likely to be victims or survivors of crime.¹⁵ Data published in 2023 pertaining to violence experienced by Indigenous women and girls demonstrates that they consistently experience far greater rates of violence, including homicide, than their non-Indigenous counterparts.¹⁶ Rates of violence experienced by Indigenous women and girls need to be reported on in a robust way to promote safety and justice.

There are well known and longstanding gaps in historic and contemporary data related to Indigenous women and girls, particularly, police-reported data. The 2022 and 2023 Progress Reports on the National Action Plan that responds to the National Inquiry's Calls for Justice identify several federal initiatives to address current data gaps involving Justice Canada, Crown Indigenous Relations and Northern Affairs Canada (CIRNAC), Indigenous Services Canada (ISC) and Statistics Canada to improve the collection and use of data, and better track progress on eliminating violence and deaths of Indigenous women and girls.

The committee acknowledges the work being done by Canada to collect disaggregated, intersectional data that is distinctions-based, with a view to measuring progress on how it is addressing the crisis of violence affecting Indigenous women and girls. The Indigenous-Led Data Research Projects funding stream at CIRNAC is an important initiative that has funded 19 Indigenous led research projects, many pertaining to data collection on violence experienced by Indigenous women and girls. Statistics Canada has been charged to work with Indigenous governments and the Canadian Association of Chiefs of Police to develop reporting mechanisms related to information on missing people. Statistics Canada has moved forward with a Missing Persons Data Standard Project in 2023-2024 to standardize "protocols, policies and practices for police services in cases of missing Indigenous women, girls and 2SLGBTQI+ people."¹⁷ The agency also leads the Disaggregated

¹⁴ Statistics Canada, [State of the Criminal Justice System Dashboard: Understanding Indigenous Women and Girls' Experiences with Victimization and Violence](#), citing Jillian Boyce, "Victimization of Aboriginal People in Canada," *Juristat*, Statistics Canada, 2016.

¹⁵ *Ibid.*

¹⁶ Marta Burczycka and Adam Cotter, "Court outcomes in homicides of Indigenous women and girls, 2009 to 2021," *Juristat*, Statistics Canada, October 4, 2023.

¹⁷ Government of Canada, [2023 Progress Report on the Missing 2022 Progress Report on the Missing and Murdered Indigenous Women, Girls and 2SLGBTQI+ People National Action Plan](#), May 2023.

Data Action Plan and has integrated Indigenous identity and sexual orientation into some of its surveys.¹⁸

The committee is of the view that making progress to assure the safety and well-being of Indigenous women and girls should be an immediate priority. Gaps in relevant data must be identified; and First Nations, Inuit and Métis specific data must be collected and disaggregated by gender and region, among other factors. The committee is aware of the federal *National Action Plan Data Strategy*, which was developed by a group of Indigenous experts. It focuses on safety as the main indicator of success. As explained in the Strategy, using a safety indicator focuses the data on the presence of the factors that need to be in place to create a safe environment, not simply the absence of violence.¹⁹

Recommendation 1

A gap in data related to missing and murdered Indigenous women and girls hinders the public's understanding of the scale of the crisis, and limits effective responses to prevent violence. Therefore, the committee recommends:

That the Government of Canada ensure that Indigenous-specific data and information should be collected, accessed and used by Indigenous peoples for accountability and transparency.

Recommendation 2

In the interest of making better quality information publicly available to Indigenous women, girls and 2SLGBTQI+ people for transparency and accountability, the committee recommends:

- **That Statistics Canada provide the committee with semi-annual progress reports starting in June 2025 on its Missing Persons Data Standard Project;**

¹⁸ Government of Canada, *2022 Progress Report on the Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA+ People National Action Plan*, 23 May 2022.

¹⁹ *Creating New Pathways for Data: the 2021 National Action Plan Data Strategy*, 2021.

- **That Statistics Canada provide the committee with semi-annual progress reports starting in June 2025 and preliminary data outcomes on the Disaggregated Data Action Plan;**
 - **That Statistics Canada increase funding to *Juristat* for more in-depth analysis of disaggregated Indigenous data, based on the priorities of Indigenous governments, organizations and Indigenous women, girls and 2SLGBTQI+ people; and,**
 - **That Crown-Indigenous Relations and Northern Affairs Canada provide an overview to the committee of statistical and data outcomes from the Indigenous-led Data Projects program.**
-

The Human Rights Framework in Canada

The *Canadian Charter of Rights and Freedoms* (1982) provides constitutional protections for individual human rights such as the right to equality, mobility rights, legal rights, freedom of expression, freedom of religion and official languages, among others. The Charter has application over laws, policies and actions of all levels of government.²⁰ It does not apply to businesses, individuals or other organizations. The federal, provincial and territorial governments have each passed anti-discrimination legislation and established associated bodies that contribute to ensuring respect for these laws. Federally, the *Canadian Human Rights Act* (1985) prohibits discrimination against individuals on prohibited grounds when they receive services from, or are employed by, the federal government and other federally regulated industries, such as First Nations governments, airlines, interprovincial transportation companies, banks or telecommunications companies.

The *Canadian Human Rights Act* establishes the Canadian Human Rights Commission (the Commission) and the Canadian Human Rights Tribunal. The Commission is Canada's national human rights institution and the designated body responsible for monitoring the Government of Canada's implementation of the United Nations *Convention on the Rights of Persons with Disabilities* (2006).²¹ Individuals may make complaints to the Commission regarding discriminatory practices.

The Commission has the power to investigate complaints, appoint conciliators to help parties to complaints to reach settlements and to approve settlements reached by the parties. The Commission may refer complaints to the Canadian Human Rights Tribunal, which conducts inquiries into these complaints and may make binding orders, including orders for compensation, if it finds that the complaint has been substantiated.²² The Commission also has commissioners who work on specific issues such as the Accessibility Commissioner and the Pay Equity

²⁰ *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10.

²¹ *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 28.1.

²² *Ibid.*, ss. 53–54.

Commissioner.²³ The Office of the Federal Housing Advocate is also housed at the Commission.²⁴

Provincial and territorial human rights legislation is generally similar to the *Canadian Human Rights Act*. Protections from discrimination may cover areas of provincial and territorial jurisdiction like private businesses, housing, schools and most workplaces. Protections are not uniform in every jurisdiction; for example, not all provincial and territorial legislation offer protections for political beliefs or social condition.²⁵

As stated by Valerie Gideon, Deputy Minister, Crown-Indigenous Relations and Northern Affairs Canada, the existing mechanisms are not Indigenous-specific, and notes “The mechanisms that do exist are often not Indigenous-led, culturally safe or trauma-informed.”²⁶

²³ *Ibid.*, ss. 38.1–38.4. See also: [Accessible Canada Act](#), S.C. 2019, c. 10; [Employment Equity Act](#), S.C. 1995, c. 44; and [Pay Equity Act](#), S.C. 2018, c. 27, s. 416.

²⁴ [National Housing Strategy Act](#), S.C. 2019, c. 29, s. 313, s. 15(1). The Advocate’s powers and duties are set out in section 14 of the Act.

²⁵ Canadian Centre for Diversity and Inclusion, [Overview of Human Rights Codes by Province and Territory in Canada](#), January 2018.

²⁶ APPA, [Evidence](#), Valerie Gideon, Deputy Minister, Crown-Indigenous Relations and Northern Affairs Canada, December 6, 2023.

Barriers Experienced by Indigenous Peoples to Human Rights Systems

Gender, intersectionality and safety

Indigenous women, girls and their families need culturally responsive and trauma-informed supports, along with an increased number of safe shelters and adequate housing. Anemki Wedom explained that:

[t]here is a real lack of adequate support for the families. Who do they go to when they have a loved one missing? Who is there to advocate for them and to help them understand? What are your rights when a coroner comes and investigates the death of a loved one? What are your rights? All of those complex processes. So many of our families don't have the support that they should have access to in order to access justice.²⁷

In Nunavut, Inuit women and their children who are experiencing violence lack safe shelter space. According to Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid, many of the communities in Nunavut do not have shelters for Inuit women and children who experience violence, “[t]here is simply not enough, and they end up staying in abusive situations.”²⁸ Compounding the problem, many violent incidents involve alcohol; while the first addictions and trauma-treatment centre in Iqaluit is currently under construction, there are no existing facilities in the territory.

The rate of poverty in Nunavut is between 30% to 80%. Other social problems include low levels of education and employment, overcrowded housing and food insecurity in one out of four Inuit preschool children. Madeleine Redfern explained that marginalized and vulnerable individuals experience pervasive systemic discrimination and bias and because of this, “people usually don't dare assert their rights.”²⁹

²⁷ APPA, *Evidence*, Anemki Wedom, as an individual, November 8, 2023.

²⁸ APPA, *Evidence*, Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid, November 21, 2023.

²⁹ Ibid.

Legislation and jurisdiction

Witnesses raised multiple barriers experienced by Indigenous peoples related to the human rights systems in Canada. Jeremy Matson for example, explained that for 30 years, First Nations were denied access to full protections under the *Canadian Human Rights Act* due to section 67 that read, “Nothing in this Act affects any provision of the *Indian Act* (1985) or any provision made under or pursuant to that Act.”³⁰ The result of that provision meant that “hundreds of thousands of First Nations people were barred from filing discrimination complaints about rules and systems that influenced their daily life.”³¹

In 2008, section 67 of the *Canadian Human Rights Act* was repealed. Valerie Phillips, Director General of Complaints Services of the Commission, noted that following the repeal of that section, legal challenges to different provisions of the *Indian Act* began, specifically related to the registration provisions.³² Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer of the Commission, explained “What followed over the next few years was a dramatic influx of new and complex complaints, many previously barred by section 67. Other cases resulted from greater awareness among Indigenous peoples of the human rights system.”³³

In 2018, the Supreme Court of Canada determined that the *Indian Act* did not qualify as a provision of service provided to the public that could be subject to section 5 of the *Canadian Human Rights Act*.³⁴ Jeremy Matson noted that the United Nations’ Committee on the Elimination of Discrimination Against Women found that different legal means such as the *Canadian Charter of Rights and Freedoms* (1982) and the *Canadian Human Rights Act* to be “illusory options for First Nations people.”³⁵

Under the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*, economic, social and cultural rights continue to have no available remedies.

³⁰ APPA, [Evidence](#), Jeremy Matson as an Individual, May 2, 2023.

³¹ APPA, [Evidence](#), Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission, April 25, 2023.

³² APPA, [Evidence](#), Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission, April 25, 2023.

³³ APPA, [Evidence](#), 25 April 2023, Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission, April 25, 2023.

³⁴ [Canada \(Canadian Human Rights Commission\) v. Canada \(Attorney General\)](#), 2018 SCC 31.

³⁵ Jeremy Matson, [Brief](#), May 2023.

Jennifer Moore Rattray, former Ministerial Special Representative, Call for Justice 1.7, noted that the system is unable to understand, enforce and protect collective Indigenous rights. As Tabatha Tranquilla, Director of Policy, Research, and International Relations at the Commission, explained other rights have very little meaning without respect for such fundamental human rights like the “right to an adequate standard of living, housing and food security”.³⁶ The protection of economic, social and cultural rights and the provision of remedies for violations of those rights is important to consider as the matter of jurisdiction could be considered by future legislation.

Access to Justice

Costs and time to pursue a complaint represents significant barriers for Indigenous peoples. Valerie Phillips and Cindy Blackstock, Executive Director of the First Nations Family and Caring Society of Canada, noted the financial resources needed to file a complaint are significant. Costs to hire legal counsel to bring cases before the Canadian Human Rights Tribunal are a barrier under the *Canadian Human Rights Act*, as litigants cannot obtain an award for legal costs at the conclusion of the process.³⁷ Will David, Director, Legal Services, Inuit Tapiriit Kanatami, noted that human rights tribunals are generally overloaded. Thus, they would benefit from the establishment of a national Indigenous human rights tribunal to reduce their case load.³⁸

New Indigenous human rights institutions should be accessible to individuals in rural and remote Indigenous communities, as travel may be difficult for some. A model of community-based peer support was proposed, whereby community members receive human rights training and can offer help to those pursuing complaints.³⁹ Maria Martin, Councillor with Heiltsuk Tribal Council, Heiltsuk Nation, noted that legal services should be available for free.⁴⁰ In Nunavut, it is challenging to access the territorial Human Rights Tribunal due to a lack of staff and it may take years to see a complaint through. Further, the limited access to legal aid and the absence of a

³⁶ APPA, *Evidence*, Tabatha Tranquilla, Director of Policy, Research, and International Relations, Canadian Human Rights Commission, April 25, 2023.

³⁷ APPA, *Evidence*, Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission, April 25, 2023; APPA, *Evidence*, Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

³⁸ APPA, *Evidence*, Will David, Director, Legal Services, Inuit Tapiriit Kanatami, November 28, 2023.

³⁹ APPA, *Evidence*, Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

⁴⁰ APPA, *Evidence*, Maria Martin, Councillor, Heiltsuk Tribal Council, Heiltsuk Nation, November 22, 2023.

human rights commission and ombudsperson has meant that “people have been put at risk and harm without much recourse.”⁴¹ Witnesses noted that Indigenous human rights complaints procedures at the commission and tribunal should be clear and available to all and available in Indigenous languages to increase accessibility by Indigenous complainants.⁴²

At the federal level, “extremely long” delays at the Canadian Human Rights Tribunal negatively affect Indigenous peoples as they continue to face discrimination while waiting for the resolution of their cases. Patrick Courtois, Elected Councillor of the Pekuakamiulnuatsh First Nation of the First Nation of Mashteuiatsh, attributed the significant delays to the lack of capacity.⁴³

Accessibility for people with disabilities

Minor Chief Marsha Wolf Collar, Siksika Nation, noted that there is a dire lack of accessible infrastructure for people in her community.⁴⁴ Furthermore, Neil Sharp Adze Jr., Councillor, Piikani Nation, stated that:

On our nation, we have a lot of members who have a lot of illnesses right now that confine them to wheelchairs...Many of these people are left having to struggle to get into their houses because all of our houses are controlled by [the federal government] ... [T]hey end up going into the Good Samaritan homes and things like that because the homes that the Aboriginal Housing Society... is providing in our areas aren't adequate, or they're too costly for our people to move into them.⁴⁵

Reprisal and intimidation

The committee heard that measures to ensure complaints are free from retaliation are necessary to maintain the independence of an Indigenous human rights body. The ability to order protective measures and remedies for retaliatory acts is necessary to ensure individuals feel safe bringing complaints forward. Indigenous

⁴¹ APPA, [Evidence](#), Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid, November 21, 2023.

⁴² APPA, [Evidence](#), Maria Martin, Councillor, Heiltsuk Tribal Council, Heiltsuk Nation, November 22, 2023; APPA, [Evidence](#), Kyrie Ransom, Director of Justice, Assembly of First Nations, December 6, 2023.

⁴³ APPA, [Evidence](#), Patrick Courtois, Elected Councillor of the Pekuakamiulnuatsh First Nation of the First Nation of Mashteuiatsh, November 22, 2023.

⁴⁴ APPA, [Evidence](#), Marsha Wolf Collar, Minor Chief, Siksika Nation, October 31, 2023.

⁴⁵ APPA, [Evidence](#), Neil Sharp Adze Jr., Councillor, Piikani Nation, October 31, 2023.

peoples, communities and organizations may be reluctant to take action against Canada for fear of losing federal funding. In 2007, Cindy Blackstock helped to bring a complaint to the Tribunal alleging that the federal government discriminated against First Nations children and families on reserve and in Yukon by underfunding the delivery of child and family services. She spoke of her experiences with intimidation arising from the surveillance of her activities by federal officials in the years that followed. She explained:

Canada was monitoring my online movements, following me, making notes about meetings I was at, et cetera, and this went on for many years, but the order didn't come down for four or five years after that. In the meantime, there was nothing to stop Canada. Even when the order was made [under] the *Canadian Human Rights Act*, all they could do was award me compensation, not make an order for them to cease the behaviour.⁴⁶

In Nunavut, the main employer is the territorial government which may provide individuals with staff housing. As Madeleine Redfern recounted, this may mean that filing a complaint could put your employment and your housing at risk.⁴⁷ Anemiki Wedom also stated that some Indigenous women are reluctant to file human rights complaints because they fear being denied future rights and benefits within their communities:

When we are dealing with situations of internalized violence within our communities, there needs to be safe space for those women [and] girls so that they have anonymity, and if they choose to want to exercise their rights to file a human rights complaint, they would not be intimidated or threatened by whoever it is that may be in the elected positions...We need those safe places so that they can be assured to have access to justice.⁴⁸

⁴⁶ APPA, *Evidence*, Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

⁴⁷ APPA, *Evidence*, Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid, November 21, 2023.

⁴⁸ APPA, *Evidence*, Anemki Wedom, as an individual, November 8, 2023.

Provincial Approaches to Improve Access to Human Rights Systems by Indigenous Peoples

Human rights legislation is founded upon the presumption of Crown sovereignty and primacy over Indigenous law and custom. Human rights legislation does not recognize the unique status of Indigenous peoples as the first human occupants of this land and their constitutional status as First Peoples. Most tools used in resolving disputes in human rights are antithetical to most Indigenous worldviews and approaches to conflict resolution.

Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission

The committee heard from representatives of Alberta, British Columbia, Nova Scotia and Ontario human rights systems. In some jurisdictions, officials reported that Indigenous people are underrepresented among the users of human rights institutions. For example, the Alberta Human Rights Commission noted that Indigenous people do not access the human rights complaint system in the province at the same rate as non-Indigenous people.⁴⁹ The Nova Scotia Human Rights Commission instructs Indigenous peoples to file their complaints with both the provincial and federal commissions to ensure that they have access to justice regardless of who has jurisdiction. While this places an additional burden on Indigenous individuals, Cheryl Knockwood, Chair of the Nova Scotia Human Rights Commission stated that the current human rights systems offers no better option.⁵⁰ Provincial officials summarized the work done by their organizations to make their respective human rights system more accessible and inclusive for Indigenous peoples.⁵¹ Witnesses outlined that priorities were being undertaken in the following areas:

- Indigenous representation within the organization, and in the case of Ontario, establishing an Indigenous-specific deputy;⁵²

⁴⁹ Alberta Human Rights Commission, *Indigenous Human Rights Strategy*.

⁵⁰ APPA, *Evidence*, Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

⁵¹ *Indigenous Human Rights Strategy External Review Report*, 2022; Justice Ardith Walpetko We'dalx Walkem, *Expanding Our Vision, Cultural Equality and Indigenous Peoples' Human Rights Report*, 2022 ; and *To Dream Together: Indigenous Peoples and Human Rights Dialogue Report*, 2018.

⁵² APPA, *Evidence*, Amber Prince, Member, British Columbia Human Rights Tribunal, April 19, 2023; Ontario Human Rights Commission, *To Dream Together. Indigenous Peoples and Human Rights Dialogue Report*, 2018, p. 51.

- Indigenous-led reforms to build cultural responsiveness, inclusion and trust;⁵³
- establishing relations with Indigenous communities;⁵⁴
- navigators and legal services to assist Indigenous people to access the human rights system;⁵⁵
- engagement with Indigenous Elders and the use of traditional knowledge to develop new processes and policies such as the inclusion of cultural protocols and ceremonies;⁵⁶
- addressing systemic discrimination that is inherent within the respective human rights systems related to Indigenous peoples;⁵⁷
- addressing access to justice issues;⁵⁸
- promoting the rights of Indigenous peoples through education and community engagement;⁵⁹
- accessing adequate funding;⁶⁰ and
- adopting processes to incorporate UNDRIP.⁶¹

Importantly, Amber Prince, Member of the British Columbia Human Rights Tribunal, noted:

Indigenous peoples must hold the architect's pencil on this or any new initiative or body which, (a), must be comprised of Indigenous leadership and decision makers from Inuit, Métis and First Nations groups, and (b), must be prioritized and sustainably and equitably resourced.⁶²

The committee takes note of work that started in 2014 to document the barriers Indigenous women and girls face in making complaints to the Canadian Human Rights Commission. However, it remains concerned that further work to reduce

⁵³ APPA, [Evidence](#), Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

⁵⁴ APPA, [Evidence](#), Kathryn Oviatt, Chief, Alberta Human Rights Commission, April 19, 2023; APPA, [Evidence](#), Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

⁵⁵ APPA, [Evidence](#), Kathryn Oviatt, Chief, Alberta Human Rights Commission, April 19, 2023; APPA, [Evidence](#), Amber Prince, Member, British Columbia Human Rights Tribunal, April 19, 2023.

⁵⁶ APPA, [Evidence](#), Kathryn Oviatt, Chief, Alberta Human Rights Commission, April 19, 2023.

⁵⁷ APPA, [Evidence](#), Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission, April 19, 2023; APPA, [Evidence](#), Kathryn Oviatt, Chief, Alberta Human Rights Commission, April 19, 2023.

⁵⁸ APPA, [Evidence](#), Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

⁵⁹ Ibid.

⁶⁰ APPA, [Evidence](#), Emily Ohler, Chair, British Columbia Human Rights Tribunal, April 19, 2023.

⁶¹ APPA, [Evidence](#), Amber Prince, Member, British Columbia Human Rights Tribunal, April 19, 2023.

⁶² Ibid.

barriers, and make processes culturally relevant and trauma-informed have lagged since that time.⁶³ The lessons shared with the committee by provincial human rights representatives should be examined by the Commission in order to initiate Indigenous-specific reforms.

Recommendation 3

The committee therefore recommends:

That the Canadian Human Rights Commission, in partnership with Indigenous peoples, undertake broad consultations to identify existing barriers preventing Indigenous peoples from bringing complaints to the Canadian Human Rights Commission and develop an Indigenous-led strategy that is culturally responsive and inclusive to remove those barriers and increase access to justice; and

That the Canadian Human Rights Commission provide the committee with semi-annual progress reports on its work to reduce barriers experienced by Indigenous peoples starting in June 2025.

⁶³ Canadian Human Rights Commission, *Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls*, 2014; APPA, *Evidence*, Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission, April 25, 2023.

Amendments to the *Canadian Human Rights Act*

The *Canadian Human Rights Act* prohibits discrimination based on grounds such as race, sex, religion and national or ethnic origin in all areas of federal jurisdiction.⁶⁴ People who have faced discrimination relating to the specified grounds can register a complaint with the Canadian Human Rights Commission, which has the authority to investigate complaints and refer cases to the Canadian Human Rights Tribunal. The Tribunal hears evidence, decides whether discrimination has occurred and may award remedies.⁶⁵ Until its repeal in 2008, former section 67 of the *Canadian Human Rights Act* prohibited people from filing complaints relating to the *Indian Act*. Each province and territory has human rights legislation that – with some variation – protects against similar forms of discrimination.

While most witnesses expressed distrust in existing human rights mechanisms in Canada, others emphasized the importance of these mechanisms and ways in which they can be improved even as new ones are created.

As noted by Jennifer Khurana, Chairperson, Canadian Human Rights Tribunal, there have been longstanding debates about possible reforms to the *Canadian Human Rights Act*, including 165 recommendations in the *Report of the Canadian Human Rights Act Review Panel*, which was completed in 2000.⁶⁶ Jennifer Khurana explained that while more than twenty years have passed since this report, many of its recommendations relating to issues such as legal representation, delays, accessibility and remedies may still be informative.⁶⁷

In testimony before the committee, Cindy Blackstock highlighted the importance of safeguarding existing human rights mechanisms, while noting some limitations and areas for improvement. She raised concerns about insufficient sanctions for respondents who do not comply with legal orders, the legislated cap on compensation at \$20,000, the unavailability of awards to cover legal costs, lack of funding through the commission for individuals to bring systemic complaints and

⁶⁴ The prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

⁶⁵ The Tribunal's decisions may be judicially reviewed by the Federal Court for reasonableness.

⁶⁶ *Report of the Canadian Human Rights Act Review Panel*, 2000.

⁶⁷ APPA, *Evidence*, Jennifer Khurana, Chairperson, Canadian Human Rights Tribunal, April 19, 2023.

insufficient protections against retaliation.⁶⁸ All of these factors represent significant barriers for Indigenous peoples, a matter acknowledged by officials appearing before the committee.

Similarly, Valerie Phillips, Director General of Complaints Services at the Commission, noted that the scope of the *Canadian Human Rights Act* is limited, and “does not cover all of the rights envisioned in the UN Declaration on the Rights of Indigenous Peoples.”⁶⁹ This was echoed by several witnesses.⁷⁰ Moreover, Valerie Phillips reiterated that “costs are precluded currently under the *Canadian Human Rights Act*. That poses a barrier to a litigant who wants to hire counsel. They cannot get legal costs awarded to them at the end of the process.”⁷¹

Witnesses also emphasized the need to include “Indigenous identity” explicitly as a protected ground of discrimination under the Act, as has been done in some provincial human rights legislation.⁷² As noted by Valerie Phillips, the list of grounds under the *Canadian Human Rights Act* is closed, meaning that unlike under section 15 of the Charter, analogous grounds of discrimination cannot be recognized by the Commission or the Tribunal.

Brenda Gunn stated that there should be training and – ideally – amendments to the *Canadian Human Rights Act* and other human rights statutes, to clarify that international human rights standards should be informing the interpretation and application of domestic legislation on human rights as it relates to Indigenous peoples. She also emphasized the lack of available remedies to protect economic, social and cultural rights in Canada.⁷³ This concern was echoed by other witnesses, including Tabatha Tranquilla, Director of Policy, Research, and International Relations, Canadian Human Rights Commission, who noted that:

⁶⁸ APPA, [Evidence](#), Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, April 19, 2023.

⁶⁹ APPA, [Evidence](#), Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission, April 25, 2023.

⁷⁰ APPA, [Evidence](#), Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission, April 19, 2023; APPA, [Evidence](#), Aluki Kotierk, President, Nunavut Tunngavik Incorporated, November 28, 2023

⁷¹ APPA, [Evidence](#), Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission, April 25, 2023.

⁷² APPA, [Evidence](#), Maria Martin, Councilor, Heiltsuk Tribal Council, Heiltsuk Nation, November 22, 2023; APPA, [Evidence](#), Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission, April 25, 2023.

⁷³ APPA, [Evidence](#), Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, March 28, 2023.

Canada's approach to the fulfillment of these rights has traditionally been through the creation of policies and programs to provide funding or government benefits to address these. They are not generally justiciable in our legal processes, and there are no available remedies for violations of these rights.⁷⁴

Canada has also acknowledged that UNDRIP is a framework for reconciliation, based on the foundational principles of "justice, democracy, respect for human rights, non-discrimination and good faith."⁷⁵

Recommendation 4

The committee therefore recommends:

That the Government of Canada table amendments to the *Canadian Human Rights Act* to better support all complainants, including amendments to:

- **refer to the *United Nations Declaration on the Rights of Indigenous Peoples* and Canada's other international human rights obligations to ensure that these instruments inform the *Canadian Human Rights Act's* interpretation and application;**
- **expand the mandate of the Canadian Human Rights Commission to directly support individuals with systemic complaints before the Canadian Human Rights Tribunal; and**
- **explore the need to increase the cap on compensation for pain and suffering that may be awarded by the Canadian Human Rights Tribunal.**

⁷⁴ APPA, *Evidence*, Tabatha Tranquilla, Director of Policy, Research, and International Relations, Canadian Human Rights Commission, April 25, 2023.

⁷⁵ *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

Recommendation 5

That the Government of Canada ensure that the Canadian Human Rights Commission and Canadian Human Rights Tribunal are adequately funded, and that the Canadian Human Rights Commission receive additional funding for the additional responsibilities proposed in the preceding recommendation to support individuals with systemic complaints.

Canada and the Inter-American Human Rights System

Canada has been a member of the Organization of American States since 1990, but has not yet ratified its principle human rights instrument – the *American Convention on Human Rights* (the Convention). Consistent with its limited role in the Inter-American human rights system, Canada did not substantively participate in negotiations nor take a position on the proposed text of the *American Declaration on the Rights of Indigenous Peoples*.

In testimony to the committee, Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group, expressed “great concern” that “Canada has not yet ratified the vast majority of human rights documents of the Inter-American human rights system.” He expressed particular concern that Canada’s failure to ratify the *American Convention on Human Rights* prevents Canadians from accessing the Inter-American Court of Human Rights, which, he noted “has been a very progressive body with respect to Indigenous human rights.”⁷⁶

Similarly, Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, emphasized that “Canada has neither expressed its support for the *American Declaration on the Rights of Indigenous Peoples* nor taken any action to implement this specific instrument.”⁷⁷ According to Brenda Gunn, certain articles of the American Declaration goes beyond the provisions in UNDRIP including establishing “better protection around gender rights,” protections of family systems, and “specific reference to the need for states to implement the spirit and intent of treaties.”⁷⁸ Article 17.1 for example, recognizes Indigenous kinship relations and family forms including the extended family.

⁷⁶ APPA, *Evidence*, Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group, November 28, 2023.

⁷⁷ APPA, *Evidence*, Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, March 28, 2023; Organization of American States, *American Declaration on the Rights of Indigenous Peoples*, 2016.

⁷⁸ APPA, *Evidence*, Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, March 28, 2023.

Article 17.2 also articulates that the best interests of the child shall be a primary consideration in matters related to “custody, adoption, severance of family ties” and that the best interest includes the rights of Indigenous children to:

[E]njoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language, and in this regard, shall take into account the Indigenous law of the people concerned and their points of view, rights and interests, including the positions of the individuals, the family, and the community.⁷⁹

Recommendation 6

That the Government of Canada provide the committee with an update on any efforts it has made towards the implementation of the *American Declaration on the Rights of Indigenous Peoples*, and related inter-American human rights instruments.

⁷⁹ Organization of American States, *American Declaration on the Rights of Indigenous Peoples*, 2016.

How is the Federal Government Accountable to Indigenous Peoples?

Commissions and Inquiries have recommended accountability mechanisms for Indigenous peoples in key sectors for years. The National Inquiry for Missing and Murdered Indigenous Women and Girls' Calls for Justice echo those made in previous reports that called for the creation of independent accountability mechanisms in areas such as Indigenous human rights, with particular attention on the need to safeguard and uphold the rights of Indigenous women, girls and 2SLGBTQI+ people. Over many decades, additional accountability mechanisms have been recommended in key areas like treaties and claims to land, health care, access to justice and policing.⁸⁰ The number of such recommendations made over the past five decades means Indigenous peoples have valid concerns about the federal government's implementation of recommendations as well as the lack of data to measure progress across almost all socio-economic indicators.⁸¹

Publishing reports about federal progress on Indigenous-specific issues has become a trend across several departments. For example, the Government of Canada reports on a discretionary, or policy, basis on its progress to respond to the National Inquiry's Calls for Justice and the Truth and Reconciliation Commission of Canada's Calls to Action.⁸²

Several provisions in recently enacted legislation mandate the Government of Canada to track and report on its progress on a range of matters pertaining to Indigenous affairs in annual reports to a Minister or to Parliament or grant powers to

⁸⁰ *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress: Final Report*, 2019; *The Royal Commission on Aboriginal Peoples Report, Volume 1: Looking Forward, Looking Back*, 1996; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future*, 2015; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report Volume 1: Reclaiming Power and Place*, 2019, among others.

⁸¹ For example, in its final report, the Truth and Reconciliation Commission of Canada noted that, "Much of what the Royal Commission [on Aboriginal Peoples] had to say has been ignored by government; a majority of its recommendations were never implemented." Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, p. 7.

⁸² Government of Canada, *2023-2024 Federal Pathway Annual Report*, 2024; Government of Canada, *Delivering on Truth and Reconciliation Commission Calls to Action*, 2024.

facilitate the resolution of complaints to a commissioner. Some of the Indigenous-specific provisions in legislation include:

- In its enabling legislation, an annual report tabled in Parliament by the Minister of Indigenous Services on its progress on closing the socio-economic gaps between Indigenous and non-Indigenous peoples in Canada and devolving federal services to Indigenous governments (*Department of Indigenous Services Canada Act*, (2019), section 15). Similarly, in accordance with legislation, the Minister of CIRNAC must table an annual report on the measures undertaken to advance self-determination and reconciliation (*Department of Crown-Indigenous Relations and Northern Affairs Act* (2019), section 10);⁸³
- An annual report tabled in Parliament by the Minister of Crown-Indigenous Relations and Northern Affairs, required under the *National Council for Reconciliation Act* (2024); as well as the annual reports published by the National Council measuring progress on reconciliation regarding a range of health, social and economic matters, as well as Canada’s progress in implementing the Calls to Action of the Truth and Reconciliation Commission of Canada (section 7(a)(b));
- An annual report submitted to the Minister of Canadian Heritage by the Indigenous Languages Commissioner to measure progress on Indigenous languages including the needs of Indigenous peoples related to the “reclamation, revitalization, maintenance and strengthening of Indigenous languages”, the adequacy of funding, and reporting on the Commissioner’s activities (section 43(1)(2)). The Indigenous Language Commissioner also has the power to facilitate the resolution of disputes and make recommendations about complaints submitted by Indigenous peoples against the Government of Canada pertaining to funding agreements, the implementation of federal Indigenous language programs, or other related matters under the *Indigenous Languages Act* (2019) (sections 26 and 27); and
- Annual Reports on the UNDRIP Action Plan, tabled by the Minister of Justice in Parliament in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples Act* (2021) (sections 6 and 7).

⁸³ In July 2019, two new Acts were entered into force, establishing the Department of Crown-Indigenous Relations and Northern Affairs and the Department of Indigenous Services Canada: [*Department of Crown-Indigenous Relations and Northern Affairs Act*](#), c. 29, s. 337, 2019 and [*Department of Indigenous Services Act*](#), c. 29, s. 336, 2019.

However, outside of sharing information about progress, these statutes lack concrete measures that would allow Indigenous peoples to oversee progress about their own priorities. For example, the UNDRIP Act does not create enforceable individual or collective rights for Indigenous people. As a result, it is up to the discretion of the Government of Canada to “monitor and report on their own conduct in fulfilling their human rights obligations,” an approach that has been criticized by Inuit Tapiriit Kanatami and the Métis National Council, among others.⁸⁴

The following section provides some examples of review and appeals processes within Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and other oversight and enforcement mechanisms under the purview of Ministers or Parliament that can provide guidance on the establishment of an Indigenous and human rights ombudsperson and tribunal.

Internal processes for appealing certain federal decisions

Within ISC, several review and appeals processes exist for Indigenous-specific matters. Some are statutory processes, such as protesting a decision of the Indian Registrar on applications for First Nations’ status.⁸⁵ If an individual disagrees with the decision of the Registrar, the decisions can be appealed to the superior courts of each province or territory.⁸⁶ However, constraints like time and legal costs prevent some people from appealing decisions.

Other review and appeals processes are not guaranteed in legislation but are set out in federal policies. The distinction between statutory appeals processes and policy appeals is important, as policies can be changed more easily than legislation. For example, funding denials for claims made under the ISC’s Non-Insured Health Benefits program and claims for health and mobility benefits for Indigenous children under Jordan’s Principle can be appealed. However, these processes are within government and there is little information available about the number of appeals submitted and processed each year, and recourse offered to individuals.

⁸⁴ Inuit Tapiriit Kanatami and the Métis National Council, *Establishing an Indigenous Human Rights Commission and Tribunal*, August 2022.

⁸⁵ *Indian Act*, R.S.C., 1985, c. I-5, section 14.2.

⁸⁶ *Ibid.*, 14.3.

Lodge a complaint with Parliamentary Officers or Ombudspersons

There are other models of federal complaint resolution bodies along with nine agents of parliament that serve to resolve complaints made against federal departments and agencies that are not Indigenous-specific. The examples that follow can provide helpful guidance in the development of a new Indigenous human rights mechanism as these bodies are independent from government, impartial and confidential.

There are a variety of offices that accept complaints from individuals who allege they are treated unfairly such as those from members of the military, veterans, incarcerated individuals or victims of crime. Individuals can make a complaint against an on-duty member of the Royal Canadian Mounted Police (RCMP) to the Civilian Review and Complaints Commission, for example. Operating independently of the RCMP, this commission typically orders the RCMP to investigate the complaint and reports back to the individual who lodged the complaint. The Chair has the powers to investigate a complaint if they find it is not in the public interest for the RCMP to investigate. This Commission can also conduct systemic reviews of RCMP activities. Ultimately, though, the findings and non-binding recommendations of the Commission are reported to the RCMP Commissioner and the Minister of Public Safety. This body has no power to compel the RCMP to take any steps it deems necessary. Others exist to receive complaints, facilitate the resolution of disputes and make recommendations like the Office of the Federal Ombudsperson for Victims of Crime and the Veterans Ombudsman. The latter two offices report to Parliament through the Minister of Veterans Affairs and the Minister of Justice, respectively.⁸⁷

Accountability and scrutiny of the Government of Canada rests with the nine officers or agents of Parliament who carry out their duties in accordance with legislation.⁸⁸ These bodies report to Parliament on the Government of Canada's progress, rather than to a Minister or to the Government of Canada. They cover various matters such as privacy, information, official languages, conflicts of interest and ethics, lobbying, budgets, elections, public sector integrity and auditing the delivery of programs and services.

⁸⁷ Office of the Federal Ombudsperson for Victims of Crime, P.C. 2007-0355, March 15, 2007, PC. and Office of the Veterans Ombudsman, JUS-609755.

⁸⁸ Andre Barnes, *Appointment of Officers and Officials of Parliament*, Library of Parliament, 2021.

Officers and agents of Parliament share some common features with ombudsperson offices like being established by legislation. However, a key difference lies in the reporting structure whereby ombudspersons report to relevant Ministers rather than Parliament. In terms of their duties, there are also similar responsibilities across some of the offices such as the power to investigate complaints, deal with disputes (these powers vary depending on the Agent or Officer) and make non-binding recommendations to government departments. However, there are also significant differences between the powers of different agents and officers. For example, the Office of the Auditor General of Canada conducts special audits and studies to measure the effectiveness of the federal delivery of programs and value for money while the Access to Information Commissioner can make binding orders to the Government of Canada to release information.

Another noteworthy example is the Office of the Public Integrity Commissioner. This Commissioner has powers to investigate disclosures of wrongdoing made under the *Public Servants Disclosure Protection Act*, to bring the attention of wrongdoing to the attention of chief executives and make recommendations about corrective measures that executives could take.⁸⁹

The Integrity Commissioner has wide-reaching powers akin to those found in Part II of the *Inquiries Act* (1985).⁹⁰ The office can investigate allegations of wrongdoing by entering any public office or institution, examine documents and summon individuals to give evidence under oath. Additionally, investigations can be expanded to other allegations of wrongdoing “during the course of an investigation or as a result of any information provided to the Commissioner by a person who is not a public servant.”⁹¹

In addition, the Integrity Commissioner receives complaints of reprisal from individuals due to a disclosure of wrongdoing. If the Commissioner determines there are “reasonable grounds to believe that reprisals occurred”,⁹² complaints are referred to the Public Servants Disclosure Protection Tribunal also established under the Act. The members of the Tribunal must be judges of the Federal Court or a

⁸⁹ *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, s. 26.

⁹⁰ *Inquiries Act*, R.S.C., 1985, c. I-11.

⁹¹ *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, s. 33(1)(2).

⁹² Office of the Public Sector Integrity Commissioner, *Investigations*.

superior court of a province and can order a settlement or other corrective actions, including disciplinary measures such as demotion or termination of employment.⁹³ Reprisals constitute an offence under the Act. The Protection Tribunal can make determinations about complaints and order remedies of up to \$10,000 for complainants and disciplinary actions. The Tribunal's decisions are subject to judicial review by the Federal Court and the Federal Court's rulings may be appealed to the Federal Court of Appeal.

⁹³ Ibid., s. 20.7(1), s. 21.4, s. 21.7 and s. 21.8.

An Indigenous and Human Rights Ombudsperson and Tribunal

Not great faith, but great hope.

Jennifer Moore Rattray, former Ministerial Special Representative, Call for Justice 1.7

Several witnesses provided concrete examples justifying the need for systemic oversight of delivery of core services to Indigenous peoples by federal departments, such as Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC), to ensure that Indigenous human rights are respected and protected. Jennifer Moore Rattray highlighted that her report found there are uneven federal program entitlements extended to different groups of people. For example, she noted that travel rates differ between “the Non-Insured Health Benefit program run by Indigenous Services Canada and the rates paid by other federal departments”.⁹⁴ Cheryl Knockwood observed that:

[a] national Indigenous and human rights ombudsperson and a national Indigenous and human rights tribunal have the potential to remedy failures of overly complex, colonial models of complaint processes that have proven incapable of caring for Indigenous peoples and inflicted trauma upon generations.⁹⁵

Naiomi Metallic also emphasized that in relation to the federal provision of First Nations child and family services that the establishment of a national child advocate would align with advocate offices established in the provinces and territories. She explains:

[T]here is no federal ombudsperson or child advocate, even though Canada is the primary service provider for First Nations children and families. This is a major gap. Every province has an ombuds or a child advocate or both to oversee the delivery of provincial services. Indigenous children and families are

⁹⁴ APPA, *Interim Transcript*, Jennifer Moore Rattray, Former Ministerial Special Representative to the Minister of Crown-Indigenous Relations - Call for Justice 1.7, as an Individual, September 24, 2024.

⁹⁵ APPA, *Evidence*, Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

thus left with the courts and human rights bodies. But there are massive barriers to accessing these forums, including their complexity and cost.⁹⁶

In 2007, the Caring Society's complaint to the Canadian Human Rights Commission was made in relation to the inequitable levels of child welfare funding provided by Canada to First Nations children living on reserve and Yukon. These funding inequities were found to be discriminatory by the Canadian Human Rights Tribunal on the grounds of race and national or ethnic origin under the *Canadian Human Rights Act*. Among other matters, the Tribunal found that Canada's funding is not based on provincial/territorial legislation that sets out service standards for children in care. It found that Canada's inequitable and insufficient funding has led to adverse effects for First Nations children and families.⁹⁷

As the federal funding discrimination did not cease immediately following the Tribunal's decision, the Canadian Human Rights Tribunal began to issue non-compliance orders and has issued approximately 20 against Canada to date. Cindy Blackstock noted that the compliance monitoring undertaken by the Tribunal of ISC's work to implement its orders in this case are a useful tool. According to Cindy Blackstock, the Tribunal has "achieved an enormous step forward in justice for First Nations children" despite some of the constraints in the *Canadian Human Rights Act*.⁹⁸ For example, in its second compliance order of 2016, the Tribunal found that Canada had implemented Jordan's Principle too narrowly and ordered Canada to expand its definition so that a broader range of First Nations children can access funding for products, services and supports.⁹⁹ The implementation of Jordan's Principle by Canada has been – and continues to be – the subject of many orders from the Tribunal requiring Canada to comply with specific timeframes, address backlogs and reduce reimbursement delays.

⁹⁶ APPA, *Evidence*, Naiomi Metallic, Professor, as an individual, March 28, 2023.

⁹⁷ *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2.

⁹⁸ APPA, *Evidence*, Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

⁹⁹ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 16. Jordan's Principle was adopted by the House of Commons on 12 December 2007, due to the experiences of Jordan River Anderson. Jordan died while in hospital while the governments of Canada and Manitoba disputed who was responsible for funding his at-home care. Today, Jordan's Principle sets out the legal obligation of governments to pay for the service an Indigenous child requires. Once the service has been paid, the different levels of government involved in the Indigenous child's care can determine which level of government will ultimately be responsible for bearing the cost of that service.

Funding denials under Jordan's Principle are subject to appeal up to one year from the date of the denial.¹⁰⁰ The new appeals process, created in 2022, includes a Non-Governmental External Expert Review Committee supported by an Appeals Secretariat. If the appeal is upheld by the Expert Review committee, the Federal Court can conduct a judicial review.

However, in 2020, ISC and the Caring Society commissioned research soliciting advice on how to oversee Canada's adherence to Jordan's Principle through the establishment of an independent accountability mechanism. In a report tabled before the committee, *Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms*, the authors proposed that a National Child and Family Advocate could be established along with a Tribunal.¹⁰¹ Naomi Metallic, who co-authored the report with Hadley Friedland and Shelby Thomas, outlined the model proposed in her appearance before the committee. This model could be adapted to establish an independent Indigenous human rights ombudsperson and tribunal:

Ultimately, we recommended three interconnected mechanisms: one, a national Indigenous child and family advocate, which is a type of ombudsperson, to provide soft advocacy, public education and systemic oversight; two, a tribunal to provide binding rulings over complaints when necessary; and three, national legal services to allow children and families to meaningfully access these and other avenues for accountability. These mechanisms would have to be independent from government, oversee both the federal and provincial governments and be set out in legislation.¹⁰²

In essence, the model proposed has a similar structure and mandate as the Office of the Public Sector Integrity Commissioner.¹⁰³ The committee takes note of this existing accountability mechanism as a model for Canada to consider.

¹⁰⁰ Indigenous Services Canada, *Submit a request under Jordan's Principle*.

¹⁰¹ Naomi Metallic, Hadley Friedland and Shelby Thomas, *Doing Better for Indigenous Children and Families: A Report on Jordan's Principle Accountability Mechanisms*, Caring Society and Department of Indigenous Services Canada, 2022.

¹⁰² APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023.

¹⁰³ *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46.

Paris Principles

Several witnesses raised the importance of the United Nations' *Principles relating to the Status of National Institutions (The Paris Principles)* as “minimum guidelines” to review and monitor government’s compliance with the establishment of an Indigenous human rights ombudsperson and tribunal.¹⁰⁴ These principles establish some guidelines to support the establishment and structure of human rights bodies, such as:

- Establishment by legislation or within the state’s constitution;
- Maintenance of a broad mandate to promote and protect human rights;
- Reports annually on human rights to government or parliament;
- Independence;
- Pluralistic, representing different parts of the broader society;
- Adequately resourced; and
- Free to examine and address all human rights issues.¹⁰⁵

Generally, the principles fall into four categories: competence and responsibilities; independence and pluralism; methods of operation; and quasi judicial competence. These four principles provide a framework to organize the witnesses’ proposals for an Indigenous human rights ombudsperson and tribunal in the next section.

Competence and Responsibilities

Witnesses proposed that an Indigenous human rights mechanism should be established by legislation, with the ombudsperson having powers to investigate, compel documents and information, conduct systemic inquiries, and facilitate resolution of complaints.¹⁰⁶ A tribunal in this model would also have the power to establish its own operating procedures that would be “more flexible than the

¹⁰⁴ APPA, *Evidence*, Jeremy Matson, As an individual, May 2, 2023; APPA, *Evidence*, Dalee Sambo Dorough, Senior Scholar and Special Adviser on Arctic Indigenous Peoples, University of Alaska Anchorage, May 3, 2023; Elizabeth Blaney, Director of Policy Development, Congress of Aboriginal Peoples; APPA *Evidence*, Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission, April 19, 2023; APPA, *Evidence*, José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples, Special Procedures of the Human Rights Council, November 21, 2023. Adopted by the UN General Assembly in 1993, the *Principles relating to the Status of National Institutions* (or the Paris Principles) outline the standards for national human rights institutions.

¹⁰⁵ United Nations General Assembly, *Principles relating to the Status of National Institutions (The Paris Principles)*, A/Res/48/134, adopted 20 December 1993.

¹⁰⁶ Inuit Tapiriit Kanatami and the Métis National Council, *Establishing an Indigenous Human Rights Commission and Tribunal*, August 2022; APPA, *Evidence*, Katherine Hensel, Partner, Fogler, Rubinoff LLP, as an individual, November 28, 2023; APPA, *Evidence*, Kathryn Oviatt, Chief, Alberta Human Rights Commission, April 19, 2023.

courts.”¹⁰⁷ Inuit Tapiriit Kanatami and the Métis National Council further proposed a model for an ombudsperson and tribunal that could be empowered to provide individual and systemic remedies, including mandating corrective action.¹⁰⁸ Katherine Hensel, Partner, Fogler, Rubinoff LLP, as an individual, recommended that the tribunal or ombudsperson should have a study mandate “to proactively go out and find out what housing looks like, in particular.”¹⁰⁹ Although the ombudsperson and the tribunal should be connected, they should be two separate entities, so the tribunal can exclusively focus on the complaints.¹¹⁰ The proposed mechanism would be grounded in Indigenous expertise, laws and cultural values and would have a public education mandate to ensure Indigenous peoples can access these services.

Witnesses noted the ombudsperson would provide support for individuals filing complaints, but not litigate on their behalf. For true reconciliation, Joanna Bernard, Interim National Chief of the Assembly of First Nations emphasized that the ombudsperson and tribunal must have the authority to examine current and historical cases.¹¹¹

Independence and Pluralism

Independence is key to a new Indigenous human rights mechanism.¹¹² A witness observed that Parliament could be involved in appointment of an ombudsperson so that the responsibility does not rest solely with the Executive branch of government.¹¹³ Conversely, José Francisco Calí Tzay, Special Rapporteur on the Rights of Indigenous Peoples, proposed that the members of the tribunal be appointed by

¹⁰⁷ Naomi Metallic, Hadley Friedland et Shelby Thomas, *Faire mieux pour les enfants et les familles autochtones : rapport sur les mécanismes de responsabilisation liés au principe de Jordan*, Société de protection de la défense et ministère des Services aux Autochtones Canada, 2022..

¹⁰⁸ Inuit Tapiriit Kanatami and the Métis National Council, *Establishing an Indigenous Human Rights Commission and Tribunal*, August 2022.

¹⁰⁹ APPA, *Evidence*, Katherine Hensel, Partner, Fogler, Rubinoff LLP, as an individual, November 28, 2023.

¹¹⁰ APPA, *Evidence*, 6 December 2023, Cassidy Caron, President, Métis National Council, and Kyrie Ransom, Director of Justice, Assembly of First Nations; APPA, *Evidence*, Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission, April 25, 2023.

¹¹¹ APPA, *Evidence*, Joanna Bernard, Interim National Chief, Assembly of First Nations, December 6, 2023.

¹¹² APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023; APPA, *Evidence*, Kienna Shkopich-Hunter, Public Interest Articling Fellow, Women’s Legal Education and Action Fund, March 28, 2023; APPA, *Evidence*, José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples, Special Procedures of the Human Rights Council, November 21, 2023; APPA, *Evidence*, Will David, Director, Legal Services, Inuit Tapiriit Kanatami, November 28, 2023.

¹¹³ APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023.

Indigenous peoples pursuant to their right to self-determination and self-government based on articles 3 and 4 of UNDRIP.¹¹⁴

Importantly, witnesses indicated that an ombudsperson and tribunal should be comprised of experts on the human rights of Indigenous peoples with regional representation across Canada.¹¹⁵ Any new mechanisms must address “the rights of First Nations, Inuit and Métis people with disabilities, two spirited and other LGBTQQAI+ communities, Indigenous children, youth and Elders and those living in poverty or who are experiencing homelessness. Any new mechanism must include all these voices in its development and in its operation.”¹¹⁶ Madeleine Redfern raised the example of the Qikiqtani Truth Commission where it looked at Indigenous-specific best practices in Canada and internationally that were incorporated into an Inuit-specific commission.¹¹⁷ Dalee Sambo Dorough, Senior Scholar and Special Adviser on Arctic Indigenous Peoples, University of Alaska Anchorage added that any new institutions should be “consistent with the values, customs, practices and institutions of Inuit.”¹¹⁸ Kienna Shkopich-Hunter, Public Interest Articling Fellow Women’s Legal Education and Action Fund, recommended that a new Indigenous-specific human rights system could be comprised of a central ombudsperson with specific deputies to focus on children and youth, women and two-spirited persons, among others.¹¹⁹

The committee agrees that traditional Indigenous knowledge, Indigenous laws and Indigenous dispute resolution practices should be the basis for the structure of any new mechanism.¹²⁰ A couple of examples of practices adopted by courts were raised

¹¹⁴ APPA, *Evidence*, José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples, Special Procedures of the Human Rights Council, November 21, 2023.

¹¹⁵ APPA, *Evidence*, Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, as an individual, March 28, 2023; APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023; APPA, *Evidence*, Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada, April 25, 2023; APPA, *Evidence*, Marsha Wolf Collar, Minor Chief, Siksika Nation, October 31, 2023; APPA, *Evidence*, Anemki Wedom, as an individual, November 8, 2023.

¹¹⁶ APPA, *Evidence*, Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission, April 25, 2023.

¹¹⁷ APPA, *Evidence*, Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid, November 21, 2023.

¹¹⁸ APPA, *Evidence*, Dalee Sambo Dorough, Senior Scholar and Special Adviser on Arctic Indigenous Peoples, University of Alaska Anchorage as an individual, May 3, 2023.

¹¹⁹ APPA, *Evidence*, Kienna Shkopich-Hunter, Public Interest Articling Fellow Women’s Legal Education and Action Fund, as an individual, March 28, 2023.

¹²⁰ APPA, *Evidence*, Elizabeth Blaney, Director of Policy Development, Congress of Aboriginal Peoples, May 3, 2023; APPA, *Evidence*, Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada, April 25, 2023; APPA, *Evidence*, William Goodon, Minister of Housing and

by witnesses, for example the Calgary Indigenous Court was established in 2019. Krysia Przepiorka, lawyer, Indigenous Bar Association observed, “[w]hen you walk into that courtroom, it opens with a smudge and an Elder’s prayer. The setting of the courtroom is such that everybody is at the same level — it is circular.”¹²¹ The Calgary Indigenous Court typically hears cases related to bail and sentencing hearings, and any Indigenous person involved in the courts can have their hearings heard by the Court. When someone is sentenced to probation, a healing plan may be included within the probation order. The court also offers accountability circles or peacemaking.¹²² Cindy Blackstock remarked that the Canadian Human Rights Tribunal adapted its practices to Indigenous peoples and children in the *First Nations Child and Family Caring Society of Canada* case filed in 2007. For example, the Tribunal “allowed space for ceremony, allowed space for [E]lders’ testimony, adopted the Aboriginal guidelines from the Federal Court as regular practice and made space for children to participate”.¹²³

Methods of Operation

The committee heard that the more the process is adapted to the contexts, culture, language and needs of Indigenous peoples, the more likely it will be responsive and effective.¹²⁴ Any new human rights system should include trauma-informed practices.

As per the Nova Scotia Human Rights Commission, the Indigenous human rights system could have liaison and education officers to work directly with the communities to ensure that the process is culturally responsive.¹²⁵ Navigation services for Indigenous peoples can support public education about human rights

Property Management, Manitoba Métis Federation, and Mandy Gull-Masty, Grand Chief, Council of the Crees (Eeyou Istchee) and Cree Nation Government, October 31, 2023; APPA, [Evidence](#), Cassidy Caron, President, Métis National Council, December 6, 2023; APPA, [Evidence](#), Joanna Bernard, Interim National Chief, Assembly of First Nations, December 6, 2023.

¹²¹ APPA, [Evidence](#), Krysia Przepiorka, Lawyer, Indigenous Bar Association; Alberta Court of Justice, [Calgary Indigenous Court](#), November 22, 2023.

¹²² Alberta Court of Justice, [Calgary Indigenous Court](#).

¹²³ APPA, [Evidence](#), Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

¹²⁴ APPA, [Evidence](#), Valerie Gideon, Deputy Minister, Crown-Indigenous Relations and Northern Affairs Canada, December 6, 2023.

¹²⁵ APPA, [Evidence](#), Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission, February 13, 2024.

more broadly.¹²⁶ Mandy Gull Masty, Grand Chief, Council of the Crees (Eeyou Istchee) and Cree Nation Government and Patrick Courtois indicated that services for Indigenous peoples must be offered in Indigenous languages.¹²⁷

In the event of a jurisdictional conflict, such an office could, “decline their jurisdiction” to enable another human rights body to conduct its work, as well as coordinate with other bodies to provide education and outreach around Indigenous peoples’ rights.¹²⁸ Individuals could also continue to use the Canadian Human Rights Tribunal should they wish.¹²⁹

According to Katherine Hensel, protocols could be developed between different human rights systems in Canada “to carve out characterizations of the rights, services and issues that are going to be considered by the tribunal under federal statute in a way that comports with a constitutional analysis on division of powers.” She believes such an approach could minimize the risk of jurisdictional disputes.¹³⁰

Mediation is an important process, with the caveat that the power imbalances between Canada and Indigenous peoples can mean further delays and expenses for complainants.¹³¹ Annual reports should be published by the ombudsperson and tribunal on the measures taken by governments to reduce systemic discrimination and the vulnerability of Indigenous women and children.¹³²

Quasi-Judicial Competence

Robust, binding, remedial powers are important. The Indigenous human rights mechanism should have the powers to make legally binding “objective decisions, conduct investigations, address individual complaints, issue reports on systemic

¹²⁶ APPA, *Evidence*, Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada, April 25, 2023.

¹²⁷ APPA, *Evidence*, Mandy Gull-Masty, Grand Chief, Council of the Crees (Eeyou Istchee) and Cree Nation Government, October 31, 2023; APPA, *Evidence*, Patrick Courtois, Elected Councillor of the Pekuakamiunuatsh First Nation of the First Nation of Mashteuiatsh, November 22, 2023.

¹²⁸ APPA, *Evidence*, Naomi Metallic, Professor, as an individual, March 28, 2023.

¹²⁹ *Ibid.*; APPA, *Evidence*, Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada, April 25, 2023.

¹³⁰ APPA, *Evidence*, Katherine Hensel, Partner, Fogler, Rubinoff LLP, as an individual, November 28, 2023 .

¹³¹ APPA, *Evidence*, Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation, as an individual, March 28, 2023.

¹³² APPA, *Evidence*, Mandy Gull-Masty, Grand Chief, Council of the Crees (Eeyou Istchee) and Cree Nation Government, October 31, 2023.

issues and make recommendations.”¹³³ Injunctive relief should also be available through a Tribunal.¹³⁴

Will David, Director of Legal Services for Inuit Tapiriit Kanatami believes that litigation and dispute resolution are “arguably necessary”. Binding powers are important to provide an incentive for the government to engage in friendly settlement agreements.¹³⁵

The government must be held accountable for implementing the ombudsperson’s recommendations.¹³⁶ While the ombudsperson’s recommendations and decisions target specific government agencies, such as provinces and municipalities, additional federal funding should be made available to assist in their implementation.¹³⁷

In May 2024, a model for an Indigenous human rights mechanism was proposed by Jennifer Moore Rattray, former Ministerial Special Representative for Call to Justice 1.7 (MSR) who was charged with exploring the establishment of an Indigenous and human rights ombudsperson office. After in depth consultations with over 600 people, from approximately 125 First Nations, Inuit and Métis governments, along with Indigenous organizations, the MSR proposed the tabling of legislation to create a decentralized model including a national office with four national ombudspersons representing First Nation, Inuit, Métis and Urban Indigenous peoples. Another 13 regional offices would be located in every province and territory. There would be 17 ombudspersons overall. The report also sets out a selection and appointment process, and governance systems for the proposed offices.¹³⁸

Importantly, the MSR advised that all ombudspersons’ offices, as well as selection and governance bodies to be comprised of a diverse group of Indigenous peoples including leaders, families of MMIWG, Indigenous women’s organizations,

¹³³ APPA, [Evidence](#), Kienna Shkopich-Hunter, Public Interest Articling Fellow, Women’s Legal Education and Action Fund, March 28, 2023; Also see, APPA, [Evidence](#), José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples, Special Procedures of the Human Rights Council, November 21, 2023.

¹³⁴ APPA, [Evidence](#), Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society of Canada, November 22, 2023.

¹³⁵ APPA, [Evidence](#), Will David, Director, Legal Services, Inuit Tapiriit Kanatami, November 28, 2023.

¹³⁶ APPA, [Evidence](#), Kyrie Ransom, Director of Justice, Assembly of First Nations, December 6, 2023.

¹³⁷ APPA, [Evidence](#), Mandy Gull-Masty, Grand Chief, Council of the Crees (Eeyou Istchee) and Cree Nation Government, October 31, 2023.

¹³⁸ Government of Canada, [Call for Justice 1.7 Final Report](#), 2024.

Indigenous 2SLGBTQI+ organizations, elected national Indigenous organizations, and national urban Indigenous organizations. Elders, Knowledge Keepers and Indigenous youth are also represented. Under the model proposed by the MSR:

- These offices would have jurisdiction to review the actions of, and consider complaints regarding, all federal departments, agencies, boards, commissions, and other bodies, including Crown corporations.
- Provincial and territorial governments should also enact legislation so that any existing ombudsperson offices and human rights ombudspersons at the provincial/territorial levels could make agreements with the national and regional Indigenous ombuds to exchange any information, including personal information. To the MSR, this comprises a “No Wrong Door Service”. The provincial and territorial legislation should, according to the MSR, “include the ability to conduct joint investigations with other accountability entities.”
- Indigenous individuals could approach any human rights ombudsperson in the region of their choice. Each office could provide education about human rights and make individuals aware of all “existing accountability entities such as provincial and territorial Ombuds Offices where appropriate, as well as health supports.” The complainant could then decide which office is best placed to lodge their complaint.
- The 14 ombudsperson offices would have the powers to investigate, mediate, monitor and promote and protect rights and can make recommendations regarding changes to policies, legislation, practices or other corrective actions to prevent rights violations.
- The offices should have “own motion powers” which would enable them to identify and investigate systemic issues in the absence of a complaint. Investigative powers should include the power to compel witnesses and documents, including documents covered by access to information legislation; the ability to summon federal officials and “the authority to interview, including under oath, professionals and others including representatives of institutions that have histories of perpetuating rights violations against Indigenous peoples.”
- Offices should also have enforcement powers, including “making it an offense to obstruct, with penalties for non-compliance. The Ombuds must have public reporting powers should recommendations not be acted upon, and once a Tribunal is established, may at their discretion seek enforcement through the Tribunal.” While the Tribunal was outside of the mandate of the MSR, the model also noted that if Ombuds recommendations are not fulfilled, it is

proposed that a Tribunal could impose binding orders and “award costs against government.”

- These offices should be able to hire and retain their own staff rather than receiving supports from the Administrative Tribunals Support Service of Canada.
- Indigenous dispute resolution practices such as “mediation, restorative justice and talking circles” should be incorporated into the work of the 14 offices; Indigenous legal traditions should also be considered.
- Tribal councils, Indigenous organizations, communities, settlements and Nations should have standing to make complaints regarding collective rights.¹³⁹

The committee appreciates the wisdom of witnesses who took the time to propose models for how to implement the National Inquiry’s Call for Justice 1.7 to establish an independent mechanism to promote, respect, protect and remedy violations of Indigenous human rights. The committee is of the view that the Government of Canada must work with Indigenous peoples, the provinces and territories to move forward with the establishment of an Indigenous human rights ombudsperson and tribunal as soon as possible. The committee takes careful note of the important recommendations made by MSR; it believes that the equal participation of Indigenous peoples is critical to the establishment of a new Indigenous human rights mechanism that reflects the values and aspirations of all. The committee believes that such an office should be sufficiently resourced to undertake the expansive nature of its potential work.

It remains an indisputable fact that Indigenous women and girls experience violence due to their very identity. This tragedy must end, and soon. The honour of the Crown is at stake with respect to ensuring the safety and well being of Indigenous peoples. The committee takes notes of witnesses’ thoughtful proposals regarding the form and function of an Indigenous human rights mechanism and makes the following recommendations.

¹³⁹ All content summarized from the Government of Canada, [Call for Justice 1.7 Final Report](#), 2024.

Recommendation 7

That the Government of Canada table legislation which:

- Establishes an Indigenous Human Rights Ombudsperson and Tribunal that is grounded by Indigenous expertise, laws, cultural values, and the rights enshrined by the *United Nations Declaration on the Rights of Indigenous Peoples*, and which meets the international minimum standards for oversight of states actions like the *United Nations Paris Principles* and the *Venice Principles*;¹⁴⁰
- Places the development, leadership and governance of the Indigenous Human Rights Ombudsperson and Tribunal in the hands of diverse Indigenous peoples;
- Enables the Indigenous Human Rights Ombudsperson to investigate, compel documents, information and testimony, conduct systemic inquiries, facilitate resolution of complaints, including complaints of reprisal, and provide education and legal services;
- Empowers an Indigenous Human Rights Tribunal to establish its own operating procedures, provide remedies – including in cases of retaliation, impose sanctions, make and enforce binding orders and award costs; and
- Ensures that the Indigenous Human Rights Ombudsperson offices have regional reach and are accessible to Indigenous peoples in their languages.

¹⁴⁰ In March 2019, the “Principles on the Protection and Promotion of the Ombudsman Institution” or the Venice Principles were adopted by the Venice Commission, which serves as the Council of Europe’s arm that provides legal advice to member states. These 25 principles are the first set of standards adopted internationally specifically pertaining to Ombuds offices and can be used when a state is contemplating the establishment of new ombuds office.

Recommendation 8

The committee further recommends that Crown-Indigenous Relations and Northern Affairs Canada provide the committee with semi-annual progress reports on steps taken toward implementing recommendations made in the *Call for Justice 1.7 Report* beginning in June 2025.

Conclusion

The committee hopes that the Government of Canada will take into account the recommendations in this report to improve the current human rights system as well as to establish a new Indigenous human rights ombudsperson and tribunal on an urgent basis. The committee strongly agrees with witnesses that Indigenous peoples' human rights need to be promoted, respected and protected, particularly those of Indigenous women and girls and 2SLGBTQI+ people. It is hoped such a mechanism can support the wishes of the families and Survivors of missing and murdered Indigenous women and girls.

APPENDIX A – Witnesses

Tuesday, March 28, 2023

Brenda Gunn, Academic and Research Director, As an Individual

Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund

Naiomi Metallic, Professor, As an Individual

Kienna Shkopich-Hunter, Public Interest Articling Fellow, Women’s Legal Education and Action Fund

Wednesday, April 19, 2023

Patricia DeGuire, Chief Commissioner, Ontario Human Rights Commission

Jennifer Khurana, Chairperson, Canadian Human Rights Tribunal

Juliette Nicolet, Director, Policy, Education, Monitoring and Outreach Ontario Human Rights Commission

Emily Ohler, Chair, British Columbia Human Rights Tribunal

Kathryn Oviatt, Chief, Alberta Human Rights Commission

Amber Prince, Member, British Columbia Human Rights Tribunal

Tuesday, April 25, 2023

Charlotte-Anne Malischewski, Interim Chief Commissioner and Chief Executive Officer, Canadian Human Rights Commission

Jennifer Moore Rattray, Ministerial Special Representative – Call for Justice 1.7, Crown-Indigenous Relations and Northern Affairs Canada

Valerie Phillips, Director General of Complaints Services, Canadian Human Rights Commission

Tabatha Tranquilla, Director of Policy, Research, and International Relations,
Canadian Human Rights Commission

Tuesday, May 2, 2023

Jeremy Matson, As an Individual

Wednesday, May 3, 2023

Elizabeth Blaney, Director of Policy Development, Congress of Aboriginal
Peoples

James Devoe, Chief Executive Officer, Congress of Aboriginal Peoples

Dalee Sambo Dorough, Senior Scholar and Special Adviser on Arctic Indigenous
Peoples, University of Alaska Anchorage, As an Individual

Elmer St. Pierre, National Chief, Congress of Aboriginal Peoples

Tuesday, October 31, 2023

William Goodon, Minister of Housing and Property Management, Manitoba
Métis Federation

Mandy Gull-Masty, Grand Chief, Grand Council of the Crees (Eeyou Istchee)
and Cree Nation Government

Neil Sharp Adze Jr., Councilor, Piikani Nation

Lou Ann Solway, Minor Chief, Siksika Nation

Marsha Wolf Collar, Minor Chief, Siksika Nation

Wednesday, November 8, 2023

Anemki Wedom, As an Individual

Tuesday, November 21, 2023

José Francisco Calí Tzay, Special Rapporteur on the rights of Indigenous Peoples,
Special Procedures of the Human Rights Council

Madeleine Redfern, Chair, Legal Services Board of Nunavut, Nunavut Legal Aid

Wednesday, November 22, 2023

Laura Aguiar, Iskweu Project Coordinator, The Native Women's Shelter of
Montreal

Cindy Blackstock, Executive Director, First Nations Child and Family Caring Society
of Canada

Patrick Courtois, Elected counselor of the Pekuakamiulnuatsh First Nation of
Mashteuiatsh, Pekuakamiulnuatsh First Nation

Maxwell Johnson, Member, Heiltsuk Nation

Maria Martin, Councillor with Heiltsuk Tribal Council, Heiltsuk Nation

Krysia Przepiorka, Lawyer, Indigenous Bar Association

Tuesday, November 28, 2023

Will David, Director, Legal Services, Inuit Tapiriit Kanatami

Katherine Hensel, Partner, Fogler, Rubinoff LLP, As an Individual

Aluki Kotierk, President, Nunavut Tunngavik Incorporated

Robert Morales, Chief Negotiator, Hul'qumi'num Treaty Group, As an Individual
Natan Obed, President, Inuit Tapiriit Kanatami

Wednesday, December 6, 2023

Joanna Bernard, Interim National Chief, Assembly of First Nations

Cassidy Caron, President, Métis National Council

Valerie Gideon, Deputy Minister, Crown-Indigenous Relations and Northern Affairs Canada

Mary-Luisa Kapelus, Senior Assistant Deputy Minister, Policy and Strategic Direction, Crown-Indigenous Relations and Northern Affairs Canada

Kyrie Ransom, Director of Justice, Assembly of First Nations

Tuesday, February 13, 2024

Cheryl Knockwood, Chair, Nova Scotia Human Rights Commission

Tuesday, September 24, 2024

Krista Apse, Director General, Missing and Murdered Indigenous Women and Girls Secretariat, Crown-Indigenous Relations and Northern Affairs Canada

Valerie Gideon, Deputy Minister, Crown-Indigenous Relations and Northern Affairs Canada

Jennifer Moore Rattray, Former Ministerial Special Representative to the Minister of Crown-Indigenous Relations – Call for Justice 1.7, As an Individual



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