

Factsheet\*\* submitted to the UN Committee on the Rights of the Child  
90th session (May - June 2022) - State Periodic Report CRC/C/CAN/5-6

## 1 Creation of identity

### Birth registration and birth certificates

- Birth registration is almost universal in Canada<sup>1</sup>, yet barriers to birth registration still exist, which marginalise some individuals. Obstacles to birth registration may differ from obstacles to the obtention of birth certificates. In relation to the first, a barrier is the fact that forms and paperwork can be intimidating / not accessible to some individuals. Furthermore, racism against Indigenous people in the healthcare system means that information about birth registration may not be communicated by medical staff in a helpful or supportive manner. One barrier for the latter (issuance of certificates) is the fee for birth certificates<sup>2</sup>.
- Indigenous people are disproportionately affected, because of geography and Canada's historical and contemporary policies<sup>3</sup> and practices of colonialism and discrimination. Indeed, information from First Nation Communities suggests that there are 50-75% of unregistered births and children and young people without birth certificates<sup>4</sup>.
- Furthermore, past practices prevent Indigenous people from replacing lost birth certificates<sup>5</sup>. The forced removal of Indigenous children to residential schools<sup>6</sup> and the Sixties Scoop (see below) has resulted in personal and parental information frequently missing, which is essential to the issuing of a birth certificate<sup>7</sup> and other subsequent civil status documents.

### Abandonment

- In most of Canada, there are no 'safe haven' laws that allow for parents to 'safely surrender' their child in a police station, hospital or fire station<sup>8</sup>. In particular, Section 218 of the Criminal Code of Canada prohibits abandoning any child under 10 'so that its life is or is likely to be endangered'.
- Each province and territory has child protection services, which may provide services in cases of abandonment at birth or later on. However, there is no generalised system for the anonymous abandonment/reception of a child. In fact, anonymous abandonment of babies deprives the child of knowing their origins, which is detrimental for their identity. There are, however, a few places in the country where children can be left safely and anonymously<sup>9</sup>.

### Surrogacy

- By virtue of the *Assisted Human Reproduction Act* (2004), only altruistic surrogacy is legal in Canada<sup>10</sup>; however, abuses related to financial compensation have been reported<sup>11</sup>. To address these abuses, the *Reimbursement Related to Assisted Human Reproduction Regulations (Reimbursement Regulations)* came into force on 9 June 2020<sup>12</sup>.
- Financial abuses might lead to the sale of and trafficking in children; to address this, surrogacy agencies should be licenced and regulated. It is worth mentioning that, in Canada, the federal system is responsible for responses to potential criminal actions, whilst the provinces and territories must address any administrative actions. Thus, for example, even altruistic surrogacy arrangements are currently not valid in Quebec.

### Sperm and gamete donations

- Children conceived through donated sperm may have no right to ever know their origins. Their parents are often made to sign contracts promising they will never even try<sup>13</sup>. Identifying information about the donor could only be disclosed with the consent of the donor<sup>14</sup>. After amendments in the law, provincial and territorial privacy statutes mandate donors' anonymity<sup>15</sup>. Whilst concerns have been raised as to the reduction in donation if anonymity was lifted, to date, each province or territory has issued legislation independently from the federal government on issues relating to health and social services, which include sperm and gamete donation. Thus, each province and territory has its own legal framework on access to origins and the latter may differ.
- A similar concern exists about gamete donations, as it is reported that many provincial privacy statutes limit the disclosure of a gamete donor's identifying information<sup>16</sup>. Issues surrounding sperm and gamete anonymity is linked to historical stigma and the costs and efforts associated with setting up a registry system<sup>17</sup>.

### Prevention of statelessness

- Canada's *Citizenship Act* (1985) grants Canadian nationality to deserted<sup>18</sup> children. The Act provides that deserted children under the age of seven are deemed to have been born in Canada and are therefore Canadian citizens, unless within seven years of being found it is demonstrated that the child was not born in Canada<sup>19</sup>. The age is arbitrary, as the UNCRC is clear that a 'child' is a person below the age of 18 (Article 1 UNCRC).
- Further, where the deserted child has been determined to be born abroad, Canadian citizenship can be withdrawn, resulting in statelessness<sup>20</sup>.
- Statelessness has a devastating impact on people for the rest of their lives, as they cannot access education, health care, social benefits, employment and services.

**Potential considerations:** How will Canada protect the child's right to identity in the context of anonymous abandonment of babies, anonymous sperm and gamete donations, in circumstances relating to deserted children and in the context of barriers to birth registration for Indigenous and other children?

## 2 Modification of identity

### Surrogacy

- In Ontario, the chapter on *Rules of Parentage of Children's Law Reform Act* provides that, if the surrogate provides to the intended parent or parents consent in writing relinquishing the surrogate's entitlement to parentage of the child, the child becomes the child of each intended parent if specific conditions are met<sup>21</sup>. In the 7 days after the birth, the surrogate and the intending parent(s) share parental responsibility.

The law is silent on preservation of and access to origins.



### Alternative care

- Indigenous, Black and other racialised children continue to be severely over-represented in the child welfare system<sup>22</sup>. This is largely the result of Canada's and the world's history of colonialism, slavery and racism<sup>23</sup>.
- The historical violence and oppression of colonialism<sup>24</sup> resulted in displacement and alienation and 'many children lost contact with both their families and their Aboriginal identity forever'.<sup>25</sup>
- It is worth highlighting that Quebec passed legislation to modernise the adoption and guardianship law to better respond to the current realities of people in Quebec, including those of Indigenous communities<sup>26</sup>. In addition, Quebec has planned measures to develop a training and support programme for youth intervention and Indigenous families and to support the establishment of mechanisms for the handling of customary adoption files by the Indigenous community<sup>27</sup>.
- Noteworthy is Canada's new legislation to reduce the number of Indigenous children and youth in care and improve child and family services<sup>28</sup>. However, questions and concerns remain about gaps in the legislation, particularly with respect to proper funding, and how the changes will be implemented.<sup>28.1</sup>

**Potential considerations:** Acknowledgement and recognition of modification of identity, need for training, reform and transformation of laws, discourse, attitude, as well as addressing the root causes<sup>29</sup>.

## 3 Falsification of identity

*Identity of Indigenous children: Consequences of a past of illegal adoptions and forced placement in residential schools*

- The Sixties Scoop<sup>30</sup> refers to the period between approximately 1960 to the mid-1980s when thousands of Indigenous children were separated from their families and placed in foster care or for adoption by white middle-class families. Survivors still demand a federal inquiry and apology<sup>31</sup> and healing support to build on the settlement.<sup>32</sup> Alberta's Premier<sup>33</sup> and Saskatchewan's Premier<sup>34</sup> apologised to survivors. It is noteworthy that the Canadian Government agreed to pay CAD 750 million in legal settlements to Indigenous people to rectify their forced adoptions and their past<sup>35</sup>.
- About 150,000 Indigenous children are believed to have been placed in residential schools in Canada, which were funded by the Government and run by churches. The purpose of these schools was to separate these children from their families and culture<sup>36</sup>, to assimilate them and destroy their culture and language, which led to a loss of their identity. The Truth and Reconciliation Commission of Canada called this 'cultural genocide'.
- The recently-revealed unmarked children's graves in former residential school sites have sparked a debate about the residential school denialism<sup>37</sup>, demanding truth before reconciliation.

### Other situations

- Children of unmarried mothers were also forcibly adopted. It is reported that many of these adoptions were 'closed', meaning that years later, these adopted children have no information about their origins or the identity of their biological<sup>38</sup>.

**Potential considerations:** Adopting a transitional justice approach (for institutional reform), Canada should consider a full opening of provincial adoption and care records to allow adoptees to access information about their origins and provide culturally-appropriate support for Indigenous people to access this information.

Considering full and effective reparation for past human rights violations, including compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>39</sup>

## 4 Preservation of identity and access to origins

- In 2016, the Canadian Human Rights Tribunal, a domestic anti-discrimination adjudication body, found that Canada was racially discriminating against 165,000 First Nations children by underfunding child welfare and failing to provide equitable and culturally appropriate services (services needed to respect and preserve identity). Canada has yet to fully comply with the order, resulting in 20 non-compliance and procedural orders to date.
- Addressing the CRC Committee's concerns<sup>40</sup>, Canada adopted the 2017 Bill S-3, which extends eligibility for registration under the *Indian Act* to descendants of women, who lost eligibility upon marriage to a non-Indian man before 1985, on a basis fully equal to the descendants of Indigenous men<sup>41</sup>.
- Adoption disclosure legislation has not been amended to ensure that birth information is made available to adoptees as recommended in previous concluding observations<sup>42</sup>.
- Canada has no national adoption legislation, national standards, a national database on children in care or adoption, and little known research on adoption outcomes<sup>43</sup>. However, this is partly due to its legal system, of which some issues are dealt with under federal law whilst others are provided for by provincial or territory legislation.
- Consultations have taken place in Canada to address the issue of preservation of identity. In particular, one Indigenous group noted the need for revitalisation of Indigenous culture and language for off-reserve Indigenous children<sup>44</sup>. In the context of alternative care, it was noted that any out-of-home placements should be in an environment that maintains cultural connections<sup>45</sup>.

**Potential considerations:** To fulfill its obligations under Article 8 UNCRC, Canada should ensure preservation and access to origins for all children. Canada must comply in full with the 2016 ruling of the Canadian Human Rights Tribunal as well as with the *Indian Act* as it is the legislation that impacts the identity of First Nations children by defining who is eligible for government services, who is not, and that continues to interfere with and undermine the right of First Nations to determine who their citizens are.

## 5 Restoration of identity

- A proposed way to restore the identity of residential school survivors and their families is to enable them to reclaim names changed by the residential school system by, for example, waiving administrative costs for five years for the name-changing process<sup>46</sup>. Further, official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers should be revised to fully reflect the person's true identity<sup>47</sup>.
- In the context of the forced adoptions that occurred when unmarried Canadian women had to give up their babies, nearly 600,000 so-called 'illegitimate births' were recorded between 1945 and 1971<sup>48</sup>. In light of this, the Canadian Senate report recommends an apology by the federal government and a change to laws governing adoption records<sup>49</sup>.
- It is recommended that legislation regarding adoption practices should be consistent across the country to help individuals searching for their biological families if they have been adopted in a different province than the one in which they were born<sup>50</sup>. In order to promote children's access to origins, according to a local contact, a procedure of collaboration amongst provinces and territories has already been established. It is also suggested that closer collaboration amongst provincial and territory authorities is set up, as well as the sharing of tools that make it easier to respond to the needs of citizens searching for their origins.



- There must be full disclosure of information, rather than having a semi-open system where the birth parent or the child can place a veto on information disclosure to the other – this being a possibility rather than a general rule based on transitory legal provisions, according to a local contact<sup>51</sup>. Such a veto appears to be inconsistent with the child's best interests (Art. 3 UNCRC) and the child's right to identity (Art. 8 UNCRC). Clear legal provisions and a mechanism should be in place to ensure that all parties involved are fully guaranteed their rights – to identity, to integrity and to privacy; and that professional support is available to them to move forward in accessing any missing elements of their identity.

\* Canada's legal and institutional system is marked by a system set up constitutionally, in which the federal State shares powers with the governmental authorities of the Provinces (10) and Territories (2). Some competences are therefore granted to the Provinces and Territories, such as health and social services, and may therefore not be addressed in federal legislation.

\*\*Drafted by Betina Borisova, with inputs by in-country contacts.

<sup>1</sup>CRC/C/CAN/CO/3-4 para 38.

<sup>2</sup>Colour of Poverty - Colour of Change, 'Joint Submission to the UN Committee on the Rights of the Child at its 87th session and review of the fifth and sixth periodic reports of Canada' 7, (28th February 2021).

<sup>3</sup>Chris Sanders & Kristin Burnett, "A Case Study in Personal Identification and Social Determinants of Health: Unregistered Births among Indigenous People in Northern Ontario" (2018) 16:4 Intl J Evtl Research & Pub Health 567, at 2 [last visited 26.06.2021].

<sup>4</sup>Ibid, at 2 and 6.

<sup>5</sup>Colour of Poverty - Colour of Change (above n2) 8.

<sup>6</sup>See [Canadian police investigating Manitoba residential school abuse claims](#) (27.07.2021); [Canada: 751 unmarked graves found at residential school](#) (24.06.2021).

<sup>7</sup>Ibid.

<sup>8</sup>Alana Cattapan, 'After a newborn was found in a recycling bin, a safe haven for baby hatch may save lives' (The Conversation, 4th March 2020) [last visited: 07.06.2021].

<sup>9</sup>Ibid.

<sup>10</sup>See [Government of Canada - Prohibitions related to Surrogacy](#)

<sup>11</sup>See [Why a lack of oversight of surrogacy in Canada leaves some parents feeling taken advantage of](#)

<sup>12</sup>See [Government of Canada - Compliance approach for the Reimbursement Related to Assisted Human Reproduction Regulations](#)

<sup>13</sup>Alison Motluk, 'When it comes to sperm donor anonymity, Canada is behind the curve' (CBC, 30th September 2020), [last visited: 27.06.2021].

<sup>14</sup>Vanessa Gruben, 'Donor Anonymity in Canada: Assessing the Obstacles to Openness and Considering a Way Forwards' (2017) Alberta Law Review 54(3) 665, 670.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid, 667.

<sup>17</sup>Ibid, 671-672.

<sup>18</sup>Or child abandonment refers to the practice of relinquishing interests and claims over one's child in an illegal way with the intent of never resuming or reasserting guardianship.

<sup>19</sup>Section 4(1) Citizenship Act.

<sup>20</sup>available at [Civil society submission on nationality and identity under the United Nations Convention on the Rights of the Child \(1st of July 2020\) 16](#) [last visited: 27.06.2021].

<sup>21</sup>See the whole Act and relevant conditions here

<https://www.canlii.org/en/on/laws/stat/rso-1990-c-c12/latest/rso-1990-c-c12.html> [Last amendment: 2021, c. 4, Sched. 2.].

<sup>22</sup>One Vision One Voice, 'Changing the Ontario Child Welfare System to Better Serve African Canadians' (Part 1, 2016) [last visited 26.06.2021].

<sup>23</sup>Ontario Human Rights Commission, [Interrupted Childhoods: Over-representation of Indigenous and Black children in Ontario child welfare \(2016\)](#), [last visited: 26.06.2021].

<sup>24</sup>See available at [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls \(2019\)](#), [last visited: 26.06.2021].

<sup>25</sup>Truth and Reconciliation Commission of Canada (above) 16.

<sup>26</sup>CRC/C/CAN/Q/5-6 para 103.

<sup>27</sup>Ibid.

<sup>28</sup>See [Reducing the number of Indigenous children in care](#)

<sup>28.1</sup> See for example [https://fncaringsociety.com/sites/default/files/c-92\\_info\\_sheet\\_july\\_20\\_final\\_part\\_1\\_v4.pdf](https://fncaringsociety.com/sites/default/files/c-92_info_sheet_july_20_final_part_1_v4.pdf)

[https://fncaringsociety.com/sites/default/files/c-92\\_info\\_sheet\\_july\\_20\\_final\\_part\\_2\\_v2.pdf](https://fncaringsociety.com/sites/default/files/c-92_info_sheet_july_20_final_part_2_v2.pdf)

[https://fncaringsociety.com/sites/default/files/c-92\\_info\\_sheet\\_july\\_20\\_final\\_part\\_3\\_v3\\_0.pdf](https://fncaringsociety.com/sites/default/files/c-92_info_sheet_july_20_final_part_3_v3_0.pdf)

<sup>29</sup>Further recommendations in Colour of Poverty - Colour of Change (above), 22-23.

<sup>30</sup>The term was coined by Patrick Johnston and refers to the mass removal of Aboriginal children from their families into the child welfare system, in most cases without the consent of their families.

<sup>31</sup>Sixties Scoop survivors call for federal inquiry and apology (CBC, 02.08.2021).

<sup>32</sup>Sixties Scoop survivors receive cheques but still looking for healing support (CBC, 26.06.2020).

<sup>33</sup>Alberta premier apologizes to Sixties Scoop survivors (CBC, 28.05.2018).

<sup>34</sup>Saskatchewan premier apologizes to Sixties Scoop survivors (CBC, 07.01.2019).

<sup>35</sup>See [Canada to Pay Millions in Indigenous Lawsuit Over Forced Adoptions](#) [last visited 07.08.2021].

<sup>36</sup>The Indigenous children who died at Canada's residential schools (The Guardian, 08.07.2021) [last visited 07.08.2021].

<sup>37</sup>Truth before reconciliation: 8 ways to identify and confront Residential School denialism (The Conversation, 05.08.2021).

<sup>38</sup>See [Standing Senate Committee on Social Affairs, Science and Technology, 'The Shame is Ours: Forced Adoptions of the Babies of Unmarried Mothers in Post-war Canada' \(July 2018\), 6](#) [last visited: 07.08.2021].

<sup>39</sup>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras 19-23.

<sup>40</sup>CRC/C/CAN/Q/5-6 para 42.

<sup>41</sup>CRC/C/CAN/5-6, para 65.

<sup>42</sup>See CRC/C/CAN/Q/5-6 para 57 and CRC/C/25/Add.215, para. 31.

<sup>43</sup>CRC/C/CAN/Q/5-6 para 57.

<sup>44</sup>Civil society submission on nationality and identity under the United Nations Convention on the Rights of the Child (1st of July 2020) 5 [last visited: 07.06.2021].

<sup>45</sup>Ibid.

<sup>46</sup>Ibid, 17.

<sup>47</sup>Ibid.

<sup>48</sup>See [Standing Senate Committee on Social Affairs \(above n31\) 8](#).

<sup>49</sup>Stephane Lavoie, 'The legacy of forced adoption: 300,000 unmarried Canadian women had to give up their babies' (CBC), [last visited: 07.06.2021].

<sup>50</sup>Standing Senate Committee on Social Affairs, Science and Technology, 'The Shame is Ours: Forced Adoptions of the Babies of Unmarried Mothers in Post-war Canada' (July 2018), 6 [last visited: 27.06.2021].

<sup>51</sup>Ibid.

