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First Nations Information Governance Centre
Le Centre de gouvernance de l'information des Premières Nations

A FIRST NATIONS GUIDE TO THE STATISTICS ACT



About the Artist

The cover and interior art for this publication was done by Tsista Kennedy (aka Hotdog Water Art), an Anishinaabe Onyota'a:aka artist from Southern Ontario. Born in 2001, Kennedy is a self-taught artist who works primarily in digital, but also creates work with ink on watercolour and sketchbook paper.

Kennedy's love of art began in his early childhood, when his teachers would often find more doodles on his classwork than answers and equations. At 14-years-old he created his first Woodland Art piece, a style which his art had followed ever since.

Kennedy's unique variation of the Woodland style is marked by semi-bold black lines, intricate patterns, and vibrant colors, all of which combine to make the artwork flow elegantly across the canvas. Because of his ability to convey stories and messages through his artwork, Kennedy has been commissioned by many organizations, universities, and businesses.

Kennedy's artwork isn't solely rooted in Indigenous traditionalism or Indigenous modernism, rather, it's a merging of the two. With his personal experiences and stories thrown into the mix, combining these two perspectives provides the inspiration behind some of his artwork today. Being a frequent daydreamer however, many of his best art pieces simply begin as an image popping up in his head.

About the Art

Kennedy's cover art for the FNIGC series of First Nations guides to federal legislation are meant to illustrate First Nations knowledge and information, and data sovereignty. These ideas have been conceptualized through flowers and strawberries which emerge from the hands of the First Nations people signifying the essential connection between the two.

The illustrations found within these guides are meant to represent the collection, storage, and access to First Nations data and how these legislations impact First Nations Data Sovereignty.



About FNIGC

The First Nations Information Governance Centre (FNIGC) is an incorporated, non-profit organization committed to producing evidence-based research and information that will contribute to First Nations in Canada achieving data sovereignty in alignment with their distinct world views. FNIGC is strictly technical, apolitical, is not a rights-holding organization, and does not speak directly for First Nations. Mandated by the Assembly of First Nations' Chiefs-in-Assembly (AFN Resolution #48, December 2009), FNIGC's Mission is to assert data sovereignty and support the development of information governance and management at the community level through regional and national partnerships. We adhere to free, prior, and informed consent, respect Nation-to-Nation relationships, and recognize the distinct customs of First Nations, to achieve transformative change. Our work includes research and analysis of the technical elements of First Nations data sovereignty.

This Guide is not intended to be legal advice and should not be relied upon as such.

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INTRODUCTION

This Guide to the *Statistics Act* provides the basic details of the legislation and is intended to help First Nations understand and navigate the federal information management regime. It also reflects on the impact of the *Statistics Act* on First Nations data sovereignty.

What is First Nations data and data sovereignty?

First Nations data sovereignty is an inherent, Treaty, and Constitutional right essential to the exercise of rights to self-determination and self-government. First Nations data sovereignty means First Nations data is governed by First Nations laws no matter where in Canada the data is located. It incorporates the First Nations principles of OCAP® - ownership, control, access, and possession of data. 'Data' is defined in this paper to mean information in any form:

- 1. About First Nations people like health, jobs, and housing;*
- 2. From First Nations like languages, patterns, songs, or dances; and*
- 3. About First Nations reserve and Traditional Lands, Waters, Resources, and the Environment*

WHAT IS THE STATISTICS ACT?

The *Statistics Act* establishes: the Canadian statistics bureau called Statistics Canada, the position of Chief Statistician to oversee its operation, a Canadian Statistics Advisory Council to provide advice to the Chief Statistician, and the Minister responsible for Statistics Canada, the Minister for Innovation, Science, and Industry.

Statistics Canada is responsible for collecting, compiling, analyzing, and publishing statistical information. This includes commercial, industrial, financial, social, economic, health, and general activities and condition of people in Canada. It is also responsible to collaborate with other departments to collect, compile and publish statistical information, including statistics derived from the activities of those departments. This includes the federal departments of Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Statistics Canada manages the household census and the agriculture census. Statistics Canada also develops social and economic statistics for the whole of Canada and each province (section 3).

HOW DOES THE LAW WORK?

The Chief Statistician is responsible for supervising the work of Statistics Canada, which includes the collection, compilation, analysis, and publication of statistical information. The Chief Statistician is also responsible for deciding what information to share through releases and publications, and the timing and method of releasing information. In addition, the Chief Statistician provides advice to other federal departments on how to manage their statistical needs. The legislation gives the Chief Statistician some authority to make some requests for information from the public mandatory or voluntary. For example, the Census and the Labour Force Survey are both mandatory, but the Asphalt Roofing monthly survey on the quantity of asphalt roofing produced in Canada sent to roofing manufacturers is voluntary.







The collection and publication of statistics is permitted with respect to many issues including population, health and welfare, education, labour and employment, forestry, fishing and trapping, manufacturing, and any other matter determined by the Minister or Cabinet (section 22). The Chief Statistician has access to tax returns and any other information provided under the *Income Tax Act* (section 24).




The *Statistics Act* requires a national population Census every five years. Information obtained through the Census is anonymized and aggregated to protect personal privacy while making the information available to the public. Completing the Census is mandatory.

Secrecy

The *Statistics Act* addresses the need for secrecy and the unauthorized disclosure of information held by Statistics Canada. Section 17 makes it illegal to disclose information that might identify a particular individual, business, or organization, and makes it illegal for anyone other than those sworn to secrecy under Section 6 of the Act to examine information held by Statistics Canada. Anyone who works for Statistics Canada or performs any work on behalf of Statistics Canada is required to take an oath or make an affirmation that they will not disclose any information they may have access to while performing this work.

Not all information held by Statistics Canada is secret. The Chief Statistician may disclose some information including:







-  information collected by persons, organizations or departments for their own purposes and provided to Statistics Canada but only in the manner and to the extent agreed on by the collector and the Chief Statistician,
-  where an individual, business, or organization has consented to the disclosure in writing,
-  information available to the public under law, for example the *Access to Information Act*,
-  information relating to any hospital, mental institution, library, educational institution, welfare institution or other similar non-commercial institution

-  except where it is possible to identify any individual patient, inmate or other person in the care of any such institution from the information released, and
-  names, addresses, purpose, and number of employees of a business, and
-  information regarding a transportation company or public utility (s.17(2)).

Unless it falls within one of these exceptions or has already been made public, no information held by Statistics Canada can be admitted as evidence in a court of law, nor can anyone who has sworn to secrecy under the *Statistics Act* section 6 be required to give testimony in that regard (s.18).

Offences



The final sections of the *Statistics Act* make it an offence for members of the public or government employees to:

-  fail to complete a mandatory request for information (s.31),
-  obtain information without authorization (s.30),
-  give false or misleading information (s.31),
-  refuse to grant access to records or otherwise obstruct a person employed under the *Statistics Act* (s.32);
-  disclose information by individuals employed by Statistics Canada that might affect the stock market or for speculation in the stock market (s.34); and
-  impersonate an employee of Statistics Canada (s.35), among others.



Advisory Council

A Canadian Statistics Advisory Council is also established under the *Statistics Act*. It is responsible for providing advice to the Minister and the Chief Statistician. There are additional advisory groups established by Statistics Canada, which include:

-  the Advisory Council on Ethics and Modernization of Microdata Access, which addresses issues of data access, privacy, and governance;
-  the Advisory Committee on Ethnocultural and Immigration that provides advice on the collection, analysis, and publication of information on diversity, inclusion, religion, and immigration; and

 the Federal-Provincial-Territorial Consultative Council on Statistical Policy, to coordinate activities particularly on health, education, and justice statistics.

There is no dedicated Indigenous or First Nations advisory council. At the time of publication of this Guide there is one person who identifies as Indigenous serving on the Canadian Statistics Advisory Council, and none on the ethics council. The membership of the Ethnocultural Committee is not available at the time of writing.

Research Data Centres

Statistics Canada’s Research Data Centres hold microdata. They are located at 35 universities and federal offices across Canada.¹ University, government, and private sector researchers may access these data banks under specific terms and conditions, including confidentiality. In some cases, researchers are permitted access to personal information that is not anonymous.

Statistics Canada also uses disaggregated data. This is data that is collected from multiple sources, then aggregated for reporting purposes, and then disaggregated again to learn about a particular issue. For example, to learn more about First Nations high school graduation rates, Statistics Canada would review information on high school graduation rates for all Canadians. It would then identify First Nations students in that group and explore their graduation rates as a group separate from other Canadians. Statistics Canada is currently pursuing a data disaggregation strategy to “support evidence-based policy and program development by monitoring and reporting on gender, diversity and inclusion”.² At the time of writing, there is no requirement to engage, consult, or seek approval of First Nations in using First Nations data and information.

¹ Statistics Canada, 2020a, Research Data Centres, Retrieved from: <https://www.statcan.gc.ca/eng/microdata/data-centres>

² Statistics Canada, 2020b, Statistics Canada and disaggregated data, Retrieved from <https://www.statcan.gc.ca/eng/transparency-accountability/disaggregated-data>

WHAT DOES THE STATISTICS ACT MEAN TO FIRST NATIONS DATA SOVEREIGNTY?

The *Statistics Act* allows Canada to gather information on First Nations and use that information for various purposes. For example, Section 13 requires any person, corporation, business, or organization that holds information that serves the purposes of the Act to grant Statistics Canada access to that information. Further, under Canada's Open Government initiative, all information held by Statistics Canada may be made public, barring certain exceptions. Indigenous critics of open data policies have noted,

Despite being the rights holders in relation to data about them or for them, Indigenous peoples across nation-states remain peripheral to the channels of power through which consequential decisions about Indigenous statistics are made. This marginalisation continues within open data discussions, [and] the open data community.³

The *Statistics Act* has several negative impacts on First Nations data sovereignty. First, there is no First Nation oversight of Statistics Canada's collection, use, storage, or sharing of First Nations data and information. The Crown exercises unilateral decision-making over First Nations data and information, contrary to the First Nations principles of OCAP®. The *Statistics Act* makes no reference to consulting or engaging with First Nations on its implementation. It is the Chief Statistician who holds sole decision-making authority about what information on First Nations to release to the public. First Nations were not consulted on the creation of the legal regime in the first instance, and for the most part the system functions without any form of First Nations engagement, consultation, or oversight.

Second, Statistics Canada conducts research using First Nations data and information and produces public reports on their results. They usually do not work with First Nations to define the research or analyze the results. This has resulted in publications that are unfavourable to First Nations, which can perpetuate stereotypes and racism.⁴

³ Rainie, S., Kukutai, T., Walter, M., Figueroa-Rodriguez, O., Walker, J., & Axelsson, P., 2019, "Issues in Open Data - Indigenous Data Sovereignty"., in T. Davies, S. Walker, M. Rubinstein, & F. Perini (Eds.), *The State of Open Data: Histories and Horizons*. Cape Town and Ottawa: African Minds and International Development Research Centre.

⁴ See for example: Statistics Canada, 2019, Number of homicide victims and persons accused of homicide, by Aboriginal identity, age group and sex <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006001> and Statistics Canada, 2019, Suicide among First Nations people, Métis and Inuit (2011-2016): Findings from the 2011 Canadian Census Health and Environment Cohort (CanCHEC) <https://www150.statcan.gc.ca/n1/>



In conclusion, Canada's information management regime, which includes the *Statistics Act*, has serious negative impacts on First Nations data sovereignty, which in turn undermines their capacity for self-government and self-determination. These rights are listed in the *United Nations Declaration on the Rights of Indigenous Peoples*, which Canada has endorsed. System-wide changes are necessary to honour Canada's commitment to working cooperatively with First Nations to achieve Reconciliation.

You can learn more about First Nations data sovereignty at www.FNIGC.ca

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