



Congress of Aboriginal Peoples Submission to INAN on Study of C-15

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CAP History:

The Congress of Aboriginal Peoples (CAP) is one of five National Indigenous Representative Organizations recognized by the Government of Canada.

Founded in 1971 as the Native Council of Canada (NCC), and renamed in 1993, CAP represents all off-reserve status and non-status Indians, Métis and Southern Inuit Indigenous Peoples, and serves as the national voice for its 10 provincial and territorial affiliate organizations. Today, over 80% of Indigenous people in Canada live off-reserve in urban and rural areas.

Study:

That, pursuant to Standing Order 108(2), the committee initiate a study of the subject matter of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples and to make related and consequential amendments to other acts; and that, if the Bill is referred to the committee, all evidence and documentation received in public in relation to the subject-matter study of the Bill be deemed received by the committee in the context of its study of the Bill pursuant to that order of reference.

Background:

The Congress of Aboriginal Peoples has a long history of involvement in the discussion on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). CAP has been a strong supporter both domestically and internationally on the adoption of this declaration since its introduction.

CAP participated in the background discussions on the earlier bill to UNDRIP, C-262, including an appearance in front of the INAN committee on May 1st, 2018¹.

During those discussions, CAP strongly supported UNDRIP and reconciliation, but shared concerns about the approach being taken on consultations and outreach by the government of Canada.

CAP identified a colonial, government-led pattern of choosing the representative organizations who are given a platform and resources to speak for Indigenous people as a whole, while offering limited outreach to other groups.

CAP again repeated these concerns on March 11th 2021 in front of the INAN committee, while discussing the updated bill C-15 introduced under the present government.

¹ <https://www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-105/evidence#Int-10096595>

In the process of consulting and developing Bill C-15, the Government of Canada reached out to certain government-designated National Indigenous Organizations (NIOs), allowing more than 6 months of consultation in advance of tabling Bill C-15. However, other NIOs such as CAP were provided with less than 1 week of consultation. This involved 2 two-hour sessions in October of 2020 to hear the background of the bill and provide feedback.

Certain government-designated NIOs also received funding in advance as part of those consultations, for engaging with their grassroots communities. CAP was not offered that opportunity, only receiving some resourcing afterwards for legal consultations and other activities at a later date.

The principle of free, prior, and informed consent requires outreach in advance, not at the 11th hour and without time or resources to engage with member communities who will be impacted by legislation.

Concerns with C-15:

The Congress of Aboriginal Peoples is supportive of UNDRIP, and of mechanisms to ensure that it is reflected in the law in Canada. The consultation process for UNDRIP itself was extensive, and the final declaration accurately reflects an expression of the rights of CAP and our constituents.

The bill continues to reference terminology that is not found in the Constitution of Canada or the UNDRIP document, such as “First Nations”. As described by CAP representative Lorraine Augustine:

The... the Constitution of Canada says that “aboriginal peoples” are “Indian, Inuit and Métis”.

The use of multiple sets of terminology risks creating confusion and ambiguity in the obligations of the government of Canada. Use of “First Nations” inserts a term that does not have the weight of constitutional language behind it. This can weaken key protections and oversight measures.

Key elements of C-15 depend on government recognition and inclusion of Indigenous organizations and communities in the implementation process. The ongoing pattern of selective inclusion and exclusion of Indigenous communities threatens to render this bill ineffective, if it is not addressed.

In particular, the bill calls on the Minister to develop an action plan (Section 5 to 6-6), and to prepare annual reports on the progress of implementing that plan which will be submitted to Parliament (Sections 7-1 to 7-4)².

² <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading>

Under C-15, the Action Plan and Annual Reports are to be developed “in consultation and cooperation with Indigenous peoples”. Under C-15, the term “Indigenous Peoples” is defined as “the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982.”

However, the process for developing C-15 itself and the broader pattern in government has been one of unequal inclusion, despite the existing definitions for “Indigenous Peoples” under Section 35 of the Constitution and the recognition of non-Status and Metis peoples as “Indians” through the “Daniels” Supreme Court Decision of 2016³. As described by CAP representative Lorraine Augustine:

We need to be sure that when they talk about “Indigenous peoples” it means all indigenous peoples. The declaration does not determine if you're indigenous on reserve, if you're indigenous off reserve, if you're status or if you're not status. It talks about “Indigenous peoples” in this country.

CAP is concerned that, unless the bill includes specific language requiring a change of policy, the “Action Plan” and “Annual Reports” will continue to reflect the privileged treatment of certain organizations chosen by the government of Canada, and exclude the voices of other Indigenous communities.

This result would be in violation of Canada’s constitutional obligations to Indigenous people, as well as the intent and text of UNDRIP itself.

Conclusion:

UNDRIP cannot be a tool for reinforcing colonialism, by giving the government additional tools and platforms to selectively recognize or deny Indigenous identity through a process controlled by colonial institutions. Only Indigenous peoples themselves can choose their representatives, not the government of Canada.

CAP acknowledges that many of the organizations engaged by the government of Canada legitimately represent their members – however they do not speak for all those who fall under the categories listed by Section 35 of the constitution, the “Indian, Inuit, and Metis Peoples”, only their specific members. From CAP’s Testimony:

I participated at the United Nations and, as a matter of fact, I was at the constitutional talks back in 1982. I've been around for a little while.

I totally agree with the intent and what the United Nations has done. It's a very good document. However, my concern with regard to Canada and the way it's written and the current preamble is that it's leaving out 80% of the indigenous peoples in Canada.

³ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do>

UNDRIP is an essential part of reconciliation, and the approach taken by Canada on its implementation must be inclusive, Indigenous-led, and provide the resources and capacity for all Indigenous communities to participate in the process, regardless of Status, recognition, land claims settlement process or organizational membership.

Summary of Recommendations:

- Replace references to “First Nations” with “Indians as defined by the Constitution of Canada”
- Explicitly state that all Indigenous organizations will be included on an equal basis with no preferential treatment given by government to any organization over any other in the development of the “Action Plan” and “Annual Reports”
- Explicitly state that “status”, “band councils”, the Indian Act, or any other colonial creations by the government of Canada can never override Indigenous nationhood or deny or erase the identity of any Indigenous person in Canada.
- Explicitly state that all Indigenous communities, whether or not they are recognized under the “Indian Act”, Historical treaties, modern treaties, land claim settlements, or any other mechanism shall have recognition and resources to meaningfully participate in the "Action Plan" and "Annual Report" process if they request it.