



Congress of Aboriginal Peoples

**An Inclusive Approach - Submission to the House of Commons’
Standing Committee on Indigenous and Northern Affairs (INAN)**

***C-29 - An Act to provide for the establishment of a national council
for reconciliation.***

October 17, 2022

“Reconciliation is a really difficult concept for a lot of Canadians and it's a difficult concept for us as Indigenous Peoples as well. Because reconciliation isn't just about the relationship between Indigenous Peoples and non-Indigenous Peoples in this country. It's also between generations of Indigenous Peoples. It's between families of Indigenous Peoples. There are a lot of things that have happened in the last 100 years that have driven us apart, things that we need to overcome.”¹

¹ Natan Obed, President, Inuit Tapiriit Kanatami <https://www.sac-isc.gc.ca/eng/1656016750223/1656016765403>



Congress of Aboriginal People submission to the House of Commons' Standing Committee on Indigenous and Northern Affairs (INAN)C-29, An Act to provide for the establishment of a national council for reconciliation.

About Us

Founded in 1971, the Congress of Aboriginal Peoples (CAP) is one of the five National Indigenous Organizations (NIOs) recognized by the Government of Canada. CAP has eleven affiliated provincial /territorial affiliate organizations (PTOs) across Canada that work collectively to improve the socio-economic conditions of off-reserve First Nations peoples (status and non-status), Métis peoples, and Inuit of Southern Labrador, who reside in urban or rural areas. CAP works to promote and advance the common interests and equal opportunity of its constituents through education, research and knowledge translation, policy analysis and reform, and collective action.

Urban and rural Indigenous peoples experience widespread discrimination and are amongst the most socially and economically disadvantaged groups in Canadian society, which is deeply rooted in the history of colonization and its impacts. They experience poorer health, high rates of poverty and violence, and are overrepresented in many Canadian institutions, such as in justice and corrections, and in child welfare. CAP seeks to ensure that all Indigenous peoples have equal access to programs and services, and that our Indigenous and treaty rights, as guaranteed in Canada's constitution, are given equal protection regardless of residence or *Indian Act* status.

On Reconciliation

The Congress of Aboriginal peoples strongly supports reconciliation and the establishment of the National Reconciliation Council (NCR) as an independent and non-governmental mechanism. The council, if appropriately constructed, would evaluate and monitor the progress of reconciliation in the country.

Reconciliation is fundamental to protecting the rights of Indigenous peoples. It speaks to Canada's obligation and duty to honor its constitutional commitment to our people and their communities, respecting our traditions, culture and ways of knowing. It is process that requires the participation of all Canadians, Indigenous and Non-Indigenous, and all agencies and organizations to ensure its success.

It has been agreed by experts there has been an “ongoing failure by the federal government to meaningfully enact the Calls to Action that would alter the disparate realities that Indigenous peoples experience in this country. With each passing year, Canada opts to perform reconciliation in an effort to shape a benevolent reputation rather than enact the substantial and structural changes that would rectify ongoing harms and change the course of our collective

relationship.”² There is an absolute need to change Canada’s approach to reconciliation and to begin to move forward inclusively in order to experience the necessary impact for reconciliation to be achieved.

Through reconciliation we acknowledge past harms and make amends to those who have been affected by the process of colonization. This process must recognize the diversity of our cultures that are found throughout Turtle Island and in particular the diversity found within Indigenous communities themselves.

Recognizing the new Indigenous reality will be the only way reconciliation can honestly and truly be accomplished. According to Statistics Canada, the majority of the 1.8 million people identified as Indigenous peoples live off-reserve and in Urban communities.³ Of these peoples, a full 45% or nearly half are NOT represented by any of the three organizations that have been identified in this legislation. If this legislation is passed nearly 800,000 Indigenous peoples will not have a guaranteed voice on the NCR responsible for monitoring and overseeing reconciliation in Canada. Indigenous peoples are represented by more than just three political groups⁴. There is a need for a more inclusive approach that includes the voice of the Congress of Aboriginal Peoples and the communities that it represents.

Bill C-29 – Comments and Recommendations

The Truth and Reconciliation Commission calls to action recommended that there be National Council for Reconciliation and that it would be fully resourced. This recommendation came with very important and detailed advice on how the Council should be developed. Unfortunately, this Bill falls short of what was intended in Call to Actions 53-56. There was no meaningful engagement on Bill C-29 with Indigenous Peoples. There is an unequivocal need for co-development of this legislation.

The following outlines our concerns with the Act itself and proposes recommendations on how the Act could be modified to better advance reconciliation using a more inclusive approach.

Preamble

Whereas reconciliation with Indigenous peoples is recognized as a fundamental purpose of section 35 of the Constitution Act, 1982;

The Congress of Aboriginal Peoples is in agreement with this fundamental principle. CAP represents section 35 rights holders from across Canada and those rights holders have often been excluded from the process of reconciliation because of political and financial concerns. If this truly is the purpose of the act, there is a need for Canada to recognize that there is a duty to rights holders that they have thus far excluded. Non-status people who have been denied their section 35 rights as a result of colonial policies like the Indian Act are a good example of this exclusion. Most of

² <https://yellowheadinstitute.org/wp-content/uploads/2022/03/trc-2021-accountability-update-yellowhead-institute-special-report.pdf>

³ <https://www150.statcan.gc.ca/n1/en/daily-quotidien/220921/dq220921a-eng.pdf?st=JSQ4DVUe>

⁴ <https://www150.statcan.gc.ca/n1/en/daily-quotidien/220921/dq220921a-eng.pdf?st=JSQ4DVUe>

these people have been denied access to hunting, fishing, culture, and spirituality to name just a few. Many of these people lost their status under the Indian Act because of residential school, for voting privileges, higher education or through the sixties scoop. These concerns must be included in the process of reconciliation and their voice must be represented at the NCR.

Whereas that reconciliation requires collective efforts from all peoples and the commitment of multiple generations;

Reconciliation does require the collective efforts of all peoples in Canada, Indigenous and Non-Indigenous, the continued mistreatment of our community and their exclusion is counter-productive to this end. Off-reserve communities have a particular importance to this work as they now make up the majority of Aboriginal peoples in Canada. There is a need to understand that the Indigenous community is diverse and reconciliation between Indigenous groups is also a necessary part of reconciliation. This cannot happen if they are not engaged in the development of these important mechanisms.

Whereas Indigenous peoples have their own collective identities, cultures, teachings and ways of life and have, throughout history and to this day, continued to live in, use and occupy the lands that are now in Canada;

As mentioned, Indigenous communities are broad and diverse, and this must be understood in this legislation. Off-reserve, non-status, Metis and Southern Inuit peoples who are not represented by Canada's chosen few political organizations must also have an opportunity to work toward reconciliation. Acknowledging our cultural differences and the historic harms caused to our peoples through colonialism is an essential part of reconciliation.

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

The right to be free of discrimination is the basic tenant of UNDRIP. For CAP and other Indigenous organizations, this right is expressed through the right to self-determination, to be recognized as distinct peoples and to ensure we are engaged and consent to legislation like that being proposed in Bill C-29. Ensuring Indigenous people have the right to choose their representative organizations is how UNDRIP is upheld. For thousands of Indigenous people in Canada, they express the right to Self-Determination by choosing CAP as their representative organization.

Whereas the Government of Canada recognizes the need for the establishment of an independent, non-political, permanent and Indigenous-led organization to monitor, evaluate, conduct research and report on the progress being made towards reconciliation in all sectors of Canadian society and by all governments in Canada, in order to address the Truth and Reconciliation Commission of Canada's Call to Action number 53;

The Structure of this council is neither independent nor non-political. Its very structure is political, the lack of co-development with any other group except those chosen by Canada is the very opposite of non-partisanship. Call to Action number 53 was clear that "legislation would establish the council as an independent, national, oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations" as a National Indigenous Organization, we have never been consulted or engaged about the composition of the Council's membership, through either the legislative process or the government-appointed Transitional Committee. The absence of co-development for this legislation and the Governments patriarchal approach is an affront to the very spirit of what reconciliation should be.

Purpose and Functions (Funding)

7 In carrying out its purpose, the Council is to

- (a) develop and implement a multi-year national action plan to advance its efforts for reconciliation;
- in all sectors of Canadian society and by all governments in Canada, including efforts to implement the Truth and Reconciliation Commission of Canada's Calls to Action;
- (c) conduct research on promising practices that advance efforts for reconciliation in all sectors of Canadian society, by all governments in Canada and at the international level;
- (d) monitor policies and programs of the Government of Canada, and federal laws, that affect Indigenous peoples;
- (e) recommend measures to promote, prioritize and coordinate efforts for reconciliation in all sectors of Canadian society and by all governments in Canada;
- (f) educate the public about Indigenous peoples' realities and histories and advocate for reconciliation in all sectors of Canadian society and by all governments in Canada; and
- (g) stimulate innovative dialogue, thought and action on reconciliation.

The purpose and function of the Council must include the provision of multi-year funding and the endowment of a National Reconciliation Trust to advance the cause of reconciliation as was recommended in TRC Call to Action number 54. There is also a need to further implement Call to Action number 53 and its intent to ensure the Council takes an inclusive approach.

Section 7 should be amended to include the following additional subsections:

- **(h) the council in collaboration with the Minister will work to develop a multi-year funding plan resourced by the Government of Canada**
- **(i) the council in collaboration with the Minister will work to develop and endow a National Reconciliation Trust**
- **(j) the council in all its work will make every effort to ensure they are inclusive of all Indigenous people, regardless of status or residency, ensuring all Indigenous people have the opportunity to participate in the activities of the council**

First board of directors

8 The persons whose names are set out in the notice of directors sent under section 3 are to be selected by the Minister in collaboration with the transitional committee, taking into account sections 9, 11 and 13 and the nominations referred to in subsection 10(1).

The first board of directors for any organization has an enormous impact on its overall strategy and success. It will be crucial to select a first board that has the confidence of the Indigenous community. To ensure the first board of directors' is non-partisan and Independent those selected should be chosen by representatives of the Indigenous community not the Minister.

Section 8 should be amended to read:

8 The persons whose names are set out in the notice of directors sent under section 3 are to be selected by the transitional committee in collaboration with directors selected in section 10 (1), taking into account sections 9, 11 and 13.

Nominations

10 (1) The board of directors is to include

- (a) one director who may only be elected after having been nominated by the Assembly of First Nations;*
- (b) one director who may only be elected after having been nominated by Inuit Tapiriit Kanatami; and*
- (c) one director who may only be elected after having been nominated by the Métis National Council.*

As noted previously, the recommended composition of the Board of Directors is not consistent with the current reality of Indigenous peoples in Canada. There is a need for representation that is reflective of this reality. With almost half of Indigenous peoples not represented in this section, we recommend adding additional National Indigenous Organizations.

Section 10 (1) should be amended to read:

10 (1) The board of directors is to include

- (a) one director who may only be elected after having been nominated by the Assembly of First Nations;**
- (b) one director who may only be elected after having been nominated by Inuit Tapiriit;**
- (c) one director who may only be elected after having been nominated by the Métis National Council;**
- (e) one director who may only be elected after having been nominated by the Congress of Aboriginal Peoples; and**
- (f) one director who may only be elected after having been nominated by the Native Women's Association of Canada.**

Representativeness

12 Beginning on the fifth anniversary of the day on which the Council is incorporated, the Council's board of directors must, to the extent possible, include representation from

- (a) First Nations, Inuit and the Métis;*
- (b) other peoples in Canada;*
- (c) Indigenous organizations, as defined in section 2 of the Department of Indigenous Services Act;*
- (d) youth, women, men and gender-diverse persons; and*
- (e) various regions of Canada, including urban, rural and remote regions.*

The composition of the Board of Directors is not consistent with the current reality of Indigenous peoples in Canada. First Nation, Metis and Inuit have diverse lived experiences resulting from

colonialism. It is imperative that their voices be heard and acknowledged in this process. We suggest that representatives should be reflective of the current demographic.

Section 12 should be amended to read:

12 Beginning on the second anniversary of the day on which the Council is incorporated, the Council's board of directors must, to the extent possible, include representation from

- (a) First Nations, Inuit and the Métis;**
- (b) non-status, non-affiliated Metis and Southern Inuit;**
- (c) other peoples in Canada;**
- (d) Indigenous organizations, as defined in section 2 of the Department of Indigenous Services Act;**
- (e) youth, women, men and gender-diverse persons; and**
- (f) various regions of Canada, including urban, rural and remote regions.**

Contents

17 (1) The Council must, within six months after the end of each financial year, submit to the Minister an annual report setting out

(a) the state of reconciliation, including the progress being made towards reconciliation in all sectors of Canadian society and by all governments in Canada; and

(b) the Council's recommendations respecting measures to promote, prioritize and coordinate efforts for reconciliation in all sectors of Canadian society and by all governments in Canada.

To fully implement the Call to Action in respect to a National Council, this legislation requires that the Prime Minister be an integral part of the process as recommended by the TRC in Call to Action number 56.

17 (1) should amended to read:

17 (1) The Council must, within six months after the end of each financial year, submit to the Prime Minister an annual report setting out

(a) the state of reconciliation, including the progress being made towards reconciliation in all sectors of Canadian society and by all governments in Canada; and

(b) the Council's recommendations respecting measures to promote, prioritize and coordinate efforts for reconciliation in all sectors of Canadian society and by all governments in Canada.

Government response

17 (3) Within 120 days after the day on which the report under subsection (2) is laid, the Minister must, on behalf of the Government of Canada, respond to the matters addressed by the report that are under the jurisdiction of Parliament by publishing an annual report on the state of Indigenous peoples that outlines the Government of Canada's plans for advancing reconciliation.

The TRC was clear about the expected response from government should be in Call to Action number 56 when they asked “the Prime Minister of Canada to formally respond to the report of the National Council for Reconciliation by issuing an annual “State of Aboriginal Peoples” report, which would outline the government’s plans for advancing the cause of reconciliation.” This has not been addressed in this legislation. The Prime Minister is an essential partner in advancing reconciliation on behalf of Canadians. This should not be a delegated responsibility.

17 (3) should be amended to read:

(3) Within 120 days after the day on which the report under subsection (2) is laid, the Prime Minister must, on behalf of the Government of Canada, respond to the report of the National Council for Reconciliation by issuing an annual “State of Aboriginal Peoples” report, which would outline the government’s plans for advancing the cause of reconciliation.

Summary of Recommendations

The Congress of Aboriginal Peoples makes the following recommendations to the committee to ensure Bill C-29 is inclusive of our community and the Indigenous reality in Canada.

Recommendation #1

Bill C-29 needs further engagement with Indigenous people to meet the intent of the calls to action and we recommend that there be open and transparent co-development.

Recommendation # 2

Section 7 should be amended to include multi-year funding, the endowment of a National Reconciliation Trust and an objective to be inclusive of Indigenous peoples regardless of status or residency.

Recommendation # 3

Section 8 of the legislation should be amended to ensure the selection of the first board of directors be the sole responsibility of the Indigenous community.

Recommendation # 4

Section 10 (1) should be amended to add one director who may only be elected after having been nominated by the Congress of Aboriginal Peoples and one director who may only be elected after having been nominated by the Native Women's Association of Canada.

Recommendation # 5

Section 12 should be amended to include non-status, non-affiliated Metis and southern Inuit Indigenous peoples in the composition of the council.

Recommendation # 6

Section 12 should be amended to reduce the time to ensure representativeness of the Council from its fifth anniversary to its second.

Recommendation # 7

Section 17 (3) should be amended ensure the Prime Minister responds to the report of the council as recommended by the TRC.

Next Steps

As Bill C-29 currently exists it does not meet Calls to Action numbers 53-56. The TRC called upon the Parliament of Canada, in *consultation and collaboration* with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. There has been no meaningful consultation or collaboration with Indigenous peoples to develop the NCR legislation. This is unacceptable and the counterproductive to the fundamental nature of what true reconciliation process is intended to be.

The TRC also recommended that the government “provide multi-year funding for the National Council for Reconciliation to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.”. These issues have not been adequately addressed in the legislation.

The government needs to do more. There has been little to no effort from this government to actively engage with Indigenous peoples on the development of this legislation. In fact, there has been a significant move toward only dealing with certain groups leaving out most Indigenous peoples. There needs to be a better and more inclusive process that has significant engagement with the non-status, unaffiliated Metis and Southern Inuit people.

In respect to the development of Bill C-29, Canada needs to work with Indigenous partners like CAP to ensure engagement happens with key groups that need to be part of this process. This can only happen if CAP is fully represented and engaged in this legislation.