

An Act Recognizing Indigenous Nations and Peoples as founding peoples of Canada

SUMMARY

This enactment requires the Government of Canada to give formal recognition to indigenous nations and peoples as founding peoples of Canada and to protect and promote their languages, cultures, history, traditions and laws in ways similar to the government's protection and promotion of the languages, cultures, history, traditions and laws of the British and French founding peoples.

BILL

An Act to recognize that indigenous nations and peoples are founding peoples of Canada.

Preamble

Whereas indigenous peoples of Canada were the first peoples to govern this land and were present for thousands of years prior to Confederation;

Whereas indigenous peoples were self-determining nations with distinct cultures, languages, laws, traditions and unique understanding of the land and environment;

Whereas the indigenous peoples provided land, knowledge, military and other support to sustain colonial life, entered into peace and friendship treaties and trade agreements with settlers to sustain economic growth and resource development on the land now recognized as Canada;

Whereas the indigenous peoples were essential to the success of the fur trade that was the backbone of the economy for more than 250 years in the land now recognized as Canada;

Whereas the indigenous nations negotiated treaties with the Crown transferring vast tracts of land that have produced immense riches making Canada one of the wealthiest nations in the world;

Whereas the British and French peoples settled on the land, established self determining provinces with their own languages, cultures, customs and laws and created a constitutional model of governance at Confederation to unite the provinces;

Whereas the contributions of the British and the French peoples are widely accepted and recognized as foundational to the existence of Canada and the contributions of the indigenous nations of peoples are not widely accepted or recognized as such;

Whereas at Confederation in 1867 the British and French languages were constitutionally protected as well as their civil rights, customs, traditions, laws, and forms of governance yet indigenous peoples' languages, civil rights, customs, traditions, laws and forms of governance were not protected;

Whereas the Constitution of Canada states that English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada and indigenous languages have no such official status, equal rights or privileges as to their use;

Whereas non-recognition of indigenous peoples and imposition of bureaucratic control over their lands, governance, and all aspects of life have contributed to historic injustices including inter alia, their colonization and dispossession from their lands, territories, and resources, loss of indigenous languages, customs and cultures and civil rights and loss of their inherent right to self determination;

Whereas the Government of Canada recognizes its relationship with Indigenous peoples is fundamental and must be reconciled, based on a nation-to-nation relationship rooted in recognition of rights and mutual respect;

Whereas recognizing the role of Indigenous nations of peoples as foundational to the existence of Canada is a step towards building a meaningful nation-to-nation relationship and an important step in reconciliation;

Whereas the nation-to nation relationship and reconciliation are concepts that must be given more explicit recognition and substance;

Whereas all doctrines, policies and practices used to justify unequal treatment of indigenous peoples such as the discovery doctrine and the formal equality principle based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are scientifically false, legally and historically invalid, morally condemnable, and socially unjust;

Whereas, in regard to indigenous peoples, it is important for Canada to reject colonialism and engage in a contemporary approach based on good faith and on principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;

Whereas the protection of existing aboriginal and treaty rights is an underlying principle and value in Canada's Constitution and Charter of Rights and Freedoms that must be given more explicit recognition and content;

Whereas the Government of Canada has declared its full support for the UN Declaration on the Rights of Indigenous Peoples, recognizing that indigenous peoples are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity;

Whereas human rights, the rule of law, and democracy are interlinked and mutually reinforcing and are underlying principles of that Constitution, the Charter of Rights and Freedoms and the UN Declaration on the Rights of Indigenous peoples;

Whereas the Government of Canada has declared its intention to implement all of the ninety-four Calls to Action in the Truth and Reconciliation Report;

Whereas recognition of Indigenous peoples' human rights, including the free, prior and informed consent to development on their traditional lands and territories, will lead to greater peace, security and prosperity for all;

Whereas this statute makes explicit what courts, the Constitution and political conferences have already implicitly recognized in acknowledging the important role Indigenous people play in federalism and in the fundamental definition of Canada;

Whereas in 2017 Canada will celebrate the 150th anniversary of Confederation for which recognition of the indigenous peoples as founders of Canada is long overdue;

Short title

1 This Act may be cited as the *Recognition of Indigenous Peoples as Founding Peoples of Canada Act*

Aboriginal and treaty rights

2(1) For greater certainty, nothing in this Act is to be construed so as to diminish or extinguish existing aboriginal or treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in law or section 35 of the Constitution Act, 1982 or in Section 25 of the Canadian Charter of Rights and Freedoms.

(2) Nothing in this Act is to be construed as to prevent the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in Canadian law or any other steps toward reconciliation and the nation-to-nation relationship that Parliament deems appropriate.

(3) Nothing in this Act is to be construed as to diminish or derogate from the Calls to Action of the Truth and Reconciliation Commission.

Policy Measures

Indigenous Recognition Policy

3(1) It is hereby declared to be the policy of the Government of Canada to consult and cooperate with indigenous leadership to:

- (a) recognize and promote the understanding within Canada and abroad that the indigenous peoples were founding peoples of Canada and that the cultures, customs and languages of indigenous peoples comprise a fundamental characteristic of the Canadian heritage and identity.
- (b) Foster the recognition and appreciation of the diverse indigenous cultures and promote and support the expressions of those cultures as valuable resources in the shaping of Canada's future.
- (c) Acknowledge the freedom of all indigenous peoples to preserve, enhance and share their cultural heritage.
- (d) Recognize and promote the full and equitable participation of indigenous individuals and communities in the continuing evolution and shaping of all aspects of Canadian society according to their own values and priorities.
- (e) Ensure that all indigenous individuals receive equal treatment before and under the law and equal benefit and equal equal protection of the law while respecting and valuing their diversity.
- (f) Encourage and assist the social, cultural, economic and political institutions of Canada to be both respectful and inclusive of Canada's indigenous character.
- (g) Recognize and respect the inherent right of indigenous self-government, including the authority of indigenous governments to safeguard and develop their languages, cultures, economies, identities, institutions and traditions;
- (h) Recognize and respect the inherent right of indigenous peoples to develop, maintain and strengthen their relationship with their lands, waters and environment so as to determine and control their developments as peoples according to their own values and priorities and to ensure the integrity of their societies.

Federal Institutions

- 4 (1)** It is further declared to be the policy of the Government of Canada that all federal institutions shall:
- (a) Ensure that indigenous Canadians have an equal opportunity to obtain employment and advancement in those institutions;
 - (b) Promote policies, programs and practices that enhance the understanding of and respect for indigenous peoples of Canada and their founding role;
 - (c) Collect statistical data in order to enable the development of policies that are sensitive to and responsive to the indigenous reality of Canada;

- (d) Make use, as appropriate, of the language skills and cultural understandings of indigenous individuals and communities; and
- (e) Generally carry on their activities in a manner that is sensitive and responsive to the indigenous reality of Canada.

Implementation of the Indigenous Recognition Policy of Canada

5(1) The Minister of Canadian Heritage, in consultation with other Ministers of the Crown and indigenous leadership, shall encourage and promote a coordinated approach to the implementation of the indigenous recognition policy of Canada and may provide advice and assistance in the development and implementation of programs and practices in support of the policy.

Specific Mandate

6(1) The Minister of Canadian Heritage shall take such measures as the Minister considers appropriate in consultation and cooperation with indigenous leadership, to implement the indigenous recognition policy of Canada and, without limiting the generality of the foregoing, may

- (a) encourage and assist individuals, organizations and institution to project the indigenous reality of Canada in their activities in Canada and abroad; and
- (b) undertake and assist research relating to Canadian indigenous peoples and foster scholarship in this field;
- (c) encourage and promote exchanges and cooperation among the indigenous communities and other communities of Canada;
- (d) encourage and assist the business community, labour organizations, voluntary and other private organizations, as well as public institutions, to advance the full participation of indigenous peoples in Canadian society, including the social and economic aspects;
- (e) facilitate the acquisition, retention, reclamation and use of indigenous languages that contribute to the indigenous reality of Canada;
- (f) assist indigenous communities to conduct activities with a view to overcoming any discriminatory barriers and, in particular, discrimination based on race or ethnic origin;
- (g) provide support to indigenous and non-indigenous individuals, groups, or organizations for the purpose of preserving, enhancing and promoting indigenous recognition in Canada; and

- (h) undertake such other projects or programs in respect of indigenous recognition, not by law assigned to any other federal institution, that are designed to promote the indigenous recognition policy of Canada;
- (i) recognize and promote the implementation of the inherent right to indigenous self-government within the Canadian federation including but not limited to self-government with respect to ownership, use and management of lands, territories, and resources, and the development, maintenance and strengthening of their relationship with their lands, waters and environment according to their own values and priorities.
- (j) establish effective mechanisms that enable meaningful participation of indigenous peoples in decision-making in relation to development projects being carried out on, or near, their lands or territories.
- (k) consult and cooperate with indigenous leadership to ensure that the laws of Canada protect and promote the full spectrum of indigenous rights, including Aboriginal rights, Aboriginal title, and treaty rights in a manner consistent with section 35 of the Constitution Act and recognize that the fundamental objective of section 35 is to reconcile and inform the Crown's broader relationship with indigenous peoples.
- (l) ensure that federal negotiation policies reflect the principles of recognition and affirmation mandated by this Act and section 35 of the Constitution Act 1982.

Provincial Agreements

7(1) The Minister of Canadian Heritage may enter into an agreement or arrangement with any province respecting the implementation of the indigenous recognition policy of Canada.

(2) A Minister of the Crown other than the Minister of Canadian Heritage, may enter into an agreement or arrangement with any province respecting the implementation of the indigenous recognition policy of Canada.

Responsibilities of other Ministers

8 (1) The Ministers of the Crown, other than the Minister of Heritage shall, in the execution of their respective mandates and in consultation and cooperation with indigenous leadership, take such measures as they consider appropriate to implement the indigenous recognition policy of Canada.

International Agreements

9(1) The Minister of Heritage may, with the approval of the Governor in Council and in consultation with indigenous leadership, enter into an agreement or arrangement with the government of any foreign state in order to foster the indigenous character of Canada.

.Indigenous Recognition Advisory Committee

10(1) The Minister of Canadian Heritage shall establish an advisory committee to advise and assist the Minister on the implementation of this Act and any other matter relating to indigenous recognition and, in consultation with indigenous leadership and organizations representing indigenous interests, the Minister may appoint members and designate the chair and other officers of the committee.

(2) Each member of the advisory committee shall be paid such remuneration for the member's services as may be fixed by the Minister and is entitled to be paid the reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the committee.

Annual report

(3) The chair of the advisory committee shall, within four months after the end of each year, submit to the Minister of Indigenous and Northern Affairs, a report on the activities of the committee for that year and on any other matter relating to the implementation of the indigenous recognition policy of Canada that the chair considers appropriate.

General

Annual Report

11 The Minister of Canadian Heritage shall cause to be laid before each House of Parliament, not later than the fifth sitting day of that House after January 31st next following the end of each fiscal year, a report on the operation of this Act for that fiscal year.

Permanent review by a Parliamentary committee

12 The operation of this Act and any report made pursuant to a section 11 shall be reviewed on a permanent basis by such committee of the House, of the Senate or of both Houses of Parliament as may be designated or established for the purpose.