

Maritime Aboriginal Peoples Council



The Maritime Regional Aboriginal Leaders
Intergovernmental Council of Aboriginal Peoples
Continuing to Reside on Traditional Ancestral Homelands

Forums

June 27, 2019

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- Leaders Congress
- MAPC Commissions/Projects
- MAARS Secretariate
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Ms. E. Tendayl Achiume
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Office of the High Commissioner for Human Rights
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Your Excellency Tendayl Achiume:

We respond to the call for submissions towards your: "Thematic report on reparations, racial justice and equity" for your 2019 report to the 74th sessions of the UN General Assembly.

Our submission will provide your good office as the Special Rapporteur, with information about the "**distinction based discrimination**" promoted by the Government of Canada to further *victimize the large population of Indigenous Peoples living off-reserve*. The distinction based approach is the most current Government of Canada approach to deny responsibility and to inflict sociological harm as to the **worth, merit, capacity and dignity** of over 510,000 Indigenous Peoples living outside Indian Act Reserve within the Federation of the Peoples of Canada.

The long over due reparation to the metis and non-status Indians "*deprived of programs, services and intangible benefits recognized by all governments as needed*" stated by the Supreme Court of Canada in the *Daniels v Canada (Indian Affairs and Northern Development)* re-echo the call to Canada to *assume it's Constitutional Responsibility and obligations to all the Aboriginal Peoples of Canada without qualification*.

1. CANADA has to ensure that reparation (reconciliation) mechanisms respect the inherent dignity of victims (metis and non-status Indians) and facilitate robust participation throughout both planning and execution.

The publication by Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) "*Collaborative Process on Indian Registration, Band Membership and First Nation Citizenship factsheets March 2018*" noted that the

Indian Act Registered Status Population within Canada is 900,435 men and women. Of that registered Indian population, it is estimated that there are over 510,430 registered Status men and women who are not confined to the 3000 odd Indian Act Reserves throughout Canada, or in the vernacular “**off-reserve Indians**”. The vast majority of off-reserve Indian/Aboriginal Peoples remain the responsibility of the federal Government and are not managed by 633 Indian Act Created Band Councillors and elected Chief. The “off reserve Indians” are denied the social security net appropriated by Parliament for Indian Act Band members residing on Indian Act Reserves, many of which are in remote isolated areas.

Census Canada enumerated data for the Aboriginal Population of Canada reveals a population count of over 1.7 million or a little more than 4% of the total population of Canada. The vast majority of off-reserve Aboriginal Peoples continue on their unceded traditional ancestral homeland territory off a federal land reserved for the Indian.

In Canada there remain 73 Nations of Indigenous Peoples, each maintaining their culture, tradition, customs, practices, worldview, language and more as a People. There are 80 Indigenous Languages (including northern language variations) of the 11 Indigenous Languages Families throughout Canada.

Following the end of the English French Wars, with the Definitive Treaty of Peace concluded in Paris the 10th day of February 1762, the Royal Proclamation of 1763 was proclaimed at the Court at St. James the 7th Day of October 1763 in the Third Year of his Reign.

Of note, ... “and whereas great frauds and Abuses have been committed in purchasing lands of the Indians, to the great Prejudice of our Interests, and to the great dissatisfaction of the said Indians, in order therefore *to prevent such irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined resolution to remove all reasonable cause of discontent, we do*” and there follows a process for land purchases, consultation, trade and promised liberties.

When the Colonies were contemplating the formation of the Federation of Canada as a Dominion of the Realm, it was the advised Pleasure of Her Majesty Queen Victoria that the federal Government of Canada as the head government of the Dominion will continue to Honour the Decrees, Treaties and Proclamations of the Sovereigns (covenant chain remains intact). The Commentary by the House of Lords in 1982 noting that the Treaties between the Crown and the Indians shall continue in the manner as attested: “*as long as the rivers flow, and the sun rises and falls on the lands*”. This history and more including the repatriated Constitution Act of 1867 and the definitive 2016 *Daniels* declarations clarifying a 150 years question as to the meaning of Indian in Part IV federal Legislative Power Section 91 (24) “*Indians and lands reserved for the Indians*” definitively confirm a current governing reality, Canada is responsible for **ALL** Indians, which includes Metis and Non-Status Indians, ... “*and it is the federal government to whom they can turn.*”

Given the significance of the *Royal Proclamation of 1763*, the repatriation of the Constitution of Canada in 1982 which specifically included in Part I, Section 25 in the Charter of Rights and Freedoms the guarantee of Aboriginal and Treaty Rights, including the Rights, and the rights in the Royal Proclamation of 1763. Part II affirmed the Rights of the Aboriginal Peoples of Canada. Section 35 (1), recognized and affirmed the existing Aboriginal and Treaty rights of the Aboriginal Peoples of Canada who in section 35 (2) : *In this Act, “aboriginal Peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.*

In the 1960's while England, France, Spain, Portugal, The Netherlands, and other States decolonized their colonial holdings throughout the globe, and in the sixties we witnessed millions of Indigenous

Peoples rebuilding their nations (UN Trustees Council Reports), the Nations of Indigenous Peoples nested within the Dominion of Canada were not freed from the Colonial Reach of their Colonial history, nor of the federal government which asserted ownership of Indian lands, Resources and the Indian inhabitants within the Dominion of Canada.

In 1960, the Indian Act was remastered to disaggregate the many Nations of the Indigenous Nations of Peoples nested within the Federation into smaller "Band Units". Canada now has 633 Band Councils, under the control of the Department of Indian and Northern Affairs. Up until the 1960's as was the case fairly throughout Canada for the other Nations of Aboriginal Peoples, the Mi'Kmaq Nation of Peoples occupied their lands, territories, used their resources and lived along the seacoasts throughout the present day Maritime Provinces of Nova Scotia, New Brunswick, Prince Edward Island, the Gaspé region of Quebec, the southern Parts of Newfoundland, and parts of Maine in the USA. The Mi'Kmaq Nation of Aboriginal Peoples continue to occupy their traditional ancestral homeland Mi'Kmaki the unceded territory confirmed by numerous Treaties of Peace Friendship and Trade.

In Nova Scotia the Federal Government of Canada recognized one tribe of Nova Scotia Mi'Kmaq Indians, administered by two Agencies of Indian Affairs – the Cape Breton Agency out of Eskasoni and the Shubenacadie Agency out of Shubenacadie in the mainland.

The Mi'Kmaq Nation of Indigenous Peoples who lived around and within forty odd Colonial Reserve areas, including inland and coastal areas as well as in many Indian settlements established and located beside larger settler villages, and towns, were disaggregated by the 1960 Indian Act. An Order in Council dated Thursday, the 3rd day of March 1960, divided the one undivided Band/Tribe of Nova Scotia Micmac into eleven separate Indian Act bands, at the struck of the pen.

The continuing practise of dealings with the Indians, was consistently and to this day treated as finding a solution to the "**INDIAN PROBLEM**" or "**INDIAN QUESTION**" in Canada. The litany of hardship, suffering, abuses and loss of liberties and life are now more frequently revealed in reports of inquiries, and special commissions. One observation worthy of note which captures this reality is a government statement:

"Sadly, our history with respect to the treatment of Aboriginal Peoples is not something in which we can take pride. Attitudes of racial and cultural superiority led to the suppression of Aboriginal cultures and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal Peoples, suppressing their languages and cultures and outlawing spiritual practices."

*Government of Canada, Ottawa. 1997
Gathering Strength- Canada's Action Plan*

With the division of the Mi'Kmaq into eleven Indian Bands, and with the human continuing human rights violating provisions of the Indian Act, notable Section 12 (1) (b) against women and any person who advanced his or her lot in life, or who was ousted from the Reserve and denied any security support by the Band Council, fueled the movement for change. Within twelve years of disaggregating the Nova Scotia Tribe of Mi'Kmaq Indians into eleven Indian Act Bands, with a growing number of Off Reserve Indians defined as "non-status Indian" with more and more off-reserve Indians denied or relieved of Indian Status, or Mi'Kmaq struck off the band list, the "**non-status off-reserve Indians**" met in kitchens,

halls, church basements, at the grocery store or at gatherings as the **"forgotten people"** organizing for a voice and calling for change.

Aware of the growing discontent by off-reserve Indians, and the calls for reparation for the victimization forced on Indigenous Peoples by the Indian Act, a 1974 memo to Cabinet in part read:

"the Metis and Non-Status Indian people, lacking the protection of the Department of Indian Affairs and Northern Development are far more exposed to discrimination and other Social disabilities. It is true to say that in the absence of federal initiative in this field they are the most disadvantaged of all Canadian Citizens."

In 1972, the now New Brunswick Aboriginal Peoples Council was organized, in 1973 the Native Council of Nova Scotia, and in 1975 the Native Council of Prince Edward Island in its own name.

Collectively, the three Native Councils working and advocating for the off-reserve Status and Non-Status Indians respectively represent 24,900 off-reserve Aboriginal Persons in Nova Scotia, 15,295 in New Brunswick and 1,785 in Prince Edward Island and are organized **voice to the councils of governments**.

In the late 1970's early 1980's the Prime Minister of Canada, the late Right Honourable Pierre Elliot Trudeau called for a **just society** to include women, the disabled, the francophone and the Aboriginal Peoples. His vision also called to transform Canada from a **Parliamentary Democracy** to a **Constitutional Democracy** founded upon the principles that recognize the supremacy of God and the rule of Law. Treaty and Aboriginal Rights were guaranteed and the affirmation of Aboriginal Rights were included in the *Constitution Act of Canada 1867* for **all** the Aboriginal Peoples of Canada.

Sadly the machinery of the Department of Indian and Northern Affairs promoted to their Ministers their vision and goal, best characterized in the 1955 publication Pioneer Public Service:

"Thus a policy devised in the 1830's was reiterated, elaborated, and carried forward to Confederation. Almost intact it has served up to this day as the guiding star for administrators of Indian Affairs. Probably in no other sphere has such continuity or consistency or clarity of policy prevailed; probably in on other area has there been such a marked failure to realize ultimate objectives".

"To get rid of the Indian Problem and Indian Question in Canada by acculturation"

Without any meaningful leadership by the federal Government and with provincial governments unsure of their assertions to ownership of lands and resources within their drawn provincial lands, and faced with the growing number of Supreme Court of Canada decisions confirming treaties, Treaty and Aboriginal and Other Rights, as the 1985 Supreme Court of Canada Ruling in the *Simons Decision*, on the Mi'Kmaq Treaty of 1752, the 1999 Marshall Decision on the Treaty of 1760 and many more across Canada. Aware of the call by the Chief Justice of the Supreme Court of Canada for Canada to uphold the honour of the Crown, and the "Duty to Consult" to reconcile. Aware of the work since 1982 for a Declaration on the Rights of Indigenous Peoples, and the 1995 report of the Royal Commission on Aboriginal Peoples and the growing voices of the victimized Off-Reserve Indians, the clock was clicking sort of speak for urgent change. **The forgotten and now ignored off reserve status and non-status Indians** called on the Congress of Aboriginal Peoples (CAP) the national Indigenous Organization to seek three declarations from the Supreme Court of Canada. CAP filed its pleadings in December of 1999, and

the Government of Canada, tried every legal obstacle in their arsenal to stall or quash the call for a declaration on the: (1) meaning of Indian in section 91 (24), (2) the fiduciary duty of the Crown, and (3) the right to be consulted and negotiated with.

After an exhaustive and expensive sixteen year journey through the Court System, on April 14, 2016, the Supreme Court of Canada delivered in the words of the Government, “a very very important declaration” the *“Daniels v Canada (Indian Affairs and Northern Development) 2016 SCC 12 unanimous declaration on the three questions:*

The decision noted for the declarations:

“one of the results of the positions taken by the federal and provincial governments and the “political football – buck passing” practices is that financially (Metis and non-Status Indians) have been deprived of significant funding for their affairs...

...the political/policy wrangling between the federal and provincial governments has produced a large population of collaterally damaged (Metis and Non-status Indians). They are deprived of programs, services and intangible benefits recognized by all governments as needed. (Paras.107-108)

“The first declaration should, accordingly be granted as requested. Non-status Indians and Metis are “INDIANS” under s. 91 (24) and it is the federal government to whom they can turn.”

In 2007, Canada rejected and voted against the United Nations Declaration on the Rights of the Indigenous Peoples. In May of 2017, Canada affirmed before the General Assembly of the United Nations that Canada accepts the UNDRIP without any reservation. With that affirmation, re-echoed by the Minister of Indian and Northern Affairs, many Indigenous Peoples within the federation of the peoples of Canada, and notably the ***“metis and non-status and status off-reserve Indigenous Peoples”*** the most marginalized and victimized held out for some hope that they would no longer be ***the forgotten peoples within Canada.***

Unfortunately we have to note. CANADA’s written response to questions posed by the Committee on the Elimination of Racial Discrimination during the Interactive Dialogue with Canada on August 14-15 2017 and its lack of meaningful action on reparation/reconciliation with the off-reserve Indians refutes Canada’s response. Similarly the same failure applies to the Government of Nova Scotia.

Point 4 . Information on the progress being made on the implementation of the Truth And Reconciliation Commission of Canada’s calls to Action

The Prime Minister committed to a renewed relationship with Indigenous peoples, based on recognition of rights, respect, co-operation and partnership. As part of advancing reconciliation a commitment was made to implement all 94 Calls to Action of the T&RC.

The T&RC Report under section reconciliation calls for action by **The Canadian government on the United Nation Declaration on the Rights of Indigenous Peoples:**

Action 43 ...to fully adopt and implement the UNDRIP...

Action 44 ...to develop a national action plan, strategies and other concrete measures to achieve the goals of UNDRIP...

"In accepting the T&RC Report the Prime Minister of Canada Justin Trudeau, made a firm commitment to "a renewed relationship with Indigenous Peoples based on the recognition of rights, respect, co-operation and partnership". As part of advancing reconciliation (reparation) a commitment has been made to implement all 94 calls to Action which are directed to multiple parties. Including the government of Canada, ...

On the matter of Canada "Respecting the Government of Canada's Relationship with Indigenous People" we have to questions. Does Principle 6 fall in line with UNRIP, when the government of Canada qualifies consultation on matters of rights, land, territories and resources. Is Canada being forthright in its responses when the Government of Canada does not seek the consent nor include the participation nor recognize the off-reserve peoples through their own representative institutions as parties which should participate in the decision making processes affecting their rights, lands, resources and territories. Representative Native Council Institutions freely established by the larger proportion of Aboriginal Peoples continuing of their traditional ancestral homelands greater in number than the 1960 Indian Act created Indian Band Councils where our brothers and sisters are maintained in "social security net captivity" on federal owned Indian Act Reserves administered by Indian Act created band councils..

Does the written response statement of Canada support the CERD article # 1, when a senior public servant in the office of the Minister for Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) tells the Chief and President of the Native Council of Nova Scotia that "your community does not have rights, you are not entitled to participate, we have a process with the Indian Act Chiefs and the Indian Act Bands".

Does Principle 10 within the written and promulgated Canada Wide "Principle Respecting the Government of Canada's relationship with Indigenous Peoples", a **distinctions based**, exclusionary approach ensure that the unique rights, interests and circumstances of the Indians, Metis, Inuit **all** Indigenous Peoples within Canada are acknowledged, affirmed and implemented. By reading Principle 10 anybody familiar with the very first few words of Article 1 in the Convention as to the meaning of the term "racial discrimination" means any form of "**distinction**"... would come to the same conclusion, NO, Canada is violating CERDS and further discrimination against Off-Reserve Aboriginal Peoples.

Are the growing public calls and frequency of demonstrations, correspondences by the off-reserve status and non-status Indian peoples Native Councils, the result of jubilation or are they the result of frustration and pent up anger with Indian Affairs, Ministers and with Prime Minister Justin Trudeau and his Government. The lack of action, mistreatment, aspersions and continually degrading the merit, worth, capacity and human dignity of the off-reserve Indigenous person nested within the Federation of the Peoples of Canada are seeds for public unrest which Canada is watering.

Are the words of Colonial Secretary Lord Glenelg to the Governor of D'Urban at Cape Town on December 26, 1865 worthy to heed in Canada, 130 years after the world has witnessed the freeing of millions of South Africans from the colonial Bantustan systems employed throughout South Africa.

"I know not that a greater real calamity could befall Great Britain than that of adding Southern Africa to the list of the regions which have seen their aboriginal inhabitants disappear under the

withering influence of European neighbourhood. It is indeed a calamity reducible to no certain standard or positive measurement, but it invokes whatever is most to be dreaded in bringing upon ourselves the reproaches of mankind and the weight of national guilt.”.

Will it take the honourable Special Rapporteur to highlight in her 2019 report to the United Nations in General Assembly that:

“based on submissions from Indigenous organizations in Canada representing and advocating for the **off reserve forgotten Indigenous Peoples**, Canada does not have in place any action plans to address items 43 and 44 of the T&RC, nor does Canada have any measures to comply with their Supreme Court of Canada declaration as to the meaning of ‘Indian’. Further Canada’s **distinction based approach** to limit the reach of principle 10 is in violation of Article I of CERD. Also, there is no inclusive plan for reparation (reconciliation) targeted to the most Government Indian Act, policies and practices marginalized and victimized Indigenous Peoples - the off-reserve metis and non-status Indian person living off a federal Indian Reserve. Over 510,000 off reserve Indian Act Registered status Indians, and almost a million census enumerated Aboriginal Persons about 2% of Canada total population of Canada as off-reserve status and non-status Indian and Metis Peoples continue to be victimized and deprived of reparation. They are Excluded from meaningful consultation on matters of Rights, Lands, Territories and Resources, and denied the obligations and fiduciary responsibility of Canada owed to **all** indigenous Aboriginal Peoples nested within the Federation of the peoples of Canada.

Will it take public shaming of elected Ministers of the Crown, and the Prime Minister of Canada before international forums to move Canada to take actions and urgently needed resolutions.

Will it take exposing the sad horrific history of Canada’s relationship with Indigenous Peoples. Will it take revealing more inequities and the lack of action to produce remedies urgently sought. Will the international community have to shame Canada to develop reconciliation principles inclusive of **all** the Indigenous Peoples and not just the few, and without a distinction based exclusionary approach. Will the Supreme Court of Canada have to remind the Government of Canada about the Law. Will reciting the long list of disadvantages, and robust inequities requiring urgent inclusive action have to be continually raised. Will the urgent unattended outstanding matters with the majority of Indigenous Peoples – the off-reserve Aboriginal Peoples and other matters of Provincial take their toll on the capacity of the a federation to function.

Is mass public discontent by the off-reserve Indigenous Peoples who are forgotten and ignored the only means to address the urgent issues of reparation and reconciliation.

Is the path of exclusion, or acculturation the only path which the Government of Canada sees for a resolution of outstanding matters between the government and off-reserve Indians.

Is the path of “civil disobedience” particularly in 2019 with UNDRIP and an educated and informed off-reserve majority of Indigenous Peoples the only way to bring about reparation and reconciliation?

Advancing, Promoting and Advocating the Reality of the
Maritime Off-Reserve Community of Aboriginal Peoples



Roger J. Hunka