

Truth and Reconciliation Commission's Calls to Action regarding Justice



1. Background
2. Reconciliation is a Canadian Problem
3. Ten Principles
4. 94 Calls to Action
5. Implementation

1. Background

- Largest class action suit in Canadian history settled in an out of court agreement and created the TRC.
- Indian Residential Schools Settlement Agreement (IRSSA) designed, among other things, to:
 - help repair the lasting damage caused by the schools;
 - compensate survivors; and,
 - create the TRC to explore the truth behind the government-funded, church-operated assimilation program that existed in Canada.

1. Background continued

- TRC carried out between 2008 and 2015.
- 10 volumes available online at www.nctr.ca.
- The TRC held:
 - 7 national events,
 - 2 regional events,
 - 238 days of local hearings in seventy-seven communities across the country, and
 - 6,750 recorded statements from survivors of residential schools, members of their families and other individuals.

2. Reconciliation is a Canadian Problem

- All Canadians must take ownership of this history and the legacy of residential schools and what that entails.
- All people must assess where their own biases come from and question their ongoing legitimacy.
- All Canadians must recognize that the way Canada has been doing business will likely have to change.

3. Ten Principles

- 1) The *United Nations Declaration on the Rights of Indigenous Peoples* is the framework for reconciliation at all levels and across all sectors of Canadian society.
- 2) First Nations, Inuit, and Métis peoples, as the original peoples of this country and as self-determining peoples, have Treaty, constitutional, and human rights that must be recognized and respected.
- 3) Reconciliation is a process of healing of relationships that requires public truth sharing, apology, and commemoration that acknowledge and redress past harms.
- 4) Reconciliation requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples' education, cultures and languages, health, child welfare, the administration of justice, and economic opportunities and prosperity.
- 5) Reconciliation must create a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes that exist between Aboriginal and non-Aboriginal Canadians.

3. Ten Principles Continued

- 6) All Canadians, as Treaty peoples, share responsibility for establishing and maintaining mutually respectful relationships.
- 7) The perspectives and understandings of Aboriginal Elders and Traditional Knowledge Keepers of the ethics, concepts, and practices of reconciliation are vital to long-term reconciliation.
- 8) Supporting Aboriginal peoples' cultural revitalization and integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential.
- 9) Reconciliation requires political will, joint leadership, trust building, accountability, and transparency, as well as a substantial investment of resources.
- 10) Reconciliation requires sustained public education and dialogue, including youth engagement, about the history and legacy of residential schools, Treaties, and Aboriginal rights, as well as the historical and contemporary contributions of Aboriginal peoples to Canadian society.



4. Calls to Action

with respect to the Justice System



Legacy (sections 1 – 42)

<u>Sections</u>	<u>Sub-headings</u>
1-5	Child welfare (5 sections)
6-12	Education (7 sections)
13-17	Language and culture (5 sections)
18- 24	Health (7 sections)
25-42	Justice (18 sections)

Reconciliation (sections 43 – 94)

43-44 Canadian governments and the
UNDRIP (2 sections)

45-47 Royal Proclamation and Covenant of
Reconciliation (3 sections)

48-49 Settlement agreement and the
UNDRIP (2 sections)

**50-52 Equity for aboriginal people in the
legal system (3 sections)**

53-56 National council for Reconciliation
(4 sections)

57 Professional development and training
for public servants (1 section)

58-61 Church apologies and Reconciliation
(4 sections)

62-65 Education for Reconciliation
(4 sections)

66 Youth Programs (1 section)

67-70 Museums and Archives (4 sections)

71-76 Missing children and burial
information (6 sections)

77-78 National Centre for Truth and
Reconciliation (2 sections)

79-83 Commemoration (5 sections)

84-86 Media and Reconciliation (3 sections)

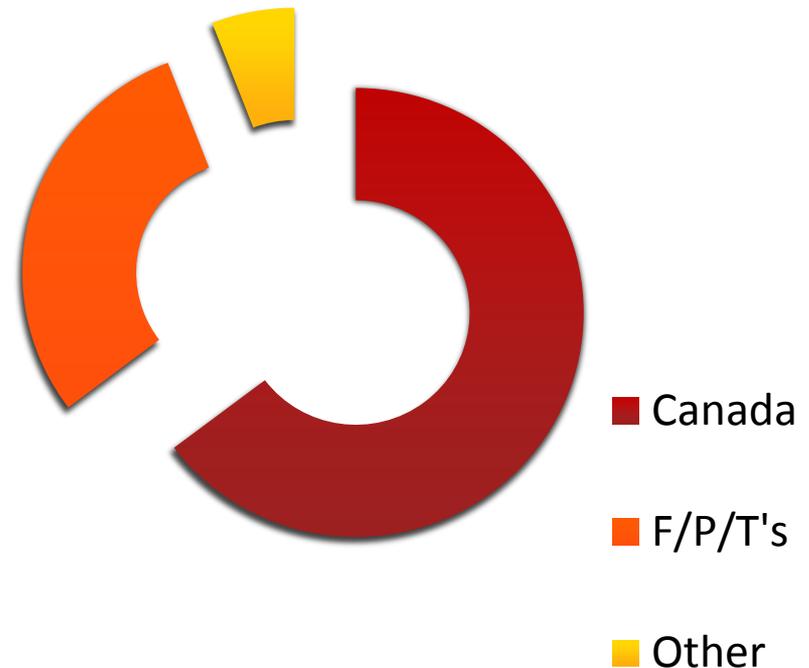
87-91 Sports and Reconciliation (5 sections)

92 Business and Reconciliation (1 section)

93-94 Newcomers to Canada (2 sections)

Justice and Equity for Indigenous Peoples in the Legal System

Almost $\frac{1}{4}$ of the Calls (22) deal with justice and equity for Indigenous people in the legal system.



Federal - Legislation

6. We call upon the Government of Canada to repeal Section 43 of the *Criminal Code of Canada*.

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

Federal - Policy

25. We call upon the federal government to establish a written policy that reaffirms the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

51. We call upon the Government of Canada, as an obligation of its fiduciary responsibility, to develop a policy of transparency by publishing legal opinions it develops and upon which it acts or intends to act, in regard to the scope and extent of Aboriginal and Treaty rights.

Federal – New Initiative

37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

- i. Investigation into missing and murdered Aboriginal women and girls.
- ii. Links to the intergenerational legacy of residential schools.

50. In keeping with the *United Nations Declaration on the Rights of Indigenous Peoples*, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

F/P/T - Legislation and New Initiative

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

- i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.
- ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.
- iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.

Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

52. We call upon the Government of Canada, provincial and territorial governments, and the courts to adopt the following legal principles:

Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.

Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

F/P/T - Policy and New Initiative

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

Federation of Law Societies of Canada

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Canadian Law Schools

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

5. Implementation

1. Government of Canada

- Commitment by Prime Minister to fully implement TRC Calls to Action starting with implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- *Public “mandate letters” calling for a “renewed, nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, co-operation, and partnership”.*

5. Implementation cont'd

Provinces and Territories

- All 13 Canadian premiers voiced their support for the 94 Calls to Action and said they would act on them in their own provinces and territories.
- However without a body to monitor or report on progress, it is difficult to ascertain if any of the commitments made by the provinces and territories are being acted on.

5. Implementation cont'd

Assembly of First Nations

- Chiefs-in-Assembly passed resolution 1/2015 in support of the full implementation of the Calls to Action. In addition, the Chiefs-in-Assembly directed the AFN Secretariat to create a political working group comprised of members of the AFN Executive to develop an action toolkit with respect to the implementation of the Calls to Action. The AFN has also begun work on a Progress Report to monitor the progress of implementation of the Calls to Action in order to present at the upcoming 2016 Annual General Assembly.

5. Implementation cont'd

Laws Schools and the Federation of Law Societies:

- The Federation of Law Societies of Canada recently established a working group to develop recommendations to respond to the Calls to Action as announced on March 11, 2016. No other information publicly available at this time.
- Lakehead University's Faculty of Law states on its website that it is the first and only law school in Canada to include stand alone mandatory courses on Indigenous legal issues in its curriculum in keeping with Call to Action number 28.
- However without a body to track progress on the recommendations, it is difficult to determine what if any other law schools are following suit.

Conclusion

- ➔ Call to Action 53 recommends that a **National Council for Reconciliation** be established as an independent, national, oversight body to monitor, evaluate, and report annually to Parliament and the people of Canada on the progress on reconciliation in order to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained.
- ➔ However this call has not been answered.