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Indigenous Peoples Colonization: *Minority Rights or Self-Determination*

From the Unist'ot'en Camp, Wetsuwet'en Peoples. (Photo courtesy of Unist'ot'en Camp, circa January 2014.)

By Arthur Manuel, Spokesperson, Aboriginal Title Alliance

Indigenous Sovereignty

The **Unist'ot'en Camp** puts into focus the fundamental issue facing the international human rights bodies when considering the rights of Indigenous Peoples living under a settler state government like Canada. **Unist'ot'en Camp**, like so many other Indigenous stands—**Oka**, **Gustafeson Lake**, **Ipperwash**, **Sun Peaks**, **Red Chris Mine** and **Elsipogtog**—reflects the State's use of out-dated legal concepts that are embedded in the **Colonial Doctrines of Discovery** that cause the State to immediately reach for injunctions and enforcement orders to remove Indigenous Peoples from territories that they have lived in for more than 10,000 years. The big question facing the **United Nations Human Rights Committee** is: Will they stop the internalized colonialism imposed on Indigenous Peoples in Canada?

The settler-state government dispossessed Indigenous Peoples under the Canada **Constitution Act 1867** (which used to be called the **British North America Act 1867**) where all Indigenous Peoples territories were put under the jurisdiction of the federal and provincial governments of Canada. In fact when all Indian Reserves are added up they total no more than 0.2% of Canada. This means that Canada and the provinces enjoy the benefit of 99.8% of all Indigenous Peoples territories. This has resulted in Canada being at the top of the **United Nations Human Development Index** and Indians living on an Indian Reserve living in Third World poverty. The fact that Indigenous Peoples are expected to live off 0.2% of our territory is what makes us systematically poor. Being forced to survive on government welfare on 0.2% of our land is what Canadian colonization is all about.

If you want to see how the Canadian establishment fights with Indigenous Peoples look at the videos on the **Unist'ot'en Camp web page**: http://unistotencamp.com These videos show how **Chevron** and then the **Royal Canadian Mounted Police** (**RCMP**) use settler state government permits to establish authority to enter onto Indigenous Peoples territory without recognizing the protocol put forward by the Indigenous Peoples. Needless to say that these efforts to force their way onto the land will be used as evidence, when the **government** or **Chevron** will go to **Court** to seek to get an injunction and enforcement order to use armed force to remove the **Unist'ot'en Camp**. Court Injunctions are the legitimate means of using armed force to take possession over unresolved Indigenous Peoples territories. Injunctions and enforcement orders in this context are nothing more than modern day tools to colonize Indigenous Peoples, especially in view the fact that no mutually acceptable means to negotiate and decolonize are available.

Special points of interest:

- **Choosing a Path: Self-Determination or Re-Colonization**
- **Sovereignty or Surrender? First Nations & Voting in Federal Election**
- **Budget 2015 Feds Off-Load Duty to Consult to Mining Companies**
- **UN Human Rights Committee Report 2015 on Canada**

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"Fathers of Colonization" drawing up Canada's first constitution.

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It is clear that Indigenous Peoples must look beyond the domestic boundaries to seek justice against the internal colonization we have been suffering under. It clear that our marginalization and impoverishment have become acceptable in Canada. In fact the **Royal Commission on Aboriginal Peoples Report** gives a very thorough overview of Canada's destructive treatment of Indigenous Peoples. But it is obvious that Canada is not prepared to change their present strategy. All efforts to negotiate have resulted in failure and because Canada refuses to recognize Aboriginal Rights on ground.

Choices: Self-Determination or Minority Rights

Indigenous Peoples must decide if we are independent sovereign peoples with a right to self-determination or if we want to be a minority under Canada's domestic laws. I raise this broader focus because it is through this lens that we can see how the **International Covenant on Civil and Political Rights** (**ICCPR**) and the **United Nations Human Rights Committee** function. The **international covenants** actually provide Indigenous Peoples with the means to challenge Canada's colonial settlement laws.

"Indigenous Peoples must decide if we are independent sovereign peoples with a right to self-determination or if we want to be a minority under Canada's domestic laws"

On the other hand Canada takes the position that Indigenous Peoples exercised their right to self-determination as Canadians. Any rights we have are under **Article 27** as a minority with ethnic, religious and linguistic rights within Canada. In fact Canada never even reported anything under **Article 1** on self-determination in their **6th Periodic Review**. Canada's position is that only Canada collectively has the right to exercise self-determination despite the fact much of their territories is actually on unsettled Aboriginal lands.

Indigenous Peoples must be consistent on being independent peoples with our own right to self-determination and not buy into being domesticated under Canada's political, economic, social and cultural systems. That is the big issue question that **Article 1** in the **International Covenant Civil and Political Rights** asks to Indigenous Peoples. Are Indigenous Peoples in Canada entitled to self-determination or are we simply a Canadian minority?

Self-Determination

The **Aboriginal Title Alliance** was the only body that raised the primary question of how **Article 1 on Self-Determination** is applied to Indigenous Peoples inside Canada. The **Aboriginal Title Alliance** is a network of Indigenous Peoples who have Aboriginal Title but will not negotiate under the existing **Comprehensive Land Claims** or **Self-Government policies**. They will not negotiate under the existing policies because they will terminate our Aboriginal Rights.

Self-Determination is a collective right of Indigenous Peoples. It is recognized under the **United Nations Declaration on the Rights of Indigenous Peoples** under **Article 3**. This makes it indisputable that Indigenous Peoples have a right to self-determination, including freely deciding our political status and pursuit of economic, social and cultural development. Self-determination is the framework to address the dispossession, dependency and oppression we have suffered under Canadian colonialism. In terms of land reform Indigenous Peoples limitation 0.2% of land must be increased so that Indigenous Peoples can become self-sufficient. This must also include our right to establish our own form of self-government based on our Aboriginal Right to our territory.

On left Arthur Manuel at Human Rights Committee, July 7, 2015, in Geneva, Switzerland.

United Nations Human Rights Committee

The **United Nations Human Rights Committee** is a panel of 18 independent human rights experts who monitor state governments that have signed onto the **International Covenant on Civil and Political Rights**. Canada made its **6th Periodic Report United Nations Human Rights Committee** in Geneva, Switzerland on July 7 & 8,, 2015. The record of Canada making its **6th Periodic Report** to the **UN Human Rights Committee** can be found at:

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http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CAN&Lang=EN under the heading "***CCPR – International Covenant on Civil and Political Rights***" under Cycle "***VI***".

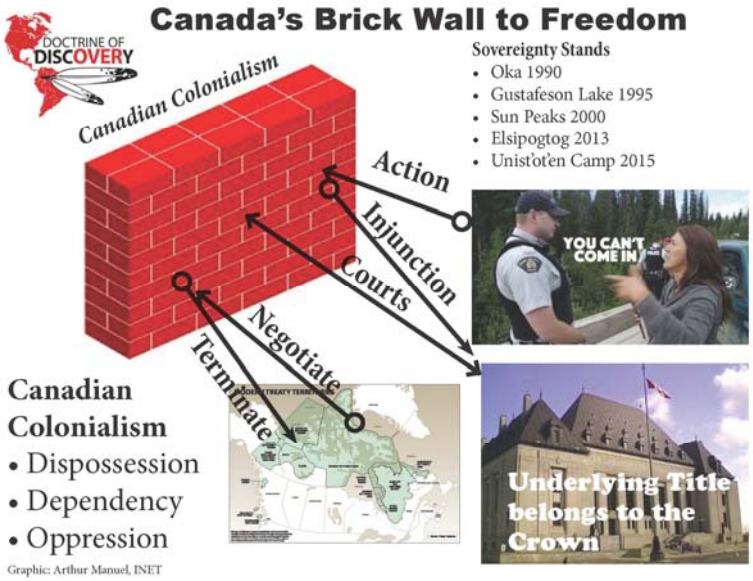
Canada is supposed to report on all **Articles of the International Covenant on Civil and Political Rights** but it did not report on Indigenous Peoples are entitled to self-determination under **Article 1** of the **Covenant**. Instead Canada reported on Indigenous Peoples as being under **Article 27** as a minority entitled to ethnic, religious and linguistic rights. The vast majority of Indigenous Peoples do not believe they are a minority but sovereign Indigenous Peoples with a right to self-determination.

Canada basically reports on how Canada is enforcing the **federal comprehensive land claims and self-government agreements** on Indigenous groups presently at the negotiating table with the federal government. The Report does this in 3 pages of a 36 page **6th Periodic Report** with a focus on the **Tlicho**, **Innu people of Quebec and Labrador** and **Lubicon First Nation**.

Nothing in this report says anything about our Aboriginal title and rights except that the federal government has the Indigenous Peoples at the negotiating table. I know a lot of leaders now a days like to be at the table and negotiating or as some say engaging. The real question is a bad agreement better than no agreement at all. This is a political question that Indigenous Peoples themselves must answer and unfortunately, many are putting the question to the wrong people—to the leaders and consultants whose personal incomes are drawn from the very negotiations that are putting our rights at risk. For many at the negotiating tables their personal interests are being served at the expense of the Aboriginal title and rights—and the long term future—of the people they are supposed to be serving.

Conclusion

The real conclusion that must be drawn from the **UN Human Rights Committee's Concluding Observations** is that Indigenous Peoples need to press the **Human Rights Committee** for substantive connection on the application of **Article 1** of the **International Covenant on Civil and Political Rights** and **Article 3** of the **Declaration on Rights of Indigenous Peoples**. Nothing will be given unless we stand up and demand our rights. We must be prepared to do this in Geneva as well as on the ground, like the people at the **Unist'ot'en Camp**. In both places we have to demand a new process that will allow us to shape a new relationship with Canada that respects our international **right to self-determination on our Indigenous territories**.



L to R: Jean Chretien & Pierre Trudeau in their later years. Both negotiated the **Constitution Act 1982**.

"we have to demand a new process that will allow us to shape a new relationship with Canada that respects our international right to self-determination on our Indigenous territories."

Supreme Court of Canada Building in Ottawa.

First Nations and Voting in the Upcoming Federal Election: *An Exercise in Self-Termination*

Canadian Coat of Arms

L to R: Justin Trudeau, LPC Leader & AFN Nat'l Chief Perry Bellegarde (Photo courtesy of THE CANADIAN PRESS/Ryan Remiorz)

By Russell Diabo

For the past several weeks with increasing frequency I have observed the mainstream media and now **AFN National Chief Perry Bellegarde**—along with other regional First Nation leaders—calling for First Nation Peoples' to get out and vote in the upcoming federal election, particularly since it is looking like a three way race between the federal leaders and their Parties, (Sorry, **Elizabeth May**).

Of course the main purpose of the call for First Nation individuals to get out and vote by some First Nations' leadership is to get rid of **Stephen Harper** and his dreaded racist Conservatives.

I took particular notice of the **National Post's** opinion piece by **Tasha Kheiriddin** who was responding to **Regina Crowchild**, a Councillor with Alberta's **Tsuu T'ina Nation**, who said that she would not want to see "***an alien government's polling station***" on her reserve, adding that, "***if we join Canada in their election system, that's a part of genocide.***"

"We have pre-existing sovereignty, along with our own tribal law and governance systems, which has survived the creation of the Canadian Settler-State"

Kheiriddin's counter argument was:

> ***The reality is that, paradoxically, if First Nations are truly interested in more autonomy, they will never get it without cooperation from the federal government. That means electing a government that is sympathetic to their perspective — and they will never do so unless they go to the polls. Voting is not capitulation, but a recognition that in a democracy, you need to participate if you want your voice to be heard.***

Despite the mainstream media's pleas we must remember as First Nation individuals we are connected to our families, communities, Nations and therefore have collective or group rights, which Canadian citizens—whether founding settlers or recent immigrants—cannot claim.

In fact, Canada (including the **Supreme Court of Canada**) bases its asserted sovereignty and territorial integrity on the racist, colonial **Christian doctrine of discovery**. **Kheiriddin's** argument makes sense only if Indigenous Peoples' already consider themselves as "***Canadians***."

Survivors of the Canadian Settler-State

But I urge all First Nation Peoples' to never forget we are Indigenous Peoples who are survivors of genocide and colonialism. We have pre-existing sovereignty, along with our own tribal law and governance systems, which has survived the creation of the Canadian Settler -State and as Indigenous Peoples' we have the international right of self-determination. Article 3 of the **United Nations Declaration on the Rights of Indigenous Peoples'** recognizes that Article 1 of the **United Nations International Covenant on Economic, Social and Cultural Rights** (**ICESCR**) and the **United Nations International Covenant on Civil and Political Rights** (**ICCPR**), applies to Indigenous Peoples', these Conventions provide that:

> ***All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development***

On September 13, 2007, at the **UN's General Assembly**, the **United Nations Declaration**

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on the Rights of Indigenous Peoples' (**UNDRIP**) passed in a vote of 143-4. Canada, Australia, New Zealand and the United States voted against the declaration, with 11 countries abstaining.

Canada's Ambassador John McNee, **Permanent Representative of Canada to the United Nations to the 61st Session of the General Assembly**, explained Canada's rejection of the **UNDRIP** at the time:

> ***Canada's position has remained consistent and principled. We have stated publicly that we have significant concerns with respect to the wording of the current text, including the provisions on lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of indigenous peoples, member States and third parties.***

Canada does not like the **UNDRIP** because within Canada the federal **Prime Minister**, **his Cabinet** and a **Federal Steering Committee of officials** are continuing to implement a federal-First Nations Termination Plan through an amended **Indian Act** and negotiations at land claims and/or self-government tables.

"Canada does not like the UNDRIP because within Canada the federal Prime Minister, his Cabinet and a Federal Steering Committee of officials are continuing to implement a federal-First Nations Termination Plan"

The "***core mandates***" of the federal negotiators at these Termination Tables are to get First Nations consent to sign off on legally binding agreements to extinguish (modify) First Nations land rights into private property (fee simple) while getting First Nations to release Canada from any liabilities for past theft of lands and resources and to convert First Nations from **Indian Act** "***bands***" into ethnic municipalities.

Let's be clear! These are federal Liberal land claims and self-government policies the Harper government is implementing.

In 2005, the **United Nations Human Rights Committee** asked Canada how the right of self-determination was being exercised by Indigenous People's in Canada and Canada gave this response: "***indigenous collectivities and other peoples living within the existing state of Canada participate in the exercise of the right of self-determination as part of the people of Canada***."

We see these limits clearly set out in Canada's **1995 Federal Aboriginal Self-Government** or "***Inherent Right***" policy:

> ***The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.***

The federal self-government policy is based on a concurrent law and harmonization model, which means those First Nation negotiating under this policy must accept the two colonial orders of government (federal & provincial) and their laws along with First Nations law, then harmonize those laws—meaning First Nations get converted into local municipal type governments from **Indian Act** bands while agreeing to implement federal and provincial laws.

L to R: Bernard Valcourt and Stephen Harper issued "interim" section 35 policy & appointed Douglas Eyford to consult on it.

The goal of the federal **Indian Act** from the beginning in 1876, was to assimilate individuals and "***bands***" of Indians into the social, economic and political mainstream of Canada. Indians were (and are) treated as children under the **Indian Act** with the **Minister of Indian Affairs** (now Aboriginal Affairs) having discretion over about 75% of the **Indian Act**. The federal goal of the **1969 White Paper on Indian Policy** has been to remove the legal distinctions between Indians and Canadian citizens.

'FN's & Voting' continued from page 5

PM-AFN Meeting of Jan. 11, 2013.

For status Indians, Canada only gave the franchise to vote in 1961 (1968 in Quebec) and it was a **Conservative Prime Minister**, **Diefenbaker** who granted that right to Indians.

The **Conservative Party** has always promoted individual rights to erode and undermine collective rights. **Prime Minister Stephen Harper** is no different he has imposed the following suite of First Nations legislation that is designed to promote individual rights in order to undermine collective rights:

- **First Nations Financial Transparency Act**
- **Family Homes on Reserves and Matrimonial Interests or Rights Act**
- **Indian Act Amendment and Replacement Act**
- **First Nations Election Act**
- **First Nation Education Act (Pending)**
- **First Nation Private Property Ownership Act (Pending)**

Liberal Party of Canada's Legacy

"once the LPC formed a majority government in November 1993, it became clear that Chretien and Goldenburg had their own ideas and systematically broke or manipulated the 1993 Liberal Aboriginal Promises"

All federal Settler-State political parties have their own methods of encouraging "***Aboriginal***" participation in their party, including candidacy for becoming a Member of Parliament, but after the election is done it is the Parliamentary Wing and the party establishment who run the party regardless of the party.

Recent history has shown that Aboriginal M.P.'s, Cabinet Minister's and Senators are routinely used by the sitting Prime Minister to support federal Aboriginal policy or legislative initiatives, whether the federal policies or laws are supported by Aboriginal Peoples or not!

My own experience is with the **Liberal Party of Canada** (**LPC**). From 1990-1994, I served as **Vice-President of Policy for the Aboriginal Peoples' Commission** (**APC**) of the **LPC**. Although from the late 1980's I was involved with other founding members in lobbying within the **LPC** to establish the **APC** by amending the **LPC** constitution to create the **APC** using the existing model of the **LPC's** Women's and Youth Commissions.

The **APC** was created in June 1990 at a **Liberal Leadership Convention**. Through our lobbying efforts with the Liberal Leadership Candidates Aboriginal delegates received "***contingent delegate***" status. Following a successful vote to amend the **LPC** constitution Aboriginal "***contingent delegates***" exchanged their lanyards for full delegate status and the first **APC meeting** was held and the founding executive was elected. **Jean Chretien** was elected Liberal Leader at the Convention as the **Meech Lake Accord** died and two weeks later the so-called "***Oka Crisis***" began.

Despite much resistance from within the **LPC** from **Jean Chretien's Chief of Staff**, **Eddie Goldenburg**, on down to **LPC** M.P.'s, Senators and staff the **APC** succeeded in getting a **1993 LPC Aboriginal Electoral Platform** adopted, both **Chapter 7 of the Red Book** and a longer version, which **Jean Chretien** announced in October 1993 on the campaign trail.

However, once the **LPC** formed a majority government in November 1993, it became clear that **Chretien** and **Goldenburg** had their own ideas and systematically broke or manipulated the **1993 Liberal Aboriginal Promises**.

Aboriginal Peoples' Commission

Logo of the Aboriginal Peoples' Commission of the Liberal Party of Canada

The federal Liberal government of **Jean Chretien** named his crony **Ron Irwin** as **Minister of Indian Affairs** who without consultation imposed a **1995 Aboriginal Self-Government Policy**, which they called an "***Inherent Right***" policy when it is anything but that!

On top of that **Paul Martin**—who was **Co-Chair of the 1993 Liberal Platform Committee**—as **Liberal Finance Minister** imposed a **2% cap on all First Nation programs**, which is still in place even though he became Prime Minister in 2005.

In 1996, **Chretien** and **Irwin** while ignoring the **Liberal Aboriginal Platform promises** launched an **Indian Act** amendment process that started with a few innocuous clauses like

'FN's & Voting' conclusion from page 6

extending terms of office for Chiefs and Council, but turned into a major re-write of the **Indian Act** to give Ottawa bureaucrats more power to control and manage **Indian Act** bands.

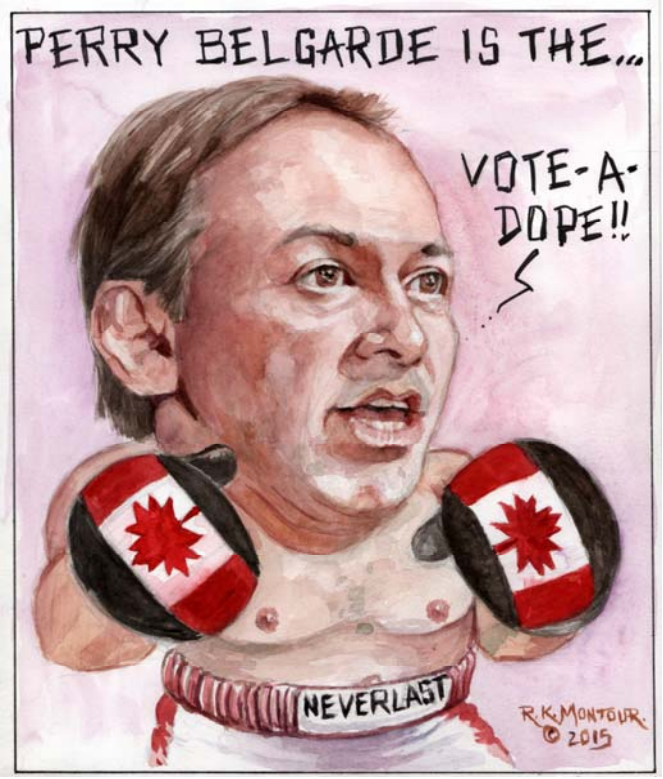
That same year, I became the **Assembly of First Nation Indian Act Amendments Coordinator** under then **National Chief Ovide Mercredi** and after analyzing the **Indian Act** amendment package advised the Chiefs-in-Assembly that the proposed changes were worse than the status quo.

The Chiefs' agreed and we launched a campaign to oppose the prosed **Indian Act** amendment package, Ron Irwin introduced it into Parliament as **Bill C-79**, the **Indian Act Optional Modification Act**, it died on the order paper when the 1997 federal election was called. **Ron Irwin** didn't run again so **Chretien** rewarded him with an appointment as **Ambassador to Ireland** where the residence is said to be spectacular.

It was in 1996, when then **AFN National Chief Ovide Mercredi**, burned the Liberal Red Book in front of the Ottawa Convention Centre while the **Liberal Biennial Policy Convention** was taking place. My fellow **APC founding executive members**, **David Nahwegahbow**, **Marilyn Buffalo** and I were there to support **National Chief Mercredi**. We told the national media then that **Jean Chretien** had personally betrayed and deceived us by breaking the **1993 Liberal Aboriginal promises**!

Following that in 2000, the federal Liberal government of **Jean Chretien** tried to impose a re-packaged version of the **Indian Act** amendments as the **First Nation Governance Act** (**FNGA**), along with a suite of legislation that was contrary to the **1993 Liberal Platform**. The **FNGA** was defeated—some say by **Paul Martin**—but that would take way from the strong First Nations resistance and filibustering at the **HoC Standing Committee on Indian Affairs and Northern Development** by **NDP M.P. Pat Martin** and **BQ M.P. Yves Loubier**.

After my experience both inside and outside of the **LPC** (I ceased to be involved with the **LPC** after 1994 and I haven't been affiliated with any party since). I have to say it is a bad idea to get involved in the federal voting process as individual First Nation Persons.



Editorial Cartoon by Kahnawake Mohawk, Kakwirakeron Ross Montour.

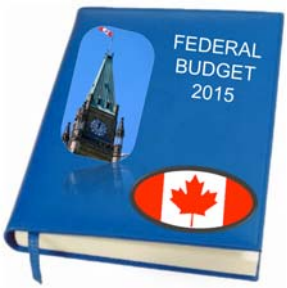
I have yet to see any platform from any federal party that convinces me they will stop implementing the **federal First Nations Termination Plan** and respect our pre-existing sovereignty and right of self-determination as Indigenous Peoples'.

AFN National Chief Perry Bellegarde's and other regional First Nation leaders promoting participating in the upcoming federal election are already compromised by representing those Chiefs/First Nations who are at a Termination Table where the outcome of negotiations will be final agreements accepting to extinguish Inherent, Aboriginal Title and historic Treaty Rights and to become ethnic minorities and Canadian Citizens, which the federal government calls "***Aboriginal Canadians***".

In other words, First Nation individuals who participate as candidates, or campaigning and voting in the upcoming federal Settler-State election for any of the federal Settler-State parties will be playing into Canada's Termination Plan to assimilate First Nations into the Canadian mainstream and undermining their Indigenous communities and Indigenous Nations right of self-determination.

[A version of this article was published by Ricochet.Media on July 30, 2015.]

Federal Budget Could Mark End of Duty to Consult with First Nations



L to R: PM Harper & Finance Minister Joe Oliver on budget day in Ottawa, April 21, 2015. (Photo courtesy of JUSTIN TANG / THE CANADIAN PRESS)

By Shiri Pasternak & Anna Stanley, June 3, 2015

Consultation dollars will now flow through mining corporations

Tens of millions in dollars for consultation processes on Aboriginal lands made it into the recently tabled federal budget, but not for First Nations.

The **Supreme Court of Canada** has said that the Crown must consult and accommodate First Nations when development threatens to infringe their rights. But Canada and the provinces have begun to offload that duty onto mining companies who seek to prospect on Aboriginal lands.

"Consultation will now be funded through mining tax credits that can be "flowed through" to investors to fund exploration and development activities"

Largely ignored in analyses of the federal budget is a new way of financing consultation with Indigenous communities at early stages of mineral exploration and mine development. Consultation will now be funded through mining tax credits that can be "***flowed through***" to investors to fund exploration and development activities.

Tax breaks assist firms to attract venture capital into the exploration industry in the face of assertions of Indigenous jurisdiction to lands and resources. There is no equivalent financing mechanism to transfer government revenues or lower costs to Indigenous groups who engage in consultation activities or who are impacted by resource development.

In fact, the **Department of Aboriginal Affairs and Northern Development** cut project funding in **2013-2014** to core operational capacity for First Nations organizations and tribal councils, which affected consultation and policy development budgets.

So while First Nations have been crippled in their capacity to respond to development activities on their lands, the public is now subsidizing industry's ability to negotiate with First Nations.

The federal government promises to consult industry stakeholders about the appropriate contours of what constitutes a "***consultation cost***."

But leaving this determination up to industry and the federal government carries significant concerns. While consultation costs may include relatively benign practices like public hearings and interpreters, it could also veer quickly into greyer areas, for example, gifting new band council offices. In that case, Canada would be financing infrastructure on reserves through subsidies to corporations, rather than directly allocating funds to bands to self-govern.

Most poignantly, these publicly subsidized consultation costs raise questions about how Canada is dealing with questions about underlying Aboriginal title. Could consultation costs include insurance premiums driven up by Indigenous assertions of sovereignty? Legal fees for injunctions served by First Nations to remove companies from their lands?

Tax credits appear to be part of a new resource management strategy that uses rights-based frameworks of consultation in order to eliminate the legal and political risks of Aboriginal title and gain easy access to Indigenous territories. Consultation dollars should be distributed evenly among parties by Canada; otherwise, the Canadian government fails to uphold its legal obligations to First Nations.

'Budget 2015' conclusion from page 8

The relevant **2015 federal budget sections** related to these measures are both located in a subsection called **Responsible Resource Development**.

Under the proposed changes, tax credits based on community consultation costs are now transferable from junior exploration mining companies to investors through something called the **flow-through share**. Put simply, the **FTS** reduces taxable income for investors.

In addition to the tax credits flowed through, a **15 per cent Mineral Exploration Tax Credit** also renewed in this budget offers additional incentive to investors to spend money in the exploration sector.

As well, if a firm decides not to flow through the credits, they can be banked indefinitely and used against future income.

This tax-based financing mechanism has the potential to increase development on Indigenous land throughout the country.

It is also especially significant given the changes proposed to the **Canadian Exploration Expenses tax category**, which has been redefined in the **2015 federal budget** to include costs incurred by firms related to "***consultation***" with Indigenous communities in the context of mineral exploration and early-stage mine development.

These costs are also now eligible for **FTS** arrangement. Firms will be able to "***flow***" expenses associated with consultation through to investors (refundable at 100 per cent) in exchange for cash to finance exploration and development initiatives.

These costs could include the negotiation of **Impact Benefit Agreements**, **memoranda of understanding**, **exploration agreements**, and **consultation and accommodations related to environmental assessments**, all of which are increasingly being undertaken at the exploration phase, and increasingly seen by governments to fulfill the Crown's duty to consult with and accommodate First Nations.

Total lost government revenue from both **FTS** and **CEE** measures together is about **$56 million**. **Finance Minister Joe Oliver** suggests this will "***enhance***" consultation with Indigenous communities and make resource development more responsible.

Industry has been lobbying hard for this change, but inclusion of what industry now terms "***community consultation costs***" has typically been disallowed. Since the passage of the **2012 budget**, however, there is increasing evidence that inclusion of these costs has been allowed by the **Canada Revenue Agency**.

The **Association for Mineral Exploration British Columbia** welcomed the measures contained in this year's federal budget, couching their financial benefit in the language of consultation: "***We particularly appreciate the recognition of community consultation costs, as the industry places a high level of importance on engaging communities about the opportunities, impacts and benefits of mineral exploration and development.***"

Industry is happy to take government money to strike deals with First Nations. Through these subtle tax changes, the government is devolving its duty to consult into private contracts. By shirking its fiduciary obligations, Canada subverts the rightful jurisdiction of Indigenous peoples to govern their lands and resources.

[Reprinted courtesy of Ricochet.Media]

"Through these subtle tax changes, the government is devolving its duty to consult into private contracts. By shirking its fiduciary obligations, Canada subverts the rightful jurisdiction of Indigenous peoples to govern their lands and resources"

Imperial Metals Mount Polley spill in B.C. on August 4, 2014.

*UN Human Rights Committee—Concluding Observations on the Sixth Periodic Report of Canada**

* Adopted by the Committee at its 114th session (29 June–24 July 2015).

1. The Committee considered the sixth periodic report submitted by Canada (CCPR/C/CAN/6) at its 3176th and 3177th meetings (CCPR/C/SR.3176 and CCPR/C/SR.3177), held on 7 and 8 July 2015. At its 3192nd meetings (CCPR/C/SR 3192), held on 20 July 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Canada. It expresses appreciation for the opportunity to pursue its constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for its written replies (CCPR/C/CAN /Q/6 /Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) Adoption of the Human Rights Act of the Province of Newfoundland and Labrador, in 2010;

(b) Adoption of the Domestic Relations Act in the Prince Edward Island that legalizes same-sex marriage, in 2008;

(c) Changes in Ontario's human rights system that allows direct complaints to the Human Rights Tribunal of Ontario.

4. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities, on 11 March 2010.

C. Principal matters of concern and recommendations

Views under the Optional Protocol

5. The Committee is concerned about the State party's reluctance to comply with all Committee's Views and Interim Measures under the Optional Protocol and the Covenant in particular when they relate to recommendations to re-open Humanitarian and Compassionate applications. The Committee regrets the lack of an appropriate mechanism in the State party to implement Views of the Committee, with a view, *inter alia*, to providing victims with effective remedies (art.2).

The State party should reconsider its position in relation to Views and Interim measures adopted by the Committee under the First Optional Protocol. It should take all necessary measures to establish mechanisms and appropriate procedures to give full effect to the Committee's Views so as to guarantee an effective remedy when there has been a violation of the Covenant. The Committee draws the attention of the State party to its General Comment No. 33 (2009).

Business and Human Rights

6. While appreciating information provided, the Committee is concerned about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations and about the inaccessibility to remedies by victims of such violations. The Committee regrets the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations that adversely affect the enjoyment of the human rights of victims, and of a legal framework that would facilitate such complaints (art. 2).

"the Committee is concerned about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations"

'UN Committee' continued from page 10

The State party should: a) enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations, in particular mining corporations, under its jurisdiction respect human rights standards when operating abroad; b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; c) and develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad.

Gender equality

7. The Committee is concerned about the persisting inequalities between women and men. In particular, the Committee is concerned about: a) the high level of the pay gap, which is more pronounced in some provinces such as Alberta and Nova Scotia and disproportionately y affects low-income women, in particular minority and indigenous women; b) the fact that the legislation relating to equal pay differs at federal, provincial and territorial levels and for the public and private sectors, and does not exist in some provinces; d) the underrepresentation of women in leadership positions in the public and private sectors and; e) the failure to enforce or ensure employment equality in the private sector across the country. It further regrets that the State party has not yet adopted regulations to implement the Public Sector Equitable Compensation Act (art. 3).

The State party should strengthen its efforts to guarantee that men and women receive equal pay for work of equal value across its territory with a special focus on minority and indigenous women. It should ensure that all provinces and territories adopt a legislative framework on equal pay, covering the public and private sectors; and take measures to implement the recommendations of the Pay Equity Task Force at all levels. The State party should promote better representation of women in leadership positions both in private and public sectors and ensure effective remedies to women who are victims of gender-based discrimination.

Violence against women

8. The Committee is concerned about the continued high prevalence of domestic violence in the State party, in particular violence against women and girls, that mostly affects indigenous and minority women. The Committee is also concerned about reports of: a) the low number of cases reported to the police by victims; b) the insufficiency of shelters, support services and other protective measures for victims that reportedly prevent them from leaving their violent partner and; c) a failure to effectively investigate, prosecute, convict, and punish perpetrators with appropriate penalties. The Committee is further concerned about the lack of statistical data on domestic violence including on investigations, prosecutions, convictions, sanctions and reparation (arts. 3, 6, 7).

The State party should enhance its efforts to firmly combat domestic violence including violence against women in all forms, paying particular attention to minority and indigenous women. Specifically, the State party should: a) take measures to effectively enforce its criminal legislation at federal, provincial and territorial levels; b) provide complaint mechanisms to victims of domestic violence, protect them from any retaliation and provide them with support at the police level; c) investigate all reported cases, prosecute, and punish those responsible with appropriate penalties; d) increase the number of shelters, support services and other protective measures and; e) effectively implement policies and programs adopted at all levels and ensure an effective application of the Victims Bill of Rights Act.

Murdered and Missing Indigenous women and girls

9. The Committee is concerned that indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances. Notably, the Committee is concerned about the State party's reported failure to provide adequate and effective responses to this issue across the territory of the State party. While noting that the Government of British Columbia has published a report on the Missing Women

MMIWG Rally on Parliament Hill. (Photo courtesy of FRED CHARTRAND / THE CANADIAN PRESS)

"Committee is concerned that indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances"

'UN Committee' continued from page 11

Elsipogtog Land Defenders

Commission of Inquiry and adopted legislation related to missing persons, and the Government of the State party is implementing the Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls , the Committee is concerned about the lack of information on measures taken to investigate, prosecute, and punish those responsible (arts. 3, 6).

The State party should, as a matter of priority: a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; b) review its legislation at the federal, provincial and territorial levels and coordinate police responses across the country with a view to preventing the occurrence of such murders and disappearances; c) investigate, prosecute and punish the perpetrators and provide reparation to victims and; d) address the root causes of violence against indigenous women and girls.

"Committee is concerned about reports of the excessive use of force by law enforcement officers during mass arrests in the context of protests at federal and provincial levels, with particular reference to indigenous land-related protests"

Counter-terrorism

10. The Committee takes note of the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to prevent such acts. However, the Committee is concerned about information according to which: a) Bill C-51 amendments to the *Canadian Security Intelligence Act* confers a broad mandate and powers on the Canadian Security Intelligence Service (CSIS) to act domestically and abroad, thus potentially resulting in mass surveillance and targeting activities that are protected under the Covenant without sufficient and clear legal safeguards; b) Bill C-51 creates under the *Security of Canada Information Sharing Act*, an increased sharing of information among federal government agencies on the basis of a very broad definition of activities that undermine the security of Canada which does not fully ensure that inaccurate or irrelevant information is shared ; c) Bill C-51 codifies a no-fly list programme without a clear procedure to inform the person concerned on its status, allowing a judicial review that may be conducted in secret, and to which the system of special advocates does apply. The Committee is also concerned about the lack of adequate and effective oversight mechanisms to review activities of security and intelligence agencies and the lack of resources and power of existing mechanisms to monitor such activities (arts. 2, 14, 17, 19, 20, 21, 22).

The State party should refrain from adopting legislation that imposes undue restrictions on the exercise of rights under the Covenant. In particular, it should: a) ensure its anti-terrorism legislation provides for adequate legal safeguards and does not undermine the exercise of the rights protected under the Covenant; b) consider revising Bill C-51 to ensure that it complies with the Covenant ; c) provide adequate safeguards to ensure that information-sharing under the *Security of Canada Information Sharing Act* does not result in human rights abuses; d) establish oversight mechanisms over security and intelligence agencies that are effective and adequate and provide them with appropriate powers as well as sufficient resources to carry out their mandate; e) provide for judicial involvement in the authorization of surveillance measures and; f) establish a clear procedure that allows persons placed on the no-fly list to be promptly informed and able to challenge such a decision through judicial review, with the legal assistance of counsel.

Excessive use of force during protests and police accountability

RCMP at Elsipogtog.

11. The Committee is concerned about reports of the excessive use of force by law enforcement officers during mass arrests in the context of protests at federal and provincial levels, with particular reference to indigenous land-related protests, G20 protests in 2010 as well as student protests in Quebec in 2012. The Committee is also concerned about reports that complaints are not always promptly investigated and the lenient nature of sanctions imposed. While noting efforts by the State party to establish oversight and accountability mechanisms to investigate serious incidents involving the police at the federal, provincial and territorial levels, the Committee is concerned about reports of the lack of effectiveness of such mechanisms. The Committee regrets the lack of statistical data on

'UN Committee' continued from page 12

all complaints, investigations, prosecutions, convictions and sanctions imposed on police officers at all levels (art. 7).

The State party should strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by strong independent oversight bodies with adequate resources at all levels, and that those responsible for such violations are prosecuted and punished with appropriate penalties.

Immigration detention, asylum-seekers and non-refoulement

12. The Committee is concerned that individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time and that under Section 20.1 (1) of the Immigration and Refugee Protection Act ("IRPA"), any migrant and asylum-seeker designated as an "irregular arrival" would be subject to mandatory detention , or until the asylum-seeker's status is established, and would not enjoy the same rights as those who arrive "regularly". The Committee is also concerned that individuals who are nationals of Designated Country of Origin are denied an appeal hearing against a rejected refugee claim before the Refugee Appeal Division and are only allowed judicial review before the Federal Court, thus increasing a risk that those individuals may be subjected to *refoulement*. The Committee is further concerned about the 2012 cuts to the Interim Federal Health Program which has resulted in many irregular migrants losing access to essential health care services (arts. 2, 7, 9, 13).

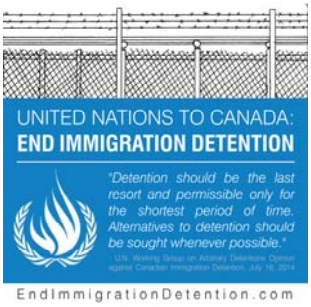
The State party should refrain from detaining irregular migrants for an indefinite period of time and should ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention. The State party should review the Immigration and Refugee Protection Act in order to provide refugee claimants from "safe countries" with access to an appeal hearing before the Refugee Appeal Division. The State party should ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status.

13. The Committee is concerned that subsection 115 (2) of the Immigration and Refugee Protection Act provides for two exceptions to the principle of *non-refoulement* which may result in deporting migrants that are at risk in their country of origin. The Committee is also concerned at reports that individuals under the security certificate mechanism may be subject to deportations when due process guarantees are limited. In such cases, judicial review may take place in secret and the special advocates appointed to assist individuals cannot independently and properly seek evidence on behalf of their clients, because the Court can be requested to withhold information and evidence by the Minister of Public Safety and Immigration under Bill C. 51. The Committee is further concerned that Bill C-60 may prevent certain individuals from applying for protection on the basis of crimes committed, thus posing a risk of *refoulement* (arts. 2, 9, 13).

The State party should consider amending subsection 115 (2) of the IRPA to fully comply with the principle of non-refoulement. The State party should also ensure that the application of the security certificate is not detrimental to the rights protected under the Covenant and does not result in unlawful deportations, and should allow special advocates to seek all evidence that may be necessary to represent their clients. The State party should reconsider Bill C-60 to ensure that all individuals in need of protection may apply to have their requests appropriately examined.

Prison conditions

14. The Committee is concerned about: a) the high level of overcrowding in some detention facilities in the State party; b) the many cases of administrative or disciplinary segregation, sometimes for long periods of time, including of detainees with mental illness; c) reports of insufficient medical support to detainees with serious mental illness; d) reported suicides in detention in particular among indigenous inmates and; e) lack of in-



"Committee is concerned that individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time"

'UN Committee' continued from page 13

formation on the impact of the Mental Health Strategy within Correctional Service of Canada (art.10).

The State party should take appropriate measures to effectively reduce overcrowding in detention facilities, including by increasing the use of alternative means of detention. It should also limit effectively the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness. The State party should effectively improve access to, and the capacity of, treatment centres for prisoners with mental health issues at all levels.

Freedoms of expression, peaceful assembly and association

15. While noting explanations provided by the State party, the Committee is concerned about reports of increased repression of mass protests in the State party, such as those which occurred in the G.20 Summit in 2010, in Quebec in 201 , and the disproportionate number of arrests of participants. The Committee is also concerned by the level of apprehension within a broad sector of civil society about the State party's current policies in the areas of political, social and human rights advocacy. The Committee is further concerned at the ambit of section 149.1 of the Income Tax Act relating to donations to non-governmental organisations registered as charities whose activities are considered as political activities when they relate to the promotion of human rights (arts.19, 21, 22.)

"the Committee is concerned about reports of the potential extinguishment of indigenous land rights and titles. It is concerned that land disputes between indigenous peoples and the State party which have gone on for years impose a heavy financial burden in litigation on the former"

The State party should renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression. It should take all appropriate measures to avoid unnecessary obstacles and restrictions, legally or in practice, against the activities of civil society organizations. The State party should effectively protect the exercise of the freedom of peaceful assembly and avoid restrictions that are not proportionate. The State party should take measures to ensure that the application of section 149.1 of the Income Tax Act does not result in unnecessary restrictions on the activities of non-governmental organisations defending human rights. The State party should consider developing a well-structured dialogue with civil society and indigenous peoples, to restore confidence in the State party's commitment in this area.

Indigenous lands and titles

16. While noting explanations provided by the State party, the Committee is concerned about reports of the potential extinguishment of indigenous land rights and titles. It is concerned that land disputes between indigenous peoples and the State party which have gone on for years impose a heavy financial burden in litigation on the former. The Committee is also concerned at information that indigenous peoples are not always consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them, including legislation, despite favourable rulings of the Supreme Court (arts. 2, 27).

The State party should consult indigenous people: a) to seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights and b) to resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.

Indian Act

17. While noting the position of the State party, the Committee is concerned about the slow application of the 2011 Gender Equity in Indian Registration Act that amends the Indian Act, to remove reported lasting discriminatory effects against indigenous women, in particular regarding the transmission of Indian status, preventing them and their descendants from enjoying all of the benefits related to such status (arts. 2, 3, 27).

The State party should speed up the application of the 2011 Gender Equity in Indian Registration Act and remove all remaining discriminatory effects of the Indian Act that affect indigenous women and their descendants, so that they enjoy all rights on equal footing with men.

'UN Committee' conclusion from page 14

Overrepresentation in criminal justice and access to justice for indigenous peoples

18. The Committee is concerned at the disproportionately high rate of incarceration of indigenous people, including women, in federal and provincial prisons across Canada. The Committee is also concerned that Aboriginal people continue to face obstacles in recourse to justice (arts. 2, 10, 14).

The State party should ensure the effectiveness of measures taken to prevent the excessive use of incarceration of indigenous peoples and resort, wherever possible, to alternatives to detention. It should enhance its programs enabling indigenous convicted offenders to serve their sentences in their communities. The State party should further strengthen its efforts to promote and facilitate access to justice at all levels by indigenous peoples.

Situation of indigenous peoples

19. While noting measures taken by the State party, the Committee remains concerned about: a) the risk of disappearance of indigenous languages; b) some indigenous people lacking access to basic needs; c) child welfare services which are not sufficiently funded; e) the fact that appropriate redress not yet being provided to all students who attended the Indian Residential Schools (arts. 2, 27).

The State party should in consultation with indigenous people: a) implement and reinforce its existing programmes and policies to supply basic needs to indigenous peoples; b) reinforce its policies aimed at promoting the preservation of the languages of indigenous peoples; c) provide family and child care services on reserves with sufficient funding and; d) fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools.

20. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of its sixth periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into official languages and the minority languages of the State party.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 9 (murdered and missing indigenous women and girls), 12 (immigration detention, asylum-seekers and non-refoulement) and 16 (indigenous lands and titles) above.

22. The Committee requests the State party to submit its next periodic report by 24 July 2020 and to include specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee requests the State party, in the preparation of the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

United Nations Human Rights Committee, Geneva, Switzerland, July 7, 2015. (Photo courtesy of Alex Neve)

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

First Nations Strategic Policy Counsel

Innisfil, Ontario

Phone: (613) 296-0110

E-mail: rdiabo@rogers.com

The First Nations Strategic Counsel is the organizational name under which the First Nations Strategic Bulletin has been published since 2002. We want to expand the work of the Bulletin, and thus the Counsel, by creating a more responsive publishing outlet for critical analysis of Indigenous policy and law.

It's a big job and will take a lot of time and work. But we're thinking we could phase in the project gradually - begin by uploading all the Bulletins in a searchable format, on a new website and slowly begin soliciting original content and material.

We hope to launch a new website and expand our work over the next six months. We will give notice as this happens.

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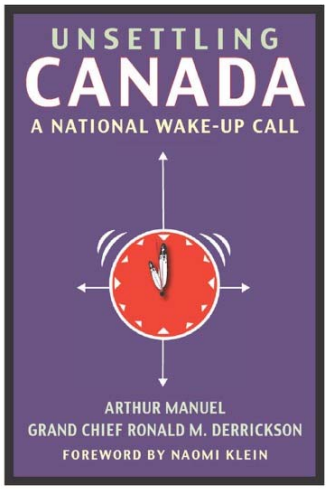
UNSETTLING CANADA: A National Wake-Up Call

UNSETTLING CANADA is built on a unique collaboration between two First Nations leaders, Arthur Manuel and Grand Chief Ron Derrickson.



Right to left Vera Manuel (1949-2010) my mother Marceline, holding my bother Richard with Bobby (1947-1998) standing to her right. I am directly in front of Bobby, my sister Arlene is on my left. Neskonlith, 1962

My school picture, Chase B.C. 1962.

With my father, Grand Chief George Manuel. Edmonton Alberta,1969.

Both men have served as chiefs of their bands in the B.C. interior and both have gone on to establish important national and international reputations. But the differences between them are in many ways even more interesting. Arthur Manuel is one of the most forceful advocates for Aboriginal title and rights in Canada and comes from the activist wing of the movement. Grand Chief Ron Derrickson is one of the most successful Indigenous businessmen in the country.

Together the Secwepemc activist intellectual and the Syilx (Okanagan) businessman bring a fresh perspective and new ideas to Canada's most glaring piece of unfinished business: the place of Indigenous peoples within the country's political and economic space. The story is told through Arthur's voice but he traces both of their individual struggles against the colonialist and often racist structures that have been erected to keep Indigenous peoples in their place in Canada.

In the final chapters and in the Grand Chief's afterword, they not only set out a plan for a new sustainable indigenous economy, but lay out a roadmap for getting there.

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