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FIRST NATIONS STRATEGIC POLICY COUNSEL

Our Right of Indigenous Self-Determination is Being Hijacked by Trudeau: *Recognition & Implementation of Rights Framework*

Justice Minister Jody Wilson-Raybould embraces Prime Minister Justin Trudeau after he announces a "**Recognition & Implementation of Rights Framework**" based upon her work as AFN-BC Regional Chief. (Feb. 14, 2018)

By Russell Diabo

The most important right recognized in the **United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**) is the right of Indigenous Peoples to self-determination. This is now enshrined in **Article 3** of **UNDRIP**, which replicates **Article 1(1)** of the **International Covenant on Civil and Political Rights** (**ICCPR**) and the **International Covenant on Economic, Social and Cultural Rights** (**ICESCR**) and makes it clear that this right applies to Indigenous Peoples.

The right to self-determination is the overarching umbrella right; much of its essence is then spelled out further in **UNDRIP**, in regard to land rights, governance and Indigenous free prior informed consent (**FPIC**).

Indigenous **FPIC** and therefore Indigenous decision-making power regarding access to our lands and resources has to be recognized if **UNDRIP** implementation is real. As we can see from the actions, policy and legislation of the Trudeau government to date, the version of **UNDRIP** the **United Nations General Assembly** adopted in 2007 is not the same version cooked up in the Liberal backrooms of Ottawa and now being imposed by the Trudeau Liberal government.

According to Mr. Stefan Matiation, Acting Director General and Senior General Counsel, Aboriginal Affairs Portfolio, Department of Justice, who testified before the Standing Committee on Indigenous and Northern Affairs on March 1, 2018, regarding **Bill 262, an act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples**:

> *The UN declaration is the declaration of the United Nations, and its role in Canadian law is to serve as an*

Special points of interest:

- **Trudeau's Hijacking our right of Self-Determination**
- **Questioning Trudeau about his Legislative Framework!**
- **Interior Salish Peoples & Nations Speak Out!**
- **Bill C-69 ignores UNDRIP & FPIC!**
- **Free Decolonization Handbook!**

Inside this issue:

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Pierre & Justin Trudeau, father & son.

> ***interpretive tool*** *that courts can use in interpreting legislation and in interpreting Canadian law.*
>
> *Bill C-262, in section 3, refers to the application of the UN declaration in Canadian law. That's consistent with the way courts can draw on international instruments, like the UN declaration, today as* ***interpretative sources of guidance****.*
>
> *…I think the key thing with the UN declaration is that it is an* ***aspirational document*** *that describes the rights of indigenous peoples".* [emphasis added]

In my view, the Trudeau government's interpretation of **UNDRIP** cited above, means the federal definition is being used to camouflage the longstanding federal objective of terminating the collective Inherent, Aboriginal and Treaty rights of First Nations by a process of re-colonizing First Nations through federal "*framework*" legislation.

Trudeau's Recognition & Implementation of Rights Framework

"Although there aren't many details yet, the Federal Budget 2018 Reconciliation Chapter does provide some indication of what the federal "Framework" will likely look like"

On February 14, 2018, Prime Minister Justin Trudeau made a Statement in the House of Commons regarding a **Recognition and Implementation of Rights Framework**.

Although there aren't many details yet, the **Federal Budget 2018** Reconciliation Chapter does provide some indication of what the federal "*Framework*" will likely look like. This is a major announcement by the Trudeau government that it intends to introduce "*Framework*" legislation into Parliament in 2018 and passing it into law by 2019. If it passes, regardless of the details, it will have major impacts on the lives of this generation and generations to come.

In summary, on Valentine's Day, the Prime Minister announced:

- A new **Recognition and Implementation of Indigenous Rights Framework** that will include new ways to recognize and implement Indigenous Rights.
- This will include new **recognition and implementation of rights legislation**.
- The Prime Minister said the contents of the Framework will be determined through **a national engagement**, led by the Minister of Crown-Indigenous Relations and Northern Affairs, with support from the Minister of Justice.

Former PM Chretien & current PM Trudeau

- The Prime Minister said the federal government will be **engaging the provinces and territories**, and **non-Indigenous Canadians**: people from civil society, from **industry** and the **business community**, and the **public at large**.
- The Prime Minister said the results of this engagement will guide what the final Framework looks like, as a starting point, he believes it **should include new legislation and policy** that would make the recognition and implementation of rights the basis for all relations between Indigenous Peoples and the federal government moving forward.
- The Prime Minister said through this new Framework, he can better align Canada's laws and policies with the **United Nations Declaration on the**

'Hijacking by Trudeau' continued from page 2

Rights of Indigenous Peoples, a declaration he says his government supports without qualification.

- The Prime Minister said he believes that a Framework that includes measures like these will finally bring to life many of the recommendations made by the **Royal Commission on Aboriginal Peoples**, the **Truth and Reconciliation Commission**, and countless other studies and reports over the years.
- The Prime Minister said some may worry that this ambitious approach may require re-opening the Constitution. The Prime Minister said this is not true.
- The Prime Minister said, in fact, by fully embracing and giving life to the existing Section 35 of the Constitution, **he will replace policies like the Comprehensive Land Claims Policy and the Inherent Right to Self-Government Policy with new and better approaches** that respect the distinctions between First Nations, Inuit, and Métis peoples.
- The Prime Minister said **Engagement will continue throughout the spring**, but it is his firm intention to **have the Framework introduced this year, and implemented before the next election**.
- The Prime Minister said **this work will involve not only the government, but also this Parliament. Committee work, witnesses, strong debate – in both Houses**.
- The Prime Minister said we all know that we cannot erase the past. **We cannot bring back the things that we have lost**.

Analysis of PM's Planned "Framework" on "Rights Recognition" & Budget

From the information I have reviewed it's now clear to me that the core of the planned federal "*legislative framework*" is to transition bands currently under the **Indian Act** into "*self-government*" or "*comprehensive claims*" agreements, which the Trudeau government is falsely calling "*self-determination*". For clarity, bands currently under the **Indian Act** include those that are historic Treaty Nations, including the Numbered Treaties, where reserved lands were set aside under a historic Treaty. What this means for historic Treaty Nations is their internationally recognized Treaties made with Great Britain and Ireland, will become domesticated under Canada's section 35 legal doctrine through Trudeau's new "*framework*". This '*framework*' would forever change the legal, historic treaty relationship; a legal obligation that was inherited by Canada as a successor State. This new '*framework*' relationship effectively moves historic Treaty Nations under Canada through a special track of '*self-government*' disguised as self-determination.

The federal "*framework*" comes from a proposal for federal and provincial "*recognition legislation*" contained in an 805 page book called the "*Governance Toolkit*" prepared by **Justice Minister Jody Wilson-Raybould and her husband** while she was **AFN-BC Regional Chief** in 2013.

Jody's 2013 proposal was based on her experience in working with then **Conservative Senator Gerry St. Germaine** on **Senate Bill S-212** called **An Act providing for the recognition of self-governing First Nations of Canada**. The Bill died in 2013.

L to R: Ed John, Shawn Atleo, Jody Wilson-Raybould, First Nations Summit.

"it's now clear to me that the core of the planned federal "legislative framework" is to transition bands currently under the Indian Act into "self-government" or "comprehensive claims" agreements, which the Trudeau government is falsely calling "self-determination"

Jody Wilson-Raybould as Co-Chair of Liberal Convention.

Prime Minister Justin Trudeau & Jody Wilson-Raybould.

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It seems along the lines of **Bill S-212**, the Trudeau government plans to elevate the 1995 so-called "*Inherent Right*" self-government policy (see Pages 14-15) into federal law and financially facilitate **Indian Act** bands into self-government agreements or "*modern Treaties*", along with the "*Indigenous Governments*" already created through "*self-government*" agreements and "*modern treaties*".

To be clear, **Prime Minister Justin Trudeau** and his Justice Minister's **Recognition & Implementation of Rights Framework** is based on the existing 0.2% Reserve land base/economy unless some additional parcels of land can be returned via federal (comprehensive and specific) land claims policies and even then the federal long-term objectives are to eliminate Indian Reserves! This 0.2% limited land base economy presumes that Canada has exclusive control and jurisdiction over Indigenous lands, particularly the lands of historic Treaties, including Treaties 1-11. They use their settler colonial legal regimes to continue with their ongoing oppression of Indigenous peoples through the illusionary ownership of our lands.

"Recognition & Implementation of Rights Framework is based on the existing 0.2% Reserve land base/economy unless some additional parcels of land can be returned via federal (comprehensive and specific) land claims policies"

Unlike the United States where Native American Tribes have a degree of Internal Sovereignty recognized by federal and State governments, the Canadian colonial federal government considers **Indian Act** band councils "*non-governing*" because:

> *Many of Canada's First Nation communities are still governed by the **Indian Act**, and are referred to as Bands. This means that their reserve lands, monies, other resources and governance structure are managed by the provisions in the **Indian Act**.*

This means **Indian Act** "*bands*" and "*band councils*" are subject to the colonial Minister's and the Department's discretion regarding program and capital funding, reserve management and social development, particularly "*bands*" located on "*reserves*" governed by the **Indian Act**. Until **Indian Act** bands develop their own governance, laws and legal structures based on their inherent authority exercising their inherent jurisdiction, the colonial regime will continue to apply.

This is how Canada continues to control Indigenous peoples, lands and territories—the final nail in the coffin to get rid of the "*Indian Problem*"—is the development and passing of Trudeau's new '*framework*'. **Justin Trudeau** is finishing the work that his father, **Pierre Elliot Trudeau** started with the **1969 White Paper on Indian Policy**.

"*Aboriginal and Treaty rights*" are not part of the **Indian Act** they are "*recognized and affirmed*" in section 35 of Canada's constitution.

Supreme Court of Canada building.

Since 1990, the **Supreme Court of Canada** has been defining section 35 rights and a legal framework is now developed based on a series of court decisions setting out legal principles and tests for proving and establishing rights, including Aboriginal Title.

The issue of whether or not "*self-government*" is an Inherent right or a conditional, delegated matter, subject to reaching agreements with the federal and provincial governments, was the main issue during the constitutional talks in the 1980's. Those talks ended in failure and the **Supreme Court of Canada** took over inter-

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Canada

Indigenous and Northern Affairs Canada

The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government

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preting section 35 rights, but so far the court has not ruled on whether or not self-government is an Aboriginal right.

In 1995, the federal government of **Prime Minister Jean Chretien** unilaterally issued the so-called "*Inherent Right*" **Aboriginal Self-Government policy**, which prompted hundreds of bands to begin negotiating "*self-government*". After this, the "*self-government*" component was added to "*Modern Treaty*" negotiations by the federal government as well. According to information I have seen, there are 22 final agreements involving this policy, 18 are part of a comprehensive claims agreement (Modern Treaty).

In 1996, the **Supreme Court of Canada** issued an **Aboriginal rights test** in the ***Van Der Peet*** decision. The legal test for this is as follows:

> *The right must involve an activity that was a "practice, tradition or custom [that] was a central and significant part of the [Aboriginal] society's distinctive nature.*
>
> *The activity must have existed prior to contact with European settlers.*
>
> *The activity, even if evolved into modern forms, must be one that continued to exist after 1982, when the Constitution Act was passed.*

The federal "*Inherent Right*" self-government policy makes it clear that the "*inherent right of self-government does not include a right of sovereignty in the international law sense*".

A federal policy document called "*DRAFT Self-Government Fiscal Policy Proposal for Federal Review Collaborative Fiscal Policy Development Process, December 13, 2017*" now defines "*Indigenous Governments*" as follows:

> *"Indigenous Governments" are defined as those Indigenous Governments operating under various self-government regimes, including:*
>
> *7.1. A comprehensive land claim agreement which includes a comprehensive self-government component;*
>
> *7.2. A comprehensive agreement on self-government; or*
>
> *7.3. A legislated comprehensive self-government arrangement.*

"The federal "Inherent Right" self-government policy makes it clear that the "inherent right of self-government does not include a right of sovereignty in the international law sense"

So, when **Prime Minister Justin Trudeau**—or his Ministers—say the coming federal "*framework*" is to "*recognize and implement*" Indigenous "*rights*" it means as unilaterally defined by federal self-government, comprehensive claims policies and under the new "*framework*" being developed in secret with little to no Indigenous input, especially from grassroots title and rights holders.

The federal Ministers have already said publicly that section 35 is a "*full box*" of rights and that the final self-government agreements and comprehensive claims settlements represent the "*free, prior, informed consent*" of Indigenous Peoples. So the federal government will likely say their new "*framework*" fulfills their constitutional obligations and the implementation of the **United Nations Declaration on the Rights of Indigenous Peoples**.

Office of the High Commissioner for Human Rights
Minority Rights

'Hijacking by Trudeau' continued from page 5

A March 2, 2018, **Macleans** article on "*Jody Wilson-Raybould's Vison to Save Canada*", by **John Geddes**, now confirms that the federal "*Framework*" comes from a coastal British Columbia centric perspective epitomized by the Justice Minister herself:

> *Last summer, it was the justice minister who released a list of the 10 principles that will guide the Liberal government's attempt to reboot Ottawa's relationships with First Nations, Inuit and Métis. The first principle: "All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government." For those who knew about the [Governance] Toolkit, the detailed, systematic approach behind the 10 principles was more than familiar.*
>
> *Then, in February, Trudeau gave a major speech in the House announcing the start of consultations toward passing into law what he called a "framework" for recognizing Indigenous rights. Again, the approach and language seemed to come straight from the [Governance] Toolkit, where Wilson-Raybould had emphasized in the preface the need to "establish the legal and political framework for implementing First Nations governance."*
>
> *But "framework" isn't exactly a self-explanatory word. The problem it aims to solve is how First Nations that are fed up with being governed under the reviled Indian Act must embark on lengthy negotiations with Ottawa, and often end up going to court to settle disputes that arise in the bargaining. In the end, the federal cabinet must separately approve each deal.*
>
> *The framework would, in theory, speed up and clarify the process. For example, Wilson-Raybould says it will probably set out that a First Nation can decide who its citizens are and devise its own governing institutions, while in other areas—likely including policing and education—discussions with the federal government will still be needed.*

"Canada is developing legislation and policy without Indigenous peoples' input, passing it off as co-development and collaboration under the guise of reconciliation and the rhetoric of a new 'nation to nation' relationship"

House of Commons where Liberals have a majority.

Clearly, this is not respecting the Indigenous Peoples' right of self-determination!

Once again, Canada is developing legislation and policy without Indigenous peoples' input, passing it off as co-development and collaboration under the guise of reconciliation and the rhetoric of a new '*nation to nation*' relationship.

The entire process leading up to **Jody Wilson-Raybould's** "*Framework*"—now endorsed by the Prime Minister and the federal Liberal Cabinet—has by-passed the people who collectively hold the Inherent, Aboriginal and Treaty rights. The right of self-determination Belongs to the Indigenous Peoples in the communities. Therefore, people in the communities must understand what's at stake and how future generations will be impacted by this new '*legal framework*'.

'Hijacking by Trudeau' continued from page 6

National Top-Down Secret Liberal Process

The Prime Minister and the AFN National Chief signed a **Memorandum of Understanding** (**MOU**) **on Shared Priorities** in June 2017, following the December 2016 creation of an **AFN-Canada Cabinet Committee** (Permanent Bilateral Mechanism).

A Bilateral Mechanism – this is an AFN-Federal Cabinet Committee where the AFN National Chief & Prime Minister meet annually and AFN delegations meet federal Ministers semi-annually on shared priorities as set out in the **AFN-Canada MOU.** In this joint committee, AFN is basically a rubber stamp because it does not control the funding, pen or process. Canada is using and funding the AFN to manufacture the consent of Indigenous peoples to forge ahead with top down processes giving the illusion that we want what they are developing for us.

Moreover, the Trudeau government is operating in secret through the following processes:

A Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples – Chaired by **Justice Minister & Attorney-General Jody Wilson-Raybould**, but includes the Ministers of Indigenous-Crown Relations, Indigenous Services, Fisheries, Oceans and the Canadian Coast Guard, Health, Families, Children and Social Development and Natural Resources. Supposedly, this working-group is to "*de-colonize*" Canada's laws & policies.

10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples – Released without consulting First Nation Chiefs or communities, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.

Dissolving/Splitting Department of Indian Affairs & Northern Development into two new departments – Announced without consultation with First Nation Chiefs or communities, including the National Indigenous Leaders who are supposedly the Trudeau government's partners.

Establishment of Recognition of Rights and Self-Determination Negotiation Tables across Canada – These were initially called "*exploratory tables*". The federal government initially kept it secret who is involved in the "*discussions*", they have now made the list public, but not what is being discussed at these tables. Reportedly, the outcomes from these tables will contribute to the planned policy and legislative "*Framework*" affecting Indigenous Peoples.

These federal processes are all behind closed door secret partisan Liberal government processes, including the processes to develop the federal "10 Principles" and split **INAC** into two departments.

What **Prime Minister Justin Trudeau** is now calling "rights *recognition and self-determination*" tables were previously called "*exploratory tables*" and it was previously reported that:

> *The exploratory tables, an arena for these new interpretations of section 35 to take form, could impact treaty negotiations, self-government powers and resource management across Canada — among other things under [ADM] Wild's responsibility.* [Source: Joe Wild, senior Assistant Deputy Minister for Treaties and Aboriginal Government INAC

"These federal processes are all behind closed door secret partisan Liberal government processes, including the processes to develop the federal "10 Principles" and split INAC into two departments"

'Hijacking by Trudeau' continued from page 7

June 4, 2016, ipolitics Article]

Incredibly, the discussions at these tables continue to remain secret even though they could be used to create new federal policy and law affecting Indigenous Peoples.

Federal 10 Principles on Indigenous Relationships

The federal government's "*10 Principles*" lessen and undermine those fundamental principles of international law.

The Federal "*10 Principles*" are based on the racist, colonial Christian **Doctrine of Discovery**. The **Doctrine of Discovery** is the instrument relied on by Canada to continue with its illusion of political and legal control over Indigenous lands, through its '*assertion of Crown sovereignty*', and by legal principles found in **Supreme Court of Canada** decisions dealing with the interpretation of Canada's section 35 legal doctrine.

"The Federal "10 Principles" are based on the racist, colonial Christian Doctrine of Discovery. The Doctrine of Discovery is the instrument relied on by Canada to continue with its illusion of political and legal control over Indigenous lands, through its 'assertion of Crown sovereignty'"

In the Federal "*10 Principles*" Canada does not refer to, but continues to rely on its **Constitution Act 1867**, which was unilaterally passed by a British parliament as the **British North America Act** 150 years ago. The Act effectively enshrine these colonial systems and structures and the division of powers between the federal and provincial governments, leaving no room for recognition of equal Indigenous jurisdiction and power, absent fundamental (constitutional) reforms, which are not contemplated in the "*10 Principles*".

This is also reflected by the fact that the federal government stated that these "*10 Principles*" are to guide the federal **Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples**, but it is now clear these "*10 Principles*" are also being used in negotiations, agreements and funding such as the **Education Funding Agreements for Elementary & Secondary Education**, already reported in **FNSB Vol. 13, Issues 11-12, November-December 2017**.

Budget 2018:

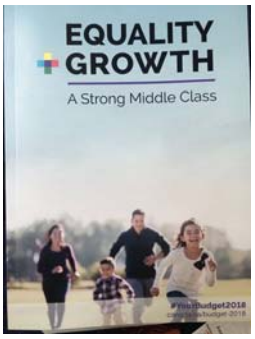
As stated above, the Trudeau government distinguishes between "*non-self-governing*" **Indian Act** Bands and Aboriginal groups who have signed Modern Treaties & Self-Government Agreements. This is reflected in **Budget 2018** in the two different fiscal relations processes.

For the bands under the **Indian Act**, the **Canada-AFN Fiscal Relations process** seems to be about improving the federal Contribution Funding Agreements and preparing **Indian Act** bands to be federally recognized as "*Indigenous Governments*" through "*self-government*" and/or "*comprehensive claims*" agreements. This is why **Budget 2018** includes:

> *$127.4 million over two years **to directly support First Nations communities in building internal fiscal and administrative capacity**. This includes $87.7 million over two years to ensure that communities under default management are able to move forward on **projects that form part of their management action plans**, and **to support pilot projects in order to strengthen governance and community planning capacity in First Nations**.* [emphasis added]

Christopher Columbus planting a flag.

'Hijacking by Trudeau' continued from page 8



In addition to supporting band capacity building, especially in financial and administrative management, as well as, community planning (known as comprehensive community planning), **Budget 2018** includes the following measures to support the transition from being **Indian Act** bands into becoming federally recognized "*Indigenous Governments*":

> *$50 million over five years, and $11 million per year ongoing, to strengthen the First Nations Financial Management Board, the First Nations Finance Authority and the First Nations Tax Commission.*
>
> *$2.5 million over three years to support the First Nations Information Governance Centre's design of a national data governance strategy and coordination of efforts to establish regional data governance centres.*
>
> *$8.7 million over two years to continue and broaden work with First Nations leadership, technical experts, researchers and community representatives on the new fiscal relationship.*
>
> *The Government, with First Nations partners,* ***will also undertake a comprehensive and collaborative review of current federal government programs and funding that support First Nations governance****. The purpose of the review will be to ensure that these programs provide communities with sufficient resources to hire and retain the appropriate financial and administrative staff* ***to support good governance, plan for the future and advance their vision of self-determination****.* [emphasis added]

"Budget 2018 includes the following measures to support the transition from being Indian Act bands into becoming federally recognized "Indigenous Governments"

The federally created institutions referred to above are to help facilitate the transition from **Indian Act** bands into self-government agreements, including collecting baseline data for determining methods and levels of funding for the transition. Comprehensive community plans are now making their way into historic Treaty Nations and territories – these are meant to prepare bands to move into self-government.

Those "*Indigenous Governments*" either negotiating or implementing self-government and/or modern treaty agreements are involved in a separate fiscal relations process with Canada focused on funding formulas for transfer payments and involve using their federally granted taxation powers for "*own source revenue*".

Budget 2018 clarifies that with the dissolving of the federal **Department of Indian Affairs and Northern Development** the "*Framework*" is divided into two parts: 1) The **Department of Indigenous Services** under **Minister Jane Philpott** for "*Achieving Better Results*" for funding programs and services for bands still under the **Indian Act**, until the **Indian Act** bands transition to a new fiscal relationship and the **Department of Indigenous Services** will cease to exist once all bands are converted into federally recognized "*Indigenous Governments*"; and 2) The **Department of Crown-Indigenous and Northern Affairs** under **Minister Carolyn Bennett** for federal "*Rights Recognition*" and transfer payments through self-government agreements, what the Trudeau government is calling "*self-determination*" and "*Modern Treaties*".

Prime Minister Justin Trudeau wearing a headdress.

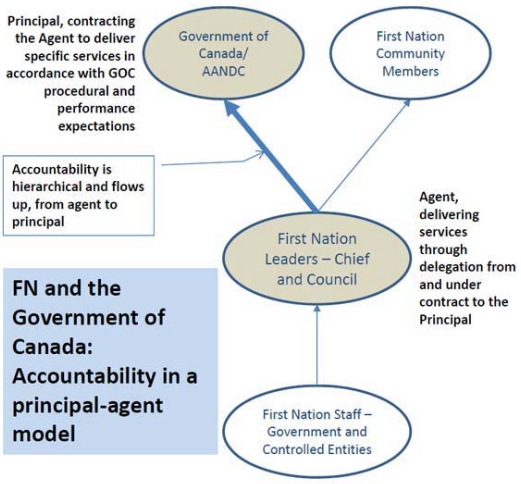
'Hijacking by Trudeau' continued from page 9

Besides the self-government and modern treaties negotiation tables there is now a third category of **Recognition of Rights and Self-Determination Negotiation Tables**.

Through the coming federal "*framework*" a key objective is keeping costs down by encouraging bands to merge to "*reconstitute their nations*" and support cheaper economies of scale, so there is a section in **Budget 2018** called "*Helping Indigenous Nations Reconstitute*", which states as follows:

> *The Government has committed to a forward-looking and transformative agenda to renew relationships with Indigenous Peoples. Indigenous groups are seeking to rebuild their nations in a manner that responds to their priorities and the unique needs of their communities—a message they have shared with the Working Group of Ministers on the Review of Laws and Policies related to Indigenous Peoples. This was also a key recommendation of the Royal Commission on Aboriginal Peoples, and is an objective outlined in the United Nations Declaration on the Rights of Indigenous Peoples. As stated by the Prime Minister at the United Nations General Assembly, the Government supports this vital work.*

"Through the coming federal "framework" a key objective is keeping costs down by encouraging bands to merge to "reconstitute their nations" and support cheaper economies of scale, so there is a section in Budget 2018 called "Helping Indigenous Nations Reconstitute"



Graph showing Chiefs & Councils as agents for the Government of Canada. SOURCE: INAC

> *Through Budget 2018, the Government proposes to provide $101.5 million over five years, starting in 2018–19,* ***to support capacity development for Indigenous Peoples. Funding would be made available to Indigenous groups to support activities that would facilitate their own path to reconstituting their nations****.* [emphasis added]

This raises serious questions for Member Bands about the future of their existing Tribal Councils, Service Delivery Organizations, historic Treaty areas, Provincial-Territorial Organizations and ultimately, the **Assembly of First Nations** structure.

The Prime Minister said the following in his February 14th speech:

> *In fact, by fully embracing and giving life to the existing Section 35 of the Constitution,* ***we will replace policies like the Comprehensive Land Claims Policy and the Inherent Right to Self-Government Policy with new and better approaches*** *that respect the distinctions between First Nations, Inuit, and Métis peoples.*

Prime Minister Justin Trudeau receiving a blanket from AFN Nat'l Chief Bellegarde.

'Hijacking by Trudeau' continued from page 10

> ***This will give greater confidence and certainty to everyone involved.*** [emphasis added]

Despite the Prime Minister's statement, from all evidence I've seen so far it doesn't appear that the federal government is changing much in the self-government and comprehensive claims policies.

The specific claims process (not policy, so far) is being reviewed through a AFN-**INAC Joint Technical Review process**.

As of this writing, the federal government has not agreed to publicly review the self-government and comprehensive claims policies, so it seems when the Prime Minister says he intends to "*replace*" these two policies with a "*new and better approach*" he seems to mean elevating these two federal policies into his coming "*legislative framework*" and greasing the wheels of negotiations.

In an effort to speed up existing comprehensive claims and self-government negotiations the Trudeau government announced in **Budget 2018**:

> *Budget 2018 outlines* ***new steps the Government will take to increase the number of modern treaties and self-determination agreements*** *in a manner that reflects a recognition of rights approach. These changes, along with the new approach brought forward through the Recognition of Indigenous Rights and Self-Determination negotiation process, will shorten the time it takes to reach new treaties and agreements, at a lower cost to all parties.*
>
> *As part of this new approach, the* ***Government of Canada will be moving away from the use of loans to fund Indigenous participation in the negotiation of modern treaties. Starting in 2018–19, Indigenous participation in modern treaty negotiations will be funded through non-repayable contributions.***
>
> ***The Government will engage with affected Indigenous groups on how best to address past and present negotiation loans, including forgiveness of loans.***
>
> *Through Budget 2018, the Government also proposes to invest $51.4 million over the next two years to continue its support for federal and Indigenous participation in the Recognition of Indigenous Rights and Self-Determination discussion tables*. [emphasis added]

This new federal "*reconstituting of nations*" approach should raise questions among the **Indian Act** bands about re-organizing or merging with other bands, especially when there are no details about the subjects being discussed at the "*Recognition of Indigenous Rights and Self-Determination discussion tables*", which according to federal statements are supposed to be used in designing this new federal "*Framework*", scheduled to be introduced into Parliament later this year.

It is at these "*discussion tables*" that the federal government is "*co-developing*" new negotiation mandates with the federal Cabinet in secret to shape federal policy for Aboriginal Title territories and historic Treaty territories, indeed **all** Indigenous Peoples.

"This new federal "reconstituting of nations" approach should raise questions among the Indian Act bands about re-organizing or merging with other bands, especially when there are no details about the subjects being discussed at the "Recognition of Indigenous Rights and Self-Determination discussion tables"

'Hijacking by Trudeau' conclusion from page 11

L to R: INAC Minister Carolyn Bennett, PM Justin Trudeau, Justice Minister Jody Wilson-Raybould

"Under Canadian law Indigenous Peoples not only have the burden of proof on them, but section 35 Aboriginal & Treaty rights can be justifiably infringed for development deemed a priority by the Crown"

INAC Minister Carolyn Bennett at Standing Committee on Aboriginal Affairs.

Conclusion

So, as I've stated before, the Trudeau government is developing a "*Canadian Definition*" of **UNDRIP** to re-colonize Indigenous Peoples with racist, colonial laws and termination policies.

The Trudeau government rarely, if ever, mentions "*lands, territories & resources*" and federal land claims & self-government policies are written to help the provinces clear Aboriginal Title and Rights by getting bands to consent to agreements that place Federal & Provincial jurisdiction over Indigenous Peoples.

Under Canadian law Indigenous Peoples not only have the burden of proof on them, but section 35 Aboriginal & Treaty rights can be justifiably infringed for development deemed a priority by the Crown, such as **Site C Dam** in British Columbia and the **Kinder-Morgan Pipeline**.

The Trudeau government's **Bill C-69: An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts**, reinforces the distinction between **Indian Act** bands and those groups negotiating and/or implementing self-government or comprehensive claims (Modern Treaty) agreements.

It should be noted that **Bill C-69** was vetted and released by the **federal Working -Group on Law and Policy** and the narrow definitions of Indigenous rights and jurisdiction in **Bill C-69** reflect what is coming in the federal **Recognition and Implementation of Rights Framework**.

In addition, past experience shows us that Security & Intelligence Agencies are Monitoring & Developing Individual Profiles of Indigenous Peoples for Future Action.

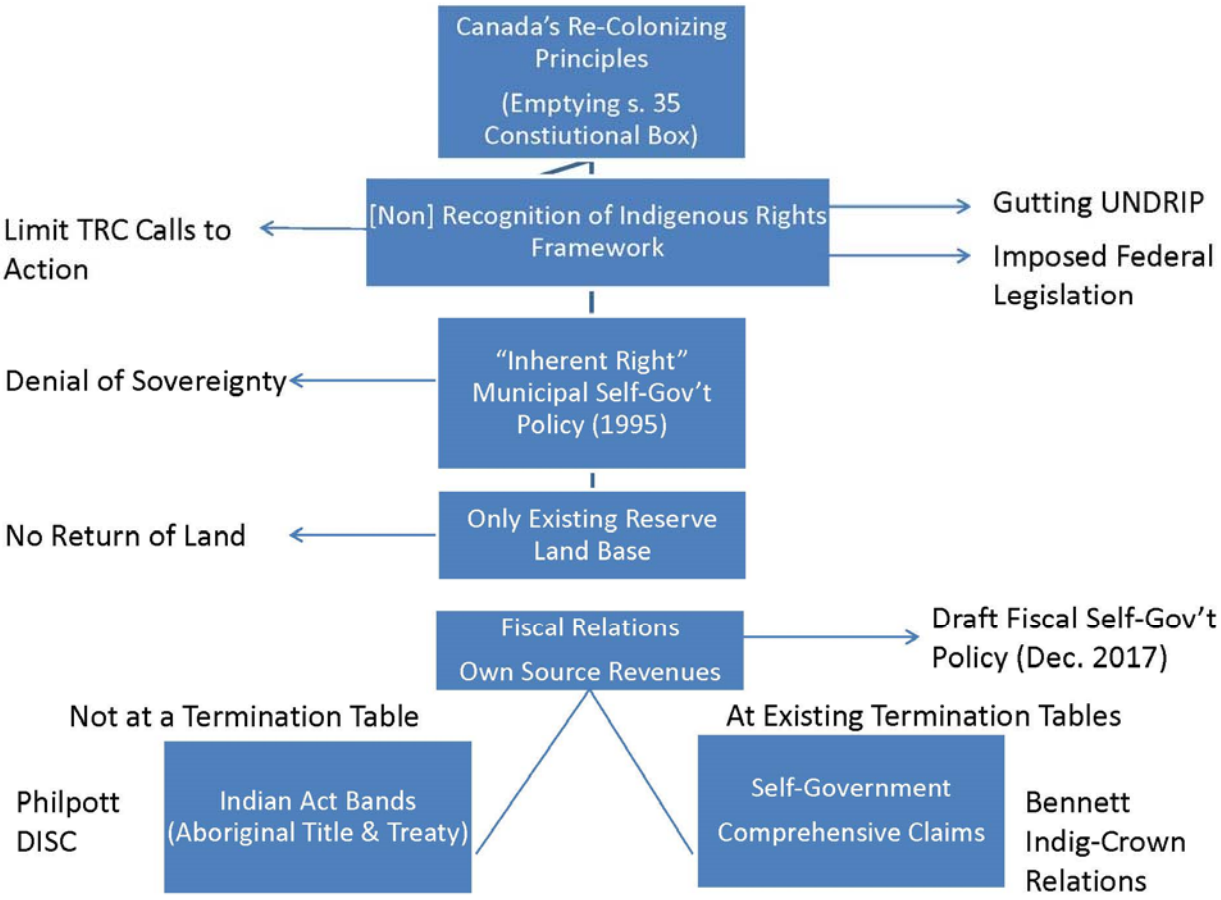
In conclusion, Indigenous Grassroots Peoples and the remaining honest, sincere Indigenous Chiefs/Leaders had better critically analyze the federal government's rhetoric, policy, legislation and actions before it's too late! In my review of the current legislative and policy situation, we are at a critical time in our history where Indigenous peoples will need to make some important decisions in a very short period of time on our collective futures, if we want to retain lands/rights that are inherently ours and left for us to look after.

First and foremost, peoples and leaders of Aboriginal Title territories and historic Treaty Nations can call out the federal government on these unlawful interferences; as they interfere with their Creator-granted exercise of sovereignty and ownership of the lands. Just as important as the Aboriginal Title Nations the historic Treaty Nations, including Treaties 1-11 lands must remain intact and remain free from interferences such as land designations. Nations cannot claim to be such without the lands. These lands are to be protected for the unborn, our heirs and whose interests supersede the present.

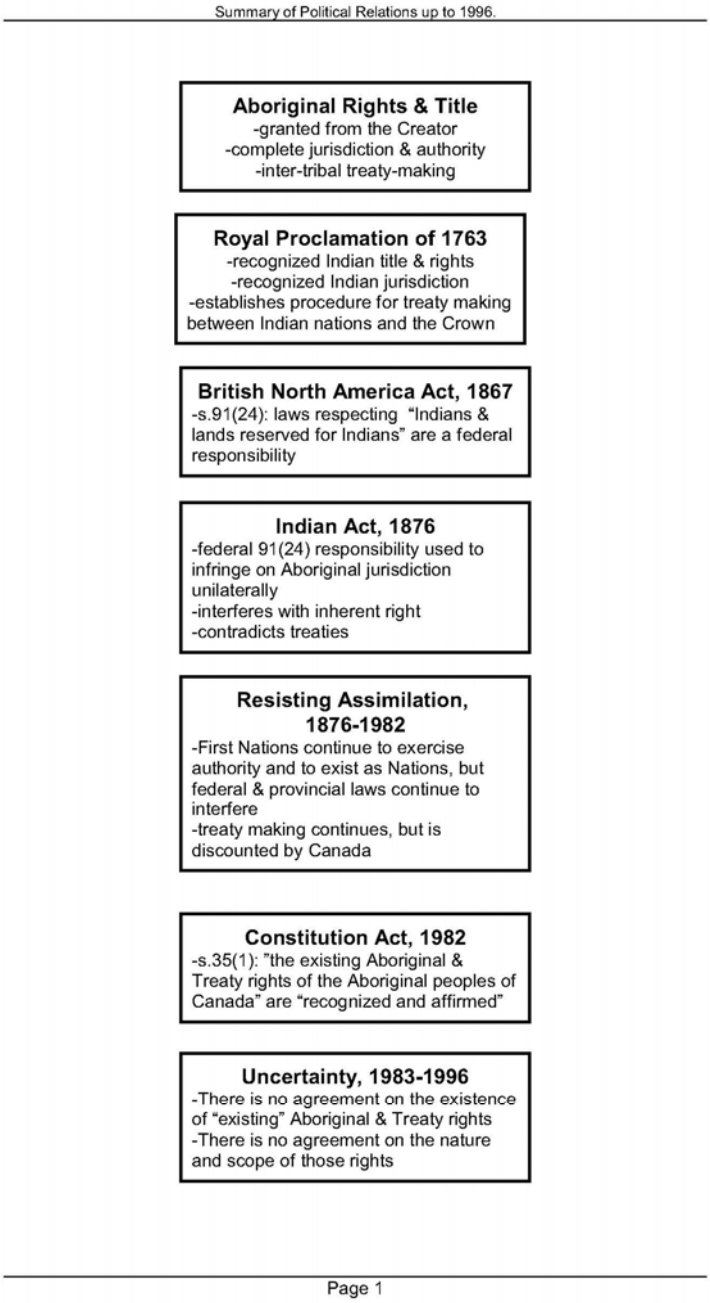
The warnings I have been giving for several decades now is coming to a head. Look at the facts and the evidence.

I can only hope my analysis, which is based upon decades of experience, is shared and acted upon to thwart the potential of our rights and title to our lands from being hijacked!

Overview Graph of [Non] Recognition and Implementation of Rights Framework



Crown-First Nations Relations Chart 1996 [Still in Force]
SOURCE: Assembly of First Nations (Page 1)



Summary of Political Relations up to 1996.

Aboriginal Rights & Title
-granted from the Creator
-complete jurisdiction & authority
-inter-tribal treaty-making

Royal Proclamation of 1763
-recognized Indian title & rights
-recognized Indian jurisdiction
-establishes procedure for treaty making between Indian nations and the Crown

British North America Act, 1867
-s.91(24): laws respecting "Indians & lands reserved for Indians" are a federal responsibility

Indian Act, 1876
-federal 91(24) responsibility used to infringe on Aboriginal jurisdiction unilaterally
-interferes with inherent right
-contradicts treaties

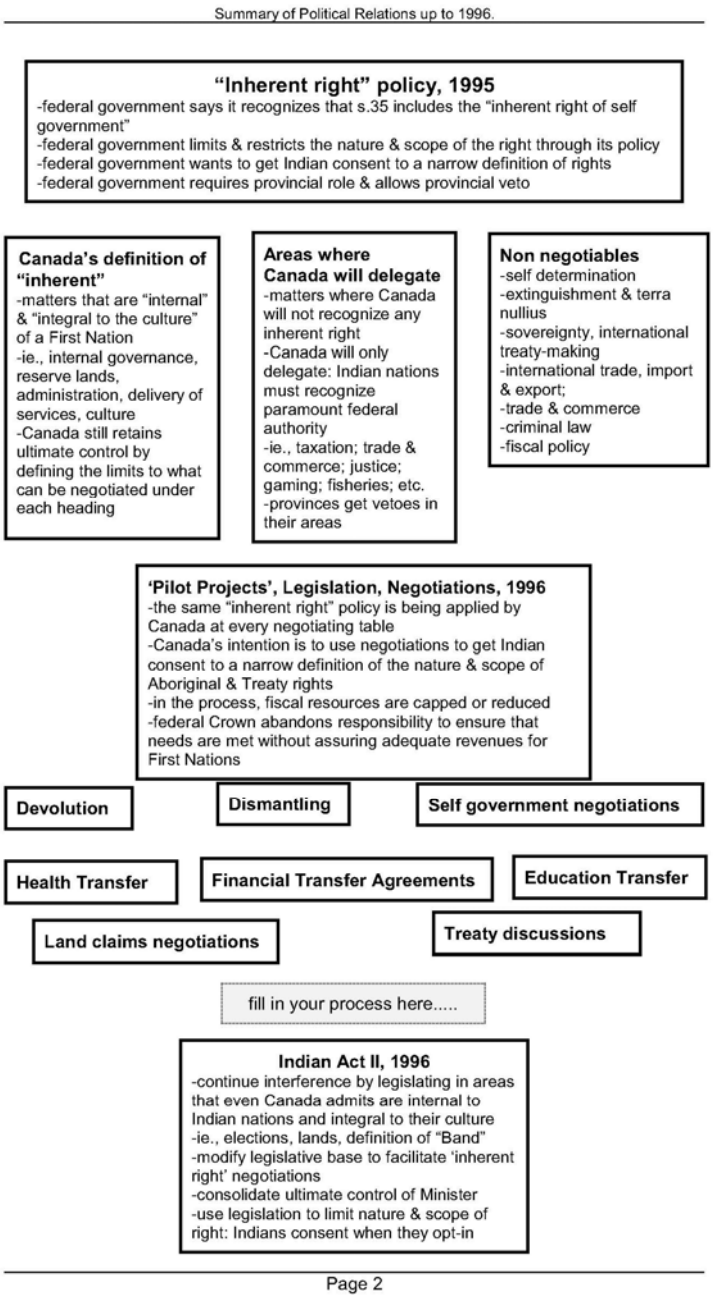
Resisting Assimilation, 1876-1982
-First Nations continue to exercise authority and to exist as Nations, but federal & provincial laws continue to interfere
-treaty making continues, but is discounted by Canada

Constitution Act, 1982
-s.35(1): "the existing Aboriginal & Treaty rights of the Aboriginal peoples of Canada" are "recognized and affirmed"

Uncertainty, 1983-1996
-There is no agreement on the existence of "existing" Aboriginal & Treaty rights
-There is no agreement on the nature and scope of those rights

Page 1

Crown-First Nations Relations Chart 1996 [Still in Force]
SOURCE: Assembly of First Nations (Page 2)



Do we need a Recognition and Implementation Framework?

By Judith Sayers, February 18, 2018

Dr. Judith Sayers, President, Nuu-chah-nulth Tribal Council.

The Prime Minister, Justin Trudeau, announced on February 14, 2018 that the Government of Canada will develop – in full partnership with indigenous peoples – a Recognition and Implementation of Rights Framework.

He stated that "For too long, Indigenous Peoples in Canada have had to prove their rights exist and fight to have them recognized and fully implemented. To truly renew the relationship between Canada and Indigenous Peoples, the Government of Canada must make the recognition and implementation of rights the basis for all relations between Indigenous Peoples and the federal government.

He also said it was time to stop fighting over these rights in court.

To be clear, s. 35 of the Constitution Act of Canada recognizes and affirms aboriginal rights. So if s. 35 exists, why do we need a Recognition and Implementation of Rights Framework and law?

The problem lies with the federal and provincial governments and their reluctance to accept First Nation rights and often end up in court trying to protect them. So in reality because the governments cannot do their job, they need a framework, policy and legislation to make them do it.

"To be clear, s. 35 of the Constitution Act of Canada recognizes and affirms aboriginal rights. So if s. 35 exists, why do we need a Recognition and Implementation of Rights Framework and law?"

As First Nations people, we know what our rights, and exercise them regularly. Many First Nations have done Traditional Use Studies (TUS) that set out their rights and where they exercise them in their territories. They are located through the use of GIS. Governments are very aware of this data and often have this data with the exception of Sacred/cultural sites which is confidential. First Nations use this as the basis of their consultations with government to identify their rights and why development cannot occur in certain areas.

First Nations have gone further to do Land Use Plans or Marine Use Plans to ensure that the areas they exercise their rights and their ecosystems that are integral to sustaining those rights are protected from development.

First Nations know their rights and title and it is up to governments to understand those rights. The courts have been very clear that this is a responsibility governments must fulfil.

During the consultation process the government "assesses" rights and decides if there needs to be mere consultation or deep consultation. They get to decide how much they will accommodate them. When it is to their advantage, they use the justification test and abrogate or derogate from our rights in the public interest. Such was the case in Kinder Morgan and Site C. The government rationalized that these projects must go ahead in the greater public interest even though it meant totally abrogating rights. Thus, people go to court to fight the government's decision and sometimes First Nations win and sometimes they lose. Too many times we have seen the government "justify development" for the greater public good. I always ask, "at what point will we not be able to exercise our rights?"

Why couldn't Justin Trudeau just instruct his bureaucrats to recognize and implement our rights as they should be without putting in place a framework and legislation? If he is serious about recognition of rights and implementing the Universal Declaration of Rights (UNDRIP), wouldn't that be a quicker and easier solution? Couldn't he set up an independent tribunal to work out disputes about rights and how they can be protected?

The amendments to the Fisheries Act are out in bill C-68. S. 2.4 requires the Min-

'Questioning Trudeau' continued from page 16

ister "to take into consideration" the impact of his decision on s.35 rights. The section should read "the Minister shall take into consideration the impact of his decision on indigenous rights and ensure that they are protected". Simple and easy. As it is now, the Minister can think about how his authorizations for development will impact on indigenous rights and do nothing about it and that goes against everything the Prime Minister has promised and his recognition initiatives.

Waiting for a framework and legislation is a long ways off when there are simple solutions available.

I wonder if Trudeau or any of his Minister talked to First Nations before setting out this plan for a Recognition and Implementation of Rights Framework. I never heard of any such initiatives. The Prime Minister says he wants to develop this "in full partnership with Indigenous People" yet didn't bother to do so when he came up with the idea. Maybe there would have been better or different solutions found. This is just another example of the Prime Minister and his government trying to find solutions without working out mechanisms with them. So much for a Nation to Nation relationship when one Nation thinks they have all the answers for the other.

The problem with legislation is that First Nations are not part of the drafting process and don't have final approval before it goes into the house and the Senate. Nor can they approve any changes made along the way. The legislation may be limiting and may define rights globally that don't apply to every First Nation or not define others. There is danger in trying to do a melting pot solution if First Nations are not a part of every step of the way and give their CONSENT to any legislation.

Will the new process include an independent dispute resolution process if Canada and First Nation people don't agree on what our rights are and there are sure to be disagreements?

Another initiative that has been underway for some months is Nation to Nation/Reconciliation tables. There are over 50 of them across the country. Is this new process going to duplicate those efforts or interfere with them in any way and why was another process needed?

Does Canada have enough resources both in manpower and money to ensure this process can work? First Nations will need to be resourced so they can participate in this process if it goes ahead.

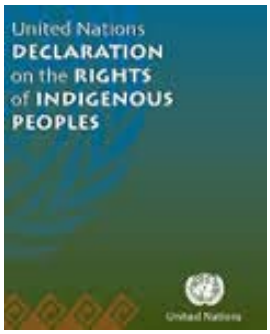
There is not much detail on what the Framework will have in it. The contents of the Framework will be determined through national engagement activities led by the Minister of Crown-Indigenous Relations and Northern Affairs. Engagement will continue throughout the spring, with the intention to have the Framework introduced in 2018 and implemented before October 2019.

While the results of this engagement will guide what the final Framework looks like, the federal government believes that, as a starting point, it should include new legislation and policy that will make the recognition and implementation of rights the basis for all relations between Indigenous

Provinces and the public will be part of this engagement because the PM said they need to be a part of it. Does the public know what our rights are and why should they have a say over indigenous rights? We know there are people who want to do away with our rights and think there should be no differences between them and indigenous peoples. Will these kinds of engagements strengthen or widen the divide between indigenous peoples and non-indigenous people and will it bring out the racism that we saw during the trial of Gerald Stanley for killing Colten Boushie?

The Framework can also include new measures to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination, including the inherent right of self-government so indigenous peoples can control their own destinies.

I sometimes wonder if governments understand the concept of self determination and the inherent right of self government. I heard Minister Jane Philpott say at the Joint Gathering of First Nations and the federal government say that there would be full realization of the right of self Determination. This would mean separation from Canada in our own State. I assume this is why the want to legislate self determination so they can define it and limit it from its true international meaning.



'Questioning Trudeau' conclusion from page 17

One thing is certain that implementation of our rights have to be done quickly. For instance, the T'aaqwiihaak Nations who won the Ahousaht case 9 years ago are still trying to work with the Federal government what a reasonable right to a fishing livelihood is. This is far too long. The Tsilqot'in won their aboriginal title way back in 2014 and are still waiting to implement that decision. We cannot wait to put in place a framework, legislation and policy in order to implement rights that have been recognized in court. We cannot have more rights destroyed like the burial/sacred sites that will be inundated in Site C or put at risk many vital rights by Kinder Morgan's pipeline. I did not hear anything from the Prime Minister on the interim.

The recognition of right framework necessarily must include the right to land, resources and free prior and informed consent (FPIC). Again, the Prime Minister did not mention settling the longstanding title to land, resources and water but rather talked of drinking water, suicides and housing. All of these must be part of it and I wonder if we can agree on FPIC.

Is the new proposed Framework and legislation a good thing?

It could be if there is a full partnership with First Nations and they have free prior and informed consent on anything worked out including the legislation. If it can be done in quick order and not go on forever like the BC Treaty process. It may be good if First Nations are fully resourced to participate in the process and the government of Canada devotes enough staff to engage the 633 First Nations across this country.

"It would be a bad thing if the government doesn't listen to ALL First Nations and does not get their free prior and informed consent and create legislation that has to be challenged in court"

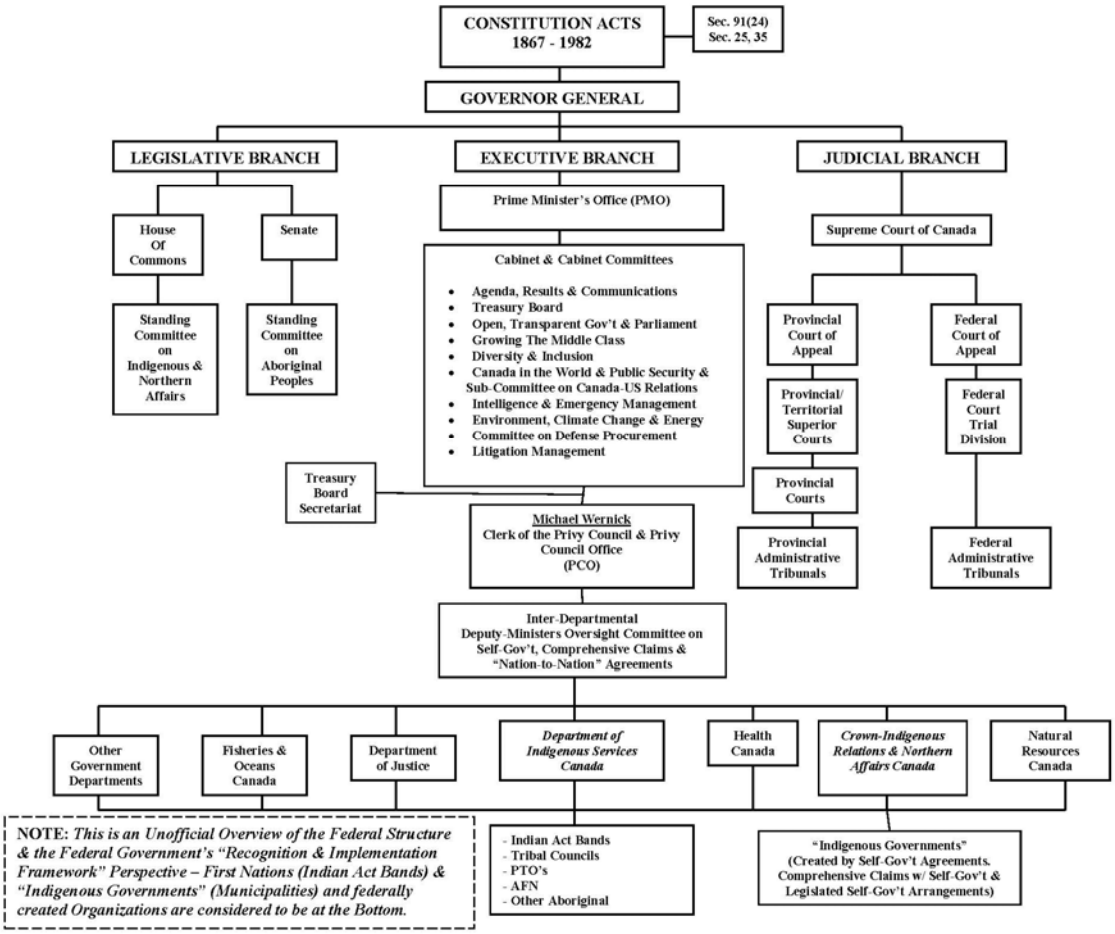
It would be a bad thing if the government doesn't listen to ALL First Nations and does not get their free prior and informed consent and create legislation that has to be challenged in court when the whole object of this new process is for "collaboration to become the norm and court cases the anomaly." There may have to be an opt in provision for people who want to be a part of the legislation.

The Prime Minister wants to build greater trust and do something different with indigenous peoples. If he continues to do things on his own without truly working with indigenous peoples he will not build trust. If he doesn't do what he says he will do he will not build trust. If he doesn't take immediate action to recognize rights in ways the government can and should in the interim he will not build trust. Indigenous peoples in this country have suffered because of government's denial of our rights and title. Indigenous peoples in this country have also suffered because their rights have been limited and their access to lands, waters and resources have been restricted when they are the true owners.

Leaders across this country have expressed doubt about this process and others cautious optimism. If First Nation had been asked what needs to be done to recognize and implement their rights I know their would have been different solutions and mechanisms. If we are moving into a new era, First Nations need to be asked first, not as an afterthought.

[Reprinted courtesy of First Nations in BC Knowledge Network—First Nations Technology Council]

2018 Unofficial Chart of Federal "Recognition & Implementation of Rights Framework" Structure



INTERIOR SALISH PEOPLES AND NATIONS COMMUNIQUÉ
RE: Federal Rights Recognition Framework

Representatives of **Interior Alliance Nations** met on March 19 and 20, 2018 at Tk'emlups to discuss the massive roll out of federal legislation and policies, including the proposed federal rights recognition framework announced by Prime Minister Justin Trudeau on Feb. 14, 2018. As the Indigenous Rights holders with responsibilities to the future generations we have grave concerns about this top down, unilateral process by the federal government that is neither transparent nor accountable.

Due to the importance of the topic the delegates at the **Interior Alliance meeting** on March 19, 2018 decided to spend a whole day to discuss the **Federal Rights Recognition Framework**. In order to have a fruitful discussion it was necessary to have a comprehensive understanding of the background which has lead up to this critical development in Canadian policy. To help in this regard, respected Indigenous policy advisor and analyst, **Russell Diabo** (Kanawake, Mohawk) who had just attended a national policy conference at (March 15 and 16, 2018 McMaster University), and a weekend think tank on Trudeau's policies (March 17 and 18, Ryerson University), that involved Indigenous strategists and academics, was able to set the **federal rights recognition framework** within the broader evolution of federal government policy citing:

- 1969 White Paper
- The Comprehensive Claims Policy
- The Federal Policy on the inherent right to self-government
- Dual tracks for new fiscal relations policy
- Process of developing the framework
- Involvement of the **Assembly of First Nations** (**AFN**) Chief and Executive, while bypassing the **Chiefs Committee on Lands, territories and resources**; and
- Lack of engagement of Indigenous rights holders, communities and nations;

Taken as a whole it is very concerning that this **federal rights recognition framework** aims to funnel all First Nations negotiations into a framework with one of three possible outcomes for getting out from under the **Indian Act** (***Section 7, draft Self-Government Fiscal Policy Proposal for Federal Review on December 13, 2017***):

- ***A comprehensive land claim agreement which includes a comprehensive self-government component;***
- ***A comprehensive agreement on self-government; or***
- ***Legislated comprehensive self-government arrangement.***

Which are scarcely different than a final agreement in the **BC Treaty Commission process**.

It is clear from the **draft Impact Assessment Act** and **amendments to the Fisheries Act** tabled by the federal government that they are only ready to work with groups who cooperate under their policies as also set out in the **Recognition of Rights Framework**. They deem bands and nations as non-governing when we are not in treaty or that have not signed self government agreements, which our nations have not and will not concede to.

Our **Interior Salish Nations** have not collectively entered into such negotiations because they are based on the same assimilationist approaches as the **1969 White Paper**, and they aim at the de facto extinguishment of our Aboriginal Title and Rights, which have been found in violation of international human rights standards.

'Interior Salish Communique' conclusion from page 20

The gravity of the situation we have been put in by the Trudeau government cannot be overstated; with his promise to implement legislation before the next election and the Liberal majority in the House of Commons, our hand is being forced. Now more than ever before we will need to educate, organize and implement with our grassroots community and Nation citizens what self-determination means to us.

In response to how the federal government is trying to roll out their process, several of the Interior Salish leadership in attendance have announced that they plan to organize informational sessions to be held in the next few months. A prior informed consent based process requires full Indigenous involvement from the outset, where all the information is presented and Indigenous Peoples can make an informed decision on the basis of it. It is paramount that this process is in line with the principled positions taken by our ancestors and leaders since contact as documented in the historical documents, such as the **Sir Wilfrid Laurier Memorial**, presented the to the then **Prime Minister of Canada**, in August 1910, by the Secwepemc, Okanagan and Nlaka'pamux Nations; and the **1911 Memorial to Frank Oliver, Minister of the Interior**, where an expanded group of Interior Chiefs, including of the St'at'imc Nation (based on the **Declaration of the Lillooet Tribe**, May 10, 1911), demanded in powerful words to address the question of title, rights and jurisdiction.

Our ancestors stated in the **Sir Wilfrid Laurier Memorial** in 1910, amongst other things:

When they [the settlers] first came among us there were only Indians here. They found the people of each tribe supreme in their own territory, and having tribal boundaries known and recognized by all… They [their governments] treat us as subjects without any agreement to that effect, and force their laws on us without our consent and irrespective of whether they are good for us or not. They say they have authority over us. They have broken down our old laws and customs (no matter how good) by which we regulated ourselves…

We remain committed to implementing our own laws and jurisdiction, our people have never surrendered, released or ceded our land, we have never lost in the field of battle. Leadership expressed their frustration that we are once again reacting to actions of the federal government and do not want to be forced to scramble together a defense and resort to a fight but rather to address the issue from a position of strength by defining community by community, Nation by Nation, what Free Prior and Informed Consent means, and what is expected from the Federal Government.

Self-determination begins with respecting the voices of our people, rather than a top down approach to policy or legislative development about our peoples' inherent rights that bypasses our People.

The Trudeau government has not taken any steps to recognize our rights to our lands and resources as set out under the **UN Declaration on the Rights of Indigenous Peoples** and the **Convention on the Elimination of All Forms of Racial Discrimination** and other international human rights treaties. Their framework and policy approaches are linked to the Indian reserve land base which amounts to 0.2% of the whole land base of Canada and of our territories. We know that the federal government is trying to download all the responsibilities to the provincial governments and not recognize our territorial jurisdiction and self-determination. Our Ancestors already said in 1911 in the **Declaration of the Lillooet Tribe** of May 10th, 1911:

. . . we are the rightful owners of our tribal territory, and everything pertaining thereto. We have always lived in our Country; at no time have we ever deserted it, or left it to others. . . . We are aware the B.C. government claims our Country, like all other Indian territories in B.C.; but we deny their right to it. We never gave it nor sold it to them. They certainly never got the title to the Country from us, neither by agreement nor conquest, and none other than us could have any right to give them title.

We urge other communities and Nations to educate yourselves and engage your peoples in dialogue on these federal processes, draft legislation and policies.

CONTACT: Secwepemc.InteriorAlliance@gmail.com

New Legislation Shows Cracks in Trudeau's First Nations Promises

Federal Minister Catherine McKenna is not on Review of Law & Policy Working-Group, but Bill C-69 was vetted & released by working-group.

By James Wilt • Tuesday, February 20, 2018 - 15:24

When it comes to the rights of Indigenous peoples, Prime Minister Justin Trudeau talks a really good talk. A close look at new laws that will dictate how major resource projects are reviewed, however, suggest he wants to leave himself a lot of wiggle room when it comes to walking the walk.

The week before Trudeau was lauded for a speech in the House of Commons that promised of a new legal framework for Indigenous people, his government released two long-awaited pieces of environmental legislation.

Initial reactions were cautiously optimistic. But now that the dust has settled, it's clear that matching words to action is often an exercise in optimistic romanticism.

Bill C-69 — which will overhaul the Canadian Environmental Assessment Act, National Energy Board Act and Navigable Waters Act — mostly restores protections to how they were before the Harper Conservatives decimated them in 2012, but little has been done to truly modernize processes.

It's "abundantly clear that the architects…have no transformative aspirations," wrote University of Victoria law professor Chris Tollefson in an article for Policy Options.

Unfortunately, the same appears to be true about what the new legislation means for how Indigenous peoples and communities will be included in future environmental assessments and protection planning: rather than tightening the rules to make ministers more accountable for upholding First Nations' rights, the new laws give them broad discretion at every turn.

"Looking at the bill itself, we don't really see the robust impact-assessment, sustainability framework that was promised," said Sara Mainville, partner at OKT Law and former chief of northwest Ontario's Couchiching First Nation.

"Looking at the bill itself, we don't really see the robust impact-assessment, sustainability framework that was promised," said Sara Mainville, partner at OKT Law and former chief of northwest Ontario's Couchiching First Nation"

Requirements to integrate Indigenous knowledge, governments

To be sure, there were some new developments on how governments plan to engage with Indigenous people.

The revised acts require that Indigenous traditional knowledge be used to inform decision-making, require that such knowledge is protected from public disclosure, and create new abilities for Canada to enter into management agreements with Indigenous governing bodies (rather than just provinces and territories).

In the case of impact assessments, the revised bill also explicitly requires that adverse impacts on Indigenous rights need to be considered — a significant shift from the current legislation.

"What the present Act requires is that potential impacts to the current use of lands for traditional purposes be assessed," said Jeff Langlois, lawyer at JFK Law and recently counsel for Gwich'in Tribal Council in the Peel Watershed case.

"It lets proponents and the government in these formal environmental assessment processes just focus on the use of the land today. Like 'Have you hunted in the last couple of years? Is it going on right now?' It's made these environmental assessments very narrow in scope."

The proposed legislation expands the review criteria. But here's the catch — it only needs to be considered by the minister and can always be ignored in the name of "public interest."

"All that cabinet has to do is say in its reasons that, 'We took Indigenous impacts and interests into account,' " said Jason Maclean, environmental law professor at the University of Saskatchewan. "It doesn't change anything. In fact, it could provide the government cover and insulation for even worse decision-making, making it that much harder to overturn."

'Trudeau's Promises Cracking' conclusion from page 22

Regional impact assessments only required if minister wants

The issue of ministerial discretion also plagues many other elements of the bills.

For example, Bill C-69 suggests the use of regional impact assessments and strategic impact assessments. Such tools can be used to provide baseline data or plans for an entire area such as the oilsands-dominated Lower Athabasca Region of northeast Alberta in order to help track cumulative impacts — whether they be on the local environment, Indigenous rights or ability to meet climate targets.

Langlois said that a big problem with the current approach is that every proponent and government will argue that you can't blame any one project for infringement on Aboriginal and treaty rights, meaning none are ever stopped on those grounds.

But once again, the rules are soft: the bill is worded carefully to say that the Minister "may" order a regional or strategic assessment.

"If you want to take these strategic and regional assessments as effective tools, you should be putting some trigger in place to say, 'What's going to make you do that assessment?'" Langlois said. "Right now, it's still just totally discretionary, as is all decision-making under the act still."

Bill falls short of expert recommendations

It's also a fundamental undermining of recommendations made by the government's expert review panel in its comprehensive April 2017 report, which specifically recommended that legislation "require" such tools to be used in any area where cumulative impacts may occur or already exist and to "guide" the entire impact assessment.

It's one of the panel's many key suggestions that has been weakened in the bills.

"I often look at the expert panel report as a recipe, not as a menu," Mainville said. "You can't really pick and choose different pieces of it."

A central ingredient in that recipe was dealing with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which contains the principle of "free, prior, and informed consent." But there wasn't a single mention of UNDRIP in the bill.

Instead, Trudeau's Environment and Climate Change Minister Catherine McKenna pledged to "try really hard" to gain consent from Indigenous communities.

Further complicating the situation was McKenna's assurance that the Kinder Morgan Trans Mountain pipeline would have been approved under the new environmental assessment legislation — despite many Indigenous communities vehemently opposing its construction.

"Bill C-69's really obvious failures to mention, let alone implement, UNDRIP or [free, prior and informed consent] is a failure for the government to take a step forward towards shared governance with Indigenous peoples," Maclean said. "Instead, it retains the same colonial top-down model that reposes all the decision-making power with the federal cabinet under a very broad and highly discretionary 'national interest' test."

"A central ingredient in that recipe was dealing with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which contains the principle of "free, prior, and informed consent." But there wasn't a single mention of UNDRIP in the bill"

Liberals recently supported UNDRIP bill, pledged new legal framework

In addition to finalizing the legislation, the government will have to craft a wide range of regulations, policies and programs. Such tools could provide more insights into how the Liberals expect to integrate their support of MP Romeo Saganash's recent private member's bill to fully implement UNDRIP, as well as Prime Minister Justin Trudeau's pledge to establish a new legal framework for Indigenous peoples.

"This staged approach is the silver lining to all this," Mainville said. "But the wait-and-see is wearing First Nations' patience a little thin."

[Reprint courtesy of DesmogCanada, Victoria, BC]

DEFENDERS of the LAND

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

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Feedback is welcome. Let us know what you think of the Bulletin—Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

For More Information Check Out: http://unsettling150.ca/

Whose Land Is It Anyway? A Manual for Decolonization

We are pleased to announce the publication of Whose Land Is It Anyway? A Manual for Decolonization; inspired by a 2016 speaking tour by Arthur Manuel, less than a year before his untimely passing in January 2017. The book contains two essays from Manuel, described as the Nelson Mandela of Canada, and essays from renowned Indigenous writers Taiaiake Alfred, Glen Coulthard, Russell Diabo, Beverly Jacobs, Melina Laboucan-Massimo, Kanahus Manuel, Jeffrey McNeil-Seymour, Pamela Palmater, Shiri Pasternak, Nicole Schabus, Senator Murray Sinclair, and Sharon Venne. FPSE is honoured to support this publication.

FREE DOWNLOAD:

http://fpse.ca/sites/default/files/news_files/Decolonization%20Handbook.pdf