VOLUME 19, ISSUES 1-7 JANUARY-JULY 2021

FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

The Colonization Experience: *First Hand*

Prime Minister Justin Trudeau visiting a gravesite with 751 unmarked graves at Cowessess First Nation. (Photo courtesy of Richard Agecoutay/CBC)

By Rolland Pangowish, Wikwemikong Unceded Indian Reserve

I was just thinking how tired I am getting of burying youths here at home on our reserve, when it really hit me in the gut, this kind of death and despair is not normal for any community, except those suffering the impacts of war. We bury youths in silence, as so many are simply giving up on life before reaching maturity, almost week after week in this place. It is only colonialism that creates these kinds of generations of impoverished pockets of humanity that exist throughout this land. Our despair is the direct result of years of direct federal control over our lives and lands.

Canada is a colonial state that is pretending to be a progressive leader in the development of human rights in the international community, while today right here in my larger than average reserve community, we continue to suffer poverty and underdevelopment. I hear it's the same with our neighbors in other reserves on this Island, youths, adults, children, either taking their own lives or not feeling the will to go on, displaying a level of collective trauma that has persisted for too many generations.

It is not going away, the collective trauma of colonized First Nations living under restrictive laws that deny existing legal rights and impose assimilationist regulations designed to manage Indigenous populations continues to dispossess us of our lands and resources and most settlers continue to prosper and develop their society, some of the colonized continue to hang on to hope as a People who have been imprisoned by dependence since the settlers' pushed us aside.

The facts of this history I have known in my head from my own years of study and fading career in advocacy work for Indigenous Rights, the history now penetrates my heart and soul like I have not felt before. Moving back home has forced me to see and feel the proof that

Special points of interest:

- **A First Hand Account of Colonization Under the Trudeau Government**
- **Learn How the Trudeau Liberal's Manipulated Passage of CANDRIP (Bill C-15) into Federal Law, Entrenching Its Pan-Indigenous Melting Plot**
- **Learn How Bill C-15 is Based on a Lie!**

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the ongoing collective depression and despair that prevails in so many Indigenous communities, can only really be the direct result of a continuing Crown colonization that is not finished here in Canada.

The spiral of poverty and the ongoing social-cultural alienation I witness all around me, that I have seen in so many other Indigenous communities across Canada over the years, is growing exponentially each year. In fact, the continuing self-destruction will never cease until Canada realizes that it must decolonize its relationship with Indigenous Nations. If it sincerely recognizes the right to self-determination within Canada, it must negotiate a new relationship with Indigenous Nations that incorporates truly self-governing First Nations as heads of jurisdiction with the Canadian federation.

"Despite its rhetoric, Trudeau's Liberal Government is refusing to seek change in this old colonial relationship. There have been no negotiations about how First Nations join the federation. This must take place before there can ever be any real sense of reconciliation with Indigenous Nations in Canada."

Despite its rhetoric, Trudeau's Liberal Government is refusing to seek change in this old colonial relationship. There have been no negotiations about how First Nations join the federation. This must take place before there can ever be any real sense of reconciliation with Indigenous Nations in Canada.

Under the developing international human rights law, the self-determination of all peoples includes the right not to be deprived of their means of subsistence and the ability to choose their own political affiliation. Canada's current attempts to absolve itself for the colonial past and reinstate a colonial relationship wherein it continues to hold arbitrary authority over "*self-governing*" First Nations as fourth level governments within Canada.

My home will continue to face the same inter-generational social and economic issues that the colonial system has imposed on it for many years now. The consistently high unemployment and enormous school drop-out rates that plague so many First Nations reserves are the direct result of the colonial dispossession of lands that provided the livelihoods of entire Indigenous Nations and the imposition of assimilation policies over several generations. While the residents of the reserve are used to living from crisis to crisis, the recent ridiculous growth in accident, addiction, suicide and overdose death rates should not be ignored.

I have witnessed where the pandemic lock downs have compounded this suffering, seeing for myself and feeling the bizarre growth in drug overdose and suicide rates that have exploded on this reserve which is undoubtedly worse than what was already taking place, that was already way out of proportion to the size of the Indigenous population. The growing rate of deaths on this large reserve, not from disease but due to suicide and drug overdoses that are over and above the typical ever-growing rate of deaths due to alcohol abuse and poor medical treatment. To say that this is a very disturbing trend for me personally would be an understatement.

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It is not only the sudden shock and pain at each incident of death we share as a community, but it is a visceral experience shared with our immediate neighbors, as every household all around us has experienced a death within the past two years. It is almost impossible to effectively describe what is happening here, as each of those categories of death have struck every home around us in turn, including our house where we lost a well-loved 20 year-old in January before losing his talented 24 year old brother living next door just two weeks ago.

This morbid coincidence is distinctive to the colonial experience of Indigenous communities the world over. It is not only painful because that the deaths are so often composed of some our most talented youth, whose talents should have been developed and applied to the benefit of the community. This latest outbreak of deaths is taking place because the long-term effects of colonization has not been mitigated.

Colonial policies not only persist, but laws are being arbitrarily reworded to reinforce the Crown’s dominance over Indigenous Nations. Recent federal legislation seeks to secure the consent of Indigenous Nations to maintain the federal government’s control over Indigenous “*self-government*”. This sleight of hand manipulation of domestic law to maintain federal policy frameworks will serve to reinstate the Crown’s arbitrary control over Indigenous governance and will only serve to feed the growing social and economic problems faced by today’s fastest growing segment of the Canadian population.

Why is Canada allowing these deadly symptoms of colonialism to continue, by imposing new laws that maintain old programs and attempt to legitimize more devious proposals that seek to re-entrench the colonial relationship? While Canada publicly acknowledges the past wrongs of colonial history and expends considerable effort in praising itself on being so progressive in the development of international human rights law, in reality, it continues to introduce laws and maintain policy frameworks based on a colonial relationship. Its new laws and old assimilationist policy frameworks are seeking to finish the colonial project.

This project began following the resolution of European conflicts in the **1763 Treaty of Paris**, where colonial the French Crown surrendered all interests in Northeastern North America to the British Crown. The Indigenous Peoples who had fought with the French against the British for many years, knew nothing of European activities and the appearance of British soldiers in their territories prompted a brief war, sometimes referred to as Pontiac’s War that destroyed most of the British forts in their traditional territories. This fierce resistance helped prompt the development of the **Royal Proclamation of 1763**, which reserved the acquisition of Indian lands to the Crown.

The **Royal Proclamation of 1763** remains part of Canada’s constitutional structure. It set out a standard for the treaty-making process and affirmed Crown duties with respect to Indians and their lands. From the Indigenous perspective, the Crown proposed the **1764 Niagara Wampum Treaty**, specifically promising to the Indigenous Nations that would ally with the Crown that it would never take land without the consent of the Indigenous Nations. Secondly, it was promised that alliance with the Crown would secure its protection for our Peoples and lands for as long as the sun shines, the rivers flow and the grass grows.

The Crown, represented by Sir William Johnson as Superintendent for Indian Affairs, who was intimately familiar with Indian treaty practices, made this agreement near Niagara Falls over the summer of 1764 at a gathering of at least 24 Nations. This process established in some sense, a

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peaceful relationship of First Nations with the British Crown, if not a full military alliance. The British acknowledged this Treaty relationship of peace at periodic gatherings for the distribution of presents, where the relationship established with **Treaty of Peace and Friendship** would be renewed and supplies distributed through the Chiefs.

This very same Crown proceeded to break its word almost immediately by asserting a sovereignty over Indigenous lands and peoples, a concept alien to Indigenous Nations. So Indigenous Nations were not even aware of this subordinate relationship under the Crown in European law, which the British assumed. The Indigenous Nations always understood the promise of protection, but the growing exercise of assumed Crown authority over First Nation lives soon became obvious with the imposition of the **Indian Act** and regulations governing status Indians.

The **Indian Act** and related laws, governing almost every aspect of Indigenous life in this country continue to apply to this day and are an outrage to Indigenous communities and Indigenous Nations, who are still coping with these colonial provisions. However, there are issues to be negotiated and debts to be paid before the fiduciary obligations of the Crown owed to First Nations can be adequately addressed. Thousands of outstanding land claims remain to be resolved in a fair and timely manner, while the Treaty relationship and obligations of the Crown must be seriously addressed. Meanwhile, the **Indian Act** ironically provides the people some predictability and is their only protection from Chief and Council as appeal can be made to the Crown.

Many of the well-known disputes and long-outstanding legal conflicts cannot be resolved while Canada refuses to address the Indigenous Perspective on the original colonial assertion of Crown sovereignty. This alleged assertion of Crown sovereignty over Indigenous communities and Indigenous Nations and their lands lies at the heart of far too many legal conflicts and the Canadian Courts are incapable of resolving this issue, while Indigenous lands and resources have been subject to colonial control all this time.

The original assertion of Crown sovereignty must be questioned, as there were no legitimate means by which this could be done, outside of war and conquest, which we can discount in Canada, due to the Treaty relationship, that helped minimize war and violent conflict. Nonetheless this assertion of sovereignty has no legitimate basis, as only the discredited colonial concepts of "*discovery*" or "*terra nullius*" could be seen to form the basis for such a unilateral assertion.

There were already Indigenous Nations here since time immemorial, living on these lands and managing the resources, Indigenous Nations who lived under a different concept of their relationship to their lands and resources. Anyone familiar with Indigenous languages and cultures in Canada understands that the livelihoods of these Indigenous communities and Indigenous Nations were intimately connected with their lands and waters. In addressing reconciliation and resolving compensation issues, the fact that we have always been land and water based is a crucial aspect, but it is getting increasingly difficult to resolve in the face of a disappearing natural habitat.

The problems I am referring to have a direct link to the inter-generational residential school experience. Recent finds of hidden grave sites at residential school sites have received great media coverage and are again forcing Indigenous communities to mourn their losses. The **Truth and Reconciliation Commission** had warned of this happening and Canada is engaging the public and Indigenous communities about issues of racism. The negative impacts and public images of grief have brought some attention to the damages of colonialism to the media

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and public's attention.

Now we need the media to cover not only the symptoms of colonialism and dwell on the damaging outcomes for Indigenous communities and Indigenous Nations in this country, but to help to expose some of the mythic lore upon which the establishment of the Canadian state is based.

The very basis of Crown sovereignty is not legal, but it is a colonial construct of Canada's dominant legal relationship with Indigenous Peoples. Where do we stand if the establishment of Canada is based on a legal fiction?

Suffering continues to prevail amongst our peoples and has quietly reached epidemic proportions. I have been personally confronted by the negative impacts of the colonial relationship in my community. In fact, the growing death rate is visually mounting before the eyes of the whole neighborhood here, providing a visceral experience of the negative symptoms of a colonial system we cannot change.

Canada is trying to get out in front of the real implications of admitting there must be a decolonization process required in this country. It is avoiding this and trying to implement re-colonization by tricking First Nations into providing consent for Canada to continue its Crown domination by maintaining the ultimate federal jurisdiction over Indigenous "*self-government*" arrangements within the existing Canadian Constitutional Framework. Now I have a better understanding of what the term "*neo-colonialism*" means in the context of decolonization, as I watch our people's leadership get re-colonized and the people continue to suffer every day, in every way.

The governments in this country continue to use the threat of armed force if we organize to demonstrate our serious objections to arbitrary measures. Why should we have to fight and stand up for rights that are supposed to be recognized in the supreme law of this land. Since the original Treaties were agreed upon, the emergence of different interpretations of what was agreed upon have undermined the Treaty relationship and broken the Crown's sacred promise to protect our lands and peoples.

No one can deny that the loss of adequate lands, resources and lack of control over our lives are the root cause of Indigenous poverty and alienation in this country. The concentration of the Indigenous Populations onto postage stamp size reserves that freed up the land for settlement and resource exploitation. Meanwhile, the Indigenous People's resident in so many Northern communities across Canada cannot help but watch almost daily, as truckloads of timber and minerals are trucked by, within sight on the way out of their traditional territory. The sense of loss only grows greater with each generation living under a colonial framework that Canada refuses to address.

It seems to be fighting against hope to maintain some sense of community spirit, but the difficulties of working with so many broken lives and families, as well as the loss of our clan system have left us in a very tough spot to maintain our unique languages and cultures, that Canada says it wants to protect. Yet it keeps us buried in the poverty and despair that I am experiencing all around me at home on the reserve, today and everyday.

With Passage of CANDRIP (Bill C-15) & Appointment of an Indigenous GG, Canada Spreads the Lie that it's Implementing UNDRIP Through Bill C-15's Pan-Indigenous "Framework"

By Russ Diabo

Now that Residential School Survivors, their families, communities, Indigenous Nations and most of Canada are focused on the findings of mass burial sites at former Residential Schools (Prisons) through the use of Ground Penetration Radar at Kamloops, Cowessess and elsewhere, it's time to remember the Residential Schools were created through federal genocidal policy under the **Indian Act** of 1876. The religious orders were carrying out federal law and policy, basically as agents of Canada, so we should recognize both Canada and the churches are culpable in what happened to the children in those genocidal institutions.

Although I did not personally attend a Residential School, members of my immediate family on my father's side did go to Residential School and I can personally attest to the inter-generational impacts of their horrible experience being forced to attend these genocidal institutions.

It is my own personal experiences and observations of the impacts of Canada's colonial policies and laws on my own family and community that led me to activism in my teenage years and the evolution of my career as a First Nations policy analyst and advocate as I've tried to make sense of the results of the colonial chaos that I was born into in the mid-20th century.

So, on a personal level, I know we must remember that the federal objectives of assimilation and termination have been central to the **Indian Act** since it became federal law in 1876, and these objectives remain very much alive in Canada today, as Canada's imposed policies and laws remain designed to disintegrate our families, communities and nations.

This is why I believe the story continually needs to be told about how the Trudeau government over the past six years has manipulated the terms "*reconciliation*" and "*nation-to-nation*" in policy and law, including passage of Bill C-15 as the culmination of the Trudeau government's domestication of the **United Nations Declaration on the Rights of Indigenous Peoples** (2007 version), which is now the "*framework*" to define " *Indigenous rights*" that are to be federally "*recognized,*" and any assertions of rights outside of these section 35 federal policy/legislative (self-government & land claims) definitions are now considered non-starters for negotiations, or simply illegal.

"one of the first things Prime Minister Justin Trudeau did after forming the federal government in October 2015 was to appoint former Conservative Prime Minister Stephen Harper's Deputy Minister of Aboriginal Affairs, Michael Wernick, as top bureaucrat (Clerk of the Privy Council)"

Michael Wernick, Top Aide to Prime Minister Justin Trudeau

Trudeau's Pan-Indigenous Two-Track Self-Termination Process

In January 2016, one of the first things Prime Minister Justin Trudeau did after forming the federal government in October 2015 was to appoint former Conservative Prime Minister Stephen Harper's Deputy Minister of Aboriginal Affairs, Michael Wernick, as top bureaucrat (Clerk of the Privy Council), then they put Harper's key negotiator from the Department of Aboriginal Affairs, Treaties and Governance (TAG), Joe Wild, in charge of

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were initially called "*exploratory tables*", which *ipolitics.ca* reported in 2016 were "*a series of non-binding discussion groups that are meant to find consensus ahead of tougher negotiations over powers.*" Now these "*exploratory*" tables are called "*Recognition & Self-Determination*" tables.

These actions began a 5-year plan (2016-2021) from the Prime Minister's Office and the Privy Council Office (Trudeau and Wernick) to set up a two track, pan-Indigenous process (First Nations, Métis, Inuit) to covert Indian Act Bands into 4th level "*Indigenous governments*" by negotiating modern agreements to define section 35 rights on a band-by-band basis, essentially transforming each Band's legal and political status from being "*Indigenous Peoples*" with the international right of self-determination into ethnic minorities as "*Indigenous-Canadians*", similar to, for example, Italian-Canadians or Indo-Canadians, that's why the term "*Indigenous Governing Bodies*" is now defined in federal legislation, because it bridges the two tracks (from status quo to 4th level governance) with a list of signed agreements, using the existing Modern Treaty and Self-Government agreements as templates.

PM Trudeau and NC Bellegard sign MOU on Joint Priorities

Co-Opting National Indigenous Organizations & First Nation Governments

To accomplish their national pan-Indigenous top-down plan, Trudeau and Wernick needed to get the collaboration of the three National Indigenous Organizations (First Nations, Métis, Inuit) and their members.

"To accomplish their national pan-Indigenous top-down plan, Trudeau and Wernick needed to get the collaboration of the three National Indigenous Organizations (First Nations, Métis, Inuit) and their members"

I haven't seen the Métis and Inuit agreements with Canada, but the 2016 and 2017 AFN Memorandums of Understanding (MOU) are available.

In 2016, National Chief Bellegarde signed an MOU with Indigenous and Northern Affairs Canada on Fiscal Relations, which has led to new federal fiscal policy for Indian Act Bands (10 Year Grants) and "*Self-Governing*" First Nations (Own Source Revenue/Self-Government Fiscal Policy) to support the two-track process of converting Indian Act Bands into fourth level "*Indigenous governments*", lower in status than the federal, provincial and municipal orders of government.

In 2017, National Chief Bellegarde signed an MOU on Joint Priorities with Prime Minister Justin Trudeau. It was shortly after signing the AFN-Canada MOU that then federal Minister of Justice, Jody Wilson-Raybould unilaterally issued 10 Principles for Indigenous Relationships, which at the time she said were directed at the federal bureaucracy. The "*10 Principles*" act as a proxy for the UNDRIP, with the Principles simply being a restatement of the Canadian common law limitations of section 35 rights.

Michael Wernick & Perry Bellegarde

The **AFN-Canada MOU on Joint Priorities** included the following:

> ***establishment of a permanent, ongoing Cabinet-level process for First Nations leadership and members of the federal Cabinet*** *("AFN-Canada Working Group") to review progress on jointly set*

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NC Bellegarde putting an AFN jacket on PM Trudeau

> "This 2017 MOU basically created a coup d'etat (takeover) of AFN by Trudeau and Wernick through what Canada calls a "Bilateral Mechanism", a fancy term for an AFN-Canada Joint Cabinet Committee. A similar "Mechanism" was created with the Métis National Council and the Inuit Tapiriit Kanatami"

PM Trudeau with Coaliton of 3 National Indigenous Leaders

> *priorities;*
>
> ***to establish a steering committee of senior officials to identify and establish requirements to support the AFN-Canada Working Group*** *(work plan development, human resources, fiscal support, process and machinery of government requirements);*
>
> ***provide financial support to the AFN and to regional First Nation organizations*** *to support full and meaningful engagement with First Nations, as rights holders, with respect to the objectives of this MOU;*
>
> *[The Joint Priorities of the MOU include]* ***work in partnership on measures to implement*** *the United Nations Declaration on the Rights of Indigenous Peoples, including* ***co-development of a national action plan and discussion of proposals for a federal legislative framework on implementation****…work jointly to decolonize and align federal laws and policies with the United Nations Declaration on the Rights of Indigenous Peoples and First Nations' inherent and Treaty rights.*

This 2017 MOU basically created a coup d'etat (takeover) of AFN by Trudeau and Wernick through what Canada calls a "*Bilateral Mechanism*", a fancy term for an AFN-Canada Joint Cabinet Committee. A similar "*Mechanism*" was created with the Métis National Council and the Inuit Tapiriit Kanatami.

Chapter 3 of the 2017 Federal Budget had a section called "*A Renewed Nation-to-Nation Relationship*" that included " *$13.7 million over two years to support the establishment of permanent bilateral mechanisms with Indigenous groups, such as the new Inuit Crown Partnership Committee*."

As far as I call tell, the AFN Chiefs-in-Assembly never adopted a resolution ratifying the **AFN-Canada MOU on Joint Priorities**, but more money was flowing from Ottawa to the **Indian Act** Bands (First Nation Governments) and organizations like AFN and regional organizations for programs and services, so there has been silence and a lack of critical analysis of the massive federal changes to policy, law and structure to create a "*renewed nation-to-nation relationship*" from most First Nation Chiefs and regional First Nation Leaders.

The Trudeau government's two-track approach to converting Indian Act Bands into "*fourth level*" ethnic governments is being accomplished

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through Bill C-97, a law adopted in 2019 to dissolve the Department of Indian Affairs and Northern Development while formally establishing the two new federal departments: the Department of Crown-Indigenous Relations and Northern Affairs Canada, which is tasked with negotiating and implementing these modern treaties, self-government agreements and alternative federal legislation to the **Indian Act**; and the Department of Indigenous Services Canada, a provisional department that will dissolve once all **Indian Act** bands sign modern treaties or self-government agreements and are converted into these new, fourth-level Indigenous governments to deliver programs and services.

So, in summary, if First Nations want to opt out of the Indian Act, they now have three options. The first option is to sign a legally binding modern treaty—in areas of Canada where there are no historic land Treaties—which, as described above, is a fast-track to the termination of sovereignty. The second is to sign a Self-Government Agreement, which will also fast-track them to the termination of sovereignty by subjecting them to the federal and provincial powers under the Canadian Constitution. Moreover, under this option, as noted above, the " *self-governing*" First Nation will be considered a fourth order of government – below not only the federal and provincial governments, but also with less power than municipal governments. Or, the final option: assimilation into Canada's property and tax systems through the federal **First Nations Land Management Act** and the **First Nations Fiscal Management Act**.

The two new federal Indigenous Departments now use the following legal definitions in the two-track pan-Indigenous approach to transition **Indian Act** Bands into fourth level ethnic governance:

> ***Indigenous governing body:*** *means a [Indian Act band] council, [or an Indigenous (First Nations, Métis, Inuit)] government [recognized by modern treaty or self-government agreement] or other entity [such as a Child & Family Agency] that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.*
>
> ***Indigenous organization:*** *means an Indigenous governing body or any other entity that represents the interests of an Indigenous group and its members [such as the Assembly of First Nations, or Provincial-Territorial Organizations].*
>
> ***Indigenous peoples:*** *has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982.*

Carolyn Bennett, Min. of Crown-Indigenous Relations & Marc Miller, Min. of Indigenous Services Canada.

"**Indigenous governing body**: means a [Indian Act band] council, [or an Indigenous (First Nations, Métis, Inuit)] government [recognized by modern treaty or self-government agreement] or other entity [such as a Child & Family Agency] that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982"

Prime Minister Justin Trudeau wearing Redface!

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These definitions from the Trudeau government's two-track pan-Indigenous approach is the "*framework*" for what many of us call **CANDRIP** (**Bill C-15**), and this policy and legislative "*framework*" will be used in the development and implementation of Bill C-15's as yet defined "*action-plan*".

A Joint Statement by Minister Lametti and Minister Bennett on the Senate Passing Bill C-15 put it this way:

> ***The legislation will complement other initiatives underway across Canada with Indigenous partners*** *to close socio-economic gaps, advance reconciliation and renew relationships based on the affirmation of rights, respect, co-operation and partnership*. [emphasis added]

What this really means is that the "*Rights Recognition Framework*", which was rejected by the AFN Chiefs-in-Assembly in December 2018, will now form the "*framework for the Government of Canada's implementation of [UNDRIP]*", as provided for in section 4 (Purpose) of CANDRIP (Bill C-15).

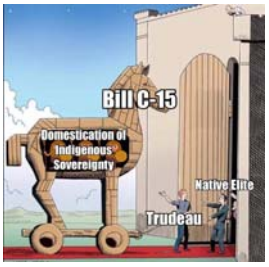
Even Trudeau ally National Chief Bellegarde and his legal team had concerns about Bill C-15 as a federal "*framework*" for interpreting UNDRIP international standards domestically when addressing Inherent and Treaty rights, which is why he proposed amending Bill C-15 to remove the word "*framework*" in section 4 (Purpose) of Bill C-15. On April 13, 2021, National Chief Bellegarde told the HoC Standing Committee on Indigenous Affairs:

> *it's recommended that the word "framework" be removed. As acknowledged in the preamble of this bill, the UN declaration itself is the framework, and reference to other frameworks simply causes confusion.*

Charmaine Whiteface who is an Oglala Tituwan Oceti Sakowin writer, scientist and great-grandmother, and wrote an in-depth analysis of UNDRIP based on her experiences at the UN debates called: Indigenous Nations Rights in the Balance published by Living Justice Press, has publicly commented on Bill C-15:

> *First of all, if Bill C-15 is based on the* United Nations Declaration on the Rights of Indigenous Peoples *(UNDRIP), it is based on a lie. The Declaration that was approved by the United Nations (UN) General Assembly in 2007 is NOT the Declaration approved by Indigenous Peoples.*

"These definitions from the Trudeau government's two-track pan-Indigenous approach is the "framework" for what many of us call CANDRIP (Bill C-15), and this policy and legislative "framework" will be used in the development and implementatio n of Bill C-15's as yet defined "action-plan"."



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Having a Bill based on a lie makes the Bill a partner in the lie and therefore, not good law. To say that Bill C-15 will affirm the rights of Indigenous Peoples is not true. The UNDRIP was changed to satisfy colonizing governments' continued pursuit for control over Indigenous Peoples and resources.

If Bill C-15's sponsors really wanted to "affirm" the rights of Indigenous Peoples, they would base their Bill on the Original Text that was approved by all Indigenous Peoples in Geneva, Switzerland, in 1994. That Original Declaration was also approved by two UN Committees: the Working Group on Indigenous Populations (WGIP), and the Subcommission on the Prevention of Discrimination and the Protection of Minorities. After that, the most powerful colonizing governments pushed the Declaration off into another working group and changed not just the words but the meaning and purpose of the UNDRIP.

Canada can do that. The Canadian government could base their Bill C-15 on the truth, the Original Declaration passed in 1994, and support the intent and purpose in that Original document. ***To support Bill C-15 based on the UNDRIP that was approved in 2007 is to base Bill C-15 on a lie. Such an action will only bring dishonor and regret to the Canadian government***. [emphasis added]

CANDRIP (Bill C-15) White Paper 2.0 Indigenous Melting Plot

On June 21, 2021, what the federal government calls "*National Indigenous Peoples Day*", the Administrator of the Government of Canada, the Chief Justice of the Supreme Court of Canada, Richard Wagner, granted Royal Assent by written declaration for Bill C-15 (CANDRIP). By having the SCC Chief Justice as the administrator for the Office of Governor-General sign CANDRIP (Bill C-15) into federal law, we saw the three branches of the federal government (judicial, legislative, executive) converge in passing the federal United Nations Declaration on the Rights of Indigenous Peoples Act (2007 version of UNDRIP). Apparently, with no care about of the potential conflict should CANDRIP (Bill C-15) be potentially challenged in court.

Manipulation of AFN's Support for CANDRIP (Bill C-15)

The Trudeau government led by Minister of Justice & Attorney-General, David Lametti, assisted by the Minister of Crown-Indigenous Relations, Carolyn Bennett, took advantage of the global pandemic to bypass First Nation Peoples, who are the real rights holders, and instead manipulated the six week "*engagement process*" with mainly federally funded organizations such as AFN, leading up to Bill C-15's introduction into the House of Commons on December 3, 2020, apparently timed to be just before the AFN Assembly held December 8-9, 2021 and the Parliamentary recess for the holidays.

Following Bill C-15's December 3, 2020 introduction into Parliament, apparently in tandem with the federal government, the then National Chief Bellegarde manipulated the agenda of the December 8-9, 2020, virtual AFN Chiefs-in-Assembly to engineer AFN support for Bill C-15. On day one, the AFN agenda included an evening session with Prime Minister Justin Trudeau and several federal Ministers, including Bill C-15's lead Ministers, Lametti and Bennett, all of whom chose the occasion to trumpet their government's perceived accomplishments, including introducing Bill C

Wille Littlechild, Member, AFN Legal Team on Bill C-15

"federal presentations were followed the second day by an AFN legal panel that included Wille Littlechild, Mary Ellen Turpel-Lafond and Paul Joffe who strongly urged the Chiefs to support Bill C-15, as Bill C-15 built on the previous private Member's Bill C-262 of NDP M.P. Romeo Saganash."

Mary Ellen Turpel-Lafond, Member AFN Legal Team on Bill C-15

Paul Joffe, Member, AFN Legal Team on Bill C-15

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-15 into the House of Commons just days before, as promised in their 2019 Liberal Platform.

The federal presentations were followed the second day by an AFN legal panel that included Wille Littlechild, Mary Ellen Turpel-Lafond and Paul Joffe who strongly urged the Chiefs to support Bill C-15, as Bill C-15 built on the previous private Member's Bill C-262 of NDP M.P. Romeo Saganash.

There were no critics of Bill C-15 on the unbalanced, one-sided AFN legal panel, which was a set-up by AFN.

While the AFN sales job was underway on screen of the AFN virtual Assembly, behind the scenes was the revision of a Draft AFN Resolution #6 entitled "*Conditions to Supporting Federal Bill C-15 Legislation Regarding the United Nations Declaration on the Rights of Indigenous Peoples*".

An original version of Draft AFN Resolution #6 had been submitted to the AFN Resolutions Committee before the AFN virtual Assembly and the introduction of Bill C-15 into the House of Commons on December 3, 2020.

The original Draft AFN Resolution #6 had been previously approved by the B.C. First Nations Leadership Council and moved by Secwépemc Kukpi7 (Chief) Judy Wilson (BC Region) on its behalf and was seconded by Algonquin Chief Lance Haymond (Quebec Region).

However, once Bill C-15 was introduced into the House of Commons on December 3, 2020, Chief Lance Haymond became concerned after reviewing the text of Bill C-15 and in consultation with Chiefs from the Quebec region, revised the Draft AFN Resolution #6, which caused Kukpi7 Wilson to withdraw as mover while the AFN Assembly was in progress, because the changes in text made to the original Draft AFN Resolution #6 by Chief Haymond went beyond the text of the original Draft AFN Resolution #6, which the BC First Nations Leadership Council had previously agreed with.

When Kukpi7 Wilson informed Chief Haymond she was withdrawing as the mover of the revised Draft AFN Resolution #6 because the original scope of the resolution had changed, Chief Haymond informed Kukpi7 Wilson that he was prepared to become the mover of the revised Draft AFN Resolution #6 and he would seek a new Seconder so this resolution could be debated by the Chiefs-in-Assembly on the virtual floor of the Assembly.

However, Chief Haymond was then blocked by the AFN Co-Chairs—likely in consultation with National Chief Bellegarde, a supporter of Bill C-15—who sent the message to Chief Haymond that since Kukpi7 Wilson was

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withdrawing support for the revised version of AFN Resolution #6, the Co-Chairs (or National Chief Bellegarde) had AFN general counsel, Stuart Wuttke, invoke the AFN rule that:

> ***DURING THE ASSEMBLY***
> ***Final Draft Resolutions***
> *4. …the mover may declare intent to withdraw the proposed resolution. In this event, the Co-Chairs will declare the resolution withdrawn and no further debate or comments will be allowed*.

Despite requests from Kukpi7 Judy Wilson to let Chief Lance Haymond speak to the Bill C-15 issue on the virtual floor of the Assembly and a direct request from Chief Haymond himself, the AFN Co-Chairs would not turn on the microphone of Chief Haymond to allow him to put the question to the Chiefs-in-Assembly to determine if they wanted to discuss the revised Draft AFN Resolution #6 in light of the importance of the federal Bill purporting to "*align*" federal laws with UNDRIP.

If the AFN Assembly had been conducted in-person as normal, Chief Haymond could have simply gone to the microphone and asked the Co-Chairs in front of the Chiefs-in-Assembly if Draft AFN Resolution #6 could be introduced and debated. Chief Haymond could have gotten a seconder and made a motion under the AFN Charter rules, but because the December 2020 AFN Assembly was held virtually, the Co-Chairs and the AFN Executive Committee controlled the microphones, the Zoom Platform and the Assembly proceedings.

Consequently, despite the importance of the issue involving UNDRIP federal legislation affecting First Nations, no AFN Resolution was discussed or adopted during the AFN virtual Assembly on December 8 and 9, 2020.

Following the AFN December 2020 Assembly, word had spread among Chiefs and First Nation organizations about AFN not addressing Bill C-15 in a Resolution at its December Assembly. In response to increasing concerns being raised among First Nation Leaders, National Chief Bellegarde announced that a virtual AFN "*National Leadership Forum on Bill C-15*" would be held February 10-11, 2021.

By holding a "*Leadership Forum*" instead of an AFN Special Assembly, National Chief Bellegarde was again manipulating the AFN Charter. Rather than holding a formal AFN Special Chiefs' Assembly on Bill C-15, where a formal AFN Resolution on Bill C-15 could be debated and voted on, National Chief Bellegarde instead chose to call a "*Leadership Forum*", which is only an advisory forum with no binding authority over the AFN National Chief or the AFN Executive Committee under the rules of the AFN Charter, which National Chief Bellegarde was well aware of.

The AFN two-day "*Leadership Forum on Bill C-15*" was merely another sales job orchestrated by National Chief Bellegarde with predominantly pro-Bill C-15 presenters on the agenda, including federal Minister of Justice, David Lametti and from British Columbia, a video presentation from pro-Bill C-15 Premier John Horgan along with his Minister of Indigenous Relations & Reconcilia-

'Pan-Indigenous Framework' continued from page 13

tion, Murray Rankin, all supporting Bill C-15 in their comments.

As expected, because of the ongoing pandemic, there was little attendance by Chiefs at the AFN Bill C-15 virtual "*Forum*" and the resulting AFN Summary Report conclusion was weak and muddled, stating:

> *The AFN National Leadership Forum on Bill C-15 provided First Nations with an opportunity to have a wide-ranging dialogue on Bill C-15. There was broad agreement that C-15 should be strengthened as well as some opposition to the Bill. There were many concerns about the engagement process, and consensus that First Nations must be fully involved as equal partners in the implementation of the UN Declaration*.

In the end, National Chief Bellegarde subsequently relied on an outdated AFN Resolution (#86/2019) to say AFN had a mandate to support Bill C-15, even though he and the AFN Assembly Co-Chairs had blocked the revised version of Draft AFN Resolution #6 from being discussed or debated at the virtual AFN Assembly, and the AFN " *Forum on Bill C-15*" was inconclusive, as well as, non-binding.

House of Commons Support for CANDRIP (Bill C-15)

As Parliament resumed consideration of Bill C-15 in 2021, Minister Lametti knew he was able to count on the three National Indigenous Organizations (AFN, ITK, MNC) to support Bill C-15 as the national pan-Indigenous coalition did with previous federal "*Indigenous*" legislation, such as **Bill C-91**, **Bill C-92** and **Bill C-97**, an over 800 page omnibus budget Bill that included dissolving the **Department of Indian Affairs and Northern Development** and legislatively replacing the department with two new "*Indigenous*" Departments and Ministers (Indigenous Services & Crown-Indigenous Relations).

Bill C-15's Second Reading and referral to the House of Commons Standing Committee on Indigenous and Northern Affairs occurred on April 19, 2021, with a vote of 219 yes and 115 no.

The Liberals, NDP, Bloc Québécois, Greens and Independent M.P. Jody Wilson-Raybould all voted yes, while the Conservatives voted no.

The HoC Standing Committee on Indigenous and Northern Affairs heard from numerous witnesses, Indigenous and non-Indigenous. Anyone who watched the proceedings of the Standing Committee saw that it was clear the NDP and to some extent the BQ were supporting the Liberal government's Bill C-15, while the Conservatives were strongly against the Bill, along with six Premiers who wrote Minister Lametti also opposing Bill C-15 because of the short six-week "*engagement process*".

There were some witnesses, Indigenous and non-Indigenous, who proposed substantive amendments to Bill C-15 and in the end as the law firm of Milt Akins noted:

> *The House of Commons made several amendments to the text of Bill C-15. Most of the amendments applied to the preamble, although there are two substantive changes to the provisions of Bill C-15 [in section 6]. The*

'Pan-Indigenous Framework' continued from page 14

amendments include:

- *references to racism and systemic racism in the preamble;*
- *expansion of the preamble to identify the doctrines of discovery and terra nullius as "racist, scientifically false, legally invalid, morally condemnable and socially unjust";*
- *recognition in the preamble that Aboriginal and Treaty rights are capable of evolution and growth and are not frozen;*
- *reduction of the time limit for preparing the action plan from three to two years [section 6]; and*
- *the action plan must include measures to address racism and systemic racism [section 6].*

The HoC Standing Committee Report was tabled in the House of Commons on May 12, 2021, and Third Reading of Bill C-15 took place on May 25, 2021, with 210 yes and 118 against.

The Liberals, NDP and Bloc Québécois voted for passage of Bill C-15 at Third Reading and while Green M.P. Jenica Atwin voted against, Green M.P.'s Elizabeth May and Paul Manly voted yes, as did Independent M.P. Jody Wilson-Raybould.

Meanwhile, to accelerate passage of Bill C-15 through Parliament on April 20, 2021, the Senate adopted a Motion to authorize the Senate Committee on Aboriginal Peoples to begin a "*pre-study*" of Bill C-15 while the Bill was still in the House of Commons.

Senate Support for CANDRIP (Bill C-15)

The Standing Senate Committee on Aboriginal Peoples submitted its Report to the Senate on June 10, 2021 and did not propose any additional amendments to Bill C-15. The Senate held a Third Reading Debate and Vote on Bill C-15 on June 16, 2021, and Bill C-15 passed in the Senate the same day with 61 voting yes and 11 voting no with 9 Senators abstaining.

As noted above, the Supreme Court of Canada Chief Justice Richard Wagner, acting Administrator of the Office of Governor-General, gave Royal Assent to CANDRIP (Bill C-15) on June 21, 2021.

CANDRIP (Bill C-15) Action-Plan & Canada's White Paper 2.0 Indigenous Melting Plot

It was on February 14, 2018, that Prime Minister Justin Trudeau announced in the House of Commons his National "*Reconciliation*" Plan as proposed "*Rights Recognition Framework*" legislation. This proposed pan-Indigenous law was rejected at an AFN Policy Forum held September 11-12, 2018, in Gatineau, Quebec.

Following the September 2018, AFN rejection of the proposed "*Rights Recognition Framework*" legislation, in October 2018, CBC reported that the federal government was delaying the proposed "*Rights Recognition Framework*" legislation until after the 2019 election. However, at the same time CBC reported the delay, the federal Minister of Crown-Indigenous Relations, Carolyn Bennett, stated,

Our Government is committed to advancing the framework, and to continue

'Pan-Indigenous Framework' continued from page 15

Joe Wild, Senior Assistant Deputy Minister, CIRNAC & key aide to Minister Bennett on federal discussion & negotiation "tables".

"Chiefs from the Association of Iroquois and Allied Indians (AIAI), introduced AFN Resolution #67/2018, which was adopted by the December 2018 Assembly, and rejected the federal proposed "Rights Recognition Framework" legislation because the federal "distinctions based approach" was false and called for AFN to hold a Policy Forum to discuss the federal "Rights Recognition Framework"."

May 1, 2018, Treaty Nations Protest outside of hotel where AFN Policy Forum was held in Edmonton, Alberta.

> *actively engaging with partners on its contents…We continue to make substantial progress in accelerating the recognition and implementation of Indigenous rights through policy changes and the development of the Recognition of Rights and Self-Determination Tables…We look forward to continue working with our partners on developing more of this crucial framework*.

What the AFN Policy Forum rejected was the content of a September, 2018 federal "*Overview Document*" stating that the federal "*Rights Recognition Framework*" law would have formed the basis for **ALL RELATIONS** between the federal Crown (government) and Indigenous Peoples (First Nations, Métis, Inuit) including " *pre-1975*" and "*post-1975*" Treaties and:

- Would have contained federal "*definitions*" of " *key terms*".
- Federal and Provincial/Territorial powers and jurisdictions would continue to dominate over First Nations and provincial governments would continue to have a veto over any agreements affecting their jurisdiction.
- A federally established advisory committee or institution would have been created to decide what Indigenous Nations or "*Collectives*" would be federally recognized and have the authority of a government possessing "*the legal capacity of a natural person*", meaning a federal corporation. This would all have been subject to agreements with the federal and provincial governments (where their jurisdiction is affected). The federal legislation would have included a "*list of powers*" for " *Indigenous Governments*", which could have been unilaterally amended by the federal government.

Although a September 2018, AFN Policy Forum had rejected the proposed federal "*Rights Recognition Framework*" legislation, this was not binding on the AFN Executive Committee or the National Chief, so at a December 2018 AFN Assembly, Chiefs from the Association of Iroquois and Allied Indians (AIAI), introduced AFN Resolution #67/2018, which was adopted by the December 2018 Assembly, and rejected the federal proposed "*Rights Recognition Framework*" legislation because the federal "*distinctions based approach*" was false and called for AFN to hold a Policy Forum to discuss the federal "*Rights Recognition Framework*".

In response to AFN Resolution #67/2018, National Chief Bellegarde orchestrated an AFN Policy Forum on First Nation Led Processes: The Four Policies and Nation Building, held May 1-2, 2019, in Edmonton, Alberta, focused on these four federal policies:

- Inherent Right Policy.

'Pan-Indigenous Framework' continued from page 16

- Additions to Reserve Policy.
- Comprehensive Land Claims Policy.
- Specific Claims Policy.

Like the AFN Forum on Bill C-15 held in February 2021, the 2019 AFN Policy Forum on the Four Federal Policies had panels stacked with representatives who accept the federal policies.

By 2019, the Bellegarde-Trudeau partnership was causing concern among a number of Chiefs and communities. This was the case in Edmonton when the AFN Policy Forum was held. Hundreds of mostly First Nation Treaty Peoples marched on the hotel where the AFN Forum was being held on May 1, 2019, to protest AFN's collaboration with the Trudeau agenda and the threat of the Trudeau agenda to Treaty rights.

A number of Chiefs from the area led a march into the hotel where the AFN meeting was being held and there was a struggle at the door of the meeting between the First Nations people and the security guards hired by AFN. The people prevailed over the AFN security guards and gained entry to the hotel ballroom where the AFN meeting was being held. Meanwhile, assisted by security guards, National Chief Bellegarde fled before the people gained entry to the meeting.

After a testy exchange between the Treaty people and several Chiefs in the meeting room, the Chiefs who led the march went up to the front of the room to read out a prepared statement to the AFN Forum. Following the reading of the statement the Treaty people left the meeting and the meeting resumed with its pre-cooked agenda.

On the second day of the AFN Forum, federal Minister of Crown-Indigenous Relations Carolyn Bennett and her Associate Deputy Minister Joe Wild attended the "Forum".

There were concerns among a number of Chiefs and Leaders about Minister Bennett continuing to change the federal "*Inherent Right*" and "*Comprehensive Claims*" Policies privately at various "*tables*" as part of the "*Rights Recognition Framework*" previously rejected by AFN by June 2019.

During a question and answer session at the AFN Forum, Minister Bennett confirmed that the federal government would be delaying changes to the self-government and land claims policies and that

> "*any new policies will be anchored in the United Nations Declaration on the Rights of Indigenous Peoples and co-developed with rights holders*."

Conclusion

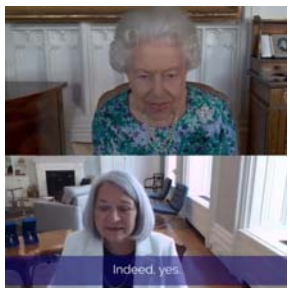
While in 2019, prior to the last federal election, Minister Bennett committed to delaying any changes to the national federal self-government and comprehensive land claims policies, the Trudeau government, along with the government of B.C. and the B.C. First Nations Summit, in September, 2019 announced a new B.C. Treaty Negotiation Policy, which renewed the 29 year-old BC Treaty process and confirmed "*Modern Treaties*" in B.C. will be based upon surrender to the "*assumed sovereignty of the Crown*" (section 18) as a fundamental principle of the process.

The Union of B.C. Indian Chiefs were excluded in the development of the new negotiation policy.

The Crown-Indigenous Relations Northern Affairs Canada (CIRNAC) 2021-2022 Departmental Plan describes the ongoing federal pan-Indigenous agenda priorities, which will be used as part of the measures in Bill C-15's "*action-plan*", as follows:

PM Trudeau with Mary Simon, new Indigenous Governor -General.

"As the Trudeau government prepares to announce a 2021 federal election, they will go forward knowing the Trudeau-Wernick pan-Indigenous Bill C-15 "Framework" continues to work, crowned by the appointment of an Indigenous Governor-General, Mary Simon, who is a safe choice, because her career, as well as the Inuit Nation's governance, is based upon accepting the federal comprehensive claims policy surrendering to Crown sovereignty."



Queen Elizabeth II on a Zoom Call with new GG, Mary Simon.

'Pan-Indigenous Framework' conclusion from page 17

CIRNAC will continue discussions to co-develop modern treaties, self-government agreements and other constructive arrangements, and explore new ways of working with First Nations, Inuit and Métis communities.

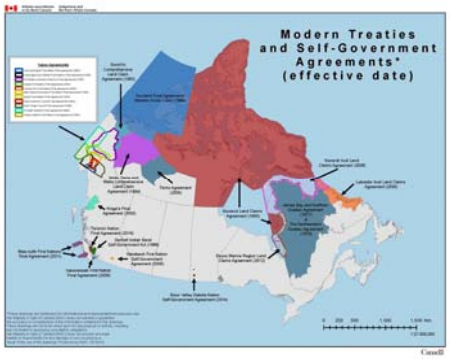
CIRNAC will advance ongoing work with First Nations, Inuit and Métis to re-design the Comprehensive Land Claims and Inherent Right policies.

Canada, as represented by CIRNAC and other federal departments, will progress in the implementation of the ***Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia****, in partnership with the other Principals of the British Columbia treaty process (the First Nations Summit and the Province of British Columbia).* ***Where there is interest, Canada is ready to discuss using the approaches found in this policy with negotiation partners elsewhere in the country***. [emphasis added]

The last point about using the B.C. Treaty Negotiations Policy across Canada where requested confirms what CIRNAC Senior Assistant Deputy Miniter Joe Wild wrote in a letter in October 2020, after the 2019 federal election:

> *The policy embeds [federally defined] recognition as the underlying basis for negotiations and replaces Canada's Comprehensive Land Claims and Inherent Right policies in the British Columbia treaty process.* ***Where there is interest, Canada is also ready to use the approaches found in the*** **Recognition** ***and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia*** *with negotiation partners elsewhere in the country*. [emphasis added]

As the Trudeau government prepares to announce a 2021 federal election, they will go forward knowing the Trudeau-Wernick pan-Indigenous Bill C-15 "*Framework*" continues to work, crowned by the appointment of an Indigenous Governor-General, Mary Simon, who is a safe choice, because her career, as well as the Inuit Nation's governance, is based upon accepting the federal comprehensive claims policy surrendering to Crown sovereignty.



STATEMENT BY CHARMAINE WHITEFACE 'BILL C-15 IS BASED ON A LIE'!

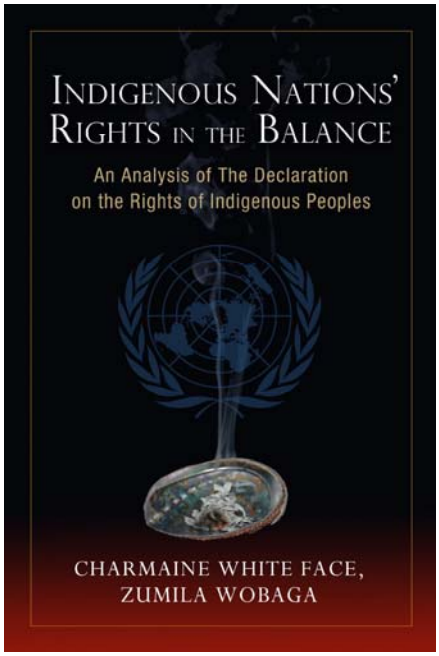
April 16, 2021

First of all, if **Bill C-15** is based on the **United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**), it is based on a lie. The Declaration that was approved by the United Nations (UN) General Assembly in 2007 is **NOT** the Declaration approved by Indigenous Peoples. Having a Bill based on a lie makes the Bill a partner in the lie and therefore, not good law. To say that **Bill C-15** will affirm the rights of Indigenous Peoples is not true. The **UNDRIP** was changed to satisfy colonizing governments' continued pursuit for control over Indigenous Peoples and resources.

If **Bill C-15's** sponsors really wanted to *"affirm"* the rights of Indigenous Peoples, they would base their Bill on the Original Text that was approved by all Indigenous Peoples in Geneva, Switzerland, in 1994. That Original Declaration was also approved by two UN Committees: the **Working Group on Indigenous Populations** (**WGIP**), and the **Subcommission on the Prevention of Discrimination and the Protection of Minorities**. After that, the most powerful colonizing governments pushed the Declaration off into another working group and changed not just the words but the meaning and purpose of the **UNDRIP**.

Canada can do that. The Canadian government could base their **Bill C-15** on the truth, the Original Declaration passed in 1994, and support the intent and purpose in that Original document. To support **Bill C-15** based on the **UNDRIP** that was approved in 2007 is to base **Bill C-15** on a lie. Such an action will only bring dishonor and regret to the Canadian government.

Charmaine White Face is an Oglala Tituwan Oceti Sakowin writer, scientist and great-grandmother. She wrote an in-depth analysis of the UNDRIP based on her experiences at the UN debates called: Indigenous Nations Rights in the Balance published by Living Justice Press, St. Paul, MN. She can be reached at cwhiteface@gmail.com.



Indigenous Nations' Rights in the Balance

An Analysis of the Declaration on the Rights of Indigenous Peoples

By Charmaine White Face, Zumila Wobaga

Softcover, 160 pages, indexed

$20.00

Publication 2013

ISBN: 978-0-9721886-8-5

e-Book ISBN 978-1-937141-11-0

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'Bill C-15 is Based on a Lie' conclusion from page 19

Comparing three different versions of the UN Declaration on the Rights of Indigenous Peoples (DRIP), Indigenous Nations' Rights in the Balance analyses the implications of the changes made to DRIP for Indigenous Peoples and Nations.

This is a foundational text for Indigenous law and rights and the global struggle of Indigenous Peoples in the face of modern states.

Between 1994 and 2007, three different versions of the Declaration on the Rights of Indigenous Peoples were passed by various bodies of the United Nations, culminating in the final version passed by the UN General Assembly. Significant differences exist between these versions—differences that deeply affect the position of all Indigenous Peoples in the world community.

In Indigenous Nations' Rights in the Balance, Charmaine White Face gives her well-researched comparative analysis of these versions. She puts side-by-side, for our consideration, passages that change the intent of the Declaration by privileging the power and jurisdiction of nation states over the rights of Indigenous Peoples. As Spokesperson representing the Sioux Nation Treaty Council in UN proceedings, she also gives her insights about each set of changes and their ultimate effect.

Reviews and Comments

Charmaine White Face, a Lakota Wiyan from Pine Ridge, S.D., who is devoted to the political rights of indigenous peoples, gives us here a lucid and implacable analysis of the crucial relationship between Indians and their colonizers. Her work in Geneva, Switzerland, as well as her defense of the Black Hills of the North Plains region, challenges the United Nations Human Rights declaration of 2007 as deeply flawed. In examining the role of the UN, she charges that it has again through its recent declarations provided legitimacy and prestige not only to historical eighteenth-century genocide, but to the continuing plunder of rights and resources of native peoples. Her profoundly disturbing message forces us to ask the question: what happens when international law says powerful nations can use the idea of law as a weapon to gain consensus for theft? The so-called rule of law, as "discoverers" have shown us from the beginning, entrenches legal doctrines that justify genocide. The UN complicity, White Face tells us, has enormous consequences. No readers of this little text can dismiss the logic of her analysis if we are to learn the lessons of history.

Charmaine Whiteface

INDIGENOUS ACTIVISTS NETWORKS
(DEFENDERS OF THE LAND-TRUTH CAMPAIGN-IDLE NO MORE)

BRIEF TO THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES ON BILL C-15 - UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

May 14, 2021

Greetings;

Thank you for the invitation to present to your Committee today.

I am here as the spokesperson on Bill C-15 for three Indigenous Activists Networks: the Defenders of the Land, Idle No More and the Truth Before Reconciliation Network.**1**

On December 11, 2020, our Indigenous Networks issued our full analysis of Bill C-15 and recommended to Indigenous communities and nations to reject Bill C-15.

Canadian Definition of UNDRIP

It is our opinion that the federal UNDRIP Bill C-15 must be reviewed and considered in the broader context of the Trudeau government's record of stealth and deception in its treatment of Indigenous communities and Indigenous Nations for the past six years (2015-2021), particularly the federal government's unilateral development of a Canadian definition of the **UN Declaration on the Rights of Indigenous Peoples**.

This constitutes massive, unprecedented changes to policy, law and structure, bypassing Indigenous Peoples and Nations, who are the proper rights-holders, while using the three National Indigenous Organizations (AFN, MNC, ITK), "*Modern Treaty*" groups and many Band Councils who are in federal secretive, top-down discussions, a number of them who are already participating in falsely named "*self-determination*" negotiation tables across Canada.

Moreover, developing legislation during a global pandemic while most Indigenous communities and nations have been in their communities trying to protect their families from Covid outbreaks is an egregious act. How do you justify doing 'engagement' on a federal law that will have lasting generational impacts during a pandemic when many Indigenous communities and nations don't even have the capacity to respond or analyze properly how their rights will be impacted?

In 2016, Canada showed how qualified and limited its support for UNDRIP is, trying to make it subject to, and subsidiary to, national law. Then Indigenous Affairs Minister, Carolyn Bennett told the United Nations Permanent Forum on Indigenous Issues (UNPFII):

"***We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution…Canada believes that our constitutional obligations serve to fulfill***

'Senate Brief on Bill C-15' continued from page 21

all the principles of the Declaration, including "free, prior and informed consent."…We see modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent among partners."**2** [emphasis added]

Since forming government in 2015, the Trudeau government has been developing a domesticated **Canadian Definition** of UNDRIP, for example in April 2016, then federal Minister of Natural Resources, Jim Carr told the Standing Committee on Indigenous and Northern Affairs:

"***the government is in the process of providing a Canadian definition to the declaration…The government is currently in the process of providing greater clarity to these definitions…We are going to get there by following a process and a regulatory regime***"**3**. [emphasis added]

In May 2016, before Minister Bennett stated Canada's qualified support for UNDRIP, then federal Minister of Justice, Jody Wilson-Raybould told the UNPFII:

> "**There is a need for a national action plan in Canada, something our government has been referring to as a Reconciliation Framework…*And we do not need to re-invent the wheel completely. …Within Canada, there are modern treaties and examples of self-government –both comprehensive and sectoral. There are regional and national Indigenous institutions that support Nation rebuilding –for example in land management and financial administration.***"**4** [emphasis added]

"Canada has made it clear that they want national laws—many of which violate indigenous rights—to prevail over UNDRIP."

Following this 2016 statement to the UN Permanent Forum on Indigenous Issues, then federal Justice Minister Jody Wilson-Raybould told the 2016 AFN Chiefs' Assembly in Niagara Falls:

> "*adopting the UNDRIP as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it…* ***Ultimately, the UNDRIP will be articulated through the constitutional framework of section 35.***"**5** [emphasis added]

Federal Minister of Justice & Attorney-General David Lametti, gives thumbs up in HoC as Liberals shut off debate on Bill C-15.

Canada has made it clear that they want national laws—many of which violate indigenous rights—to prevail over UNDRIP.

The Federal **UN Declaration of the Rights of Indigenous Peoples Act**, **Bill C-15** is a sleight of hand that promises to increase and expand Indigenous rights but actually accomplishes the opposite.

The main sections of **Bill C-15**, particularly section 2, maintain the common law interpretation of section 35(1) and section 35(2) of the *Constitution Act, 1982*, which is heavily based on the **colonial Doctrine of Discovery**.

'Senate Brief on Bill C-15' continued from page 22

The application of this colonial doctrine has resulted in a number of problems in legal interpretations in case law based on section 35 of the *Constitution Act, 1982*, which negatively impact daily life, on the ground, for Indigenous Peoples and Nations in Canada including:

• The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.
• Disregarding Indigenous laws and legal traditions.
• Establishing that the Crown has "ultimate title" to land.
• The costly, onerous, burden of proof imposed on Indigenous Peoples and Nations to establish their rights in Canadian courts.
• The racist and "frozen in time" "Van der Peet test" for establishing Aboriginal rights.
• The ability for the Crown to infringe Aboriginal rights based on the "Sparrow test".
• The erosion of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles through "strength of claim" and "depth of consultation" assessments by the federal and provincial governments.

By subjugating UNDRIP to Section 35 the government is taking away all of the rights the declaration was designed to recognize. Under Section 35, the Indian Act and other federal laws directed at First Nations and Indigenous Peoples, Indigenous Peoples are not recognized as part of self-determining nations, as UNDRIP is supposed to do, but only as what Prime Minister Trudeau has described as a "*fourth level of government*" behind the federal, provincial and municipal governments.

Professor Nicole Schabus, who teaches law at Thompson Rivers University, says that the central problem is that Bill C-15 tries to "*domesticate*" international law and "*international law is approved and developed at the international level, and these standards cannot be lowered at the national level*."

There is no international oversight contemplated in Bill C-15 to ensure compliance with the international standards as the original 1994 UNDRIP version intended.

By subjugating UNDRIP to Canadian law and lowering standards, Bill C-15 denies Indigenous Peoples the right to self-determination that UNDRIP recognizes and "*the right to self-determination is the main remedy for colonization*."

There would be no requirement in UNDRIP to obtain the free, prior, informed, consent of Indigenous Peoples for developments on Indigenous lands, territories & resources without the right of self-determination.

At this point, to our Indigenous Networks, it seems that Bill C-15 is being fast-tracked to become law by June of this year.

If Bill C-15 becomes federal law, **we will recommend to Indigenous communities and nations that they organize themselves to resist this law and exercise their sovereignty and self-determination on the ground, challenging the jurisdiction and authority of the Canadian state, its constituent governments and the resource extraction corporations, or Crown corporations operating on Indigenous lands without Indigenous Peoples' FPIC**.

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

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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.

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'Senate Brief on Bill C-15' Conclusion & Endnotes

1 ISSUED BY THE INDIGENOUS ACTIVISTS NETWORKS

2 Speaking Notes for The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, Announcement of Canada's Support for the United Nations Declaration on the Rights of Indigenous Peoples United Nations Permanent Forum on Indigenous Issues, May 10, 2016.

3 Federal Minister of Natural Resources, Jim Carr, to Standing Committee on Indigenous and Northern Affairs, April 21, 2016.

4 Federal Justice Minister Jody Wilson-Raybould's, Opening Address at UN Permanent Forum on Indigenous Issues, May 9, 2016.

5 Federal Minister of Justice, Jody Wilson-Raybould's, Speech to the Assembly of First Nations Annual General Assembly, July 12. 2016.

[EDITOR'S NOTE: CANDRIP (Bill C-15) passed into federal law on June 21,2021]