



Reconciliation is
Re-Colonization:

Canada's 2-Track
Process to Transition
Indian Bands &
Reserves into 4th Level
Indigenous
Municipalities

BY RUSS DIABO

PRESENTED TO BEYOND COWS
& PLOUGHS TREATY TOUR

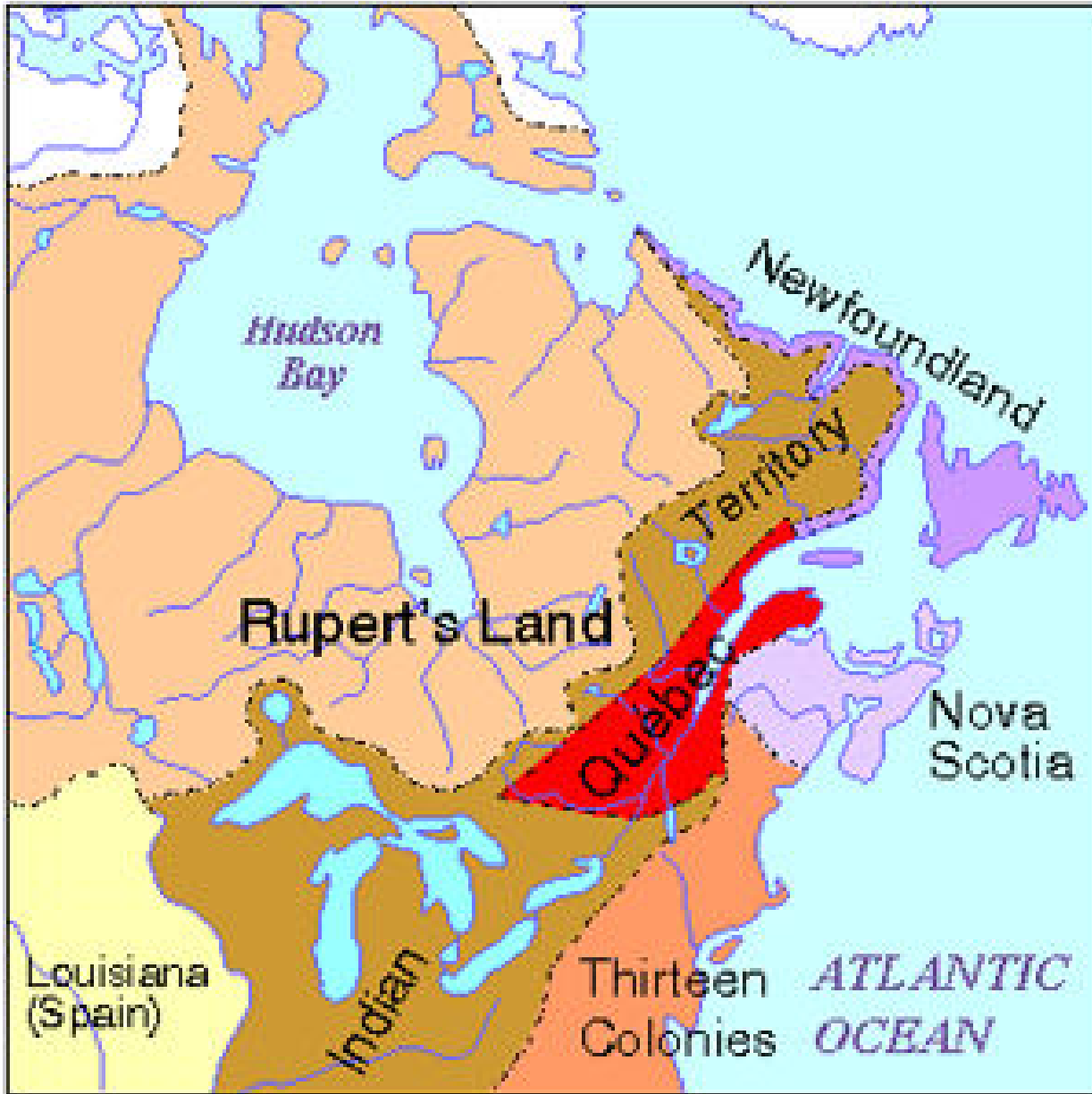
MARCH 26, 2024

PARTS OF PRESENTATION

1. Canada's Historical Colonization Phase.
2. Trudeau Government's 2-Track Reconciliation/Re-Colonization Framework.
3. Canada's Definition of UNDRIP in UNDA (Bill C-15) National Reconciliation/Re-Colonization Action-Plan.
4. Sovereignty, Nationhood & Land Back through Self-Determination Territorial Planning.

Canada's Colonization Phase: Origin of Canada

- ▶ Canada continues to base its territorial integrity and assertion of sovereignty over Indigenous (First) Nations by continuing to rely on the racist and outdated notion of the **Doctrine of Discovery**—now supported by 2007 UNDRIP Article 46.1 & Bill C-15.



ROYAL PROCLAMATION OF 1763

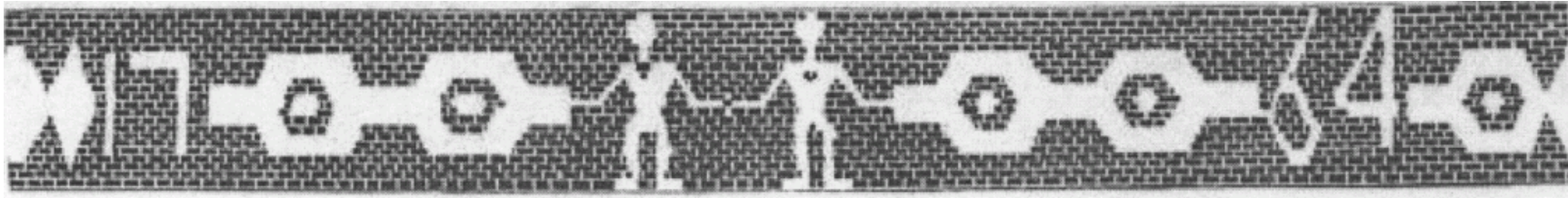


Royal Proclamation of 1763 & French, Spanish, Russian Claims of Territory



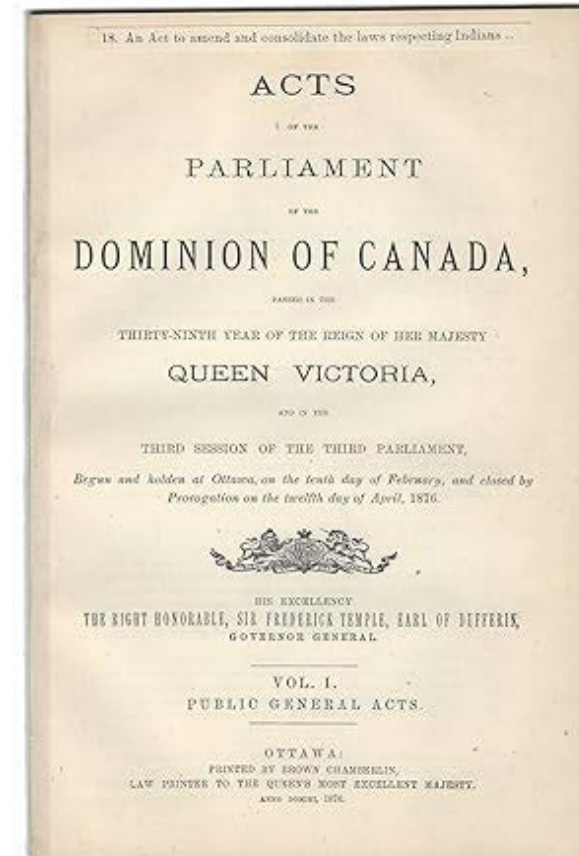
Two-Row Wampum Belt Agreement

1764 Great
Chain
Wampum



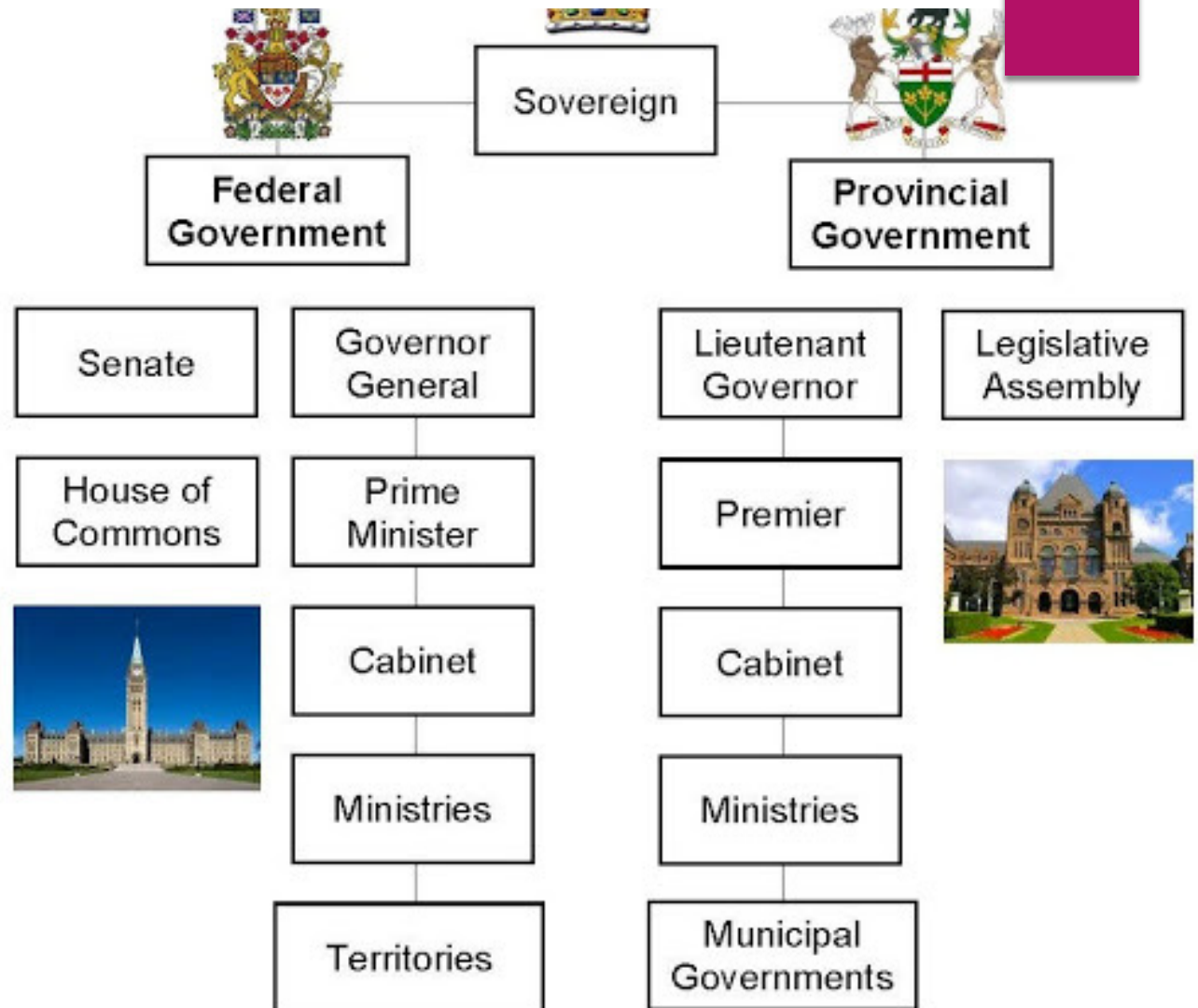
1901- Rubbing of belts at Manitoulin Island, similar to one at Kahnasatake.

Canada's First Constitution: 1867 - Section 91.24 BNA Act & 1876 - Indian Act



Constitutional Division of Powers

- ▶ Section 91 are Federal Powers
- ▶ Section 92 are Provincial Powers





1870 Purchase
of Rupert's
Land From HBC
Enlarging NWT



Premières Nations au Canada First Nations in Canada

**Statut de la Première Nation
First Nation Status**

Loi sur les Indiens / Indian Act

- Première Nation (473*)
First Nation (473*)

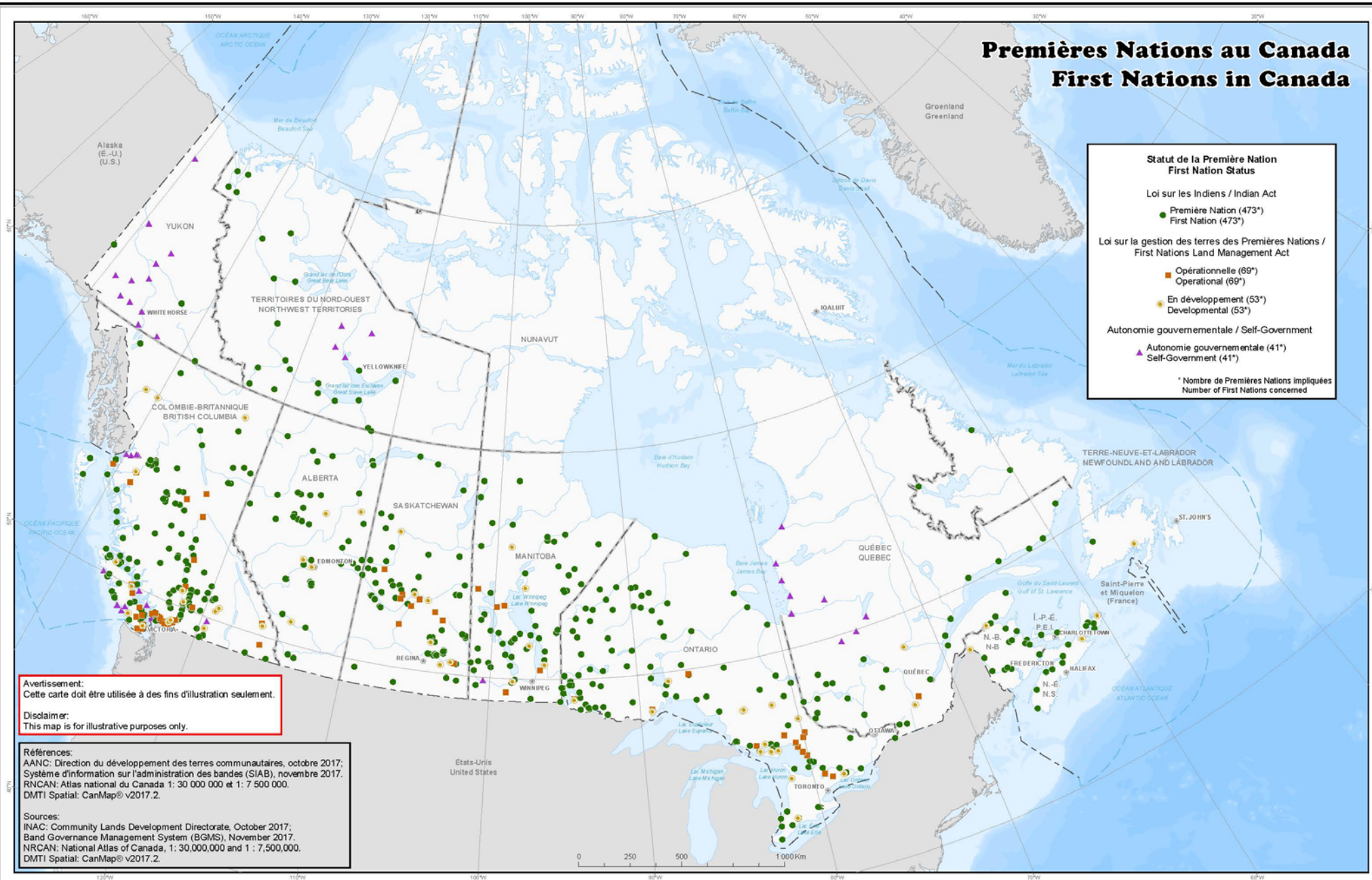
Loi sur la gestion des terres des Premières Nations /
First Nations Land Management Act

- Opérationnelle (69*)
Operational (69*)
- En développement (53*)
Developmental (53*)

Autonomie gouvernementale / Self-Government

- ▲ Autonomie gouvernementale (41*)
Self-Government (41*)

* Nombre de Premières Nations impliquées
Number of First Nations concerned



Avertissement:
Cette carte doit être utilisée à des fins d'illustration seulement.

Disclaimer:
This map is for illustrative purposes only.

Références:
AANC: Direction du développement des terres communautaires, octobre 2017;
Système d'information sur l'administration des bandes (SIAB), novembre 2017.
RNCAN: Atlas national du Canada 1: 30 000 000 et 1: 7 500 000.
DMTI Spatial: CanMap® v2017.2.

Sources:
INAC: Community Lands Development Directorate, October 2017;
Band Governance Management System (BGMS), November 2017.
NRCAN: National Atlas of Canada, 1: 30,000,000 and 1: 7,500,000.
DMTI Spatial: CanMap® v2017.2.

G511-03 (01/04 #202100)

LEGACY OF PIERRE TRUDEAU & JEAN CHRETIEN



1969 White Paper Objectives: Publicly Withdrawn - Secretly Implemented

- ▶ Eliminate Indian Status (Remove Legal Distinctions between 'Indians' & Canadians)
- ▶ Dissolve the Department of Indian Affairs within 5 years.
- ▶ Abolish the Indian Act & remove section 91.24 from the Constitution Act 1867 referring to "*Indians and Lands Reserved for Indians*".
- ▶ Convert reserve land to private property that can be sold by the band or its members.
- ▶ Transfer responsibility for Indian Affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens.
- ▶ Provide transitional funding for economic development.
- ▶ Appoint a commissioner to address outstanding land claims and gradually terminate existing Treaties.

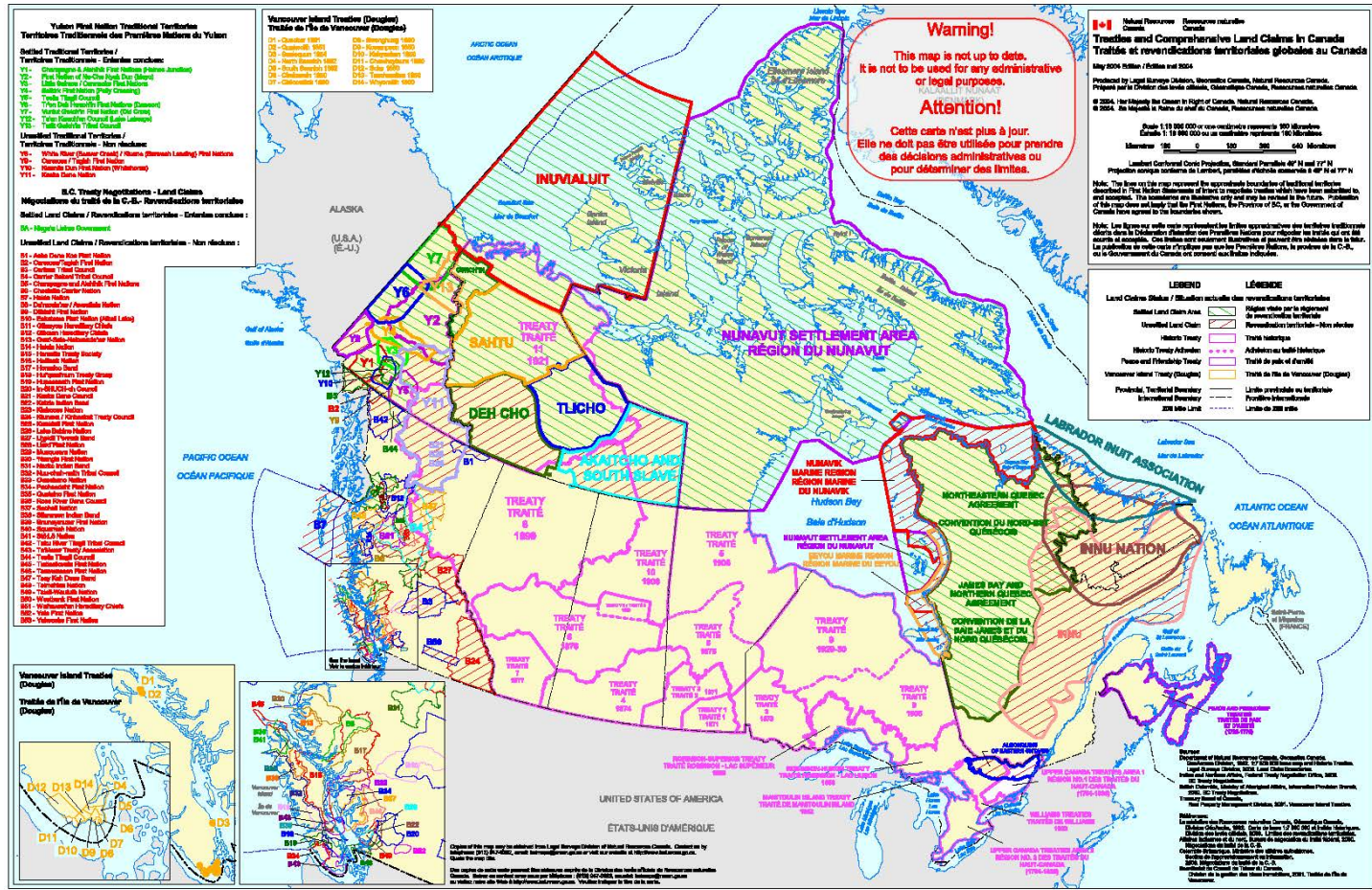
Pierre Trudeau & Jean Chretien Legacy

- ▶ 1973 Statement on Native Claims (Land Claims: Comprehensive & Specific).
- ▶ 1982 Constitution Act (Added word “Existing” to limit legal interpretation of Section 35, 1983 Constitutional Amendment (35(3) Land Claim Treaties & 35(4) Gender Equality) & Section 37 First Ministers’ Conferences on Aboriginal Matters initially to define Aboriginal & Treaty rights, 1980’s FMC’s failed to agree on Self-Gov’t).
- ▶ 1995 “Inherent Right Policy” (Federal Pre-Conditions to Negotiating Self-Government).
- ▶ 1999 First Nations Land Management Act (Sectoral Self-Government: Land Codes/Land Registry/Land Advisory Board).
- ▶ 2006 First Nations Fiscal & Statistics Management Act (National Fiscal Institutions).

1993 LIBERAL RED BOOK PROMISE

“Act on the premise that the
Inherent Right to Self-Government
is an existing Aboriginal & Treaty
Right within the meaning of
section 35.”





Inherent Right to Self-Government Policy is basis for implementation of Pre-Confederation, Post-Confederation & Modern Treaties

FEDERAL DEFINITION OF INHERENT RIGHT OF SELF-GOVERNMENT

- ▶ INHERENT RIGHT POLICY 1995-PRESENT
- ▶ Federal government says it recognizes that s.35 includes the “inherent right of self-government”
- ▶ Federal government limits & restricts the nature & scope of the right through its policy
- ▶ Federal government wants to get First Nations consent to a narrow definition of rights
- ▶ Federal government requires provincial role & allows provincial veto

CANADA'S DEFINITION OF "INHERENT"

- ▶ Matters that are "internal" & "integral to the culture" of a First Nation ie., internal governance, reserve lands, administration, delivery of services, culture
- ▶ Canada still retains ultimate control by defining the limits to what can be negotiated under each heading

- ▶ AREAS WHERE CANADA WILL DELEGATE
- ▶ matters where Canada will not recognize any inherent right
- ▶ Canada will only delegate: First Nations must recognize paramount federal authority ie., taxation; trade & commerce; justice; gaming; fisheries; etc.
- ▶ Provinces get vetoes in their areas

NON-NEGOTIABLES

- ▶ Self determination
- ▶ Extinguishment
- ▶ Sovereignty, international treaty-making
- ▶ International trade, import & export;
- ▶ Trade & commerce
- ▶ Criminal law
- ▶ Fiscal policy

DISCUSSIONS, NEGOTIATIONS, LEGISLATION 1995-PRESENT

- ▶ The federal “inherent right” policy is being applied by Canada at every discussion & negotiating table
- ▶ Canada’s intention is to use negotiations to get First Nation’s consent to a narrow definition of the nature & scope of Aboriginal & Treaty rights
- ▶ In the process, fiscal resources are capped or reduced in the “New Fiscal Relationship”
- ▶ Federal Crown abandons responsibility to ensure that needs are met without assuring adequate revenues for First Nations

FEDERAL SECTION 91.24 LEGISLATION OVER INDIANS, FIRST NATIONS & INDIGENOUS PEOPLES (INDIGENOUS GOVERNING BODIES)

- ▶ Continue federal interference by legislating in areas that even Canada admits are internal to First Nations and integral to their culture ie., elections, lands, definition of “Indigenous Governing Bodies”, child & family services, languages, self-government
- ▶ Modify legislative base to facilitate ‘Inherent Right’ negotiations & hollow out the Indian Act.
- ▶ Consolidate ultimate control of ISC & CIRNAC Ministers
- ▶ Use legislation to limit nature & scope of right: First Nations consent when they opt-into legislation
- ▶ SCC *Quebec Reference* case on Bill C-92 unanimously confirmed Bill C-92 didn’t create a 3rd Order of Government, but 1st step in “legislative reconciliation” of self-government via section 91.24, Constitution Act 1867. [4th Level Indigenous governments]

FEDERAL 'INHERENT RIGHT' POLICY

- ▶ The federal '**Inherent Right**' Policy states "*The inherent right of self-government **does not include a right of sovereignty in the international law sense...implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation***". [emphasis added]

INHERENT RIGHT TO SELF-GOVERNMENT POLICY IS THE UMBRELLA POLICY

The federal IRSG Policy is the basis for all discussions and negotiations with First Nations, Metis, Inuit, including these processes:

- ▶ “Recognition of Rights & Self-Determination” Tables.
- ▶ Modern Treaty (Comprehensive Land Claim) Tables.
- ▶ Specific Claims - Canada-AFN Proposed ‘Independent’ Claims Process.
- ▶ Additions-to-Reserve Policy Redesign (Canada-AFN Process).
- ▶ Self-Government (Sectoral—including Land Codes—or Comprehensive) Tables.
- ▶ Alternative Federal (Section 91.24) Legislation to the Indian Act Imposing National Standards on Inherent and Treaty rights (affecting First Nations lands, taxation, resources, languages, child welfare and governance regimes).

Trudeau Government's Re-Colonization Framework

“Indigenous governments” are
the fourth level of government in
this country.” – PM Justin Trudeau,
June 2016



Liberal Party of Canada's Key 2015 Promises

- ▶ Engage in a new “ **Nation-to-Nation** Process.
- ▶ Develop in full partnership with First Nations a **National Reconciliation Framework**.
- ▶ Enact all **94 TRC Calls to Action** and **adopt UNDRIP**.
- ▶ **Lift 2% Cap** on First Nations Funding.
- ▶ Do a **full review of federal law & policy** in full partnership with First Nations.
- ▶ **Establish an Indigenous Missing Women's & Girls Inquiry**.

Status of Key Liberal 2015 Promises Almost 9 Years Later

- ▶ **“Nation-to-Nation” Process** is a pan-Indigenous approach based on imposed 1995 *“Inherent Right”* Policy to transition First Nations into Indigenous Municipal Governments (self-government).
- ▶ **National Reconciliation Framework** is based on unilateral **sec. 35 policy framework** for Re-Colonization through Modern Treaties, Self-Gov't, Land Claims, Land Codes, Taxation & section 35 common law as Canadian definition of **UNDRIP** Indigenous Rights adopted in **section 2(2) of UNDA, Bill C-15**.
- ▶ **Enact 94 TRC Calls to Action & UNDRIP** is minimally addressed in **Bill C-29, National Council for Reconciliation Act** to create an advisory body to support **TRC & UNDRIP Bill C-15 Action-Plan**, a domestic, process to *“ensure consistency”* of federal laws with UNDRIP *“objectives”*

Status of Key Liberal 2015 Promises Almost 9 Years Later

- ▶ **Lift 2% Funding Cap** remains to be seen--in fiscal policies: **10 Year Grants** (annual 2% increase) & **Self-Gov't Fiscal Policy** that uses a Formula based on **Own Source Revenue, including taxation.**
- ▶ **Full review of federal law & policy** in full partnership with First Nations. This became a top-down approach using National Indigenous Organizations. Now it is a secret, internal process of **Reconciliation Cabinet Committee.**
- ▶ **Indigenous Missing Women's & Girls Inquiry** federal action-plan on **MMIWG Calls for Justice & Recommendations** has been criticized for lack of progress and as being flawed by Indigenous Women's Organizations.

December 2015: 2-Track “Indigenous” Approach To Reconciliation Announced (First Nations, Metis, Inuit)



- ▶ 1) closing the socio-economic gap between Indigenous Peoples and non-Indigenous Canadians [Indigenous Services Canada], and
- ▶ 2) making foundational changes to laws, policies and operational practices based on the federal recognition of rights to advance self-determination and self-government. [Crown-Indigenous Relations]

Trudeau's Two-Track Re-Colonization Plan

Section 91.24

Use Federal Racist, Colonial, Authority & Control over "**Indians & Lands Reserved for Indians**" to Dissolve Dept. of Indian Affairs & Create 2 New "Indigenous" Dept's.

Section 35

To Impose a "New Relationship" Through a Unilateral Federal Definition & Interpretation of "Recognition" of "**Existing Aboriginal & Treaty Rights**"

2-TRACK (ISC & CIRNAC) APPROACH DIFFERENT ROLES FOR 2 DEPARTMENTS

- ▶ In the Two-Track process, the role of Indigenous Services Canada is to prepare First Nations for the devolution (transfer) of programs and self-government through capacity building, including the 10-Year Grants.
- ▶ The role of Crown-Indigenous Relations is to implement existing self-government agreements & self-government fiscal policy, including modern treaties and the Indian Act Alternatives, supported by the National Lands Advisory Board and Financial Management Agreement institutions—and to continue this approach with First Nations, Metis & Inuit regarding the negotiation of Inherent and Treaty rights through the umbrella Inherent Right to Self-Government Policy.

DEFINITIONS – INDIGENOUS SERVICES & CROWN-INDIGENOUS RELATIONS DEPTS.

Bill C-97

- ▶ **Indigenous governing body** means a council, government or other entity 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.
- ▶ **Indigenous peoples** has the meaning assigned by the definition aboriginal peoples **of Canada** in **subsection 35(2) of the *Constitution Act, 1982***. [emphasis added]

2016 INAC-AFN FISCAL RELATIONS MEMORANDUM OF UNDERSTANDING



AFN-INAC Joint Advisory Committee on Fiscal Relations (JACFR)



New Fiscal Relationship

The Mutual Accountability Framework under the 10-Year Grant

Key Principles

- First Nation governments are primarily accountable to their citizens
- First Nation governments and the Government of Canada are mutually accountable for the commitments they have voluntarily made to one another

4 New Accountability Relationships

FN Governments to FN Citizens

- Multi-year outcome plans
- Annual reporting to citizens on results
- Audited financial statements
- Independent audits

First Nation Governments to GoC

- Maintain eligibility criteria
- Demonstrating results, incl. minimal reporting
- Sharing strategic (community) plan, annual reports and financial statements
- Engaging in periodic joint reviews

GoC to First Nation Governments

- Advancing self-determination
- Sufficient, predictable, sustainable funding
- Co-developed priorities, policies, programs
- Transfer of control of services
- Meeting service delivery standards to FNs

GoC to Parliament, First Nation Citizens and all Canadians

- Closing socio-economic gaps

Shared Responsibilities

- Closing gaps / improved outcomes; for FNs
- Transparent accounting of use of public funds;
- Effective governance capacities
- Effective and efficient delivery of services to citizens.



From	
X	Paternalistic – Not consistent with right to self-determination
X	Top-Down Accountability (one-way street)
X	Reporting burden (very little focus on outcomes; primarily compliance based reporting)
X	Socio-economic gaps not closing

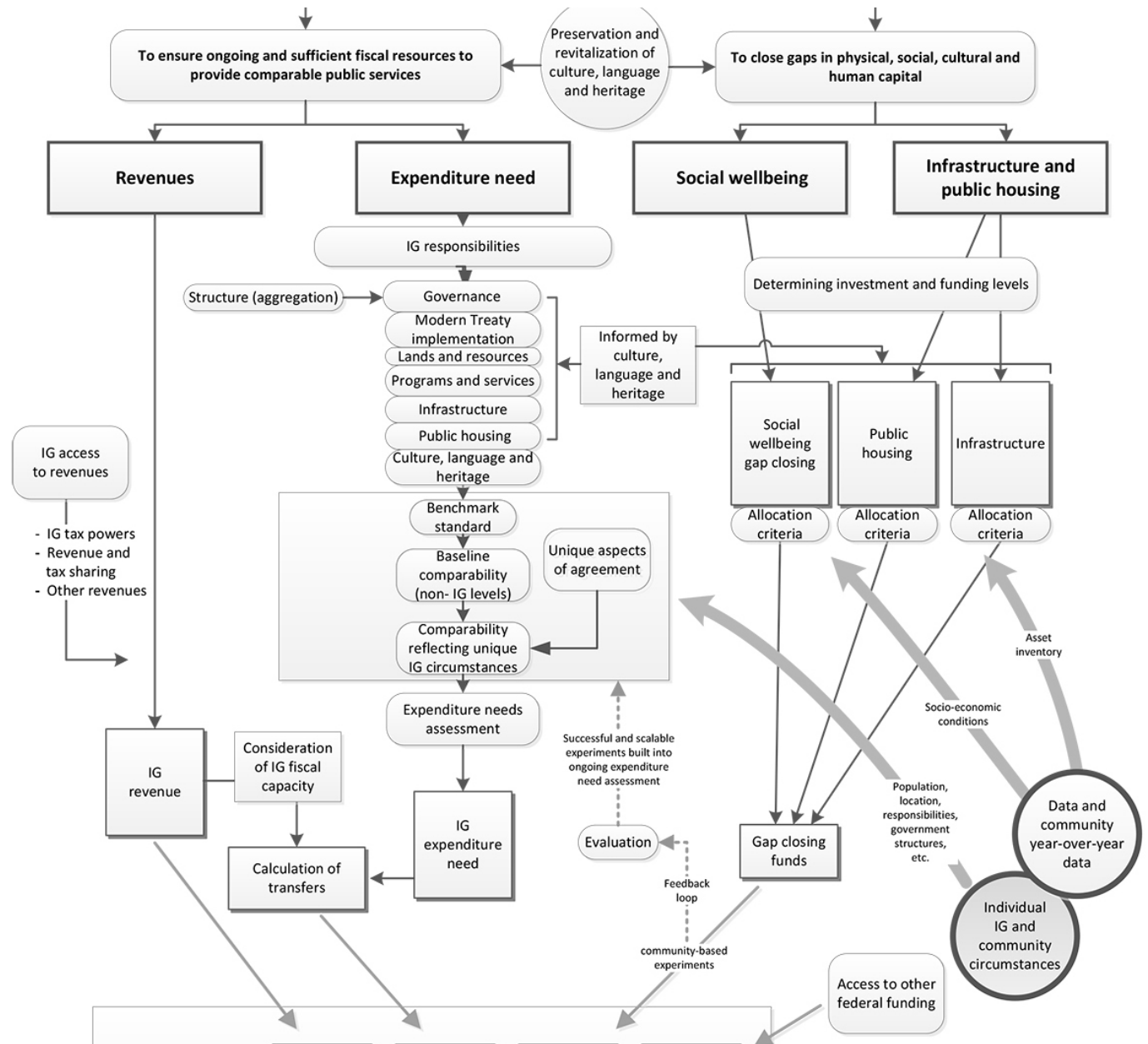
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To	
✓	Advancing self-determination
✓	Mutual Accountability (two-way street)
✓	Focus on outcome reporting (no compliance reporting to GoC)
✓	Accelerate closing of socio-economic gaps

NEGOTIATING INHERENT & TREATY RIGHTS THROUGH SELF-GOVERNMENT AGREEMENTS

- ▶ “There are 25 self-government agreements across Canada involving 43 Indigenous communities. There are also 2 education agreements involving 35 Indigenous communities.”
- ▶ “Currently there are about 50 self-government negotiation tables across the country. These tables are at various stages of the negotiation process and in many cases are being negotiated in conjunction with modern treaties.” SOURCE: CIRNAC Website

4th LEVEL INDIGENOUS SELF-GOVERNMENT FISCAL POLICY FUNDING FORMULA BASED ON OWN SOURCE REVENUE, INCLUDING TAXATION



Historic Treaties & Self-Government

- ▶ **MEADOW LAKE AGREEMENT-IN-PRINCIPLE (2001):**
- ▶ ***“8.0 Capacities of a Meadow Lake First Nation and Meadow Lake Tribal Council, 8.01 Capacities of a natural person Each MLFN is a separate and distinct legal entity with the capacities, rights, powers and privileges of a natural person.”*** [emphasis added]
- ▶ **ANISHINABEK NATION GOVERNANCE AGREEMENT (2022):**
- ▶ ***“ANISHINABEK NATION GOVERNMENT, Legal Status and Capacity, 4.1 The Anishinabek Nation is a distinct legal entity with the rights, powers and privileges of a natural person”.*** [emphasis added]

NATIONAL LEGISLATION IMPOSING SELF-GOVERNMENT AS A MUNICIPAL GOVERNMENT CORPORATION

- ▶ The federal bureaucracy has been after national legislation to convert Indian Bands into municipal corporate entities that have the “**power, rights and privileges of a natural person at law**” for decades now. [emphasis added]
- ▶ Bill C-79, Indian Act Optional Modification Act (1997):
- ▶ “*Legal capacity of bands - 16.1 A band has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.*” [emphasis added]
- ▶ Bill C-7, First Nations Governance Act (2004):
- ▶ “*Legal Capacity, Capacity, rights, powers and privileges - 15. (1) A band has the legal capacity, rights, powers and privileges of a natural person*”. [emphasis added]

2018 - PM Announces Legislative Framework for "Recognition & Implementation" of Rights



SELF-GOVERNMENT = MUNICIPAL STATUS & CAPACITY

- ▶ Proposed Recognition and Implementation of Rights Framework Legislation (2018):
- ▶ *“To summarize, the legislation could: enable the Government of Canada to recognize Indigenous Nations and Collectives as legal entities with the status and capacities of a natural person; enable the self-determined exercise of governance by **federally recognized Nations and Collectives**; affirm Canada’s intent to enter into government-to-government fiscal relationships with recognized Nations and Collectives; and, require Canada to co-develop further measures to support these elements.” [emphasis added]*

Trudeau Government Continues with Rejected “Rights Recognition Framework” at Individual Tables-Band-by-Band, Group by Group

- ▶ November 15, 2018, Statement from the Office of the Minister of Crown-Indigenous Relations:
- ▶ “Our Government is committed to advancing the framework, and to continue actively engaging with partners on its contents...We continue to make substantial progress...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”. [Emphasis added]

ALBERTA

Recognition of Indigenous Rights and Self- Determination Discussion Tables (as of February 2022)

BLOOD TRIBE

MÉTIS NATION OF ALBERTA

MÉTIS SETTLEMENTS GENERAL
COUNCIL

MIKISEW CREE FIRST NATION

SAWRIDGE/KAPAWE'NO FIRST
NATIONS

STONEY NAKOTA (CHINIKI
FIRST NATION, BEARSPAW
FIRST NATION & WESLEY FIRST
NATION)

TREATY #6 FIRST NATIONS

TREATY #8 FIRST NATIONS

SASKATCHEWAN

Recognition of Indigenous Rights and Self- Determination Discussion Tables (as of February 2022)

MEADOW LAKE TRIBAL COUNCIL

MÉTIS NATION-SASKATCHEWAN

MCARTHUR - TREATY #4 (OCEAN MAN,
WHITE BEAR AND PHEASANT RUMP
NAKOTA)

POUNDMAKER CREE NATION

RED EARTH CREE NATION

TREATY #4 FIRST NATIONS

TREATY #10 FIRST NATIONS

WAHPETON DAKOTA

WHITECAP DAKOTA FIRST NATION

MANITOBA

Recognition of Indigenous Rights and Self- Determination Discussion Tables

BIRDTAIL SIOUX FIRST NATION

CANUPAWAKPA DAKOTA
FIRST NATION

DAKOTA PLAINS FIRST NATION

FISHER RIVER CREE NATION

ISLAND LAKE TRIBAL COUNCIL

MANITOBA METIS FEDERATION

NISICHAWAYASIIK CREE
NATION

SIOUX VALLEY DAKOTA
NATION

TREATY #2 FIRST NATIONS

TREATY #5 AND TREATY #5
ADHESIONS FIRST NATIONS

TEMPLATE AGREEMENT ON RECOGNITION & SELF-GOVERNMENT

- ▶ Failing to get First Nations support for his government's proposed 2018 "***Rights Recognition Framework***" Bill, for First Nations (Indian Bands) the Trudeau government is promoting it band-by-band, seeking sign on to a template agreement that the **Metis of Alberta, Saskatchewan and Ontario have signed in 2019.**
- ▶ Section 7 of that template agreement provides as follows:
 - ▶ ***FIRST NATION X GOVERNMENT'S LEGAL STATUS, ROLE, JURISDICTION, LAWS, AND AUTHORITY, CHAPTER 7: LEGAL STATUS AND CAPACITY***
 - ▶ ***"7.01 As of the Self-Government Implementation Date, the First Nation X Government and each of its Governance Structures will be a legal entity with the rights, powers, and privileges of a natural person at law".*** [emphasis added]

2017-CANADA-AFN [SHARED] PRIORITIES MEMORANDUM OF UNDERSTANDING TO SUPPORT RENEWAL OF NATION-TO NATION RELATIONSHIP



AFN-CANADA PERMANENT BILATERAL MECHANISM MEETING November 2022



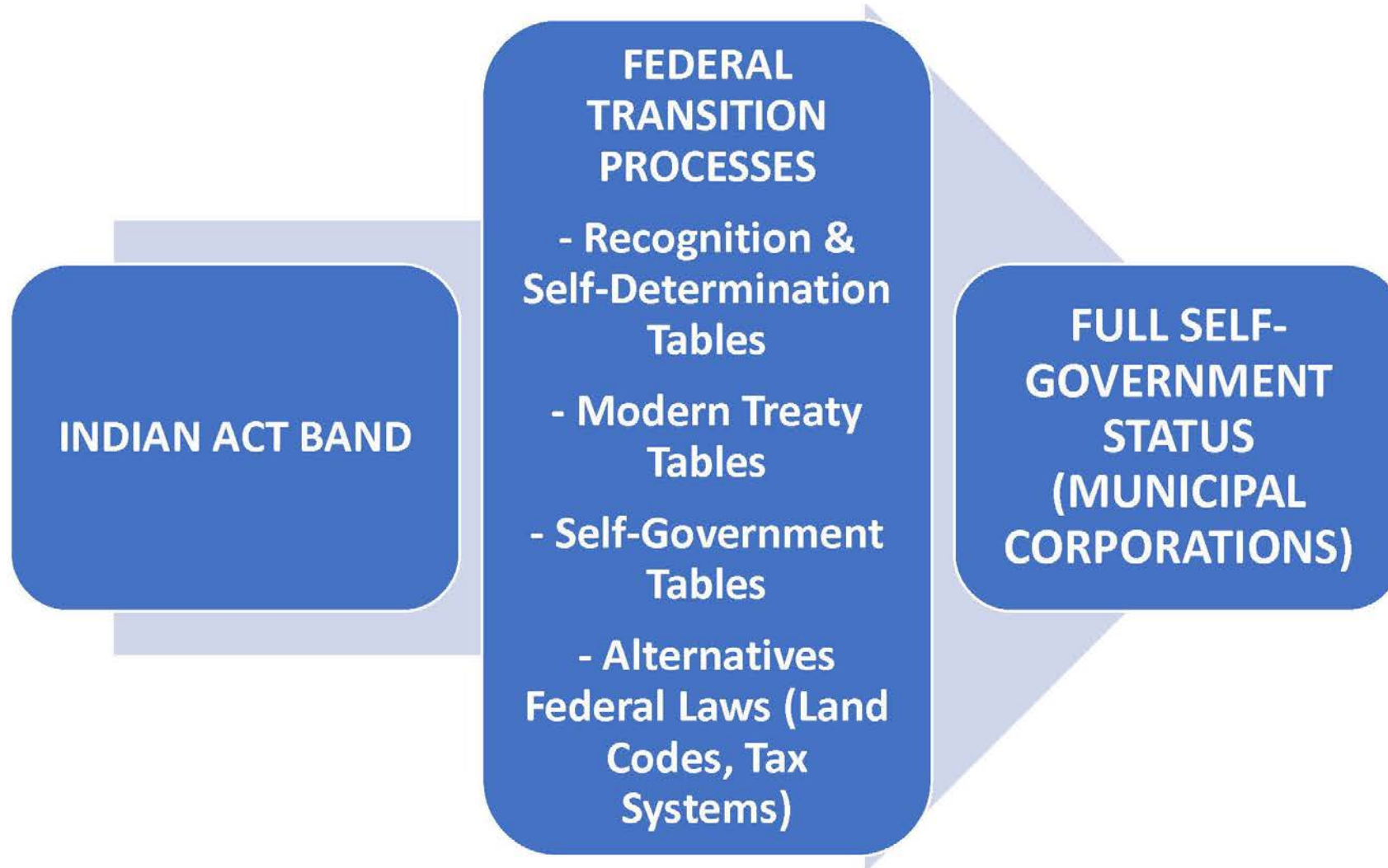
AFN Definition of “First Nation” has Changed to Include “Indigenous Governments” Renewing “Nation-to-Nation” Relationship

- ▶ BILATERAL MECHANISMS/PROCESS:
- ▶ The Government of Canada has established Permanent Bilateral Mechanisms with First Nations, Inuit and Métis Nation leaders to manage “shared” national & regional priorities, “co-develop” policy and monitor progress through:
 - Senior Officials Committee, AFN Directors & Federal ADM’s and DG’s (ISC, CIRNAC, DOJ, OTHER GOVERNMENT DEPARTMENT’S)
 - Quarterly Meetings with Ministers, and
 - Annual Meeting with Prime Minister.
- ▶ Government of Canada & First Nations Bilateral Mechanism (Canada-AFN MOU on Joint Priorities) includes “Modern Treaty & Self-Governing First Nations”.

Modern Treaties & Self-Government Agreements: Inter-Governmental Leaders Forum



TRANSITIONAL PROCESS FOR INDIAN BANDS INTO FEDERALLY RECOGNIZED SELF-GOVERNMENT



Phased Elimination of Indian Reserves into Private Property (Fee Simple)

First Nations Ownership
Initiative now called
Indigenous Land Title
Initiative



Tom Flanagan & Manny Jules

CANADA – LAND REGISTRATION

- ▶ The **ISC lands registries record property interests in First Nations lands**. A land registry is a set of records that anyone can search to find out what ownership, leases, permits and other interests may apply to a parcel of land.
- ▶ **ISC has 3 land registries**. The registries are maintained in Ottawa and are web-based. They are accessible to First Nations, ISC staff and the general public.
- ▶ The **Indian Land Registry System (ILRS)** consists of documents related to and interests in reserve (and any surrendered) lands that are administered under the **Indian Act**.
- ▶ The **First Nations Land Registry System (FNLRS)** is used for the land records of First Nations who operate under their own Land Code pursuant to the **First Nations Land Management Act (FNLMA)**.
- ▶ The **Self-Governing First Nations Land Register (SGFNLR)** is established in accordance with the terms of First Nations self-government agreements and record documents that grant an interest in self-governed First Nation lands. **SOURCE: ISC Website**

Framework Agreement Signatory Communities

 Natural Resources Canada / Ressources naturelles Canada

First Nations Land Management
Gestion des terres des Premières nations

October 2019 Edition / Édition octobre 2019

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Scale 1:18 000 000 or one centimetre represents 180 kilometers
 Echelle 1: 18 000 000 ou un centimètre représente 180 kilomètres



Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N
 Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N





Biinjitiwaabik Zaaging Anishinaabek

Macdiarmid, Ontario



**20.9 hectares
831 members**

**Voted YES to the
Biinjitiwaabik Zaaging Anishinaabek
Land Code on February 26, 2024.**

**Congratulations on becoming the
117th Framework Agreement signatory
to regain land governance through the approval
of their community developed land code!**



Indigenous and
Northern Affairs Canada

Affaires autochtones
et du Nord Canada

The Indigenous Land Title Initiative and the Proposal for the Creation of a National Indian Lands Registry

Presentation for Minister Philpott

November, 2017

Draft #2: November 17, 2017



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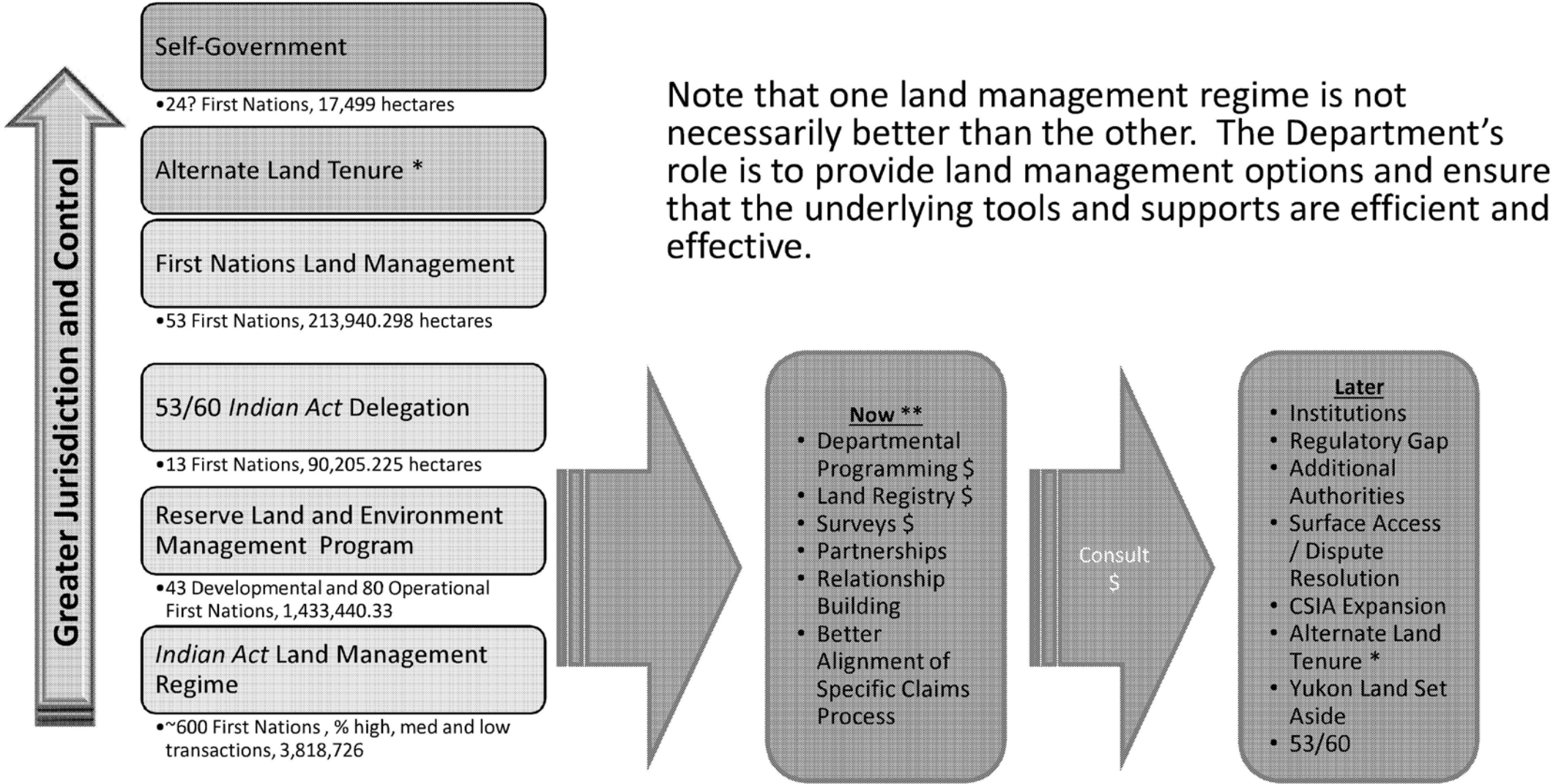
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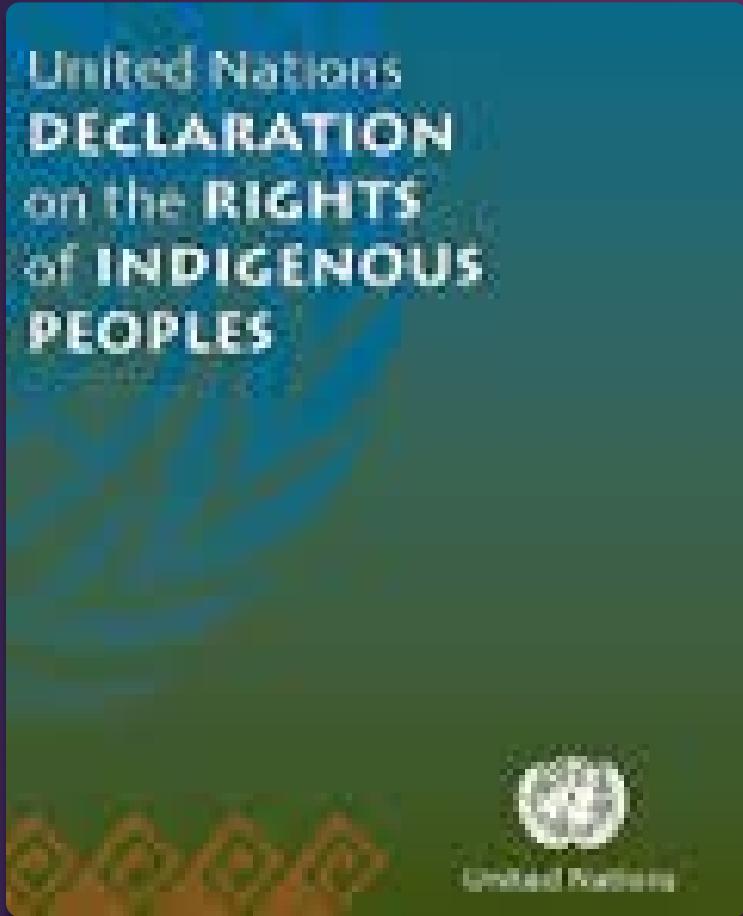
INAC·AANC

Roadmap of Land Management Regimes Currently Available to First Nations



Note that one land management regime is not necessarily better than the other. The Department's role is to provide land management options and ensure that the underlying tools and supports are efficient and effective.

** For the regimes where INAC has full or partial responsibility, there are things that we can do now within existing authorities, and there may be some things we can do later that require consultations and potentially some expanded authorities.



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

UNDRIP Was Watered Down at UN in 2007 Version

- ▶ *There were three main drafts of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).*
- ▶ *1994, the Original Text version.*
- ▶ *2006, a second amended version of UNDRIP was the Human Rights Council version.*
- ▶ *2007, the final version of UNDRIP is the United Nations General Assembly version, passed by the UN General Assembly after changes were made by the African Union, changes that were never properly presented to Indigenous Peoples globally.*
- ▶ **It's the first 1994 Original Text version of UNDRIP drafted by hundreds of Indigenous representatives over a period of years with their direct participation, which was then undermined by states—including Canada—in politicized negotiations. The United Nations General Assembly by resolution adopted the UNDRIP in 2007.**

Selected Articles of UNDRIP

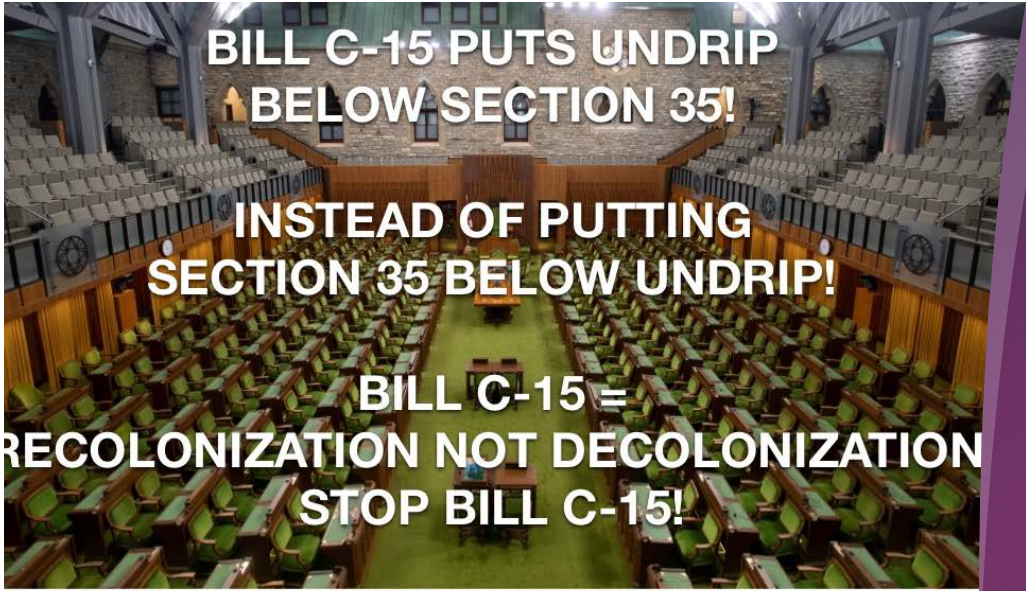
Subject to Federal/Provincial Interpretation

- ▶ Article 4 – Right to Autonomy & Self-Government.
- ▶ Article 10 – No forced removal without FPIC.
- ▶ Article 18 – Right to make decisions, including leadership selection, through Indigenous procedures & institutions.
- ▶ Article 19 – FPIC with IP's representatives required before legislation/administration measures.
- ▶ Article 26 – Right to Restoration of lands, territories, resources taken without FPIC.
- ▶ Article 27 – Fair process jointly developed to adjudicate rights to lands, territories, resources.
- ▶ Article 28 – Restitution for lands, territories & resources taken either with replacement lands or monetary compensation.
- ▶ Article 32 – FPIC required for and development affecting lands, territories, resources.
- ▶ Article 37 – Rights from Treaties, agreements, constructive arrangements.

The Problem with UNDRIP 2007 is Article 46.1

Watering Down Original UNDRIP 1994: Article 3 is Antidote to Colonialism

- ▶ Article 46
- ▶ 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
- ▶ Article 3
- ▶ Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.



**BILL C-15 PUTS UNDRIP
↑ BELOW SECTION 35!**

**INSTEAD OF PUTTING
SECTION 35 BELOW UNDRIP!**

**BILL C-15 =
RECOLONIZATION NOT DECOLONIZATION
STOP BILL C-15!**

CANADA'S DEFINITION OF UNDRIP—THE UNITED NATIONS DECLARATION ACT – BILL C-15

C-15

An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Sponsor
Minister of Justice



Liberal

What is Bill C-15

- ▶ Bill C-15 is a federal government Bill introduced into Parliament on December 3, 2020, by the federal Minister of Justice & Attorney-General, David Lametti. It became federal law on June 21, 2021.
- ▶ Bill C-15 flips the requirement for making Canadian law's subject to the articles of UNDRIP, to making UNDRIP subject to existing Canadian laws under Section 35 of the Constitution.
- ▶ Section 35 of the constitution has already been decided on by Canadian courts to give Canada control of Indigenous lands under the Doctrine of Discovery, and places severe limits on the right of self-determination, including defining Indigenous self-government as a 4th level municipality established through federal legislation.

Bill C-15 sets out 3 Legal Obligations that are Subject to Federal Interpretation

- ▶ Bill C-15 (United Nations Declaration Act) Federal Obligations
- ▶ “*In consultation and cooperation with Indigenous Peoples*”:
- ▶ 1) Take “*all measures necessary*” to ensure consistency of federal laws with the UN Declaration.
- ▶ 2) **Develop an action plan** within two years of Royal Assent (by June 21, 2023) and implement it. [Completed June 20, 2023]
- ▶ 3) **Prepare annual reports on progress** to be tabled in Parliament and made public.



SINCE 1990,
SCC HAS
DEFINED
SECTION 35
THROUGH
CASE LAW

SECTION 2.2 OF BILL C-15 "RIGHTS OF INDIGENOUS PEOPLES" IS BASED ON SEC. 35 COMMON LAW (DOCTRINE OF DISCOVERY) – IMPACTS OF BILL C-15

- 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 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*" legal test for establishing Aboriginal rights.
- The ability for the Crown to infringe Aboriginal rights based on the "*Sparrow*" legal test.
- The replacement of FPIC with the Government's lower domestic standard of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles. (Strength of Claim/Depth of Consultation - Crown assessments)

**Federal
legislation to
implement the
UN Declaration
on the Rights of
Indigenous
Peoples
means:**

COLLABORATION WITH INDIGENOUS
PEOPLES

COMMITMENT TO CREATE A NATIONAL
ACTION PLAN

SPECIFIC LAW REFORMS IDENTIFIED
AND BROUGHT BACK TO PARLIAMENT

REGULAR ASSESSMENT AND
REPORTING ON THE PROGRESS MADE



declarationcoalition.ca

Canada's UNDRIP National Reconciliation/ Re-Colonization Action-Plan

What is the Federal Department of Justice UNDA Bill C-15 National Action-Plan?

- ▶ Legally required document—since Bill C-15 doesn't immediately implement **UNDRIP**.
- ▶ Sets out measures Canada will take to achieve the objectives of the **United Nations Declaration on the Rights of Indigenous Peoples** over time (years & decades).
- ▶ Legal requirement to implement it.
- ▶ Obligation is on the federal Minister of Justice, "*in consultation and cooperation with Indigenous peoples and with other federal ministers*"

UNDA Bill C-15 National Action-Plan Continues Re-Colonization Framework: Key Measures/Actions

- ▶ UNDA (Bill C-15) National Action-Plan is a Pan-Indigenous 5-Year Plan, considered “*evergreen*” since it is to be renewed for years, likely decades.
- ▶ There are 5 chapters and 181 federal measures/actions included in the 5-Year United Nations Declaration Act (UNDA) National Action-Plan, including “*For Canada’s laws to fulfill the UN Declaration, the Indian Act must be repealed*” [First Nations Priorities, Measure/Action #8]
- ▶ Chapter 1: Shared priorities (First Nations, Metis, Inuit)
- ▶ Chapter 2: First Nations priorities
- ▶ Chapter 3: Inuit priorities
- ▶ Chapter 4: Métis priorities
- ▶ Chapter 5: Indigenous Modern Treaty Partner priorities [Land Claims Agreement Coalition]
- ▶ The entire action-plan is written from an “*assumed Crown sovereignty*” perspective, which is consistent with UNDRIP Article 46.1, where the federal government is solely in charge of the federal measures/actions and only needs to “*consult*” Indigenous Peoples.

UNDA Bill C-15 National Action-Plan Continues Re-Colonization Framework: Key Measures/Actions

- ▶ **Issue public statement** withdrawing from **Inherent Right & Comprehensive Land Claims Policy** & include **extinguishment not a policy objective**.
(CHAPTER 1: Cross-cutting priorities, measure/action #23) [Likely replace with BC de facto extinguishment Treaty Negotiation Policy as a National Template across Canada]
- ▶ **Repeal the Indian Act** (First Nations Chapter measure/action #8)
- ▶ Engage on a **Service Transfer Policy Framework**. [to off-load federal responsibilities onto Bands]
- ▶ Continue work on **New Fiscal Relationship** [for 10-year grants & self-government fiscal policy of own source revenue, including taxation]
- ▶ Continue **Specific Claims Process Reform** [CASHBACK not LANDBACK]

UNDA Bill C-15 National Action-Plan Continues Re-Colonization Framework: Key Measures/Actions

- ▶ Continue Redesign of **Additions-to-Reserve Policy** [to phase out Reserve lands for land codes & fee simple land registry]
- ▶ Continue to implement **Bill C-92, Indigenous Child & Family Services Act** [with Indigenous Governing Bodies]
- ▶ **Establish an Action Plan Advisory Committee (APAC)** to provide support and advice, **upon request**, related to the implementation of **shared priorities** included in this action plan.
- ▶ [AFN to transition current **Ad-Hoc Chiefs' Committee on UN Declaration** to become a standing **Chiefs' Committee on United Nations Declaration on the Rights of Indigenous Peoples Act** (UNDA)]



Sovereignty,
Nationhood &
Land Back
through Self-
Determination
Territorial
Planning

Self-Determination Capacity & Planning Issues:

Research, Mapping &
Planning Process for
Implementing First Nation
Self-Determination



**“Self-Determination is the
Antidote to Colonialism”
- Arthur Manuel**

Duty to Consult = Strength of Claim & Depth of Consultation analysis by Crown Gov't's

- ▶ **STRENGTH OF CLAIM** – Crown Departments apply legal tests to any consultation/information responses to any proposed project or activity on traditional territory from Indian Bands (First Nations) to determine how strong a potential for rights may exist in the spectrum of rights.
- ▶ **DEPTH OF CONSULTATION** – Crown Departments after assessing strength of claim information/evidence conduct a depth of consultation assessment to determine if only a notice is required to send to an Indian Band (First Nation) or a strong potential for rights exists requiring accommodation measures to the proposed project or activity on traditional territory.

CAPACITY BUILDING FOR INFORMATION MANAGEMENT

- ▶ First Nation (bands) **need funding to organize internally to manage research, mapping & planning** to respond to **consultation requests** from Crown governments and/or Third Parties (Corporations).
- ▶ First Nations need in-house or outside consultants to provide **independent technical/scientific advice on natural resource management/regional planning issues**.
- ▶ First Nations need to develop **modern methods of keeping track of consultations** ie. Developing a database to track the status of consultations.

First Nations Cultural/Territorial Landscapes Baseline Data/Evidence Collection

1. Use and Occupancy Study
2. Harvest Study
3. Toponym or Place-Name Study
4. Indigenous Knowledge (IK) or Traditional Ecological Knowledge (TEK) Studies
5. Documentation of Customary/Traditional Laws (and Treaties)
6. Archaeology, written history and ethnography
7. Genealogy
8. Alienation Study and State of the Territory Report

SOURCE: David Carruthers, PlanLab



THE END

PRIME MINISTER JUSTIN
TRUDEAU & ALBERTA
PREMIER DANIELLE SMITH