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FIRST NATIONS STRATEGIC POLICY COUNSEL

Canada's Re-Colonization Process is Making the Indian Act Chiefs Crown Agents

L to R: Gull Bay First Nation Chief Wilfred King, Nipissing First Nation Chief Scott McLeod, Federation of Sovereign Indigenous Nations Regional Chief Bobby Cameron

By Rolland Pangowish

Canada is using its same old divide and conquer strategy that pits the different groupings of Indigenous Peoples from maintaining a consensus on the implementation of Indigenous rights and self-determination in this country. Despite Trudeau's rhetoric about "*Reconciliation*", the Federal Government is employing underhanded tactics to ensure that its unilateral laws and policies effectively re-assert absolute Crown control over all Indigenous Peoples. The effect of these laws and policies are not recognizing the Inherent Rights of Indigenous Peoples, especially those who have been directly under its thumb the longest—First Nations—who possess sovereign, Inherent and Treaty rights.

Underlying the misleading political rhetoric is a long-standing legal and bureaucratic machine originally established to pacify and assimilate Indigenous Nations in the days of British colonization. It became the administrator for colonization, serving and implementing the Crown's assertion of sovereignty over Indigenous Nations and their lands. Although colonial officials believed the Crown's sovereignty over the lands and People's they found was legitimate, this opinion is based on inaccurate beliefs about racial superiority and the discredited colonial Doctrine of "*Discovery*".

Despite the developing international human rights standards that clearly establish that all Indigenous Peoples are entitled to

Special points of interest:

- **Canada's Re-Colonization Makes Chiefs Crown Agents**
- **Trudeau's Re-Colonization Plan is going into its 9th year**
- **Feds Appeal Mohawk Tobacco Case to Fight Self-Determination**
- **Cabinet Docs show Australia & Canada fought against Indigenous Self-Determination in UNDRIP**

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the same human rights that apply to all Nations and Peoples, Canada is seeking to preserve its control over the rights of Indigenous People's in Canada. The recent legislation, the **United Nations Declaration Act** (Bill C-15) claiming that Canada is incorporating the **UN Declaration on the Rights of Indigenous Peoples** into its laws is very misleading, as its underlying purpose is to ensure that recognition and implementation of all such rights are squarely under the Federal Crown's command.

"Although Canada claims otherwise, it is using its recent suite of legislation and the refinement of old policy frameworks to take the lead role in defining and establishing its own version of self-government"

Although Canada claims otherwise, it is using its recent suite of legislation and the refinement of old policy frameworks to take the lead role in defining and establishing its own version of self-government. The federal government claims that its unilateral definition of "*self-government arrangements*" is a valid recognition of the **Inherent Right to Self-Determination**. Selected groupings of Indigenous People's groups called Indigenous "*collectivities*" are funded to organize themselves and pursue pre-determined components of governance if they agree to work within the federal policy framework process.

So-called "*National Institutions*" like the **First Nations Lands Advisory Board, the First Nations Tax Commission, the First Nations Finance Authority and the First Nations Financial Management Board** are labeled as "*First Nation's driven*", yet were launched with mere handful of First Nations buying into this swindle. These federally created mechanisms are designed to meet federal objectives in off-loading the heavy duty aspects of its fiduciary obligations, that the Crown acquired when it asserted unilateral control over First Nation Peoples, lands and assets.

King George III

Canada is now beginning to consolidate its municipal governance policy framework and applying it to all Metis, Non-Status Indians and **Indian Act** Chiefs in its effort to recolonize Indigenous People's. This is an effort that certainly seeks to marginalize any real focus on the legal basis of the Sovereignty, Inherent and Treaty Rights of First Nations and erase any question regarding the legitimacy of the colonial assertion of sovereignty over Indigenous People's and lands in 1763 under a **Royal Proclamation by King George III**. Canada abandoned its previous section 37 constitutional commitment to negotiations between "*Aboriginal representatives*" and Canadian First Ministers' to reach agreement on the constitutional principles that should guide the interpretation of Section

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35 Rights and Self-Government. The failure of those talks in the 1980's doomed Indigenous People's rights to be defined through the Courts, which has created a hodge podge of decisions, with the **Supreme Court of Canada** often warning that many of these issues should be resolved through negotiations, rather than court action.

The historic failure of the **1980's First Minsters' Conferences on Aboriginal Matters** to at least establish some basic consensus on what the scope of these constitutionally recognized rights has resulted in the **Supreme Court of Canada** defining what section 35 rights actually mean for the reality of implementing Indigenous governance, property and human rights. Every Indigenous proposal to resolve these constitutional and legal interpretation issues has been taken advantage of by Canada as it seeks to fulfill its own agenda in such matters.

It is now abundantly clear to many independent Indigenous policy and legal experts—that for some time now—Canada has been using new laws and adapting old policies to assert Federal Crown jurisdiction over **First Nations Inherent Right to Self-Determination** and assert Crown ownership of Indigenous lands and resources. At the same time Canada is also seeking to shed the growing costs of Crown fiduciary obligations to Indigenous People's, an item downplayed in discussions about its agreements with Indigenous People's.

It must be emphasized that in addressing the federal management of Indian Reserve Lands, the **Supreme Court of Canada** has sternly declared that the Crown's fiduciary obligations in managing First Nation lands, require that the government's conduct must be of the highest standards, as the **Honour of the Crown** is always at stake in such matters. Some analysts and First Nation's rights advocates believe that the entire conduct of the Crown officials as a fiduciary, is manipulating federal policy and process to minimize the First Nation's legal interests in lands, resources and governance should be seen to bring the honour of the Crown into disrepute, as federal officials induce Indigenous participation in processes designed to shed federal fiduciary obligations without clearly discussing the implications with the Indigenous parties in what Canada claims are the fair and efficient negotiations of agreements that define the rights and obligations of each party.

PM Justin Trudeau & AFN Nat'l Chief Perry Bellegarde, December 2015.

"Canada has been using new laws and adapting old policies to assert Federal Crown jurisdiction over First Nations Inherent Right to Self-Determination and assert Crown ownership of Indigenous lands and resources"

AFN Nat'l Chief Perry Bellegarde announcing his support for Federal UNDRIP Bill C-15, in Ottawa.

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To date, nothing has been done to address allegations of heavy-handed tactics and lopsided "*negotiations*" where the **Government of Canada** dictates all the parameters of negotiations and basically offers pre-designed components for settlement agreements. Any Indigenous proposals that fall outside the strict policy framework and pre-defined elements for settlement are deemed a non-starter for federal negotiators, who are under strict instructions as to the elements and format of settlement agreements.

"Canada brags about its flexible approach to negotiating self-government, but this is not the case for the policy framework dictating the process for negotiations process and parameters of the elements for settlements"

Canada brags about its flexible approach to negotiating self-government, but this is not the case for the policy framework dictating the process for negotiations process and parameters of the elements for settlements. The flexibility only applies to window dressing, like names, titles, languages and cultural references. The funding of participation, basic framework and substantial elements of all federal agreements reached under its various negotiation processes, primarily involves an Indigenous party picking and choosing from a federal menu of approved items or elements for a settlement. Its really a joke to call such discussions "*negotiations*", as there is no equity in the process. The federal Crown officials dictate all pertinent matters that can comprise a settlement.

The reality is that many Indigenous groups have been induced by federal insistence and their need for all manner of funding to enter these federal initiatives on self-government and processes for resolving outstanding land rights questions, which are all designed to comply with federal interpretations of Crown obligations and the require the extinguishment of Inherent land and resource rights in exchange for cash payments and the conversion of those rights to new categories, defined under federal laws and policies.

Eddie Mabo won precedent setting case on Aboriginal Title in Australia.

Since the **Mabo** case in Australia over two decades ago clarified that colonial policies of asserting unilateral declarations of sovereignty over Indigenous lands and resources were not legitimate. It recognized that the pre-existing Indigenous Peoples possessed legal rights to the territories they occupied and exercised their own legitimate governance over the lands and resources that sustained them. Therefore, colonial assertions of sovereignty based on illegitimate historical concepts like "*Discovery*" or "*terra nullius*" are not valid.

This clarification of how English common law should be properly interpreted is not being applied in Canada because its Crown offi-

'Chiefs as Crown Agents' conclusion from page 4

cials believe they already hold the underlying title to all lands in Canada and that "*Aboriginal Title*" is merely a burden upon the Crown's ownership. The questions surrounding the legitimacy of the unilateral Crown assertion of sovereignty and control of all lands and jurisdiction in Canada should be recognized as a legitimate outstanding legal question in Canada.

In contrast, the Federal Government claims that it has legitimate jurisdiction and can preside over the legal rights and status of all matters pertaining to Indigenous People's in Canada. It has abandoned the collective table for negotiations about Indigenous rights and governance that was directed under its own constitution by **Section 37** of its **1982 Constitution Act**. Since those talks and subsequent "*Constitutional Discussions*" failed to reach an agreement on the scope and meaning of Aboriginal and Treaty rights in section 35.

Canada has decided to proceed on its own in imposing its interpretation of Indigenous rights through its self-government policy and laws and legislation, which were never adequately discussed or accepted by Indigenous Representatives collectively, as initially required under **Section 37** of the **1982 Constitution Act**.

Canada has determined that the final arbiter of such legal questions in Canada is its own domestic Courts, established under the same Crown Entity claiming sovereignty over Indigenous Peoples and their lands. Canada has proceeded to implement its own approach to addressing Indigenous governance or claims to land through its pre-determined policy negotiation processes that result in settlement agreements with local Indigenous community leaders. Such agreements convert the sovereign, Inherent and Treaty rights of the Indigenous People's involved to **Agreement Benefits and municipal style governing arrangements under delegated federal authorities**. While it is referred to as "*self-government*", such settlements are ratified by the federal and provincial governments involved and the authority of the Indigenous party will be delegated under federal jurisdiction in accordance with the ratified Agreement. There is no room for exclusive Indigenous ownership of their lands, as under Canada's constitutional framework only the Federal and Provincial Government's have their respective Crown jurisdiction defined. There is no room for the equitable recognition of the Inherent Right to Governance.

First Ministers Conference on Aboriginal Matters.

"There is no room for exclusive Indigenous ownership of their lands, as under Canada's constitutional framework only the Federal and Provincial Government's have their respective Crown jurisdiction defined. There is no room for the equitable recognition of the Inherent Right to Governance"

Constitutional Division of Powers

Indigenous Services Canada

Trudeau's Re-Colonization Plan Involves Repealing Indian Act, Dissolving ISC & Implementing a "*New*" Relationship with 4th Level Pan-Indigenous Municipalities

"Trudeau government's implementation of its Two-Track, Re-Colonization Plan has been accomplished so far, through the stealth and deception of the Trudeau government—particularly during the global pandemic—with the support of the coopted and compromised former AFN National Chief Perry Bellegarde, the AFN Executive Committee and Regional and Local First Nations Leadership who were involved in a virtual lynching to remove AFN National Chief Roseanne Archibald "

AFN National Chief, Perry Bellegarde places AFN jacket on Prime Minister Justin Trudeau at AFN Special Chiefs' Assembly.

By Russ Diabo

We are now entering the 9th year of the implementation of the current Trudeau government's **White Paper 2.0** (Re-Colonization Framework) designed to end the **Indian Act** and transition First Nations (**Indian Act** Bands) into federally defined "*self-government*" as tax paying, 4th level, pan-Indigenous Municipalities on private property (former reserve) lands, along with Metis and Inuit "*collectivities*".

The Trudeau government's implementation of its **Two-Track, Re-Colonization Plan** has been accomplished so far, through the stealth and deception of the Trudeau government—particularly during the global pandemic—with the support of the coopted and compromised former **AFN National Chief Perry Bellegarde**, the **AFN Executive Committee** and **Regional and Local First Nations Leadership** who were involved in a virtual lynching to **remove AFN National Chief Roseanne Archibald** on June 28, 2023, (see AFN Report on page 19), because she was was focused on protecting and advancing the Treaty and Inherent rights of First Nations—not the federal agenda—by seeking an AFN audit of the AFN Bellgarde administration as well as re-negotiation of the **Bellegarde-Trudeau Memorandum of Understanding** (**MOU**) establishing the **AFN-Canada Bilateral Process to Re-Colonize First Nations** under the facade of "*co-development*" of policy, such as **Specific Claims and Additions-to-Reserve**, and legislation that tacitly supports the transition of First Nation (**Indian Act** Bands) (ISC) into **4th level Indigenous Municipal Governments** though federal "*enabling*" self-government legislation. (CIRNAC).

According to the **Department of Crown-Indigenous Relations**:

> "*There are 25 self-government agreements across Canada involving 43 Indigenous communities. There are also 2 education agreements involving 35 Indigenous communities.*"

Crown-Indigenous Relations and Northern Affairs Canada
Relations Couronne-Autochtones et Affaires du Nord Canada

'Re-Colonization Plan' continued from page 6

"*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*."

"*Canada recognizes that Indigenous peoples have an inherent right of self-government guaranteed in section 35 of the Constitution Act, 1982. The* ***Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government was first launched in 1995*** *to guide self-government negotiations with Indigenous communities*." [emphasis added]

Rejected "Rights Recognition" Proposal is Now Negotiated at "Recognition Tables"

In September 2018, the current Trudeau government tried—but failed--to get First Nations support for the proposed one-window, pan-Indigenous **Recognition and Implementation of Rights Framework Legislation (2018)**, to achieve the goal of establishing 4th level Indigenous governments across Canada. A federal discussion paper summarized the proposal as follows:

"***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]

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, particularly when **Mr. White Paper, Jean Chretien**, was Prime Minister as his government tried to pass **Bill C-79** and **Bill C-7**. [emphasis added]

Bill C-79, Indian Act Optional Modification Act (1997):

Carolyn Bennett, Federal Minister of Crown-Indigenous Relations (2015-2021)

"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, particularly when Mr. White Paper, Jean Chretien, was Prime Minister as his government tried to pass Bill C -79 and Bill C-7"

Chretien & Trudeau

Carolyn Bennett signing Self-Gov't Agreements with Metis Nations of Alberts, Saskatchewan & Ontario in 2019.

"First Nations and now "Indigenous Peoples" who submit to "**assumed Crown sovereignty**" through federal legislation, either ratifying "**self-government" agreements** or "**Indigenous Recognition**" legislation, "Indigenous governments" are created by the federal government similar to the creation of municipalities by provincial governments, in a "new relationship"."

CIRNAC Minister Bennett signs deals with 3 Metis Nations in 2019.

'Re-Colonization Plan' continued from page 7

> "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]

The current Trudeau government's, September 2018, proposed federal pan-Indigenous "*Rights Recognition Framework*" was rejected by First Nations across Canada, but on November 15, 2018, a **Statement from the Office of the Minister of Crown-Indigenous Relations** was issued, indicating it would take a divide and conquer approach:

> "**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]

Failing to get support for the national "*Rights Recognition*" legislation the Trudeau government has been negotiating at the pan-Indigenous "*Recognition Tables*" on a group-by-group basis.

Indigenous Governing Bodies – From Band to Municipality

In 2019, buried in the 800-page omnibus **Bill C-97**, the Trudeau government formally dissolved the federal **Department of Indian Affairs and Northern Development** (DIAND) and established two new pan-Indigenous Departments (**ISC & CIRNAC**) and has now imposed a definition of **pan-Indigenous Governing Bodies** to cover the transition from Band Councils under **ISC** into Municipal Indigenous Governments under **CIRNAC**.

Both **ISC** and **CIRNAC** use the following **Bill C-97 legislative definitions**:

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> ***Indigenous governing body*** *means a [band] council, [Indigenous] 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]

The mandate of the **Minister of Indigenous Services** is to support capacity-building for financial, administrative, managerial and multi-year planning. The **10-year grant** is for stable funding to support the capacity building process, as First Nation Bands take over programs & services and prepare to become "*self-governing*" under **CIRNAC**, but until then **ISC** is to:

> *Ensure that services are provided to* ***Indigenous individuals*** *who, and* ***Indigenous governing bodies*** *that, are eligible to receive those services.*

(a) child and family services;
(b) education;
(c) health;
(d) social development;
(e) economic development;
(f) housing;
(g) infrastructure;
(h) emergency management;
(h.1) governance;

The **Minister of Crown-Indigenous Relations** is responsible for implementing existing **self-government agreements, including modern treaties, and interim land codes and delegated tax powers through the National Land and Fiscal Institutions**.

This is the **Re-Colonization Framework** that all First Nations, Metis

Jody Wilson-Raybould and PM Trudeau in HoC after PM Speech on "Rights Recognition Framework", February 14, 2018.

"The Trudeau government is trying to get through the back door on a group-by-group basis at various tables what they couldn't get through the front door with First Nations collectively at a 2018 AFN National Policy Forum because in 2018, the idea of a federal "Rights Recognition Bill" was rejected by First Nation leaders across Canada"

L to R: Chretien & Trudeau, both PM's peddling Liberal Termination Policies.

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and Inuit will negotiate with the **CIRNAC Minister** who has the mandate for:

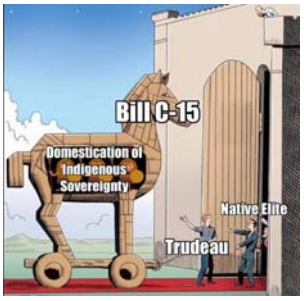
> *(a)* ***exercising leadership within the Government of Canada*** *in relation to the affirmation and implementation of the rights of Indigenous peoples recognized and affirmed by section 35 of the* ***Constitution Act, 1982*** *and the* ***implementation of treaties and other agreements*** *with Indigenous peoples;*
>
> *(b)* ***negotiating treaties and other agreements*** *to advance the self-determination of Indigenous peoples; and*
>
> *(c)* ***advancing reconciliation with Indigenous peoples****, in collaboration with Indigenous peoples and* ***through renewed nation-to-nation, government-to-government and Inuit-Crown relationships***. [emphasis added]

"CIRNAC Minister is the lead on Bill C-53, which is now in Parliament, to federally recognize Metis "Collectivities" as Indigenous Governing Bodies, the same as "self-governing" First Nations"

The Trudeau government uses the phrase "*treaties, agreements and other constructive arrangements*". This phrase comes from the **1999 United Nations Study on treaties, agreements and other constructive arrangements between States and indigenous populations**, a Final report by Miguel Alfonso Martínez, Special Rapporteur.

When the federal government uses the phrase it means **Modern Treaties, Self-Government Agreements and other constructive arrangements means First Nations Land Management Act, Land Codes and First Nations Fiscal Management Act, delegated tax authority and Loan Funding**.

This is why the CIRNAC Minister is the lead on **Bill C-53**, which is now in Parliament, to federally recognize Metis "*Collectivities*" as **Indigenous Governing Bodies**, the same as "*self-governing*" First Nations:



> *Section 8* ***Recognition***
> *The Government of Canada recognizes that a Métis government…is an* ***Indigenous governing body*** *that is authorized to act on behalf of the* ***Métis collectivity****…opposite that Métis government and that the* ***Métis collectivity holds the right to self-determination, including the inherent right of self-government*** *recognized and affirmed by section 35 of the Constitution Act, 1982*. [emphasis added]

'Re-Colonization Plan' conclusion from page 10

UNDRIP, UNDA (Bill C-15) & UNDA National Action-Plan for Re-Colonization

The current Trudeau government's domestic **Re-Colonization Plan has three parts** to report on to the **United Nations** internationally:

- Use the watered down 2007 version of the **United Nations Declaration on the Rights of Indigenous Peoples** (**UNDRIP**), which includes **Article 46.1**.

> **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.**

- Impose Canada's definition of **UNDRIP**, which I call **CAN-DRIP**, but is actually called the **United Nations Declaration Act** (**Bill C-15**).

- Implement the **United Nations Declaration Act** (**Bill C-15**) **National Action-Plan to Re-Colonize First Nations** by repealing the **Indian Act**, dissolving the Indigenous Services Canada (ISC) Department and implementing a "*New*" intergovernmental relationship between 4th level Indigenous Municipal Governments (First Nations, Metis, Inuit) and the Crown -Indigenous Relations and Northern Affairs Canada Department (CIRNAC). The **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 National Action-Plan**, including "*For Canada's laws to fulfill the UN Declaration, the Indian Act must be repealed*" [First Nations Priorities, Action #8]

"The current Trudeau government's domestic Re-Colonization Plan has three parts to report on to the United Nations internationally: UNDRIP, UNDA (Bill C-15) & Bill C-15 Action-Plan"

Entrance to United Nations in Geneva, Switzerland.

The ultimate goal of the current Trudeu government's "*Indigenous Reconciliation*" is to impose a Canadian definition of **UNDRIP** as set

'Re-Colonization Plan' continued from page 11

out in the **United Nations Declaration Act** (**Bill C-15**) and the **National Action-Plan is to complete Canada's colonial project** of transformation of the legal status of Indigenous Peoples with the international right of self-determination into ethnic minorities as "*Indigenous-Canadians*" in 4th level ethnic municipalities.

Countering Trudeau's Plan with Self-Determination Territorial Plans

The most important part of the watered-down version of **UNDRIP** is **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.***

"The settler colonial courts have imposed a burden of proof to establish Inherent and Treaty rights on First Nation communities, so, in order to survive as distinct organized societies and Nationhood as the Creator intended it, each First Nation community should adapt by developing the capacity to do cultural and historical research, mapping and territorial planning in order to obtain accommodation from Crown governments, industry and settler third parties"

The **settler colonial courts have imposed a burden of proof to establish Inherent and Treaty rights on First Nation communities**, so, in order to survive as distinct organized societies and Nationhood as the Creator intended it, each First Nation community should **adapt by developing the capacity to do cultural and historical research, mapping and territorial planning in order to obtain accommodation from Crown governments, industry and settler third parties**.

The other option is to just surrender to the federal municipal pan-Indigenous "*self-government*" plan. According to **CIRNAC** there are **492 Band Councils** doing that at federal "*Recognition Tables*", because that's the mandate of federal negotiators.

PM Justin Trudeau & Gary Anadasangaree, Minister of Crown-Indigenous Relations.

If your First Nation community want to do an authentic Self-Determination Territorial Plan this is a **suggested list of community research projects** to document and substantiate First Nation Territorial Landscapes:

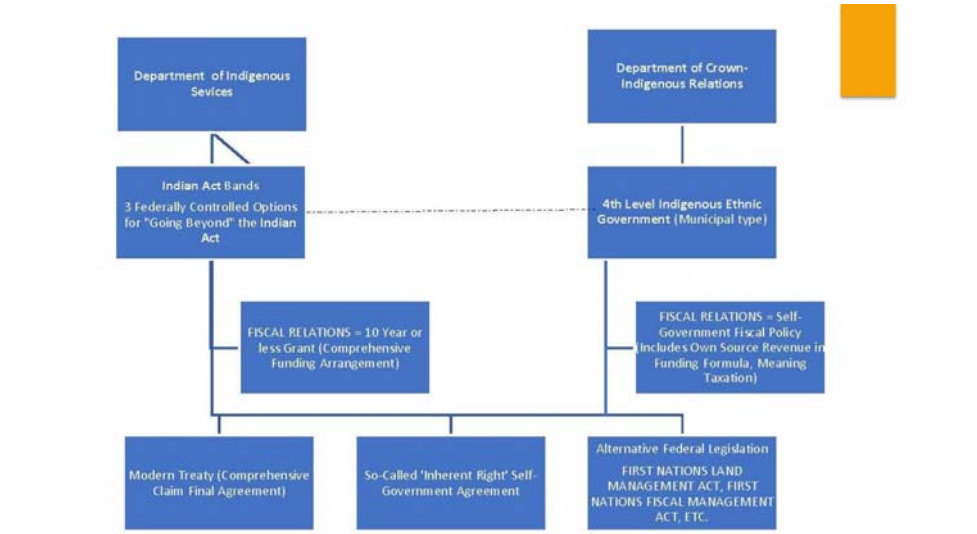
1. *Use and Occupancy Study*
2. *Harvest Study*
3. *Toponym or Place-Name Study*
4. *Indigenous Knowledge (IK) or Traditional Ecological Knowledge (TEK) Studies*
5. *Documentation of Customary/Traditional Laws (and Treaties)*
6. *Archaeology, written history and ethnography*

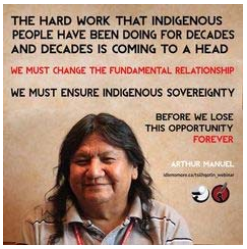
'Re-Colonization Plan' conclusion from page 12

7. *Genealogy*
8. *Alienation Study and State of the Territory Report*

SOURCE: David Carruthers, PlanLab

It's not too late for grassroots First Nation Peoples to turn the tables on the current Trudeau government's **Re-Colonization Municipal Self-Government Plan** and choosing **Nationhood**, **but it means getting active in your First Nations community's decision-making processes, whether you live on or off-reserve**. If your First Nation community votes for municipalization it affects your individual Inherent and/or Treaty rights and those of your descendents too, since these are collective rights.





"It's not too late for grassroots First Nation Peoples to turn the tables on the current Trudeau government's Re-Colonization Municipal Self-Government Plan and choosing Nationhood, but it means getting active in your First Nations community's decision-making processes, whether you live on or off-reserve"

Recommendations for Reconciliation "will not be in place before 2081"

Kamloops Indian Residential School.

Adrian Wyld archives La Presse canadienne Le premier ministre canadien, Justin Trudeau, lors d'une prise de parole à l'occasion de la publication du rapport de la Commission de vérité et réconciliation du Canada, le 15 décembre 2015, à Ottawa.

By Teilor Stone, December 30, 2023

Canada has been so slow to implement recommendations made eight years ago by the Truth and Reconciliation Commission that an Indigenous-led think tank has decided to stop publishing an annual report on progress.

"At first, the project aroused hope and determination: it was believed that if the Canadian public knew about their government's inaction, then perhaps things would change," reads- on in the annual report of the Yellowhead Institute, a research and education center at Metropolitan Toronto University.

"But as those who followed us on this journey may have noticed, this hope began to diminish during the fifth year of the project."

The Truth and Reconciliation Commission of Canada has spent years investigating and documenting the history and long-term harm of church-run and federally funded residential schools. More than 150,000 Indigenous children were forced to attend these institutions, often far from their families and communities.

Thousands of young people have suffered psychological, physical and sexual assault. The National Center for Truth and Reconciliation, based in Winnipeg, estimates that more than 4,000 Indigenous children died in these residential schools.

The Truth and Reconciliation Commission of Canada issued 94 "calls to action" in its 2015 report, with recommendations for all levels of government and other institutions, including academia and the media.

The Yellowhead Institute's 2023 report, released Wednesday, reveals no new calls to action have been implemented this year. The research institute says that if Canada continues at this pace, it won't be done until the year 2081 — 16 years later than last year's estimate.

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St. Anne's Residential School.

'No TRC Results until 2081' conclusion from page 14

The report states that "there are limits to the number of times one can write a report on how Canada, once again, has failed to do significant progress."

The Yellowhead Institute considers that only 13 of the recommendations have been fully implemented since 2015.

Ottawa, "uncompromising" partner

The institute says it is no longer sure how to compel the federal government to respond to calls for action, saying Ottawa has been a reluctant partner until now.

Indigenous Services Minister Patty Hajdu, Crown-Indigenous Relations Minister Gary Anandasangaree and Northern Affairs Minister Dan Vandal were not immediately available Wednesday to comment on the report.

But last September, Ms. Hajdu's office highlighted progress in calls for action this year, such as the June announcement of the choice of a site for the future "Monument Residential Schools Project", which will be erected on Parliament Hill.

Not all calls for action are solely the responsibility of the federal government, such as Pope Francis' apology presented in July 2022. Prime Minister Justin Trudeau had personally asked the Pope to apologize on Canadian soil, and the government federal government spent at least $55 million on Francis' visit to Canada.

But the Yellowhead Institute considers that even this call to action is not perfectly fulfilled: in its report last year, the center pointed out that the pope's apology had gaps, notably making no mention of sexual assault.

The report indicates that there are five main challenges to reconciliation: paternalism, structural discrimination against Indigenous people, reconciliation as "exploitation" or "performance", insufficient resources and economic interests, as well as the apathy of non-natives.

While asserting that none of the calls for action have been carried out in 2023, the report highlights important legal victories for First Nations. Examples include the historic $43 billion child welfare settlement, and a $10 billion settlement with 21 Ontario Indigenous communities to honor a treaty promise dating back to 1850.

"When there is concrete action, it does not come from Canada […] but from the Aboriginal people themselves, who fiercely defend themselves and resist the full weight of Canadian intransigence", supports the Yellowhead Institute.

[**Reprinted courtesy of Thesaxon**] *Teilor Stone has been a reporter on the news desk since 2013. Before that she wrote about young adolescence and family dynamics for Styles and was the legal affairs correspondent for the Metro desk. Before joining Thesaxon , Teilor Stone worked as a staff writer at the Village Voice and a freelancer for Newsday, The Wall Street Journal, GQ and Mirabella*.

Feds Appeal White and Montour Tobacco Case to Fight Self-Determination!

By Russ Diabo

First of all, I want to congratulate **Derek White and Hunter Montour** for their court victory at first instance and getting a stay of proceedings for their charges.

Raising the constitutional arguments in their defence turned out to be a winning legal strategy at the trial level, thanks to Derek and Hunter's legal team, along with the intervention of **Mohawk Nation Council of Chiefs** and their lawyer, and very importantly, having **Justice Sophie Bourque**, as the Quebec Superior Court Justice, assigned to the case.

In terms of importance for the future of Kahnawakero:non, if the case is upheld on appeal, then I put this ***White & Montour*** case up there with the **Paul K. Diabo** case of 1927, which got the men from Kahnawake, including my father, and the Haudenosaunee Confederacy—who supported the case—and North American Indians from the Canadian side, the recognized right to cross the Canada-U.S. border to work in the U.S. without a Green Card, based on the 1794 Jay Treaty.

"if the case is upheld on appeal, then I put this White & Montour case up there with the Paul K. Diabo case of 1927, which got the men from Kahnawake, including my father, and the Haudenosaunee Confederacy—who supported the case—and North American Indians from the Canadian side, the recognized right to cross the Canada-U.S. border to work in the U.S. without a Green Card, based on the 1794 Jay Treaty"

After hearing the evidence placed before her regarding:

1) the series of Treaties between the Haudenosaunee Confederacy and the British Crown, from the 17th and 18th centuries, referred to as the Covenant Chain—which includes Kahnawake—as well as;

2) considering previous legal tests adopted by the court for proving section 35 constitutional rights, and

3) considering that the previous legal tests were adopted by the court before Parliament passed a federal law (Bill C-15) in 2021, adopting a process to ensure federal laws are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

Justice Bourque made the following key conclusions in her judgment based on these 3 factors:

- *The Court concludes that the Covenant Chain is a peace and friendship alliance that includes a conflict-resolution procedure.*
- *The Court concludes that the Covenant Chain is a treaty between the Haudenosaunee and the British, as recognized by section 35 (1).*

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- *The Court concludes that the UNDRIP, despite being a declaration of the General Assembly, should be given the same weight as a binding international instrument in the constitutional interpretation of section 35(1).*
- *The Court concludes that the question it has to answer when faced with a notice to recognize an Aboriginal right is whether the activity or practice under consideration the exercise of is a right protected by the traditional legal system of the Indigenous peoples claiming the right. This question imposes the following three burdens on an Applicant:*

  1- It will require first to identify the collective right that the Applicant invokes;
  2- Then, the Applicant will have to prove that such a right is protected by his or her traditional legal system; and
  3- Finally, the Applicant will have to show that the litigious practice or activity in question is an exercise of that right. [emphasis added]

- *The Court concludes that the right to freely pursue economic development is one of the generic rights shared by all Indigenous peoples. It is intimately tied to the survival and dignity of any nation.*
- *The Court comes to the conclusion that the Mohawks of Kahnawa:ke benefit from this generic right in the same way as any other Indigenous people. In addition, there is evidence on the record for the Court to conclude that the right to pursue economic development is indeed protected under the traditional legal system of the Mohawks of Kahnawa:ke, the Haudenosaunee law.*

In her conclusions, Justice Bourque has determined that previous case law establishing legal tests for proving Aboriginal rights, like the **racist *Van der Peet* decision of 1996**—which required proof that a pre-contact right survived into modern times—was adopted before Parliament passed the 2021 **United Nations Declaration Act** (**Bill C-15**) into law, which Justice Bourque has also concluded creates a new legal and political framework for Reconciliation.

This new **framework for Reconciliation** also seems to support the need for Canada to replace its blanket "*self-government*" policy, which is based on a municipal model, with a policy that recognizes the international right of Indigenous Nations to self-determination.

Quebec Superior Court Justice Sophie Bourque.

"Justice Bourque has determined that previous case law establishing legal tests for proving Aboriginal rights, like the racist Van der Peet decision of 1996—which required proof that a pre-contact right survived into modern times—was adopted before Parliament passed the 2021 United Nations Declaration Act (Bill C-15) into law, which Justice Bourque has also concluded creates a new legal and political framework for Reconciliation"

'Feds Fight Self-Determination' conclusion from page 17


Canada
Indigenous and Northern Affairs Canada
The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government
Table of Contents
- Part I - Policy Framework
  - Inherent Right of Self-Government is a Section 35 Right
  - Within the Canadian Constitutional Framework

For example, I would say the reason the federal government did not reach out to the **Mohawks of Kahnawake** regarding the 2021 **federal Excise Act** is because the so-called federal 1995 "*Inherent Right to Self-Government*" Policy—which remains in use today—has two lists of subject matters for negotiation and one list of non-negotiable matters:

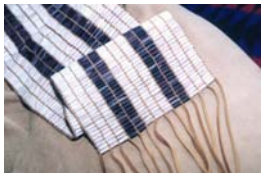
- **Matters Canada accepts as "Inherent Rights", but still must be negotiated;**
- **Matters that Canada doesn't accept as "Inherent Rights", but will delegate authority over;**
- **Matters that Canada will not negotiate, such as: self-determination; extinguishment of Aboriginal Title; Crown sovereignty, international treaty-making; international trade, import & export; trade & commerce; criminal law and fiscal policy.**

"I would say the reason the federal government did not reach out to the Mohawks of Kahnawake regarding the 2021 federal Excise Act is because the so-called federal 1995 "Inherent Right to Self-Government " Policy—which remains in use today—has two lists of subject matters for negotiation and one list of non-negotiable matters"

The 2021 **federal Excise Act**, federal fiscal policy and regulation of tobacco are all non-negotiable matters, according to the **Inherent Right to Self-Government Policy**, which **Prime Minister Jean Chretien imposed in 1995**. The **Mohawk Council of Kahnawake** used the federal "*self-government*" policy to negotiate previous agreements with the federal and Quebec governments, as is noted in Justice Bourque's court decision and the Trudeau government still uses the "*Inherent Right Policy*" today, despite its assertions of "Reconciliation" and Parliament's passage of the **United Nation Declaration Act** (**Bill C-15**), which has set up an "*action-plan*" to ensure consistency of federal laws with **UNDRIP**.

In the end, on Friday December 1, 2023, the *White and Montour* case, was appealed by the federal government, essentially because it contradicts the status quo colonial "*self-government*" policy, which does not include recognition of the international right of self-determination.

Despite this ongoing legal conflict, the *White and Montour* case continues to be a good basis for Kahnawakero:non (and Haudensaunee) to demand that the Trudeau government replace its unfair, one-sided, federal policies and laws, because as Justice Bourque concluded, the 2021 **federal Excise Act** is a breach of the unextinguished **Haudenosaunee-British Covenant Chain Treaty** and inconsistent with international standards of Indigenous Human Rights, including the right to survival and to freely pursue economic development.



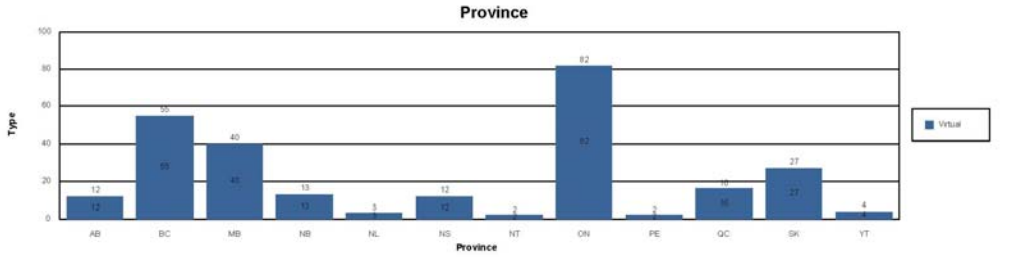
[**A shorter version of this article was printed in The Eastern Door Newspaper, December 11, 2023**]

AFN Registered Chiefs/Proxies Report for Virtual Removal of National Chief Roseanne Archibald on June 28, 2023

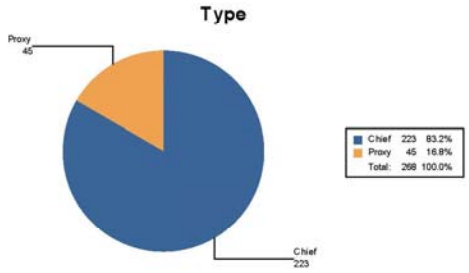
Registered Chiefs/Proxies Report

June 28, 2023: 5:41:16PM

Special Chiefs Assembly - Human Resource Investigation Report ~ Virtual,
June 28, 2023 - June 28, 2023



	Total	Virtual
Total	268	268
AB	12	12
BC	55	55
MB	40	40
NB	13	13
NL	3	3
NS	12	12
NT	2	2
ON	82	82
PE	2	2
QC	16	16
SK	27	27
YT	4	4



"The Master's Voice"
Editorial Cartoon by Mooseboy

Australian PM Howard & Canadian PM Harper.

Howard Government worked with Canada to oppose UN Declaration on Indigenous Rights

Philip Ruddock (left) was minister for Indigenous affairs and Alexander Downer (right) was foreign affairs minister in the Howard government when it bypassed Atsic to campaign against recognising the right of Indigenous peoples to 'self-determination'. Photograph: Alan Porritt/ AAP

By Daniel Hurst, The Guardian, December 31, 2023

Cabinet papers from 2003 show the government pursued talks without consulting peak Indigenous body – which it then abolished

The Howard government fought strongly against recognising the right of Indigenous peoples to "self-determination" and worked secretly with Canada to try to change a draft UN declaration, newly released cabinet papers show.

"The Howard government fought strongly against recognising the right of Indigenous peoples to "self-determination" and worked secretly with Canada to try to change a draft UN declaration, newly released cabinet papers show"

The cabinet papers from 2003, released by the National Archives on Monday, show that some Australian government departments held concerns about potential impacts of the UN declaration on the rights of Indigenous peoples, but Australia's talks with Canada on amendments were being pursued with "no Indigenous consultation about the process or its product" as such input would be "premature".

John Howard's government ultimately opposed the declaration when it was adopted by the UN general assembly in 2007, with 143 countries voting in favour and just four – Australia, Canada, New Zealand and the United States – against. The prime minister said the decision "wasn't difficult at all".

It wasn't until 2009 that the Rudd Labor government finally pledged Australia's support, but even now critics say the country has yet to fully implement the declaration in domestic law.

The cabinet records show how the government wanted to change the wording of the declaration from "self-determination" to "less problematic terminology" such as "self-management".

Australia's representative had told a UN working group in December 2002 that there was uncertainty about what a right to self-determination would involve, and that some commentators had argued it could entail "a right to secession".

The Australian government position was that it could not support a

‘Opposed UNDRIP’ continued from page 20

concept that might “threaten its territorial integrity or political sovereignty”.

Australia’s delegation said it could not “accept an absolute right of Indigenous peoples to determine their own political and legal institutions” because in a democracy this could “only be done through negotiation and with the agreement of the state”.

In a submission to cabinet dated 30 May 2003, two senior ministers seemed to acknowledge Australia was relatively isolated in its position.

The then minister for Indigenous affairs, Philip Ruddock, and the foreign affairs minister, Alexander Downer, briefed their colleagues on Australia’s “continued separate, parallel negotiations with Canada to develop a complete alternative text”.

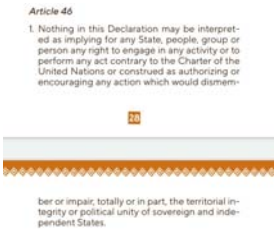
“While we have, in accordance with Cabinet’s decisions … continued to push for alternative language to the right of self-determination in our discussions with Canada and other like-minded states, and in the Working Group, it is increasingly apparent that our position attracts little support from even the like-minded states,” Ruddock and Downer wrote.

They said Canada, New Zealand and the US “share our concerns to varying degrees about the potential implications of the term, but their response is to qualify its meaning, rather than reject its usage”.

The resources department told ministers the self-determination wording “should be addressed to minimise any impacts of the draft declaration on access to resources in Australia”.

The environment and heritage department was worried about another part of the draft declaration that said states “shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of Indigenous peoples”, as this could create significant “obligations and constraints”.

One of the attachments presented to cabinet was a draft alternative text developed by Australia and Canada, which queried proposed language emphasising “the need for demilitarization of the lands and territories of Indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the


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.

“The Australian government position was that it could not support a concept that might “threaten its territorial integrity or political sovereignty””

Australian Senator Patrick Dodson

"The [declaration] reaffirms the rights of Indigenous peoples, but it also guarantees that the realisation of these rights must preserve the integrity and unity of the nation state – that is, the unity of Australia"

Senator Lidia Thorpe.

'Opposed UNDRIP' conclusion from page 21

world".

Unnamed Australian and Canadian officials added the comment: "[General sentiment about indigenous contribution to world peace is good, no need for specific reference to "demilitarization"]."

Ruddock and Downer told their colleagues in 2003 some of the issues were "theoretical rather than practical" because a number of structures, such as the Aboriginal and Torres Strait Islander Commission (Atsic), "already constitute particular Australian forms of self-determination".

However, the Howard government introduced legislation to abolish Atsic the following year – a move cited in 2023 by campaigners for an Indigenous voice to parliament to be enshrined in the constitution, to protect it from sudden axing. Voters rejected that proposal in a referendum on 14 October last year.

Ruddock and Downer told their colleagues in May 2003: "Atsic has not yet been informed of the alternative drafting process with Canada, and hence there has been no Indigenous consultation about the process or its product. However, such consultation is premature at this stage and could be unproductive given the current state of Atsic."

In November 2023, parliament's joint standing committee on Aboriginal and Torres Strait Islander affairs – chaired by the retiring Labor senator Pat Dodson – called for a national action plan to implement the UN declaration.

He dismissed some of the earlier concerns about it, saying: "The [declaration] reaffirms the rights of Indigenous peoples, but it also guarantees that the realisation of these rights must preserve the integrity and unity of the nation state – that is, the unity of Australia."

The independent senator Lidia Thorpe has demanded the declaration be enshrined in law, telling parliament it could "do so much more for our people than the voice ever could".

[Reprint courtesy of The Guardian]

Walter Rudnicki Illustrates Corporate Colonialism

The late Walter Rudnicki did this organizational chart for the **1992 Charlottetown Accord** version of "*self-government*", which didn't pass, but the organizational chart is a good illustration of the Federal government's relationship with the **National First Nations Lands Advisory Board**, the **First Nations Fiscal Institutions/Boards** and **4th level Indigenous Municipal Governments**.

BULLETIN OF THE FIRST NATIONS STRATEGIC POLICY COUNSEL

Advancing the Right of First Nations to Information

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it.

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

For Back Issues Go To: http://epe.lac-bac.gc.ca/100/201/300/first_nations_strategic_bulletin/index.html

STATEMENT BY CHARMAINE WHITEFACE—"Bill C-15 is based on a Lie"

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 **Sub-commission 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.]*