

# FIRST NATIONS STRATEGIC BULLETIN

## FIRST NATIONS STRATEGIC POLICY COUNSEL

### Trudeau's Vacationing on 1st National Day of Truth & Reconciliation Illustrates How Fake the Trudeau "Reconciliation" Agenda has been for Past 6 Years & How it Remains Fake



Meme taken with permission from Twitter Account of Terrell Tailfeathers of Prime Minister Trudeau in Tofino, B.C. Sept. 30, 2021, on 1st National Day of Truth & Reconciliation

By Russ Diabo

When **CBC Newsworld** reported on September 30<sup>th</sup> that **Prime Minister Justin Trudeau** had started a family vacation in Tofino, B.C. on the first National Day for Truth and Reconciliation, I laughed out loud. I was not at all surprised.

My submission is that it's because of the **AFN** and compromised, co-opted **Termination Table Chiefs** who have collaborated with Trudeau's

**White Paper 2.0 "Reconciliation"** Agenda for the past 6 years, that Trudeau has the confidence to blow off the **1st National Day for Truth & Reconciliation** and take a family vacation on the beach in Tofino, British Columbia.

For the past six years I have been critical of the Trudeau government's "reconciliation" agenda, which I deemed fake, starting with his appointment of **Prime Minister Harper's** former **Deputy Minister of Aboriginal Affairs, Michael Wernick**, as the **Clerk of the Privy Council**, the top job of the federal bureaucracy in Ottawa. Trudeau announced Wernick's appointment in a January 2016 press release while he was in Davos, Switzerland at the **World Economic Forum Annual Meeting**.

At the time of Wernick's appointment I wrote an online opinion piece for **APT** warning about how the Wernick appointment should be a concern for First Nations because it is the federal bureaucracy, particularly the **Privy Council Office** that advises the **Prime Minister's Office and the federal Cabinet**.

Two years later in 2018, I ran for **AFN National Chief**, not expecting to win, but to use my platform to warn the First Nation Peoples, both on and off reserve, about the threat the Trudeau government poses to

#### Special points of interest:

- **Trudeau's Fake Reconciliation Continues to be Fake**
- **Federal Court Upholds CHRT Compensation for Kids**
- **1st National Truth & Reconciliation Day is a start to Needed Constitutional Change**
- **B.C. Supreme Court Recognizes Cumulative Impacts on Treaty Rights in Decision**

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Logo from Russ Diabo  
2018 AFN National Chief  
Campaign.

“My warning  
message about the  
Liberal  
government’s  
intent to eliminate  
our rights and our  
need to develop  
our own self-  
determination  
plans from the  
ground up was  
ignored by most  
**Indian Act** Chiefs”



Diabo Candidate  
Speech at 2018 AFN  
Election.

## ‘Fake Reconciliation’ continued from page 1

our Inherent, Aboriginal and original Treaty right, which were signed with Great Britain, NOT Canada.

In June 2018, as part of my **AFN** campaign, I wrote a letter to the **Indian Act** Chiefs across Canada, which said in part:

*I have decided to run for the position of Assembly of First Nations National Chief because it has become very clear to me that over the past two years that the **AFN** has lost control of the agenda and the process. **AFN** is dancing to the tune of the Liberal government, which is now quietly manufacturing the program of their relationship with First Nations and is selling it directly to our Chiefs, our Peoples and the Canadian public from Liberal backrooms.*

*For two years now, we have been subjected to a steady stream of meaningless rhetoric from Prime Minister Trudeau that has gone virtually unchallenged from our National Chief. He has allowed the Liberal government to set the agenda in its renewed drive to terminate First Nation Inherent, Aboriginal and Treaty rights in Canada in a web of restrictive land claim and self-government agreements that give only municipal style powers to First Nations.*

*The National Chief has even allowed the Trudeau government to appropriate our terminology like "nation-to-nation" and "reconciliation" and misuse it for their own purposes. The Prime Minister wants to focus on his version of "reconciliation" while ignoring the "truth" about Canada's contemporary colonial laws, policies and practices.*

My warning message about the Liberal government’s intent to eliminate our rights and our need to develop our own self-determination plans from the ground up was ignored by most **Indian Act** Chiefs.

In my campaign platform I said First Nation communities need to counter the Trudeau government’s top-down “reconciliation” agenda and in the **2018 AFN Election**, the majority of Chiefs voted for the top status quo candidate, Perry Bellegarde. After all, by 2018 the Trudeau government had committed \$21.4 billion in new money for “Indigenous priorities”. I couldn’t compete with that type of “investment” into the dependency economy of the 0.2% colonial Reserve system.

When Perry Bellgarde won the **AFN 2018 Election** on 2<sup>nd</sup> ballot, thanks in part to the federal **Minister of Indigenous Affairs, Carolyn Bennett**,

## 'Fake Reconciliation' continued from page 2

campaigning for her government, telling Chiefs to "*stay the course*", I had only received 10 votes.

However, at the time, I won all of the polls taken by media organizations. I had grassroots peoples support, who obviously had heard my warning message. Too bad they couldn't vote in the **2018 AFN election**.

Following the **2018 AFN Election**, the Trudeau government continued its fake "*reconciliation*" agenda with the collaboration of AFN.

The then **AFN National Chief Bellegarde** remained silent about the pre-election 800-page omnibus **Budget Bill C-97** that contained legislation to dissolve the Department of Indian Affairs and create two new "*Indigenous*" departments, and Bellegarde also remained silent about the federal manipulation of a national process to replace the **Comprehensive Land Claims and Self-Government policies**, in order to change the two federal policies in only the B.C. region and not the whole country.

On September 4, 2019, the governments of Canada, B.C. and the First Nations Summit issued a **Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia**, excluding the oldest First Nations political advocacy organization in B.C., the **Union of B.C. Indian Chiefs**.

It will be interesting to see if the **UBCIC** challenges or accepts the new **B.C. Treaty Negotiations Policy** or not, because the new negotiations policy is based on a **fundamental principle that Treaty negotiations must accept the "assumed sovereignty of the Crown"** (Article 18 of the policy).

**AFN National Chief Bellegarde's** final legacy action as National Chief was to manipulate the **AFN** support for federal **UNDRIP Bill C-15** without a current mandate from the **AFN Chiefs-in-Assembly**. Now **Bill C-15** is federal law, having achieved Royal Assent on June 21<sup>st</sup>, "*National Indigenous Day*" by the actions of the then **Interim Governor-General, the Chief Justice of the Supreme Court of Canada**.

**Bill C-15, the federal UNDRIP Law**, requires the federal government to "*prepare and implement an action plan to achieve the objectives of the Declaration*" within two years of June 21, 2021. The newly elected federal government will be responsible for this major task.

### 2021 Federal Election

The results of the 2021 Federal Election have the composition of Parliament looking very much like it did before the federal election, with the Trudeau government gaining 2 seats.

The Trudeau government had a minority government from 2019 up until



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

"AFN National Chief Bellegarde's final legacy action as National Chief was to manipulate the AFN support for federal **UNDRIP Bill C-15** without a current mandate from the AFN Chiefs-in-Assembly"



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



Cover of 2021 Liberal Indigenous Electoral Platform.

“The term **“Indigenous Peoples”** is being deliberately used by the federal Liberal government in a pan-Indigenous approach to mask the diversity among and between Inuit, Metis and First Nations in order to undermine First Nation rights and interests”



Canadian Parliament

## ‘Fake Reconciliation’ continued from page 3

the 2021 election was called by Prime Minister Trudeau, and as was done before this election, the minority Trudeau Liberal government will likely use the support of either the Bloc Quebecois (BQ) or the New Democratic Party (NDP) to get “*Indigenous*” legislation or policies through the House of Commons to the Senate. On Indigenous issues, the Conservative Party of Canada (CPC) usually votes against Liberal Indigenous legislation in both the House of Commons and the Senate.

### 2021 Liberal Indigenous Election Platform

The 2021 Liberal Indigenous Electoral Platform is called “*Moving Forward on Reconciliation with Indigenous Peoples*”, since the platform is based on what the Trudeau Liberals have done for the past 6 years as the federal government.

The first point made in the 2021 Liberal Election Platform is the federal spending since the 2015 federal election on what they call “*Indigenous Priorities*”. The Trudeau government has “*invested*” almost \$25 billion in new monies for programs and services to “*Indigenous Peoples*”, meaning First Nations, Metis and Inuit.

As a consequence of the public disclosure of mass burials at the sites of the Kamloops and Cowessess Residential Schools, all federal parties made promises in their platforms to address the legacy of Residential Schools and the discovery of mass burials of children.

The 2021 Liberal Indigenous Platform also included a section in their platform called “*Addressing the Legacy of Colonialism and Residential Schools*” containing promises to support survivors and to fund the further exploration of burials at the former Residential School Sites.

The 2021 Liberal Platform also includes promises to continue to address Indigenous child welfare, to complete the elimination of boil water advisories on reserves, to continue with negotiations regarding treaties, land claim and self-government agreements, to implement Bill C-15, the **United Nations Declaration on the Rights of Indigenous Peoples Act** and other “*Indigenous Priorities*”.

The term “*Indigenous Peoples*” is being deliberately used by the federal Liberal government in a pan-Indigenous approach to mask the diversity among and between Inuit, Metis and First Nations in order to undermine First Nation rights and interests.

My focus is on the Trudeau government’s First Nations policies and legislation.

### Investing in Re-Colonization NOT De-Colonization

As I’ve repeatedly pointed out before, since 2015 and up until the 2021



## 'Fake Reconciliation' continued from page 4

election was called, the Trudeau government's "*Reconciliation Agenda*" has involved by-passing the rights holders—First Nation Peoples—including during a pandemic, through a top-down, secretive approach to make massive, unprecedented changes to federal policies, legislation, and structure **using the federally funded National Indigenous Organizations (Assembly of First Nations, Metis National Council, Inuit Tapiriit Kanatami)** and their respective "*Indigenous*" regional bodies to:

- Impose a Canadian legislative "*Framework for the Government of Canada's implementation of the Declaration*" (Bill C-15) to define the 2007 Version of the **United Nations Declaration on the Rights of Indigenous Peoples** "*in accordance with the Constitution of Canada*" through an undefined "*action-plan*". What many of us call **CANDRIP (Bill C-15)**.
- Impose a **Two-Track approach**, using 1867 and 1982 constitutional provisions (section 91.24 & section 35) and **Memorandums of Understanding (MOU's)** creating "*Bilateral Mechanisms*" (Federal-Indigenous Organizations Cabinet Committees) with the three National Indigenous Organizations (AFN, MNC, ITK) to implement a pan-Indigenous approach intended to water down and erode the Inherent, Aboriginal and original Treaty Rights of First Nations.
- Impose **10 Federal Principles for Indigenous Relationships** for shaping policies, legislation and negotiations to re-colonize First Nations. For example, the new fiscal policies of 10-year grants to First Nations and the new "*self-government*" fiscal policy based on own source revenue (taxation), negotiated with "*Indigenous Governing Bodies*" through **Modern Treaties** or **Self-Government Agreements**.
- Impose a **new federal structure** by changing the machinery of government by dissolving the Department of Indian Affairs and creating two new Indigenous Departments: **Indigenous Services Canada (ISC)** and **Crown-Indigenous Relations & Northern Affairs Canada (CIRNAC)** to accommodate the Trudeau government's pan-Indigenous "*reconciliation*" agenda by including the Metis along with the First Nations (Indians) and Inuit.

Now that the 2021 federal election has maintained a Liberal minority government in place, the Trudeau government's fake "*reconciliation*" agenda will "*move forward*" with the **2021-2022 Departmental Plans** of ISC and **CIRNAC** as planned.

Prime Minister Justin Trudeau has said he will name a new federal Cabinet later in October, so we won't know until then what the fate of the re-elected **Ministers of Indigenous Services, Crown-Indigenous Rela-**



Front: PM Trudeau.

Back L to R: AFN Nat'l Chief Bellegarde, MMF President David Chartrand, ITK President Natan Obed, December 2016.

"Trudeau government's '**Reconciliation Agenda**' has involved by-passing the rights holders—First Nation Peoples—including during a pandemic, through a top-down, secretive approach to make massive, unprecedented changes to federal policies, legislation, and structure using the federally funded National Indigenous Organizations (**Assembly of First Nations, Metis National Council, Inuit Tapiriit Kanatami**) and their respective "**Indigenous**" regional bodies "



L to R: Minister of Crown-Indigenous Relations, Carolyn Bennett & Minister of Indigenous Services Canada, Marc Miller.



Indigenous  
Services Canada

## 'Fake Reconciliation' continued from page 5

"The mandate of the Minister of Indigenous Services is to off-load or "give effect to the gradual transfer to Indigenous organizations of departmental responsibilities with respect to the development and provision of those services" though agreements with "Indigenous organizations and other entities" meaning "Indigenous Governing Bodies"."

tions and Northern Affairs will be.

While the **Indian Act** remains in force, **ISC** is now the department that is legislatively mandated to move beyond "Indians", "Indian Bands" and "Band Councils" to deliver services to "Indigenous" individuals and "Indigenous Governing Bodies", as follows:

### **Ministerial duty**

(2) *The Minister is to ensure that services are provided to Indigenous individuals, who are eligible to receive those services under an Act of Parliament or a program of the Government of Canada for which the Minister is responsible, with respect to the following matters:*

- (a) *child and family services;*
- (b) *education;*
- (c) *health;*
- (d) *social development;*
- (e) *economic development;*
- (f) *housing;*
- (g) *infrastructure;*
- (h) *emergency management; and*
- (i) *any other matter designated by order of the Governor in Council.*

The mandate of the Minister of Indigenous Services is to off-load or "give effect to the gradual transfer to Indigenous organizations of departmental responsibilities with respect to the development and provision of those services" though agreements with "Indigenous organizations and other entities" meaning "Indigenous Governing Bodies".

### **The 2021-2022 fiscal-year priorities of ISC are:**

*ISC will focus on four interconnected priority areas:*

- (1) advancing health, (2) supporting families, (3) helping build sustainable communities, and (4) supporting Indigenous communities in self-determination. The four priority areas work together to ensure that the needs and concerns of First Nations, Inuit, Métis people are recognized, providing support everywhere that it is needed from the individual through the family, community and nation-level.*

Once this gradual process of transferring program delivery to "Indigenous organizations or entities" is complete the **Department of Indigenous Services Canada** will dissolve leaving only the **Department of Crown-Indigenous Relations & Northern Affairs Canada** to implement the (pre and post 1975) Treaty and Self-Government Agreements.



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

## ‘Fake Reconciliation’ continued from page 6

The **Minister of Crown-Indigenous Relations** is responsible for negotiating a pan-Indigenous approach to (pre and post 1975) Treaties and Self-Government Agreements, as the federal legislation puts it:

### **Responsibilities**

*The Minister is responsible for*

- (a) exercising leadership within the Government of Canada in relation to the recognition 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 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.*

### **The CIRNAC 2021-2022 Plan has set out the following priorities:**

- **CIRNAC will continue discussions to co-develop modern treaties, self-government agreements and other constructive arrangements, and explore new ways of working with First Nations, Inuit and Métis communities.**
- **CIRNAC will advance ongoing work with First Nations, Inuit and Métis to redesign the Comprehensive Land Claims and Inherent Right policies.**
- **Canada, as represented by CIRNAC and other federal departments, will progress in the implementation of the Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia, in partnership with the other Principals of the British Columbia treaty process (the First Nations Summit and the Province of British Columbia). Where there is interest, Canada is ready to discuss using the approaches found in this policy with negotiation partners elsewhere in the country.** [emphasis added]

Once the federal Cabinet is named, the above noted priorities will be put into their mandate letters from the Prime Minister, along with the mandate to implement **CANDRIP (Bill C-15)**.

### **Transitioning Indian Act Bands into 4<sup>th</sup> Level “Indigenous Governments”**

The “reconciliation” agenda involves replacing **Indian Act Bands** (Indigenous Services Canada) with ethnic municipal type “*Self-Governing First Nations*” (Crown-Indigenous Relations). This is what the Trudeau government calls “*supporting the Indigenous visions of self-determination*”.



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

“The “**reconciliation**” agenda involves replacing **Indian Act Bands** (Indigenous Services Canada) with ethnic municipal type “*Self-Governing First Nations*” (Crown-Indigenous Relations). This is what the Trudeau government calls “supporting the Indigenous visions of self-determination”.”



Joe Wild, Senior ADM, Crown-Indigenous Relations.



Carolyn Bennett signing Self-Gov't Agreements with Metis Nations of Alberta, 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.

## ‘Fake Reconciliation’ continued from page 7

In Canada, municipalities are created by provincial governments and have the powers of a natural person. This is an explanation from the **government of Ontario about the Municipal Act**:

### **Natural person powers**

*The Act gives municipal governments natural person powers for the purpose of exercising their authority. **Natural person powers give municipalities similar flexibility to that of individuals and corporations** in managing their organizational and administrative affairs without the need for more specific legislative authority. [emphasis added]*

As noted, similar to municipalities, the **Canada Business Corporations Act** also provides that:

### **Capacity of a corporation**

*15 (1) A corporation has the capacity and, subject to this Act, **the rights, powers and privileges of a natural person**. [emphasis added]*

For 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”.

For example, in 2019, the Metis Nations of Alberta, Saskatchewan and Ontario signed **Metis Nation Recognition and Self-Government Agreements** with the **federal Minister of Crown-Indigenous Relations, Carolyn Bennett**, and **section 7 of those three agreements** defines the “legal status and capacity” of the Metis Governments as follows:

*7.01 As of the Self-Government Implementation Date, the Métis 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]*

The **Metis Nation Recognition and Self-Government Agreements** are a template the Trudeau government is also peddling to First Nations at federal “Recognition of Indigenous Rights and Self-Determination discussion tables”.

**The following section is from a proposed federal agreement to a prairie numbered treaty group who is at a “recognition of rights” table:**

*7.01 As of the Self-Government Implementation Date,*



## 'Fake Reconciliation' continued from page 8

*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]

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. Included in the 2018 rejected Bill was the notion that the Bill:

*could enable Canada to recognize a Nation or other Collective as an entity that has the authority to govern itself through a government having the legal capacity of a natural person*

*enable the Government of Canada to recognize Indigenous Nations and Collectives as legal entities with the status and capacities of a natural person* [emphasis added]

To undermine the Inherent and Treaty Right of First Nations, from the 1990's on federal Liberal governments have been peddling the idea of First Nation Governments surrendering to "assumed Crown sovereignty" through federal legislation that included "having the [*Indian Act Bands accept delegated authority and the*] legal capacity of a natural person" since **Bill C-79** (in 1997) and **Bill C-7** (in 2003), the **First Nations Governance Act**.

### **Bill C-79 - *Indian Act* Optional Modification Act 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.*

### **Bill C-7 – *First Nations Governance Act* Legal Capacity, rights, powers and privileges**

*15. (1) A band has the legal capacity, rights, powers and privileges of a natural person*

Both **Bill C-79** and **Bill C-7** were widely opposed by First Nations across Canada and died on the order paper when Parliament was prorogued in both 1997 and 2003.

The newly elected Trudeau minority government will likely continue to recycle the notion of "*Indigenous governments*"—similar to municipalities and corporations—having the delegated authority and powers of a "natural person".



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.

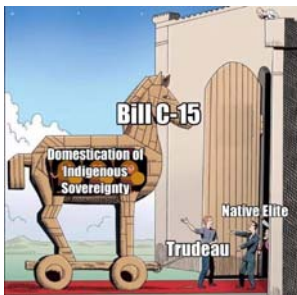


UNDRIP



CANDRIP

“One of the Trudeau minority government’s main tools to “move forward” with its fake “reconciliation” agenda will be **Bill C-15**, the federal **UNDRIP Act**, which will be used by the Trudeau minority government in its attempts to re-colonize First Nations”



## ‘Fake Reconciliation’ continued from page 9

One of the Trudeau minority government’s main tools to “move forward” with its fake “reconciliation” agenda will be **Bill C-15**, the federal **UNDRIP Act**, which will be used by the Trudeau minority government in its attempts to re-colonize First Nations.

### CANDRIP and the “Reconciliation” Agenda

In the fall of 2020, the then **federal Minister of Justice, David Lametti**, had the lead for the Trudeau government in manipulating the support for **Bill C-15**, bypassing the rights holders—First Nation Peoples—during a global pandemic.

**Minister Lametti** used the three federally funded National Indigenous Organizations (**AFN, MNC, ITK**) and some of the national organizations regional members to support **Bill C-15**.

Following the support of the national and regional Indigenous organizations, who lack the authority to make representations on the rights of their member nations without a mandate, the federal Liberal government was also able to get a February 7, 2021, support letter for **Bill C-15** from:

*Romeo Saganash, former M.P.*

*Chief Willie Littlechild, former Commissioner, Truth and Reconciliation Commission of Canada*

*Professor Mary Ellen Turpel-Lafond (Aki-Kwe), Director, Residential School History and Dialogue Centre, Professor of Law, University of British Columbia*

*Ellen Gabriel, Kanien'kehá:ka Activist from Kanehsatà:ke*

*Leah Gazan, M.P.*

This was then followed by a March 9, 2021 open letter supporting **Bill C-15** which was signed by a number of federally funded and compromised Indigenous “Nations, Governments, Organizations” and “Individuals”, with many of the individuals coming from the Indigenous elite and their mainly academic supporters.

One name on the March 9, 2021 open letter that caught me by surprise was “Hereditary Chief Na’Moks, John Ridsdale, Tsayu Clan of the Wet’suwe’ten Nation”.

Although she did not sign the March 9, 2021, open letter, another **Bill C-15** academic supporter who subsequently came out publicly in support of **Bill C-15**, was Pam Palmater from Ryerson University. One day she was supporting **CANDRIP (Bill C-15)** and the next she was calling for “land back”, apparently not seeing any contradiction?

I, on the other hand, remain convinced that **CANDRIP (Bill C-15)** will be a main tool of the Trudeau government to re-colonize First Nations by denying and undermining the international right of self-determination of Indigenous Peoples, and the restoration of, or restitution for, stolen Indigenous lands, territories and resources through its “reconciliation” agenda

## ***‘Fake Reconciliation’ conclusion from page 10***

and plan, which has been put in place by the Trudeau government over the past 6 years.

The Trudeau minority government will continue to negotiate “*modern Treaties*” and “*self-government*” agreements, and assimilate First Nations into Canada’s property and tax systems through federal laws designed to accomplish this objective.

These existing policies and legislation will be the basis of the measures for development of the Bill C-15 “*action-plan*” to implement the “*objectives*” of UNDRIP “*in accordance with Canada’s constitution*”, which is based on the colonial doctrine of discovery for the Crown’s “*assumed sovereignty*” and “*territorial integrity*”.

### **Conclusion**

In conclusion, it was clear from watching the **2021 Federal Election campaign** that Indigenous issues were not a big priority of the federal parties. The party leaders had to dance around some questions on the campaign trail, but there were no substantive responses.

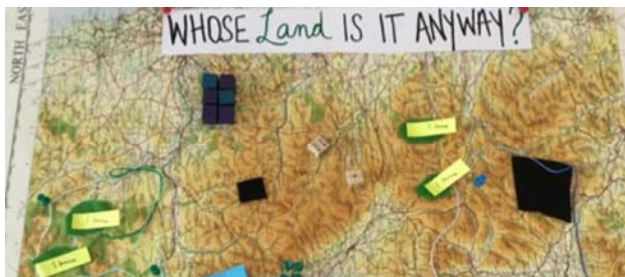
During the federal campaign, the **AFN** released a document called “*The Healing Path Forward: 2021 Federal Priorities for Strengthening and Re-building First Nations*”.

I have reviewed this document and unfortunately I do not see any serious challenge to the Trudeau government’s fake “*reconciliation*” agenda in it. There are some good ideas in it, but it seems to have been drafted by those **regional AFN organizations** whose Chiefs are coopted and compromised at the Trudeau government’s various discussion and negotiation tables, which are intended to reach final agreements based on **the Trudeau-Wernick National “Reconciliation” Plan**. What I call **White Paper 2.0!**

I remain convinced that only those First Nation communities who seriously undertake a research, mapping and planning process from the ground up will survive as distinct organized societies as our Creator intended it. Those who follow Ottawa’s fake “*reconciliation*” agenda will merely become ethnic municipalities, as “*Indigenous-Canadians*”.



“Our real problem is that the federal and provincial governments do not want to recognize Aboriginal Title because it ousts their jurisdiction over our Aboriginal Title territory”



**L to R:** PM Trudeau & Clerk of the Privy Council (2016-2019) Michael Wernick.



**“As a colonial state, Canada lacks a true understanding of First Nation peoples. When claiming it is listening to First Nations, Canada prefers to hear only the select few voices of those whom support its mainstream agenda”**

## Truth and Wreckonciliation

By Rachel Snow

This **national day of truth and reconciliation** is far from adequate compensation against intergenerational trauma and ongoing addictions and self-harming issues faced by First Nation communities.

Canada does not address First Nation concerns when the federal government or any other agency speaks of “*reconciliation*.” I have coined the term “*Wreckonciliation*” which is what Canada proposes in its one-sided attempts to rectify historic wrongs.

As a colonial state, Canada lacks a true understanding of First Nation peoples. When claiming it is listening to First Nations, Canada prefers to hear only the select few voices of those whom support its mainstream agenda.

Canada refuses to undertake the necessary work that involves listening at the grassroots level and hearing the varied voices that make up First Nations across this land. Canada has been using a well thought-out strategy to paint a picture of Indians asking for handouts when in fact Canada is obligated by their own laws to honour historic undertakings.

Canada’s knowing duplicity brings greater harms to the First Nation peoples and continues to perpetuate the genocidal saga that has become the First Nation legacy in this land.

For example, the rush to pass **Bill C-15**, the “*recognition*” of the **United Nations Declaration on the Rights of Indigenous Peoples**, did not consult groupings within the Indigenous peoples’ definition (First Nations, Inuit, Métis). Instead, Canada rushed blindly forward with a cookie-cutter approach that uses the same definition for all Indigenous people.

Canada must reconcile in this manner. Firstly, Canada must recognize the sovereignty and autonomy of the 50-plus linguistic groups and 600-plus federally recognized First Nations. Canada cannot continue to host bogus roundtables with hand-picked tokenized voices that parrot predetermined federal outcomes.

It is this process of only ever hearing from a handful of Indigenous voices that continues to present nationwide problems that make a farce of true reconciliation. First Nations function as collective voices. It is incumbent upon Canada to go to each nation and consult properly with all voices.

Under the **Indian Act**, Canada sent Indian agents to interfere with Band governance so that the true governance systems are not voicing the will of the people. Canada interfered with nations’ governance mechanisms with the introduction of Indian Affairs chiefs and councils who are extensions of the federal agenda. A Canadian government website details how First Nations select leadership under the **Indian Act** — a process Canada should never have been a part of.



PM Trudeau and AFN Nat'l Chief Bellegarde signing a Joint Priorities MOU in 2017.



## 'Truth & Wreckonciliation' continued from page 12

From **Deskaheh in the Haudenosaunee territory** to the recent belittling of **Wet'suwet'en hereditary chiefs in the LNG crisis of British Columbia**, Canada has deflected calls from the true spokespeople who govern their respective nations. Canada believes that there is one size that fits all for First Nation people.

Canada under the leadership of **Justin Trudeau** showed this hand when they announced a "*framework*" in response to the **Colten Boushie trial** and its shortcomings. Instead of stating that systemic racism exists in the judicial system, Canada pushed forward with a plan to "*recognize*" rights.

It is over 150 years since Confederation. Surely by now Canada understands that there is specificity in First Nation held governance systems, languages and legal traditions.

It is not that Canada does not understand this, it is that Canada chooses to ignore this reality.

This is why Canada makes brash announcements of pomp and pretense at times of First Nation upheaval. The **finding of 215 children** led Canada to quickly announce funding dollars for uncovering burial sites located near residential schools. There was a quick apology with Trudeau's mournful look and a quick segue into how this can be fixed with a sprinkling of dollars.

There was no outrage about cemeteries located in close proximity to "*schools*" or the fact that the bodies of First Nation children may lay in unmarked graves. There was no affirmation from Canada about the killing nature of the residential schools. Instead, Canadians and the global audience heard about a "*sad*" chapter in the history of Canada.

Worse, right wing pundits came out with theories about tuberculosis and the fact that these graves were due to family neglect and the poor health in general of First Nation children. There was no linkage to the vibrant and healthy nations that had existed freely on this land since time immemorial. Instead, there were racist overtures that suggested the First Nation somehow were responsible for the demise and kidnapping of their children.

Enter **Trudeau's national truth and reconciliation day**. Trudeau has mandated that September 30 will be a national statutory holiday to show that "*every child matters*" to the Canadian government. This is not an adequate acknowledgement of harms inflicted on First Nations. This is not an adequate compensation against intergenerational trauma and ongoing addictions and self-harming issues that continue to exist in First Nation communities.

Canada continues to gloss over the genocide that its settler forefathers have inflicted on First Nations. Canadians and the world are led to believe that these harms were historic, only.



"From Deskaheh in the Haudenosaunee territory to the recent belittling of Wet'suwet'en hereditary chiefs in the LNG crisis of British Columbia, Canada has deflected calls from the true spokespeople who govern their respective nations. Canada believes that there is one size that fits all for First Nation people"



Truth & Reconciliation Commission Canada Logo.

## 'Truth & Wreckonconciliation' conclusion from page 13



Kamloops Indian Residential School.

"True First Nation voices must speak so that "reconciliation" may actually happen. If Canada controls the one-sided narrative of goodwill to assuage settler consciences, then we, the First Nations, actually experience "Wreckonconciliation." This has not changed in 154 years"

If this is true, then why do First Nations people still not have adequate drinking water? Is it because they were forcibly removed from their homelands and ignored while development poisoned nearby water supplies?

If the harms inflicted on First Nations were historic, then why was **Gerald Stanley** acquitted of shooting **Colten Boushie** due to a misfire theory so convoluted that only a white man could make this defense?

If the harms inflicted on First Nations were historic, why, in 2020, did Canada block access to residential school documents for **St. Anne's residential school survivors** who are seeking compensation from criminal and unethical acts of abuse, possible electrocution and nutritional experimentation?

If the harms inflicted on First Nations were historic, why did Canada challenge that it owed compensation to those scooped kids under child family services who were given poverty payments if they remained on reserve versus those children who were highly paid by non-First Nations off reserve?

If the harms inflicted on First Nations were historic, why was **Adam Capay** held in isolation for 1,647 days while incarcerated in 2012 through 2019? If the harms inflicted on First Nations were historic, then why was **Cindy Gladue's** vagina put on display in an Alberta courtroom during a trial about her death in 2015?

If the harms inflicted on First Nations were historic, why are the **Mi'kmaq fishing boats** under siege at the eastern door? Why are the First Nations standing to protect the land constantly under siege by the RCMP?

This is the Canada that needs exposure. True First Nation voices must speak so that "reconciliation" may actually happen. If Canada controls the one-sided narrative of goodwill to assuage settler consciences, then we, the First Nations, actually experience "Wreckonconciliation." This has not changed in 154 years.

*Rachel Ann Snow is Iyahe Nakoda, the daughter of late Reverend Dr. Chief John Snow. She holds a juris doctor from the College of Law, University of Saskatchewan and is an outspoken educator, speaker, writer and co-contact person for the Indigneous Activist Networks. Rachel resides on her ancestral lands in Mini Thni which is west of Calgary, Alberta. She can be followed @RachelAnnSnow on Twitter. [This article was originally published by Rabble on September 30, 2021]*



St. Anne's Residential School.

## Judge upholds human rights compensation order for First Nations kids

By Brett Forester

**Canada has lost every battle so far in 14-year-old court fight that isn't over yet**

The Federal Court has upheld a trailblazing **Canadian Human Rights Tribunal order** requiring Ottawa to pay potentially billions of dollars to thousands of First Nations kids and families who suffered discrimination by the state.

**Justice Paul Favel** also upheld a separate tribunal order that said the federal government must consider some non-status First Nations kids eligible for the Jordan's Principle program.

Favel, a member of **Poundmaker Cree Nation in Saskatchewan**, dismissed the two court challenges launched by the Canadian government. He said Ottawa failed to show the orders were unreasonable, adding that the case has resulted in significant good work being done.

*"However, the good work of the parties is unfinished," Favel wrote in his 111-page ruling released Wednesday. "The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation."*

The Canadian government requested judicial reviews of both orders and spent a week in June in front of Favel, trying to convince him to quash them.

Ottawa's opponents urged him to affirm the potentially precedent-setting rulings.

Reached by phone after the decision came down, **Cindy Blackstock, executive director of the First Nations Child and Family Caring Society of Canada**, said it was yet another win for First Nations kids. She urged the **Justice Department** not to appeal.

*"These families have been through enough," she said. "It's time for them to put down their sword."*

### 14-year-old fight not over yet

The original human rights complaint was lodged by **Blackstock and the Assembly of First Nations (AFN)** in 2007.

The organizations argued Ottawa was racially discriminating against First Nations children by underfunding child welfare on reserves. After some initial legal wrangling, the case was heard in 2013.

*"Today's decision acknowledges the personal harm caused by Canada's discrimination and affirms that First Nations deserve justice," the AFN said via tweet. "This monumental decision comes one day before Orange Shirt Day,*



Federal Judge Paul Favel,  
Member, Poundmaker  
Cree Nation

**"The Federal Court has upheld a trailblazing Canadian Human Rights Tribunal order requiring Ottawa to pay potentially billions of dollars to thousands of First Nations kids and families who suffered discrimination by the state"**

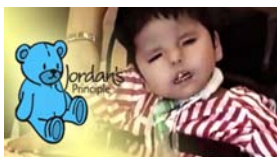


Cindy Blackstock  
PhD, Executive  
Director, First Na-  
tions Child and  
Family Caring So-  
ciety of Canada.



First Nation's Caring Society Spirit Bear Plan.

"The tribunal noted that Canada's funding scheme created a "perverse incentive" for agencies to scoop kids from their homes. Ottawa would fully reimburse agencies for the costs of apprehending and maintaining kids in foster care but provided only a fixed pot of cash for prevention services"



**Jordan's Principle**, named after Jordan River Anderson, who was a First Nations child from Norway House Cree Nation in Manitoba.

## 'Judge Upholds Compensation' continued from page 15

and we hope that Canadians stand with us in recognizing that #EveryChildMatters."

The tribunal issued its landmark ruling in favour of the **caring society** and **AFN** in 2016. The panel said Canada was racially discriminating against 163,000 First Nations kids by knowingly underfunding the system and refusing to implement **Jordan's Principle**.

**Jordan's Principle** states that the level of government first contacted by a family seeking access to an essential health product or social service must provide it without delay and figure out the bill later. It exists to prevent jurisdictional bickering between Ottawa and the provinces on who will pay for the services.

The tribunal noted that Canada's funding scheme created a "perverse incentive" for agencies to scoop kids from their homes. Ottawa would fully reimburse agencies for the costs of apprehending and maintaining kids in foster care but provided only a fixed pot of cash for prevention services.

In 2019, the tribunal ruled the discrimination was "wilful and reckless." It ordered Canada to pay \$40,000 — the maximum amount under federal human rights law — to kids unnecessarily taken from their homes or denied access to essential services.

Canada's lawyer argued the tribunal had overstepped its jurisdiction and moved the goal posts on Ottawa. **Chief general counsel Robert Frater** said the order was flawed and lacked sufficient proof of harm.

**Frater** said a case about systemic discrimination should require systemic reform, not individual payouts. The issue of compensation should be settled by a class action, he said.

The **AFN's lawyer** said his arguments were "callous" and "heartless."

Favel said the tribunal did not exceed its jurisdiction under the **Canadian Human Rights Act**. He noted Canada has had numerous chances to appeal previous orders, but did not.

"Nothing changed," he wrote. "All of this was conducted in accordance with the broad authority the Tribunal has under the CHRA."

## Decisions released a day before new holiday

The tribunal ruled in 2020 that the federal government was still not applying **Jordan's Principle** to all First Nations kids. The panel ordered Canada to expand the program to non-status kids who live off reserve if they meet certain criteria.

In this appeal Frater again argued that the tribunal had exceeded its jurisdiction. He said the panel had started writing government policy, which is the domain of elected authorities and not administrative tribunals.



## 'Judge Upholds Compensation' continued from page 16

His opponents from the **caring society**, **AFN** and other organizations slammed Canada again for relying on the "racist and colonial" **Indian Act** as the core of its argument.

**Favel** again said the tribunal did not overstep its jurisdiction and did not deny Canada procedural fairness.

Canada "was afforded numerous opportunities to challenge the various decisions but did not," **Favel** wrote. "No one was taken by surprise."

The appeals were heard despite a motion that passed unanimously in the **House of Commons** urging Canada not to proceed. **Prime Minister Justin Trudeau**, now newly re-elected, abstained from voting on the motion and so did his cabinet.

The rulings come a day before the **first National Day for Truth and Reconciliation**.

The **Truth and Reconciliation Commission's** first calls to action — delivered six years ago — recommended Ottawa act immediately to reduce the number of First Nations kids in state custody.

The judge offered some general thoughts on reconciliation in his reasons.

*"Reconciliation is, in essence, a continuation of the nation-building exercise of this young country in the sense that the foundational relationships between Indigenous people and the Crown continue to evolve,"* he wrote.

*"Reconciliation, as nation-building, can also result in the re-establishment, on a proper foundation, of broken or damaged relationships between Indigenous people and Canada in the manner suggested by the Supreme Court in its numerous judgments."*

Canada has lost every single round so far in the 14-year-old legal battle that isn't over yet. **Favel** stressed the importance of negotiations moving forward.

**Favel's** decision can be challenged in the **Federal Court of Appeal** and then potentially in the **Supreme Court of Canada**.

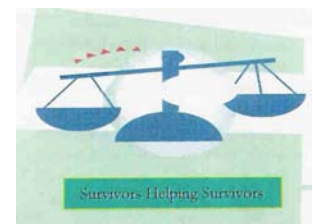
Ottawa also applied for a third judicial review of yet another tribunal order on Sept. 24.

[This was originally published on APTN September 29, 2021]



TRC Commissioners during a ceremonial smudge.

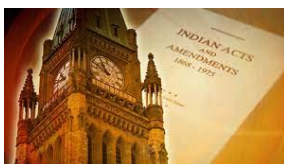
"The Truth and Reconciliation Commission's first calls to action — delivered six years ago — recommended Ottawa act immediately to reduce the number of First Nations kids in state custody"





Katzie First Nation Logo.

“Indian hospitals were places where medical experiments were performed on children without the consent of their parents, where First Nations people were imprisoned against their will, and where it was a crime to refuse any treatment that was ordered for you”



## On Her Last Day, My Mother Wore a Shirt With the Words She so Believed. Every Child Matters



By Robert Jago | Opinion

In my family, the older aunts and uncles tell a story about “the oven baby.” “That was Maryann,” my Aunt June tells me. This conversation is back in the summer of 2018, on the **Katzie First Nation reserve in B.C.**

“The one who had a hole in her back,” my mother chimes in.

“She had some spinal disease, it was like about that big [gesturing to show her palm], almost bigger than the rest of her, and they used to keep her in

As a family, we have been at the receiving end of almost everything Canada did to First Nations people, and my mother saw it all, writes Robert Jago. Photo via @rjjago / Twitter

the oven to keep her warm,” June said.

They explained to me that it was a wood-burning stove, with a small, cloth-lined drawer.

My grandma had a baby every year for nearly two decades throughout the '50s and '60s; I have a lot of aunts and uncles. And like all of them, Maryann was born at home.

Giving birth at home wasn't a choice. While Canada doesn't keep statistics on home births, statistics from the United States show that only about one per cent of births were at home by the mid-1950s.

First Nations people like my grandmother gave birth at home because they were denied access to regular hospitals.

Canada's white population didn't want First Nations people in their hospitals. A typical example of this disdain for us comes from a meeting of the **Victoria Jubilee Hospital Board**, where a board member stated: “Indians were unclean and they hurt the hospital.” That hospital board went on to ban First Nations patients unless they paid in advance, and at a rate higher than what was charged to white people. It's something that many other hospitals did across Canada, forcing the **Department of Indian Affairs** to create its own — albeit substandard — medical system.

While they were technically called “Indian hospitals,” they had all the hallmarks of a residential school or a prison camp.

The **Indian hospitals** were places where medical experiments were performed on children without the consent of their parents, where First Nations people were imprisoned against their will, and where it was a crime to refuse any treatment that was ordered for you.

## ‘Every Child Matters’ continued from page 18

The result was that Grandma Mary was left to her own devices to bring her family into the world. Her husband, my grandfather, was a fisherman, and was away at sea 11 months out of the year, so she made her little nest in her room, and she did this all alone.

Grandma Mary had a procedure for giving birth. Before she was due, she would take everything she needed into her bedroom: water, towels, and according to June, “a new pair of scissors ... she never used for anything else.”

June explained: “We’d all go to school and come home and there’d be a baby, and mom was all cleaned up, the baby was cleaned up, the room was cleaned up.”

The night Maryann died, back in 1950, Grandma was with her. Crouched by the oven, she fed it wood to keep the baby warm.

As the night wore on,  
her cries softened,  
and then stopped,  
and as the fire went out, the baby died.

This is the Truth in “*Truth and Reconciliation*.” It is one of hundreds of thousands of individual tragedies that collectively make up the genocide of Indigenous people in Canada — and broadly speaking, it is an event we mark today on the **National Day for Truth and Reconciliation**.

The genocide doesn’t begin and end with the **residential schools**. Maryann was born, and died, off reserve.

My family is one of many that fled the reserve to escape federal control. After having gone to **residential school** themselves, my grandparents decided it was in the best interests of their family to flee. They gave up their home, the plot of land that has been in our family for generations, and left to live as refugees in the small fishing village of **Steveston, B.C.**

This is another part of the genocide.

Letting “*the oven baby*” die won the land for Canada, it built the railroad, cleared the Prairies, re-natured the parks and pumped clean water into every home in the country, or every one of YOUR homes.

There are so many different parts of the genocide that we mark today, and too many of them are still going on.

The **residential schools** are closed, the **Indian hospitals** are closed — but still many First Nations women choose to give birth at home, in secret, to escape the newer forms of oppression, like so-called **birth alerts**. These are orders a **provincial child welfare agency** gives to a hospital,



“Letting “the oven baby” die won the land for Canada, it built the railroad, cleared the Prairies, re-natured the parks and pumped clean water into every home in the country, or every one of YOUR homes”





“My mother Virginia Jago was born at home. She died this past week. She is too many things for me to say here, other than to say that her death has broken every piece of my heart. She was 64, and she was due so many more years with her family. But decades of poverty, and everything that came from that, took those years from us”



Section 91.24 of British North America Act says federal gov't has jurisdiction over “Indians & lands reserved for Indians”.

## ‘Every Child Matters’ continued from page 19

so that they are informed when a baby is born to a targeted mother. The agency then goes in and, in nearly a third of cases, seizes the child. In B.C., where First Nations people make up six per cent of the population, nearly 60 per cent of those seized under birth alerts are First Nations.

My mother **Virginia Jago** was born at home. She died this past week. She is too many things for me to say here, other than to say that her death has broken every piece of my heart. She was 64, and she was due so many more years with her family. But decades of poverty, and everything that came from that, took those years from us.

This, too, is a Truth.

On my mother’s last day with us, she spent it surrounded by her grandchildren. It was her granddaughter’s birthday. Her granddaughter shared the name of my sister who died as an infant, and so was especially beloved by my mom. That day, in spite of years of health problems, she was as happy and healthy as I had seen her in years.

In the final picture of her, she was wearing her orange “*Every Child Matters*” shirt.

As a family, we have been at the receiving end of almost everything Canada did to First Nations people, and my mother saw it all. Many of our family went to residential schools, my mother lost brothers and sisters to the 60s Scoop, others like Maryann, to discrimination in medical services.

We have lost so much, and to be with family and to see all of us together meant so much more to her — because she felt the meaning of those three words: **Every. Child. Matters.**

We gave her this shirt to wear in her casket, as a reminder of how happy she was at the end, and how it was being with her grandchildren that completed her. I shudder to think of the countless First Nations families that were denied this solace because their children were taken and were never to return. As if taking the land wasn’t enough, this most elemental bit of happiness — being with your grandchildren — was expropriated as well.

These are some of the Truths. But what about Reconciliation — the other half of what we are marking today?

Just as you can’t put out a fire with a blowtorch, you can’t reconcile with people who are still hurting you. **Métis lawyer Breen Ouellette** has observed that at the root of all the oppression heaped upon Indigenous peoples is **Section 91(24) of the British North America Act** — the act that created Canada. This section grants the federal government the exclusive right to make laws for “*Indians*” and our lands.

Every piece of land stolen from us, every child sent to residential school,



## ‘Every Child Matters’ conclusion from page 20

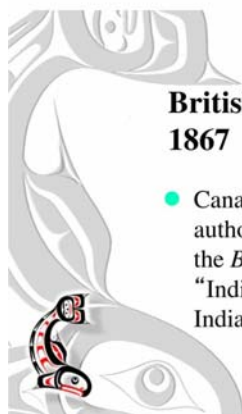
every underfunded school, forced sterilization, every litre of toxic waste dumped on to reserve — everything, all of it, begins with **Section 91(24)**. That section, what **Ouellette** calls “*legislated apartheid*,” is the line that divides reconciliation from oppression. While it remains a part of the Constitution of this country, this country continues to be an active oppressor of our people.

The time has come to cross that line — that is how Reconciliation begins. Non-Native leadership in Canada must separate themselves from those who have harmed Indigenous peoples. **Justin Trudeau** and even **Stephen Harper** have shown the ease of saying the right words to mollify people — and both have gone back the next day to oppressing Indigenous people. But we don’t need more words, we need fewer — specifically, we need to remove **Section 91(24)** from the Constitution.

Removing that part of the Constitution won’t fix things overnight — but it will remove the legal foundation for our oppression. Doing this will distance the Canadians of the future from those who have done so much harm.

On this day, we need to look at the Truth and the heartbreak. I wish you could know what I feel and then magnify that a million times for each person affected so that you can see the scale of pain that is the genocide of our peoples. With that knowledge, it would become imperative for every person to demand that we break with what came before and move forward. In the name of ourselves, of the country, and of the children.

*If you want to make a difference, consider donating to the First Nations Child & Family Caring Society, which helps support equity for First Nations children and young people, and reconciliation-based activities for all children in Canada. [This was first published in “The National Observer” on September 20, 2021]*



### British North America Act, 1867

- Canada given constitutional authority under Section 91(24) of the *BNA Act*, to make laws about “Indians and Lands Reserved for Indians”



Breen Ouellette, Metis  
Lawyer.

“Justin Trudeau and even Stephen Harper have shown the ease of saying the right words to mollify people — and both have gone back the next day to oppressing Indigenous people. But we don’t need more words, we need fewer — specifically, we need to remove Section 91(24) from the Constitution”



Robert Jago, author,  
blogger.



**“the B.C. Supreme Court released its 511 page Yahey decision. Justice Burke for the Court held that the cumulative effects from all types of industrial development in BRFN’s territory have resulted in significant adverse impacts on the lands, water, fish and wildlife in the area, and to the exercise of BRFN’s Treaty 8 rights”**



## Precedent-Setting Cumulative Effects Decision in B.C. Supreme Court Could Change Resource Development in Canada

By Sander Duncanson, Martin Ignasiak, Tommy Gelbman, Olivia Dixon and Tyler Warchola [SANDER DUNCANSON, MARTIN IGNASIAK, TOMMY GELBMAN and OLIVIA DIXON are partners at Osler, Hoskin & Harcourt LLP; TYLER WARCHOLA is a summer student. (Wwww.Osler.com)]

On June 29, 2021, the **British Columbia Supreme Court** released its decision in **Yahey v British Columbia**, in which it ruled that the rights of the **Blueberry River First Nations (BRFN)** under **Treaty 8** in northeast B.C. had been infringed by the cumulative impacts of industrial developments within **BRFN’s traditional territory**, including forestry, oil and gas, mining, renewable energy and agriculture. This decision marks a significant departure from past cases involving cumulative effects and treaty rights infringement. It could materially increase regulatory risks for new infrastructure projects in northeast B.C., and could extend to other areas in Canada where similar claims may be made.

**BRFN** is a relatively small First Nation in northeast B.C. **BRFN’s traditional territory** is around 38,000 sq. km, including most of the Montney natural gas play, agricultural lands, various municipalities (including **Fort St. John and Dawson Creek**), active forestry areas, hydro-electric projects (including Site C), and several mines. **BRFN’s territory** also falls within the area of **Treaty 8**, which **BRFN’s** ancestors signed in 1900, and overlaps, to varying degrees, with the asserted territories of several other Indigenous groups.

In 2015, **BRFN** filed a civil action seeking, among other things, a declaration that the **B.C. government** had infringed **BRFN’s** rights under **Treaty 8** and an injunction prohibiting B.C. from approving any further developments within its traditional territory. After a series of unsuccessful pre-trial applications, the **B.C. Supreme Court** held a full trial to consider **BRFN’s** civil claim.

### Summary of decision

On June 29, the **B.C. Supreme Court** released its 511 page **Yahey decision**. **Justice Burke** for the Court held that the cumulative effects from all types of industrial development in **BRFN’s territory** have resulted in significant adverse impacts on the lands, water, fish and wildlife in the area, and to the exercise of **BRFN’s Treaty 8 rights**. In particular, she found that **BRFN’s** treaty rights to meaningfully hunt, fish and trap within the **BRFN traditional territory** have been significantly and meaningfully diminished, such that **BRFN’s** rights under **Treaty 8** have been infringed. **Justice Burke’s** conclusions were rooted in her view that **B.C.** had not acted honourably by allowing resource development to proceed “at an extensive scale” without assessing **BRFN’s** concerns about cumulative effects of this development.

## 'Blueberry River First Nations' continued from page 22

Among other things, **Justice Burke** ordered **B.C.** to (1) **not authorize any further activities in BRFN's territory that breach the promises included in Treaty 8**, and (2) **negotiate new mechanisms with BRFN to assess and manage the cumulative impacts of industrial development to ensure BRFN's treaty rights are respected**. **Justice Burke** suspended the first declaration for six months to give the parties time to negotiate the new mechanisms.

**B.C.** has chosen not to appeal the decision. There are many aspects of **Yahey** that warrant comment, but for the purposes of this article we focus on two key implications: **Justice Burke's test for treaty infringement**, and **the decision's potential impacts on infrastructure development in Canada**.

### Test for Treaty infringement

According to **Justice Burke**, the test for determining whether treaty rights have been infringed is whether there has been a significant or meaningful diminishment of the rights. Arguably, this modifies the **Supreme Court of Canada's** guidance in **Sparrow** and **Mikisew** that infringement occurs when there is "*no meaningful exercise of the rights*" – a test that **Justice Burke** concluded would upend the terms of the **Treaty**. **Justice Burke's** test is much easier to establish than the prior test in **Sparrow** and **Mikisew**, particularly when many parts of Canada (and Indigenous communities themselves) have changed materially over the last 120 years through, among other things, population growth, modernization and climate change. As **Justice Burke** acknowledged, "*with more and more takings and development it becomes harder and harder for the Crown to fulfill its promise to Indigenous people that their modes of life would not be interfered with.*"

### Implications for infrastructure development

**Yahey** has direct and serious implications for any future infrastructure development in northeast B.C. **Justice Burke's** declarations may be construed as granting **BRFN** the right to veto any new development across its entire, expansive territory, without considering the potentially conflicting views of other Indigenous groups whose asserted traditional territories may overlap with **BRFN's**. It is also possible that other **Treaty 8 First Nations in northeast B.C.** will rely on **Yahey** to assert that they are entitled to the same relief **Justice Burke** granted **BRFN**.

The effects of **Yahey** will likely not be confined to **northeast B.C.**, however. Many parts of Canada have seen material population growth, infrastructure and/or resource development since the time that historic treaties with Indigenous groups were entered into. We expect **Yahey** will lead to similar cumulative effects claims across Canada, particularly across the



Oil & gas development overruns Blueberry River First Nations Territory.

"the test for determining whether treaty rights have been infringed is whether there has been a significant or meaningful diminishment of the rights. Arguably, this modifies the Supreme Court of Canada's guidance in Sparrow and Mikisew that infringement occurs when there is "no meaningful exercise of the rights" – a test that Justice Burke concluded would upend the terms of the Treaty"



Court recognized cumulative effects of oil, gas, forestry, mining impacted Treaty rights.

Advancing the Right of First Nations to Information

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

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## ‘Blueberry River First Nations’ conclusion from page 23

Prairies and northern Ontario with **historic numbered treaties** similar to **Treaty 8**. Such claims could inject further uncertainty into Canada's regulatory approval processes, and, if successful, could significantly change the future of resource and infrastructure development in Canada. **[This was first published on the Digital Version of the Canadian Mining Journal, September 10, 2021]**

