

TRUDEAU GOVERNMENT'S NATIONAL "RECONCILIATION" PLAN

TRANSITIONING INDIAN BANDS INTO
FEDERALLY CREATED INDIGENOUS
MUNICIPALITIES (SELF-GOVERNMENT)

BY RUSS DIABO

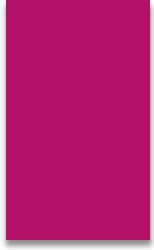
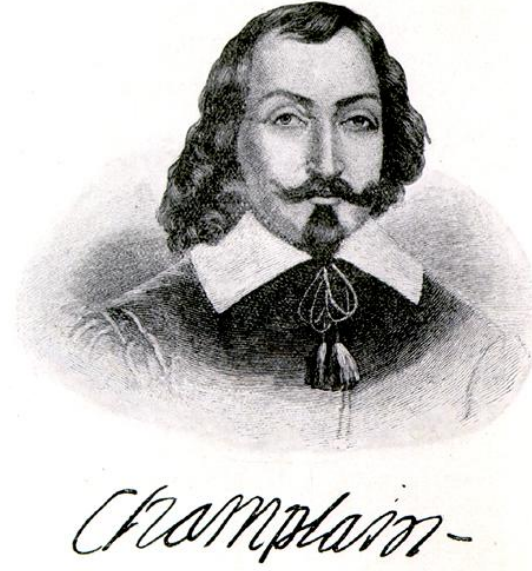
FEBRUARY 2022

PARTS OF PRESENTATION

1. Canada's Colonial Roots – Indian Act & Constitutional Provisions (Sec. 91.24 & Sec. 35)
2. The “Inherent Right Policy”
3. The Trudeau-Wernick Plan (2015-Present)
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5. Conclusion - Development of “First Nation” Self-Determination & Territorial Plans

Canada's Colonial Roots – Indian Act & Constitutional Provisions (Sec. 91.24 & Sec. 35)



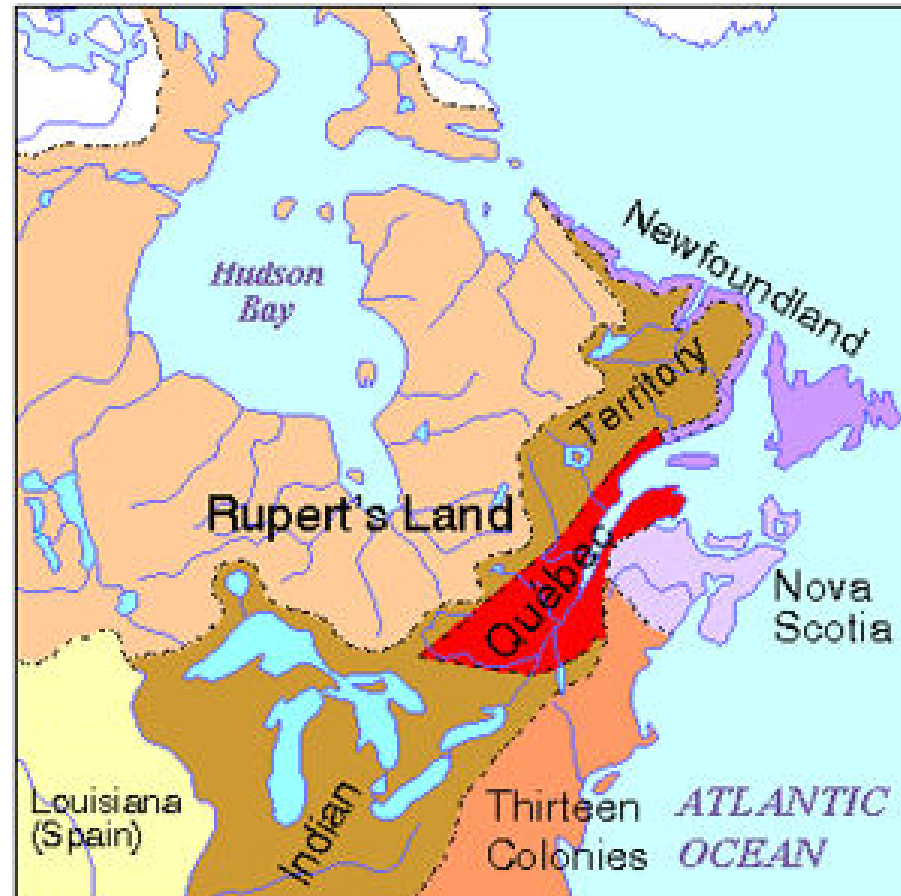


Early European Contact & Change

Origin of Canada

- ▶ Canada bases its territorial integrity and assertion of sovereignty over Indigenous Nations by continuing to rely on the racist and outdated notions of **Terra Nullius** (in Quebec) and the **Doctrine of Discovery** (Rest of Canada).

ROYAL PROCLAMATION OF 1763





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



War of 1812



FATHERS OF COLONIZATION

FIRST LEGISLATIVE ASSEMBLY JULY 1, 1867

Government in Canada



Sovereign

FEDERAL

PROVINCIAL



Senate

House of
Commons



Governor
General

Prime
Minister

Cabinet

Ministries

Territories



Lieutenant
Governor

Premier

Cabinet

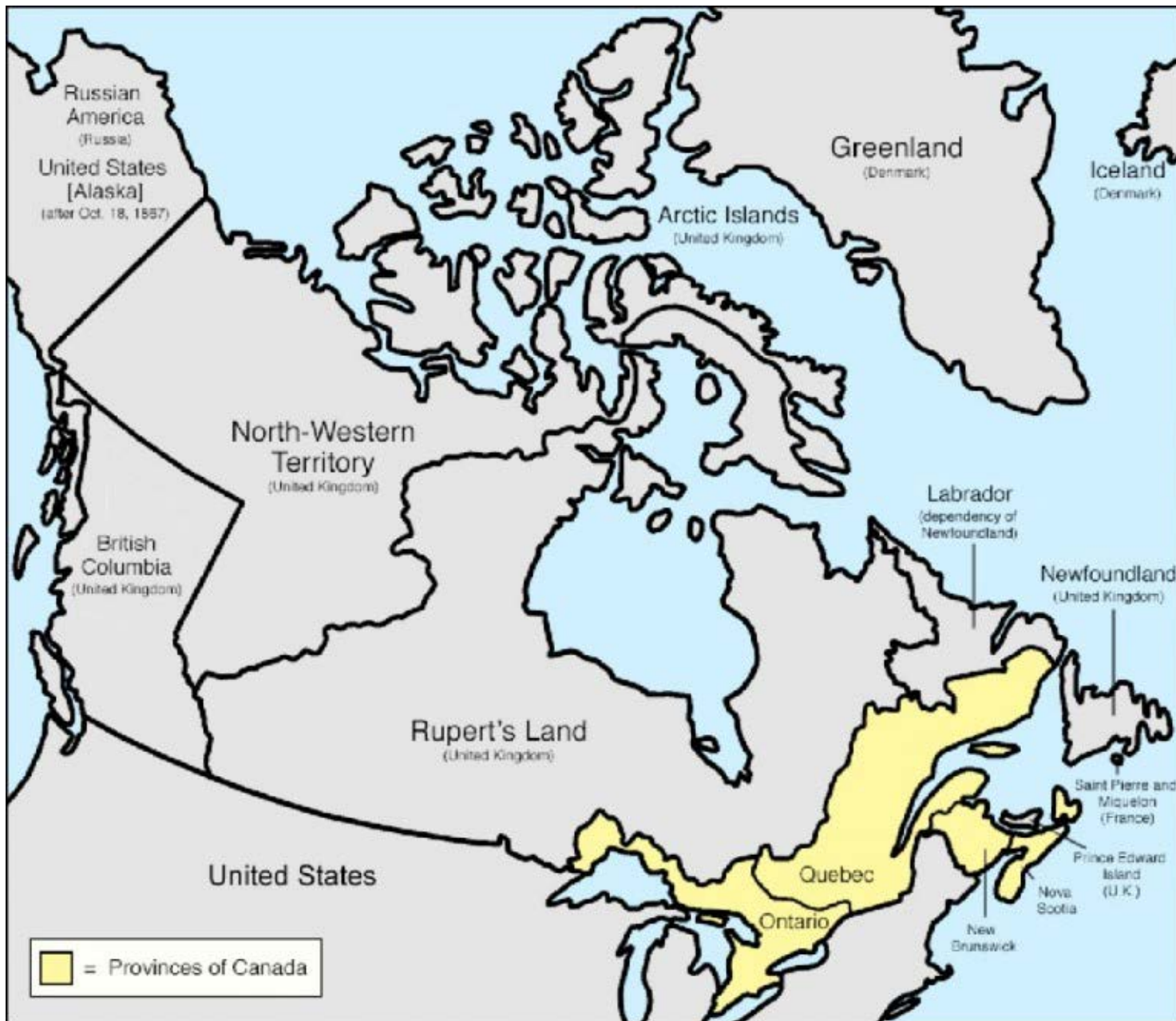
Ministries

Municipalities



Legislative
Assembly

Canada:
Settler-Colonial
Government
Hierarchy



Canada at Confederation

PROVINCES OF CANADA: July 1, 1867 to July 15, 1870.

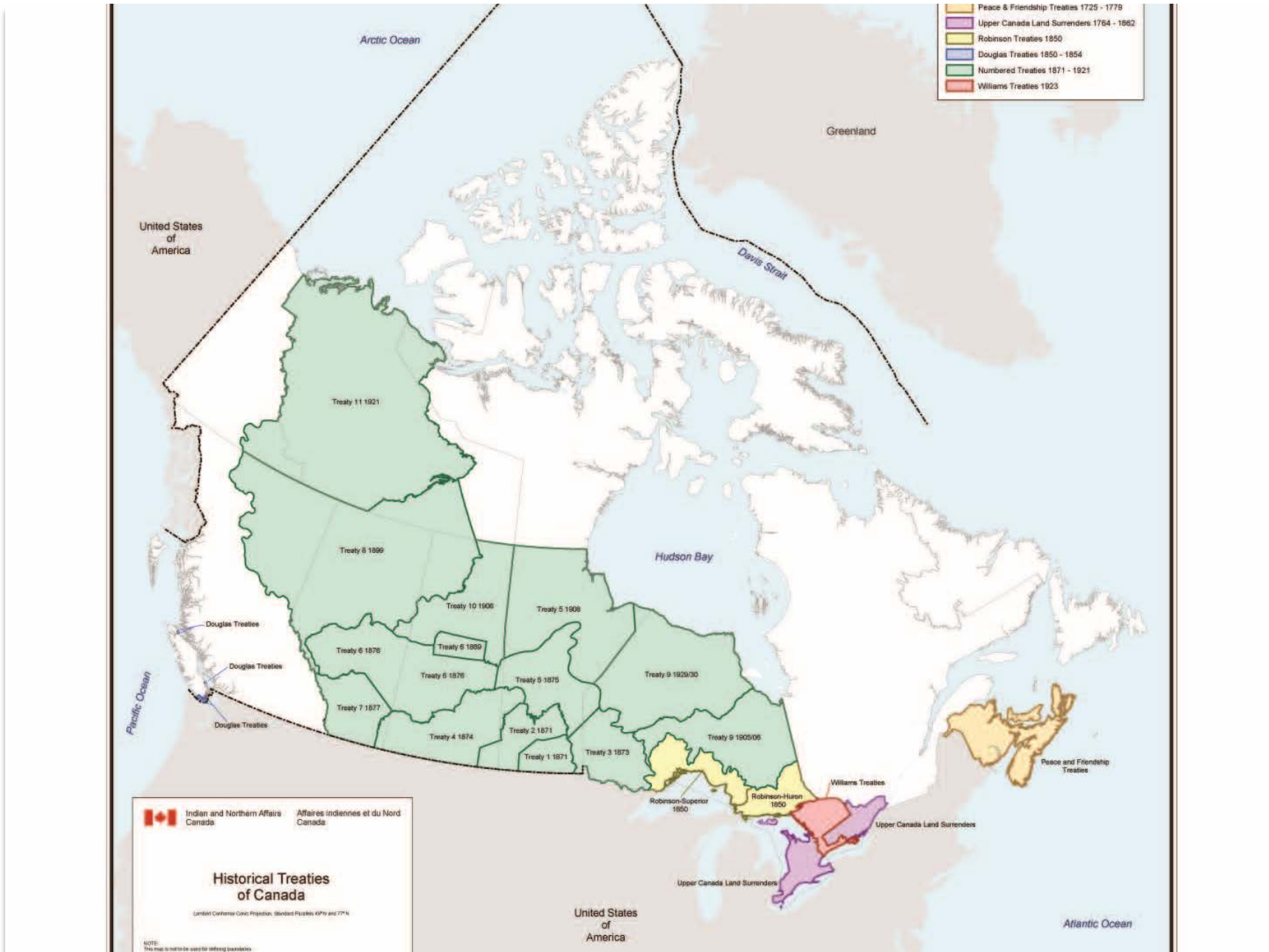


1870 Purchase
of Rupert's
Land From HBC
Enlarging NWT

The Numbered Treaties in Canada

In 1870, after nearly 200 years of control, the **HBC sold the Rupert's Land Charter to Canada**. Through this transfer, Canada took full control of all resources in the now renamed Northwest Territories.

Treaties 1 to 7, were concluded between 1871 and 1877 were followed by "taking up" lands of the Northwest Territories up to agricultural settlement, the construction of the railway linking British Columbia to Ontario and were used by Canada to claim lands north of the border with the United States. After a 22-year gap, **treaty making resumed between 1899 and 1921** to facilitate access to the natural resources in Northern Canada.

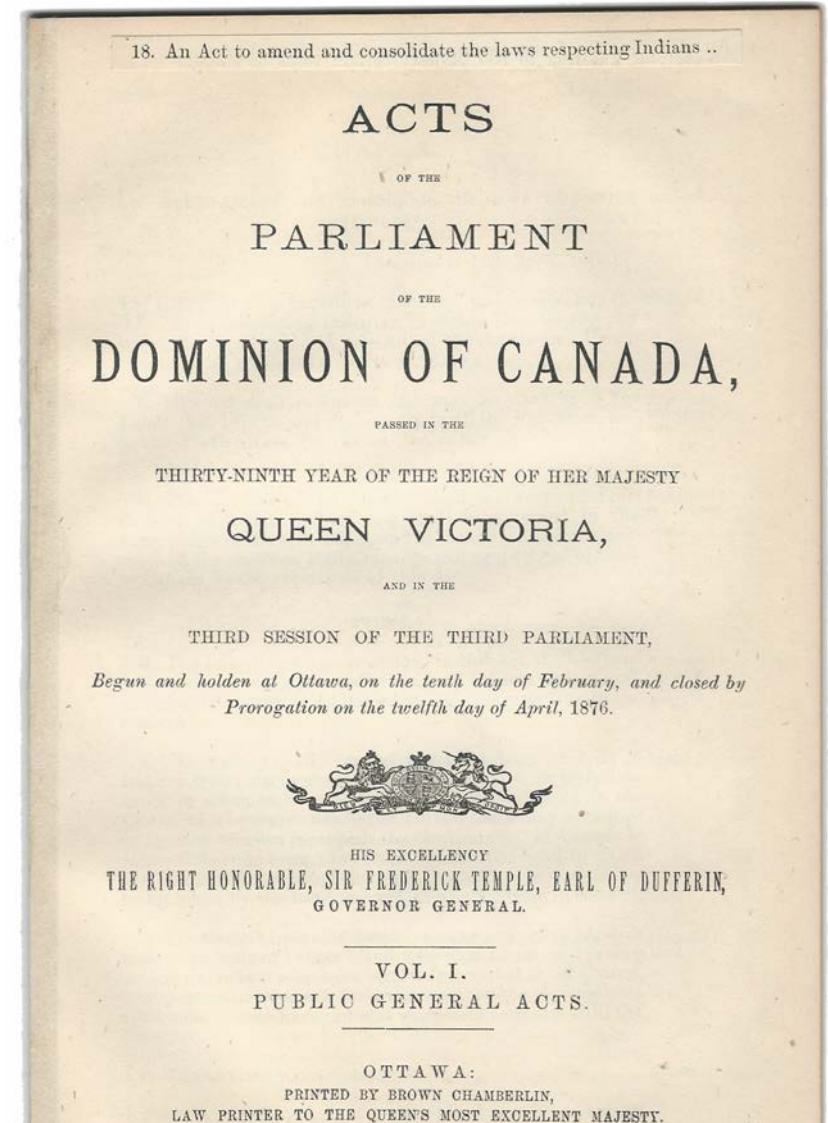


Indian Act - 1876

The **Indian Act** has conflicting and parallel objectives:

the **protection** of Indians and their lands on the one hand,

and the **control, assimilation and civilization** of Indian peoples on the other.



Canada's Pass System 1885 – 1940's

No. 4

Department of Indian Affairs

Yuck Lake Agency

November 1903

Edward Yahyakke Koot No. 125

of Beardy's Band

is permitted to be absent from his Reserve for Two weeks

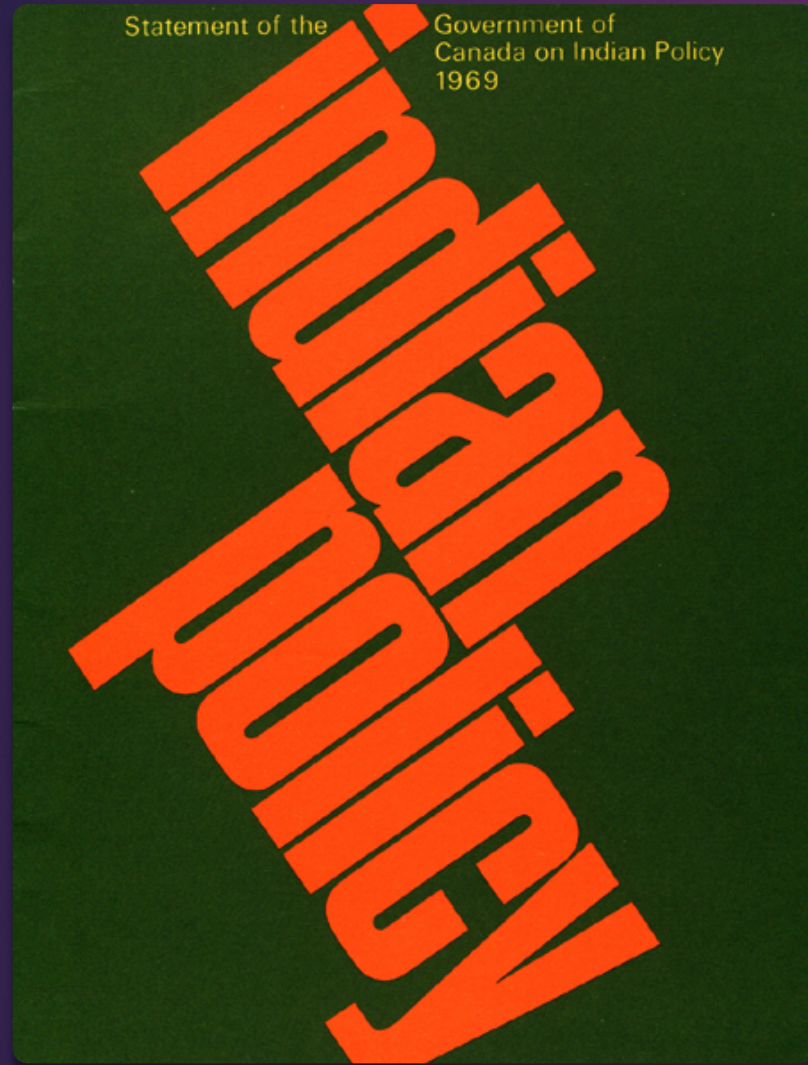
days from date hereof. Business Hunting Big Game

for food and is permitted to carry a gun.

[Signature]
Indian Agent.

LEGACY OF TRUDEAU & CHRETIEN WHO FORMED GOVERNMENT IN 1968





1969 WHITE PAPER ON INDIAN POLICY

1969 White Paper Proposals

Eliminate Status

- Eliminate Indian Status.

Dissolve DIAND

- Dissolve the Department of Indian Affairs within 5 years.

Abolish Indian Act

- Abolish the Indian Act & remove section 91.24 from constitution.

Convert Reserves to Private Property

- Convert reserve land to private property that can be sold by the band or its members.

Transfer to Provinces

- Transfer responsibility for Indian Affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens.

Transitional Funding

- Provide funding for economic development.

Appoint a Commissioner

- Appoint a commissioner to address outstanding land claims and gradually terminate existing Treaties.

1969 WHITE PAPER ON INDIAN POLICY

Publicly Withdrawn – Secretly Implemented

- ▶ In the face of the fierce opposition **the government publicly withdrew the White Paper in 1971**. However, internal correspondence from within the Department of Indian Affairs shows the 1969 federal Termination Plan has remained the federal objective.
- ▶ As **DIA Assistant Deputy Minister (Indian Consultation and Negotiation) David A. Munro**, wrote in a **1970 letter to the DIA Deputy Minister**, not to abandon the White Paper Plan but to change tactics:

*"We need not change the policy content, but we should put varying degrees of emphasis on its several components and we should try to **discuss it in terms of its components rather than as a whole**. [emphasis added]"*
- ▶ This was followed by a **1971 letter from the Minister of Indian Affairs, Jean Chretien to Prime Minister Pierre Trudeau** confirming continuation of the White Paper Plan:

...we are deliberately furthering an evolutionary process of provincial and Indian inter-involvement by promoting contacts at every opportunity at all levels of government, at the same time recognizing the truth of the matter – that progress will take place in different areas in different ways at a different pace. Experience shows that the reference of a time frame in the policy paper of 1969 was one of the prime targets of those who voiced the Indian opposition to the proposals. The course upon which we are now embarked seems to present a more promising approach to the long-term objectives than might be obtained by setting specific deadlines for relinquishing federal administration. [emphasis added]"

CONTIGENT SELF- GOVERNMENT VS. INHERENT SELF- DETERMINATION



1983 FIRST MINISTER'S CONFERENCE

CONSTITUTION ACT 1982



SECTION 35 & SEC. 37 FMC'S CONSTITUTION ACT 1982

- ▶ S. 35 was only included in constitution due to pressure from Aboriginal groups along with public support.
- ▶ S. 35 was re-introduced into draft constitution with **the word “existing” added to the clause** at the insistence of Western Premiers. The intent was to limit or restrict future interpretations of the clause.
- ▶ 35. (1) **“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”** [emphasis added]
- ▶ S. 37 provided for a **First Ministers’ Constitutional Conference on Aboriginal Matters** within 1 year of the constitution coming into force (Held in 1983).

1983 CONSTITUTIONAL AMENDMENT PROCLAMATION

- ▶ S.37 provided that the purpose of the FMC was to “**identification and definition**” of what rights would be included in the constitution.
- ▶ FMC 1983 was held in the spring with **representatives of the four National Aboriginal Organizations** (AFN, ITC, NCC, MNC).
- ▶ FMC 1983 agreed on a constitutional amendment that amended section 35.1 to **include section (3) creating a new category of Treaties called “land claims agreements”** (now called ‘Modern Treaties’) & section (4) confirming **Aboriginal & Treaty rights are “guaranteed equally to male and female persons.”**
- ▶ FSC 1983 also provided for **further FMC’s on Aboriginal Matters**, which were held in 1984, 1985 and 1987.

1980'S FMC'S ON ABORIGINAL MATTERS

- ▶ The amended s. 37 process changed from explicitly identifying and defining what rights would be included in the constitution to merely discussing “ **agenda matters that directly affect the aboriginal peoples of Canada**” .
- ▶ Despite having a number of agenda items, the amended s. 37 process **focused on whether the right to self-government was an inherent right vs. a contingent right, subject to Crown agreement.**
- ▶ The FMC's ended in 1987 **without any agreement** between the four National Aboriginal Organizations and First Minister's.

Canada's Constitutional Framework

1867 & 1982 Constitutions

Section 91.24

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

Section 35

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

SINCE 1990 SCC HAS DEFINED SECTION 35
THROUGH CASE LAW





The Federal “Inherent Right Policy”

1993 Liberal Aboriginal Promises

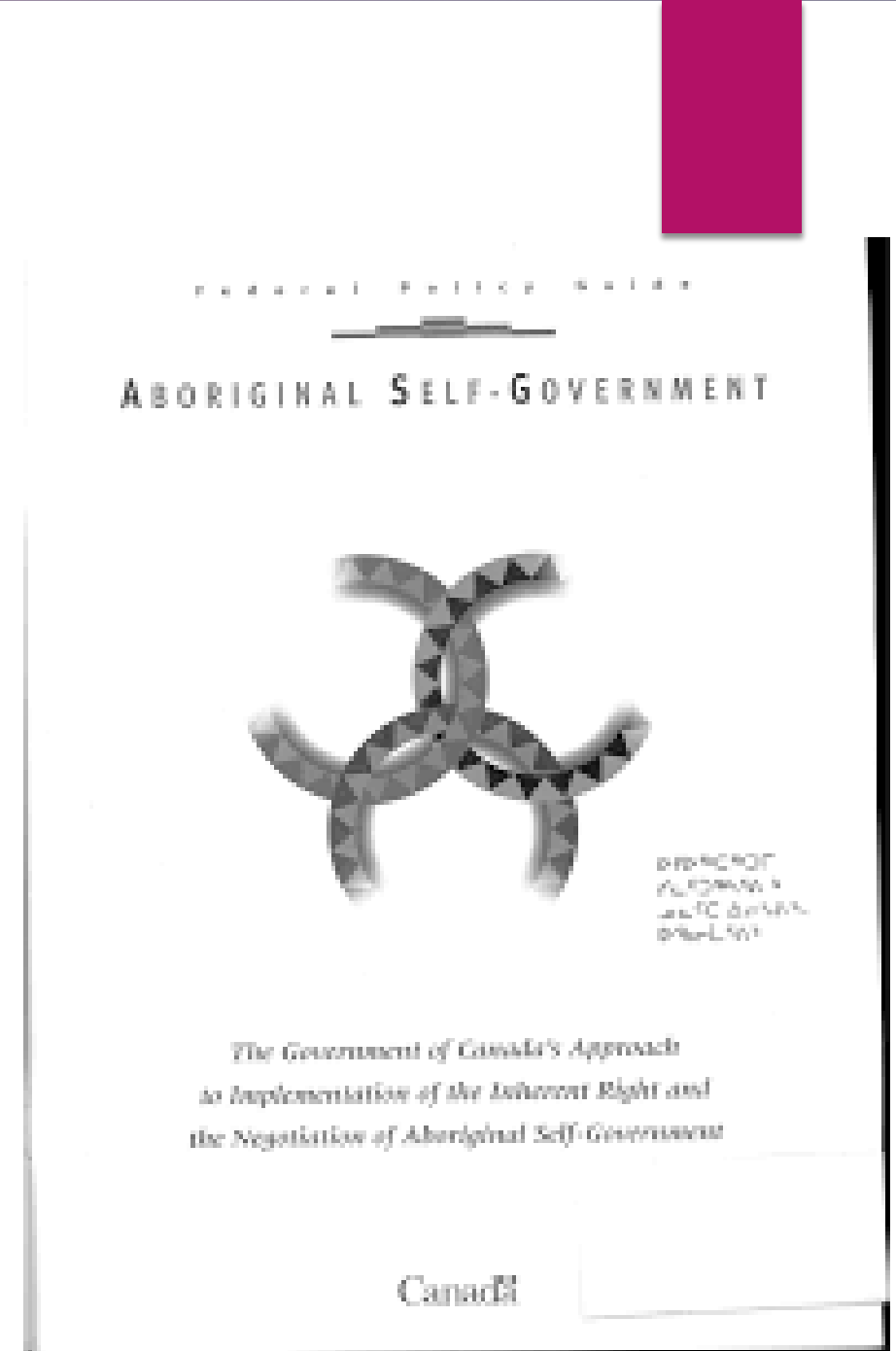
- ▶ The 1993 Federal Election saw the Liberals, headed by Jean Chrétien, decimate the Conservatives.
- ▶ The Liberals electoral promises on Aboriginal issues were included in two documents, **Chapter 7 of the 1993 Red Book**, and a longer **Aboriginal Platform** released in Saskatchewan on October 8, 1993, during the campaign.

1993 Liberal Promise

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

1995 'Inherent Right' Policy

- ▶ In 1995 the Chrétien government broke the promise to recognize the inherent right to self-government by adopting an 'Aboriginal Self-Government' Policy, which recognizes the right in an abstract sense, but doesn't recognize that any particular First Nation has the right on the ground, with pre-conditions that convert **Indian Act** bands into municipal type governments. Dozens of Bands are under Self-Government (& Modern Treaty) Agreements. 100's of bands are currently negotiating under this policy.



1996 RCAP Report Released

- ▶ In 1996, the final Report & Recommendations of the Royal Commission on Aboriginal People's was made public. The report involved 5 volumes with some 440 recommendations.
- ▶ The Chrétien government dismissed the RCAP report and recommendations as too costly and asserted that Liberal policies already addressed much of what was in the RCAP Report.



STOP TRUDEAU'S ASSIMILATION CAMPAIGN

Paper2019
NoMore



Honour Our Treat
&
Nation-to-Nation
Relationships

INDIGENOUS NATIONS ARE **NOT**
CANADA'S 4TH LEVEL OF GOVERNMENT!!!

Government of Canada's
Approach to Implementation of
the Inherent Right and the
Negotiation of Aboriginal Self-
Government (1995):
The Federal so-called "Inherent
Right" Policy

FEDERAL DEFINITION OF INHERENT RIGHT OF SELF-GOVERNMENT

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

CANADA'S DEFINITION OF "INHERENT"

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

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

NON-NEGOTIABLES

- ▶ Self determination
- ▶ Extinguishment & Terra Nullius (Empty Lands)
- ▶ Sovereignty, international treaty-making
- ▶ International trade, import & export;
- ▶ Trade & commerce
- ▶ Criminal law
- ▶ Fiscal policy

DISCUSSIONS, NEGOTIATIONS, LEGISLATION 1995-PRESENT

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

FEDERAL LEGISLATION OVER INDIANS, FIRST NATIONS & INDIGENOUS PEOPLES

- ▶ Continue federal interference by legislating in areas that even Canada admits are internal to First Nations and integral to their culture
- ▶ ie., elections, lands, definition of “Band”, child & family services, languages
- ▶ Modify legislative base to facilitate ‘inherent right’ negotiations
- ▶ consolidate ultimate control of Ministers
- ▶ Use legislation to limit nature & scope of right: First Nations consent when they opt-into legislation



THE TRUDEAU-WERNICK PLAN
(2015-Present)

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

FEDERAL 'INHERENT RIGHT' POLICY

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

Liberal Party of Canada's Key 2015 Promises

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

Key Parts of Trudeau-Wernick National “Reconciliation” Plan

- ▶ In December 2015, PM Trudeau announced a **Two-Track approach to Indigenous Reconciliation** using the three National Indigenous Organizations & Leaders.
- ▶ In January 2016, PM Justin Trudeau appointed **Michael Wernick as Clerk of the Privy Council**.
- ▶ In 2016, the Trudeau government **gave qualified support to UNDRIP** (in accordance with Canadian constitution).
- ▶ In June 2017, the Trudeau government issued **10 Principles for Indigenous Relationships**, which serve as a domestic interpretation of **UNDRIP** & reinforce “**assumed**” **Crown sovereignty and Territorial Integrity** through Canada’s constitutional framework. (UNDRIP Article 46)

Trudeau-Wernick Two-Track "Reconciliation" Plan

Section 91.24

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

Section 35

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

Shaping Federal Bureaucracy to Implement Liberal Platform

- ▶ Prime Minister Justin Trudeau needed a top federal bureaucrat to help implement the Liberal Party of Canada's 2015 Electoral Platform, particularly the more complex Indigenous Platform, into a **national plan to fit with longstanding federal objectives, by changing the language, but not the intent of federal Indigenous policy.**
- ▶ Some **highlights of Mr. Wernick's management experience at INAC** include the following:
- ▶ *Wernick supported the PMO in **keeping a lid on Aboriginal files** after the 2006 election as Aboriginal Peoples were downgraded from being a federal priority as the Harper government rejected the Liberal's mythical 2005 "Kelowna Accord". In particular, **instituting funding cuts and caps to First Nation programs and organizations.***

Shaping Federal Bureaucracy to Implement Liberal Platform

- ▶ Wernick supported the PMO in undermining Indigenous Peoples at the United Nations, including working against the adoption of the **UN Declaration on the Rights of Indigenous Peoples**.
- ▶ Wernick supported the PMO by setting up **INAC “Hot Spot” reporting** to spy on First Nations in order to identify the First Nations leaders, participants and outside supporters of First Nation occupations and protests, particularly while the “**Idle No More**” movement was at its height.
- ▶ Wernick supported the PMO by implementing **federal “core mandates”** to pressure First Nations at negotiation tables to sign final Modern Treaties/Self-Government Agreements that would amount to a termination of Aboriginal Title and Rights.

Shaping Federal Bureaucracy to Implement Liberal Platform

- ▶ Wernick supported the PMO by assisting with **implementation of federal suite of legislation** that undermined the collective rights of First Nations by emphasizing individual rights as well as omnibus legislation undermining federal regulation of the environment.
- ▶ Wernick supported the PMO by **undermining the Specific Claims process** to make it harder to research and submit specific claims to INAC or the Specific Claims Tribunal.
- ▶ Wernick supported the PMO by **meddling in the internal politics of First Nations**, including trying to engineer the passage of the regressive **First Nations Education Act**.

Shaping Federal Bureaucracy to Implement Liberal Platform

- ▶ Wernick supported the PMO by **changing the funding policy of Tribal Councils** to exclude political advocacy for member bands.
- ▶ Wernick supported the PMO **after Ms. Cindy Blackstock had filed a complaint** to the Canadian Human Rights Tribunal by failing to address First Nations' child welfare discrimination and **led the federal retaliation against Cindy Blackstock by spying on her and after she complained about INAC's spying on her, he attempted a cover-up of the INAC spying operation.**
- ▶ Based on his eight-year role in helping Prime Stephen Harper deny and infringe on Inherent, Minister Aboriginal and Treaty rights, **Michael Wernick's appointment was a perfect choice for the Trudeau Liberal government.**

PRIME MINISTER'S OFFICE
(PMO)

CABINET COMMITTEE ON RECONCILIATION

Considers issues related to renewing the nation-to-nation, Inuit-Crown, and government-to-government relationship with First Nations, Inuit, and the Métis Nation. It examines initiatives designed to advance reconciliation and strengthen the relationship with Indigenous peoples.

CLERK OF THE PRIVY COUNCIL
Privy Council

WHOLE OF GOVERNMENT – INTER-DEPARTMENTAL COORDINATION

Coordinating Committee of Deputy Ministers

Committee of Assistant Deputy Ministers, Federal Steering Committee on Section 35 Rights

A committee composed of Assistant Deputy Ministers from government agencies and departments most involved in claims negotiations will continue. The committee reviews and provides advice to Ministers on negotiating mandates, the negotiating process, framework agreements, agreements-in-principle and final agreements.

BILATERAL MECHANISMS

The Government of Canada has established Permanent Bilateral Mechanisms with First Nations, Inuit and Métis Nation leaders to identify joint priorities, co-develop policy and monitor progress.

Government of Canada & First Nations Bilateral Mechanism (Canada-AFN MOU on Joint Priorities) includes “Modern Treaty & Self-Governing First Nations”.

Inuit-Crown Partnership Committee

Government of Canada and Métis Bilateral Mechanism

Dissolving DIAND & Creating 2 New Departments: Indigenous Services Canada (ISC) & Crown- Indigenous Relations, Northern Affairs (CIRNAC)



DEFINITIONS – INDIGENOUS SERVICES & CROWN-INDIGENOUS RELATIONS DEPTS.

- ▶ **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***.

MINISTER OF INDIGENOUS SERVICES MANDATE

- ▶ 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;

MINISTER CROWN-INDIGENOUS RELATIONS MANDATE

- ▶ Minister is responsible 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.**

Department of Indigenous Services

Department of Crown-Indigenous Relations

Indian Act Bands
3 Federally Controlled Options for "Going Beyond" the Indian Act

4th Level Indigenous Ethnic Government (Municipal type)

FISCAL RELATIONS = 10 Year or less Grant (Comprehensive Funding Arrangement)

FISCAL RELATIONS = Self-Government Fiscal Policy (Includes Own Source Revenue in Funding Formula, Meaning Taxation)

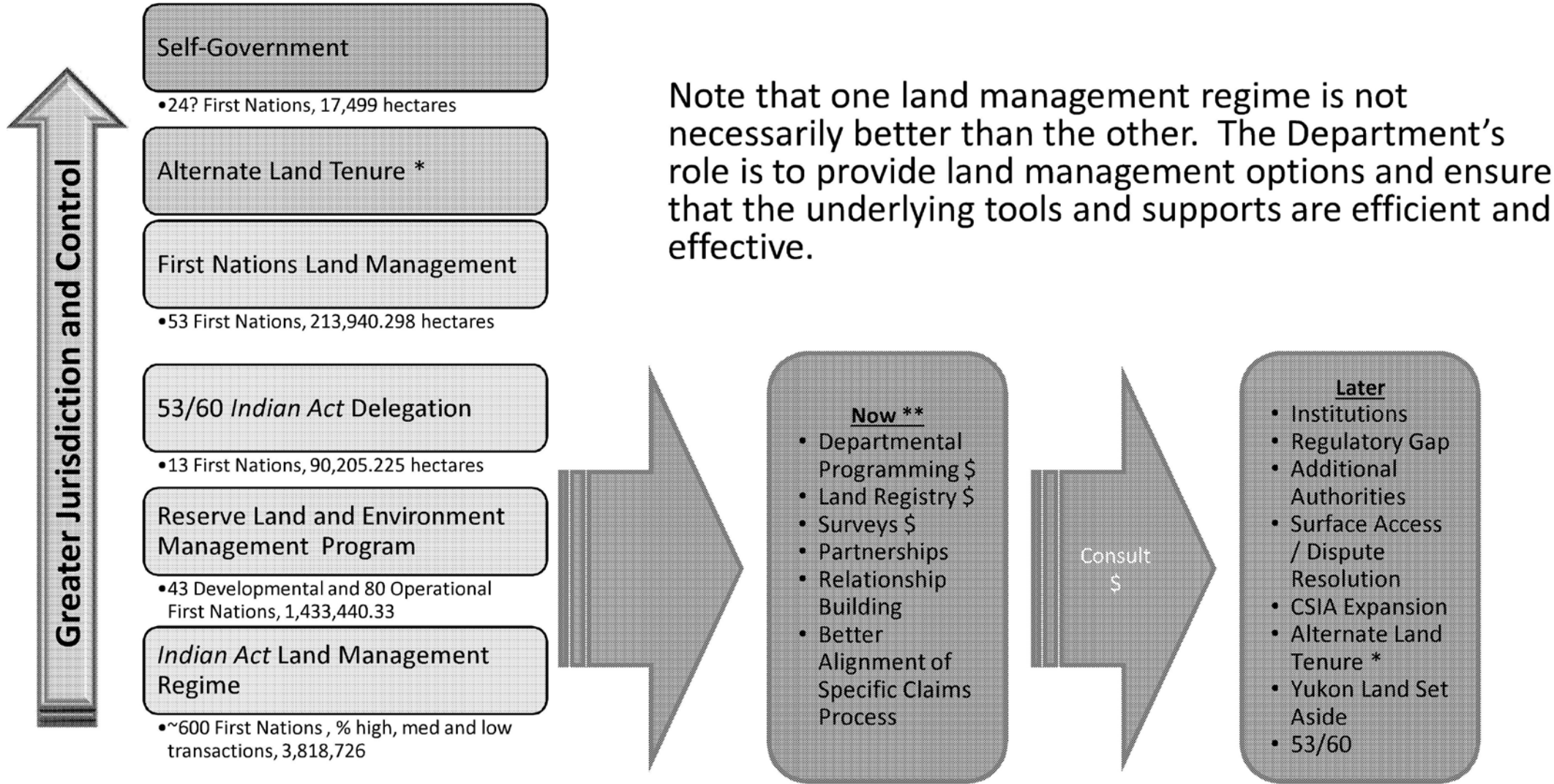
Modern Treaty (Comprehensive Claim Final Agreement)

So-Called 'Inherent Right' Self-Government Agreement

Alternative Federal Legislation
FIRST NATIONS LAND MANAGEMENT ACT, FIRST NATIONS FISCAL MANAGEMENT ACT, ETC.



Roadmap of Land Management Regimes Currently Available to First Nations



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

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

December 16, 2021, Mandate Letter of Marc Miller, CIRNAC Minister

- ▶ Mandate Letter states, *“ As Minister of Crown-Indigenous Relations, your first and foremost priority is to work in full partnership with First Nations...**as they transition to self-government and move away from the Indian Act**”* .
[emphasis added]

December 16, 2021, Mandate Letter of Patty Hajdu, ISC Minister

- ▶ *“As Minister of Indigenous Services, your immediate priority is to enhance opportunities for economic recovery and to continue delivering distinctions-based supports in response to COVID-19 as needed...[and] [c]ontinue to support **First Nation-led processes to transition away from the Indian Act**. Work with communities and institutions to invest in capacity building initiatives that support and advance self-determination like the 10-year Grant.” [emphasis added]*

1

2

3

Federal Ways Out of the Indian Act

**4th
Level
Self-
Gov't**

**Land
Claims
“Modern
Treaties”**

**Alternative
Federal
Laws
(Lands Act
& Fiscal
Act:
Taxation)**

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



PROPOSED "RIGHTS RECOGNITION" FRAMEWORK

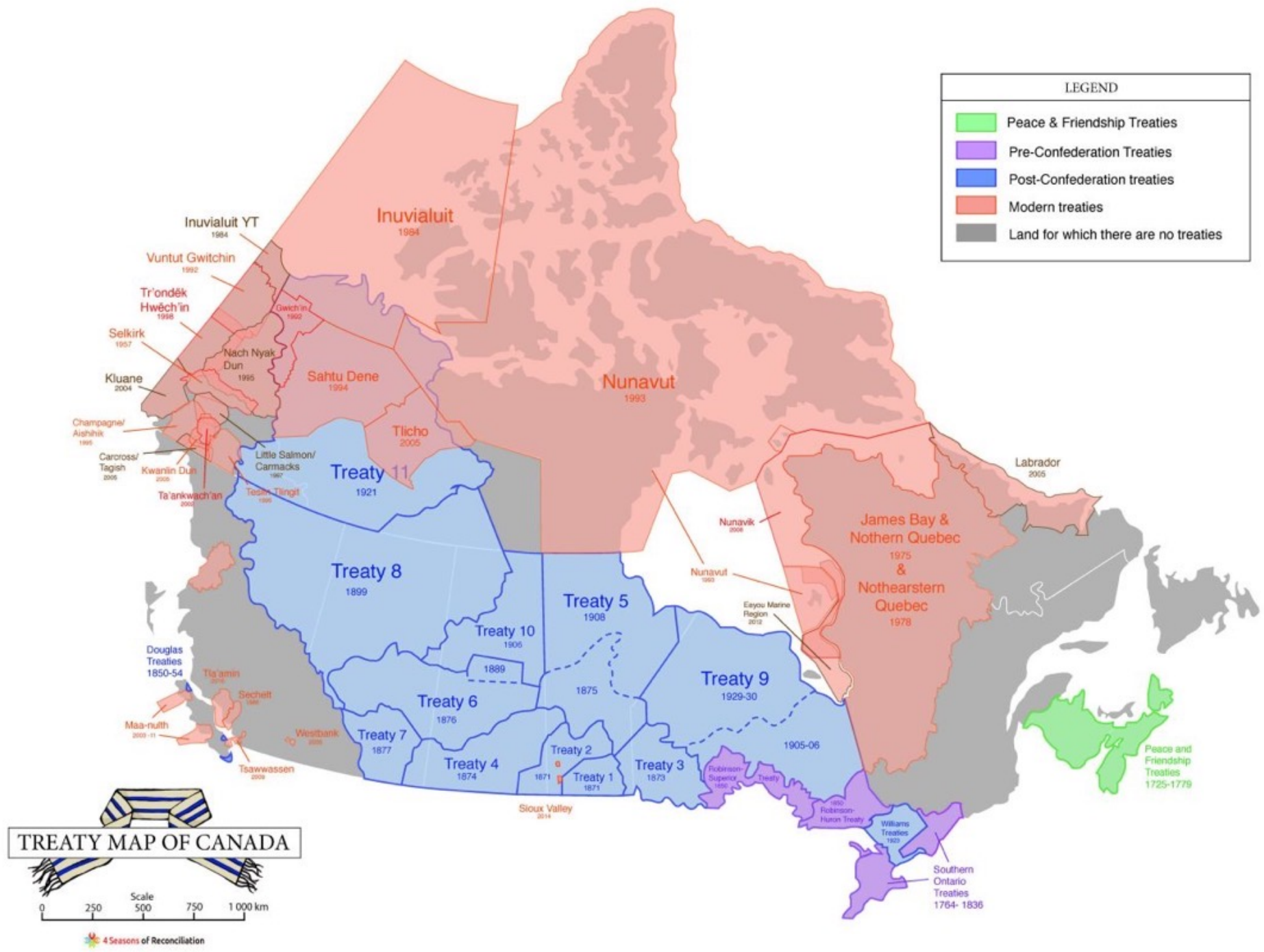
- ▶ On February 14, 2018, PM Trudeau announced in the HoC his **National "Reconciliation" Plan**, a "**Rights Recognition Framework**", which was subsequently rejected by First Nations across Canada.
- ▶ According to a September 2018, federal "**Overview Document**" the federal "**Rights Recognition Framework**" law would have formed the basis for **ALL RELATIONS** between the federal Crown (government) and Indigenous Peoples (First Nations, Metis, Inuit) including "pre-1975" and "post-1975" Treaties and:
 - ▶ Would have contained federal "**definitions**" of "**key terms**".
 - ▶ Federal and Provincial/Territorial powers and jurisdictions would continue to dominate over First Nations and provincial governments would continue to **have a veto over any agreements affecting their jurisdiction**.

COMPONENTS OF PROPOSED “RIGHTS RECOGNITION” FRAMEWORK

- ▶ A federally established advisory committee or institution would have been created to decide what **Indigenous Nations or “Collectives”** would be federally recognized and have the authority of a government possessing **“the legal capacity of a natural person”**, meaning a federal corporation. This would all have been subject to agreements with the federal and provincial governments (where their jurisdiction is affected). The federal legislation would have included a **“list of powers”** for **“Indigenous Governments”**, which could have been amended by the federal government.
- ▶ The Prime Minister has said these **“Indigenous Governments”** are a **“4th level” of government in Canada**, making them lower in status than federal, provincial and municipal governments.

Trudeau Gov't Retreated on Framework Law but Continues with it at Individual Tables-Group by Group

- ▶ November 15, 2018, Statement from the Office of the Minister of Crown-Indigenous Relations:
- ▶ "Our Government is committed to advancing the framework, and to continue actively engaging with partners on its contents...We continue to make substantial progress...through policy changes and the development of the Recognition of Rights and Self-Determination Tables...We look forward to continue working with our partners on developing more of this crucial framework". [Emphasis added]

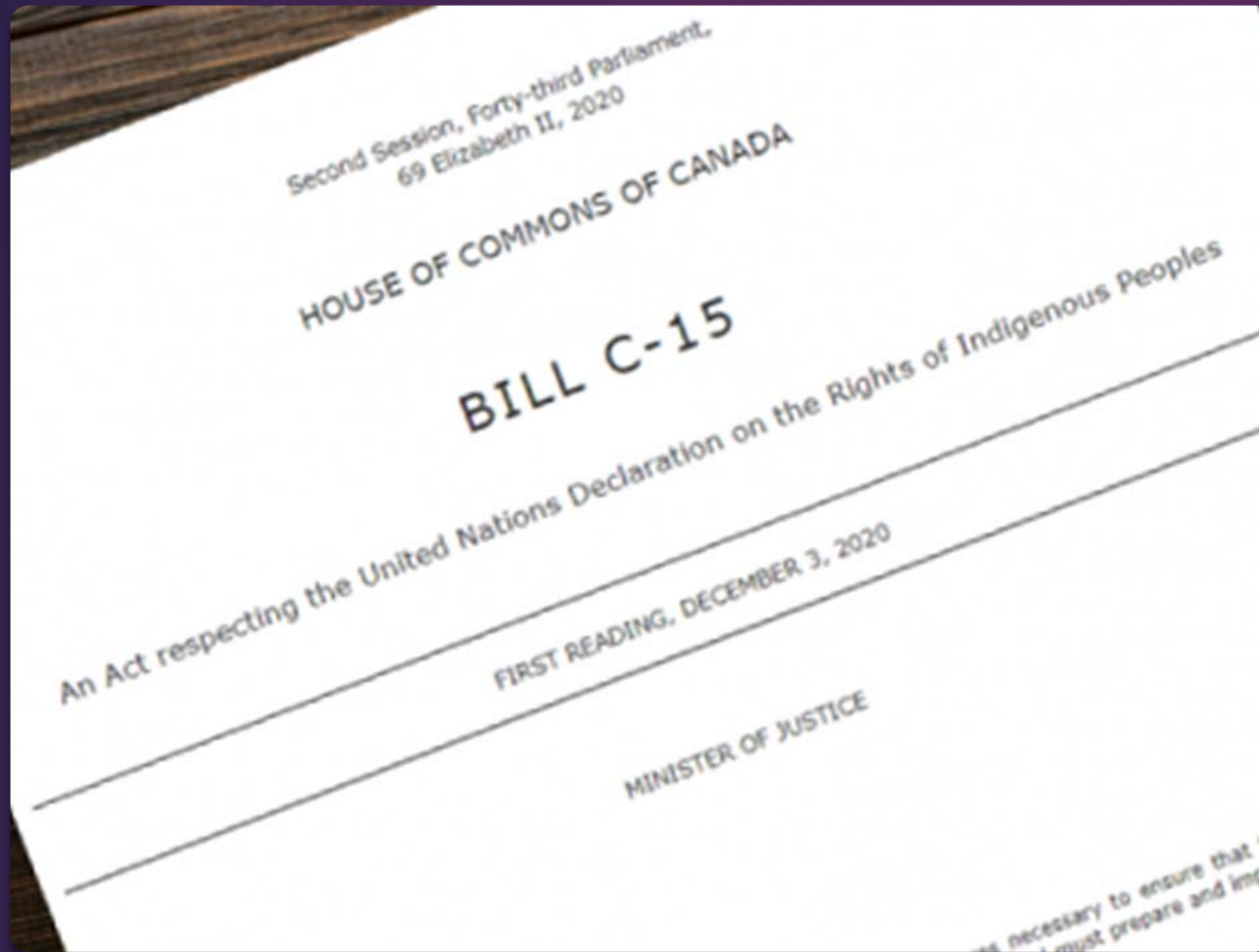


LEGEND	
■	Peace & Friendship Treaties
■	Pre-Confederation Treaties
■	Post-Confederation treaties
■	Modern treaties
■	Land for which there are no treaties

TREATY MAP OF CANADA

Scale 0 250 500 750 1 000 km

4 Seasons of Reconciliation



**CANADA'S BILL C-15:
A RE-COLONIZATION
FRAMEWORK & PROCESS
TO ALIGN FEDERAL LAWS
WITH UNDRIP THROUGH
SECTION 35 COMMON
LAW**

**(DOCTRINE OF
DISCOVERY/ASSUMED
CROWN SOVEREIGNTY)**

UNDRIP Was Watered Down at UN to 2007 Version

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

Liberal's "Canadian Definition" of UNDRIP

- ▶ "the government is in the process of providing a Canadian definition to the declaration".
- ▶ "The government is currently in the process of providing greater clarity to these definitions".
- ▶ "We are going to get there by following a process and a regulatory regime".

Source: Jim Carr to Standing Committee on Indigenous and Northern Affairs April 21, 2016.

Liberal's "Canadian Definition" of UNDRIP

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

Source: JWR at UNPFII May 9, 2016

Liberal's "Canadian Definition" of UNDRIP

- ▶ "We intend nothing less than to adopt and implement the declaration **in accordance with the Canadian Constitution.**"
- ▶ Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "**free, prior and informed consent.**" We see **modern treaties and self-government agreements** as the ultimate expression of **free, prior and informed consent among partners.**"

Source: Carolyn Bennett to UNPFII May 10, 2016.

Liberal's "Canadian Definition" of UNDRIP

- ▶ "adopting the UNDRIP as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it...Ultimately, the UNDRIP will be articulated through the constitutional framework of section 35."

Source: JWR to AFN AGA July 12. 2016.

Manufacturing Consent – Bill C-15

C-15

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

Sponsor
Minister of Justice



HOUSE OF COMMONS 

- ▶ **Bill C-15** was introduced into Parliament on December 3, 2020, after a six week “**engagement process**”, again bypassing the rights holders (Indigenous Peoples and Nations). Rather the government focused on its funded organizations (AFN, MNC, ITK) **to manufacture consent**: a continued violation of our right of self-determination. **The manufactured consent brings disrepute to the process and the people who have cooperated with the government of Canada in bypassing rights holders—the Peoples!**

Canada's Conflict of Interest - Bill C-15

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



SINCE 1990 SCC HAS DEFINED SECTION 35
THROUGH CASE LAW



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

- The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.
- Disregarding Indigenous laws and legal traditions.
- Establishing that the Crown has "ultimate title" to land.
- The burden of proof imposed on Indigenous Peoples and Nations to establish their rights in Canadian courts.
- The racist and "frozen in time" "Van der Peet" legal test for establishing Aboriginal rights.
- The ability for the Crown to infringe Aboriginal rights based on the "Sparrow" legal test.
- The erosion of the Government's duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles. (Strength of Claim/Depth of Consultation - Crown assessments)

2007 Version UNDRIP – Articles 3 & 4

Article 3 - International Right of People's

- **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.

Article 4 - Domestically Defined in Federal Policy

- **Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs,** as well as ways and means for financing their autonomous functions.

Trudeau Gov't is using Article 19 (Indian Act Re-Colonization) & Ignoring Article 18 of UNDRIP (De-Colonization with Hereditary & Traditional Gov't's)

- ▶ **Article 18** provides for Indigenous Peoples choosing their own representatives **in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.**
- ▶ Canada (and BC) **in violation of the right of self-determination (Article 3)** has ignored **Article 18 (Traditional & Hereditary Government's)** & instead used Indian Act Band Councils & Chiefs' organizations (Corporations under Federal Law) like AFN (**relying on Article 19**) in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 18

UNDRIP ARTICLE 18 THE RIGHT OF SELF- REPRESENTATION (2007 Version) Traditional & Hereditary Government's

- Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, **through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.**

Article 19

UNDRIP ARTICLE 19 THE RIGHT OF SELF- REPRESENTATION (2007 Version)

“Representative
Institutions” being used by
federal gov’t are Indian Act
Band Councils & Federally
Incorporated Chiefs
Organizations

- States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

BILL C-15 ACTION-PLAN = RE-COLONIZATION (BY-PASSING TRADITIONAL & HEREDITARY GOV'T'S)

For the past 6 years the Trudeau government has co-opted our terminology like Nation-to-Nation, Reconciliation, Decolonization and making big promises it made during its first mandate operating in a secret, top-down manner, using AFN & other National Indigenous Organizations to give the appearance of “co-development” of massive, unprecedented, changes to policy, law & structure.

Now that Bill C-15 is federal law the federal section 35 domestic policy/legal framework will be the status quo (SECTION 4) “Framework” used for interpreting the international UNDRIP 46 Articles in the (SEC. 5) measures, (SECTION 6) action-plan and (SECTION 7) reporting requirements in the legislation.

The lead Indigenous advocates of Bill C-15 come from Indigenous groups who have entered into, or they are negotiating, “Modern Treaties”, “Self-Government” Agreements, or they’ve opted out of the Indian Act into alternative federal legislation.

It is those Indigenous Grassroots Peoples who have unresolved Aboriginal Title and historic Treaty rights who oppose Bill C-15, called CANDRIP not UNDRIP! This is an indication that there needs to be a national process of discussion among Indigenous Nations & Communities about UNDRIP itself!

Now that it’s passed, Bill C-15 will likely lead to more conflict not less between Indigenous Nations & Communities, Crown governments & industry, beyond the currently active land defenders and water protectors!



UNDRIP ARTICLES ON LAND RESTORATION & RESTITUTION

SEEKING LAND BACK THROUGH
SELF-DETERMINATION PLANS

UNDRIP - Article 26

- ▶ 1. Indigenous peoples have the right to the lands, territories and resources which they have **traditionally owned, occupied or otherwise used or acquired**.
- ▶ 2. Indigenous peoples have **the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired**.
- ▶ 3. States shall give **legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned**.

UNDRIP - Article 27

- ▶ States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

UNDRIP - Article 28

- ▶ 1. Indigenous peoples have the **right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation**, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and **which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent**.
- ▶ 2. Unless otherwise freely agreed upon by the peoples concerned, **compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress**.

Countering Unilateral Federal

“Reconciliation”

Agenda:

Research & Mapping
Process for First Nation
Self-Determination &
Territorial Plans



ASSESSING HISTORY, LANGUAGE, CULTURE AND INDIGENOUS LAW

- ▶ Know your First Nation history, language, culture, customs, practices, laws and the treatment of your peoples by successive Crown governments (both oral & archival) and connection to your territory, lands & resources. This is **important to show evidence** when exercising rights and/or responding to challenges from Crown governments/Industry regarding their current or planned projects/activities on your traditional lands.

ASSESSING COLLECTION OF INFORMATION/EVIDENCE

- ▶ For decision-making and negotiations support regarding traditional territories, First Nations historical substantiation & documentation needs to be combined with contemporary land & resource management information; 1) Resource models & inventories, 2) Obstacles from legislative/regulatory/governance frameworks 3) List of third parties operating without consent on First Nations traditional territory, 4) Identification of alienated lands vs. less encumbered lands.

VALUATION OF LANDS & RESOURCES FOR SUSTAINABLE DEVELOPMENT

- ▶ Identify some criteria and provide some parameters for attaching a value (or range of values) to **Aboriginal Title/Historic Treaty lands & resources in Canada**. Also estimate the value of resources taken out of **Aboriginal Title/Historic Treaty lands annually** (i.e., timber, minerals, hydro, fish & wildlife, etc.). Assess National, Provincial and Corporate accounting practises, assess the impact the reality **Aboriginal Title/Treaty Rights** have on the balance books of major resource extraction companies. **The existence of Aboriginal Title/Treaty Rights as a legal interest stands to affect corporate security of tenure, supply, stock valuation, cost of borrowing, etc.** Also identify issues Re: WTO/NAFTA rules & hidden subsidies/unfair competition, etc.

ASSESSING NEGOTIATION/LITIGATION READINESS/SUPPORT

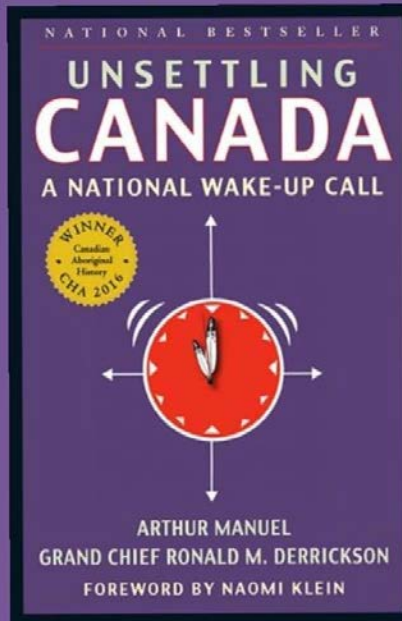
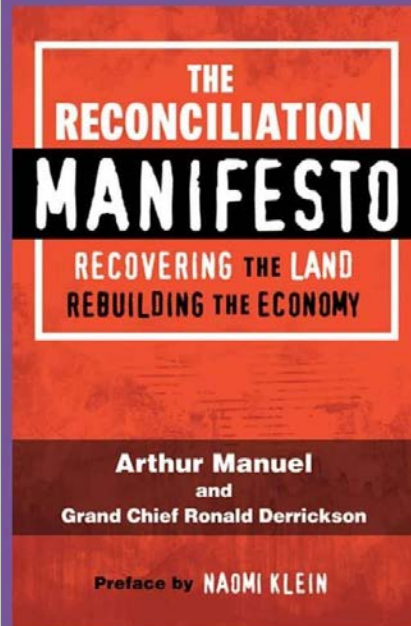
1. **Knowledge of Canadian constitutional & international legal/policy frameworks** of Indigenous, Aboriginal, Treaty & Human Rights and legal counsel, an information database (historical & resource management) to draw from during negotiations
2. **access to an interdisciplinary team of advisors** (in-house or consultants) for Indigenous Leadership/Peoples and
3. identification of **sources of sustained funding**,
4. **Preparation of litigation and/or international strategies** as options.

TAKE ACTION & EXERCISE SELF-DETERMINATION THROUGH TRADITIONAL & HEREDITARY GOVERNMENT SYSTEMS

- ▶ **The exercise and assertion of Inherent Title & Rights and/or historic Treaty Rights is at the heart of a strategy.** Being a collective right that lies with the Nation and the community, it is up to the people themselves to initiate actions which reflect the exercise of their rights to, and inherent jurisdiction over, their lands, territories & resources.
- ▶ **When First Nations exercise their Inherent Title & Rights and/or historic Treaty Rights on the ground,** it is likely that provincial and/or federal governments will drag First Nations, their communities, and their citizens, into court, probably through injunction proceedings.
- ▶ **The first step is to organize the People.** This starts with the families and community, but if possible, First Nation communities should try and work together with other communities at the level of an Indigenous Nation using proper spiritual & cultural protocols.
- ▶ **The next step involves planning and preparation,** including the seeking consensus and authority from the Community or nation, physical setting, communication, media relations, security, interested 3rd parties, etc.

THE END

EDUCATE YOURSELVES



Must read books