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FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

Putting Our Own House in Order: *At the Crossroads to Oblivion*

An amazing artistic update/remake of the Harold Cardinal's book cover "The *Unjust Society*" by **Mary McPherson** titled "***Reconcile What?***" Where she as the artist places herself in the artwork.

By Russ Diabo

Before my friend and brother, the late Arthur Manuel, passed onto the Spirit World, he finished writing his second book, "***The Reconciliation Manifesto***," which I highly recommend for people to read, Indigenous and non-Indigenous alike.

In his book, Art Manuel explains why Indigenous First Nation Peoples should stop depending on **Indian Act** Chiefs and Councils to negotiate with the federal and provincial governments to "*recognize*" and define our Treaty and Inherent Title & Rights, and be directly involved in community and Indigenous Nation decisions that involve Treaty and Inherent Title & Rights. To do this we must "*put our own house in order,*" as Art Manuel explains.

In Art Manuel's book, there is a section called "*Putting Our Own House in Order*," and this article is based on that section, and the chapters in that section.

A key point Art Manuel makes in this section of his book is that "*establishment organizations*" and "*leaders*" are leading us into "*oblivion*"!

I have been trying to communicate this point, but Art Manuel makes it crystal clear in his following comments:

> ***The recent government moves to "reconcile" our title and rights to Canada's needs and desires are yet another attempt to orchestrate us into oblivion. Yet our organizations are nowhere to be seen in this battle that is essential to our future.***
>
> ***In fact, they seem to be vaguely nodding their approval to government attacks on our rights.***
>
> ***It is ridiculous to interpret Section 35, which says that the federal and provincial government recognize and affirm existing Aboriginal and treaty rights, to mean we must reconcile those rights out of***

Special points of interest:

- **The Peoples Voice & FPIC an Indigenous Nationhood Checklist**
- **A National Debate on FNLMA plays out in Wikwemikong**
- **Gov't of Canada releases a Directive to Federal Officials on Indigneous Rights Negotiations**
- **Proposed Anishinabek Nation Agreement Under Review**

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The last time I saw my friend & brother Art Manuel alive was in October 2016, in Richmond, BC, & was captured in this photo by Pete Di Gangi.

existence, subsuming them within federal and provincial government powers. Section 35 is in the Constitution to protect our Aboriginal and treaty rights. That is why it was put there and that is what is says. But the new government interpretation of the Supreme Court of Canada decisions is that Section 35 means that we are supposed to give up our Aboriginal rights to validate Canada, and we must agree that, according to their "legal reconciliation technique," our Section 35 rights cannot override the modern treaty [or self-government agreement].

I have not heard any of our establishment organizations speak out against this policy, which remains the policy of the Trudeau government's Indigenous and Northern Affairs. Forty years ago, they would not have considered even suggesting that kind of genocidal policy for Indigenous peoples. My father told me that we need to be very careful about getting a white man's education, because after you get it you need to retrain yourself back into your Indigenous thinking. Our leadership seems to have absorbed not only white man's learning but their values as well. And in the process they have forgotten who they are.

We cannot let the government-paid leadership or even the chiefs decide on the future of our land. People must have a direct voice and they must let the chiefs know that they cannot deal away our future behind closed doors.

"We cannot let the government-paid leadership or even the chiefs decide on the future of our land. People must have a direct voice and they must let the chiefs know that they cannot deal away our future behind closed doors"

Background

In order to understand what Art Manuel means by the current Trudeau government's section 35 "*legal reconciliation technique,*" we need to review some history, because this is at the core of what is happening across Canada.

There are secret negotiation tables with **Indian Act** Chiefs & Councils and the federal government—and provincial governments are included in the negotiations where their constitutional jurisdiction may be affected—to define, limit and convert existing section 35 Aboriginal and Treaty rights by getting Indigenous Peoples to consent to surrendering existing rights for lesser, modern rights as 4th level ethnic, municipal type governments. As the federal government puts it, "this work is part of the unfinished business of Confederation."

Thus, the provinces are involved because of the division of powers between the federal and provincial governments set out in Canada's first constitution, the **British North America Act**, now called the **Constitution Act 1867**, where the federal government was given the "*exclusive legislative authority*" by the British Parliament for "*Indians and the lands reserved for the Indians*" and then Canada's Parliament subsequently passed the **Indian Act** in 1876 using this delegated constitutional authority.

George Manuel, former NIB President.

Now there is a new constitution, the **Constitution Act 1982**, that has section 35, which "*recognizes and affirms the existing aboriginal and treaty rights of Aboriginal Peoples*".

After this new constitution became law in 1982, there were a series of **First Ministers' Conferences (FMC's) on Aboriginal Matters in the 1980's** to define the section 35 Aboriginal and Treaty rights, but these constitutional talks ended in failure and in the 1990's, the Canadian courts took over defining, limiting and containing section 35 rights.

'Putting House in Order' continued from page 2

During the **1980's FMC's**, in 1983, section 35 was amended to include a provision saying "*For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired*."

This **1983 constitutional amendment to section 35** elevated the federal government's comprehensive "*land claims*" policy—which requires putting the burden of proof onto Indigenous Peoples—into constitutional law, creating a new category of post-1975 "*Modern Treaties*" all based on extinguishment of Aboriginal Title in exchange for some "*lesser benefits*", as well as other federal pre-conditions to negotiations.

Whether Self-Government is an Inherent right or a "*conditional right*" dependent on reaching agreements with Crown governments, was the key issue in the failed **1980's constitutional talks** has still not been accepted as a **section 35 Aboriginal Right** by the federal government or the Supreme Court of Canada, which in violation of international law, continues to base its court decisions about Indigenous rights vs. Crown asserted sovereignty on the racist, colonial, genocidal **Christian Doctrine of Discovery**.

In 1995, the federal government led by Mr. White Paper, Prime Minister Jean Chretien, imposed an **'Inherent Right' to self-government municipalization policy**, which hundreds of **Indian Act** Chiefs and Councils are currently funded to negotiate under (and which, through final self-government agreements, some have compromised under).

The **federal comprehensive land claims** and so-called **'Inherent Right' policies and resulting agreements** are the main policies and agreements the federal government is using as templates for ALL Indigenous Peoples to interpret the **UN Declaration on the Rights of Indigenous Peoples** (**UNDRIP**) and to assert that section 35 is a "*full box*" of rights!

Negotiating under these **comprehensive land claims and self-government policies** require consent to the federal pre-conditions to negotiations, as I've already pointed out in this article.

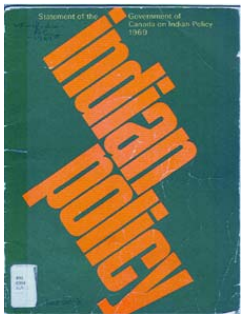
In 2017, the current Trudeau government unilaterally issued **10 Principles respecting the Government of Canada's relationship with Indigenous peoples**, which are basically a restatement of previous federal pre-conditions to negotiating **modern comprehensive land claims & self-government agreements** and are listed here:

- ***Extinguishment (modification) of Aboriginal Title;***
- ***Legal release of Crown liability for past violations of Aboriginal Title & Rights;***
- ***Elimination of Indian Reserves by accepting lands as private property (fee simple);***
- ***Removing on-reserve tax exemptions;***
- ***Respect existing Private Lands/Third Party Interests (and therefore alienation of Aboriginal Title territory without compensation);***
- ***Acceptance of existing federal & provincial laws;***
- ***Program funding on a formula basis being linked to "own source revenue" (code for paying ALL taxes)***;

The **Assembly of First Nations** never provided any public analysis of the federal

L to R: Jean Chretien, Minister of Justice & Prime Minister Pierre Trudeau during FMC on Aboriginal Matters, circa 1983.

"In 1995, the federal government led by Mr. White Paper, Prime Minister Jean Chretien, imposed an 'Inherent Right' to self-government municipalization policy, which hundreds of **Indian Act** Chiefs and Councils are currently funded to negotiate under"



'Putting House in Order' continued from page 3

10 Principles, which are now used in policy, legislation and negotiations with Indigenous Peoples, including **Indian Act** Bands and Band Councils.

During the Harper regime, in 2012, I defined **Termination** as:

> *In this context means the ending of First Nations pre-existing sovereign status through federal coercion of First Nations into Land Claims and Self-Government Final Agreements that convert First Nations into municipalities, their reserves into fee simple lands and extinguishment of their Inherent, Aboriginal and Treaty Rights*.

In my opinion, other than style, and stealing our words to trick us, the current Trudeau government is continuing—as Prime Minister Harper did—with a federal termination plan inspired by Pierre Elliot Trudeau's **1969 White Paper on Indian Policy** from 50 years ago, the Anniversary just passed on June 25, 2019.

"Just in time for the 50th White Paper Anniversary, the Parliamentary recess and probably until after the federal election in October, on May 21, 2019, the current Trudeau government selectively released a **Draft Directive for Federal Officials on the Recognition and Implementation of Indigenous Rights** (Federal Directive)"

White Paper 2.0

Just in time for the 50th White Paper Anniversary, the Parliamentary recess and probably until after the federal election in October, on May 21, 2019, the current Trudeau government selectively released a **Draft Directive for Federal Officials on the Recognition and Implementation of Indigenous Rights** (Federal Directive). **[see page 12 of this Bulletin]**

It doesn't really matter if this Federal Directive is official or draft, the Federal Directive illustrates the federal thinking about what Art Manuel calls the "*legal reconciliation technique*" and bears critical reading to decode the **Special Words And Tactics** (**SWAT**) strategy.

The first point to make regarding the **Federal Directive**, is that "*reconciliation and recognition*" of Indigenous rights are extremely qualified by the following paragraph, because the federal government already interprets these documents to its advantage:

> ***This direction and guidance is meant to be read in conjunction with Canada's Constitution; the United Nations Declaration on the Rights of Indigenous Peoples, and, the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples. It complements other guidance provided to federal officials including the Cabinet Directive on the Federal Approach to Modern Treaty Implementation and the Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples***. [emphasis added]
>
> ***The Directive also consolidates approaches adopted by the Government of Canada in recent years.***

L to R: Joe Wild, Senior ADM, CIRNAC & Carolyn Bennett, Minister of Crown-Indigenous Relations.

The **Federal Directive** also maintains the pan-Indigenous approach of the current Trudeau government in relations with Indigenous Peoples (First Nations, Inuit & Metis), as was set out in the **Recognition and Implementation of Indigenous Rights Framework** announced by Prime Minister Justin Trudeau in the House of Commons on February 14, 2018, which in my opinion waters down First Nation rights.

'Putting House in Order' continued from page 4

The second point to make about the **Federal Directive** is that it makes a distinction between "*discussions*" and "*negotiations*" in this sentence:

> *Federal officials will need to reflect these objectives in their practices at discussion and negotiation tables*.

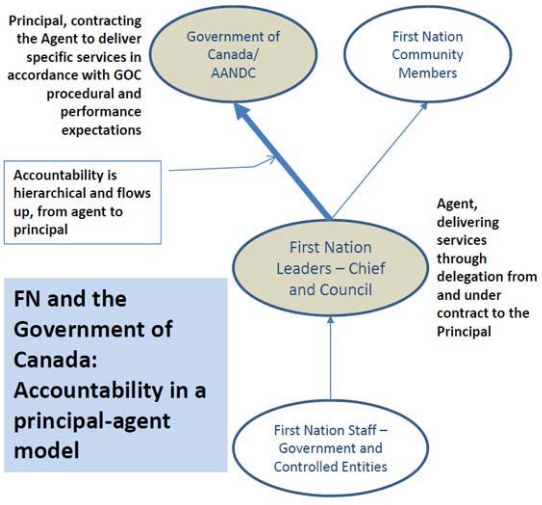
So to me this clarifies that the "*recognition tables*" appear to be non-binding discussion tables until a negotiation mandate is "*co-developed*" with Crown government representatives who have an unwritten veto because the **Federal Directive** requires all federal representatives to:

> [e]*nsure that a co-developed mandate* ***reflects the interests of all parties*** *through open and transparent discussion of issues.* [emphasis added]

Therefore, "*negotiations*" with federal and/or provincial governments about "*reconciliation and recognition*" of Indigenous rights are still based on federal pre-conditions in negotiation of 1) "***Modern Treaties***"; 2) **self-government agreements**; or 3) **alternative federal legislation**, ALL three federally directed paths, which a majority of Chiefs have accepted to negotiate under, amount to a surrender of existing Indigenous Peoples' rights to the Crown's asserted sovereignty and territorial integrity, meaning Termination!

This is why I coined the phrases "*Termination Tables*" and "*Termination Table Chief*"!

It is at these "*Termination Tables*" where the Crown's pre-conditions are consented to by **Indian Act** Chiefs and Councils in proposed "*Termination Agreements.*"



It is only then the people are asked to vote **YES** or **NO** in a referendum on a proposed "*Modern Treaty*" or "*Self-Government*" agreement, or acceptance of federally legislated property and tax regimes after the terms and conditions have been agreed to by Chiefs, Councils, their lawyers and advisors.

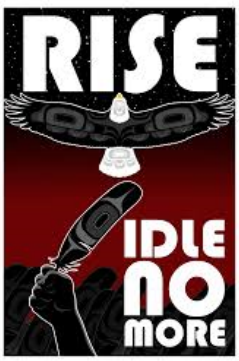
The **YES** side is always well funded by the federal government and provided with legal and advisory support while the **NO** side gets no funding. We can see the results across the country with more and more **Indian Act** Bands signing onto "*Termination Agreements*" and approvals of Land Management and Tax Codes over their former reserves under federal legislation!

The "*First Nations Land Management Code*" is part of alternative federal legislation to "*go beyond the* ***Indian Act***" as the federal government puts it and Chiefs and Councils get to decide (without the people) through a **Band Council Resolution**, whether or not to "*opt out*" of the **Indian Act** into, for example, the **First Nations Land Management Act** or the **First Nations Fiscal Management Act**.

"The **YES** side is always well funded by the federal government and provided with legal and advisory support while the **NO** side gets no funding. We can see the results across the country with more and more **Indian Act** Bands signing onto "*Termination Agreements*""

Standing in Back: Harold Calla, Financial Management Board, Robert Louie, First Nations Lands Advisory Board, and Ernie Daniels, First Nations Finance Authority, **In Front:** Manny Jules, First Nations Tax Commission.

"Under the traditional/ hereditary governance systems led by the People, the **Indian Act** Chief and Council elective system and band office can become an administrative body taking direction and receiving mandates from the original Indigenous authority, the rights holders, the People!"



'Putting House in Order' continued from page 5

The People's Voice & Decision-Making About Land Rights & Self-Determination

For the people to be directly involved in decision-making involving Treaty and Inherent Title & Rights, as **Art Manuel** rightly says is a requirement, the people need to be **INFORMED**. This is a key part of the **UN Declaration on the Rights of Indigenous Peoples** (**UNDRIP**) minimum standard where the **Free, Prior, INFORMED, Consent of Indigenous Peoples is required when Indigenous lands territories and resources are involved**.

If our First Nations are to really and truly decolonize, we expect not only the Crown governments to implement the minimum standards contained in the **United Nations Declaration**. **Our Chiefs and Councils also need to respect our Indigenous Peoples' right of self-determination**!

The **United Nations Declaration on the Rights of Indigenous Peoples** states:

> *Article 18*
>
> *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****.* [emphasis added]

Indian "*bands*" and "*band councils*" are **NOT** "*indigenous decision-making institutions,*" they are colonial institutions imposed by the government of Canada through its racist, colonial **Indian Act** under its **Constitution Act 1867**.

In my opinion, Indigenous First Nation Peoples, where their traditional or hereditary systems of government are asleep or dormant, should be re-established as their original decision-making systems exercising modern legislative, executive and judicial roles outside of the racist, colonial **Indian Act** system.

Under the traditional/hereditary governance systems led by the People, the **Indian Act** Chief and Council elective system and band office can become an administrative body taking direction and receiving mandates from the original Indigenous authority, the rights holders, the People!

How this is done locally, regionally and within each Indigenous Nation needs to be discussed widely across Canada.

What is certain, is that by standing together and developing an Indigenous agenda based on our rights as set out under international law, we can advance our people much further than by passively accepting the federal government's watered down and self-serving version of our rights that the **current AFN leadership** seems prepared to accept.

We are told by governments, and too often by our own leadership, that there is no alternative to the cookie-cutter surrender of lands and resources provided at the existing government negotiation tables. The fact is, we do have another course of action, one that is supported by the International laws that recognize all peoples right of self-determination.

My vision is to see First Nations protecting their traditional lands and waters by developing and implementing their own **Self-Determination Plans for Community Development and Nationhood** based on restoration of stolen lands, territo-

'Putting House in Order' continued from page 6

ries and resources, or restitution where lands and resources aren't returned.

I believe all Indigenous Nations need to build the foundation of their Nationhood and **Free, Prior, INFORMED, Consent**, before they sit down with the government to begin true nation-to-nation negotiations.

In preparation for serious negotiations or engagement in international human rights complaints or processes, there is an essential check-list to follow for Indigenous communities AND Nations research holdings for strategy, planning and negotiation support.

Planning for Nationhood—An Indigenous Checklist:

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.

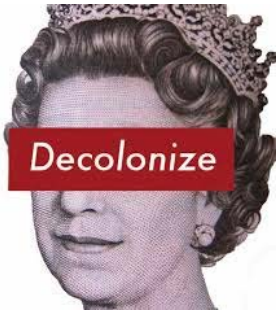
Assessing Collection of Information/Evidence - For decision-making and negotiations support regarding traditional territories, First Nations historical substantiation & documentation needs to be combined with contemporary land & resource management information; 1) Resource models & inventories, 2) Obstacles 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 (ie., 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: World Trade Organization/North American Free Trade Agreement 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, 2) an information database (historical & resource management) to draw from during negotiations 3) access to an interdisciplinary team of advisors (in-house or consultants) for Indigenous Leadership/Peoples and 4) identification of sources of sustained funding, 5) Preparation of litigation and/or international strategies as options.

I believe those Indigenous communities AND Nations who follow this Indigenous Nationhood Checklist will have a better chance of surviving as distinct, organized Indigenous societies and Nations!

Those that don't follow the Indigenous Nationhood Checklist will likely become 4th level ethnic municipalities and Indigenous-Canadians and be obliterated, meaning disappear, as Art Manuel has said so eloquently, regardless of which Party wins the next federal election, or the election after that!



"I believe those Indigenous communities AND Nations who follow this **Indigenous Nationhood Checklist** will have a better chance of surviving as distinct, organized Indigenous societies and Nations!"

Op-Ed: Former Wikwemikong Lands Employee Weighes in on Proposed New Land Code

by Rolland Pangowish

This letter is being presented to inform those members of Wikwemikong who don't clearly understand and to express the disappointment of many band members with the consultation process undertaken by Council. There are a number of people who now suspect that the council's "*land law*" is actually a "*land code*," as defined under new federal legislation called the **First Nations Land Management Act** (**FNLMA**). It appears that the process of developing our "*land law*" is being conducted under a framework agreement that initiates the first stage of opting out of the **Indian Act** and moving under this **new optional legislation**, primarily designed to define self-government within parameters and definitions set out by federal government in the legislation.

"It appears that the process of developing our "*land law*" is being conducted under a framework agreement that initiates the first stage of opting out of the **Indian Act** and moving under this **new optional legislation**, primarily designed to define self-government within parameters and definitions set out by federal government in the legislation"

Many band members have also expressed concern about the legal implications of releasing Canada from its legal obligations under 33 sections of the **Indian Act**. These have been defined in Canadian law as fiduciary obligations, which are trust -like obligations on the part of the Crown, which are trust-like responsibilities which apply whenever the federal government acts unilaterally and requires that it act in accordance with the highest standards of conduct that ensure First Nation interests are protected. These types of past legal obligations have already given rise to the several claims where Wikwemikong has lost lands illegally or without proper legal process.

Members say that they have not been informed about the **FNLMA** and most have not seen the legislation the Band Council proposes to opt into. Once some see how this **Act** works, they ask whether the Council have signed on to the **Framework Agreement with the Deputy Minister**. Under the new **Act**, a blanket **Order of Council** (**OIC**), which is a federal order by Cabinet authorizing Canada to have Wikwemikong's land registry files held by **INAC** transferred and maintained by the new Registry established under the **FNLMA**. A whole new set of regulations would apply under federal law. That part of the process has already commenced changing the legal status of the Reserve.

Some fear that despite federal assurances, the words in the **Bill and agreements** that say land claims and Constitutionally protected rights will not be surrendered and this is not sufficient reason to accept it. Too many undefined areas of the law regarding inherent rights and self-determination may be affected by agreeing to a new definition of reserve lands, that in legal effect are no longer a reserve, let alone title resting with the **Unceded Reserve** members.

Most band members have not been informed of any of this. Four hundred members signed a petition calling to stop Council from proceeding under the legislation was submitted to Band Council May 6. The **FNLMA** itself says a referendum must be held in accordance with the rules under the **Indian Act**, except Parliament amended the **Act** in December 2018, lowering the threshold for community support to 25 percent from the normal 50 percent plus one normally required. Now people are hearing there will be no vote and Council will decide. People are worried that the off-reserve membership is not being adequately informed and are falling for this plan without seeing the legislation.

To date, the few handouts shared with community members under the consulta-

'FNLMA Land Code' continued from page 8

tion process are not providing full information about the legislation and its legal implications for our **Section 35 rights**. Nothing in the "*land law*" consultation material mentions the **FNLMA**. How can these consultations then be used to authorize the change in the status of our reserve and releasing the Crown of all future responsibility for our lands and resources, even though we will be left exercising a form of delegated federal authority? As most Islanders know, **Wikwemikong Unceded Indian Reserve** has never surrendered our title to our lands or our inherent rights, but the **FNLMA** will redefine the definition of our reserve status. In fact, it my not be considered a reserve at all for legal purposes once this kicks in.

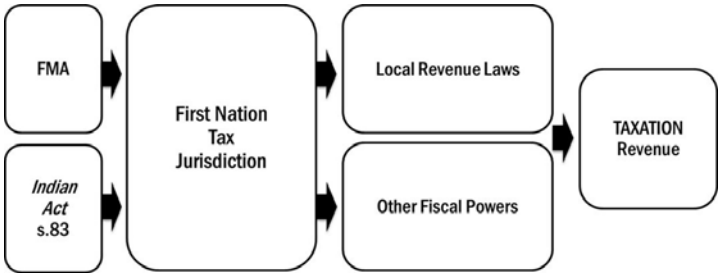
This is mentioned here because of the implied question as to why would we abandon our long-standing position as a "*special reserve*," which is provided for under a section of the **Indian Act** that recognizes the underlying title to some reserves that may not rest with the Crown? It allows us to argue that the **Wikwemikong Anishnabek** still hold the underlying title, even though the **Indian Act** was imposed on us in the 1870's. That section of the **Indian Act** allowed Canada to administer the **Unceded Reserve** as though it were lands held by the Crown for the use and benefit of Indians, like so many reserves across Canada, while we never consented to any of it. We have a unique legal situation, so we must ask whether its worth possibly compromising our own legal position. We are not aware of any band members or councillors who have seen a legal assessment of the new legislation and the possible legal effects on our claim to title and Unceded status.

Many do not like the restrictions under the **Indian Act**, but First Nations across Canada have condemned this **FNLMA** and its related legislation as a part of the Government of Canada's overall strategy for releasing all its obligation to First Nations and **restricting the definition of Section 35 rights**. The federal government has have never provided First Nations with adequate funds to administer the **Indian Act** properly, now if we agree to release Canada of all obligations in future, we will be forced to find new ways to finance our land administration. Enhanced funding is used as the attractant and First Nations desperate for financial resources to manage lands are falling for it at an increasing rate. There are enough legal experts that warn that all this "*alternative*" legislation is designed to make the reserve a municipality, with zoning and a management system compatible with the provincial land titles system. Have the council been informed of the negative side of this legislation and the federal approach to land management?

Finally, the coming into force of the **FNLMA** upon the approval a land code may even have the legal effect of defining our lands as no longer being "*reserve lands*." This is the kind of termination of rights that we need to be diligent about and ensure proper legal analysis is done. No one is sure whether the Chief and Council appear to be saying to the membership that Band Council has the authority to sign off under this change without a referendum under our new Constitution which was accepted by a vote, but now many can now see that there may differences of interpretation about the new powers being assumed and implemented. It appears that we have some internal housekeeping on to do on that before we proceed further, as the **FNLMA** gives Council authority it has never exercised before, under new federal law that is untested and for which all the legal outcomes cannot be predicted, as case law develops very slowly.

"Many do not like the restrictions under the **Indian Act**, but First Nations across Canada have condemned this **FNLMA** and its related legislation as a part of the Government of Canada's overall strategy for releasing all its obligation to First Nations and **restricting the definition of Section 35 rights**"

'FNLMA Land Code' continued from page 9



Our **Anishnabek Peoples** are entitled to all information, especially where federal legislation and the legal release of Crown obligations are released in such a sweeping manner without following the standards for a formal surrender. A new federal government down the road, under another party may well say the whole array of so-called these "*opting out*" bills for sectors such as elections, financial management, taxation and industrial development mean something else. After all, these new bills are intended to eliminate federal responsibilities, limit future liability and delegate federal authority through legislation that some experts feel is lowering the standard of Crown conduct to a new low, contrary to the law, a defined by the **Supreme Court of Canada**. There are some of us who feel the legal effect this approach will eliminate our access to collective rights that may be clarified in law in future, despite federal denials.

International human rights standards include the right of Indigenous Peoples to "*Free, Prior and Informed Consent*" before allowing lawful access to Indigenous lands and resources. I would expect our own leaders to abide by these same standards that we, ourselves have been fighting to establish for many decades. There needs to be a much more thorough discussion, whenever we change the status of our lands, including the provision of all relevant materials. We need to discuss the broader picture of Canada' approach to facilitating self-government, which has serious limits and a number of pitfalls that may affect our inherent rights in ways we haven't considered.

EDITOR'S NOTE: Rolland Pangowish is a former Wiikwemkoong lands employee with extensive experience in lands issues. This article appeared in the Manitoulin Expositor on May 22, 2019.

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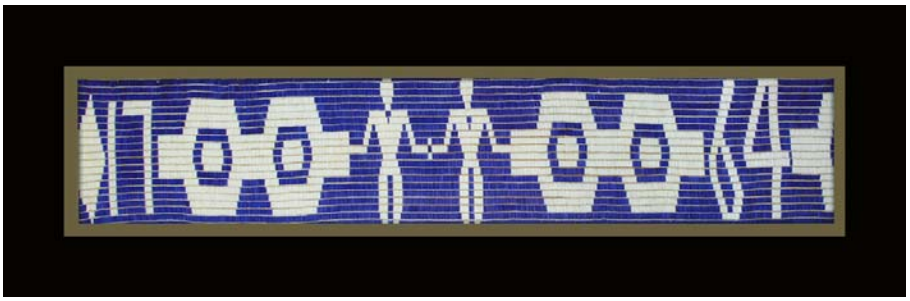
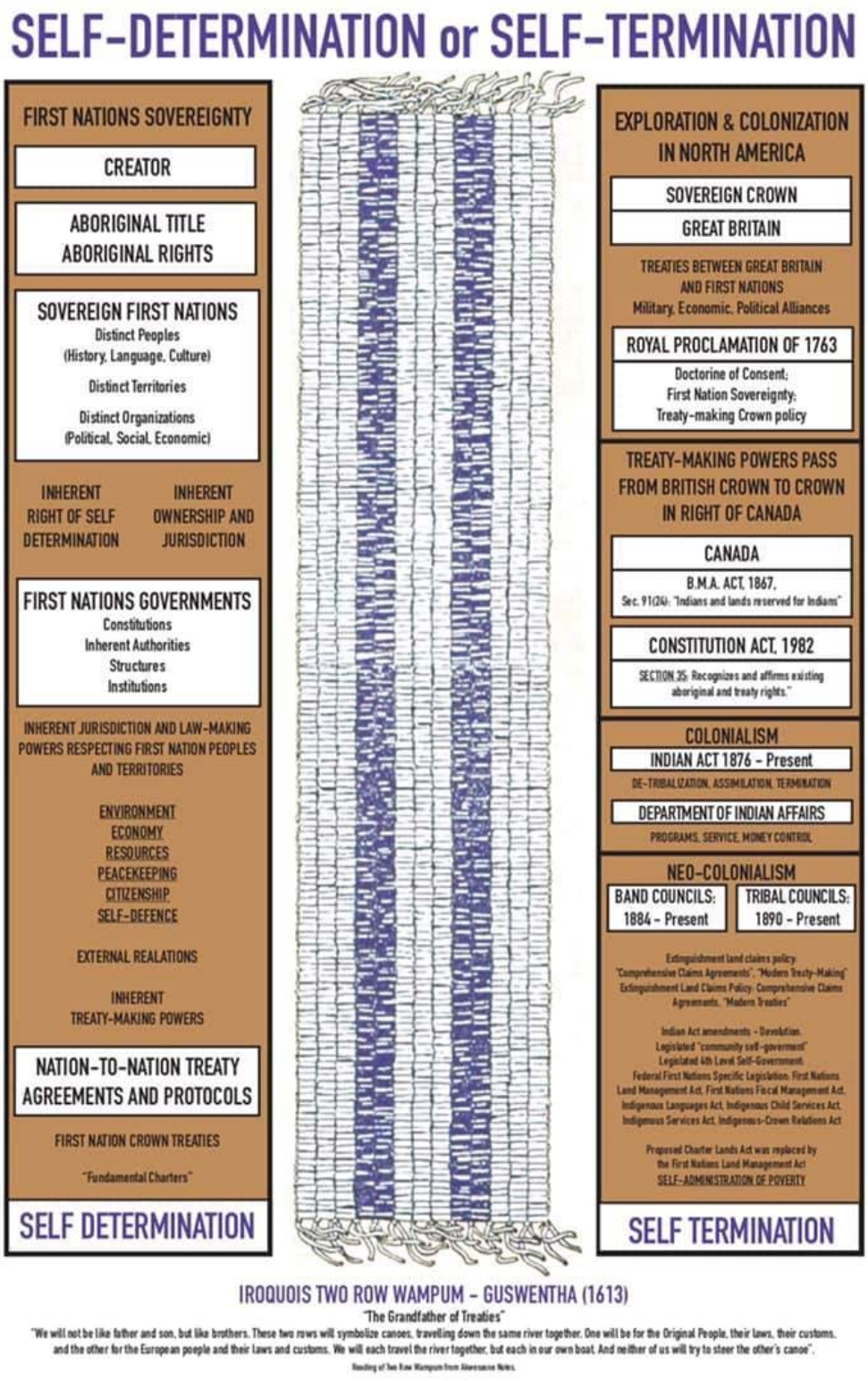


'FNLMA Land Code' conclusion from page 10

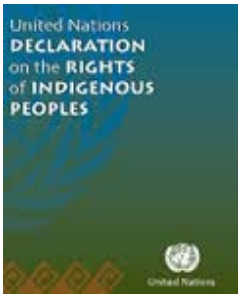


IROQUOIS TWO ROW WAMPUM - GUSWENTHA (1613)

"The Grandfather of Treaties"

"We will not be like father and son, but like brothers. These two rows will symbolize canoes, travelling down the same river together. One will be for the Original People, their laws, their customs, and the other for the European people and their laws and customs. We will each travel the river together, but each in our own boat. And neither of us will try to steer the other's canoe".

Reading of Two Row Wampum from Akwesasne Notes.



"International human rights standards include the right of Indigenous Peoples to "*Free, Prior and Informed Consent*" before allowing lawful access to Indigenous lands and resources. I would expect our own leaders to abide by these same standards that we, ourselves have been fighting to establish for many decades"

Directive for Federal Officials on the Recognition and Implementation of Indigenous Rights[1]

L to R: PM Justin Trudeau & Minister of Crown-Indigenous Relations, Carolyn Bennett.

For Discussion Purposes Only—May 21, 2019

[Editor's Note: This is a Crown-Indigenous Relations, Government of Canada Document.]

1. OBJECTIVES

This document provides direction for federal officials working on supporting communities as they move on their respective paths to self-determination. In particular, this work relates to the negotiation of treaties, agreements and other constructive arrangements with Indigenous peoples.

The Government of Canada has indicated that it will co-develop a new rights-based policy with Indigenous peoples.

This direction and guidance is meant to be read in conjunction with Canada's Constitution; the *United Nations Declaration on the Rights of Indigenous Peoples*; and, the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.* It complements other guidance provided to federal officials including the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* and the *Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples*. The Directive also consolidates approaches adopted by the Government of Canada in recent years.

"This document provides direction for federal officials working on supporting communities as they move on their respective paths to self-determination. In particular, this work relates to the negotiation of treaties, agreements and other constructive arrangements with Indigenous peoples"

This Directive is intended to contribute to the advancement of reconciliation between the Crown and Indigenous peoples. Since 2015, the Government of Canada has been working in a new way with First Nations, Inuit and Métis peoples, on the basis of the recognition of Indigenous rights. The purpose of this document is to ensure that federal officials continue to operate on this basis and that discussions with Indigenous peoples on how they will exercise their rights are no longer based on the ceding, surrender or extinguishment of those rights.

Reconciliation is an ongoing process, with Indigenous peoples and the Crown working cooperatively to establish and maintain a mutually respectful framework for living together, and foster strong, healthy, and sustainable First Nations, Inuit, and Métis communities. The negotiation and implementation of treaties, agreements and other constructive agreements are critical to making progress on reconciliation.

INAC Minister Carolyn Bennett at Standing Committee on Aboriginal Affairs.

An important component to reconciliation is maintaining honourable processes for negotiations. This requires the federal government and officials to act with honour, integrity, good faith, and fairness in all dealings with Indigenous peoples[2].

Federal officials will need to reflect these objectives in their practices at discussion and negotiation tables.

2. DIRECTION TO FEDERAL OFFICIALS

'Federal Directive 2019' continued from page 12

This direction has been organized into two broad categories of focus: co-development, and recognition and implementation of rights.

Co-development

Co-development is a key mechanism to support the renewal of the relationship between the Crown and Indigenous peoples, based on the recognition and implementation of rights, respect, cooperation and partnership. Participants in co-development commit to active and ongoing collaboration with the goal of developing mutually beneficial outcomes and establishing joint ownership and shared decision-making. Since 2015, the Government of Canada has successfully adopted this co-development approach to negotiations with partners on section 35 rights through Recognition of Indigenous Rights and Self-Determination discussion tables. Also, in negotiating modern treaties and self-government arrangements since 2015, many approaches have been co-developed with Indigenous partners and provinces and territories at negotiation tables or through collaborative policy processes. In co-developing negotiating mandates with First Nations, Inuit and Métis peoples, Canada will no longer take a unilateral approach.

To provide further guidance on how to apply a co-development approach to discussions and negotiations with Indigenous peoples, federal officials can reference the following direction:

Consistent with co-development best practices, federal officials will:

- Engage in interest-based discussions on the priorities and needs of Indigenous partners.
- Jointly design the process for co-developing a mandate.
- Under the agreed-upon process, jointly develop a mandate.
- Ensure that a co-developed mandate reflects the interests of all parties through open and transparent discussion of issues.
- Be transparent in communicating any federal limitations to discussions, and the decision-making role of Cabinet.
- Pursue any specific approach preferred by parties for implementing rights, including but not limited to stand-alone self-government, core treaty, comprehensive modern treaties, sectoral agreements, or other constructive arrangements.
- Pursue 'stepping-stone' type agreements, where desired by parties, to ensure flexibility of agreements over time.
- Jointly develop non-binding documents that capture key components of co-developed mandates, where required.
- Seek specific negotiating mandates from respective decision-makers to negotiate and conclude binding agreements.

Recognition and Implementation of Rights

The Government of Canada recognizes that Indigenous peoples have inherent rights, and that these rights do not require a court declaration or an agreement with the Crown in order to be recognized. The Government of Canada also recognizes that the rights of Indigenous peoples exist regardless of whether those rights have been recognized by the Crown through treaties, agreements or constructive arrange-

'Federal Directive 2019' continued from page 13

Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Governance, Crown-Indigenous Relations.

ments.

Indigenous peoples have the right to self-determination, including rights that derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, laws and philosophies, especially their rights to their lands, territories and resources.[3] This right is recognized and affirmed by section 35 of the *Constitution Act, 1982,* and outlined in the *United Nations Declaration on the Rights of Indigenous Peoples*.

Indigenous self-government is part of Canada's evolving system of cooperative federalism. Recognition of inherent jurisdiction and legal orders of Indigenous peoples is a necessary starting point of discussions aimed at the interaction between federal, provincial, territorial, and Indigenous jurisdictions and laws[4]. Federal officials, including negotiators, will actively support Indigenous self-determination in full partnership with Indigenous peoples.

"Recognition of inherent jurisdiction and legal orders of Indigenous peoples is a necessary starting point of discussions aimed at the interaction between federal, provincial, territorial, and Indigenous jurisdictions and laws"

In discussions and negotiations on the recognition and implementation of Indigenous rights, the Government of Canada no longer pursues treaties, agreements and other constructive arrangements that, in form or result, define the specific nature, scope and extent of rights; extinguish or modify any rights; are full and final; or, seek to cede, release or surrender any rights.

As such, it is advised that, through co-development, federal officials participating in discussions or negotiations with Indigenous partners will:

- Focus on developing ways to support the co-existence of rights and interests, for example, a negotiated relationship of jurisdictions.
- Pursue treaties, agreements and other constructive arrangements that can evolve over time as the parties agree, including with respect to lands and resources. Equally, pursue co-developed approaches to the evolution of existing treaties, agreements and other constructive arrangements where desired by the parties.
- Actively seek to support Indigenous laws, legal systems, and governance structures, to ensure that intergovernmental relationships are grounded in the legal traditions of all governments involved.
- Ensure options for redress and compensation are actively explored with Indigenous peoples where raised[5].
- Actively seek opportunities to work constructively with provincial and territorial governments and Indigenous peoples, where provincial or territorial jurisdiction is engaged.
- Ensure that the negotiated treaties, agreements and other constructive arrangements can be constructively and meaningfully implemented[6].
- Discuss the implementation of rights related to land including title through various approaches that could encompass economic, traditional, jurisdictional and ownership elements of those rights.

Crown-Indigenous Relations Minister Carolyn Bennett at Manitoba Metis Federation.

'Federal Directive 2019' continued from page 14

- Explore, through discussion, how Canada could support and facilitate efforts between Indigenous groups to resolve issues relating to shared territory and overlapping territories.

3. ROLES AND RESPONSIBILITIES

As outlined in the legislation to establish the Department of Crown-Indigenous Relations and Northern Affairs (C-97 *Budget Implementation Act*, 2019), the role of the Minister of Crown-Indigenous Relations is to:

- Advance reconciliation with Indigenous peoples, in collaboration with Indigenous peoples and through renewed nation-to-nation, government-to-government and Inuit-Crown relationships;
- Exercise 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, agreements, and other constructive arrangements with Indigenous peoples; and,
- Negotiate treaties, agreements and constructive arrangements to advance the self-determination of Indigenous peoples.

The Minister's role also includes supporting and facilitating federal approvals throughout negotiations, and developing and employing models for the evolution of treaties, agreements and other constructive arrangements.

The roles and responsibilities of Deputy Heads of all federal Departments and Agencies in support of the objectives and direction stated above, include:

- Ensuring that federal officials are aware of, understand and are supported to fulfill their respective responsibilities and obligations for achieving the core objectives;
- Ensuring that federal officials receive training on the Government's responsibilities and obligations to operationalize the core objectives[7];
- Ensuring that federal officials co-develop discussion and negotiation mandates, and treaties, agreements and other constructive agreements with Indigenous partners; and,
- Participating in and providing whole-of-government leadership through existing federal governance structures supporting discussions on the recognition and implementation of Indigenous rights.

4. APPLICATION

Distinctions-Based and Regional Approaches

First Nations, Inuit and Métis peoples may wish to co-develop processes with Canada to address unique circumstances. Such approaches would provide additional direction to federal officials in advancing the core objectives of this Directive and guide the parties in joint discussions on recognition and implementation of rights. Such agreements, where parties agree, can provide greater specificity to this Directive, and can take precedence to the extent of a conflict with the Directive.

Existing Processes

Any specific negotiation or discussion mandates that are currently in place continue to apply. Indigenous partners may notify the Government of Canada of any elements of these mandates that they prefer to co-develop.

'Federal Directive 2019' conclusion from page 15

End Notes

1. In this document, "*Indigenous rights*" are to be read to include existing Aboriginal and Treaty rights as defined in section 35(1) of the **Constitution Act, 1982**.

2. Principle 3, **Principles respecting the Government of Canada's relationship with Indigenous Peoples***;* this is supported by the Supreme Court of Canada, through decisions such as *R. v. Marshall*, [1999] 3 S.C.R. 456, para. 49.

3. Adapted from **UNDRIP**, **Preamble & Article 3; Principle 1, Principles respecting the Government of Canada's relationship with Indigenous Peoples**.

4. **Principle 4, Principles respecting the Government of Canada's relationship with Indigenous Peoples**.

5. Based on **UNDRIP**, Article 28

6. Federal officials should refer to the **Cabinet Directive on the Federal Approach to Modern Treaty Implementation** and related **Statement of Principles on the Federal Approach to Modern Treaty Implementation**.

7. Call to Action #57, **Truth and Reconciliation Commission**.

"In this document, "*Indigenous rights*" are to be read to include existing Aboriginal and Treaty rights as defined in section 35(1) of the **Constitution Act, 1982.**"

PRESS RELEASE: Indigenous Activists Networks

Indigenous Activists Networks
Defenders of the Land, Truth Campaign, Idle No More

PRESS RELEASE

On 50th Anniversary of the 1969 White Paper on Indian Policy, Indigenous Activists Networks Condemn the Trudeau Government's Termination Legislation

(Turtle Island/June 25, 2019) 50 years ago today, under a government led by Prime Minister Pierre Elliot Trudeau, the Minister of Indian Affairs, Jean Chretien, stood in the House of Commons and introduced a **Statement of the Government of Canada on Indian Policy**.

1969 White Paper on Indian Policy

The White Paper proposed the Termination of "Indians" through various measures to "end the legal distinction between Indians and Canadian citizens."

The 1969 White Paper proposed:

- *Eliminate Indian Status.*
- *Dissolve the Department of Indian Affairs within 5 years.*
- *Abolish the Indian Act & remove Constitutional Reference to Indian & Indian Reserve Land.*
- *Convert reserve land to private property that can be sold by the band or its members.*
- *Transfer responsibility for Indian Affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens.*
- *Provide transitional funding for economic development.*
- *Appoint a commissioner to end outstanding land claims and gradually terminate existing Treaties*.

The reaction from First Nations was swift and furious across Canada.

Cree Leader Harold Cardinal compared the White Paper to the American policy that "*The only good Indian is a dead Indian*" and said "*Chretien had amended this to read "The only good Indian is a non-Indian*." 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

'Indigenous Activists Networks' continued from page 17

> *"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]

Today, on the 50th Anniversary of the **1969 White Paper on Indian Policy** we are facing the implementation of **White Paper 2.0** by the current Trudeau government!

What is White Paper 2.0? It's Prime Minister Justin Trudeau's **Recognition and Implementation of Indigenous Rights Framework**, which involves co-opting the Assembly of First Nations to use them as a springboard to manufacture consent through various co-development tables and processes giving the illusion that Indigenous Nations want these Bills, policies and changes. The Federal Government is imposing an overwhelming "shock and awe" strategy of massive changes to legislation, policies and new funding agreements that are designed by the Prime Ministers' Office and the federal bureaucracy to complete the assimilation-Termination objectives of the 50 year old **1969 White Paper on Indian Policy**.

Justin Trudeau's version of the longstanding federal Termination Plan, which he calls the **Recognition and Implementation of Indigenous Rights Framework**, was first announced on February 14, 2018 with the goal to remove bands from the Indian Act and turn them into federally recognized "Indigenous Governments" or "Nations" that will have **self-government given to them as defined by the Government of Canada**. They will be **subject to the Canadian Constitution** as a 4th order of government—below federal and provincial governments and with less power than municipal governments.

The Trudeau government has delayed the "Rights Recognition" legislation because it was widely rejected by First Nation Peoples and Chiefs across Canada. Now the government is taking advantage of our poverty to change administrative agreements and funding that forces us to accept policies that impact our sacred Treaties & Inherent Title & Rights, while directly attacking our sovereign jurisdiction. This is genocide through law and policy!

Moreover, the Trudeau government is now proceeding to implement its **White Paper 2.0 Framework** in a piecemeal approach that involves: 1) issuing a one-sided **Directive to Federal Negotiators** who preside over "Land Claims", Self-Government & "Recognition Tables", 2) new **coercive funding policies**, including 10 year funding agreements & new funding arrangements and 3) through the following **Termination Bills** that passed into law on June 21, 2019:

> **Bill C-97** – On August 28, 2017, Prime Minister Justin Trudeau announced the federal government was dissolving the Department of Indian Affairs & Northern Development and creating two new federal departments: one for **Indigenous Services** and one for **Crown-Indigenous Relations**. The legislation to make this happen is buried within the April 2019 omnibus budget bill now be-

'Indigenous Activists Networks' conclusion from page 18

fore parliament without any debate from Indigenous peoples. This federal restructuring of government is central to the Trudeau government's **White Paper 2.0 Framework** approach to Indigenous policy, law, funding and is unilaterally defining a "new" relationship with Indigenous Peoples (First Nations, Metis & Inuit).

Bill C-86 – a 900 page Omnibus Bill that became law in December 2018, making substantive amendments to the: **First Nations Land Management Act**, **First Nation Fiscal Management Act**, **Additions to Reserve** and **First Nation Matrimonial Property Act** – all of this legislation facilitates eliminating reserves by transitioning communally held reserve lands into a new land regime that eventually leads to individually held private property (fee simple) that would come under provincial laws and lands registry.

Bills C-91/92 – language and child welfare legislation are intended to take our existing Inherent Rights and convert them into federally defined section 35 rights, which are subsumed under Crown Sovereignty (to be dictated by the limitations stemming from section 35 federal doctrine/ court decisions), as well as, provincial controls into Indigenous jurisidiction.

This suite of federal legislation will now be used by the federal government to continue the attack on our sacred Treaties, Inherent Title & Rights and sovereign jurisdiction, particularly with the creation of two new federal departments (Indigenous Services & Crown-Indigenous Relations) to continue to implement the **1969 White Paper objectives** through the current Trudeau government's **White Paper 2.0 Framework** (2019).

Although the current Trudeau government was able to push its Termination Bills through Parliament our Resistance Campaign will continue to support our grassroots Peoples in their exercise of the right of self-determination as Indigenous Peoples!

We note from the AFN Website, the **40th Annual General Assembly of the Assembly of First Nations** will be held July 23-25, in Fredericton, New Brunswick and "*only Chiefs will be allowed in the main plenary*", so ask your Chief and Council what are they doing to stop **White Paper 2.0**?

We remember June 25, 1969, as a dark day of infamy in the history of Canada's Plan to Terminate our collective rights! We survived into today because of the fierceness of our parents and grandparents in opposing it and this is our inspiration in our continuing fight against this the new offensive to convert us from being Indigenous Peoples into becoming ethnic minorities as *Indigenous-Canadians*.

-30-

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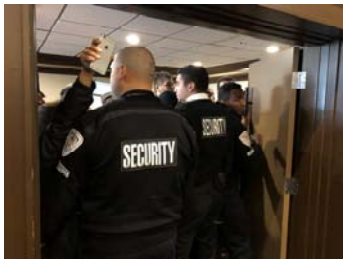

CHRONOLOGY OF EVENTS
TO
CREATE A NEW RELATONSHIP WITH INDIGENOUS PEOPLES
(FIRST NATIONS, METIS & INUIT)
THROUGH
DEVELOPMENT OF FEDERAL RIGHTS BASED POLICY
June 30, 2019
(Prepared by Russ Diabo)

October 2015: Liberals win a majority government, partly based on an Indigenous Policy Platform.

December 2015: Prime Minister Justin Trudeau announces the creation of **Bilateral Mechanisms** (Cabinet Committees for 3 National Indigenous Organizations, including the Assembly of First Nations) to meet to develop policy on shared priorities, and monitor progress going forward.

Similar meetings with key Cabinet Ministers will take place at least twice each year.

This December 2015, announcement was also about **establishing a two-track approach to Indigenous Policy**: 1) closing the socioeconomic gap between Indigenous Peoples and non-Indigenous Canadians, and 2) making foundational changes to laws, policies and operational practices based on the federal recognition (definition) of rights to advance (federal interpretation of) self-determination and self-government.

June 2016: At a public event organized by "*The Economist*" magazine in Toronto in the summer of 2016, the interviewer asked the **Prime Minister** how his government was going to liberalize and deregulate inter-provincial trade within Canada. Trudeau responded:

> "*The way to get that done is not to sit there and impose, the way to have that done is to actually have a good working relationship with the Premiers, with municipal governments, with Indigenous leadership*, ***because Indigenous governments' are the fourth level of government in this country***."

June 2016: Government of Canada establishes a new approach to negotiations with partners (First Nations, Metis, Inuit) on section 35 rights through **Recognition of Indigenous Rights and Self-Determination discussion tables**. These discussions are conducted outside the **Comprehensive Land Claims Policy** and the **Inherent Right Policy** and focus on the priorities of the respective Indigenous community.

July 2016: Indigenous and Northern Affairs Minister Carolyn Bennett signs a **Memorandum of Understanding on Fiscal Relations** with AFN National Chief Perry Bellegarde.

August 2016: Federal government establishes the **National Inquiry into Murdered and Missing Women and Girls**.

December 2016: Prime Minister Justin Trudeau announces to an AFN Special Chiefs' Assembly, the establishment of a **Ministerial Working-Group on Law & Policies related to**

'Chronology of Events' continued from page 20

Indigenous Peoples and that Minister of Justice & Attorney-General, Jody Wilson -Raybould, will lead the process aimed at de-colonializing Canada's laws and policies.

February 2017: Prime Minister Justin Trudeau formally announces the creation of the **Ministers' Working-Group on policy & law related to Indigenous Peoples**. The Working Group of Ministers responsible for the review will examine relevant federal laws, policies, and operational practices to help ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and treaty rights; adhering to international human rights standards, including the **United Nations Declaration on the Rights of Indigenous Peoples**; and supporting the implementation of the **Truth and Reconciliation Commission's** Calls to Action…As its first order of business, the Working Group will develop a rigorous work plan and principles, which will reflect a whole-of-government approach that addresses all Indigenous Peoples.

April 2017: **Canada-Metis Nation Accord** signed.

June 2017: Prime Minister Justin Trudeau signs a **Memorandum of Understanding on Joint Priorities** with AFN National Chief Perry Bellegarde.

July 2017: Federal Minister of Justice, Jody Wilson-Raybould issues **10 Principles respecting the Government of Canada's relationship with Indigenous peoples**.

August 2017: As part of a Cabinet shuffle Prime Minister Justin Trudeau announces the eventual **dissolution of the Department of Indigenous Affairs** and **replacement with two new federal departments** (Indigenous Services & Crown-Indigenous Relations) with the changes to be overseen by two Ministers.

August 2017: Jane Philpott is named Minister of Indigenous Services and Carolyn Bennett is named Minister of Crown-Indigenous Relations. Each Minister is given a **Mandate Letter** from the Prime Minister.

December 2017: **First Nations, Inuit Health Branch** formally transferred to the Department of Indigenous Services Canada (DISC).

December 2017: Two new Fiscal Relations policies (**Indian Act** & **Self-Government**).

February 2018: Prime Minister Justin Trudeau Prime Minister Justin Trudeau made a Statement in the House of Commons regarding a **Recognition and Implementation of Rights Framework**. This was a major announcement by the Trudeau government that it intended to introduce "Framework" legislation into Parliament in 2018 and passing it into law by 2019.

In summary, the Prime Minister announced:

A new **Recognition and Implementation of Indigenous Rights Framework** that will include new ways to recognize and implement Indigenous Rights. This will include new **recognition and implementation of rights legislation**.

'Chronology of Events' continued from page 21

July 2018: During a July 2018, cabinet shuffle a **Cabinet Committee on Reconciliation** was created by the Trudeau government and Justice Minister Wilson-Raybould was sidelined from the law and policy review process.

September 2018: **AFN holds a National Policy Forum**: Affirming First Nations Rights, Title and Jurisdiction.

Crown-Indigenous Relations Minister Carolyn Bennett releases a document at the AFN Forum entitled: **Overview of a Recognition and Implementation of Indigenous Rights Framework**. The document is widely rejected by Chiefs and delegates to the AFN Forum.

November 2018: CBC News reports the **Federal Recognition and Implementation of Indigenous Rights Framework** legislation will be delayed until after the next federal election.But a statement from the office of the Crown-Indigenous Relations Minister Carolyn Bennett that the "***Government is committed to advancing the framework, and to continue actively engaging with partners on its contents****…We continue to* ***make substantial progress in accelerating the recognition and implementation of Indigenous rights through policy changes and the development of the Recognition of Rights and Self-Determination Tables****…We look forward* ***to continue working with our partners on developing more of this crucial framework***."

January 2019: In her last act as Justice Minister & Attorney-General of Canada, Jody Wilson-Raybould issued the **The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples**, essentially instructions for federal lawyers when considering litigation regarding Aboriginal and Treaty rights.

January 2019: Prime Minister Justin Trudeau shuffles Cabinet and demotes **Jody Wilson-Raybould** to Veteran Affairs, transfers **Jane Philpott** to President of Treasury Board and promotes junior Minister **Seamus O'Regan** to Minister of Indigenous Services.

January 2019: **Canada's Collaborative Self-Government Fiscal Policy – Final Draft**.

January 2019: Crown-Indigenous Relations, Senior Assistant Deputy Minister, Joe Wild, begins distributing a document to First Nation organizations entitled: **Developing a New Rights-Based Policy: Summary of Current Approaches** and a Graph showing a process **to replace the existing Comprehensive Land Claims Policy and the Inherent Right Policy with a new rights-based policy, by June 2019**, "*based on the lessons learned from the over 75 Recognition of Indigenous Rights and Self-Determination discussion tables, as well as about 50 active modern treaty and self-government negotiation tables (as of December 1, 2018)*."

April 2019: Federal government introduces an Omnibus Budget **Bill C-97 An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures** (First Reading April 8, 2019), buried in the Bill is legislation to dissolve the Department of Indian Affairs and create two new federal departments (Indigenous Services & Crown-Indigenous Relations).

May 1-2, 2019: **AFN Policy Forum on First Nations Led Processes**: The Four Policies ('Inherent

'Chronology of Events' conclusion from page 22

Right', Comprehensive Land Claims, Specific Claims, Additions-to-Reserves).

May 21, 2019: **Directive for Federal Officials on the Recognition and Implementation of Indigenous Rights** – For Discussion Only.

June 10, 2019: **Joint Indigenous Services Canada-Assembly of First Nations Advisory Committee on Fiscal Relations** presents Draft Report and 24 Recommendations to Minister of Indigenous Services, Seamus O'Regan, & AFN National Chief Perry Bellegarde.

June 2019: **Bill C-262 An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples**, a Private Member's Bill by Romeo Saganash fails to pass through the Senate due to Conservative Senators procedural delays.

June 21, 2019: **Bill C-91** on Indigenous Languages, **Bill C-92** on Indigenous Children Youth & Family, **Bill C-97** an omnibus Budget Bill containing legislation dissolving the Department of Indian Affairs and creating two new Departments (**Indigenous Services Canada & Indigenous Crown Relations & Northern Affairs Canada**), are proclaimed into law.

June 27, 2019: The federal **Minister of Crown-Indigenous Relations, Carolyn Bennett**, signed "*self-government*" agreements with three provincial groups of the "*Métis Nation*" in Ontario, Alberta and Saskatchewan.

July 23-26, 2019: **AFN Annual General Assembly** to be held in Fredericton, New Brunswick.

June 2017, Prime Minister Justin Trudeau & AFN National Chief Perry Bellegarde sign MOU on Canada-AFN Joint Priorities.

June 27, 2019, Minister of Crown-Indigenous Relations, Carolyn Bennett signs 3 "self-gov't" agreements with 3 groups from "Metis Nation".

The Anishinabek Nation Governance Agreement: A Pre-Ratification Review

by Brock Pitawanakwat

BEFORE YEAR'S END, Canada and the Anishinabek Nation (an organization representing 40 Ontario First Nations and approximately 60,000 members), are seeking to conclude almost 25 years of negotiations for a self-government agreement. This follows the Anishinabek Nation's work to establish the Anishinabek Nation Education Agreement and work on a child welfare law. Indeed, the organization is often cited as an example of a progressive First Nation by Canadian officials like Crown Indigenous Relations Minister Carolyn Bennett.

But does the self-government agreement really deliver on the promised return to nationhood? This Brief considers the content of the draft agreement and whether it provides real alternatives to the Indian Act and self-government policy.

The Extent of Anishinabek Authority

The Anishinabek Nation Governance Agreement (ANGA) would establish two levels of governance: an Anishinabek Nation Government (ANG) and its constituent individual First Nation Governments (FNG). First Nations who belong to the Anishinabek Nation, have written and ratified their own constitution, and also ratify the ANGA in their respective communities would become "First Nation Governments" under the Anishinabek Nation Government.

The Agreement would recognize community law-making authority in four areas that currently fall under the Indian Act: elections or leadership selection; citizenship or membership; language and culture; and additional intergovernmental funding for governance management and operation. If these laws are violated then both the ANG or a FNG can enforce them by imprisonment (to a maximum of six months), issuing and collecting fines (to a maximum of $10,000) or "Anishinaabe sanctions that are consistent with Anishinaabe customs, culture, traditions and values, provided that such sanctions are proportionate to the seriousness of the offence and are not imposed on an offender without his or her consent." Accordingly, the ANG or a FNG can enforce its laws and prosecute its violation.

The ANG would also have a number of independent functions. It would serve as a repository for both its own laws as well as those of its constituent First Nation Governments; enact leadership selection and membership laws; enact laws for culture and language preservation and promotion; enact laws related to the ANG's management and operation including financial administration, roles of its officers, elected officials, and appointees, creation and operation of its institutions; manage access to information and privacy protection; and provide oversight of FNG or the ANG.

This authority would also be brought into harmony with Canadian law, as well as the Anishinabek Nation Education Agreement Act (ANEA) and the First Nations Land Management Act (FNLMA). The ANGA allows for First Nation control of membership but it ensures that First Nations cannot issue Canadian citizenship nor Indian Status under the Indian Act. Chapter 3 of this Agreement provides clauses to ensure that the existing Aboriginal or Treaty Rights and fiduciary relationship between the Crown and First Nations will not be affected. The Canadian Charter of Rights and Freedoms also applies to both the First Nation Governments and the Anishinabek Nation Government. In this sense, it is very similar to the existing "Inherent Right" self-government policy.

Indeed, despite the ongoing concerns with that policy, more similarities exist. For instance, federal and provincial laws would continue to apply to each First Nation, its government, its institutions, its reserves, and all persons on its reserves. For greater certainty, 11.7 states "a federal law in relation to peace, order and good government, criminal law, the protection of the health and safety of all Canadians, the protection of human rights or other matters of overriding national importance, prevails to the extent of a Conflict with a law of a First Nation or the Anishinabek Nation under this Agreement."

'Anishinabek Agreement' continued from page 24

Remarkably, while Bill C-92, the Child Welfare legislation (currently before the House of Commons) moves away from this restrictive aspect of self-government, it remains in place in the ANGA.

One of the reasons offered by its proponents for supporting the ANGA is that it will promote culture and language. The ANGA's provisions in terms of language and culture are limited to its recognition of Anishinaabemowin as an official language and English as a "secondary language." This symbolic recognition of Anishinaabemowin however is contradicted by Chapter 4's requirement that the Anishinabek Nation "establish and maintain an official registry of its laws in English and, at the discretion of the Anishinabek Nation, in Anishinaabemowin." If English is paramount then this characterization of Anishinaabemowin as an official language and English as secondary seems misleading.

Towards Ratification

While those in Anishinabek territory have heard about the ANGA for some time, there is limited information made available to communities to date. Like much of the literature for Anishinabek Nation initiatives, when a specific policy is promoted, there tends to be a lack of critical review. The same seems to be true here. In the drafting of this brief, a number of policy staff in communities were engaged who have yet to see the ANGA, despite requests. Indeed, it is not yet public. A plain-language version on their current website provides few details.

Perhaps not surprisingly, as the Anishinabek Nation begins a campaign to promote the ANGA, a number of concerns have been raised.

In consultations to date, community representatives have asked how the self-governed communities would be funded. Canadian representatives have promised that self-government funding will not be reduced from existing contributions and offered assurances that own-source revenues generated by member First Nations will not be clawed back. Other concerns include whether the new funding formulas will be indexed to inflation. The Anishinabek Nation Fiscal Agreement is also under negotiation and will provide governance funding for the Anishinabek Nation Government and First Nation Governments after they ratify the FNGA. (Yellowhead does not yet have access to the draft Fiscal Agreement).

It is a major concern that communities are ratifying this agreement without knowing its fiscal terms.

Regardless, the Anishinabek Nation is proceeding with ratification. To do so band council resolutions (BCR) supporting the ANGA have been obtained in fifteen of forty communities as of April 2019. The next stage will be a ratification yes vote by a minimum of 25% plus one of eligible voting band members in each First Nation. The campaign is underway. The Anishinabek Nation has created a self-government logo, a website at governancevote.ca and is providing community consultations in support of the ANGA including off-reserve in North Bay, Parry Sound, Sudbury and Sault Ste. Marie in late June. Between August and November, 2019, ratification votes will take place in each community to determine if they will join the proposed Anishinabek Nation Government. Chapter 10 of the ANGA then commits each First Nation to quickly enact a leadership selection law, a citizenship law, and a fiscal administration law (interestingly, Canada has been promoting these types of laws for First Nations generally through capacity building policies). Finally, the ANGA offers direction on its implementation, amendments, and dispute resolution processes.

Beyond the Indian Act, but Barely

In September 2018, the Anishinabek News quoted the Anishinabek Nation ANGA chief negotiator who claimed that the agreement is an opportunity to move beyond the Indian Act and its accompanying economic, education, health and social challenges: "If we continue to govern ourselves the same way under

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the Indian Act, we will just the get the same unacceptable results…poor health, housing shortages, and high unemployment, lack of proper water and sewage treatment systems, and low rates of education. We now have a chance to start turning things around by looking at better ways of governing ourselves…"

The ANGA does not focus any of these socioeconomic issues directly but rather would provide First Nations with governance and legal tools that are actually available to a significant extent via programs offered by Indigenous Services Canada and Crown Indigenous Relations.

Those programs are also designed to breakdown the Indian Act section by section. For example, First Nations that ratify the ANGA would replace sections 8 to 14 and sections 74 to 80. The difference, it seems, is that the Anishinabek Nation is accepting these programs in bulk, as an aggregate organization.

In that sense, it is important to note that as a chiefs organization, the Anishinabek Nation is promoting changes that will empower existing chiefs and councils. The band council as it currently exists will change very little under the ANGA. While Anishinabek Nation Grand Council Chief Glen Hare told CTV News last month, "Basically, we want to rule our own", there is little tangible move away from federal oversight.

For instance, the current Indian Act requirement of band elections every two years is one example provided by the Anishinabek Nation of a potential improvement under the ANGA. The ANGA allows for changes to elections and leadership laws including qualifications for serving as chief or councillor and term lengths between elections. But so does federal policy flowing from the First Nations Election Act (2014). There is no discernable difference between the two processes except the ANGA version is called self-government.

Another concern is the degree of uncertainty still in play. Chapter 13 of the ANGA provides a long list of issues not yet addressed and instead reserved for, "Future Negotiations…[including]: social services, administration of justice, health, lands and natural resource management, labour and training, marriage, divorce, economic development including the licensing, regulation and operation of businesses, public words and infrastructure, housing, Indian monies, wills and estates, emergency preparedness, taxation, local traffic and transportation, environmental protection, conservation and assessment, policing, any other matters agreed to by the Parties." It seems Anishinabek citizens will have to vote, and then wait to see how these new governance and legal tools will be applied or negotiated.

In other words, there is still much to address and discuss with the ANGA.

From an early review, it appears that the Agreement offers Anishinabek communities self-government policies that are already available to First Nations, and in some cases considered outdated or even already rejected. It is the hope the significant opportunities for conversation are afforded during the ANGA consultation process, and most importantly, that communities know what they are voting on and who it benefits.

[Editor's Note: Brock Pitawanakwat (Anishinaabe, Whitefish River First Nation) is an Associate Professor in Indigenous Studies at York University. This is a reprint from the Yellowhead Institute. The Institute is a First Nation-led research centre based in the Faculty of Arts at Ryerson University in Toronto, Ontario.]

Anishinabek Nation nearing end of 'long journey'

Former Anishinabek Nation Grand Council chief Patrick Madahbee speaks about the Anishinabek Nation governance agreement during an information session at the North Bay Indigenous Friendship Centre. (Photo courtesy of Michael Lee/The Nugget JPG, NB)

By Michael Lee

The Anishinabek Nation will hold a vote this fall on an agreement nearly 25 years in the making that will give its 40 member First Nations, including Nipissing and Dokis, the ability to craft their own laws around elections, citizenship, language and culture.

If ratified between August and November when the voting period takes place, the Anishinabek Nation Governance Agreement will recognize the nation and its members as governments and remove them from parts of the Indian Act that cover band lists, elections for chief and council and meeting procedures.

The agreement comes with up to seven times more funding for governance, including for elections and government operations, and will set the stage for an intergovernmental forum with the prime minister and cabinet, similar to a First Ministers' meeting with Canada's premiers.

The forum, which would give First Nations a chance to discuss specific issues with the appropriate ministers, will be the first of its type for any self-government agreement in the country.

Nipissing and Dokis First Nations have yet to decide whether they will hold votes this fall.

"If every one of our First Nations communities come together to ratify this, this will represent the biggest self-governance agreement in Canadian history," Anishinabek Nation Governance Agreement chief negotiator Martin Bayer says.

"And so in recognition of that, and in recognition that we still maintain that Canada has a fiduciary relationship to its First Nations, we want to make sure that the Government of Canada is still there if we want to have discussions on matters that are important to our communities."

Bayer and others recently held an information session at the North Bay Indigenous Friendship Centre to give citizens a chance to learn more about the agreement before casting their vote later this year. Similar sessions are planned for Parry Sound, Sudbury and Sault Ste. Marie.

Audrey Commanda of Nipissing First Nation, who attended the North Bay meeting along with a few others, has been following the negotiations from the start and says she believes the agreement will empower citizens to move beyond issues such as poverty or a lack of funding, and create the future they rightly deserve.

"In the end, it's going to be the best thing for everyone in all the First Nations across Canada," she says.

Work on a governance agreement began in 1995 with the signing of an Anishinabek Nation Grand Council resolution which authorized negotiations.

A framework was agreed to in 1998 and an agreement-in-principle was signed in 2007.

Even with a federal election scheduled for this fall, former Anishinabek Nation Grand Council chief Patrick Madahbee says any government would be hard pressed to "scuttle" something that different parties have been involved in for years.

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"I look at it as an opportunity our First Nations should not let pass," he says. "We've been talking about taking back our jurisdiction and responsibility in a lot of areas, and governance is key because we need to be in a position where we make our own path, our own laws, and get out of the Indian Act which, as I said, has been controlling us from cradle to grave."

As part of the agreement, First Nations would be allowed to determine citizenship rights and responsibilities, qualifications for office and finance management laws, including not being forced to disclose salaries, honorariums and travel expenses of chief and council.

First Nations also may extend terms of office for chief and council, which are currently limited to two years under the Indian Act.

Members are allowed to run for re-election, but the short terms mean communities hold near constant elections,

Of the 40 communities in the Anishinabek Nation, 18 will hold elections by November, Bayer says. Changing this system will not only give them greater stability, but allow them to tackle other issues such as housing shortages, health challenges, education reform, infrastructure, and possibly even develop their own court systems, he says.

"I think it represents an end of a long journey we've been engaging with our people."

This story has been corrected to say Nipissing and Dokis First Nations have yet to decide whether they will hold votes on the Anishinabek Nation Governance Agreement. **[Editor's Note: This is a reprint of a North Bay Nugget article from July 1, 2019.]**