SHAPE-SHIFTING COLONIALISM
TRUDEAU’S TWO-TRACK TERMINATION PLAN

SECWEPEMC RESISTANCE TO KINDER MORGAN PIPELINE EXPANSION

Presented By
Russell Diabo, Defenders of the Land Network
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Liberal Indigenous Platform Commitments

2015 Election
Trudeau’s Major 2015 Indigenous Platform Promises

- Nation-to-Nation Process
- National Reconciliation Framework
- Enact the 94 TRC recommendations, including adoption of UNDRIP.
- Recognize and respect Aboriginal title & rights in accordance with Canada’s Constitutional obligations, and further those enshrined in UNDRIP.
Trudeau’s Major 2015 Indigenous Platform Promises

- Immediately lift the two percent cap on funding for First Nations programs, and establish a new fiscal relationship with First Nations.

- Launch a national public inquiry into missing and murdered indigenous women.
Trudeau’s Major 2015 Indigenous Platform Promises

- Undertake a full review of regulatory law, policies, and operational practices, in full partnership and consultation with First Nations to ensure that the Crown is fully executing its consultation, accommodation, and consent obligations, including on resource development and energy infrastructure project reviews and assessments, in accordance with our constitutional and international human rights obligations.
Trudeau’s Two-Track Termination Plan

Sec. 91.24

Sec. 35
Trudeau’s Two-Track Termination Plan

91(24) - 1867
- Maintain Indian Act
- Legislation Over First Nations (Fiscal Institutions, FNLMAs, etc.)
- On-Reserve Programs & Services: Infrastructure, Housing & Education, etc. (Budget 2016: $8.4 Billion-5 Years)

Sec. 35 - 1982
- Unilateral Aboriginal & Treaty Rights Interpretation (Federal Consultation Policy)
- Self-Gov’t Policy (Municipalization)
- Land Claims Policies (Denial & Extinguishment)
- SCC Decisions/Legal Tests
- TRC Calls to Action & UNDRIP Articles (Nat’l Reconciliation Table)
FATHERS OF COLONIALISM

First legislative Assembly July 1, 1867
CONSTITUTION ACT 1982
SCC Aboriginal Rights Test
R. v Van Der Peet (1996)

- The right must involve an activity that was a “practice, tradition or custom [that] was a central and significant part of the [Aboriginal] society’s distinctive nature.

- The activity must have existed prior to contact with European settlers.

- The activity, even if evolved into modern forms, must be one that continued to exist after 1982, when the Constitution Act was passed.
Comprehensive Claims Settlements
Comprehensive Land Claims & Self-Government Tables

The Government of Canada negotiates Comprehensive Land Claim and Self-Government Agreements with Aboriginal groups and provincial/territorial governments across Canada.

Visit the: Aboriginal and Treaty Rights Information System (ATRIS) [Link]

<table>
<thead>
<tr>
<th>Aboriginal Group</th>
<th>Participating Aboriginal Communities</th>
<th>Population</th>
<th>Date claim was accepted</th>
<th>Type of Process</th>
<th>Current Stage of Negotiations</th>
<th>Provincial / Territorial Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mi'kmag of Prince Edward Island*</td>
<td>Lennox Island, Abegweit</td>
<td>1,500</td>
<td>2003</td>
<td>Comprehensive Land Claim with Self-Government</td>
<td>Exploratory Discussions</td>
<td>No</td>
</tr>
</tbody>
</table>

[CFNG.jpg]
BCTC Negotiations
3 Classes of Aboriginal Title First Nations

The federal implementation of Canada's Comprehensive Claims Policy (CCP) has led to three main classes of Aboriginal Title First Nations:

i. First Nations that have entered in final comprehensive claims agreements;

ii. First Nations that were or have been in comprehensive claims negotiations; and,

iii. First Nations that have never agreed to negotiate under the federal CCP.
FEDERAL “CORE MANDATES” = KEY GOALS/CLAUSES

- Getting consent to the extinguishment (modification) of Aboriginal Title;
- Getting consent on the legal release of Crown liability for past violations of Aboriginal Title & Rights;
- Getting consent to the elimination of Indian Reserves by accepting lands as private property (fee simple);
- Getting consent to removing on-reserve tax exemptions;
FEDERAL “CORE MANDATES” = KEY GOALS/CLAUSES

- Getting consent to respect existing Private Lands/Third Party Interests (and therefore alienation of Aboriginal Title territory without compensation);
- Getting consent to be assimilated into existing federal & provincial laws;
- Getting consent to application of Canadian Charter of Rights & Freedoms over governance & institutions in all matters (individual vs. collective rights);
- Getting consent to program funding on a formula basis being linked to own source revenue;
Extinguishment of Aboriginal Title - Legal Techniques

- certainty and finality;
- modified and released;
and
- Non-assertion of rights.
Cash & Land: The Comprehensive Claims Formula: $25,600 per head 9.3 Hectares (23 acres) per head
Selected Articles of UNDRIP

- **Article 3** – Right to Self-Determination.
- **Article 10** – No forced removal w/o FPIC.
- **Article 19** – FPIC required before legislation/administration measures.
- **Article 26** – Rights to lands, territories, resources.
- **Article 27** – Fair process jointly developed to adjudicate rights to lands, territories, resources.
- **Article 32** – FPIC required for and development affecting lands, territories, resources.
- **Article 37** – Rights from Treaties, agreements, constructive arrangements.
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

“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

“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.
Jody Wilson-Raybould
Trudeau’s Salesperson &
“Minister of Colonization”
Trudeau’s Nation-to Nation Process = Using AFN & Chiefs

- AFN accepted a Joint AFN-Cabinet Committee process on “shared priorities” where Trudeau has a veto on agenda items and process while AFN becomes a rubber stamp because a majority of Chiefs across Canada are coopted and compromised at federal negotiation (termination) tables (Over 400+ of 630). Moreover, the colonized management class of First Nations—from the band office level to AFN—is focused on administering the Federal Budget 2016 $8.4 billion 5-year allocation for programs and services.
AFN-Canada National Reconciliation Table

First Nations
- First Nations mandates from resolutions
- Government mandates from mandate letters, election platform

Reconciliation Table
- Tasked with developing options
- High Level Political Table
- Technical Tables

Decision-making
- Chiefs-in-Assembly resolution to proceed
- Internal government approvals process

Joint Policy Development
- Joint policy and legislative development tables
Trudeau’s Nation-to-Nation Process in BC

- FN Leadership Council
- UBCIC Chiefs’ Council
- Shuswap Nation Tribal Council
- SNTC Band Chiefs & Councils
What Do Secwepemc Do About Land & Water Defense?

- Organize a Secwepemc Gathering of Title/Rights Holders to take an official decision on Kinder-Morgan Pipeline Expansion.
- Direct Action/Assertion of Rights.
- Public Education.
- National & International Campaign.
- Political/Negotiation/Pre-Litigation Strategy
- Litigation
- Policy Development
Conclusion