

March 17, 2021

Brief to the Standing Committee on Indigenous and Northern Affairs on Bill C-15 United Nations Declaration on the Rights of Indigenous Peoples Act

Respectfully submitted by Edward H. Lipsett, B.A. LL.B.

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I respectfully suggest that Bill C-15 not be enacted into law. This is largely for the reasons which I expressed in my Submission to the Standing Committee on Indigenous and Northern Affairs on Bill C-262 United Nations Declaration on the Rights of Indigenous Peoples Act which was published on Monday, March 12, 2018 and my "Brief to the Standing Senate Committee on Aboriginal Peoples on Bill C-262 United Nations Declaration on the Rights of Indigenous Peoples Act" of May 11, 2019. However, in light of some differences in the current Bill and the continued controversy on subject, I believe that several additional comments are in order.

Even though it may not be the intention of the Government to directly alter Canadian law with this Bill, some of its provisions seem to leave open that possibility, and thus create great uncertainty. Section 4(a) though somewhat different from s. 3 of Bill C-262, still uses the expression "affirm the Declaration as a universal human right instrument with application in Canadian law." Furthermore, its preamble states "Whereas the Declaration is affirmed as a source for the interpretation of Canadian law."

Even if this Bill doesn't directly incorporate the Declaration into Canadian law, the apparent promise to implement it completely is in my respectful opinion, inappropriate. The Declaration does indeed contain many sound principles which provide valuable guidance for the reform of Canadian law. However, as already widely recognized, some of its provisions (at least depending on how they are interpreted or applied) could prove highly problematic.

Perhaps if it is deemed necessary to legislate concerning the Declaration, an act establishing a Commission to examine Canada's laws in light of the Declaration would be preferable to this Bill. The Commission (which would be composed of an equal number of Indigenous and non-Indigenous members) would be authorized to make recommendations for reform which would be consistent with the Declaration and also consistent with Canada's Constitution, values, needs and interests.

Should Parliament decide to proceed with this Bill, I would at least recommend the following amendments:

- The provision in the preamble "Whereas the Declaration is affirmed as a source for the interpretation of Canadian law" be removed.
- -Subsection 2(3) "Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law" be removed.
- Section 4 be replaced with: 4(1) the purpose of this Act is to
  - (a) acknowledge the Declaration as a universal human rights instrument containing valuable guidance for reform of Canadian law; and
  - (b) provide a framework for the examination of Canadian law in light of the Declaration

- (2) Nothing in this Act is to be construed as altering Canadian law in any way
- Perhaps sections 5 to 7 should be replaced with (something like):

5(1) The Government of Canada must appoint a Commission to review all laws of Canada and to make recommendations for reform which would be consistent with the Declaration and also consistent with Canada's Constitution, values, needs and interests.

(2) The Commission shall have at least twelve members, half of whom shall be members of Indigenous peoples and half of whom shall be non-Indigenous"

I must reiterate that I am not challenging the need for reconciliation with the Indigenous peoples and remedy the injustices they are suffering. However, Canada already has the constitutional and legal tools to accomplish these vital aims. Unqualified implementation of the Declaration might, however, reduce our discretion and the possibility of flexibility in these matters. An inflexible or imbalanced approach could imperil the goal of reconciliation and indeed harm the Indigenous peoples the Declaration was designed to protect. I humbly and respectfully suggest a more cautious approach to the Declaration, and request that my alternative recommendations be considered.

Thank you for your kind attention to this submission.

Respectfully,

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