
HOUSE OF COMMONS STANDING COMMITTEE ON INDIGENOUS AND NORTHERN AFFAIRS

In the Matter of
Subject Matter of Bill C-15, An Act Respecting The United Nations Declaration
on The Rights of Indigenous Peoples

“Making UNDRIP Enforceable in Canada”

Submission of Grand Chief Garrison Settee
Manitoba Keewatinowi Okimakanak, Inc.

Odawa Territory, House of Commons, Parliament Buildings, Ottawa, Ontario – April 8, 2021

Tansi, Boozhoo, Edlane'te, hello. On behalf of the 63,000 First Nation citizens of the 26 northern Manitoba First Nations affiliated with the Manitoba Keewatinowi Okimakanak, Inc., I am pleased to be able to share MKO's views on Bill C-15, *An Act Respecting the United Nations Declaration on The Rights of Indigenous Peoples*.

Context and Background of MKO Comments and Recommendations:

MKO closely followed the development of the United Nations Declaration on the Rights of Indigenous Peoples (the “Declaration”). MKO was deeply disappointed when Canada voted “no” on September 13, 2007, along with Australia, New Zealand and the United States. The MKO First Nations and MKO raised our voices to call on Canada to recognize and endorse the Declaration and were pleased when Canada announced on May 10, 2016 that “*Canada is now a full supporter of the [United Nations Declaration on the Rights of Indigenous Peoples] without qualification*”.

Since Canada's endorsement of the Declaration, MKO has been looking forward to the Government of Canada enacting legislation to affirmatively implement the Declaration in Canada and to enacting a statutory framework that would “make UNDRIP enforceable in Canada”.

MKO wants to share five principles that are important to this Committee's consideration of how Bill C-15, as proposed to be amended by MKO, will support and enhance our Treaty, political, constitutional and legal relationship with Her Majesty the Queen in Right of Canada and of the rights of the MKO First Nations and of our citizens.

- ✓ the Treaty relationship, the inherent sovereignty of our Nations and the joint commitment to nation-building;
- ✓ "Our Laws Are in Our Language";
- ✓ *Keewatinook Ininew Okimowin*; and
- ✓ Consultation, Justification, Accommodation, and
- ✓ Free Prior and Informed Consent

The Treaty-making process acknowledges and recognizes our Creator-granted Sovereignty and authority within our traditional homelands.

The MKO First Nations entered into Treaty Number Four, 1874 (the "Qu'Appelle Treaty"), Treaty Number 5, 1875-1910 (the "Winnipeg Treaty"), Treaty Number 6, 1876 (the "Treaties at Fort Carlton and Pitt") and Treaty Number 10, 1908.

The MKO First Nations have also entered into other treaties and agreements with governments, including the modern-day treaty of the *Northern Flood Agreement* originally entered into by five MKO First Nations on December 16, 1977.

These Treaties and agreements establish relationships that are intended by the Crown to reconcile the Aboriginal title of the MKO First Nations to our homelands and traditional territories. The Treaty medal that today symbolically represents the MKO organization confirms our inherent sovereignty and our joint commitment to nation-building that is bound by our Treaty promises of sharing, peace and good will and founded on principles of mutual faith, recognition, honour and respect.

The MKO approach is to seek solutions where First Nation governments and our citizens: develop and exercise systems to protect the inherent rights, human rights and constitutionally recognized and affirmed rights of First Nation citizens in accord with the customs, traditions, principles and beliefs of the First Nations; to address and resolve the persistent inequities between First Nation communities and non-Indigenous Canadians in respect of the access to basic community services; and to ensure that the relationship established by Treaties and agreements is honoured, upheld and enforced.

The principles of the Declaration reflect, support and are consistent with the exercise of the sovereignty, authority and jurisdiction of the MKO First Nations, the practical recognition and affirmation of the rights of the MKO First Nations and support MKO approach and objectives.

Bill C-15, An Act Respecting the United Nations Declaration on The Rights of Indigenous Peoples

A question asked by many MKO citizens is:

“Is UNDRIP Enforceable in Canada?”

Answer:

“No”

A further question asked by many MKO citizens is:

“Will Bill C-15 make UNDRIP enforceable in Canada?”

Answer:

“No”

The follow-up question being asked by many MKO citizens is:

“Can Bill C-15 be Amended to make UNDRIP Enforceable in Canada?”

Answer:

“Yes”

Objectives of the MKO Amendments to Bill C-15:

The objective of the amendments to C-15 being proposed by MKO are "to make the principles of UNDRIP enforceable in Canada."

As set out in the March 25, 2021 presentation of Chief David Monias of the Pimicikamak Cree Nation entitled, "Making UNDRIP Enforceable in Canada":

"The central objective in making the principles of UNDRIP enforceable in Canada is to turn the legal and constitutional paradigm around 180 degrees..."

"...by having mining companies and forestry companies and energy companies take Canada to court over actions taken by government to recognize, affirm and protect Indigenous rights..."

"...instead of the current and historic paradigm in which First Nations endlessly take Canada to court for failing to take actions to recognize, affirm and protect Indigenous rights..."

The "Lessons Learned" about the practical enforcement of rights recognized and affirmed by s. 35 of the *Constitution Act, 1982* is that, since 1982, Canada has done a very poor job of making administrative and judicial decisions to practically enforce the protection of rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*.

In 1991 and as a means to address the lack of practical enforcement of rights recognized and affirmed by s. 35 of the *Constitution Act, 1982*, the Manitoba Aboriginal Justice Inquiry co-chaired by the then-Justice Murray Sinclair and the late Justice Alvin Hamilton recommended that:

"The Interpretation Acts of Manitoba and Canada be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights."

The *Manitoba Interpretation Act* was finally amended further to the recommendation of the Manitoba Aboriginal Justice Implementation Commission to include at Section 8 of the Act:

“Aboriginal rights protected

8 No Act or regulation is to be interpreted so as to abrogate or derogate from the aboriginal and treaty rights of the aboriginal peoples of Canada that are recognized and affirmed by section 35 of the Constitution Act, 1982.”

MKO’s Initial Recommendations as to Amendments to Bill C-15:

1. C-15 to include a consequential amendment of the federal *Interpretation Act* to establish an enforceable “UNDRIP affirmation clause”:

“Every Act or regulation is to be interpreted and administered in accordance with the United Nations Declaration on the rights of Indigenous Peoples and no Act or regulation is to be interpreted or administered so as to abrogate or derogate from that Declaration.”

2. Amend Section 4(a) of Bill C-15 by stating:

“The purpose of this Act is to:

- a) affirm the Declaration as a universal international human rights instrument and expression of binding principles of international treaty law and customary international law with application in Canadian law as both a source of interpretation and source of law.”***

3. Amend Section 2 of C-15 by replacing the present non-derogation clause to reflect the language of the proposed consequential amendment to the *Interpretation Act*:

“This Act is to be interpreted and administered as protecting the aboriginal or treaty rights of the Indigenous peoples of Canada that are recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.”

4. Amend C-15 by including the following clause:

“This Act is to be interpreted and administered as upholding the rights of Indigenous peoples as proclaimed in the Declaration and nothing in this Act is to be interpreted or administered so as to diminish, abrogate or derogate from those rights.”

5. Taking into account s. 17 of the *Interpretation Act*, amend Bill C-15 to ensure the Crown is bound by the amended Bill C-15 and the requirement to enforce the principles of UNDRIP in Canada:

“The Crown is bound by this Act” or “This Act is binding on Her Majesty in right of Canada”.

6. Include in Bill C-15 a consequential amendment of the federal *Interpretation Act* to include a Universal Non-Derogation clause similar in structure to the recommended UNDRIP affirmation clause:

“Every Act and regulation is to be interpreted and administered as protecting the aboriginal or treaty rights of the Indigenous peoples of Canada that are recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.”

7. That Bill C-15 also include further amendments, including consequential amendments to other Acts, that also provide for:
- a) unequivocal direction that the MKO amendments of an “UNDRIP affirmation clause” and the non-derogation clauses as a consequential amendment in in the *Interpretation Act* and in Bill C-15 contain a further provision that the “UNDRIP affirmation clause” and non-derogation clauses are to be enforceable as being “read-in” to the interpretation and administration of all federal statutes, with the effect that officials must affirmatively act to protect Indigenous rights in accordance with s. 35 of the *Constitution Act, 1982* and in accordance with the Declaration whether or not there are express statutory mechanisms to provide for the administrative decision, act or actions necessary to give practical effect to the protection of Indigenous rights;
 - b) a clear provision that any non-derogation provision in the *Interpretation Act* will be **constructive** in terms of processes and mechanisms that will be established, implemented, monitored and enforced, as distinct from merely **presumptive** in respect of the correctness of any action or decision of the federal government; and
 - c) the development of a judicially reviewable and enforceable code of conduct and policy and procedure applicable to all of the Government of Canada in order to give practical effect to the inclusion of the recommended “UNDRIP affirmation clause” and the non-derogation clauses to be included in the federal *Interpretation Act* and in Bill C-15.