

CONFEDERACY OF **TREATY SIX** FIRST NATIONS



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Standing Committee on Indigenous and Northern Affairs
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SUBMISSION TO THE STANDING COMMITTEE ON C15

The Confederacy of Treaty Six Chiefs representing sixteen (16) Treaty Nations are allied working on common issues related to our Treaty. Our Nations entered into a Peace and Friendship Treaty with the British Crown in 1876 – there are adhesions to the Treaty – Ermineskin and O’Chiese. It does not change the fact that Treaty No. 6 is a Peace and Friendship that our ancestors agreed to allow the Queen’s subjects to live in our territory and use our lands to the depth of a plough. This was the specific request of the Treaty Commissioner – when asked how much land do you want to use? He answered on behalf of the Queen – the depth of a plough. There was no land surrender or release. This is an important aspect of this discussion on the legislation.

Canada has been taking advantage of the role to bring honour to the Crown. Rather than considering the actions of the state in relation to our rights, the government of Canada has made decisions that will affect our rights and the treaty relationship. We had wanted to appear in person but were not invited. Where is the honour?

C15

Bill C-15. *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* was introduced with no warning to the Nations. Then, the Christmas break and parliamentary recess was quickly followed by the second reading of the Bill was on the 17th of February 2021. In the time of pandemic, what is the rush? There was no process to engage our Peoples. The present process does not bring honour to the Crown. There is NO consent of the Treaty Peoples in Alberta. We are attaching the Treaty Chiefs of Alberta working in unity unanimously rejected Bill C15 – CANDRIP.

It is important to remember that our Nations did not make treaty with Canada. Our Treaty is with the Crown in Right of Great Britain and Ireland. Canada was created by the British North America Act of the Imperial Parliament in 1867. Canada has been trying to get a hold of our lands and territories since its creation in 1867. This legislation is another attempt to secure itself as a “sovereign state”. Bill C15 is **ONLY seven (7) sections**. No implementation plans but legislation to develop a plan. This could be done outside of the legislative agenda. What is the Liberal government really doing?

UNDRIP VERSUS CANDRIP

The history of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was an initiative of the world’s Indigenous Peoples. The language and drafting were driven by Indigenous Nations until the UNDRIP reached the General Assembly. Then, Canada along with New Zealand, Australia and United States made changes to protect themselves. Other instruments within the United Nations system are able to protect the international rights of Indigenous Peoples. The one major change was the last-minute amendment to UNDRIP:

Article 46.

Article 46 1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the ***territorial integrity or political unity of sovereign and independent States***.

An analysis by Opaskwayak Cree Nation Lawyer Ken Young points out:

By Article 46, Canada, as a ***sovereign and independent State*** will have its sovereignty through its constitutional framework protected. No exercise of rights activity which might impair Canada's sovereignty will be sanctioned. Sub-articles 2 and 3 provide no room for rights activity which would impair Canada's sovereignty. The exercise of any rights enunciated in the UNDRIP will be limited by law, principles of justice, democracy and good governance. In other words, the rule of law in Canada will prevail to protect its sovereignty from any rights activity which might impair it.

If the nations did not give up our territories at the time of the Treaty Making – what happens when the state claims all our land? As Treaty Peoples, we cannot change the Peace and Friendship Treaties. Master of the Rolls Lord Denning in 1982 *Commonwealth Affairs, ex parte: The Indian Association of Alberta, Union of New Brunswick Indians, Union of Nova Scotian Indians* [1981] 4 C.N.L.R. 86 recognized this very fact. He wrote that: “When the Crown became divisible, the obligations which were previously binding on the Crown simpliciter were also divided. As a result, the obligations of the Crown under the Royal Proclamation and the Indian treaties became the obligations of the Crown in respect of Canada”.

The Royal Proclamation recognized our right to free, prior and informed consent on matters related to our lands and resources. The Royal Proclamation recognized our rights as Nations and Tribes and our territories could not be entered without our consent in a public meeting having all the information related to the request of the Crown. This did not take place in the drafting of this Bill.

There are a number of problems with the proposed bill –

1. What process was used to get to this draft? There was no engagement at the Nation level. Rather it appears that the Liberal government used the Assembly of First Nations (AFN) – an organization that did not make treaties with anyone to create the legislation. There is no mandate from the Chiefs who created the AFN to engage in the drafting any legislation related UNDRIP. AFN tried to correct their error, in December 2020, a resolution presented at the virtual meeting of AFN to give them authority. It was withdrawn when a lot of opposition was expressed by the Chiefs. No mandate was given to AFN by the Chiefs.
2. There was no recognition of our right to free, prior and informed consent despite the right being recognized by the United Nations in numerous decisions made by the Committee on the Elimination of Racial Discrimination (CERD). Canada has been asked to implement these rights. Canada says that free, prior and informed consent would mean that Indigenous Peoples could ‘veto’ projects in their territories. It is an essential right of the Nations to protect and care for their territories as a fundamental right recognized by the Crown since 1763 in the Royal Proclamation.
3. The draft Bill changes the international definition of Indigenous Peoples. The international definition of Indigenous Peoples covered by the Declaration is based on the precedent set by the United Nations in the *Cobo Study* from 1972 (E/CN.4/Sub.2/1982/2/Add.6). The whole definition is included because Canada is attempting to use domestic law to change an international standard into a pan aboriginal definition without any international significance is in complete violation of our rights as Peoples.

“Indigenous communities, peoples and nations are those which, having a historical continuity with **pre-invasion and pre-colonial societies** that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them.

They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”

“This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- a) Occupation of ancestral lands, or at least of part of them;
- b) Common ancestry with the original occupants of these lands;
- c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- e) Residence on certain parts of the country, or in certain regions of the world;
- f) Other relevant factors.”

“On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

“This preserves for these communities **the sovereign right and power to decide** who belongs to them, without external interference”

- 4. Since 1972, the United Nations has recognized our sovereign right to decide who are our Peoples’. The Crown, in making Treaty with our ancestors, accepted our right to determine our own treaty paylists. We have a treaty right to decide our citizenship. This legislation is similar to the way Canada changed its obligations under the Genocide Convention. Canada enacted provisions in the Criminal Code related to Genocide omitting a key international standard - the section related to the forcible transfer of children – read residential schools. C15 changes key components in relation to our territories, our treaties and our peoples in CANDRIP.
- 5. The definition in C15 is “pan aboriginal” – meaning within the Constitution of Canada and not the United Nations. Does Canada have authority to unilaterally change an international definition?
- 6. Everything is within the Constitution of Canada – which really defeats the purpose of the old people who went to the United Nations in the 1970’s. It was to get justice as Nations not to be incorporated into Canada as set out in the 1969 White Paper. We have come full circle. Canada is finally implementing Pierre Trudeau’s vision as outlined in his white paper policy of 1969.
- 7. There is no intention by Canada to have the international community oversee any of the work that Canada would do on the implementation. In effect, you will have 186 different state standards if every state adopts the declaration. This defeats the purpose of an international standard on rights.
- 8. What international standards allows for a resolution of the General Assembly to be subject to one jurisdiction’s legislation? There should be an investigation by the members of the Committee and a paper prepared for the whole House to consider prior to the next reading.

On behalf of the Confederacy of Treaty Six Chiefs – we submit the resolution of the Alberta All Chiefs Assembly rejecting CANDRIP and further make the following recommendations.

1. **RECOMMEND THE WITHDRAWAL OF THE BILL AND WORK ON A REAL PLAN FOR RECONCILIATION THAT DOES NOT CREATE MORE DISHONOUR TO THE CROWN.**
2. **THE REAL PROBLEM: THE WHOLE BILL IS TO CREATE AN ACTION PLAN WITHIN THREE YEARS. BUT ONLY AN ACTION PLAN – NO MONEY ATTACHED.**
3. **IF THERE WAS CHANGES MADE TO THE LEGISLATION –ALL DECISIONS TAKEN UNDER THE ACTION PLAN SHOULD BE REVIEWED YEARLY BY THE GENERAL ASSEMBLY.**

Respectfully in the Spirit of Treaty No 6.,

A handwritten signature in blue ink, appearing to read 'Vernon Watchmaker', with a stylized, flowing script.

Grand Chief - Okimaw Vernon Watchmaker

CC Assembly of Treaty No. 6 Chiefs
 Prime Minister Justine Trudeau
 Minister Marc Miller
 Minister Carolyn Bennett

Attachments: Resolution: R04/2021/03/16 – Bill C-15 “CANDRIP”



Treaty No. 6

Treaty No. 7

Treaty No. 8

**2021 Winter Sitting AoTC on Health
Treaty No. 6 – Treaty No. 7, Treaty No. 8 (Alberta)
March 16 & 17, 2021
Treaty No. 6 Territory, AB**

OFFICIAL RESOLUTION

Resolution: R04/2021/03/16
Subject: Bill C-15 "CANDRIP"
Moved by: Chief Roy Whitney, Tsuu T'ina Nation
Seconded by: Chief Rupert Meneen, Tallcree First Nation
Decision: PASSED

WHEREAS:

1. The Treaty Chiefs of Treaty No. 6, Treaty No. 7, Treaty No. 8 (Alberta) did meet in a duly convened meeting at the offices of the Tribal Chiefs Ventures in Treaty No. 6 Territory on March 16 and 17, 2021;
2. The Chiefs derive their authority from the Creator and the citizens of their respective Nations/Tribes, and in the exercise of their inherent authority and Treaty Rights are beneficiaries of all aspects of international law;
3. Indigenous Peoples over a period of five years from 1985 until 1990 drafted at the United Nations, a Declaration on their rights;
4. The United Nations system dominated by state governments took until 2007 to pass a resolution at the General Assembly, a greatly changed original Declaration;
5. The final document contained language designed to integrate our lands into the state of Canada in complete violation of our Peace and Friendship Treaties;

6. Canada working with the Assembly of First Nations and other organizations drafted Bill C-15 to enact the United Nations Declaration on Indigenous Peoples into Canadian Law;
7. Organizations are not rights holders;
8. There was no process to engage the Nations on any discussion on the contents of the Bill C-15;
9. Bill C-15 changes the definition of Indigenous Peoples who were present at the time of contact (which is the United Nations definition) to a "pan aboriginal" definition using Canada's *Constitution Act*, 1982;
10. Bill C-15 would ensure that Canada has territorial integrity over our territories despite our Peace and Friendship Treaties;
11. In 2012, the United Nations Committee on the Elimination of Racial Discrimination asked Canada to provide the UN with document or documents to show that the state owned the territories and resources of Indigenous Peoples;
12. To this date, Canada has not provided those documents;
13. Bill C-15 would be evidence of Canada's ownership of our territories and resources;
14. Bill C-15 was read into Parliament on December 3, 2020, with second reading on February 17, 2021; and
15. There has been no process to engage the Nations leaving the Nations to ask for time before the Standing Committee to voice objections to the present Bill C-15.

THEREFORE BE IT RESOLVED THAT THE ASSEMBLY OF TREATY CHIEFS:

1. Reject Bill C-15 in it's entirety;
2. Ask Canada be asked to withdraw Bill C-15;
3. Direct Canada start to engage in processes that respect our Treaties and our right to free, prior and informed consent;
4. Will appear at the Standing Committee to present their case against Bill C-15;
5. Prepare a draft submission to the Standing Committee, for the House of Commons Standing Committee and the Senate Standing Committee;

6. Instruct the appropriate department/s to forward Resolution #04/2021 and corresponding material to the appropriate departments within the Treaty No. 6, Treaty No. 7, Treaty No. 8 (Alberta) First Nations; and
7. Finally, that the research team report to the Assembly of Treaty Chiefs of Treaty No. 6, Treaty No. 7, Treaty No. 8 (Alberta) as to the status or progress in relation to this directive at the Summer or Fall Sitting of the AoTC.

Certified Correct:


Sharon Venne, Resolutions Chairperson