



OFIFC

Ontario Federation of
Indigenous Friendship Centres

Response to Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*

April 2021

INTRODUCTION

The OFIFC is pleased to share this submission on Bill C-15, *Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*. It sets our expectations for an adoption of the UNDRIP grounded in reconciliation and able to meet the needs of Indigenous communities now and into the future. As it stands, Bill C-15 falls short of these expectations. A vision of Indigenous wellbeing and resurgence within the urban sphere is put forward.

UNDRIP AS A TOOL OF DECOLONISATION

The adoption of the UNDRIP into Canadian law necessitates an understanding of Indigeneity that reflects the lived reality and diversity of Indigenous people(s). Today, across Canada, the vast majority of Indigenous people reside off-reserve. Nationally, 79.7 percent of Indigenous people live off-reserveⁱ and in Ontario, the proportion of Indigenous people living in urban and rural areas off-reserve is 85.5 percent.ⁱⁱ These demographics echo a global trend of urbanized Indigenous communities and increased migration to urban areas.ⁱⁱⁱ

The Declaration was designed as a bulwark against this perpetually unfolding colonial history, allowing “for Indigenous peoples to reclaim their social, cultural, linguistic, spiritual, political, economic, environmental and legal autonomy.”^{iv} In adopting the UNDRIP domestically, Canada can take steps toward resetting its relationship with Indigenous people, including recalibrating its “reconciliation” approach.

IMPLEMENTING THE UNDRIP: BILL C-15 AMENDMENTS

The OFIFC supports a comprehensive adoption of the Declaration through legislation and a national action plan co-developed with Indigenous partners, including urban Indigenous organizations and communities. Bill C-15, as it stands, does not meet our expectations for inclusivity, action, or oversight. A number of significant improvements must be made for Canada to move beyond neo-colonial tokenism with respect to implementation.

Critically, Bill C-15 should set a new course for Indigenous people and the State. Commitments toward inclusive engagement and a system of assessing legislation, judicial decisions, policies, and programs against UNDRIP principles and standards are required. Explicit oversight mechanisms and enforcement should be built into the legislation to affect measurable change – implementation must include a monitoring and measurement function.^v

Indigenous People’s Right to Self-Determination

Legislation adopting the UNDRIP must affirm its application to all Indigenous peoples with explicit mention of urban Indigenous people. It is recommended that the colonial adherence to a Constitutional definition of Indigeneity is removed from the legislation in favour of an inclusive definition which respects the diversity of Indigenous nations, their

traditional governing systems, and contemporary forms of self-government and representation.

A definition of Indigenous people which hews to the notion that a non-Indigenous, neo-colonial document, the *Constitution Act 1982*, has competency to define Indigeneity is problematic at best, illegitimate at worst. Therefore, the interpretive clause in Section 2(1) which states “[i]n this Act, Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982”^{vi} must, at minimum, be amended to include reference to Indigenous peoples’ own, self-determined mechanisms and approaches to determine Indigeneity and community belonging, in recognition of treaty and Aboriginal rights.

Further, within the preamble, Bill C-15 must:

- Recognize that treaty and Aboriginal rights are not subordinate to the Constitution.
- Recognize that treaty rights holders are people, not corporations, who can be and are identified by Indigenous peoples, not Canada, in keeping with the Declaration.
- Recognize that the people who hold the treaty rights do so regardless of residency.

Affirming Indigenous Diversity: Beyond Three-Streams

Bill C-15 repeats the misguided approach in defining ‘Indigenous peoples’ as well as the ‘Rights of Indigenous peoples’ within the confines of Section 35 of the *Constitution Act, 1982*.^{vii} Allegiance to a “distinctions-based” approach by the federal government is not only flawed, it is limiting in its ability to effect change at the community-level as it ignores the extensive and longstanding urban Indigenous service delivery infrastructure that exists to serve the majority of Indigenous people where they live, in towns, cities and rural areas.

The Preamble must include a recognition that a “distinctions-based”, “three streams” or “First Nation, Metis, Inuit” approach, as enacted by Canada, is inadequate. And that, at a minimum Urban and Two-Spirited must be recognized, as well as the right for all groups to organize and self-determine freely, without fear of sanction or dismissal, and that such organizing will be recognized by Canada in policy and policy implementation.

Consultation and Cooperation: Requirement for Inclusive Engagement

Bill C-15 commits within the preamble and throughout the legislation to “consultation and cooperation” with Indigenous people without defining the mechanism for consultation or cooperation. Furthermore, there is no qualification indicating who within Indigenous communities will be consulted. In order to fulfil the spirit and intent of the Declaration, consultation must be broad and inclusive in order to be effective. Specific mechanisms must be outlined within the legislation.

The federal government will be expected to consult and work cooperatively with a diverse network of Indigenous partners. This must include urban and Two-Spirited people and communities. Urban Indigenous organizations, like the OFIFC and Friendship Centres, should be part of this process. The Friendship Centres are subject experts in meaningful, community-level implementation and rights exercisers, and must therefore be engaged

from the beginning. Bill C-15's section regarding Measures of Consistency of Laws and Achieving the Objectives of the Declaration be amended explicitly to include Urban and Two-Spirited people and communities.

Implementation through a National Action Plan

The first point to be underlined is that an Action Plan is not required to give the Declaration various degrees of force and effect in Canadian law, either as an interpretive aid, as confirmed in the Preamble, or through incorporation of international customary law into Canadian common law. Many principles set out in the Declaration are already part of international customary law, and the Declaration codifies their applicability to specifically Indigenous contexts.^{viii}

Flowing from a broad and inclusive consultation approach, the national action plan should be focused on extremely concrete measures of the realization of the Declaration at the community level in achievement of the spirit and intent of the TRC's specific Calls to Action 43 and 44.^{ix}

In alignment with TRC Call to Action 44, Bill C-15 should set out key action areas including, but not limited to, UNDRIP compliance reviews of multi-jurisdictional legislation and judicial decisions and the development of new policies and programs to improve Indigenous relations in Canada. Additionally, the timeframe for implementation must be accelerated from the defined three years to a maximum of one year.

Enforcement through Monitoring, Oversight, and Reporting

There is no specific enforcement plan within Bill C-15. It is recommended amendments be made to detail how monitoring and enforcement mechanisms will be established beyond the tabling of an annual report. Failing this, the burden of monitoring and enforcement will eventually fall on Indigenous communities who may be forced, once more, to litigate for the protection of their rights.

Indigenous diversity should not only be ascribed as a principle within the legislation but should also be reflected in the development of a national oversight committee that includes equitable urban Indigenous representation. The government should not only commit to reporting annually to Parliament on its progress in achieving the national action plan, but it should also establish formal enforcement mechanisms, such as a national oversight committee, review process, and measurement plan.

CONCLUSION AND RECOMMENDATIONS

Bill C-15 does little that is not already legally required, and also creates uncertainty and confusion around whether or not the Federal government recognizes its existing legal obligations. As the federal government moves toward the implementation of the Declaration, it is recommended that:

1. The federal government engage broadly and proactively with a diverse network of Indigenous partners which include urban Indigenous organizations like the

OFIFC and Friendship Centres throughout every stage of the legislative process.

2. Bill C-15 explicitly define how “consultation and cooperation” with Indigenous people will occur and who will be consulted. Consultation must be broad and inclusive to be effective and fulfill the spirit and intent of the Declaration. Specific mechanisms must be outlined within the legislation.
3. The legislation explicitly affirms its application to all Indigenous people including urban Indigenous and Two-Spirited people.
4. The colonial adherence to a Constitutional definition of Indigeneity is removed from the legislation in favour of an inclusive definition respecting the diversity of Indigenous nations, their traditional governing systems, and contemporary forms of self-government and representation. The preamble of the legislation should be amended to remain consistent with the spirit and intent of the Declaration. Specifically, it must:
 - Include reference to Indigenous peoples’ own, self-determined mechanisms and approaches to determine Indigeneity and community belonging, in recognition of treaty and Aboriginal rights.
 - Recognize that treaty and Aboriginal rights are not subordinate to the Constitution.
 - Recognize that treaty rights holders are people, not corporations, who can be and are identified by Indigenous peoples, not Canada, in keeping with the Declaration.
 - Recognize that the people who hold the treaty rights do so regardless of residency.
5. Bill C-15 sets out key action areas within a National Action Plan including, but not limited to UNDRIP compliance reviews of multi-jurisdictional legislation and judicial decisions and the development of new policies and programs to improve Indigenous relations in Canada.
6. Bill C-15’s section regarding Measures of Consistency of Laws and Achieving the Objectives of the Declaration be amended explicitly to include Urban and Two-Spirited people and communities.
7. The timeframe for the implementation of the National Action Plan must be accelerated from the defined three years to a maximum of one year.
8. Amendments are made to detail how monitoring and enforcement mechanisms will be established beyond the tabling of an annual report.
 - The government should not only commit to reporting annually to Parliament on its progress in achieving the national action plan, but it should also establish formal enforcement mechanisms such as a national oversight committee, review process, and measurement plan.

9. The legislation should outline annual Parliamentary reporting commitments that track progress in achieving the National Action Plan, implementing federal strategies, and achieving other concrete measures in the implementation of the Declaration.
10. The federal government should establish a national oversight committee responsible for monitoring the progress of the National Action Plan that includes urban Indigenous representation.
 - As part of this work, the federal government should seek regular guidance and direction on the implementation of the National Action Plan from the national oversight committee.

ⁱ Statistics Canada, *Census 2016 Results, Data Table: Aboriginal Identity (9), Dwelling Condition (4), Registered or Treaty Indian Status (3), Residence by Aboriginal Geography (10), Age (12) and Sex (3) for the Population in Private Households* (Catalogue number 98-400-X2016164).

ⁱⁱ Statistics Canada, *Census 2016 Results, Data Table: Aboriginal Identity (9), Dwelling Condition (4), Registered or Treaty Indian Status (3), Residence by Aboriginal Geography (10), Age (12) and Sex (3) for the Population in Private Households* (Catalogue number 98-400-X2016164).

ⁱⁱⁱ United Nations. (2010). 'Urban Indigenous peoples and migration: A review of policies, programmes and practices.' United Nations Housing Rights Programme. Retrieved from: <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2916>

^{iv} Fitzgerald, Oonah E. & Larry Chartrand. (2018). 'UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws.' Centre for International Governance Innovation. x. Retrieved from: <https://www.cigionline.org/sites/default/files/documents/UNDRIP%20II%20Special%20Report%20lowres.pdf>

^v Lightfoot, Sheryl. (2018). 'Using Legislation to Implement the UN Declaration on the Rights of Indigenous Peoples.' Centre for International Governance Innovation. 19. Retrieved from: <https://www.cigionline.org/sites/default/files/documents/UNDRIP%20II%20Special%20Report%20lowres.pdf>

^{vi} House of Commons of Canada. (December 2020). 'Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.' Second Session, Forty-third Parliament, 69 Elizabeth II, 2020. Retrieved from: <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading>

^{vii} House of Commons of Canada. (December 2020). 'Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.' Second Session, Forty-third Parliament, 69 Elizabeth II, 2020. Retrieved from: <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading>

^{viii} Hille, Kevin, Roger Townshend, Jaclyn McNamara. *Bill C-15 (UNDRIP Act) Commentary*. Retrieved from: [Bill C-15 \(UNDRIP Act\) Commentary - OKT | Olthuis Kleer Townshend LLP \(oktlaw.com\)](https://www.oktlaw.com/Bill-C-15-UNDRIP-Act-Commentary-OKT-Olthuis-Kleer-Townshend-LLP-oktlaw.com)

^{ix} Truth and Reconciliation Commission of Canada. (2015). 'Calls to Action.' Retrieved from: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf