

Brief to The Standing Committee on Indigenous and Northern Affairs, for the study of the Subject Matter of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples¹.

Introduction

This is my² first submission to parliament on this area of policy as I previously focused on technology law³. I wish to offer myself as an example of a privileged white male who for most of my life was unaware of Canada's record on human rights. I believed what I was told, and now want what I was told to match Canada's actions.

European worldviews were embedded within the UN's conceptualisation of Human Rights as encoded in the Universal Declaration of Human Rights. I do not believe UDHR was ever universal, and consider UNDRIP a critical step in that direction.

I am aware of opposition to UNDRIP as adopted by the UN General Assembly in 2007, as well to Bill C-15 which is the current incarnation of a bill to affirm and update domestic law to reduce violations of the rights of Indigenous Peoples. I disagree with this opposition.

My transition

I was born in 1968 in Sudbury, Ontario, moved to Ottawa to attend university in 1987, and have lived here since⁴.

In 1990 I heard about the "Oka Crisis". I believed if the Canadian governments sent in the police and military that the "protesters" must have done something wrong. Over the years I have learned to question these assumed "truths". I initiated self-directed anti-racism training starting in the summer of 2020. I better understand what happened during the 1990 Kanesatake Resistance, and recognize it as one of many high profile examples of Canada violating the human rights of Indigenous peoples⁵.

¹ <https://www.ourcommons.ca/Committees/en/INAN/StudyActivity?studyActivityId=11156647>

² My name is Russell McOrmond. Full contact information is at <http://www.flora.ca/#contact>

³ <https://www.ourcommons.ca/Search/en/website?text=mcormond>

⁴ I acknowledge I have lived on land of an Anishinaabeg nation my entire life, but have never been given the opportunity to be naturalized.

⁵ I wrote an article titled "Help stop overt racism and white supremacy in Canada!" that discusses additional examples <https://mcormond.blogspot.com/2021/01/white-supremacy.html>

Criticism: Bill proceeding too quickly

The process that eventually led to UNDRIP started in 1923. This is when Deskaheh, Chief of the Iroquois League, representing the Six Nations of the Iroquois Confederacy, left Canada to go on a mission to Geneva (Switzerland)⁶. At that time the elder league of nations (Iroquois 6 nations in 1722, and a confederacy of 5 nations possibly since 1142) wanted to address the younger league of nations (formed at the Paris Peace Conference, 1919, which later became the United Nations) to have the younger league adequately recognize the elder.

In response to the attempt to get appropriate international recognition for the Iroquois league of nations, the British subsidiary called Canada sent in the RCMP to depose the centuries old participatory democratic Confederacy Council.

We can skip to the 1940's when the UN was drafting the so-called "Universal Declaration of Human Rights", and how western nations with their narrow focus on individuality refused to entertain the idea of protecting "peoples" rather than only "people". Grand Chief Littlechild recently discussed that process during a Town Hall on UNDRIP and C-15 hosted by Amnesty International Canada⁷.

In 1982 the UN established the Working Group on Indigenous Peoples, the same year the United Kingdom passed the Canada Act 1982⁸. The Canada Act, among other things, finally meant that UK law was not automatically Canadian law. The UK population being twice that of Canada had always meant that UK citizens had more influence over Canadian law than anyone actually living on Turtle Island. While new UK laws wouldn't automatically be Canadian law, the BNA⁹ and Canada Acts had already imposed a system based on thousands of years of foreign British history onto Turtle Island.

I don't expect anyone was surprised which countries voted against the UNDRIP resolution in 2007, 84 years after the process began. It is the 4 British colonies where non-naturalised settlers greatly outnumber Indigenous peoples: Canada, Australia, New Zealand, United States (collectively known as CANZUS).

These colonies are where the human rights violations against Indigenous peoples have been the greatest over a longer period of time. I put this area of policy into an important context with the following percentages of Indigenous populations remaining in regions currently under active colonialism. Colonialism almost inevitably leads to genocide¹⁰.

⁶ <https://www.docip.org/en/oral-history-and-memory/historical-process/>

⁷ <https://youtu.be/lXh2--pBDdA?t=4435>. This skips to the specific section where J. Wilton "Willie" Littlechild discussed the process. https://en.wikipedia.org/wiki/Willie_Littlechild

⁸ Canada Act 1982 <https://www.legislation.gov.uk/ukpga/1982/11/introduction>

⁹ British North America Act 1967 <https://www.legislation.gov.uk/ukpga/Vict/30-31/3/introduction>

¹⁰ Dr. Kim TallBear indicates we should use the UN definition of genocide, and recognize Indigenous Peoples "Very Clearly" are suffering genocide. <https://www.facebook.com/407570359384477/videos/2226217140832714>

Uyghuristan (Xinjiang, means 'new frontier' in Mandarin)	43.6%
Canada	5%
Australia	3%
New Zealand	17%
United States	2%

Given the Government of Canada was created 154 years ago, and for more than half that time this policy has been discussed, nobody can claim that this policy was "rushed".

Criticism: Canada can't be trusted to honour UNDRIP

Canada has been violating human rights since it was created by an act of the British Parliament in 1867. Passing Bill C-15 alone will not stop this ongoing violation.

The hardest concept to understand with anti-racism is the difference between individual race based prejudices and racist systems¹¹. These are systems where "not racist" individuals will still carry out racist acts simply by obeying the law or following normal procedures or practises.

I don't think of Canada as a place, as this place had names long before Europeans visited.

I don't think of Canada as a group of people. At no time in the past did the inhabitants of this land come together and decide to be called Canada or to form the Government of Canada. A small group of white males in a white minority region of the world decided to ask the foreign British government to pass the BNA Act.

Canada is a system, and any attempt to make that system less racist must be focused on that system. There is too much focus on individual people in indicating that those people cannot be trusted -- individuals following a system and believing they are individually "not racist". This regularly leads to the logical fallacy known as the Association fallacy (Guilt or honour by association, an ad hominem fallacy).

This bill needs to finally receive Royal Assent, after many incarnations being tabled since 2008¹². This last 12 years is sufficient time for debating the exact wording of the bill.

¹¹ The author that allowed me to best understand the difference was Ibram X. Kendi, primarily through his book *Stamped from the Beginning*. <https://www.ibramxkendi.com/stamped-from-the-beginning>

¹² I discuss the dates within "How I analyse and why I support Bill C-15, the UNDRIP related bill" <https://mccormond.blogspot.com/2021/01/c15-undrip-analysis.html>

Receiving Royal Assent is not a "Mission Accomplished" moment. It's an early step in recognizing the truth about Canada. Truth comes before reconciliation, and it quickly became obvious to me while studying this area of policy that Canada and most Canadians have not yet come to grips with truth.

Criticism: Free, Prior and Informed Consent (FPIC) is too vague

Similar concepts to "Free, Prior and Informed" exist in contract law, including mutual consent and contractual capacity.

Some people believe it is legitimate to debate whether there should be a need for consent for activities which are otherwise a violation of human rights.

I know of no other human rights that are so callously debated. Nobody would be asking if a "right to life" represented a "veto" for those who wanted to murder (especially for profit).

Is it a "veto" to disallow slavery or torture? What about narrow western notions of property in UN UDHR article 17 (western notions of property being exclusivity without responsibility)?

The context I have heard this debated most often is from individuals or politicians representing industries which wish to continue to violate human rights for profit. I find it disgusting that this conversation persists in the Canadian government, parliament and media.

Criticism: Indigenous Peoples should be consulted on C-15 and have FPIC

UNDRIP was primarily authored by Indigenous peoples, and wasn't authored by Canada. Bill C-15 itself regulates Canada, future Canadian governments, and not Indigenous peoples¹³. This criticism is similar to the criticism that Canada can't be trusted, and somehow a law will be passed that further infringes on the rights of indigenous peoples.

Canada markets itself domestically and internationally as a leader in protecting and promoting human rights. Canada rejecting international human rights norms would cause people to recognise this as a myth. Canada doesn't have a choice if it wants to avoid sanctions against it for being a perennial violator of human rights. While Canada and the USA have Magnitsky legislation, the lack of understanding of what CANZUS countries are doing will likely surprise some when similar legislation in other countries is finally used to sanction Canada.

It makes perfect sense for Indigenous peoples globally to be critical of Canada for delaying

¹³ I offer a more extended version in <https://mccormond.blogspot.com/2021/02/undrip-regulates-canada.html>

affirmation and the process to correct the large body of "domestic" laws which encourage/induce human rights violations. It makes no sense to oppose the bill once it is understood that C-15 is not something the Canadian government wants to do, but is something that due to international pressure Canada must do.

Bill C-15 does not "implement" UNDRIP, the way most people understand the word "implement".

The bill affirms UNDRIP applies in Canada. This is an additional clarification of the status-quo, given UNDRIP should be understood to already apply once it was officially adopted by Canada in May 2016¹⁴. Embarrassingly, Canada was the last of the 4 original CANZUS objector countries to finally adopt UNDRIP. (Australia 2009, New Zealand 2010, United States 2011)

The bill creates a process to amend laws which is "in consultation and cooperation with Indigenous peoples". It is not in passing C-15 where FPIC might be violated, but with a dishonorable government carrying out the process.

Every time a government representative claims that C-15 "implements" UNDRIP "in accordance with the Canadian Constitution" they are generating opposition and making it harder to move forward.

Several government representatives discussing UNDRIP in context of Section 35 of the Canadian Constitution speak in a way that suggests the reverse of the non-derogation clause in Bill C-15. That clause is clearly intended to be read that C-15 can not be interpreted in a way to reduce any rights affirmed by Section 35, while UNDRIP is clearly intended to articulate new rights beyond Section 35. Language used by government representatives are being interpreted to mean that UNDRIP is subservient to Section 35 - that the only UNDRIP rights that remain when "domesticated" are those already confirmed by past Section 35 interpretations.

The constant use of the "implement" language, as well as confusion around the relationship between UNDRIP and Section 35, has caused many Indigenous peoples to oppose Bill C-15 due to the mixed messages the government is sending. I'm not sure if generating confusion and opposition is a deliberate action on the part of the government, or part of the ongoing mishandling of this area of policy.

Criticism: Provinces, municipalities, or business sectors should be consulted on C-15 and have FPIC

No.

Trade and other sanctions for ongoing human rights violations will be against Canada. Internal jurisdictional issues may be important to Canada, but are irrelevant at an international level.

This is true in the context of UNDRIP as well as the nation-to-nation relationships between Canada and First Nations. UNDRIP, as well as Section 35 of the Canadian Constitution, must always be understood to be at the national level, beyond internal Canadian jurisdictional debates.

Provinces are creatures of the Government of Canada and/or Britain and should not have a say in whether they will honour international human rights instruments. Municipalities are provincial corporations, and as with any other corporation should simply honour international human rights norms or be held fully accountable for any non-compliance. Each level of government should be launching their own process to modify their own laws and procedures to come into compliance with international human rights, and not in any way slow down the federal process.

Businesses which have been profiting off violating human rights should be brought into compliance, or possibly folded as a consequence of continuing for-profit violations of human rights. They should be treated as organized crime.