



# TSLEIL-WAUTUTH NATION

*People of the Inlet*



April 9, 2021

House of Commons Standing Committee on Indigenous and Northern Affairs  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6

Via email: [INAN@parl.gc.ca](mailto:INAN@parl.gc.ca)

**Re: Tsleil-Waututh Nation Written Submission Regarding Bill C-15**

Dear House of Commons Standing Committee on Indigenous and Northern Affairs,

The Tsleil-Waututh Nation ("TWN") submits this written brief outlining our comments regarding Bill C-15, an Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples.

Tsleil-Waututh are the "People of the Inlet" and a distinct Coast Salish nation whose territory includes Burrard Inlet in the lower mainland area of British Columbia, including what is now Vancouver. Our people have occupied, governed, and acted as stewards of our territory since time out of mind and continue to do so today.

Tsleil-Waututh holds a sacred, legal obligation and responsibility to our ancestors, current, and future generations to maintain and restore conditions that provide the environmental, cultural, spiritual, and economic foundation for our nation and community to thrive. We are encouraged by the proposed Bill C-15.

## **I. Tsleil-Waututh supports Bill C-15**

The Tsleil-Waututh Nation supports Bill-C15 and the implementation of UNDRIP into Canadian law. Bill C-15 presents a critical opportunity for Canada to advance its ongoing work of reconciliation with Indigenous peoples.

UNDRIP and Bill C-15 presents the *minimum human rights standards* for Indigenous peoples. These are not principles nor aspirations, nor merely a framework. It is important we keep this in mind, as Indigenous rights have largely been denied, diminished, and not afforded the same protections as human rights more broadly.

For decades, the Crown has refused to honour Indigenous rights, including title and governance rights. The Canadian court system has had to step in, time and time again, when the Crown shirks these very fundamental responsibilities. Too often it has been left to Indigenous peoples to hold the Canadian government to account by taking them to court, at great risk, expense and sacrifice to the community, simply to reinforce obligations that are existing, and recognized and affirmed by the Canadian Constitution. This is unacceptable and unsustainable, and yet has been the status quo for far too long, it has become all but normalized.

Bill C-15 provides us with a new way forward. Bill C-15 positions the federal government to better grapple with pressing and timely matters currently facing Canada and Indigenous peoples. These matters are already active and impacting Canada and Indigenous peoples. To reject or delay passing Bill C-15 would simply deny the reality we are currently in: Indigenous rights must be addressed, and meaningful steps must be put in place about what it looks like for the Crown to enter into dialogue with Indigenous governments over matters of mutual interest and concern. Bill C-15 puts us in the best position to engage and enter into dialogue meaningfully and proactively, increasing potential for positive outcomes for all involved. This in turn creates certainty.

TWN presents the following recommendations in an effort to ensure the passage of Bill C-15, which will benefit all parties over the long term. Our expectation is that Bill C-15 will pass into legislation, and with it, a commitment to meaningfully engage Indigenous peoples on a nation-to-nation basis, and to develop a national action plan to review existing laws, policies and regulations, and to identify and implement measures and mechanisms to ensure Canadian laws become aligned with UNDRIP.

## **II. Recommendations**

### **1. First Nations and Indigenous groups must be directly engaged in the enactment of this legislation, including developing an action plan and informing the alignment of laws.**

Tsleil-Waututh was disappointed that there was not more federal engagement with Indigenous groups prior to the tabling of Bill C-15. This is particularly disappointing given the purpose of the bill. Moving forward, the federal government has the opportunity to demonstrate what UNDRIP looks like in action by how we design the subsequent processes for Indigenous engagement.

We further remind the federal government that national umbrella organizations, while providing valued input, cannot be solely relied upon to provide Indigenous input on UNDRIP and its implementation as well as other matters affecting Indigenous rights. As governments and rights- and title-holders within our respective territories, it is the Tsleil-Waututh Nation's view that our input as well the input of individual First Nations and Indigenous groups must be considered and dialogue occur on a nation-to-nation basis. We acknowledge that different Indigenous groups have varying interests, capacities, and means of participating—therefore, First Nations and Indigenous groups must have the opportunity self-identify and define the level and nature of the participation they intend to exercise in subsequent engagement on this Bill.

*Recommendations:*

- a) Direct nation-to-nation engagement with First Nations and Indigenous groups should they wish to participate. This includes a clear invitation and information on opportunities to participate, meaningful Indigenous engagement to co-develop the action plan, as well as affiliated legislation, regulations, and policy.
- b) Adequate resourcing to support Indigenous engagement. Sufficient capacity funding for participating Indigenous groups will be critical to enable Indigenous peoples to engage in the process, review documents, and provide feedback. Adequate capacity funding must be allocated for Indigenous groups to participate in review and engagement in the national action plan, the alignment of laws, and the monitoring of plan implementation including developing and proposing amendments.
- c) Indigenous engagement must be specified in 6(3), “Other Elements,” regarding an annual evaluation and compliance review. Potential wording for this could be:

*6 (3) The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan **in consultation and cooperation with Indigenous peoples.***

- d) Tsleil-Waututh supports the following recommendation proposed by the First Nations Leadership Council (FNLC) in their submission. TWN supports that the following be added to section 5:

*5 (1) The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.*

*5 (2) The Minister must, in consultation and collaboration with Indigenous peoples, prepare a plan to implement the Declaration, including:*

*(a) measures to enable the consultation and cooperation referred to in section 5 (1);  
and*

*(b) measures to achieve the consistency of laws referred to in section 5(1).*

*5 (3) The Minister of Justice shall, for every bill introduced in or presented to either House of Parliament by a minister or other representative of the Crown, cause to be tabled, in the House in which the bill originates, a statement that sets out potential effects of the bill on the rights, standards and principles affirmed in the Declaration.*

## 2. A statutory decision-making mechanism

TWN is encouraged by the Crown's increasing recognition of Indigenous groups as jurisdictions. We have seen the federal government make positive strides in this regard within various agreements as well as legislation such as Bill C-69, the Impact Assessment Act. Bill C-15's lack of a mechanism to recognize Indigenous governing bodies as jurisdictions is however a striking gap. By contrast, the British Columbia Declaration on the Rights of Indigenous Peoples Act includes a statutory decision-making mechanism (Section 7, "Decision-Making Agreements"), and serves as an example that we can look to. UNDRIP recognizes Indigenous jurisdictions as legitimate, with the right to make decisions and uphold obligations, grounded in their own authority as longstanding governing bodies with their own laws and legal orders.

Bill C-15 must be explicit and create a mechanism to formalize this, and create increased certainty by pathways to enter into meaningful dialogues with each other. We therefore request that the following be added:

*The Minister may enter into an agreement with an Indigenous governing body relating to one or both of the following:*

- (a) the exercise of a statutory power of decision jointly by
  - (i) the Indigenous governing body, and*
  - (ii) the government or another decision-maker;**
- (b) the consent of the Indigenous governing body before the exercise of a statutory power of decision.*

As stated above, we recognize that different Indigenous groups have varying capacities and means of carrying out their jurisdictional roles—therefore, a mechanism to enter into statutory decision-making agreement allows Indigenous groups to determine the level and nature of the participation they intend to exercise as a relevant jurisdiction.

## 3. Dispute Resolution Process

Bill C-15 must include a mechanism by which disputes are resolved outside of the current Canadian court process regarding the interpretation and application of UNDRIP.

One option is for the Act to direct the Crown to work collaboratively with Indigenous groups to develop regulations for an alternative dispute resolution process in the event of a disagreement over an interpretation. This may take the form of an established independent body to facilitate dispute resolution in accordance with both Indigenous and Canadian laws, such a tribunal with

both Indigenous and Crown representation and equal respect provided to Indigenous laws and legal orders. This independent body or tribunal upholds Articles 27<sup>1</sup> and 40.<sup>2</sup>

#### 4. **6(4) Time Limit:**

We agree with the Act in that preparation for the action plan must “be completed as soon as practicable.” With this view, therefore, the time limit should be changed to “no later than *one year*.” This shorter timeline is imperative for meaningful action. We acknowledge that implementing UNDRIP is necessarily a long-term commitment that will to some degree be iterative and take shape over time; however, it is essential to generate momentum as promptly as possible, and a three-year timeline runs the risk of this momentum subsiding. A national action plan must not be delayed.

#### 5. **Refining the Preamble**

- a) TWN recommends the preamble paragraph 8 be edited to specifically include the word “racism,” in order to account for and address the unique aspects of racism that aren’t sufficiently captured in “violence and discrimination, including systemic discrimination.” The inclusion of “racism” is particularly pressing given the identification of racism in institutions such as the RCMP,<sup>3</sup> healthcare<sup>4</sup>, and many others, and the widespread acknowledgements that steps must be taken to address racism. TWN supports the recommendation advanced by FNLC that the text be amended as follows:

Whereas the implementation of the Declaration must include concrete measures to address injustices, combat prejudice and eliminate all forms of **racism**, violence and discrimination, including systemic discrimination, against Indigenous peoples and

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<sup>1</sup> Article 27: “States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”

<sup>2</sup> Article 40: “Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

<sup>3</sup> Statement from RCMP Commissioner Brenda Luckie, June 2020. <https://www.rcmpgrc.gc.ca/en/news/2020/statement-commissioner-brenda-luckie>

<sup>4</sup> While this particular example pertains to provincial jurisdiction, Mary-Ellen Turpel Lafond’s *report Addressing Racism: An independent investigation into Indigenous-specific discrimination in B.C. health care* provides an alarming look at the pervasiveness of racism in government institutions and its dire implications. We recognize that elements of healthcare delivery do fall under federal jurisdiction. <https://engage.gov.bc.ca/addressingracism/>

Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons.

- b) TWN supports the recommendation advanced by the FNLC that preamble paragraph 9 be amended to specifically identify the doctrines of discovery and *terra nullius*. In TWN's experience, the doctrine of discovery and *terra nullius* continue to actively inform the foundations of engagement between TWN, the Crown, and the public in general. These doctrines and their myths persist even after the 2014 *Tsilhqot'in* decision in which, as the FNLC points out, the Supreme Court of Canada stated "The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada." TWN therefore recommends the text be amended as follows:

Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, **including the doctrines of discovery and *terra nullius***, are racist, scientifically false, legally invalid, morally condemnable and socially unjust;

### III. Conclusion

We thank you for the opportunity to express our support for Bill C-15, and to propose some recommendations to further strengthen this important piece of legislation. Our hope for the new legislation is that it will provide us with new pathways forward; to work together, to exercise our governance rights, and to ensure a more equitable world for future generations of Tsleil-Waututh people. Should you wish to discuss the comments further, please contact Erin Hanson, Policy Advisor, at [ehanson@twnation.ca](mailto:ehanson@twnation.ca).

Respectfully,



Chief Leah George-Wilson  
Tsleil-Waututh Nation