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LEGISLATIVE SUMMARY

BILL C-15: AN ACT RESPECTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

43-2-C15-E

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Sara Fryer and Olivier Leblanc-Laurendeau

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AUTHORSHIP

20 January 2021	Sara Fryer	Legal and Social Affairs Division
	Olivier Leblanc-Laurendeau	Legal and Social Affairs Division

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Legislative Summary of Bill C-15
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-15: AN ACT RESPECTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

1 BACKGROUND

Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples,¹ was introduced in the House of Commons on 3 December 2020 by the Minister of Justice.

The bill affirms that the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP or “the Declaration”) has application in Canadian law and provides a framework for the federal government to ensure that its laws are consistent with it. UNDRIP was adopted as a resolution of the United Nations General Assembly on 13 September 2007.²

1.1 UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The Declaration contains a 24-paragraph preamble and 46 articles that establish “the minimum standards for the survival, dignity and well-being of the [I]ndigenous peoples of the world.”³ Since it is a declaration – as opposed to an international treaty or convention – UNDRIP is not legally binding. It does not require ratification by a state; instead, a state may simply endorse the declaration.⁴ According to Article 38 of UNDRIP, “States, in consultation and cooperation with [I]ndigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.” Bolivia is the first country to have adopted it as a national law (2008) and into its Constitution (2009).⁵

The international community saw the adoption of an Indigenous-specific human rights instruments as necessary “in part due to the failure of the general, existing human rights regimes to afford appropriate protection for Indigenous peoples’ rights.”⁶ To this day, Indigenous peoples still live with the consequences of colonialism and struggle to have some of their most basic human rights respected, including in Canada.

The Declaration’s preamble recognizes that Indigenous peoples are equal to all other peoples and should be free from discrimination, that they have suffered from “historic injustices” and that there is an “urgent need” to recognize their inherent rights. It also explains that “[I]ndigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.”

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The Declaration's 46 articles do not create new rights. Instead, UNDRIP “elaborated upon existing international human rights instruments and clarifies how those rights apply to Indigenous peoples given their ‘specific cultural, historical, social and economic circumstance.’”⁷ Among other things, its articles affirm that Indigenous peoples have the right:

- to the full enjoyment of their human rights, as individuals and collectives (Article 1);
- to self-determination, autonomy and self-government (Articles 3 and 4);
- to maintain and strengthen their distinct institutions (Article 5);
- to not be subjected to forced assimilation or cultural destruction (Article 8);
- to practice and revitalize their cultures, customs and spiritualities (Articles 11, 12 and 13);
- to participate in decision-making in matters affecting their rights, and to be consulted in good faith on legislative and administrative measures that may affect them (Articles 18 and 19);
- to own, use, develop and control their lands, territories and resources (Article 26);
- to give their free, prior and informed consent (Articles 10, 11, 19, 28 and 29); and
- to maintain, control, protect and develop their intellectual property (Article 31).

It should be noted, however, that Article 46(1) limits the rights embedded within the Declaration so that they cannot infringe upon the sovereignty of states.

After initially voting against UNDRIP at the United Nations General Assembly in 2007, in 2010, Canada endorsed it with qualification. At that time, the government said that it was “an aspirational document” and that it would “interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework.”⁸ In 2016, the government stated that Canada was “now a full supporter, without qualification, of the United Nations Declaration on the Rights of Indigenous Peoples” and that it would implement it “in accordance with the Canadian Constitution.”⁹

1.2 REFERENCES TO THE DECLARATION IN FEDERAL LEGISLATION AND CASE LAW

In recent years, UNDRIP has been referred to in federal statutes, including *An Act respecting Indigenous languages*¹⁰ and *An Act respecting First Nations, Inuit and Métis children, youth and families*.¹¹ The stated purpose of these two laws includes contributing to the implementation of UNDRIP. According to the Canadian Human Rights Tribunal, references to UNDRIP in the latter Act show “Parliament’s clear intent to uphold the inherent rights of self-determination and of self-governance of First Nations, Inuit and Métis Nations in the areas of child welfare and to respect substantive equality.”¹²

The preambles of laws with broader objectives, such as the *Impact Assessment Act*¹³ and *Canadian Energy Regulator Act*,¹⁴ also refer to Canada’s commitment to implementing the Declaration.

Additionally, the Declaration is being cited by Canadian courts and tribunals.¹⁵ At least one Canadian decision has noted that “UNDRIP may be used to inform the interpretation of domestic law.”¹⁶

1.3 SIMILAR BILLS INTRODUCED IN PREVIOUS SESSIONS OF PARLIAMENT

In the 42nd Parliament, Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples,¹⁷ was introduced by Romeo Saganash. It was adopted at third reading in the House of Commons in 2018. Bill C-262 died on the *Order Paper* in the Senate when the 42nd Parliament was dissolved on 11 September 2019. Similar private members’ bills had been introduced in the 39th, 40th and 41st parliaments, but they never progressed beyond first or second reading in the House of Commons.¹⁸

Bill C-15 differs from Bill C-262 in several ways. For instance, the preamble to Bill C-15 includes many paragraphs that were not part of Bill C-262. Bill C-15 also defines certain terms used in the bill and sets out the bill’s purpose, none of which were included in Bill C-262. Furthermore, while both bills require preparing an action plan to achieve the objectives of UNDRIP, Bill C-15 describes what the plan must include and sets out a three-year timeline for its tabling in Parliament; it does not, however, indicate when the work detailed in the action plan must conclude. In comparison, Bill C-262 proposed that the Minister of Indian Affairs and Northern Development report annually to Parliament on the implementation of UNDRIP for 20 years (2017–2037).

The main clause requiring that the federal government make its laws consistent with UNDRIP is identical in both Bill C-15 and the former Bill C-262.

1.4 BRITISH COLUMBIA'S *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT*

In October 2019, the Government of British Columbia introduced Bill 41, Declaration on the Rights of Indigenous Peoples Act. The Legislative Assembly of British Columbia unanimously passed Bill 41 a month later, becoming the first Canadian legislature to adopt legislation to implement UNDRIP.¹⁹ British Columbia's *Declaration on the Rights of Indigenous Peoples Act* has a three-part objective:

(a) to affirm the application of the Declaration to the laws of British Columbia; (b) to contribute to the implementation of the Declaration; (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.²⁰

Bill C-15 and British Columbia's *Declaration on the Rights of Indigenous Peoples Act* are similar. Both state that the respective governments "must take all measures necessary" to ensure that their laws are consistent with UNDRIP. Both also require the preparation of an action plan to achieve the objectives of UNDRIP and the tabling of an annual progress report.

However, unlike Bill C-15, the British Columbia law includes provisions authorizing the provincial government to enter into agreements with Indigenous governing bodies²¹ for the purpose of establishing joint decision-making or consent with respect to the use of statutory powers.²²

2 DESCRIPTION AND ANALYSIS

Bill C-15 contains a 23-paragraph preamble and seven clauses. The main purpose of the bill is to establish a framework by which Canada will implement the provisions of UNDRIP. Under its provisions, the government must develop an action plan with Indigenous peoples in order to realize the goals of the Declaration within three years of the bill being enacted. The Declaration is attached as the schedule to the bill.

2.1 PREAMBLE

The preamble to Bill C-15 offers some important observations that provide context for the bill; it sets forth a number of key principles regarding Canada's intent to implement the provisions of UNDRIP. According to the preamble, UNDRIP represents the minimum standards of human rights of Indigenous peoples.

It refers to calls to action of the Truth and Reconciliation Commission of Canada and calls to justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls.²³ Both the Commission and the Inquiry recommended UNDRIP be implemented by governments in Canada.

The preamble recognizes that First Nations, Inuit and Métis peoples have resided on the lands of what is now Canada and that colonization and the related dispossession of their lands, territories and resources are among historic wrongs they experienced. It further outlines that the government rejects all forms of colonialism and that relations with Indigenous peoples will be grounded in the principles of justice, democracy, equality, non-discrimination, governance and human rights.

Regarding rights, the preamble recognizes an “urgent need” to recognize and implement the inherent rights of Indigenous peoples to self-determination (UNDRIP Article 3) and self-government (UNDRIP Article 4).

2.2 INTERPRETATION (CLAUSE 2)

Clause 2 defines the terms “Declaration,” “Indigenous peoples” and “Minister.” It also refers to the protection of the rights of Indigenous peoples as set out in the *Constitution Act, 1982*. Clause 2(2) clarifies that the Act should be interpreted as upholding the rights of Indigenous peoples, in accordance with section 35 of the *Constitution Act, 1982*,²⁴ and not as abrogating or derogating from them. Similar language was used in the *Indigenous Languages Act* and the *Act respecting First Nations, Inuit and Métis children, youth and families*.

In Canada, the hunting and fishing activities of Indigenous peoples, especially for food, social or ceremonial purposes, are granted special legal status as Aboriginal or treaty rights. Canada is the only nation among those with common law legal systems that has recognized Aboriginal rights “unconditionally”²⁵ in its Constitution. Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the Aboriginal and treaty rights of the Aboriginal peoples of Canada (defined at section 35(2) as “Indians, Inuit and Métis”) that were in existence when the Act came into force in 1982.

With respect to non-derogation in clause 2(2), section 25 of the *Canadian Charter of Rights and Freedoms* also includes a non-derogation clause with respect to Aboriginal and treaty rights. The clause has been referred to as a “shield”²⁶ affirming “Aboriginal and treaty rights” and enshrines its protection vis-à-vis section 52(1) of the *Constitution Act, 1982* which sets out the Constitution’s primacy over all legislation. Section 25 has also been referred to as an “interpretive provision informing the construction of potentially conflicting Charter rights.”²⁷ The constitutional entrenchment means that Aboriginal and treaty rights cannot be extinguished (or abrogated) by federal, provincial or territorial law.²⁸

2.3 DESIGNATION OF MINISTER
(CLAUSE 3)

The bill does not specify which minister is responsible for carrying out its listed objectives. Instead, clause 3 establishes that a minister can be designated by order of the Governor in Council. Clause 3 does not require a minister to be named by a particular date.

2.4 PURPOSE
(CLAUSE 4)

The bill does not implement UNDRIP into domestic law. Instead, the bill's stated purpose is to affirm that the Declaration has "application in Canadian law" (clause 4(a)) and "provide a framework for the Government of Canada's implementation of the declaration" (clause 4(b)).

2.5 CONSISTENCY, ACTION PLAN
AND REPORT TO PARLIAMENT
(CLAUSES 5 TO 7)

Clauses 5 and 6 outline measures to ensure that Canadian laws are consistent with UNDRIP and requires that the responsible minister develop an action plan to achieve the objectives of the Declaration.

The action plan must be prepared and implemented in consultation with Indigenous peoples (clause 6(1)). Clause 6(2) establishes certain measures required to be included in the action plan. For example, measures must be included to address injustices, prejudice, violence and discrimination experienced by Indigenous peoples and specific groups, such as Elders, women, persons with disabilities, and gender-diverse and two-spirit persons (clause 6(2)(a)(i)). The action plan must also include measures that promote good relations such as human rights education and ways to measure and oversee the overall impact of its work (clause 6(2)(a)(ii)). The action plan must include ways to monitor and oversee the implementation of the Declaration (clause 6(2)(b)) and the implementation, review and amendment of the action plan (clause 6(3)).

The action plan must be completed within three years of the Act coming into force (clause 6(4)) and must be made public (clause 6(6)) after it is tabled in each House of Parliament.

The government must report annually to Parliament on the action plan's implementation as well as on the measures taken to ensure the consistency of Canadian laws with UNDRIP (clause 7(1)).

NOTES

1. [Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples](#), 43rd Parliament, 2nd Session.
2. United Nations General Assembly (UNGA), [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#), 2 October 2007.
3. UNGA, [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#), 2 October 2007, art. 43.
4. Whereas ratification is the final approval of an international agreement, endorsement is merely an expression of support from a state. In Canada, international agreements requiring ratification, such as treaties, will often need to be implemented through domestic legislation:

Unlike some countries which operate according to a monist model ... Canada operates according to a dualist model: a treaty that has been signed and ratified by the executive branch still requires incorporation through domestic law to be enforceable at the national level. Turning international law into domestic law is not a self-executing process in Canada.

See Laura Barnett, [Canada's Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Library of Parliament, 5 August 2018.
5. For more information, see Indigenous Bar Association, [Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook](#), 2011, p. 28.
6. Brenda L. Gunn, "Beyond *Van der Peet*: Bringing Together International, Indigenous and Constitutional Law," in Centre for International Governance Innovation, [UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws](#), Special report, 2017, p. 32.
7. Indigenous Bar Association, [Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook](#), 2011, p. 7.
8. Indigenous and Northern Affairs Canada, [Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples](#), 12 November 2010.
9. Indigenous and Northern Affairs Canada, [Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples](#), News release, 10 May 2016.
10. [Indigenous Languages Act](#), S.C. 2019, c. 23.
11. [An Act respecting First Nations, Inuit and Métis children, youth and families](#), S.C. 2019, c. 24.
12. [First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada \(representing the Minister of Indigenous and Northern Affairs Canada\)](#), 2020 CHRT 20 (CanLII), para. 164.
13. [Impact Assessment Act](#), S.C. 2019, c. 28, s. 1.
14. [Canadian Energy Regulator Act](#), S.C. 2019, c. 28, s. 10.
15. Sheryl Lightfoot, "Using Legislation to Implement the UN Declaration on the Rights of Indigenous Peoples," in [UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws](#), Centre for International Governance Innovation and Wiyasiwewin Mikiwahp Native Law Centre, Special report, 2018, p. 23.
16. [Nunatakavut Community Council Inc. v. Canada \(Attorney General\)](#), 2015 FC 981 (CanLII), para. 103.
17. [Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples](#), 42nd Parliament, 1st Session.

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18. [Bill C-469, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 2nd Session; [Bill C-641, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 2nd Session; [Bill C-469, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 1st Session; [Bill C-328, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 40th Parliament, 3rd Session; [Bill C-328, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 40th Parliament, 2nd Session; and [Bill C-569, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 39th Parliament, 2nd Session.
19. British Columbia, Legislative Assembly, [Votes and Proceedings of the Legislative Assembly of British Columbia – Nos. 103 and 104](#), 26 November 2019.
20. [Declaration on the Rights of Indigenous Peoples Act](#), S.B.C. 2019, c. 44.
21. The [Declaration on the Rights of Indigenous Peoples Act](#) defines “Indigenous governing body” as “an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.”
22. [Declaration on the Rights of Indigenous Peoples Act](#), S.B.C. 2019, c. 44, art. 7.
23. Following the conclusion of the [Indian Residential Schools Settlement Agreement](#) (a class-action lawsuit launched by former students of residential schools), the Truth and Reconciliation Commission of Canada was established in 2008. Its [Final Report and related Calls to Action](#) were published in 2015. In 2016, the National Inquiry into Missing and Murdered Indigenous Women and Girls was launched as a public inquiry established under Part I of the federal *Inquiries Act*. The Inquiry was the Government of Canada’s response to the Truth and Reconciliation Commission’s Call to Action No. 41. The [Final Report and related Calls for Justice](#) were published in 2019.
24. [Constitution Act, 1982](#), Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).
25. Jack Woodward, “The Constitution Act: Entrenchment of rights and effect of constitutional protection,” *Native Law*, 2§840.
26. [R. v. Kapp](#), 2008 SCC 41.
27. *Ibid.*
28. Despite the constitutional entrenchment, the Crown can infringe upon Aboriginal and treaty rights provided it is justifiable in accordance with the framework outlined in the landmark *Sparrow* case. See [R. v. Sparrow](#), [1990] 1 S.C.R. 1075; see also Jack Woodward, “Aboriginal and treaty rights: Application of s. 35,” in *Native Law*, 5§370. The Crown retains the powers to consult, potentially accommodate, or infringe (with justifiable reason) on Aboriginal and treaty rights through existing mechanisms in Canadian law. For further discussion on Canadian Aboriginal law mechanisms and how UNDRIP Article 19 related to free, prior and informed consent may intersect or appear to be “more robust than contemporary doctrines created by the [Supreme Court of Canada],” see Jeremy Patzer, “Indigenous Rights and the legal politics of Canadian coloniality: What is happening to free, prior and informed consent in Canada,” *International Journal of Human Rights*, Vol. 23, Nos. 1–2, pp. 214–233.