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Legislative Summary

BILL S-13: AN ACT TO AMEND THE INTERPRETATION ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

44-1-S13-E

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For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

Any substantive changes to this Library of Parliament legislative summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill S-13
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL S-13: AN ACT TO AMEND THE INTERPRETATION ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

1 BACKGROUND

1.1 OVERVIEW OF THE PROPOSED LEGISLATION

Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts[1] (Bill S-13) was introduced in the Senate on 8 June 2023 by Senator Marc Gold. On 20 June 2023, Senator Patti LaBoucane-Benson moved the second reading of Bill S-13.

The bill amends the federal *Interpretation Act*[2] to include a non-derogation clause on upholding Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*.[3] A non-derogation clause is a statement in a law that indicates the law should be interpreted to uphold, and not diminish, other pre-existing rights. Bill S-13 aims to ensure that all federal legislation is interpreted to uphold constitutionally protected Aboriginal and treaty rights.

At the federal level, non-derogation clauses had previously been included in statutory mechanisms in more of an ad hoc fashion. The Government of Canada indicates that they were often produced in "the course of the parliamentary process at the request of Indigenous peoples seeking to ensure that legislation would be interpreted to respect section 35 Aboriginal and Treaty rights."[4]

Community driven engagement and consultation processes revealed differing views on whether to repeal all, or most, of the existing non-derogation clauses in federal legislation.[5] Ultimately, Bill S-13 repeals non-derogation provisions in 26 federal statutes, set out in Part 2 of the Bill, "Related Amendments." However, existing non-derogation clauses in several other federal laws will remain in place.

The *Interpretation Act* allows Parliament to establish key definitions and rules in a single statutory location to promote consistent legal interpretation across all federal legislation. Given the *Interpretation Act*'s role and function in federal law and its broad implications,[6] the amendment proposed by Bill S-13 would affect all federal legislation, including statutes and regulations.

1.2 "ABORIGINAL AND TREATY RIGHTS"

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 the "Indian, Inuit, and Métis peoples of Canada").

Aboriginal rights refer to the practices, traditions, and customs of distinct Indigenous groups. Aboriginal rights vary from group to group depending on the customs, practices and traditions that have formed part of their culture, and can include:

- Aboriginal title (ownership rights to land);
- rights to occupy and use lands and resources, such as hunting and fishing rights;
- self-government rights; and
- cultural and social rights.[7]

Treaties are commonly divided into those signed before 1975 (pre-1975 treaties or historic treaties) and those signed after 1975 (comprehensive land claims agreements or modern treaties). Examples of treaty rights include reserve lands, farming equipment and animals, annual payments, ammunition, clothing, and specific rights to hunt and fish.[8]

There is a lack of constitutional specificity in the defining of "existing Aboriginal and treaty rights," which has largely placed the task of interpreting the scope of section 35 rights in the judicial sphere.

For instance, in its landmark 1990 *R. v. Sparrow*[9] decision, the Supreme Court of Canada established an initial interpretive framework for section 35 rights that has been further developed in several of the Court's subsequent judgments. In that decision, the Court confirmed that federal and provincial governments can only limit or infringe upon Aboriginal and treaty rights with respect to title to their lands for specific reasons according to the criteria set out in the decision.[10] In other words, under *Sparrow*, the Crown may enact legislation infringing existing Aboriginal and treaty rights, provided it can satisfy the justification test[11] articulated by the Court.

Subsequent key cases on Indigenous rights further explored issues left unresolved by the *Sparrow* case, namely compensation and consultation regarding the infringement of Indigenous rights.[12] A growing and substantial body of law has since developed governing the identification and definition of Aboriginal and treaty rights.[13]

1.3 NON-DEROGATION CLAUSES AND THE PATH TO BILL S-13

The possible inclusion of a non-derogation clause in the *Interpretation Act* has been the subject of discussion over many years. Indeed, in her 20 June 2023 sponsor's speech, Senator LaBoucane-Benson provided an overview of these discussions, from the recommendations of the Standing Senate Committee on Legal and Constitutional Affairs in 2007, to the "extensive and cooperative consultations [between government and Indigenous peoples] to finally make this happen."[14]

Prior to the release of the 2007 Standing Senate Committee on Legal and Constitutional Affairs report, entitled *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*,[15] non-derogation clauses had been included in certain federal statutes in response to concerns voiced by Indigenous peoples about the potential effect on their interests associated with the legislation. According to the Senate Committee's report, these more ad hoc legislative of clauses were considered "largely superfluous reminders of section 35 [rights]" by some Department of Justice officials, who "may have agreed to the clause's inclusion as a matter of expediency, to avoid delays in the passage of a bill."[16] Additionally, the lack of a standardized approach to legislating non-derogation clauses resulted in different clauses containing different variations in language, with the potential to result in differing protections and varying impacts on Indigenous rights and interests from one federal statute to the next.

The report contained six sets of recommendations, two of which relate specifically to non-derogation clauses:

> Recommendation 1
>
> The Committee recommends that the Government of Canada take immediate steps to introduce legislation to add the following non-derogation provision to the federal *Interpretation Act*:
>
> > Every enactment shall be construed so as to uphold existing Aboriginal and treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*, and not to abrogate or derogate from them.
>
> …
>
> Recommendation 2
>
> The Committee recommends that the legislation to amend the *Interpretation Act* also provide for the repeal of all non-derogation clauses relating to Aboriginal and treaty rights included in federal legislation since 1982.[17]

In 2009, a series of initial meetings and discussions were held between Department of Justice officials and Indigenous representatives on the topic of the 2007 Senate Committee recommendations.[18]

On 13 December 2011, Senator Charlie Watt introduced Senate public Bill S-207, An Act to amend the Interpretation Act (non-derogation of aboriginal and treaty rights)[19]. Bill S-207 would have amended the *Interpretation Act* by adding a non-derogation clause. Bill S-207 was reported back to the Senate in February 2013 and the Standing Senate Committee on Legal and Constitutional Affairs report on the bill was adopted in April 2013, but the bill was subsequently dropped from the *Order Paper*.[20]

Indigenous peoples and organizations, as well as Indigenous members of Parliament have also repeatedly raised the issue of the non-derogation clauses during legislative processes. In 2013, for instance, Cathy Towtongie, President, Nunavut Tunngavik Inc., argued before the Senate Committee that the incorporation of non-derogation language into the *Interpretation Act* would be like pressing a "restart button." Such a clause would mean that "as a default, where Parliament has not otherwise considered the infringement of Aboriginal and treaty rights, it does not intend an act to be interpreted to infringe."[21]

In 2018, Eva Clayton, Co-Chair and President, Nisga'a Lisims Government, Land Claims Agreements Coalition, said that incorporating a non-derogation clause in the *Interpretation Act* would be "an important step toward reconciliation."[22]

By 2019, Canada had enacted several statutes that contained language generally reflective of that recommended by the Standing Senate Committee on Legal and Constitutional Affairs [23]

In December 2020, the Minister of Justice and Attorney General of Canada unveiled a nationwide "targeted consultation and cooperation process with First Nations, Inuit, and Métis to advance discussions on potential legislative changes in support of [a non-derogation clause] in the federal *Interpretation Act*,"[24] a summary of which is provided in the "What We Learned" report.[25] During this process, Justice officials held about a dozen virtual meetings and received over 30 written submissions from Indigenous peoples, partners, and organizations.[26] According to the report, these initial dialogue sessions indicated substantial support for a non-derogation clause related amendment to the *Interpretation Act* relating to the upholding of section 35 rights, but revealed divergent opinions on how said clause should be worded, as well as whether to repeal all or some of the pre-existing non-derogation clauses in federal legislation.[27]

A next phase of engagement and consultation on the matter was launched in late 2021. At this phase, discussions piggybacked on the ongoing consultation and

cooperation process at the time to advance the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.[28] Conversations around supporting the intent of this Act, which received Royal Assent on 21 June 2021, were inextricably linked to dialogue around inserting a non-derogation clause into the *Interpretation Act*.[29]

Furthermore, additional bilateral meetings were held in spring 2022, and specifically, statutorily mandated consultations were undertaken.[30] This second stage of engagement once again yielded divergent preferences on the language of the clause to be inserted, with "many Indigenous partners" preferring "Aboriginal and treaty rights" over the broader "rights of Indigenous peoples," due to the associated overlap in the specific language used in section 35.[31] Others still preferred using both wording options, to mirror the aforementioned constitutional language, but also to reflect the wording found in the *United Nations Declaration on the Rights of Indigenous Peoples*.[32] Additionally, these additional conversations revealed a lack of support for a blanket repeal of all pre-existing non-derogation clauses in federal legislation, with Indigenous partners generally agreeing that "[non-derogation clauses] in federal legislation affecting only certain Indigenous partners should be retained if these partners wish to do so."[33] Several Indigenous partners also requested to repeal any pre-existing non-derogation clauses that "did not align with the Senate Committee report's recommended language."[34] At all stages of engagement, feedback from the Indigenous stakeholders consulted stressed the priority nature of such an initiative "proceeding without delay[.]"[35]

The final phase of engagement and consultation began with the posting of a draft legislative proposal on the Department of Justice Canada website from 1 March 2023 to 14 April 2023. First Nations, Inuit and Métis were invited to review the draft and provide input.[36]

In summarizing the evolution toward the current Bill S-13, Senator LaBoucane-Benson, in her motion for a second reading of the bill stated,

> Indigenous peoples have been pushing for this ever since section 35 was added to the Canadian Constitution over 40 years ago. Indigenous peoples came to the Senate 16 years ago to make their pitch, and I would just like to take a moment to acknowledge all the chiefs, leaders, Indigenous lawyers and Indigenous scholars who have asked for this change to the *Interpretation Act* for years.
>
> …
>
> For the last three years, Indigenous peoples have been working with the government through extensive and cooperative consultations to finally make this happen. This bill is one more step on the road

> to reconciliation, and it is a major one, because it affects every existing and future federal law.[37]

The state intention behind the inclusion of a non-derogation clauses in federal legislation is not to gain additional rights or take the position that section 35 protections are insufficient. Instead, the Senate Committee

> concluded that non-derogation clauses serve the important purpose of expressing to all Parliament's clear intention that legislation is to be interpreted and implemented consistently with section 35.[38]

While engagement yielded overall support for the inclusion of a non-derogation clause, a 2022 discussion paper from the Assembly of First Nations indicated that non-derogation clauses

> are not a complete shield to the infringement of First Nations rights and do not broaden "Aboriginal and treaty rights" as referred to in s. 35 of the *Constitution Act, 1982*. Under the existing jurisprudence, these rights remain subject to review and potentially "justifiable infringement" by Canada. […] There have been no examples where [a non-derogation clause] has been relied on to absolutely shield First Nations rights.[39]

2 DESCRIPTION AND ANALYSIS

2.1 INDIGENOUS PEOPLES (CLAUSE 1)

Clause 1 amends the *Interpretation Act* by adding a new section 8.3, containing two subsections. This amendment adds a provision after section 8.2, under the broad heading "Rules of Construction."

New subsection 8.3(1) provides that all Acts of Parliament and regulations are to be interpreted as maintaining the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. The section goes on to say that these Acts of Parliament and regulations will not repeal or detract from these rights.

As previously outlined, Aboriginal rights are the collective rights of First Nations, Inuit and Métis peoples. Subsection 8.3(2) specifically states that for the purpose of subsection 8.3(1), the term "Indigenous peoples" has the same meaning as the term "Aboriginal peoples of Canada" in section 35(2), which include the "Indian, Inuit and Métis peoples of Canada."

Treaties between Indigenous peoples and the Crown may be either historic or modern and consist of "specific continuing rights, benefits and obligations for the signatories that vary from treaty to treaty."[40]

Given the *Interpretation Act*'s definitions and rules of construction underpin all federal legislation, subsection 3(1) of the Act is noteworthy to the amendment proposed by Bill S-13. This subsection reads as follows:

> 3(1) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

This provision provides a single exception to the otherwise comprehensive application of the statute to all federal legislation. In other words, it indicates that the provisions of the *Interpretation Act* apply to all enactments except where said enactments contain a "contrary indication." The 2007 Senate Committee report did indeed flag subsection 3(1) of the *Interpretation Act* as noteworthy when it comes to non-derogation clauses, indicating a preference for the insertion of a standardized non-derogation clause into the Act, "with explicit action needed to opt-out of its application."[41]

In the case of Bill S-13, it would still theoretically be possible that an upcoming statute would expressly state that it would deviate from the *Interpretation Act*'s section 8.3, or could even contrarily state that it would *not* uphold the constitutionally affirmed Aboriginal and treaty rights of Indigenous peoples. Where there is evidence of a legislative intention contrary to that of the new section 8.3,

> the question is one of inference and implication, which is left to the courts to determine whether there is sufficient evidence of parliamentary intent to [show that the statute displaces a rule from the *Interpretation Act*].[42]

While the threshold for evidentiary certainty may vary,

> a contrary intention may be quickly found when an Act or regulation presents a simple alteration to drafting language ordinarily employed or which appears as a default rule of the *Interpretation Act*.[43]

In late 2021, British Columbia amended its provincial *Interpretation Act* so provincial laws would be interpreted as being consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as those protected under section 35 of the *Constitution Act, 1982*. It should be noted some Indigenous partners advocating for a non-derogation clause within the federal

Interpretation Act have argued for a non-derogation clause that also includes consistency with UNDRIP.

Protections related to Indigenous language rights are not specifically mentioned in the *Interpretation Act*. The inclusion of rights related to Indigenous languages and their protection and revitalization has been affirmed by federal statute,[44] echoing calls for federal government action to protect Indigenous languages stemming from the Truth and Reconciliation Commission,[45] and are rights upheld under several articles in the *United Nations Declaration on the Rights of Indigenous Peoples Act*.[46] While the federal Indigenous languages regime and official languages regime are different, the recently amended *Official Languages Act* (OLA) contains a provision "Rights relating to other languages." This provision affirms that its contents do not derogate "from any legal or customary right acquired or enjoyed either before or after the coming into force of this Act with respect to any language other than English or French, including any Indigenous language."[47] While the Supreme Court of Canada has not explicitly recognized "language" as a section 35 right, it has acknowledged customs and traditions,[48] with the potential for a close relationship to exist between those aspects of culture and language. The Assembly of First Nations has stated that despite a "constitutional recognition [of Indigenous language rights under section 35], the Government of Canada has taken an approach to languages that purposely and systematically privileges English and French and devalues Indigenous languages."[49] The Assembly of First Nations has also requested the OLA incorporate Indigenous languages as official languages within the context of its statute.[50] During statutory considerations, the Assembly of First Nations' proposal was not put forward as an amendment by any members, nor was it put forward as an amendment at third reading. Amendments tabled in the Senate to advance the status of the *United Declaration on the Rights of Indigenous Peoples Act* in the OLA were defeated.[51] Given Bill S-13's broad scope for upholding Indigenous rights, consideration may need to be given to how its contents will interact with some pre-existing provisions in the OLA.

According to Lorne Neudorf et al., beyond its convenience, the *Interpretation Act* "promotes the cohesion and uniformity of federal law with associated benefits for rule of law values like legal certainty, predictability and fairness."[52] The insertion of a non-derogation clause in the *Interpretation Act* may promote a more consistent approach to the legal relationship between federal statutes and section 35 Aboriginal and treaty rights.

2.2 RELATED AMENDMENTS (CLAUSES 2 TO 35)

Existing non-derogation clauses in 26 different Acts are to be completely repealed.

In one specific statute listed amongst the Related Amendments, the *Mackenzie Valley Resource Management Act* (S.C. 1998, c. 25), the previous clause 5(2) entitled "Aboriginal Rights" is to be replaced with the Bill S-13 proposed section 8.3 provisions.

The Government of Canada indicates that, as a result of cooperation and consultation, only three other non-derogation clauses would remain in federal legislation: the aforementioned *Mackenzie Valley Resource Management Act*,[53] the *Kanesatake Interim Land Base Governance Act*,[54] and the *shíshálh Nation Self-Government Act*.[55]

Note, however, that the related amendments in Bill S-13 do not amend the *Indian Oil and Gas Act* (R.S.C. 1985, c. I-7) in which section 6(2) states:

> 6(2) Nothing in this Act shall be deemed to abrogate the rights of Indian people or preclude them from negotiating for oil and gas benefits in those areas in which land claims have not been settled.

Bill S-13 does not mention the *Indian Oil and Gas Act*. It is unclear whether or not the meaning of its section 6(2) will be impacted in light of the change brought about by Bill S-13.

2.3 COORDINATING AMENDMENTS (CLAUSES 36 TO 38)

Non-derogation clauses are contained in three government bills currently at different stages of the legislative process (bills C-21, C-35 and C-49). If these bills receive Royal Assent, those provisions will be repealed or replaced when Bill S-13 comes into force.

Two private members' bills in the House of Commons and one Senate public bill currently before Parliament also contain non-derogation clauses that use similar, though not necessarily identical, language to that found in Bill S-13 (Bill C-219, An Act to enact the Canadian Environmental Bill of Rights and to make related amendments to other Acts;[56] Bill C-271, An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection;[57] and Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals)).[58] These bills are not included in the list of coordinating amendments in clause 36.

3 COMMENTARY

Associate Professor Naiomi Metallic, Chancellor's Chair in Aboriginal Law and Policy at the Schulich School of Law at Dalhousie University and member of the Listuguj Mi'gmaq First Nation, commented on the "curious omission" of UNDRIP from Bill S-13, stating that, "In the same way that they want section 35 to be very clear in the Interpretation Act, [UNDRIP] would equally be as clear."[59] She differentiates including UNDRIP protections compared to the non-derogation clause in that the former's provisions "puts this in a different ballpark because they're so explicit" whereas "section 35 rights" don't itemize precisely what Aboriginal and treaty rights entail, which risks ambiguity and could result in the need for outside judicial interventions.[60]

That said, in the previously mentioned 2022 Justice Canada consultations and subsequent "What We Learned" report, discussions around a non-derogation clause in the *Interpretation Act* were indeed intertwined with dialogue surrounding UNDRIP and the UNDRIP Act, but concrete discourse or efforts to amend the *Interpretation Act* to reference UNDRIP were not raised at that time.

NOTES

1. Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts, 44th Parliament, 1st Session. In reviewing Bill S-13, the Minister of Justice "has not identified any potential effects on Charter rights and freedoms" (*Bill S-13:* An Act to amend the Interpretation Act and to make related amendments to other Acts, Charter statement, 13 June 2023).
2. *Interpretation Act*, R.S.C. 1985, c. I-21.
3. *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s.35.

   Section 35 states:

   > Recognition of existing aboriginal and treaty rights
   >
   > (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
   >
   > Definition of aboriginal peoples of Canada
   >
   > (2) In this Act, aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada.

4. Government of Canada, "Upholding Section 35 rights through a non-derogation clause in the federal *Interpretation Act*," *Non-derogation clauses*.
5. Government of Canada, *NDC: Consultation and Engagement Process Overview and Summary of What We Have Learned*, June 2022.
6. According to the *Interpretation Act*, section 2(1), an "enactment" to which the Act applies is defined broadly to include any part of an Act of Parliament and also any part of a regulation.
7. Government of Canada, "What are Indigenous Rights," *Treaties and agreements*.

8. Sara Fryer and Olivier Leblanc-Laurendeau, *Understanding Federal Jurisdiction and First Nations*, Publication no. 2019-51-E, Library of Parliament, 29 November 2019.

9. *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

10. Specifically, if the federal or provincial government can prove that the infringing measures serve a "valid legislative objective" (such as natural resource conservation) and that such measures are consistent with the fiduciary or trust relationship the government has with Indigenous people. See *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

11. This test places the burden of proof on the Crown. The complainant must establish that the impugned law has the effect of interfering with an existing [A]boriginal right. The Crown must then justify the infringement by showing that the law has a valid objective, and that the limit is justified in light of the principle of the honour of the Crown and the Crown's fiduciary duty to Aboriginal peoples.

12. See *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74.

13. See Thomas Isaac, *Aboriginal Law: Supreme Court of Canada Decisions*, 2016; and Jim Reynolds, *Aboriginal Peoples and the Law: A Critical Introduction*, 2018.

14. Senate, "Bill to Amend the Interpretation Act and to Make Related Amendments to Other Acts," *Debates*, 20 June 2023.

15. Senate, Standing Committee on Legal and Constitutional Affairs, *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*, Final report, December 2007.

16. Ibid., p. 3.

17. Ibid., pp. 19–20.

18. These included representatives of the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council, the Congress of Aboriginal Peoples and the Native Women's Association of Canada.

19. Bill S-207, An Act to amend the Interpretation Act (non-derogation of aboriginal and treaty rights), 41st Parliament, 1st Session.

20. Senate, "Bill to Amend – Third Reading – Dropped from the Order Paper," *Debates*, 4 June 2013.

21. Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 28 February 2013.

22. Senate, Standing Committee on Aboriginal Peoples, *Evidence*, 17 October 2013.

23. For example, *An Act respecting Indigenous languages*; *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24; and *An Act to amend the Fisheries Act and other Acts in consequence*, S.C. 2019, c. 14.

24. Government of Canada, "Upholding Section 35 rights through a non-derogation clause in the federal *Interpretation Act*," *Non-derogation clauses*.

25. Government of Canada, *NDC: Consultation and Engagement Process Overview and Summary of What We Have Learned*, June 2022 ("What we Learned Report").

26. Ibid.

27. Government of Canada, *NDC: Consultation and Engagement Process Overview and Summary of What We Have Learned*, June 2022 ("What we Learned Report"), p. 2.

28. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

29. According to the "What we Learned" report, this was in part due to:

> The overlap of the work that can contribute to implementing section 5 of the United Nations Declaration Act ("UNDA"), which constitutes a requirement to take measures to ensure consistency of federal laws with the UNDA, and, the recognition that the UNDA itself contains a non-derogation clause that could possibly be affected by this legislative initiative.

30. Government of Canada, *NDC: Consultation and Engagement Process Overview and Summary of What We Have Learned*, June 2022 ("What we Learned Report"), at p. 4:

> In accordance with the Mackenzie Valley Resource Management Act (S.C. 1998, c. 25), statutorily mandated consultations with the Dél̨ı̨nę Got'ı̨nę Government and Tł̨ı̨chǫ Government were held. Additionally, in accordance with the Yukon Act (S.C. 2002, c. 7), statutorily mandated consultations with the Yukon Government Executive Council occurred. Other stakeholders were also invited to participate in a meeting on the NDC initiative.

31. Ibid.

32. Ibid.

33. Ibid., p. 5.

34. Ibid., p. 4.

35. Ibid., p. 5.

36. Department of Justice Canada, *Next phase launched on consultation and cooperation with Indigenous peoples on non-derogation clauses*, News release, 1 March 2023.

37. Senate, "Bill to Amend the Interpretation Act and to Make Related Amendments to Other Acts," *Debates*, 20 June 2023.

38. Senate, Standing Committee on Legal and Constitutional Affairs, *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*, Final report, December 2007. p. 19.

39. Assembly of First Nations, *Discussion paper RE: Non-derogation clause issues for First Nations*, 5 May 2022.

40. Government of Canada, *Treaties and Agreements*.

41. Senate, Standing Committee on Legal and Constitutional Affairs, *Taking Section 35 Rights Seriously: Non-derogation Clauses relating to Aboriginal and treaty rights*, Final report, December 2007, p. 19.

42. Chris Hunt, Lorne Neudorf and Micah Rankin, "Canada's First Act: The History and Role of the Interpretation Act," in Chris Hunt, Lorne Neudorf and Micah Rankin, eds., *Legislating Statutory Interpretation: Perspectives from the Common Law World*, 2018, p. 210 [subscription required].

43. Ibid., p. 211. Also see *Edgar v. Canada (Attorney General)*, (1999), 46 O.R. (3d) 294 (Ont. C.A.).

44. See *Indigenous Languages Act*, S.C. 2019, c. 23. Specifically, section 6 states:

> The Government of Canada recognizes that the rights of Indigenous [P]eoples recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages.

45. Government of Canada, *Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, 2015.

46. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14., arts. 13, 14 and 16.

47. *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 83(1).

48. *R v. Côté*, [1996] 3 S.C.R. 139, para. 56.

49. Assembly of First Nations, *Submission to the Standing Committee on Official Languages – RE: Bill C-13* An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts, 31 October 2022, p. 17.

50. Assembly of First Nations, *Submission to the Standing Committee on Official Languages – RE: Bill C-13* An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts, 31 October 2022, p. 12.

51. Senate, Standing Committee on Official Languages, *Minutes of Proceedings*, 12 June 2023.

52. Chris Hunt, Lorne Neudorf and Micah Rankin, "Canada's First Act: The History and Role of the Interpretation Act," in Chris Hunt, Lorne Neudorf and Micah Rankin, eds., *Legislating Statutory Interpretation: Perspectives from the Common Law World*, 2018, p. 208 [subscription required].

53. As outlined in Bill S-13, clause 17, section 5(2) of the *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25, is replaced by the following:

> 17 Rights of Indigenous peoples
>
> (2) This Act is to be construed as upholding the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.
>
> Indigenous peoples
>
> (3) For the purposes of subsection (2), *Indigenous peoples* had the meaning assigned by the definition of *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*.

54. *Kanesatake Interim Land Base Governance Act* (S.C. 2001, c. 8) states, at s. 3(2):

> Aboriginal and treaty rights
>
> (2) This Act does not address any aboriginal or treaty rights of the Mohawks of Kanesatake. Nothing in this Act is intended either to prejudice such rights or to represent a recognition of such rights by Her Majesty in right of Canada.

55. *shíshálh Nation Self-Government Act* (S.C. 1986, c. 27) states, at s. 2(3):

> Rights of Indigenous peoples
>
> 3 This Act shall be construed as upholding the Aboriginal rights of the shíshálh Nation and the rights of any other Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

56. Bill C-219, An Act to enact the Canadian Environmental Bill of Rights and to make related amendments to other Acts, 44th Parliament, 1st Session, "Canadian Environmental Bill of Rights," contains the following language:

> Rights of Indigenous peoples of Canada
>
> 3(1) For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982.
>
> Definition of *Indigenous peoples of Canada*
>
> (2) In subsection (1), Indigenous peoples of Canada has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*.

57. Bill C-271, An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection, 44th Parliament, 1st Session, "St. Lawrence River Capacity and Protection Act," contains the following language:

> 3. For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of Indigenous peoples by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

58. Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals), 44th Parliament, 1st Session, "Jane Goodall Act," contains the following language:

> 17. The provisions enacted by this Act are to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982* and not as abrogating or derogating from them.

59. Shari Narin, "Canada seeks to update Interpretation Act to protect Indigenous rights, but draft fails to include UNDRIP," *Windspeaker*, 8 March 2023.

60. Ibid.