

The United Nations Declaration on the Rights of Indigenous Peoples in Canada: Bill C-15 Introduced

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On December 3, 2020, the federal government introduced Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act*.¹ If passed by Parliament, Bill C-15 will provide a roadmap for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) in Canada.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

UNDRIP is a statement of principles adopted by the United Nations General Assembly in 2007.² UNDRIP is considered “the most comprehensive international instrument on the rights of Indigenous peoples...and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous peoples.”³

UNDRIP is frequently referenced in the natural resource development context as many rights contained in UNDRIP relate directly to resource development on Indigenous lands. For example, UNDRIP recognizes Indigenous peoples’ right to

- ◆ own, use, develop and control their lands, territories and resources (Article 26)
- ◆ the conservation and protection of the environment (Article 29)

¹ Canada, Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, 2nd Sess, 43rd Parl, 2020.

² *United Nations Declaration on the Rights of Indigenous Peoples*, 13 September 2007, A/RES/61/295 [UNDRIP].

³ United Nations Department of Economic and Social Affairs: Indigenous Peoples, “United Nations Declaration on the Rights of Indigenous Peoples” (n.d.), online: <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>.

- ◆ participate in a fair, independent, impartial, open, and transparent process to recognize and adjudicate the rights pertaining to their lands, territories, and resources. The process must give due recognition to Indigenous peoples' laws and traditions (Article 27)
- ◆ participate in decision-making in matters that would affect their rights through their own chosen representatives in accordance with their own procedures (Article 18), and
- ◆ States consulting and co-operating in good faith with Indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands, territories, or resources (Article 32).

In addition, UNDRIP addresses a broad range of individual and collective Indigenous rights beyond the resource development context, including rights to education, identity, health, employment, culture, and language. UNDRIP also affirms the right of Indigenous peoples to self-determination, and the right to pursue their own priorities in economic, social, and cultural development.⁴

UNDRIP is an international instrument that proclaims principles as a standard of achievement. It is not legally enforceable unless and until its principles are incorporated into Canadian law by domestic legislation or other means (e.g. through a treaty with an Indigenous government).⁵ Nevertheless, courts have indicated that UNDRIP can be used to interpret other governmental legal obligations.⁶

IMPLEMENTING UNDRIP IN CANADA

Canada was one of four states that initially voted in opposition to UNDRIP.⁷ Canada had significant “concerns with respect to the wording of the current text, including provisions on lands, territories and resources; on free, prior and informed consent when used as a veto; on self-government without recognition of the importance of negotiations; on intellectual property; on military issues; and on the need to achieve an appropriate

⁴ UNDRIP, *supra* note 2.

⁵ *Baker v Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699 at para 69; *Watson v Canada*, 2020 FC 129 at para 351; Kerry Wilkins, “Strategizing UNDRIP Implementation: Some Fundamentals” in *UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws* (Waterloo: Centre for International Governance and the Wiyasiwewin Mikiwahp Native Law Centre, 2018) 121 at 122.

⁶ *NunatuKavut Community Council Inc. v Canada (AG)*, 2015 FC 981 at paras 103–04.

⁷ United Nations Department of Economic and Social Affairs, “United Nations Declaration on the Rights of Indigenous Peoples – Historical Overview” (2007), online: United Nations <www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>. The United States, Australia, and New Zealand also voted in opposition to UNDRIP.

balance between the rights and obligations of indigenous peoples, Member States and third parties.”⁸

Under the minority Conservative government in November 2010, Canada gave a qualified Statement of Support to UNDRIP. In 2016, following the election of Justin Trudeau’s Liberal government, Canada announced its adoption of UNDRIP with no reservations or qualifications.⁹

Bill C-262

In April 2016, Private Member’s Bill C-262, the *United Nations Declaration on the Rights of Indigenous Peoples Act*,¹⁰ was introduced in the House of Commons. Bill C-262 would have recognized UNDRIP “as a universal international human rights instrument with application in Canadian law.”¹¹ It would have required the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure that the laws of Canada are consistent with the UNDRIP.¹² Bill C-262 would have also required the Government of Canada, in consultation and cooperation with Indigenous peoples, to develop and implement a national action plan to achieve the objectives of UNDRIP.¹³

Bill C-262 received support from the federal Liberal government in November 2017.¹⁴ However, Bill C-262 died on the order paper before receiving royal assent.

Bill C-15

Bill C-15 is very similar to Bill C-262. As with Bill C-262, Bill C-15 requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to “take all measures necessary to ensure that the laws of Canada are consistent” with

⁸ UNGAOR, 61st Session, 107th Plen Mtg, UN Doc A/61/PV.107 (2007) at 12–13, online: <<https://undocs.org/en/A/61/PV.107&Lang=E>>.

⁹ Tim Fontaine, “Canada Officially Adopts UN Declaration on Rights of Indigenous Peoples,” CBC News (10 May 2016), online: <www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>.

¹⁰ Canada, 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*, 1st Sess, 42nd Parl, 2016, (as passed by the House of Commons 30 May 2018).

¹¹ *Ibid*, cl 3.

¹² *Ibid*, cl 4.

¹³ *Ibid*, cl 5.

¹⁴ John Paul Tasker, “Liberal Government Backs Bill that Demands Full Implementation of UN Indigenous Rights Declaration,” CBC News (21 November 2017), online: <www.cbc.ca/news/politics/wilson-raybould-backs-undrip-bill-1.4412037>.

UNDRIP.¹⁵ In conjunction with the introduction of Bill C-15, a new [federal website](#) has been established to provide background on UNDRIP and to provide answers to key questions. Interestingly, the concept of free, prior and informed consent (“FPIC”) is described as being about working together in partnership and respect and that it is not about having a veto over government decision-making.¹⁶

In his remarks during a press conference on December 3, 2021, Minister of Justice and Attorney General, David Lametti, stated that consideration was given to UNDRIP in the drafting of the *Impact Assessment Act*¹⁷ (“IAA”), which came into force on August 28, 2019. The government’s website also cites the IAA as an example of an action taken to support implementation of UNDRIP in Canada.

As with Bill C-262, Bill C-15 also requires the preparation and implementation of an action plan to achieve the objectives of UNDRIP.¹⁸ Unlike Bill C-262, Bill C-15 sets out what must be included in the action plan such as measures to address injustice and discrimination against Indigenous peoples, measures to promote mutual respect through human rights education, and accountability measures with respect to the implementation of UNDRIP.¹⁹ Clause 6(4) of Bill C-15 requires the action plan to be completed “as soon as practicable, but no later than three years after the day on which this section comes into force.”²⁰

Unlike Bill C-262, Bill C-15 contains a clause stating that its purpose is to:

- 1 affirm UNDIRP as a universal international human rights instrument with application in Canadian law, and
- 2 provide a framework for the Government of Canada’s implementation of UNDRIP.²¹

Until Bill C-15 is passed into law, its provisions are not enforceable. It is expected that Bill C-15 will be referred to the Standing Committee on Justice and Human Rights for detailed review early in 2021.

Stay tuned for further analysis of Bill C-15 and the implementation of UNDRIP in Canada.

¹⁵ Bill C-15, *supra* note 1, cl 5.

¹⁶ Government of Canada, “Backgrounder: Bill C-15 – *United Nations Declaration on the Rights of Indigenous Peoples Act*”, online: <<https://www.justice.gc.ca/eng/declaration/about-apropos.html>>.

¹⁷ SC 2019, c 28, s 1.

¹⁸ Bill C-15, *supra* note 1, cl 6(1).

¹⁹ *Ibid*, cl 6(2).

²⁰ *Ibid*, cl 6(4).

²¹ *Ibid*, cl 4.

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