

CANADA'S PLAN TO REPLACE THE INDIAN ACT & PRE-1975 TREATIES THROUGH SELF-GOVERNMENT AGREEMENTS, MODERN TREATIES & OPT-OUT LAWS



BY RUSS DIABO

PRESENTED TO MARLENE'S SOLIDARITY
WEBINAR OCTOBER 10, 2024

IMAGE COURTESY OF MICHELLE BOIVIN

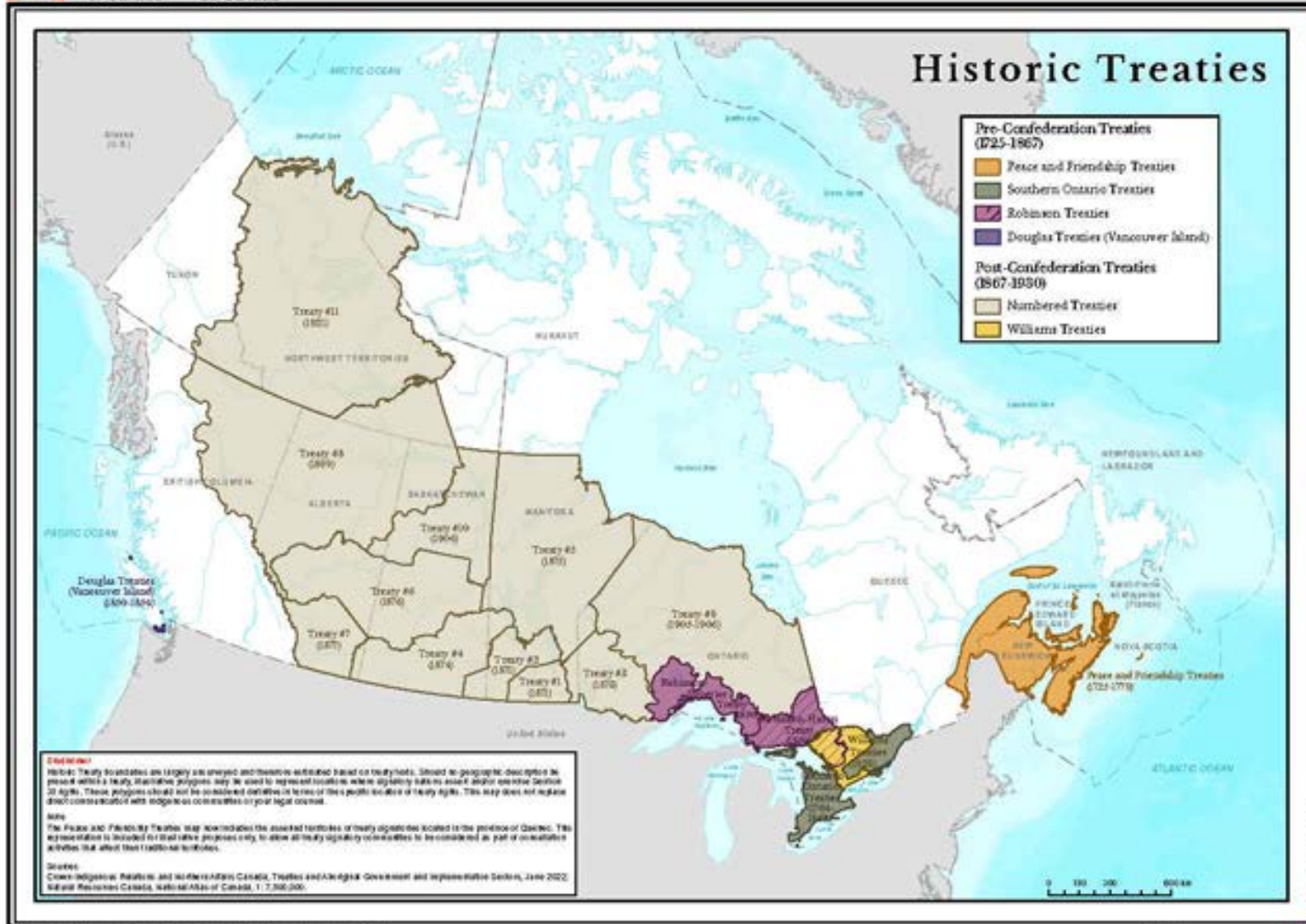
PARTS OF PRESENTATION

1. Basis of Canada's "*Assumed Crown Sovereignty*".
2. Elements of Trudeau Government's Two-Track "*Rights Recognition*" Re-Colonization Framework.
3. 2007 INTERNATIONAL VERSION of UNDRIP Substituted with Canada's Domestic United Nations Declaration Act (Bill C-15) and National Action-Plan to Replace Indian Act and Pre-1975 Treaties.
4. Self-Determination Capacity & Planning Issues.

Origin of Canada

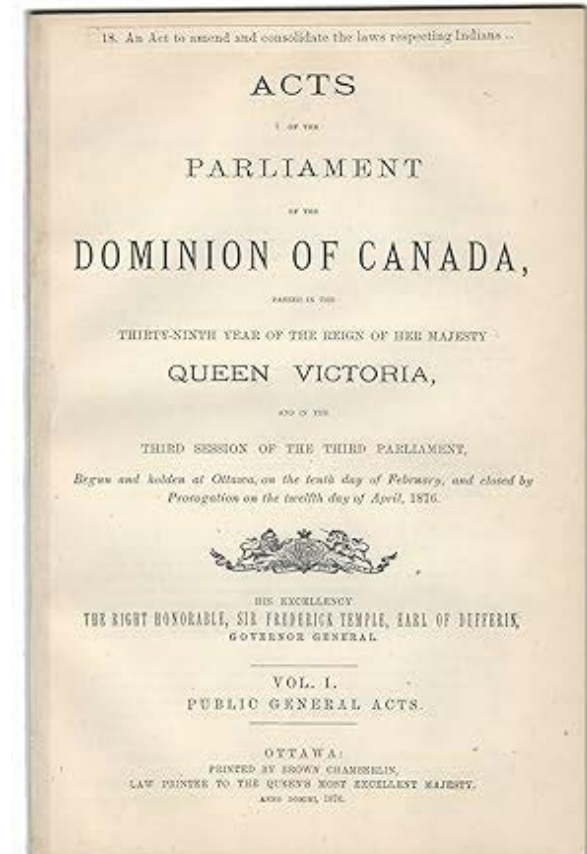
- ▶ Canada bases its territorial integrity and assertion of Crown sovereignty over Indigenous (First) Nations by continuing to rely on the racist and outdated notion of the **Doctrine of Discovery (Assumed Crown Sovereignty)** while manipulating the **Doctrine of Consent**.





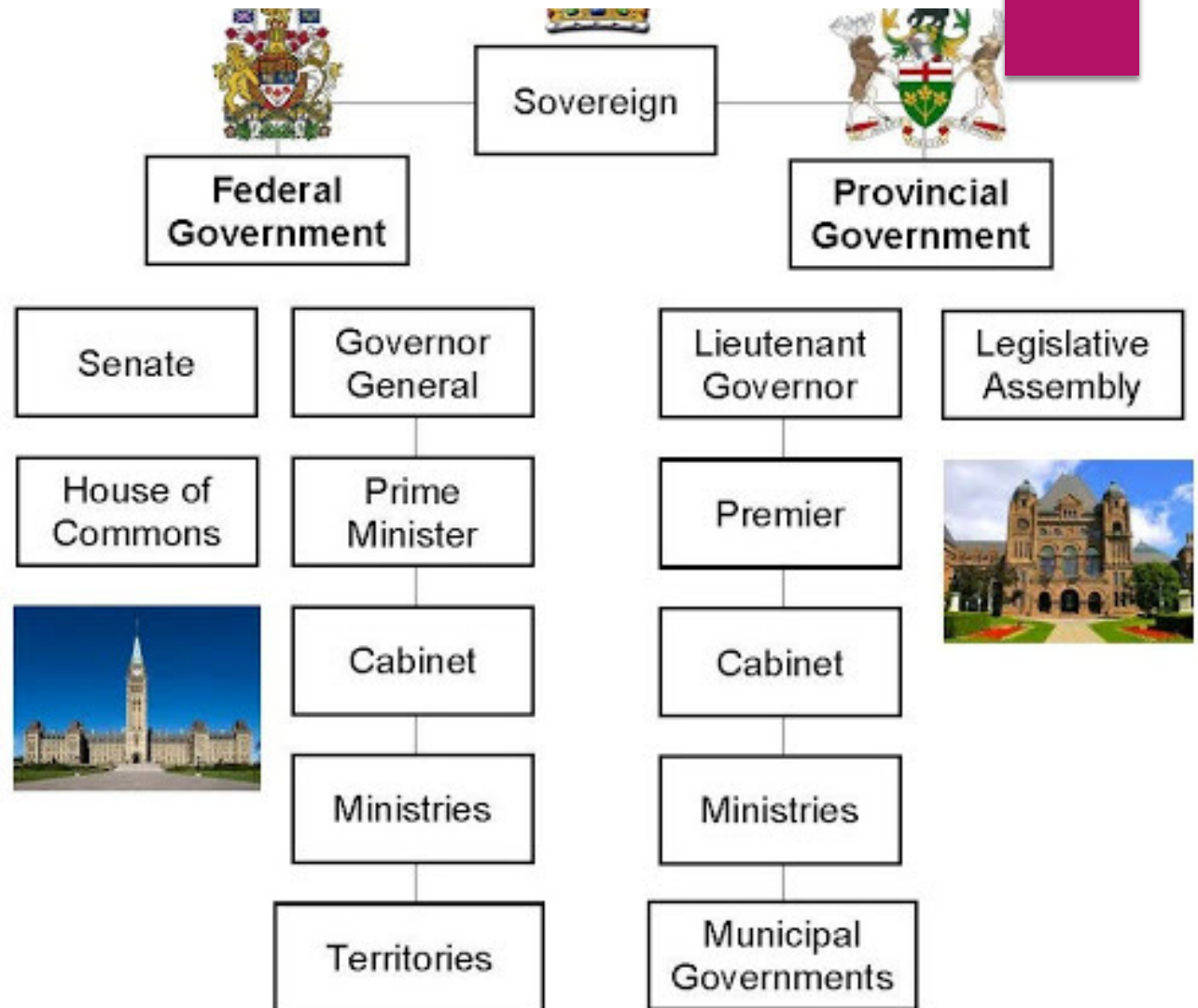
Pre-1975 Treaties: Pre- Confederation and Post- Confederation

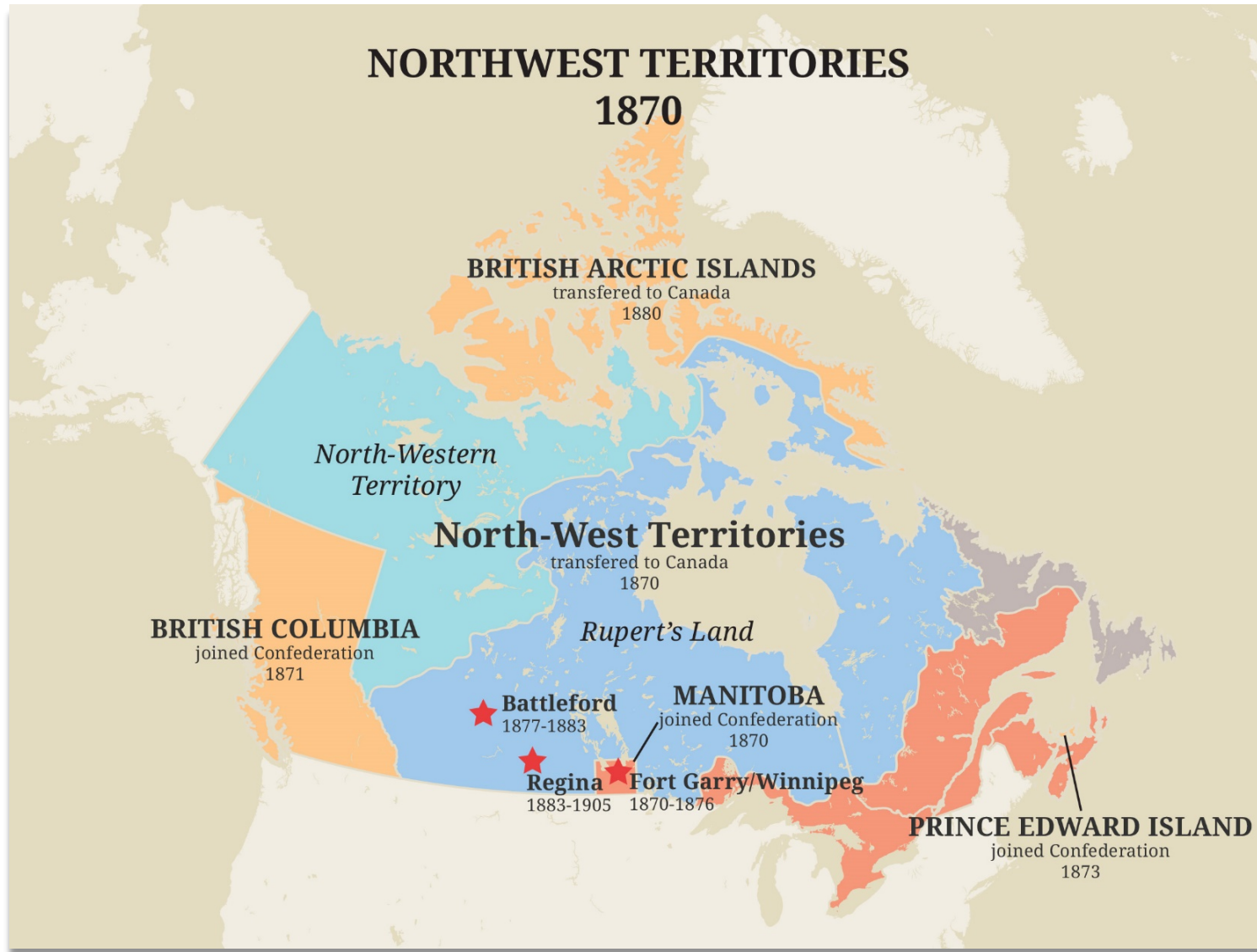
1867 - Section 91.24 BNA Act & 1876 - Indian Act



Constitutional Division of Powers

- ▶ Section 91 are Federal Powers
- ▶ Section 92 are Provincial Powers





1870
Purchase of
Rupert's Land
From HBC
Enlarging NWT

Constitution Act 1982 & Section 37 FMC's



Liberal Legacy of PM Pierre Trudeau & PM Jean Chretien

- ▶ 1969 White Paper on Indian Policy.
- ▶ 1973 Statement on Native Claims (Land Claims: Comprehensive & Specific).
- ▶ 1982 Constitution Act (Added “Existing” to Section 35 Wording & Section 37 Process to define Aboriginal & Treaty rights, 1983 constitutional amendment to include sec. 35(3) Land Claims Agreements as Treaties, 1980’s Failed FMC’s).
- ▶ 1995 “Inherent Right Policy” (Federal Pre-Conditions to Negotiating Self-Government, including Denial of International Right of Self-Determination).
- ▶ 1999 First Nations Land Management Act (Land Codes/Land Registry/Land Advisory Board).
- ▶ 2006 First Nations Fiscal & Statistics Management Act, now called the First Nations Fiscal Management Act (National Fiscal Institutions for Loans & Taxation).

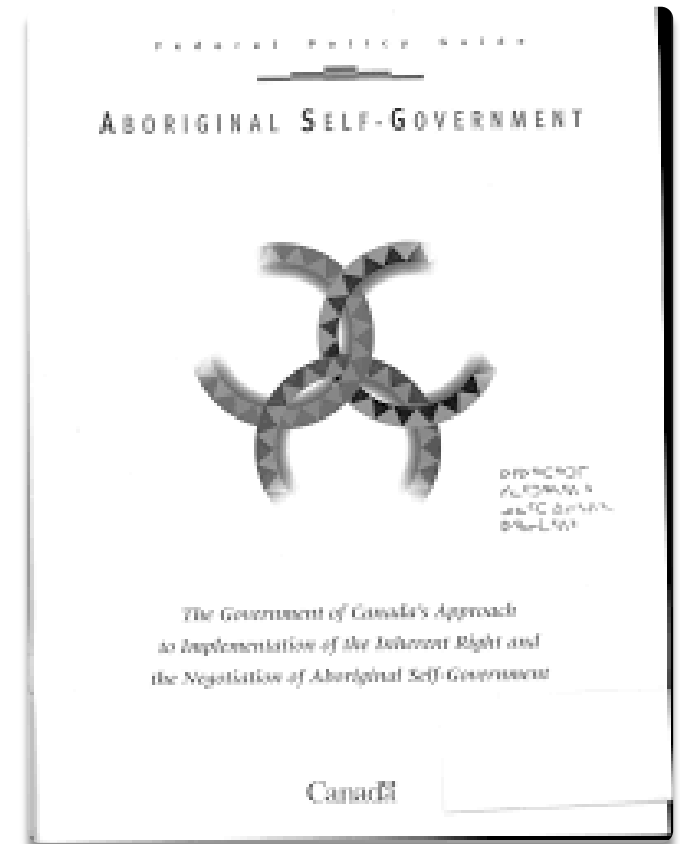
1993 LIBERAL RED BOOK PROMISE

**“Act on the premise that the
Inherent Right to Self-Government
is an existing Aboriginal & Treaty
Right within the meaning of
section 35.”**



Federal 1995 'Inherent Right' Policy

- ▶ In 1995 the Chrétien government broke the promise to recognize the inherent right to self-government by adopting an 'Aboriginal Self-Government' Policy, which recognizes the right in an abstract sense, but doesn't recognize that any particular First Nation has the right on the ground, with pre-conditions that convert **Indian Act** bands into municipal type governments.



FEDERAL 'INHERENT RIGHT' POLICY

- ▶ The federal '**Inherent Right**' Policy states "*The inherent right of self-government **does not include a right of sovereignty in the international law sense...implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation***". [emphasis added]

1996 GUIDELINES FOR FEDERAL SELF-GOVERNMENT NEGOTIATORS

How to Deal with Requests for Recognition as "Distinct People(s)"

- ▶ ***“Use of "people(s)" by itself without further qualification has potential implications related to the international right of self-determination, a right traditionally considered akin to the right of a sovereign state. Officials have no authority to use this language in agreements, whether binding or otherwise, since it may raise implications vis-à-vis the right of self-determination at international law.” [emphasis added]***
- ▶ ***“The word "peoples" found in s.35 of the Constitution Act, 1982 ("the aboriginal peoples of Canada") is clearly set within the context of the Canadian constitutional framework and therefore does not have implications related to self-determination.” [emphasis added]***

Elements of Trudeau Government's Two-Track "Rights Recognition" Framework



Liberal Party of Canada's Key 2015 Election Promises

- ▶ Engage in a new “**Nation-to-Nation**” Process.
- ▶ Develop in full partnership with First Nations a **National Reconciliation Framework**.
- ▶ Enact all **94 TRC Calls to Action** and **adopt UNDRIP**.
- ▶ **Lift 2% Cap** on First Nations Funding.
- ▶ Do a **full review of federal law & policy** in full partnership with First Nations.
- ▶ **Establish an Indigenous Missing Women's & Girls Inquiry**.

Trudeau's Two-Track Re-Colonization Plan

Section 91.24

Use Federal Racist, Colonial, Authority & Control over **"Indians & Lands Reserved for Indians"** to Dissolve Dept. of Indian Affairs & Create 2 New "Indigenous" Dept's.

Section 35

To Impose a "New Relationship" Through a Unilateral Federal Definition & Interpretation of "Rights Recognition" of **"Existing Aboriginal & Treaty Rights"**

December 2015:

2-Track Approach To “Indigenous” Reconciliation Announced (First Nations, Metis, Inuit)



- ▶ 1) closing the socio-economic gap between Indigenous Peoples and non-Indigenous Canadians [Indigenous Services Canada], and
- ▶ 2) making foundational changes to laws, policies and operational practices based on the federal recognition of rights to advance self-determination and self-government. [Crown-Indigenous Relations]

**Dissolving DIAND & Creating 2 New Departments:
Indigenous Services Canada (ISC) & Crown-Indigenous Relations
Northern Affairs Canada (CIRNAC) - Bill C-97
TRACK ONE – TRANSFER OF PROGRAMS**



“As Minister of Indigenous Services...Continue to support First Nation-led processes to transition away from the Indian Act. Work with communities and institutions to invest in capacity building initiatives that support and advance self-determination like the 10-year Grant.” - PM Mandate Letter [emphasis added]

**Dissolving DIAND & Creating 2 New Departments:
Indigenous Services Canada (ISC) & Crown-Indigenous Relations
Northern Affairs Canada (CIRNAC) - Bill C-97
TRACK TWO – NEGOTIATION OF SECTION 35 RIGHTS**

**“As Minister of Crown-Indigenous Relations,
your first and foremost priority is to work in full
partnership with First Nations, Inuit and Métis
to continue building nation to nation
relationships and support self-determination,
including supporting First Nations
communities as they transition to self-
government and move away from the Indian
Act.” – PM Mandate Letter [emphasis added]**



**NATION-TO-NATION = RECOLONIZATION
FROM INDIGENOUS PEOPLES TO INDIGENOUS-CANADIANS**

**FEDERAL MASTER-PLAN FOR REPLACING THE INDIAN ACT & HISTORIC PRE-1975 TREATIES
WITH 4TH LEVEL INDIGENOUS SELF-GOVERNING MUNICIPALITIES**

- ▶ **Two-Tracks, Departments & Ministers (ISC & CIRNAC) to prepare repeal of the Indian Act, by off-loading programs & legal responsibilities (Transfer Policy) to transition Indian Act Bands/Reserves into Indigenous Governments with “*Natural Person Powers*” (same as corporations)—both pre-1975 Treaty Bands and non-Treaty Bands.**
- ▶ **Federal Department of Justice-10 Principles based on the **Doctrine of Discovery (Assumed Crown Sovereignty)** for Canada’s replacement/substitute definition of the INTERNATIONAL MINIMUM STANDARDS contained in International 2007 version of UNDRIP & Defining Indigenous Relationships and Legal Status (Using Constitutional Heads of Power - **Section 91.24 Legislation and Section 35 Agreements**).**
- ▶ **Four Termination Policies to limit & restrict the meaning of Section 35 Aboriginal & Treaty Rights (**Inherent Right, Comprehensive Land Claims, Specific Claims (Process Reform), Additions-to-Reserves (Redesign)**).**

**NATION-TO-NATION = RECOLONIZATION
FROM INDIGENOUS PEOPLES TO INDIGENOUS-CANDIANS**

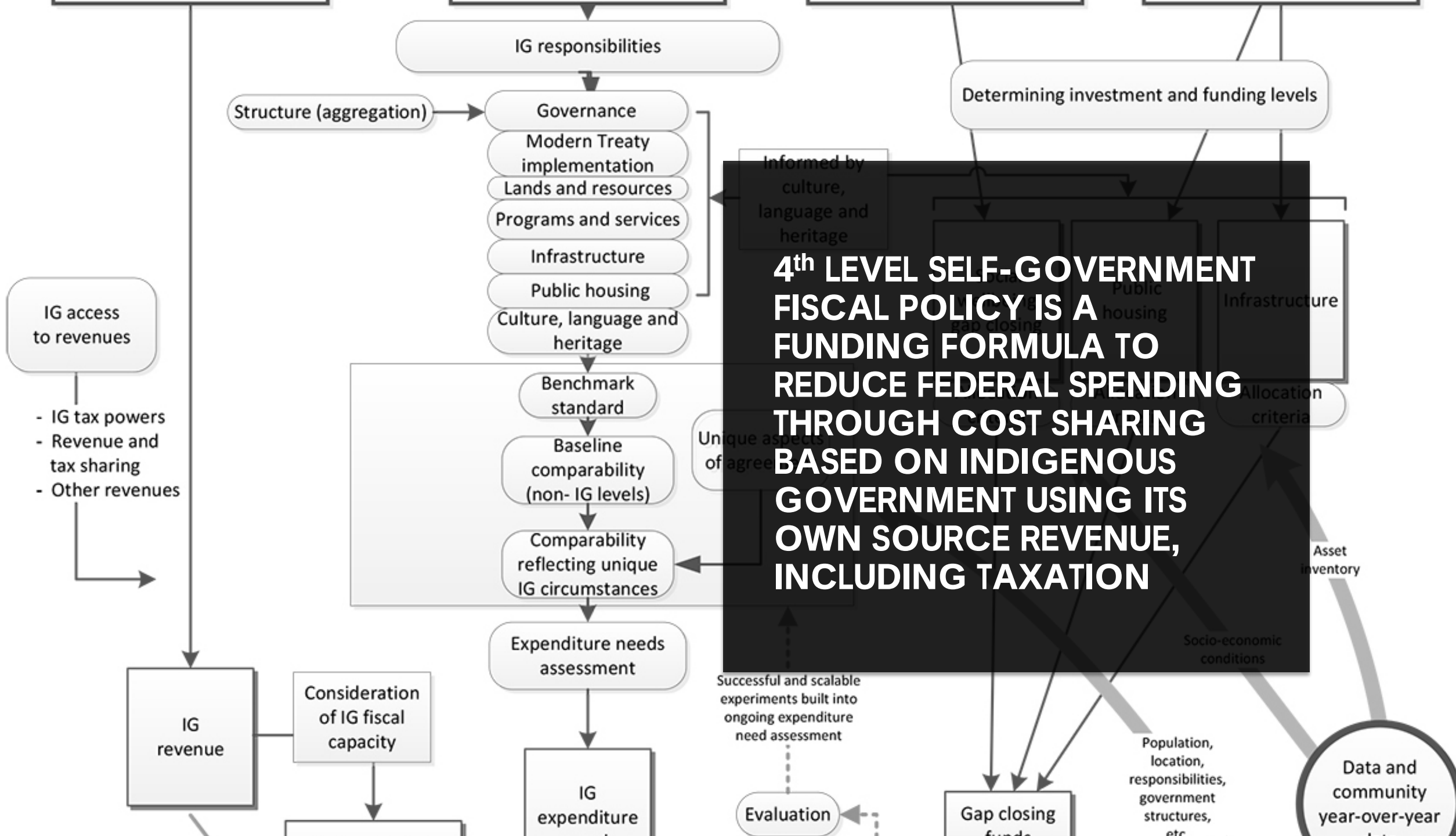
**FEDERAL MASTER-PLAN FOR REPLACING THE INDIAN ACT & HISTORIC PRE-1975 TREATIES
WITH 4TH LEVEL INDIGENOUS SELF-GOVERNING MUNICIPALITIES**

- ▶ **Five Federally created, funded & controlled—BC Based—National Institutions (First Nations Lands Advisory Board, First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority, First Nations Infrastructure Institute) to facilitate the off-loading of programs & legal responsibilities and support transition of Indian Act Bands/Reserves into Indigenous Governments with Natural Person Powers (same as Corporations) and eventually dissolving Indigenous Services Canada.**
- ▶ **Implement Canada's domestic UNDRIP (Bill C-15) National Action-Plan, which is based on Canada's "*assumed crown sovereignty and territorial integrity*" (International 2007 UNDRIP-Article 46.1), to negotiate Canada's domestic version of self-determination, self-government and interpretation of pre-1975 Treaties, through federal laws and policies.**

INHERENT RIGHT TO SELF-GOVERNMENT POLICY IS THE BLANKET POLICY

The federal **Inherent Right to Self-Government Policy** is the basis for all discussions and negotiations with First Nations, Metis, Inuit, including these processes:

- ▶ *“Recognition of Rights & Self-Determination”* Tables.
- ▶ Modern Treaty (Comprehensive Land Claim/Assertion of Aboriginal Title) Tables.
- ▶ Specific Claims (Lawful Obligations) - Canada-AFN Proposed *‘Independent’* Claims Process.
- ▶ Additions-to-Reserve Policy Redesign – Transition of Indian Reserves into Land Codes, Self-Government Arrangements (Fee Simple).
- ▶ Self-Government (Sectoral—including Land Codes & Programs like Education, Health, Child and Family Services—or Comprehensive) Tables.
- ▶ Alternative Federal (Section 91.24) Legislation to the Indian Act, Granting Delegated Law-Making Authority and Imposing National Standards on Inherent and Treaty rights (affecting First Nations lands, taxation, resources, languages, child welfare and governance regimes).



Phased Elimination of Indian Reserves into Private Property (Fee Simple)

First Nations Property
Ownership Initiative now
called Indigenous Land
Title Initiative



Tom Flanagan & Manny Jules

CANADA – LAND REGISTRATION

- ▶ The **ISC lands registries record property interests in First Nations lands**. A land registry is a set of records that anyone can search to find out what ownership, leases, permits and other interests may apply to a parcel of land.
- ▶ **ISC has 3 land registries**. The registries are maintained in Ottawa and are web-based. They are accessible to First Nations, ISC staff and the general public.
- ▶ The **Indian Land Registry System (ILRS)** consists of documents related to and interests in reserve (and any surrendered) lands that are administered under the **Indian Act**.
- ▶ The **First Nations Land Registry System (FNLRS)** is used for the land records of First Nations who operate under their own Land Code pursuant to the **First Nations Land Management Act (FNLMA)**.
- ▶ The **Self-Governing First Nations Land Register (SGFNLR)** is established in accordance with the terms of First Nations self-government agreements and record documents that grant an interest in self-governed First Nation lands. **SOURCE: ISC Website**

Framework Agreement Signatory Communities



Natural Resources
Canada

Ressources naturelles
Canada

First Nations Land Management Gestion des terres des Premières nations

October 2019 Edition / Édition octobre 2019

Produced by Surveyor General Branch, Natural Resources Canada.
Préparé par la Direction de l'arpenteur général, Ressources naturelles Canada.

To Order Additional Copies / Pour obtenir ce produit contactez :
Surveyor General Branch, Geomatics Canada, Natural Resources
Canada. Telephone: (780) 495 - 7664, email: AI.Bowler@canada.ca
or visit our website at <http://nrg.mcan.gc.ca>

Direction de l'arpenteur général, Géomatique Canada, Ressources naturelles
Canada Téléphone (780) 495 - 7664, Courriel: AI.Bowler@canada.ca
ou voir le site web <http://nrg.mcan.gc.ca>

© 2019, Her Majesty the Queen in Right of Canada, Natural Resources Canada.
© 2019, Sa Majesté la Reine du chef du Canada, Ressources naturelles Canada.

Scale 1:18 000 000 or one centimetre represents 180 kilometers
Échelle 1: 18 000 000 ou un centimètre représente 180 kilomètres

180 0 180 360 540 KM

Lambert Conformal Conic Projection, Standard Parallels 49° N and 77° N
Projection conique conforme de Lambert, parallèles d'échelle conservés à 49° N et 77° N

LEGEND

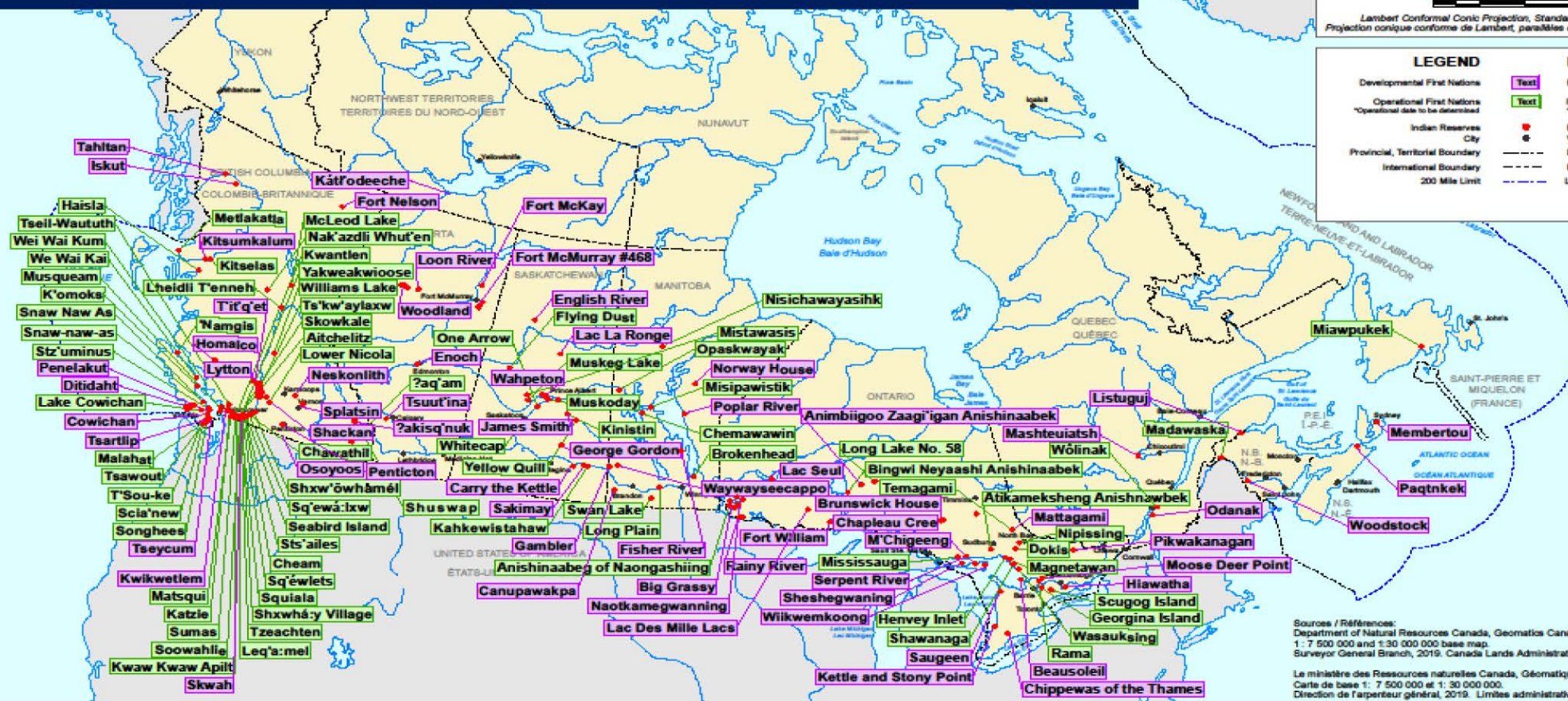
Developmental First Nations
Operational First Nations
Indian Reserves
City
Provincial, Territorial Boundary
International Boundary
200 Mile Limit

LÉGENDE

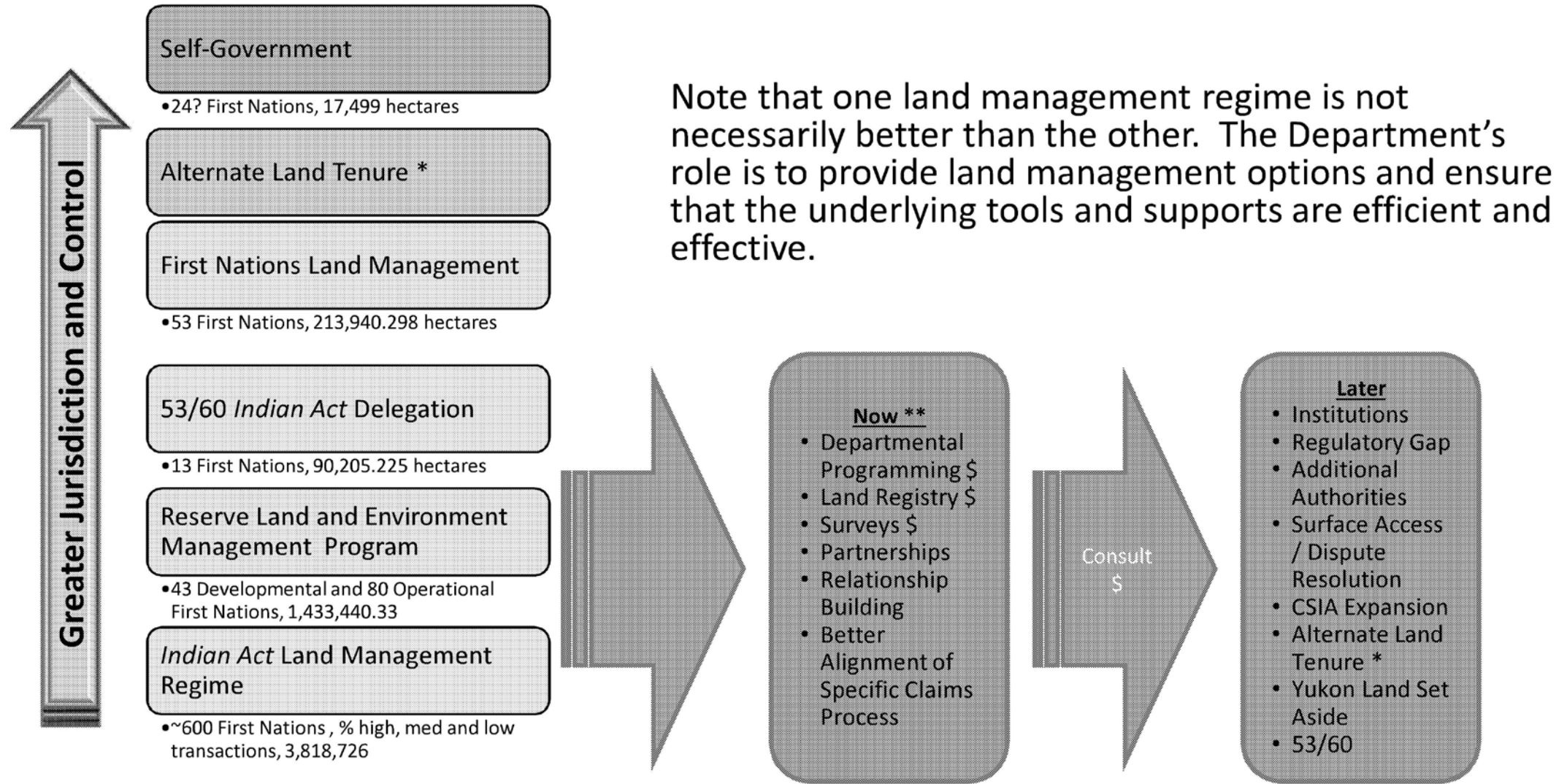
Premières nations - En développement
Premières nations - En opération
Réserves indiennes
Ville
Limite provinciale ou territoriale
Frontière internationale
Limite de 200 milles

Sources / Références:
Department of Natural Resources Canada, Geomatics Canada, GeoAccess Division, 1992.
1: 7 500 000 and 1:30 000 000 base map.
Surveyor General Branch, 2019. Canada Lands Administrative boundary.

Le ministère des Ressources naturelles Canada, Géomatique Canada, Division GéoAccès, 1992.
Carte de base 1: 7 500 000 et 1: 30 000 000.
Direction de l'arpenteur général, 2019. Limites administratives des terres du Canada

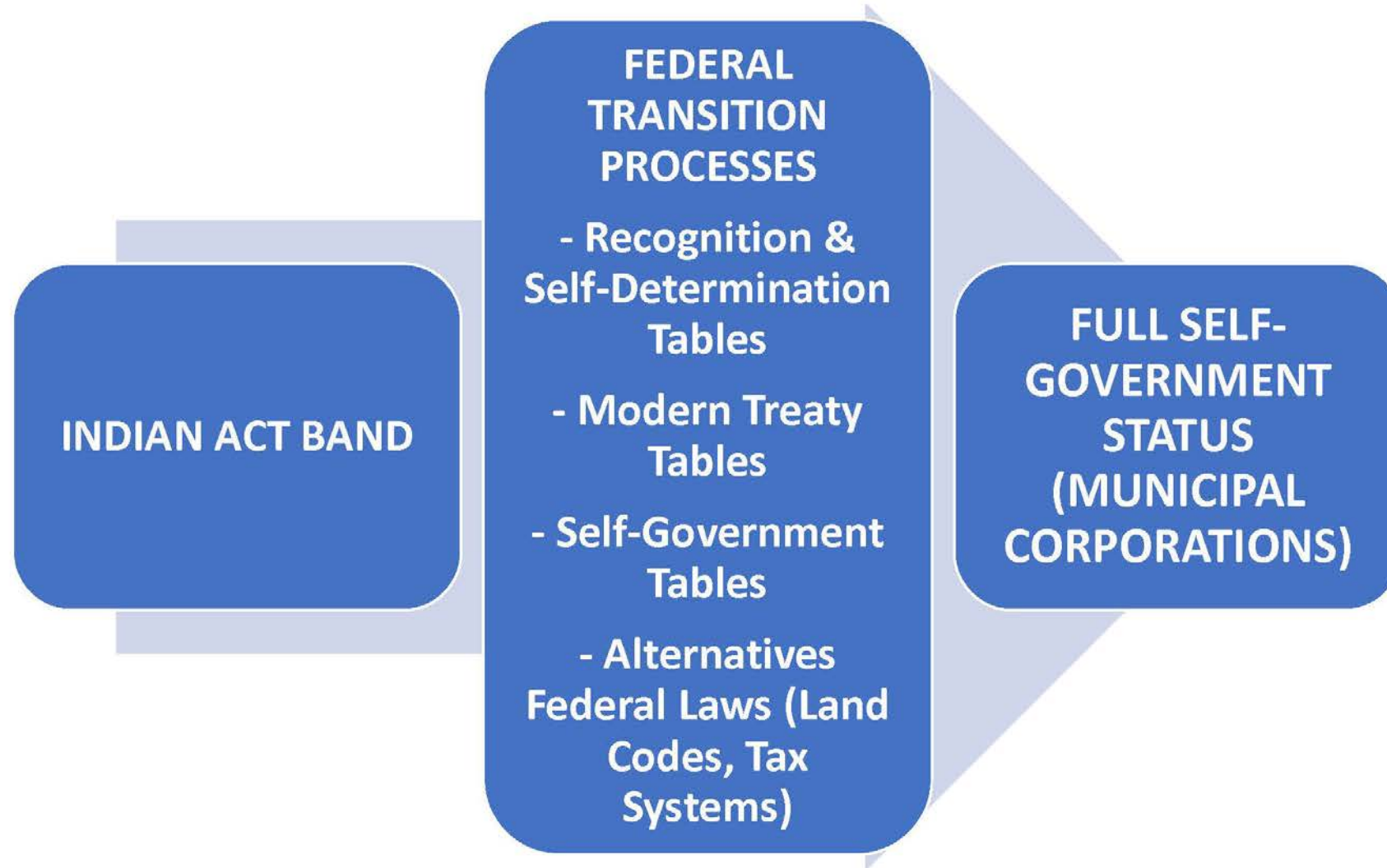


Roadmap of Land Management Regimes Currently Available to First Nations



** For the regimes where INAC has full or partial responsibility, there are things that we can do now within existing authorities, and there may be some things we can do later that require consultations and potentially some expanded authorities.

TRANSITIONAL PROCESS FOR INDIAN BANDS INTO FEDERALLY RECOGNIZED SELF-GOVERNMENT

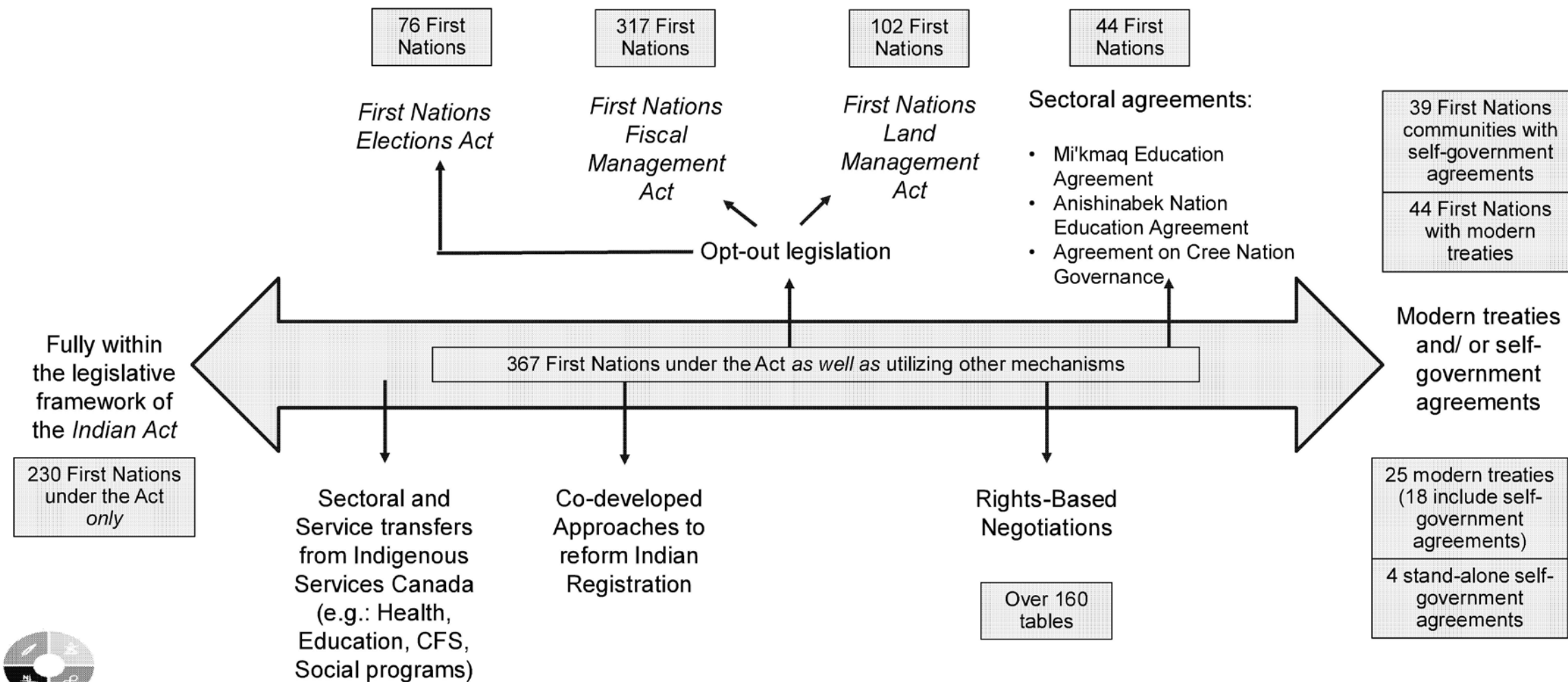


Recognition & Self-Determination Tables

- ▶ “Modern treaties, self-government agreements and other constructive arrangements [land codes & taxation] are the foundations for transformative change...CIRNAC will continue to advance discussions at over 180 active negotiation tables with more than 468 First Nations, 22 Inuit communities, and 8 Métis organizations, representing a total population of approximately 1 million people. Through these discussion tables, CIRNAC will increase the number of treaties, self-government agreements and other constructive arrangements” [emphasis added]
- ▶ SOURCE: 2024-2025, CIRNAC Departmental Plan



Self-Determination and Options for Moving Away from the *Indian Act*



**2007 INTERNATIONAL
VERSION of UNDRIP
MINIMUM STANDARDS
Substituted with Canada's
Domestic United Nations
Declaration Act (Bill C-15)
and National Action-Plan
to Replace Indian Act &
Pre-1975 Treaties**





**SINCE 1990, SCC
HAS DEFINED
SECTION 35 OF
CONSTITUTION
ACT 1982
THROUGH CASE
LAW**

UNDA (Bill C-15)

Action-Plan Doesn't Affect Provincial Jurisdiction

- ▶ **David Lametti, Federal Minister of Justice & Lead Minister on Action-Plan:**
- ▶ **“UNDRIP as an interpretive tool**, just as any UN declaration, already exists as a source of law — an interpretive source of law — in front of tribunals. That’s already the case. **When UNDRIP is passed, I will be required, along with my ministerial colleagues, to develop an action plan.** That will be **with respect to federal laws.** People living in [provinces], to the extent there is a federal law applicable to that, will be subject to any changes that come about as a result of that process. **With respect to areas of provincial jurisdiction — and a lot of the resource development that happens is in provincial jurisdictions — it has to wait until [a] Province...decides to move ahead with implementing legislation on its own part, the way that British Columbia has and as a number of other provinces are thinking about doing.”**
SOURCE: Senate Committee on Indigenous Peoples, May 31, 2021. [emphasis added]

Memorandum of Fact and Law of the Respondent the Attorney General of Canada, dated April 4, 2022

- ▶ “The UN Declaration on the Rights of Indigenous Peoples is an important interpretative aid only”
- ▶ “34. In May 2016, Canada announced its **full endorsement** of UN Declaration, undertaking to adopt and implement it **in accordance with the Canadian Constitution**. On June 21, 2021, Parliament adopted the **UN Declaration Act**.”
- ▶ “37. While an appellate Court has not yet considered the **UN Declaration Act**, Courts have confirmed that the **UN Declaration can serve as an interpretive aid to Canadian law**. However, **neither the UN Declaration nor the UN Declaration Act** can displace the Constitution or clear statutory language, nor has any Canadian Court suggested that the **UN Declaration itself has constitutional status**. **Giving the UN Declaration constitutional force would require a constitutional amendment.**” [emphasis added]

Bill C-15, the United Nations Declaration Act is the Framework for “*Indigenous Reconciliation*”, 2024 SCC Quebec Reference Case on Bill C-92

- ▶ “In 2021, Parliament enacted the UNDRIP Act, s. 4(a) of which affirms the Declaration “as a universal international human rights instrument with application in Canadian law”. **It is therefore through this Act of Parliament that the Declaration is incorporated into the country’s domestic positive law.** In s. 4(b), the statute states that its purpose is also to “**provide a framework for the Government of Canada’s implementation of the Declaration**”. In s. 5, it provides that 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**”. Further, s. 6(2)(b) provides that the minister responsible for the statute must **prepare and implement an action plan**, which must include “**measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration**”” [paragraph 15]. [emphasis added]

SCC Quebec Reference Case on Bill C-92, An Act Respecting First Nations, Inuit and Métis Children, Youth and Families

- ▶ [paragraph 7] The three elements of the purpose set out in s. 8 reflect Parliament's openness to using three different types of legal norms that will be interwoven in this framework for reconciliation to ensure the well-being of Indigenous children: the [delegated section 91.24] legislative authority of Indigenous peoples in relation to child and family services, the legislative provisions enacted by Parliament to establish national standards, and the international standards referred to in the Declaration. The metaphor of “braiding” together these three types of norms has been helpfully proposed to explain how the Declaration should be implemented in Canada, so as to “work out how state law and Indigenous law could be interwoven, with guidance from international law, to form a single, strong rope”. [emphasis added]

Selected Articles of 2007 UNDRIP

- ▶ **Article 4 – Right to Autonomy & Self-Government.**
- ▶ **Article 10 – No forced removal without FPIC.**
- ▶ **Article 18 – Right to make decisions, including leadership selection, through Indigenous procedure & institutions.**
- ▶ **Article 19 – FPIC required before legislation/administration measures.**
- ▶ **Article 26 – Right to Restoration of lands, territories, resources taken without FPIC.**
- ▶ **Article 27 – Fair process jointly developed to adjudicate rights to lands, territories, resources.**
- ▶ **Article 28 – Restitution for lands, territories & resources taken either with replacement lands or monetary compensation.**
- ▶ **Article 32 – FPIC required for and development affecting lands, territories, resources.**
- ▶ **Article 37 – Rights from Treaties, agreements, constructive arrangements.**

2007 UNDRIP & TREATIES

- ▶ **Article 37**
- ▶ **1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.**
- ▶ **2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.**

The Problem with 2007 UNDRIP is Article 46.1

Watering Down Original UNDRIP: Article 3 is Antidote to Colonialism

- ▶ **Article 46**
- ▶ **1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. [emphasis added]**
- ▶ **Article 3**
- ▶ **Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. [emphasis added]**

**BILL C-15 PUTS UNDRIP
BELOW SECTION 35!**

**INSTEAD OF PUTTING
SECTION 35 BELOW UNDRIP!**

**BILL C-15 =
RECOLONIZATION NOT DECOLONIZATION
STOP BILL C-15!**

C-15

An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Sponsor
Minister of Justice



CANADA'S DEFINITION OF UNDRIP—THE UNITED NATIONS DECLARATION ACT – BILL C-15

HOUSE OF COMMONS



What is Bill C-15

- ▶ **Bill C-15 is a federal government Bill introduced into Parliament on December 3, 2020, by the federal Minister of Justice & Attorney-General, David Lametti. It became federal law on June 21, 2021.**
- ▶ **Bill C-15 flips the requirement for making Canadian law's subject to the articles of UNDRIP, to making UNDRIP subject to existing Canadian laws under Section 35 of the Constitution.**
- ▶ **Section 35 of the constitution has already been decided on by Canadian courts to give Canada control of Indigenous lands under the Doctrine of Discovery, and places severe limits on the right of self-determination, including defining Indigenous self-government as a 4th level municipality established through federal legislation.**

Bill C-15 sets out 3 Legal Obligations

- ▶ **Bill C-15 (United Nations Declaration Act) Federal Obligations**
- ▶ ***“In consultation and cooperation with Indigenous Peoples”:***
- ▶ 1) Take ***“all measures necessary”*** to ensure consistency of federal laws with the UN Declaration.
- ▶ 2) **Develop an action plan** within two years of Royal Assent (by June 21, 2023) and implement it. **COMPLETED**
- ▶ 3) **Prepare annual reports on progress** to be tabled in Parliament and made public.

SECTION 2.2 OF BILL C-15 “RIGHTS OF INDIGENOUS PEOPLES” IS BASED ON SEC. 35 COMMON LAW (DOCTRINE OF DISCOVERY) – IMPACTS OF BILL C-15

- The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.**
- Disregarding Indigenous laws and legal traditions.**
- Establishing that the Crown has “ultimate title” to land.**
- The burden of proof imposed on Indigenous Peoples and Nations to establish their rights in Canadian courts.**
- The racist and “frozen in time” “*Van der Peet*” legal test for establishing Aboriginal rights.**
- The ability for the Crown to infringe Aboriginal rights based on the “Sparrow” legal test.**
- The replacement of FPIC with the Government’s lower domestic standard of the duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles. (Strength of Claim/Depth of Consultation - Crown assessments)**

**Federal
legislation to
implement the
UN Declaration
on the Rights of
Indigenous
Peoples
means:**



COLLABORATION WITH INDIGENOUS
PEOPLES

COMMITMENT TO CREATE A NATIONAL
ACTION PLAN

SPECIFIC LAW REFORMS IDENTIFIED
AND BROUGHT BACK TO PARLIAMENT

REGULAR ASSESSMENT AND
REPORTING ON THE PROGRESS MADE

declarationcoalition.ca

Canada's UNDRIP (Bill C-15) National Action- Plan

What is the Bill C-15 Action Plan?

- ▶ Legally required document—since Bill C-15 doesn't immediately implement **UNDRIP**.
- ▶ Sets out measures Canada will take to achieve the “objectives” of the **United Nations Declaration on the Rights of Indigenous Peoples** over time (years & decades).
- ▶ Legal requirement to implement it.
- ▶ Obligation is on the federal Minister of Justice, “***in consultation and cooperation with Indigenous peoples and with other federal ministers***”

UNDA Bill C-15 National Action-Plan Continues a Re-Colonization Framework: Key Measures/Actions

- ▶ UNDA (Bill C-15) National Action-Plan is a Pan-Indigenous 5-Year Plan (2023-2028), considered “*evergreen*” since it is to be renewed for years, likely decades.
- ▶ There are 5 chapters and 181 federal measures/actions included in the 5-Year United Nations Declaration Act (UNDA) National Action-Plan, including “*For Canada’s laws to fulfill the UN Declaration, the Indian Act must be repealed*” [First Nations Priorities, Measure/Action #8]
- ▶ Chapter 1: Shared priorities (First Nations, Metis, Inuit)
- ▶ Chapter 2: First Nations priorities
- ▶ Chapter 3: Inuit priorities
- ▶ Chapter 4: Métis priorities
- ▶ Chapter 5: Indigenous Modern Treaty Partner priorities
- ▶ The entire action-plan is written from an “*assumed Crown sovereignty*” perspective, which is consistent with UNDRIP Article 46.1, where the federal government is solely in charge of the federal measures/actions and only needs to “*consult*” Indigenous Peoples.

UNDA Bill C-15 National Action-Plan Continues a Re-Colonization Framework: Key Measures/Actions

- ▶ Issue a public statement clarifying the federal “*Rights Recognition Framework*” Based on BC Section 35 Negotiation Model to Surrender to “Assumed Crown Sovereignty” as a replacement of the **Inherent Right & Comprehensive Land Claims Policy** & include that explicit **extinguishment not a policy objective**. (CHAPTER 1: Cross-cutting priorities, measure/action #23)
- ▶ **Repeal the Indian Act** (First Nations Chapter measure/action #8)
- ▶ Engage on a **Service Transfer Policy Framework (Off-Loading Programs & Legal Responsibilities)**. CHAPTER 1: Cross-cutting priorities, measure/action #27)
- ▶ Continue work on **New Fiscal Relationship (10 yr. Grants & Self-Government Fiscal Policy)**. (First Nations Chapter measure/action #1)
- ▶ Continue **Specific Claims Process [NOT POLICY] Reform** (First Nations Chapter measure/action #3)

UNDA Bill C-15 National Action-Plan Continues a Re-Colonization Framework: Key Measures/Actions

- ▶ Continue Redesign of **Additions-to-Reserve Policy (To Replace Indian Reserves with Land Codes & Self-Government Arrangements)**. (First Nations Chapter measure/action #5)
- ▶ Continue to implement **Bill C-92, Indigenous Child & Family Services Act (Delegated Law-Making Authority of Indigenous Governing Bodies)**. (CHAPTER 1: Cross-cutting priorities, measure/action #29)
- ▶ **Establish an Action Plan Advisory Committee (APAC)** that will include First Nations, Inuit, and Métis **experts selected by First Nations governments and representative institutions, Métis governments** and representative institutions and by **Inuit Treaty Organizations**, or their designates, **to provide support and advice, upon request**, related to the implementation of **shared priorities** included in this action plan. **Advice from the APAC will be considered as the Minister**, in consultation and cooperation with Indigenous peoples and with other federal ministers, implements the **shared priorities** in this action plan. (CHAPTER 1: Cross-cutting priorities, measure/action #22) [emphasis added]

AFN Chiefs' Committee on the UNDA (Bill C-15) Mandate to Help Trudeau Gov't Implement the National Plan

- ▶ THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:
- ▶ **1. Direct the Assembly of First Nations (AFN) to continue working with relevant federal and provincial ministries to support First Nations as the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) is implemented.**
- ▶ **2. Direct the AFN to transition the current Ad-Hoc Chiefs' Committee on the UN Declaration to become a standing Chiefs' Committee on the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA).**
- ▶ **3. Direct the AFN Executive Committee to appoint, and in some cases reappoint, existing members as needed, to the Chiefs' Committee on the UNDA, in accordance with Article 7 (3) of the AFN Charter, to provide advice and direction on matters relating to the implementation of the UN Declaration.**
- ▶ **4. Direct the Chiefs' Committee on the UN Declaration to create a Terms of Reference and to report back to First Nations in-Assembly on the status of implementation within Canada.**
- ▶ **5. Direct the AFN to seek adequate resources to support the Chiefs' Committee as it advocates for the full implementation of the UN Declaration. [emphasis added]**

Self-Determination Capacity & Planning Issues:

Information Management

Research, Mapping &
Planning Process for
Implementing First Nation
Self-Determination



**“Self-Determination is the
Antidote to Colonialism”
- Arthur Manuel**

ASSESSING HISTORY, LANGUAGE, CULTURE AND INDIGENOUS LAW

- **Know your First Nation history, language, culture, customs, practices, laws and the treatment of your peoples** by successive Crown governments (both oral & archival) and connection to your territory, lands & resources. This is **important to show evidence** when exercising rights and/or responding to challenges from Crown governments/Industry regarding their current or planned projects/activities on your traditional lands.

ASSESSING COLLECTION OF INFORMATION/EVIDENCE

- ▶ For decision-making and negotiations support regarding traditional territories, First Nations historical substantiation & documentation needs to be combined with contemporary land & resource management information; **1) Resource models & inventories, 2) Obstacles from legislative/regulatory/governance frameworks 3) List of third parties operating without consent on First Nations traditional territory, 4) Identification of alienated lands vs. less encumbered lands.**

VALUATION OF LANDS & RESOURCES FOR SUSTAINABLE DEVELOPMENT

- **Identify some criteria and provide some parameters for attaching a value (or range of values) to Aboriginal Title/Historic Treaty lands & resources in Canada. Also estimate the value of resources taken out of Aboriginal Title/Historic Treaty lands annually** (ie., timber, minerals, hydro, fish & wildlife, etc.). Assess National, Provincial and Corporate accounting practises, assess the impact the reality Aboriginal Title/Treaty Rights have on the balance books of major resource extraction companies. **The existence of Aboriginal Title/Treaty Rights as a legal interest stands to affect corporate security of tenure, supply, stock valuation, cost of borrowing, etc.** Also identify issues Re: WTO/NAFTA rules & hidden subsidies/unfair competition, etc.

ASSESSING NEGOTIATION/LITIGATION READINESS/SUPPORT

1. **Knowledge of Canadian constitutional & international legal/policy frameworks** of Indigenous, Aboriginal, Treaty & Human Rights and legal counsel, an information database (historical & resource management) to draw from during negotiations
2. **access to an interdisciplinary team of advisors** (in-house or consultants) for Indigenous Leadership/Peoples and
3. identification of **sources of sustained funding for negotiation/litigation**,
4. **Preparation of litigation and/or international strategies** as options.

Indigenous Cultural/Territorial Landscapes Baseline Data/Evidence Collection

- 1. Use and Occupancy Study**
- 2. Harvest Study**
- 3. Toponym or Place-Name Study**
- 4. Indigenous Knowledge (IK) or Traditional Ecological Knowledge (TEK) Studies**
- 5. Documentation of Customary/Traditional Laws (and Treaties)**
- 6. Archaeology, written history and ethnography**
- 7. Genealogy**
- 8. Alienation Study and State of the Territory Report**

SOURCE: David Carruthers, PlanLab

