

FIRST NATIONS STRATEGIC BULLETIN

FIRST NATIONS STRATEGIC POLICY COUNSEL

What's Your Plan? Will a 2025 Federal Election Change Canada's Plan to Repeal the *Indian Act* and End/Replace Pre-1975 Treaties?



Conservative Leader Pierre Poilievre is wrapped in a ceremonial blanket and presented a gift alongside the Chief of Tzeachten First Nation, Derek Epp, left, and the Chief of Chippewas of Georgina Island, Donna Big Canoe, right, during a press conference in Vancouver on Feb. 8, 2024. (Photo by ETHAN CAIRNS)

By Russ Diabo

As the Trudeau government comes to the end of its mandate in 2025, all opposition parties are pledging to bring down the government the first chance they get, and a growing number of members of the Liberal caucus are demanding that Prime Minister Justin Trudeau resign as Liberal Leader and Prime Minister.

So, it appears a federal election will be held sooner than the scheduled election in October 2025, likely in the Spring, with or without Justin Trudeau, as Prime Minister and leader of the Liberal Party of Canada, depending on the outcome of his reported personal reflections on staying or going.

For many months now, the polls have predicted a Liberal loss of seats in the House of Commons, to the point where keeping party status in Parliament becomes a serious question.

Considering these political events, change is coming to First Nations in 2025, in both the short and long-term.

The Federal Plan

Since 2015, under the pretense of implementing the **Truth and Reconciliation Calls to Action** and endorsing the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, the Trudeau government has taken actions that align with the objectives of

Special points of interest:

- **Change is coming to First Nations in 2025, whether Liberals or Conservatives form the next federal government**
- **Trudeau attends AFN Assembly for perhaps his last time**
- **The 2023 Conservative Party of Canada's Indigenous Platform is unashamably colonial and racist**

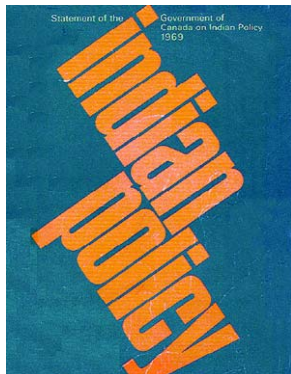
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Jean Chretien, Minister of Indian Affairs who issued **1969 White Paper on Indian Policy**, who went on to become Prime Minister.

“the Trudeau government has taken actions that align with the objectives of the 55-year-old Liberal 1969 White Paper on Indian Policy”



Cover of the Liberal's 1969 White Paper on Indian Policy

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the 55-year-old Liberal **1969 White Paper on Indian Policy**, which are as follows:

- *Eliminate Indian Status.*
- *Dissolve the Department of Indian Affairs within 5 years.*
- *Abolish the Indian Act and remove section 91.24 referring to “Indians and Lands Reserved for Indians”.*
- *Convert reserve land to private property that can be sold by the band or its members.*
- *Transfer responsibility for Indian Affairs from the federal government to the province and integrate these services into those provided to other Canadian citizens.*
- *Provide funding for economic development.*
- *Appoint a commissioner to address outstanding land claims and gradually terminate existing Treaties.*

Let’s review the chronology of the Trudeau government’s actions over the last 9 years in establishing its Indigenous “*Rights Recognition Framework*” to achieve the above federal objectives:

2015:

Liberal Party of Canada campaigns in the federal election, in part, on an Indigenous Rights Platform with key promises, including endorsing **UNDRIP** and wins a majority government.

After winning the election Prime Minister Justin Trudeau announces a **Two-Track approach to Indigenous Reconciliation** 1) **closing the socio-economic gap** between Indigenous Peoples and non-Indigenous Canadians, 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.

2016:

Prime Minister Justin Trudeau appoints Prime Minister Stephen Harper’s former Deputy Minister of Aboriginal Affairs, **Michael Wernick**, as top bureaucrat in Ottawa (Clerk of the Privy Council), his job is to turn the **2015 federal Liberal Indigenous Platform promises** into a plan to fit with the long-term federal **1969 White Paper objectives**.

Trudeau government **establishes a new approach to negotiations** with partners (First Nations, Metis, Inuit) on section 35 rights through **Recognition of Indigenous Rights and Self-Determination discussion tables**.

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Federal Ministers of Indigenous Affairs and Justice inform the **United Nations Permanent Forum on Indigenous Issues (UNPFII)** that they endorse **UNDRIP** *"in accordance with the Canadian constitution"* and that *"modern treaties and self-government agreements [are] the ultimate expression of free, prior and informed consent among partners"*.

Canada's definition of **UNDRIP** is further clarified at **UNPFII**, *"Within Canada, there are modern treaties and examples of self-government –both comprehensive and sectoral. There are regional and national Indigenous institutions that support Nation rebuilding—for example in land management and financial administration."*

Canada and AFN sign a political agreement on establishing a **New Fiscal Relationship**, which has resulted in **10-Year Grants for Indian Act Bands and a Self-Government Fiscal Policy for "Indigenous Governments"** with *"Natural Person Powers"* the same legal status as corporations and municipalities.

2017:

On February 14, 2018, Prime Minister Justin Trudeau announced his plan to *"chart a new way forward"* for the federal government by creating a new **Recognition and Implementation of Indigenous Rights Framework** to include new laws and policies to define what federal *"recognition"* means in a law adopted by Parliament and what the federal government will and won't include in *"negotiations"* of *"Indigenous Rights"* with First Nations, Metis and Inuit.

In June, the Trudeau government created a new **Federal-AFN Cabinet Committee**. The AFN budget was substantially increased to implement the two agreements with the federal government.

Canada and AFN signed a political agreement on *"Joint Priorities"* to include AFN into the federal decision-making process to develop new law and policy by cooperating on a suite of *"Indigenous"* legislation through a **bilateral Canada-AFN process** involving a **Joint Senior Officials Committee** and **Joint Federal-AFN Annual Meetings with Cabinet Ministers and the Prime Minister** to control and manage national and regional First Nation issues.

In July, the Minister of Justice and Attorney-General imposed **10 Principles for Indigenous Relationships** (First Nations, Metis, Inuit) to *"form a foundation for transforming how the federal government partners with and supports Indigenous peoples and governments"*.

The federal *"Rights Recognition Framework"* is based on these *"10 Principles"*.



Trudeau & Bellegarde sign a Canada-AFN MOU on Joint Priorities that led to a suite of legislation.

"the Trudeau government created a new Federal-AFN Cabinet Committee. The AFN budget was substantially increased to implement the two agreements with the federal government"



Bellegarde & Bennett signed an INAC-AFN MOU on a New Fiscal Relationship in July 2016, that led to 10 year grants & "self-government" fiscal policy.



As Justice Minister, Jody Wilson-Raybould imposed 10 Principles for Indigenous Relations based on “assumed Crown sovereignty”, now used in UNDRIPA (Bill C-15) action-plan measures.

“Indigenous Governments are what Prime Minister Justin Trudeau calls the “fourth level of government” in Canada after the federal government, provincial governments and municipalities, a new order of government”



Joe Wild, Senior Assistant Deputy Minister, Treaties & Aboriginal Government, INAC, prepared “Rights Recognition Framework”.

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The “10 Principles” are a continuation by the Canadian settler-colonial government attempts to sever our relationship with our lands and Pre-1975 Treaties by eliminating Aboriginal Title and our existing right of sovereignty and self determination; as well as a fair and just, interpretation of our sacred Pre-1975 Treaties with the Imperial Crown NOT Crown Canada.

In August, the Trudeau government announced it was dissolving the federal **Department of Indian Affairs** by creating two new federal bureaucracies: 1) The **Department of Indigenous Services Canada (ISC)** to take over on-reserve program delivery and funding until existing Indian Bands are forced/convinced to sign onto new agreements under new law and policy to become federally recognized “*Indigenous Governments*”.

“*Indigenous Governments*” are what Prime Minister Justin Trudeau calls the “*fourth level of government*” in Canada after the federal government, provincial governments and municipalities, “*a new order of government*”, 2) and after new agreements are signed, the **former Indian Bands** will be moved under the **Department of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)**.

Jane Philpott is named **Minister of Indigenous Services** and **Carolyn Bennett** is named **Minister of Crown-Indigenous Relations and Northern Affairs**. Each Minister is given a **Mandate Letter** from the Prime Minister and the **First Nations, Inuit Health Branch** is formally transferred to the **Department of Indigenous Services Canada (DISC)**.

Two new Fiscal Relations policies developed in separate processes that has resulted in a **New Fiscal Relationship** that includes a **10-year grant** for First Nations in the **Indian Act** and a **Collaborative Self-Government Fiscal Policy** for “*Self-Governing*” First Nations.

2018:

The result of the federal “*Rights Recognition Framework*” engagement process was contained in a September 2018, federal document entitled “**Overview of a Recognition and Implementation of Indigenous Rights Framework**”, which outlined a proposed federal law for “*recognition*” of “*Indigenous Governments*” (First Nations, Metis and Inuit).

The federal law—if it had passed—would have formed the basis for **ALL RELATIONS** between the federal Crown (government) and Indigenous Peoples (First Nations, Metis, Inuit) including “*pre-1975*” Treaties and: Would have contained federal “*definitions*” of “*key terms*” [like “*Inherent Right to Self-Government*”, “*Self-Determination*” “*Aboriginal Title and Rights*”, “*Treaty Rights*”].

Under the proposed federal “*Recognition*” law, the Federal and Provincial/Territorial powers and jurisdictions would continue to dominate over First Nations and provincial governments would have a veto over any

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agreements affecting their jurisdiction, which is the case in self-government and land claims agreements anyway.

A federally established **advisory committee or institution** would have been created to decide what Indigenous Nations or "*Collectives*" would be federally recognized and have the authority of a government possessing "*the legal capacity of a natural person*", meaning a federally created "*Indigenous*" municipal corporation. This would have been subject to agreements with the federal and provincial governments (where their jurisdiction is affected). The federal legislation would have included a "*list of powers*" for "*Indigenous Governments*", which could have been amended by the federal government.

This proposed **Recognition and Implementation of Indigenous Rights Framework law** was rejected by AFN First Nation leaders and grassroots peoples.

In September, **Finance Canada, First Nations Tax Commission and the Assembly of First Nations establish a Technical Working-Group on Taxation for Co-Development of Long-Term Taxation Policy, including Taxation of Cannabis Products.**

In November, following the widespread rejection by First Nations of the proposed "*Recognition*" law, a **Statement from the Office of the Minister of Crown-Indigenous Relations, Carolyn Bennett**, was released, confirming that the Trudeau government would continue to seek agreement to the federal "*Rights Recognition Framework*" band-by-band, group-by-group, at the **Recognition of Indigenous Rights and Self-Determination Tables**, instead of a through a national federal law.

As Carolyn Bennett stated:

"Our Government is committed to advancing the framework, and to continue actively engaging with partners on its contents... This framework will not be imposed on anyone [because First Nations consent is legally required] except the federal government. The legislative and policy reforms we are committed to will get Ottawa out of the way so that Indigenous nations and governments can accelerate their path to self-determination... We continue to make substantial progress in accelerating the recognition and implementation of Indigenous rights through policy changes and the development of the Recognition of Rights and Self-Determination Tables... We look forward to continue working with our partners on developing more of this crucial framework." [emphasis added]

2019:

In her last act as Justice Minister & Attorney-General of Canada, Jody Wilson-Raybould issued the **The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples**, essentially instructions for federal lawyers when considering litigation regarding Aboriginal



Michael Wernick, Clerk of the Privy Council and Perry Bellegarde, AFN Nat'l Chief collaborated on federal plan to re-colonize First Nations through a suite of legislation, changes to policies and the federal machinery of government.

"a Statement from the Office of the Minister of Crown-Indigenous Relations, Carolyn Bennett, was released, confirming that the Trudeau government would continue to seek agreement to the federal "*Rights Recognition Framework*" band-by-band, group-by-group, at the **Recognition of Indigenous Rights and Self-Determination Tables**, instead of a through a national federal law"

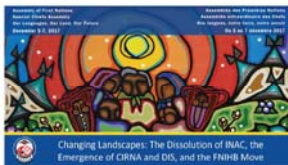


HQ, federal Departments of ISC & CIRNAC, National Capital Region



Carolyn Bennett was named CIRNAC Minister and Jane Philpott was named ISC Minister in 2017 Cabinet shuffle.

“the federal government introduces an Omnibus Budget Bill C-97, buried in the Bill is legislation to dissolve the Department of Indian Affairs and create two new federal departments (Indigenous Services & Crown-Indigenous Relations and Northern Affairs)”



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and Treaty rights.

Prime Minister Justin Trudeau shuffles Cabinet and demotes **Jody Wilson-Raybould** to Veteran Affairs, transfers **Jane Philpott** to President of Treasury Board and promotes junior Minister **Seamus O’Regan** to **Minister of Indigenous Services**.

In February, Jody Wilson-Raybould Resigns from Cabinet.

In March, Jane Philpott Resigns from Cabinet.

For “*Self-Governing First Nations*” the Final Draft of **Canada’s Collaborative Self-Government Fiscal Policy** is completed.

In February, the federal government introduces an Omnibus Budget **Bill C-97 An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures** (First Reading April 8, 2019), buried in the Bill is legislation to dissolve the **Department of Indian Affairs** and create two new federal departments (**Indigenous Services & Crown-Indigenous Relations and Northern Affairs**).

In February, the federal government introduces **Bill C-91 An Act Respecting Indigenous Languages** a pan-Indigenous Bill to impose federal jurisdiction and control over Indigenous languages without treating Indigenous languages the same as the languages in the “*Official Languages Act*” or guaranteeing funding to save Indigenous languages.

In February, the federal government introduces **Bill C-92 An Act Respecting First Nations, Inuit and Metis Children, Youth and Families** to make the doctrine of federal paramountcy applicable to Indigenous laws (section 21) and that “Indigenous laws” prevail over any conflicting or inconsistent provisions of provincial legislation (section 22(3)).

In April, Federal government introduces an Omnibus Budget **Bill C-97 An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019, and other measures** (First Reading April 8, 2019), buried in the Bill is legislation to dissolve the **Department of Indian Affairs and Northern Development (DIAND)** and create two new federal departments (**Indigenous Services & Crown-Indigenous Relations and Northern Affairs**).

In June, Governor-General gives **Royal Assent** to Adopted **Bills C-91, C-92, C-97** to Become Law.

In June, the federal Minister of Crown-Indigenous Relations, Carolyn Bennett, signs a **Recognition and Self-Government [Template] Agreement** with the Metis Nations of Alberta, Saskatchewan and Ontario. Chapter 7 of the agreement provides that: “*As of the Self-Government Implementation Date, the Métis Government and each of its Governance Structures will be a legal entity with the rights, powers, and privileges of a natural person at law*”.

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In September, the Government of Canada, Government of B.C. and the First Nations Summit release **Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia**, renewing the **1992 B.C. Modern Treaty Termination Process**.

In October, a **Liberal Minority Government** elected in federal election.

2020:

In December, Federal Minister of Justice **David Lametti** introduces **Bill C-15** the proposed **UNDRIP Act** into the House of Commons, defining Indigenous Rights based on section 35 common law and requiring an **alignment of federal laws** and a **National Plan** to implement the federal definition of **UNDRIP** objectives.

2021:

In June, **Bill C-15** the **United Nations Declaration Act** given **Royal Assent** by the **Administrator of the Government of Canada**, the **Chief Justice of the Supreme Court of Canada**, **Richard Wagner**.

In September, a **Liberal Minority Government** was elected in federal election.

2022:

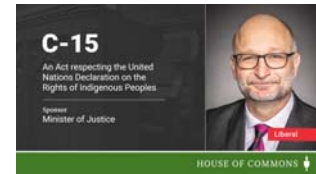
In March, Agreement reached by the **Liberal Party of Canada** and the **New Democratic Party** in Parliament, **Delivering for Canadians Now, A Supply and Confidence Agreement**. Key policy areas are climate change, health care spending, **reconciliation with Indigenous peoples**, economic growth and efforts to make life more affordable.

2023:

In June, **Section 6** of the **United Nations Declaration Act (Bill C-15)** requires the Government of Canada to produce a **National Action Plan** to pursue the "*objectives*" of **UNDRIP**, the **National Action Plan** was tabled with Parliament, included is the repeal of the **Indian Act** because it is inconsistent with Canada's interpretation of **UNDRIP** set out in **181 Action-Plan Measures (APM's)**.

2024 – The Supreme Court of Canada Approves Parliament's "*Reconciliation*" Legislation

The Supreme Court of Canada in a recent *Quebec Reference* case regarding the constitutionality of **Bill C-92**, the **Indigenous Child & Family Services Act**, held that **Bill C-15**, the **United Nations Declaration Act** is the framework for "*Indigenous Reconciliation*".



David Lametti who replaced Jody Wilson-Raybould as Justice Minister, introduced Bill C-15, the United Nations Declaration Act into Parliament.

"The Supreme Court of Canada in a recent *Quebec Reference* case regarding the constitutionality of **Bill C-92**, the **Indigenous Child & Family Services Act**, held that **Bill C-15**, the **United Nations Declaration Act** is the framework for **Indigenous Reconciliation**"





Former Justice Minister David Lametti & former AFN Nat'l Chief, Perry Bellegarde, who both promoted adoption of United Nations Declaration Act (Bill C-15) into law are now at Fasken Law Firm.

“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”



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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 largely 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.

The preamble of **UNDA (Bill C-15)** declares:

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

Yet, **section 2.2 of UNDA (Bill C-15)** provides that the rights of Indigenous Peoples are based on **section 35 common law**, which is heavily based on the **doctrine of discovery**:

- 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 Free, Prior, Informed, Consent (FPIC) with the Crown’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)

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Section 4 sets out that the purpose of the **UNDA (Bill C-15)** is to:

- (a) **affirm the Declaration** as a universal international human rights instrument with application in Canadian law; and
- (b) **provide a framework** for the Government of Canada's implementation of the Declaration. [emphasis added]

Section 5 of Bill C-15 directs the government of Canada to "take all measures necessary to ensure that the laws of Canada are consistent with the Declaration." There is no immediate implementation of the Declaration, this section establishes an ongoing process of consulting with "Indigenous peoples" for legal review and reform, and while not explicitly mentioned in **Bill C-15**, any legal review and reform process will be based on the **Department of Justice's 2017 Principles respecting the Government of Canada's relationship with Indigenous peoples** and **2018 Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples**.

It is also important to note, for any **UNDA section 5** legal review, there is no list of measures or laws that are inconsistent with **2007 UNDRIP** and even if there were a list of laws to review it would be up to the **House of Commons** and the **Senate** to pass any amendments to the laws, not just the **executive branch**. Such a legislative amendment process will be subject to changes in the federal government, because of **elections and changing priorities of a new Parliament**, like what's coming in 2025.

There are already nearly 50 First Nations related federal laws that were passed between 2005-2020, prior to the adoption of **Bill C-15** into federal law. This has been well documented by **Susan Collis** in her June 2021 paper "*W(h)ither the Indian Act? How Statutory Law Is Rewriting Canada's Settler Colonial Formation*".

Section 6 of Bill C-15 gives the government of Canada the dominant role in developing an "action-plan" to implement **2007 UNDRIP** in the future, in relation to federal laws, since under Canada's constitutional division of federal and provincial powers, the provincial governments have a veto in subject areas that may affect their jurisdiction.

As such, it is important to note that the **United Nations Declaration Act, Bill C-15**, only applies to federal laws while many challenges facing First Nations come from provincial government jurisdiction.

Section 7 of Bill C-15 regarding **Annual Reporting to Parliament** on measures taken and the **action-plan**. It is the government of Canada that controls the pen in preparing the **Annual Report to Parliament** about "progress" in implementing the federal "action-plan measures" to achieve the "objectives" of Canada's domestic **section 35 common law interpre-**



"it is important to note that the United Nations Declaration Act, Bill C-15, only applies to federal laws while many challenges facing First Nations come from provincial government jurisdiction"

What the Native Elite think Bill C-15 says: What Bill C-15 actually says:





Pam Palmater & Ellen Gabriel support Bill C-15, along with many other academics & organizations like AFN.

“Bill C-15 was studied by the House of Commons Standing Committee on Indigenous Peoples, but the Liberal-NDP M.P.’s, refused to accept First Nations proposed amendments to Bill C-15, particularly to section 2(2) of Bill C-15 defining the Rights of Indigenous Peoples, based on section 35 common law”



Pretendian lawyer Mary Ellen Turpel-Lafond advised AFN to support Bill C-15 despite its flaws.

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tation of UNDRIP.

What is the Bill C-15 National Action-Plan?

- It is a legally required document—since **Bill C-15** doesn’t immediately implement **UNDRIP**.
- It 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).
- There is a legal requirement to implement it.

The 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 is a Pan-Indigenous 5-Year Plan, considered “*evergreen*” since it is to be renewed for years, likely decades.

There are **5 Chapters**, and **181 federal Action-Plan Measures (APM’s)** 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, Action-Plan Measure #8]

- **Chapter 1: Shared priorities (First Nations, Metis, Inuit).** [This is the largest Chapter.]
- **Chapter 2: First Nations priorities**
- **Chapter 3: Inuit priorities**
- **Chapter 4: Métis priorities**
- **Chapter 5: Indigenous Modern Treaty Partner priorities**

General Comments:

First of all, the **5-Year (2023-2028) National Action-Plan** is based on **Bill C-15**, which contains fatal flaws identified by various First Nations as **Bill C-15** was studied by the **House of Commons Standing Committee on Indigenous Peoples**, but the **Liberal-NDP M.P.’s**, refused to accept First Nations proposed amendments to **Bill C-15**, particularly to **section 2(2)** of **Bill C-15** defining the Rights of Indigenous Peoples, based on **section 35 common law**.

So, the flaws in **Bill C-15** remain and the legal obligations of the federal government to consult “*Indigenous Peoples*” about the **action-plan** (section 6), the **review of federal laws** (section 5) and **annual reporting** to Parliament on progress (section 7) towards achieving the “*objectives*” of the **UN Declaration** remain based on the legal principles, standards and tests set out in **section 35 common law** regarding Aboriginal and

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Treaty rights and the federal interpretation of **section 35 common law** set out in the 2017 **Principles respecting the Government of Canada's relationship with Indigenous peoples** and the 2018 **Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples**, left behind by then **Minister of Justice and Attorney-General Jody Wilson-Raybould**.

As such, 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 action-plan measures** and only needs to "consult" Indigenous Peoples.

As the action-plan describes it:

*"The Government of Canada is committed to implementing the measures identified in this action plan, which **outlines a whole of government roadmap for advancing reconciliation with Indigenous peoples** through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship" [page 18] [emphasis added]*

Specific Comments:

The following is a summary of key sections of the **UNDA Bill C-15 National Action-Plan** that **impact on Inherent and Treaty rights** and should be considered in any First Nations counter political/legal strategy, keeping in mind the federal government only needs to "consult" with "Indigenous Peoples" on the **federal action-plan measures**, which are all subject to federal interpretation of the 2007 **UNDRIP** "objectives". There are also program **action-plan measures** that aren't listed here.

CHAPTER 1: Cross-cutting priorities Self-determination, self-government and recognition of treaties (articles 3, 4, 37)

The following federal **action-plan measures** reflect the one-sided federal interpretation of **2007 UNDRIP Article 3** (right of self-determination), **Article 4** (right of self-government) and **Article 37** (recognition, observance and enforcement of treaties)

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 Policies** and include that explicit **extinguishment is not a policy objective** since there are other legal techniques such as the "modified rights model" and the "non-assertion model", used in agreement language by the federal **Department of Justice** to achieve **de facto extinguishment**, which do not differ much from the **explicit extinguishment and surrender approach**. (CHAPTER 1: Cross-cutting priorities, action-plan measure #23)



Jody Wilson-Raybould told the AFN in 2016, "adopting the *UNDRIP* as being Canadian law are unworkable"

"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 action-plan measures and only needs to "consult" Indigenous Peoples"



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Indigenous
Services Canada

Repeal the Indian Act (First Nations Chapter action-plan measure #8)

Engage on a **Service Transfer Policy Framework [Off-Loading Programs & Legal Responsibilities]**. CHAPTER 1: Cross-cutting priorities, action-plan measure #27)

Continue work on **New Fiscal Relationship [10 year Grants & Self-Government Fiscal Policy Shared Costs Formula-Own Source Revenue, including Taxation]**. (First Nations Chapter action-plan measure #1)



Crown-Indigenous Relations
and Northern Affairs Canada
Relations Couronne-Autochtones
et Affaires du Nord Canada

Continue **Specific Claims Process [NOT POLICY] Reform** (First Nations Chapter action-plan measure #3)

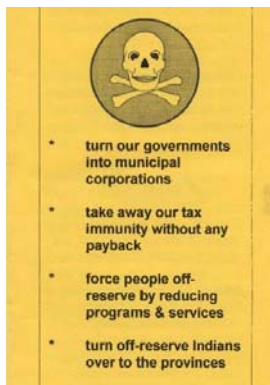
Continue Redesign of **Additions-to-Reserve Policy [To Replace Indian Reserves with Land Codes & Self-Government Arrangements]**. (First Nations Chapter action-plan measure #5)

Continue to implement **Bill C-92, Indigenous Child & Family Services Act [Maintain Delegated Law-Making Authority of Indigenous Governing Bodies]**. (CHAPTER 1: Cross-cutting priorities, action-plan measure #29)

Establish an Action Plan Advisory Committee (APAC) [AFN is helping implement the federal Bill C-15 action-plan measures through Canada-AFN 2017 MOU on Joint Priorities and a Chiefs' Committee on the UN Declaration Act] 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 [meaning federal veto] 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, action-plan measure #22) [emphasis added]

In the **federal action-plan measures** listed above, the Trudeau government is using outdated, status quo, domestic policies to say its implementing the **international minimum standards in UNDRIP "objectives"**, such as the **1995 Inherent Right to Self-Government Policy, the Comprehensive Land Claims Policy, the Specific Claims Policy, these are land claims policies that date back to 1973, the Additions-to-Reserve Policy, and laws such as the Addition of Lands to Reserves and Reserve Creation Act, the First Nations Land Management Act and the First Nations Fiscal Management Act in its UNDA (Bill C-15) National Action-Plan, action-plan measures to interpret and negotiate key international 2007 UNDRIP Articles on self-determination (article 3), self-government (article 4), restoration of lands, territories and resources taken without free, prior, informed, consent (article 26), restitution for lands,**

"AFN is helping implement the federal Bill C-15 action-plan measures through Canada-AFN 2017 MOU on Joint Priorities and a Chiefs' Committee on the UN Declaration Act"



'2025 election' continued from page 12

territories or resources taken without free, prior, informed, consent, through replacement lands or monetary compensation (**article 28**), joint establishment of a *"fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used"* (article 27).

2025 – Convergence: Where Liberal & Conservative Termination Plans Come Together:

Since 2015, using about \$150 billion in new monies to fund AFN, the Provincial/Territorial regional Chiefs' organizations, **Indian Act** Bands, *"Self-Governing"* First Nations and Modern Treaty Groups, the Trudeau government has largely and successfully sold *"Indigenous Reconciliation"* and *"Nation-to-Nation"* to First Nations Chiefs and Councils as implementing **UNDRIP** and supporting First Nations *"visions of self-determination and self-government"*, when in fact at the **Recognition of Indigenous Rights and Self-Determination (RIRSD) Tables**, the Trudeau government's federal negotiators are mandated by the federal Cabinet to use as national standards, the legal *"Reconciliation"* techniques used in the B.C. region of *"modified rights"* and *"non-assertion"* of rights in agreement language to achieve the equivalent result used in the **direct extinguishment and surrender approach in land claims and self-government negotiations since 1975**.

If, in the apparently unlikely chance the **2025 federal election** will see a Liberal government formed this **Liberal Termination Plan** will continue.

If, on the other hand, a Conservative government is elected into power, then a **Conservative Termination Plan** will be implemented based on the **2023 Conservative Party Policy Declaration on Indigenous Affairs**, which is similar to the **Liberal Termination Plan**, but more openly blunt and white supremacist. The **Conservative Termination Plan** will take over from the federal Liberal Policies and discussion & negotiation tables to promote individual rights over collective rights of *"Indigenous-Canadians"*, through the various legislative and policy measures listed here from the **2023 Conservative Party of Canada Policy Declaration**:

"Legislation should be developed which governs such programs and which prescribes the standards of service which the federal government has undertaken to provide to Indigenous Canadians."

"The Conservative Party supports the abolition of the Indian Act and proposes a new legislation which recognizes the fiduciary obligation of the Federal Crown while proposing a new deal with First Nations based on autonomy, taxation, capacity, transparency, accountability, and property rights."



"at the Recognition of Indigenous Rights and Self-Determination (RIRSD) Tables, the Trudeau government's federal negotiators are mandated by the federal Cabinet to use as national standards, the legal "Reconciliation" techniques used in the B.C. region of "modified rights" and "non-assertion" of rights in agreement language to achieve the equivalent result used in the direct extinguishment and surrender approach in land claims and self-government negotiations since 1975"





L to R: CPC Leader Pierre Poilievre accepting artwork from Chair of First Nations Tax Commission, Manny Jules, Dec. 7, 2021.

“The Conservative Party supports the development of a property regime that would encourage lending for private housing and businesses. This will promote economic opportunity and individual freedom. We support the development, in conjunction with First Nations, of a First Nations Land Ownership Act, which would transfer Reserve land title from the Federal Crown to willing First Nations”



‘2025 election’ continued from page 13

*“Future Indigenous legislation, policies and programs must **balance the collective rights of Indigenous Canadians** under section 35 of the Constitution Act **with the individual equality rights** enshrined in the Charter.”*

*“Settlement of all outstanding “comprehensive claims” must be pursued on the basis of a **clear framework which balances the rights of Indigenous claimants with those of Canada**. In particular, negotiated settlements must balance the economic and social needs of Indigenous Canadians with **Canada’s need for certainty and finality of terms**. **Self-government agreements** must reflect Canada’s need for both efficacy and practicality in institutional structure, and “**constitutional harmony**” so as not to impede the overall governance of Canada.”*

*“The federal government should, as a priority, adopt measures to resolve the existing backlog of specific claims so as to provide justice for Indigenous claimants, together with **certainty for government, industry and non-Indigenous Canadians**. Institutional reform in the specific claim area should be pursued in a manner which resolves claims in a timely manner. The jurisdiction of the Federal Court should be expanded and the arbitrary ambit of the Indigenous and Northern Affairs Canada Minister and the Specific Claims Policy contracted to eliminate the inherent conflict of interest of the Federal Crown in the resolution of specific claims.”*

*“The federal government, **in consultation with the provinces, territories and Indigenous leaders**, should direct an independent audit of all social service providers to Indigenous communities to determine what, if any, measures of effectiveness are employed and whether the programs provided result in desired outcomes. The federal government should work with the provinces, territories and Indigenous leaders to **establish a three-party co-ordinating body tasked with developing a strategy for coordination of all programs and services provided to Indigenous communities**. The Auditor General of Canada and the Auditors General of the provinces should include an evaluation of actual outcomes as well as financial accountability in their audit reports on Indigenous services.”*

“The Conservative Party supports the development of a property regime that would encourage lending for private housing and businesses. This will promote economic opportunity and individual freedom. We support the development, in conjunction with First Nations, of a First Nations Land Ownership Act, which would transfer Reserve land title from the Federal Crown to willing First Nations.”

What’s Your First Nation Community’s Plan for a Future Without the Indian Act?

So, whether it’s a Liberal or Conservative government in power after the 2025 federal election, both federal parties plan to **end/replace the Indian Act Bands/Reserves with tax-paying municipal self-government agreements, and eliminating Indian Reserves with privatized fee**

'2025 election' continued from page 14

simple lands, as well as settling land claims (comprehensive and specific) with certainty and finality (de facto extinguishment of ongoing title and rights) for "government, industry and non-Indigenous Canadians".

In my opinion, under the **Liberal or Conservative re-colonization plans**, not all First Nation communities will survive as distinct organized societies with their languages, culture and identity relatively intact, many communities will submit to the federal model of municipal self-government, instead of developing their own **self-determination plans** to get out of the **Indian Act** on their own terms.

According to the federal government there are already "25 self-government agreements across Canada involving 43 Indigenous communities. There are also 2 education agreements involving 35 Indigenous communities," and since 1975, "Canada has negotiated and signed 26 modern treaties with Indigenous groups in Canada, 18 of which contain self-government provisions or associated self-government agreements."

These section 35 agreements and legislation are the precedents and templates for the remaining 600+ First Nation communities in Canada.

Conclusion - Self-Determination Planning & Capacity Issues:

In the face of the federal re-colonization plans to extinguish/modify land rights and transition First Nations into "**Indigenous Municipal Government Corporations**" under the **section 35 common law legal tests and burden of proof**, First Nation communities should **prioritize internal capacity building for information management (data sovereignty) by developing research plans for historical and cultural research, GIS mapping and an off-reserve land and resource territorial plan**, to maintain what's left of the connection to off-reserve lands and resources, which have already been cumulatively impacted by provincial governments issuing permits and licenses for non-First Nation settlements, forestry, mining, hydro, oil and gas, etc. alienating First Nations from their traditional lands.

It is recommended these following research projects be considered to meet the legal burden of proof:

Indigenous Cultural/Territorial Landscapes Baseline Data/Evidence Collection:

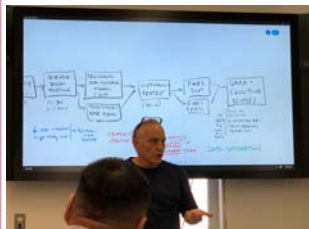
1. *Use and Occupancy Study*
2. *Harvest Study*
3. *Toponym or Place-Name Study*
4. *Indigenous Knowledge (IK) or Traditional Ecological Knowledge (TEK) Studies*



"whether it's a Liberal or Conservative government in power after the 2025 federal election, both federal parties plan to end/replace the Indian Act Bands/Reserves with tax-paying municipal self-government agreements, and eliminating Indian Reserves with privatized fee simple lands, as well as settling land claims (comprehensive and specific) with certainty and finality (de facto extinguishment of ongoing title and rights) for government, industry and non-Indigenous Canadians"



Pierre Poilievre, asked if Residential School Settlement was "value for Money".



Terry Tobias presenting workshop on cultural mapping project design, February 2020.

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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

Since the AFN and its regional bodies have been coopted by the federal government, each First Nation community should focus on its own self-determination plan.

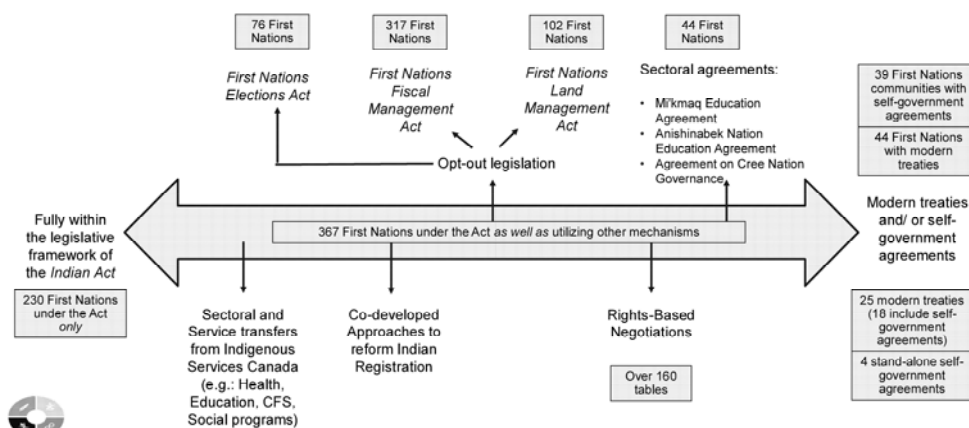
In conclusion, consideration should also be given to development of a **structure and protocols for the formation of a Treaty Nations Confederacy outside of the AFN for Pre-1975 Treaties (Pre and Post Confederation)**, since the federal government is using the Modern Treaty Groups as the model for "Indigenous Reconciliation" and regardless of which party forms the next federal government in 2025, **the War on First Nations collective rights will continue.**

"Since the AFN and its regional bodies have been coopted by the federal government, each First Nation community should focus on its own self-determination plan"



Crown-Indigenous Relations and Northern Affairs Canada / Relations Couronne-Autochtones et Affaires du Nord Canada

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



Graph of Federal Master-Plan Presented by Deputy Ministers of Crown-Indigenous Relations and Indigenous Services Canada to Governor-General, Mary Simon, on October 6, 2021.

Transcription of Prime Minister Justin Trudeau's Comments to Assembly of First Nations, Special Chiefs' Assembly Day 3: December 5, 2024



PM Justin Trudeau at AFN Special Chiefs' Assembly in Ottawa, Ontario
December 5, 2024.

First of all, there's a really, really, important reflection that everyone in this room has to have, about how Indigenous Peoples—First Nations in this case—want to organize themselves. It is not for the government of Canada to say who should speak for whom, and that is something we've been there as a partner, in resourcing and investing in, in helping to reflect on how you choose to organize yourselves and govern yourselves.

The AFN exists as a body that has gathered you here in Ottawa, but if you want to look at something other than AFN in order to organize yourselves, we will be there to work with whatever you decide is right for you.

The time for people in Ottawa, however well meaning, to decide how you go about organizing yourselves is long past, and that's a good thing, that's why **there are many nations across this country that have stepped out from under the AFN, stepped out from under the Indian Act, and are choosing to sign self-governing Treaties with us and our goal as a country is to end the Indian Act. To see it finished! To see every First Nations community, every First Nations nation, Indig-**

enous community and nation, determine what kind of relationship you want with the federal government and with Canada.

So I know over the past number of years, the fact that after decades of federal government not showing up, after decades of the federal government not putting money on the table, not in any substantial way like we have over the past 9 years, the imperative was very much on just being seen, but now, you are working on—as you need to—figuring out what the path forward is for the next generations of engagement with the federal government and we are here as a federal government to work with you on that, and it's not easy, quite frankly because for generations nobody has given you the space, nobody has granted you the legitimate, and recognized your legitimate rights, to determine your own future.

We are here to say we are working with you, and it won't be easy and it won't be quick, because these are things that will impact on your communities deeply, not just now, but for generations, as you well know, but we will continue to show up on that.

I appreciate the invitations and the engagement. I travel across the country all the time and meet with many, many First Nations, Metis, Inuit groups, **sign agreements and move forward**, but a lot of those things are—**the first steps are working with Ministers to define and find ways to move forward quickly**, because if I'm showing up and we end up not moving appreciably forward, that increases frustration on your side and your people say "*the Prime Minister's coming, wonderful, we can solve this now*", **and we sit down and we start negotiations that may take months**, there's something that misses on that—but I'm glad to come to celebrations, I'm glad to sit down and work with you and I will continue to. [emphasis added]

-End of Comments-



“Conservative Party supports the abolition of the **Indian Act** and proposes a new legislation which recognizes the fiduciary obligation of the Federal Crown while proposing a new deal with First Nations based on autonomy, taxation, capacity, transparency, accountability, and property rights”



L to R: AFN Nat'l Chief, Cindy Woodhouse & CPC Leader Pierre Poilievre at 2024 AFN AGA in Montreal, Quebec.

CONSERVATIVE PARTY OF CANADA POLICY DECLARATION

As amended by the delegates to the
National Convention September 9, 2023
As consolidated by the National Policy
Committee and approved by National Council

L. INDIGENOUS AFFAIRS

112. Indigenous Affairs Principles

A fundamental obligation of the federal government is to improve the living conditions of Indigenous Canadians, including the Inuit, in terms of economic opportunity, health, education, and community safety.

The Conservative Party believes the following principles should govern the administration of existing federal Indigenous programs:

- i. the need for a legislated framework for federal Indigenous expenditures;
- ii. self government – legal and democratic authority;
- iii. transparency;
- iv. respecting the Canadian constitutional framework;
- v. a framework for the settlement of comprehensive claims and self government agreements;
- vi. the resolution of existing specific claims and lawsuits against the federal Crown; and
- vii. economic sustainability.

We support provisions for property ownership and women's equality on reserves.

These principles should also govern future legislative reform to the Indian Act and related legislation.

They should also form the basis for government decision making in the resolution of rights disputes – whether based upon existing treaties, court decisions or section 35 of the Constitution Act.

113. Legislated Framework for Federal Indigenous Expenditures

The Parliament of Canada must develop legislation which governs the delivery of federal governmental programs to Indigenous Canadians. Both Indigenous and non-Indigenous Canadians deserve to know the legislative basis upon which the Government of Canada is expending funds on Indigenous health, education, social welfare and infrastructure. Legislation should be developed which governs such programs and which prescribes the standards of service which the federal government has undertaken to provide to Indigenous Canadians.

114. Indigenous Affairs

The Conservative Party supports the abolition of the Indian Act and proposes a new legislation which recognizes the fiduciary obligation of the Federal Crown while proposing a new deal with First Nations based on autonomy, taxation, capacity, transparency, accountability, and property rights.

'CPC Policy' continued from page 18

115. Transparency in Indigenous Affairs

Both Indigenous and non-Indigenous Canadians are entitled to complete transparency and accountability in the expenditure of all public funds on Indigenous programs, services and inter-governmental transfers. Indigenous peoples, like other Canadians, must have ready access to police and judicial intervention to constrain and check any exercise of governmental authority (whether Indigenous or non-Indigenous) which is illegal, corrupt or an abuse of power.

The Auditor General should be empowered to review the spending of Indigenous governments and Indigenous organizations which receive public funds.

116. Respecting the Canadian Constitutional Framework

We are a nation governed by the Constitution Act, under which the rights of all citizens are protected and advanced by the Charter of Rights and Freedoms. Our future together as a country must be built upon the universal application of that framework.

All Indigenous rights recognized under section 35 of the Constitution Act must be conferred within the four square corners of the Constitution Act and the Charter, with full protection for equality rights, such as women's rights, for both Indigenous and non-Indigenous Canadians. Future Indigenous legislation, policies and programs must balance the collective rights of Indigenous Canadians under section 35 of the Constitution Act with the individual equality rights enshrined in the Charter – which protect all Canadians – whether Indigenous or non-Indigenous. Indigenous Canadians are entitled to the full benefits of Canadian citizenship and the full protection of the Charter - in areas such as economic opportunity, the delivery of health services, community safety, women's rights, respect for the rule of law, and the education and protection of children. Canada must develop in a manner that ensures constitutional equality and workability.

117. A Framework for the Settlement of Comprehensive Claims and Self Government Agreements

Settlement of all outstanding "comprehensive claims" must be pursued on the basis of a clear framework which balances the rights of Indigenous claimants with those of Canada. In particular, negotiated settlements must balance the economic and social needs of Indigenous Canadians with Canada's need for certainty and finality of terms. Self-government agreements must reflect Canada's need for both efficacy and practicality in institutional structure, and "constitutional harmony" so as not to impede the overall governance of Canada.

118. The Resolution of Existing Specific Claims and Lawsuits against the Federal Crown

The federal government should, as a priority, adopt measures to resolve the existing backlog of specific claims so as to provide justice for Indigenous claimants, together with certainty for government, industry and non-Indigenous Canadians. Institutional reform in the specific claim area should be pursued in a manner which resolves claims in a timely manner. The jurisdiction of the Federal Court should be expanded and the arbitrary ambit of the Indigenous and Northern Affairs Canada Minister and the Specific Claims Policy contracted to eliminate the



"Self-government agreements must reflect Canada's need for both efficacy and practicality in institutional structure, and "constitutional harmony" so as not to impede the overall governance of Canada"



Advancing the Right of First Nations to Information

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The First Nations Strategic Policy Counsel is a collection of individuals who are practitioners in either First Nations policy or law. We are not a formal organization, just a network of concerned individuals.

This publication is a volunteer non-profit effort and is part of a series. Please don't take it for granted that everyone has the information in this newsletter, see that it is as widely distributed as you can, and encourage those that receive it to also distribute it.

Feedback is welcome. Let us know what you think of the Bulletin—Russell Diabo, Publisher and Editor, First Nations Strategic Bulletin.

For Back Issues Go To: http://epe.lac-bac.gc.ca/100/201/300/first_nations_strategic_bulletin/index.html

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inherent conflict of interest of the Federal Crown in the resolution of specific claims.

119. Measuring Outcomes in Indigenous Affairs

The federal government, in consultation with the provinces, territories and Indigenous leaders, should direct an independent audit of all social service providers to Indigenous communities to determine what, if any, measures of effectiveness are employed and whether the programs provided result in desired outcomes.

The federal government should work with the provinces, territories and Indigenous leaders to establish a three-party coordinating body tasked with developing a strategy for coordination of all programs and services provided to Indigenous communities.

The Auditor General of Canada and the Auditors General of the provinces should include an evaluation of actual outcomes as well as financial accountability in their audit reports on Indigenous services.

120. First Nations Land Title

The Conservative Party supports the development of a property regime that would encourage lending for private housing and businesses. This will promote economic opportunity and individual freedom.

We support the development, in conjunction with First Nations, of a First Nations Land Ownership Act, which would transfer Reserve land title from the Federal Crown to willing First Nations.

121. First Nations Educational Choice

The Conservative Party proposes, where available and agreed to by all parties, including provincial authorities, to offer choice in schooling for First Nations.