



National Chief Bulletin

December 3, 2020

Update on Federal Bill to advance implementation of the United Nations Declaration on the Rights of Indigenous Peoples

SUMMARY:

- Since my last Bulletin, Minister of Justice David Lametti tabled [Bill C-15, United Nations Declaration on the Rights of Indigenous Peoples Act](#) on December 3rd, 2020.
- This proposed legislation is the culmination of generations of advocacy by First Nations nationally and internationally. Chiefs-in-Assembly have repeatedly called for implementation legislation for the Declaration since it was adopted by the UN General Assembly 13 years ago. Assembly of First Nations (AFN) Resolution 86/2019 *Support for Federal Legislation to Create a Framework to Implement the UN Declaration* called for the introduction of federal legislation by the end of 2020. The federal government responded with a commitment to do so, in the Speech from the Throne in 2019 and 2020.
- Preliminary legal analysis indicates that Bill C-15 contains key elements that Chiefs-in-Assembly mandated the AFN to work toward. It is consistent with former Private Member's Bill C-262 as 'the floor' and contains several enhancements. It contains strong language affirming our inherent right to self-determination, highlights the urgent need to respect and promote our rights affirmed in Treaties and commits the Government of Canada to an action plan that includes measures to combat and eliminate all forms of violence and discrimination, including systemic discrimination.
- I invite all Chiefs, Proxies and First Nations to attend the forthcoming AFN Virtual Annual General Assembly on December 8-9 ([Registration](#)) where this critical legislation will be discussed. The Prime Minister and Minister of Justice will attend on December 8th. On December 9th, a plenary panel will present on this development and provide legal analysis.
- AFN legal team member Mary-Ellen Turpel Lafond has prepared a preliminary comparison table of federal Bill C-15 as compared to Bill C-262 that is attached to this bulletin for your review.

BACKGROUND:

- In 2007, following more than 25 years of global advocacy by First Nations and other Indigenous peoples, the UN Declaration was adopted by the United Nations General Assembly (UNGA). Since then, the UNGA has reaffirmed the Declaration several times. Canada is part of numerous consensus resolutions of the UN calling on states to work with Indigenous peoples to develop national action plans and other measures to support implementation, including legislation such as that tabled today.
- In 2018, Bill C-262 was passed by the House of Commons. Subsequently however, it failed to pass in the Senate of Canada due to a filibuster by a small minority of Senators, preventing it from moving to third reading and passage.
- Following this, Chiefs-in-Assembly passed Resolution 86/2019. This Resolution called for; a collaborative process to introduce legislation to implement the Declaration as government

legislation by the end of 2020; and to ensure such legislation fully respects the Declaration; and establishes the content of Bill C-262 as the floor rather than the ceiling.

- AFN Executive Committee Motion 2019-12 called for the creation of a Legal Team to engage with the Department of Justice (DoJ) on the federal UN Declaration legislation initiative. This team was led by legal experts, Chief Wilton Littlechild, Mary-Ellen Turpel-Lafond and Paul Joffe.
- The Speech from the Throne in 2020 committed the government to introduce legislation to implement the UN Declaration by the end of 2020. Canada publicly accepted the content of Bill C-262 as the floor for any government bill and reflected that in a consultative draft. The federal government indicated that the purpose of its engagement was to enhance or strengthen the consultative draft through input from Indigenous peoples.
- From the end of September into November 2020, DoJ received input, and engaged in dialogue on potential enhancements to the consultative draft from First Nations Rights holders, First Nations Provincial/Territorial organizations and National Indigenous Organizations.
- The AFN Legal Team focused on ensuring that DoJ was fully cognizant of the status of international law affirming the inherent rights of First Nations under the UN Declaration; as well as the broader body of international law. This includes binding international Treaties affirming the equal right of all peoples to self-determination.
- The AFN Legal Team engaged in dialogue with DoJ officials to address misinformation and unfounded fears raised by opponents of First Nations rights, as well as speaking to legal issues such as the relationship between the rights of Indigenous peoples under international law and the Constitution of Canada.
- The AFN Legal Team also identified opportunities to strengthen DoJ's consultative draft to reflect key developments in international law that uphold and respect First Nations Treaty and inherent rights, title, and jurisdiction.
- The Crown carries the responsibility to engage with First Nations directly and the AFN is not a replacement for nation-to-nation dialogue to meet Crown legal obligations

CURRENT STATUS:

- The Minister of Justice introduced Bill C-15 for First Reading today (December 3, 2020).
- Mary Ellen Turpel-Lafond has prepared the attached *Comparison Table of Federal Bill C-15 and Bill C-262 with Commentary* to assist you in your own review.

NEXT STEPS:

- The AFN will analyze Bill C-15's content against Chiefs-in-Assembly Resolutions and will share updates with First Nations.
- Bill C-15 would need to be advanced to second reading and referral to a Parliamentary Committee for study.

ATTACHMENTS:

- 1) Comparison Table of Federal Bill C-15 and Bill C-262 with Commentary (French to follow)
- 2) Bill C-15 (English-French)

United Nations Declaration on the Rights of Indigenous Peoples Act

Comparison Table of Federal Bill C-15 and Bill 262 with Commentary

(Note this is a rolling draft for briefing purposes prepared as of December 3, 2020. This commentary is a high-level summary only. Do not rely on this summary as legal advice as more precision is needed to compare and contrast meanings of words and phrases.)

C-15	C -262	Commentary
PREAMBLE		
<p>PP1 Whereas the United Nations Declaration on the Rights of Indigenous Peoples provides a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith;</p>	<p>N/A</p>	<p>Enhancement, not in 262.</p>
<p>PP2 Whereas the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world and must be implemented in Canada</p>	<p>Whereas the Parliament of Canada recognizes that the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples should be enshrined in the laws of Canada</p>	<p>Enhancement. “Should” is changed to “must” which is stronger. Enhancement in reference to Indigenous peoples of the world providing clear statement that Canada supports global recognition of Indigenous rights.</p>
<p>PP3 Whereas, in the outcome document of the high-level plenary meeting of the General Assembly of the United Nations known as the World Conference on Indigenous Peoples, Canada and other States reaffirm their solemn commitment to respect, promote and advance the rights of Indigenous peoples of the world and to uphold the principles of the Declaration;</p>	<p>Whereas, in the outcome document of the high-level plenary meeting of the General Assembly of the United Nations known as the World Conference on Indigenous Peoples, Canada and other states worldwide reaffirmed their solemn commitment to respect, promote and advance the rights of indigenous peoples and to uphold the principles of the United</p>	<p>Consistent with 262 but brought up to date and active language consistent with government initiated bill.</p>

	Nations Declaration on the Rights of Indigenous Peoples;	
PP4 Whereas, in its document entitled <i>Calls to Action</i> , the Truth and Reconciliation Commission of Canada calls upon federal, provincial, territorial and municipal governments to fully adopt and implement the Declaration as the framework for reconciliation and the Government of Canada is committed to responding to those Calls to Action;	Whereas, in its document entitled <i>Calls to Action</i> , the Truth and Reconciliation Commission of Canada is calling upon the federal government and other governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation;	ENHANCEMENT —commits to all Calls to Action, including on implementing UN Declaration. Further calls upon other governments to do likewise consistent with Calls to Action from TRC.
PP5 Whereas, in its document entitled <i>Calls for Justice</i> , the National Inquiry into Missing and Murdered Indigenous Women and Girls calls upon federal, provincial, territorial, municipal and Indigenous governments to implement the Declaration and the Government of Canada is committed to responding to those Calls for Justice;	NA	ENHANCEMENT: positive recognition of the Calls to Justice and requirement to respond to these at Federal, provincial, territorial and municipal level.
PP6 Whereas First Nations, Inuit and the Metis Nation have, throughout history and to this day, lived in the lands that are now in Canada with their distinct identities, cultures and ways of life;	NA	MUST BE ANALYZED FURTHER—states a fact, but not sure Metis were in all areas of Canada at the time of Confederation as a distinct Nation, lack of clarity on what is the Metis Nation. Is tempered by distinctions and further PP on distinctions.
PP7 Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;	Whereas indigenous peoples have suffered historic injustices as a result of, <i>inter alia</i> , their colonization and dispossession from their lands, territories and resources;	MUST BE ANALYZED FURTHER—difference in language of “dispossession from” rather than “dispossession of” is likely of minimal significance, but deserves closer analysis and discussion. Consider how relates to other provisions in Bill and Declaration on Indigenous land tenure.
PP8 Whereas the implementation of the Declaration must include	NA	ENHANCEMENT: strong anti-racism and discrimination language, including importance

<p>concrete measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;</p>		<p>of ending violence against Indigenous peoples, is a significant enhancement.</p>
<p>PP9 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 are racist, scientifically false, legally invalid, morally condemnable and socially unjust;</p>	<p>Whereas all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust</p>	<p>Mirror of 262.</p>
<p>PP10 Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;</p>	<p>Whereas, in regard to indigenous peoples, it is important for Canada to reject colonialism and engage in a contemporary approach based on good faith and on principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights</p>	<p>ENHANCEMENT: language is improved and clearer with explicit reference to Government of Canada.</p>
<p>PP11 Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;</p>	<p>NA</p>	<p>ENHANCEMENT: New provision and positive recognition of legal orders of Indigenous peoples, including lands, territories and resources.</p>
<p>PP12 Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-</p>	<p>NA</p>	<p>MAJOR ENHANCEMENT: New provision that confirms all relations must be based on the inherent right of self-determination of peoples and the inherent right of self-government.</p>

Comparison of Bill C-15, tabled December 3, 2020 with C-262, and Commentary – Confidential Solicitor/Client - Mary-Ellen Turpel-Lafond

determination, including the inherent right of self-government;		
PP13 Whereas the Government of Canada is committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration;	Whereas Canada is committed to taking appropriate measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with indigenous peoples, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples and to follow up on its effectiveness;	CHANGE: dropped “follow up on its effectiveness”. Not a major change as the bill includes enhancements on Action plan and process. However, needs further discussion. Addition of new clause below strengthens concept and is arguable enhancement read in conjunction with this preambular para.
PP14 Whereas the Government of Canada is committed to exploring, in consultation and cooperation with Indigenous peoples, measures related to monitoring, oversight, -recourse or remedy or other accountability measures that will contribute to the achievement of those objectives;	NA	ENHANCEMENT: requires commitment to do monitoring, oversight and recourse reassures. This is important for proper and fair process to implement the declaration in Canada.
PP15 Whereas the implementation of the Declaration can contribute to supporting sustainable development and responding to growing concerns relating to climate change and its impacts on Indigenous peoples;	NA	ENHANCEMENT: the addition of sustainable development and climate change is a positive and helpful addition as sustainable development is widely recognized and must be applied to Indigenous peoples’ governments priority setting and planning.
PP16 Whereas the Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority;	NA	ENHANCEMENT: makes it clear that the work in BC DRIPA is recognized and within the authority of the provinces, encourages other provinces and municipal governments to implement the Declaration within their spheres of authority.
PP17 Whereas the Government of Canada welcomes opportunities to work cooperatively	NA	ENHANCEMENT: Makes it clear federal government commits to work in cooperation

<p>with those governments, Indigenous peoples and other sectors of society towards achieving the objectives of the Declaration;</p>		<p>with Indigenous peoples and BC on implementation of the Declaration in a more cohesive way. Positive commitment to make Declaration implementation more cohesive. CAUTION, MUST NOT DELAY DRIPA processes.</p>
<p>PP18 Whereas the Declaration is affirmed as a source for the interpretation of Canadian law,</p>	<p>NA</p>	<p>ENHANCEMENT: Makes it clear UN Declaration is a source to interpret all of Canadian law. This would include the Constitution of Canada, section 35, which is significant. The Declaration does include provisions that are part of customary international law.</p>
<p>PP19 Whereas the protection of Aboriginal and treaty rights – recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> - is an underlying principle and value of the Constitution of Canada;</p>	<p>Whereas protection of existing Aboriginal and treaty rights is an underlying principle and value of Canada’s Constitution</p>	<p>ENHANCEMENT: adds the phrase "recognized and affirmed" which is positive improvement. Makes reference to the protection of Aboriginal and Treaty rights as an underlying constitutional principle and value.</p>
<p>PP20 Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements, and those treaties, agreements and arrangements can contribute to implementing the Declaration;</p>	<p>NA</p>	<p>ENHANCEMENT: Clearer position on rights affirmed in treaties, agreements and constructive arrangements. Also, flexibility in wording as “can contribute” to implementing the Declaration. For those Treaty First Nations that do not want the UN Declaration applied to their Treaty relationship or rights, they are not required to do so. Such Treaty FN can make a clear statement and this provides flexibility and self-determination, which is a positive aspect of this paragraph and enhancement. Does not impose one path, which reinforces PP12.</p>
<p>PP21 Whereas respect for human rights, the rule of law and democracy are underlying principles of the Constitution of Canada which are interrelated, interdependent and mutually</p>	<p>Whereas human rights, the rule of law and democracy are interlinked and mutually reinforcing and are underlying principles of that Constitution</p>	<p>ENHANCEMENT: adds the recognized in international law, clarifies it is the Constitution of Canada, and notes that human rights, rule of law and democracy are interrelated and</p>

<p>reinforcing and are also recognized in international law;</p>		<p>reinforcing. This is a key concept and makes the implementation of UN Declaration a central aspect of this globally important work for human rights.</p>
<p>PP22 And whereas measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Metis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;</p>	<p>NA</p>	<p>ENHANCEMENT: diversity clause or distinctions clause is strong, and includes recognizing different legal traditions—so would include land tenure systems of Indigenous legal orders—and is broadly worded. Positive recognition of Indigenous knowledge.</p>
<p>Short Title</p>		
<p>1 This Act may be cited as the <i>United Nations Declaration on the Rights of Indigenous Peoples Act</i></p>		<p>Addition that clarifies name of the Act.</p>
<p>Interpretation</p>		
<p>Definitions 2 (1) The following definitions apply in this Act.</p> <p>Declaration means the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007 and that is set out in the schedule.</p> <p>Indigenous peoples has the meaning assigned by the definition <i>aboriginal peoples of Canada</i> in subsection 35(2) of the <i>Constitution Act, 1982</i>.</p>	<p>NA</p>	<p>ENHANCEMENT: There were no definitions in C262, and this clarifies what Declaration referring to, and attaches as a schedule, and further provides a definition of Indigenous peoples to ensure it includes Section 35. This is consistent with BC DRIPA and other federal statutes.</p> <p>Bill 262 Had a section 3 with Declaration language which has been captured here in Section 2 of Bill 15.</p>

<p>Minister for the purposes of any provision of this Act, means the federal minister designated as the Minister for the purposes of that provision under section 3.</p>		<p>Identifies Minister but does not provide clarity on which minister. Enhancement though as there will be a point of accountability in the Executive side of the Government of Canada. Will need to consider if this is consistent with a “whole of government” approach or how this will be implemented as there have been concerns regarding inconsistent knowledge, acceptance or commitment to UNDRIP.</p>
<p>Rights of Indigenous peoples (2) This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>, and not as abrogating or derogating from them.</p>	<p>Aboriginal and treaty rights 2 (1) For greater certainty, nothing in this Act is to be construed so as to diminish or extinguish existing aboriginal or treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in section 35 of the <i>Constitution Act, 1982</i>.</p>	<p>ENHANCEMENT: Positive addition of “recognized and affirmed”.</p> <p>NEEDS FURTHER ANALYSIS: The loss of the expression “diminish” which was in 262 is noted. This may be neutral but must flag continued concerns with inconsistent approaches to non-derogation clauses at federal level.</p>
<p>Clarification (3) Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.</p>	<p>Declaration (2) Nothing in this Act is to be construed as delaying the application of the United Nations Declaration on the Rights of Indigenous Peoples in Canadian law.</p>	<p>Mirrors 262. There is a minor wording change as Act uses Declaration which is defined in definitions section so does not repeat full title throughout.</p>
<p>Designation of Minister</p>		
<p>Order designating Minister 3 The Governor in Council may, by order, designate any federal Minister to be the</p>	<p>NA</p>	<p>Enhancement: Lead minister means further accountability, although unclear which minister will be assigned and what mandate letter will accompany.</p>

Minister for the purposes of any provision of this Act.		
Purposes of Act		
<p>Purposes 4 The purposes of this Act is to</p> <p>(a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and</p> <p>(b) provide a framework for the Government of Canada’s implementation of the Declaration.</p>		<p>ENHANCEMENT: Purpose clause is an enhancement, modelled to some extent on BC DRIPA. First subsection is a positive addition and clarifies applies to Canadian law.</p> <p>Subsection b requires further analysis as while the Act is a framework, the consistency clause, in Section 5, does not make implementation dependent on any framework. There is an Action Plan and reporting process.</p>
Measures for Consistency of Laws and Achieving the Objectives of the Declaration		
<p>Consistency 5 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.</p>	<p>Consistency 4 The Government of Canada, in consultation and cooperation with indigenous peoples in Canada, must take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples.</p>	<p>NO CHANGE—This is the critical clause which is the FLOOR for 262.</p>
<p>Action plan 6 (1) The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration.</p> <p>Content (2) The action plan must include</p> <p>a) measures to</p>	<p>National action plan 5 The Government of Canada must, in consultation and cooperation with indigenous peoples, develop and implement a national action plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.</p>	<p>ENHANCEMENT: greater detail on the action plan and specific aspects of ending racism, violence and discrimination against Indigenous peoples. This is a significant positive addition as in years since 262 first introduced there are many instances of violence, racism and discrimination against Indigenous peoples, and the targeted sub-groups of Peoples, that have come to the forefront and require dedicated action.</p>

<p>(i) address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities, and gender-diverse persons and two-spirit persons;</p> <p>(ii) promote mutual respect and understanding as well as good relations, including through human rights education; and</p> <p>(b) measures related to monitoring, oversight, recourse or remedy, or other accountability measures with respect to the implementation of the Declaration.</p> <p>Other elements (3) The action plan must also include measures for monitoring the implementation of the plan and for reviewing and amending the plan.</p> <p>Time limit (4) The preparation of the action plan must be completed as soon as practicable, but no later than three years after the day on which this section comes into force.</p> <p>Tabling in Parliament (5) The Minister must cause the action plan to be tabled in each House of Parliament as soon as practicable after it has been prepared.</p>		<p>Positive addition of monitoring, oversight, recourse and remedy, or accountability measures which was not in 262 and can meet other TRC Calls to Action, and reflect need for proper redress mechanisms consistent with UN Declaration provisions.</p> <p>CONCERN: Three year timeframe seems long given the priority needed and factors such as systemic racism, violence and discrimination are acknowledged.</p> <p>The three year window seems far too long given gravity of this and should be shortened.</p>
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<p>Action plan made public Publication (6) After the action plan is tabled under subsection (5), the Minister must make it public.</p>		<p>The tabling in both Houses is important and means open to public scrutiny, debate and transparency. This has been a major stumbling block on previous policy and practice where released half-baked, provisional, and with no certainty. One example, Aboriginal fishing policy from DFO been in “draft” form since 1990s (post-<i>Sparrow</i>), not rights based and permitting no clear accountability, proper evaluation and transparency. C-15 on Action plan commits to a public process to report and account.</p> <p>Excellent that it must be public and thus open to discussion and review year over year in terms of progress and accountability.</p>
<p>Report to Parliament</p>		
<p>Annual report 7 (1) Within 90 days after the end of each fiscal year, the Minister must, in consultation and cooperation with Indigenous peoples, prepare a report for the previous fiscal year on the measures taken under section 5 and the preparation and implementation of the action plan referred to in section 6.</p> <p>Tabling in Parliament (2) The Minister must cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.</p> <p>Referral to committee</p>	<p>Annual report to Parliament 6 The Minister of Indian Affairs and Northern Development must, within 60 days after the first day of April of every year including and occurring between the years 2017 and 2037, submit a report to each House of Parliament on the implementation of the measures referred to in section 4 and the plan referred to in section 5 for the relevant period.</p>	<p>ENHANCEMENT: Positive additions to the reporting process. Requiring annual report on both</p> <ol style="list-style-type: none"> 1. Alignment of laws and policies with the declaration. 2. Action plan <p>These are distinct and this is consistent with 262 but creates new process which is COMMITTEE REFERRAL which provides greater transparency and public review and all party consideration.</p>

<p>(3) The report stands permanently referred to the committee of each House of Parliament that is designated or established to review matters relating to Indigenous peoples.</p> <p>Report made public</p> <p>(4) After the report is tabled, the Minister must make it public.</p>		<p>Positive step to have it public released also and it is not a privileged or protected report.</p>
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