

BILL C-15: AN ACT RESPECTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (“BILL”) PROPOSED AMENDMENT AND EXPLAINER TABLE

SECTION (ORIGINAL LANGUAGE)

PROPOSED AMENDMENTS

Red = New language

Strike through = deleted language

EXPLANATION

PREAMBLE

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;

None

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;

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;

Whereas, in its document entitled Calls to Action, 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 Calls for Justice, 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;

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Preamble

Whereas First Nations, Inuit and the Métis 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;

None

Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;

Whereas the implementation of the Declaration must include 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; 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;

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 the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;

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;

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	<p><i>Insert:</i> Whereas the Declaration further emphasizes that Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions and the right to determine and develop priorities and strategies for exercising their right to development;</p> <p><i>Insert:</i> Whereas the Government of Canada acknowledges that providing clarity with respect to Indigenous rights and the Crown's duty to consult and, if appropriate, accommodate is fundamental to enhancing regulatory certainty and improving Canada's competitiveness;</p>	<p>First amendment intended to introduce legislative objectives related to economic reconciliation and related concepts of self-determination. It is drawn from the Declaration itself.</p> <p>Second amendment intended to acknowledge the need to maintain Canadian competitiveness as a consideration that is important to reconciliation.</p>
<p>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-determination, including the right of self-government;</p>	<p><i>Edit:</i> 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-determination, including the right of self-government, by virtue of which Indigenous peoples freely pursue their economic, social and cultural development;</p>	<p>This amendment echoes the first amendment on economic reconciliation using language from the UN Declaration itself.</p>
<p>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;</p> <p>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;</p>	<p>None</p>	
<p>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;</p>		

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Whereas the Government of Canada (“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;	<p><i>Edit:</i> Whereas the Government of Canada acknowledges and respects that provincial, territorial and municipal governments each have the jurisdiction and ability to establish their own approaches to contributing to the implementation of the interpretation of the Declaration by taking various measures at their discretion that fall within their authority and the Government of Canada will respect these various approaches to the Declaration in formulating its own action plan;</p>	These amendments reflect respect for provincial jurisdiction and different approaches to implementation of the Declaration.
Whereas the Government of Canada welcomes opportunities to work cooperatively with those governments, Indigenous peoples and other sectors of society towards achieving the objectives of the Declaration;	<p><i>Edit:</i> Whereas the Government of Canada welcomes opportunities to work cooperatively with those provincial, territorial and municipal governments, Indigenous peoples and other sectors of Canadian society towards understanding and achieving the objectives of the Declaration;</p>	Same as above: This amendment reflects respect for provincial jurisdiction and different approaches to implementation of the Declaration.
Whereas the Declaration is affirmed as a source for the interpretation of Canadian law;	<p><i>Edit:</i> Whereas the Declaration is affirmed as a source for the interpretation of Canadian law; an international human rights instrument that is available as a resource to assist with the interpretation of the domestic federal laws of Canada;</p>	This amendment is intended to clarify the status of the Declaration in Canadian domestic law and aligns with the government’s stated intention that UNDRIP is to be used as an interpretive tool in Canada.

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Whereas the protection of Aboriginal and treaty rights — recognized and affirmed by section 35 of the Constitution Act, 1982 — is an underlying principle and value of the Constitution of Canada;	None	
<p>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 the implementation of the Declaration;</p> <p>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 reinforcing and are also recognized in international law;</p> <p>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 Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;</p> <p>Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>	None	
<p>Short Title</p> <p>1 This Act may be cited as the United Nations Declaration on the Rights of Indigenous Peoples Act.</p>	None	

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INTERPRETATION

Definitions

2 (1) The following definitions apply in this Act.

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. (Déclaration)

Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones)

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. (ministre)

Definitions

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[Insert at bottom of clause:]

(2) In affirming the Declaration as a universal international human rights instrument with application to and, as a resource available to assist with the interpretation of the federal laws of Canada, the following definitions apply in respect of the Declaration:

Free, prior and informed consent is a meaningful consultative process that aims to secure the consent of Indigenous peoples and provides them with a degree of participation and protection corresponding to the strength of the claimed right or treaty entitlement and the seriousness of the impact on the claimed right or treaty entitlement.

This FPIC definition reflects the understanding that consent is an objective of consultation, while ultimately government retains its role as decision-maker in the broad public interest.

This aligns with **point six** of Justice Canada's Principles of Canada's relationship with Indigenous peoples as well as the following statement on the principles of FPIC in UNDRIP by James Anaya, former Special Rapporteur to the United Nations on Indigenous Rights:

"In all cases in which Indigenous peoples' particular interests are affected by a proposed measure, obtaining their consent should, in some degree, be an objective of the consultations. As stated, this requirement does not provide Indigenous peoples with a "veto power", but rather establishes the need to frame consultation procedures in order to make every effort to build consensus on the part of all concerned."

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<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 Constitution Act, 1982, and not as abrogating or derogating from them.</p>	<p>Edit: (2) (3) This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.</p>	<p>The insertion of the definition of FPIC above requires a consequential re-numbering of this sub-paragraph.</p>
<p>Clarification (3) Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.</p>	<p>Edit: (4) Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian Law to the federal laws of Canada.</p>	<p>Amendment clarifies the Act so as to avoid impacting provincial jurisdiction. This is ultimately about consistency with the constitution (sections 91 and 92 division of powers) and aligning the bill with statements made by Justice Minister Lametti.</p>
DESIGNATION OF MINISTER		
<p>Order designating Minister</p> <p>3 The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.</p>	<p>None</p>	
PURPOSE OF ACT		
<p>Purpose</p> <p>4 The purpose 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>Edit:</p> <p>4 The purpose of this Act is to (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law to the federal laws of Canada as a source to assist in interpretation of those laws; and (b) provide a framework for the Government of Canada's implementation of the Declaration.</p>	<p>This amendment is intended to ensure that the division of powers are respected so as to avoid impacting provincial jurisdiction. It also confirms that the Declaration is not immediately being applied to Canadian law; rather it is a source to assist in interpreting federal law.</p>
MEASURES FOR CONSISTENCY OF LAWS AND ACHIEVING THE OBJECTIVES OF THE DECLARATION		
<p>Consistency</p> <p>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>Edit / Insert:</p> <p>5 (1) The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all reasonable measures necessary to ensure that the federal laws of Canada are consistent with the Declaration.</p>	<p>The minor insertion in 5(1) continues the amendments regarding constitutional division of powers.</p>

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	(2) Any such measures that propose to amend a federal law of Canada shall be identified in the action plan and nothing in this Act, by itself, shall be construed as amending the federal laws of Canada other than affirming the Declaration as an international human rights instrument that is available as a resource to assist with the interpretation of the domestic federal laws of Canada.	The addition of 5(2) clarifies that this legislation does not, on its own, amend the laws, but that other subsequent legislation is required. It also aligns with the Minister's statements. This addresses ambiguity regarding the immediate application of UNDRIP in Canada.
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.	None	
Content 6(2) The action plan must include (a) measures to (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, and (ii) promote mutual respect and understanding as well as good relations, including through human rights education; and (b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.	Edit: (2) The action plan must identify include: (a) measures to (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, and (ii) promote mutual respect and understanding as well as good relations, including through human rights education; and (b) measures relating to improvement of Indigenous peoples' economic and social conditions through sustainable development; (c) resources required to implement the action plan; and (d) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.	The addition of paragraph (b) continues the amendment proposed in the preamble to introduce economic reconciliation. This paragraph also introduces the connection to "sustainable development". The addition of paragraph (c) is intended to introduce a requirement on government to identify resources to create additional accountability for effective implementation.

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<p>Other elements</p> <p>6(3) The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan.</p>	<p><i>Edit / Insert:</i></p> <p>(3) The action plan must also include measures</p> <p>(a) to enhance coordination and consistency with the approaches and timelines of provincial, territorial and municipal governments;</p> <p>(b) to identify lessons learned from prior engagement and reconciliation processes; and</p> <p>(c) related to monitoring the implementation of the plan and reviewing and amending the plan.</p>	<p>The insertion of paragraph (a) is intended to create a legislated requirement that the federal government cooperate with provincial governments.</p> <p>The insertion of paragraph (b) is intended to require government to include non-Indigenous Canadians in the development of the Action Plan, including industry.</p>
<p>Time limit</p> <p>6(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><i>Insert:</i></p> <p>6(5) The preparation of the action plan must be informed by a public comment period that shall provide the public with the opportunity to participate meaningfully in the development of the action plan. The public comment process shall be completed before the action plan is developed and tabled in the House of Commons.</p>	<p>As per the last proposed amendment.</p>
<p>Tabling in Parliament</p> <p>6(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><i>Edit:</i></p> <p>6(6) 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>Consequential re-numbering</p>
<p>Action plan made public</p> <p>6(6) After the action plan is tabled, the Minister must make it public.</p>	<p><i>Edit:</i></p> <p>6(7) After the action plan is tabled, the Minister must make it public.</p>	<p>Consequential re-numbering</p>

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Report to Parliament

Annual report

None

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. [emphasis added]

Tabling in Parliament

None

7(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.

Referral to committee

None

7(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.

Report made public

None

7(4) After the report is tabled, the Minister must make it public.

Schedule

None

United Nations Declaration on the Rights of Indigenous Peoples