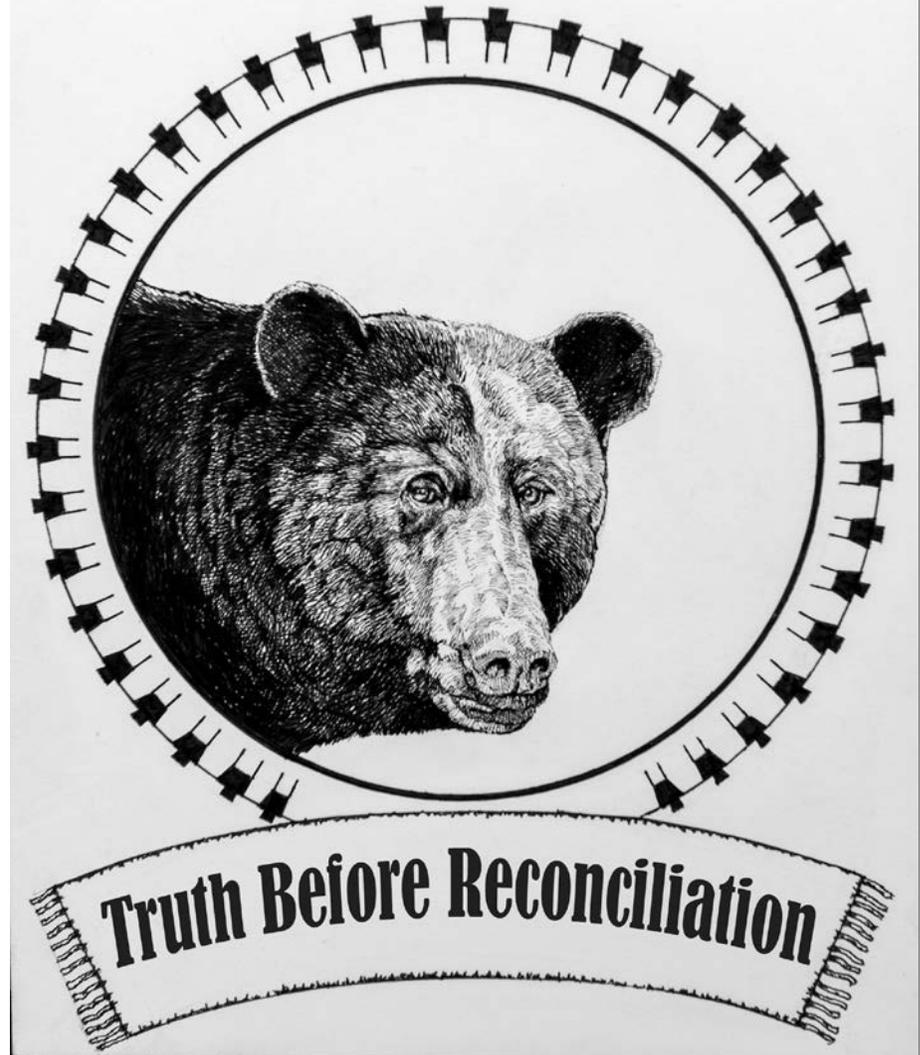


CANDRIP (Bill C-15)

Justice Canada's Draft Action-Plan and Self-Determination, Lands, Territories & Resources

By Russ Diabo

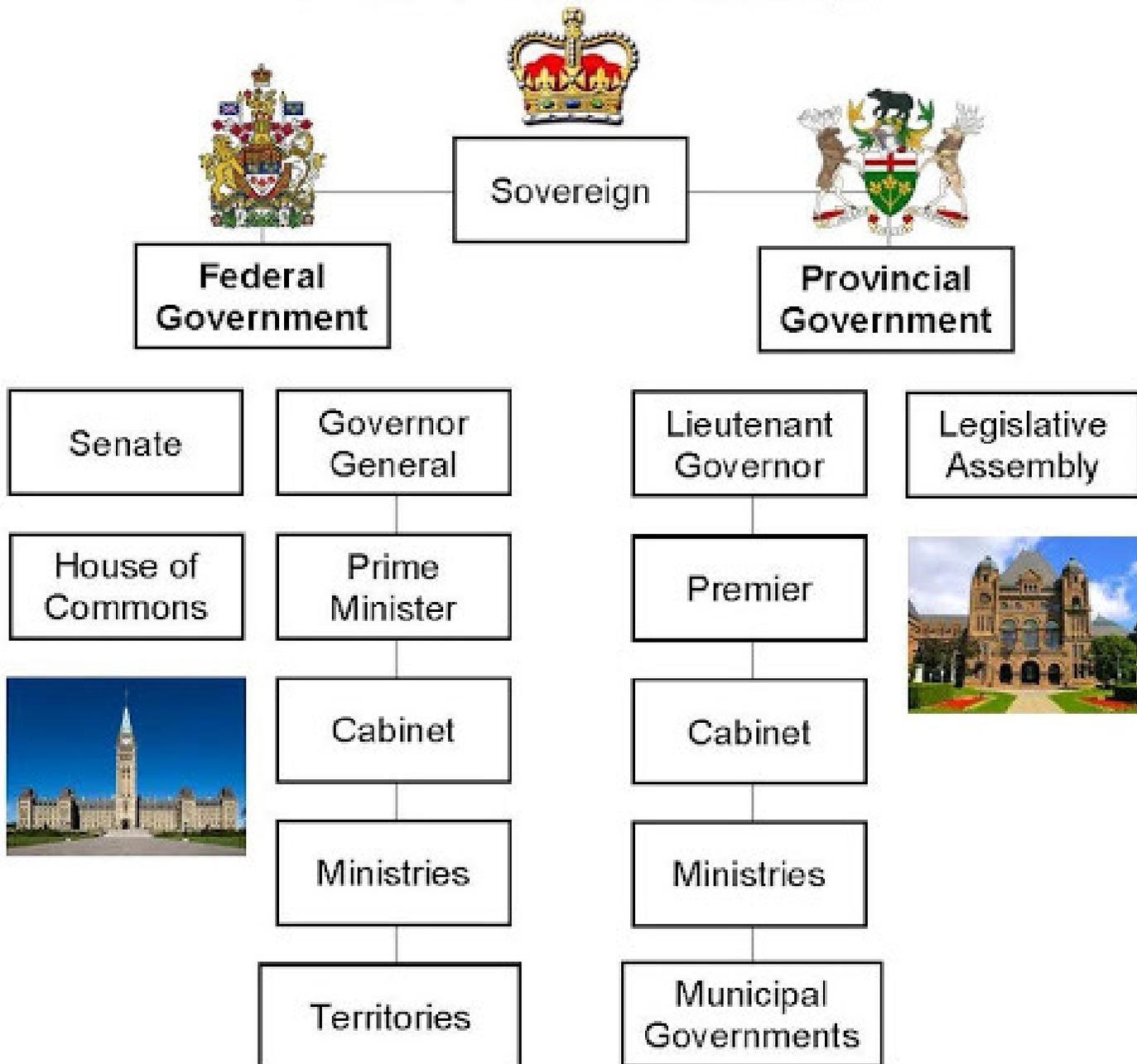
May 9, 2023



Parts of Presentation

- **1. Introduction of Issues.**
- **2. Content of Bill C-15.**
- **3. Summary of Justice Canada's Draft Action-Plan
(Federal Departmental Measures/Priorities).**
- **4. Conclusion.**

Government in Canada



Constitutional Division of Federal & Provincial Powers

UNDRIP Was Watered Down at UN

- There were three main drafts of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 1994, the Original Text version.
- 2006, a second amended version of UNDRIP was the Human Rights Council version.
- 2007, the final version of UNDRIP is the United Nations General Assembly version, passed by the UN General Assembly after changes were made by the African Union, changes that were never properly presented to Indigenous Peoples globally.
- It's the first Original Text version of UNDRIP drafted by hundreds of Indigenous representatives over a period of years with their direct participation, which was then undermined by nation states in politicized negotiations. The United Nations General Assembly by resolution adopted the UNDRIP in 2007.

Indigenous Nations Rights in the Balance

An Analysis of the Declaration on the Rights of Indigenous Peoples

- Charmaine White Face is an Oglala Tituwan Oceti Sakowin writer, scientist and great-grandmother. She wrote an in-depth analysis of the UNDRIP based on her experiences at the UN debates called: Indigenous Nations Rights in the Balance published by Living Justice Press, St. Paul, MN. She can be reached at cwhiteface@gmail.com.

INDIGENOUS NATIONS' RIGHTS IN THE BALANCE

An Analysis of The Declaration
on the Rights of Indigenous Peoples



CHARMAINE WHITE FACE,
ZUMILA WOBAGA

Canada's Definition of Sec. 35 & UNDRIP

- In order to understand the Trudeau governments 2015, promise to adopt the **United Nations Declaration on the Rights of Indigenous Peoples**, you need to refer back to the beginning of the federal Liberal government's mandate.
- In 2016, at the *United Nations Permanent Forum on Indigenous Issues* the Minister of Indigenous Affairs, Carolyn Bennett gave qualified NOT unqualified support to endorsing UNDRIP.
- Minister Carolyn Bennett's statement is the basis for the Canadian domestic definition of UNDRIP. Minister Bennett told the UNPFII:
- *"We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution... Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "free, prior and informed consent." We see modern treaties and self-government agreements as the ultimate expression of free, prior and informed consent among partners."* Source: Carolyn Bennett to UNPFII May 10, 2016. [emphasis added]

Canada's Definition of Sec. 35 & UNDRIP

- Minister Bennett's 2016 statement confirms that the **federal Inherent Right and Comprehensive Land Claims Policies are the federal basis for implementing the "objectives" of UNDRIP**, in accordance with the constitutional divisions of federal and provincial powers.
- Jody Wilson-Raybould, then Minister of Justice & Attorney-General, was also at the 2016 UNPFII and reinforced Minister Bennett's position on endorsing UNDRIP:
- *"There is a need for a national action plan in Canada, something our government has been referring to as a **Reconciliation Framework**...And we do not need to re-invent the wheel completely. ... 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."* [emphasis added]

Trudeau Government's Two-Track “Indigenous Reconciliation” Plan

Section 91.24

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

Section 35

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

Canada's Definition of Sec. 35 & UNDRIP

Two-Track Approach to Indigenous Reconciliation

- To implement Canada's definition of UNDRIP and to fulfill the Liberal governments promise to “re-engage in a renewed nation-to-nation process with Indigenous Peoples”, in December 2015, Prime Minister Trudeau announced a **Whole-of-Government, Two-Track approach to Indigenous Reconciliation** followed by his government issuing **10 Principles for Indigenous Relationships** and replacing the **Department of Indian Affairs** with the **two new Departments: Indigenous Services Canada and the Crown-Indigenous Relations and Northern Affairs**.

Canada's Definition of Sec. 35 & UNDRIP

Two-Track Approach to Indigenous Reconciliation

- In the federal Two-Track process, the role of ISC is to prepare First Nations for the devolution of programs and accepting a federal definition of self-government to get out of the Indian Act, through capacity building, including the 10-Year Funding Grants.
- The role of CIRNAC is to implement existing self-government agreements, including modern treaties and the alternative to the *Indian Act* legislative arrangements—through the National Land and Financial Management Agreement Institutions—and to continue this approach regarding the negotiation of Inherent and Treaty rights through four policies that are inconsistent with UNDRIP's minimum international standards: 1) the Inherent Right to Self-Government; 2) Comprehensive Land Claims; 3) Specific Claims and Additions-to-Reserves.

CANADA BILL C-15

C-15

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

Sponsor
Minister of Justice



HOUSE OF COMMONS 

Bill C-15 sets out 3 Legal Obligations

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

What is the Bill C-15 Action Plan?

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

Justice Canada's United Nations Declaration Act - Draft Action-Plan

- Justice Canada's Draft Action-Plan is organized into four chapters:
- *1. Shared Priorities [Includes Self-Determination, Treaties, & Lands]*
- *2. First Nations Priorities*
- *3. Inuit Priorities ("this section is pending further co-development")*
- *4. Metis Priorities*
- **The Draft Action-Plan contains departmental measures and lists the responsible department(s), or if All Departments are responsible.**

Draft Action Plan: Self-Governance, Self-Determination, and the Recognition of Treaties

- Draft Action Plan continues the domestic, status quo use of the self-government/land claims policy & legislative framework. (Four Policies & Federal Land/fiscal Laws)
- No clear commitment to meaningfully move away from the overriding **Inherent Right to Self-Government** policy.
- No mention that the **right of self-determination is an international right of Indigenous Peoples** and no commitment to provide funding or capacity support for either domestic model of municipal self-government, or the international right of self-determination.
- **Not a single measure mentioning historic treaties.**

United Nations Declaration Act - Draft Action-Plan Lands, Territories & Resources (art. 10, 26, 27, 28, 30, 32)

- *31 Develop guidance on engaging with Indigenous peoples on natural resources projects in consultation and collaboration with Indigenous partners, and in collaboration with provinces, territories, and industry*
- *32 Work closely with Indigenous peoples to develop and implement actions to ensure Indigenous peoples and their communities equitably and consistently benefit from natural resource development that occurs on Indigenous lands.*
- *33 Advance co-development of options to enable Indigenous peoples to harvest within Parks Canada-administered heritage places in a manner that respects and supports the implementation of Indigenous protocols and enforcement. [emphasis added]*

United Nations Declaration Act (Bill C-15) - Draft Action-Plan Chapters on Shared Priorities & First Nations Priorities

- The Draft Action-Plan contains no new federal commitments to the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* recognition of the right of self-determination as the main remedy for colonization (Article 3) and the restoration of Indigenous lands, territories & resources (Article 26) or restitution for lands territories & resources, “*which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent*” (Article 28) through “*a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems*” (Article 27), only vague measures continuing the colonial, status quo policy & legislative structure & system.

CANDRIP (Bill C-15)

Draft Action-Plan Replaces FPIC with Consultation

- **UNDRIP Article 19 (and 32)**
- States **shall** consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions **in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.**
- **Federal Principle #6.** The Government of Canada recognizes that meaningful engagement with Indigenous peoples **aims to secure** their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources. [emphasis added]

CANDRIP (Bill C-15)

Draft Action-Plan Replaces FPIC with Consultation

- **Bruno Steinke, Director, Consultation & Accommodation Unit on FPIC:**
- **“Canada’s position on “Free, prior and informed consent”:**
- **“At its core, the concept of Free, Prior, and Informed Consent is about meaningful consultation with Indigenous Peoples on issues of concern to them with a goal of achieving consensus. This is about government, Indigenous communities and industry striving towards consensus and there are many examples where this is occurring”. SOURCE: Presentation, Real Property Institute of Canada – 2016 Real Property National Workshop November 16, 2016**

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

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

CANDRIP (Bill C-15)

Draft Action-Plan Replaces FPIC with Consultation

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

**SUGGESTED RESEARCH &
MAPPING PROCESS FOR
FIRST NATION
SELF-DETERMINATION
& TERRITORIAL PLANS**



Indigenous Cultural/Territorial Landscapes Baseline Data/Evidence Collection

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

SOURCE: David Carruthers, PlanLab

Living Proof: The Essential Data-Collection Guide for Indigenous Use-and-Occupancy Map Surveys (Terry Tobias)





QUEBEC REGION EXAMPLE
OF
TERRITORIAL PLANNING



Logical Framework Example

TRILATERAL AGREEMENT

PROGRAM
INDIGENOUS KNOWLEDGE

PROGRAM
SUSTAINABLE DEVELOPMENT
OF NATURAL RESOURCES

PROGRAM
ECONOMIC/SOCIAL
DEVELOPMENT

Projects:

- Traditional Ecological Knowledge
- Social Customs
- Toponymy
- ABL-FEC
- Sensitive Area Mapping
- Measures to Harmonize
- Elders Field Trip

Sub-Program: FORESTRY
Projects:

- Data Compilation
- Digitization of Ecoforestry Data
- Cut Plan Map Digitization
- Synthetic Map Production
- Buffer Zone Study

Sub-Program: WILDLIFE
Projects:

- Aerial Moose Inventory
- Wildlife Data Compilation
- Habitat Supply Analysis & Modeling
- ABL Harvest Study
- Moose Management Strategy

Projects:

- Regional Socio-Economic Study
- ABL Socio-Economic Study
- Legal Framework Study

Information Management

community knowledge

government

industry

researchers

academics

interest groups



reports

letters

maps

databases

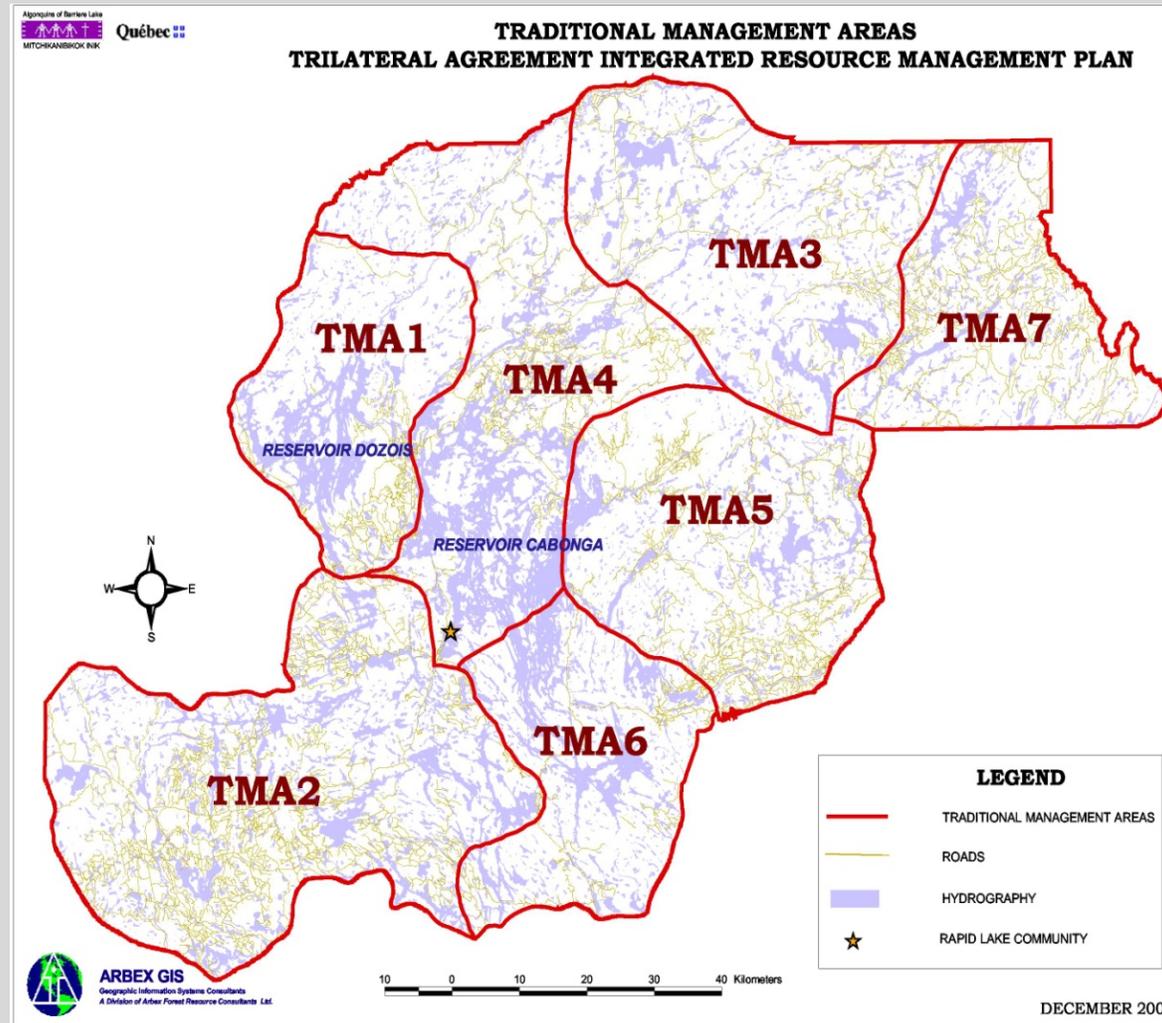
stories



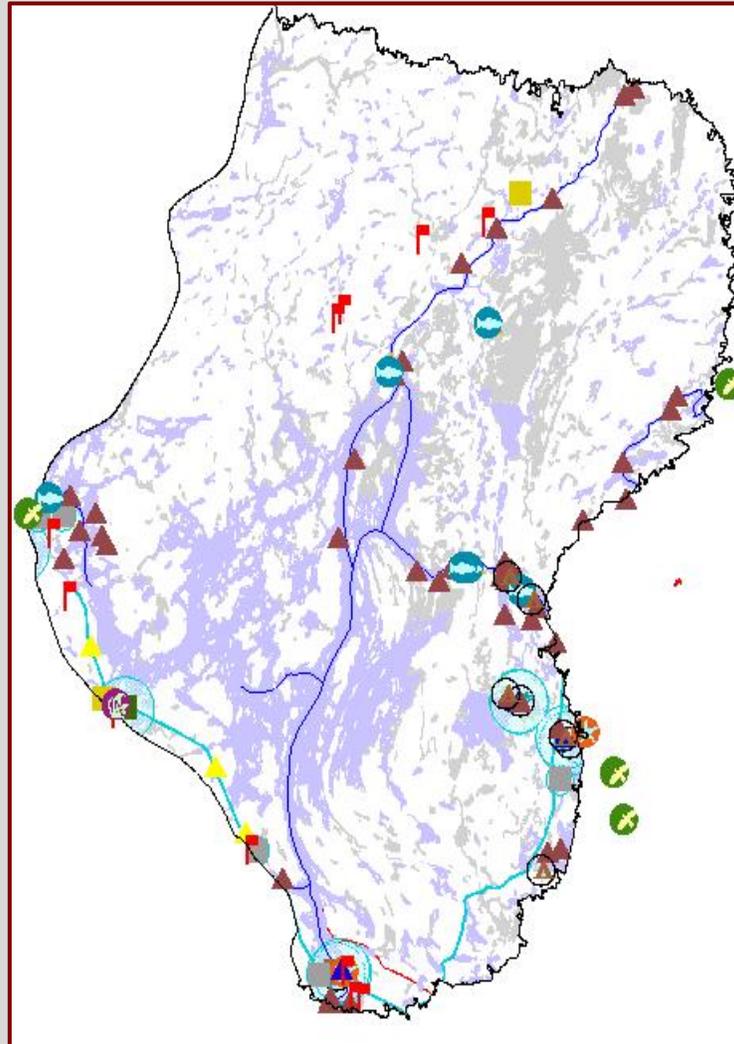
decision

↳ **interpretation**

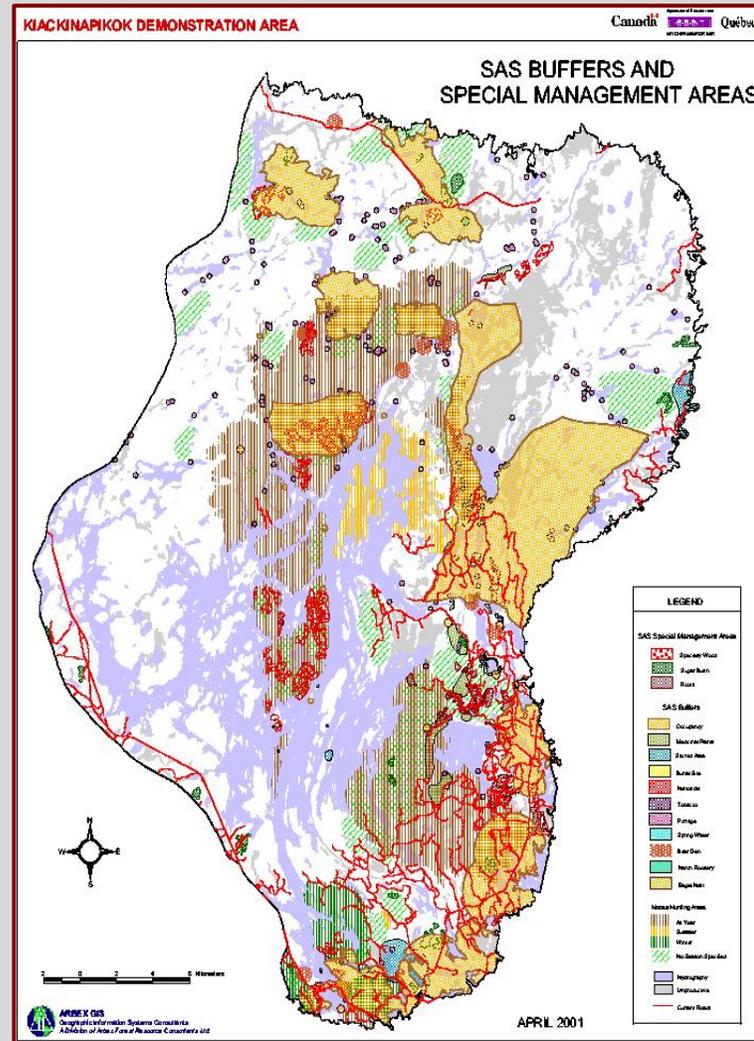
Traditional Management Areas



FAPAQ & MRN Affection Zones (TMA 1)



ABL Areas of Concern (TMA 1)



The ABL-Quebec Implementation Agreement 2021

- In 2021 the Algonquins of Barriere Lake finally reached agreement with Quebec on the core issues.
- This Agreement is the continuation a process started by a **1991 Trilateral Agreement**, Re-Affirmed by the **1998 Quebec Agreement** and is the Framework Agreement to implement the 2006 Quebec-ABL Special Representatives Joint Recommendations.
- **This is not a land claim agreement. Algonquins of Barriere Lake title and rights are not extinguished in any way. The matter of Algonquins of Barriere Lake title remains for future resolution by negotiation or court.**

Highlights of ABL-Quebec Implementation Agreement

- **Recognition of the Trilateral Agreement Territory as a Special Management Zone (Annex 2) & Overlaps with Other First Nations. (Annex 1)**
- **That Forestry Management Plans be approved as frameworks for the ongoing management of forestry resources including transitional logging plan.**
- **That Wildlife Management Plans & issues be negotiated & ABL Harvest Monitoring Program established. Also harvest ethics.**
- **That a joint Quebec-ABL Co-Management Committee be set up and mandated to oversee implementation of the IRMP**
- **ABL Natural Resources Office to be setup**

Conclusion

- The **Justice Canada Draft Action-Plan** will be finalized and presented to Parliament by June 21, 2023. These **federal policy measures** are going to set the federal government's—particularly the bureaucracy's—policy, legislative & budgetary agenda for years, even decades, to come. **Now is the time to push for federal spending powers in a model of “co-development” of policy & law for real Self-Determination/Territorial plans.**
- It's because the Supreme Court of Canada has placed the **burden of proof** on First Nations, I've been advising Chief and Councils across Canada to use the methodology of conducting cultural & historical research, GIS mapping and strategic planning to develop **self-determination and territorial plans for traditional lands, territories & resources.**
- The **1991 Trilateral Agreement between Canada, Quebec and the Algonquins of Barriere Lake**, provides an example of how **federal spending power** can be used in areas of provincial jurisdiction—like forests and wildlife—by directly funding a First Nation to co-develop an **Integrated Resource Management Plan** for over 10, 000 square kilometres of traditional Barriere Lake Territory..