



BILL C-15

**AN ACT RESPECTING THE UNITED
NATIONS DECLARATION
ON THE RIGHTS OF
INDIGENOUS PEOPLES**

**SUBMISSION TO THE STANDING
SENATE COMMITTEE ON ABORIGINAL PEOPLES**

MAY 28, 2021



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BY

THE CANADIAN HUMAN RIGHTS COMMISSION

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I. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (the CHRC) is Canada's National Human Rights Institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.¹ It has a broad mandate to promote and protect human rights. The CHRC, pursuant to the CHRA, has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations.

The CHRC also conducts compliance audits under the *Employment Equity Act* (EEA).² The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and racialized people.³

In 2019, the CHRC was mandated with several new responsibilities under the *Accessible Canada Act*, the *Pay Equity Act*, and the *National Housing Strategy Act*. The CHRC was also designated as a body responsible for monitoring the Government of Canada's implementation of the United Nations *Convention on the Rights of Persons with Disabilities*, in accordance with article 33.2 of the Convention.

The CHRC's efforts to protect and promote human rights include conducting mediation, preliminary assessments and/or merits-based assessments of discrimination complaints, representing the public interest in the litigation of complaints, conducting research and developing policy, issuing public statements and tabling special reports in Parliament. The CHRC is committed to working with the Government of Canada and with domestic and international partners, stakeholders and rights holders to ensure continued progress in advancing human rights in Canada, including those rights enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration).

II. CHRC POSITION ON BILL C-15

The CHRC welcomes the opportunity to provide comments on Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15).

¹ Available at: laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

² Available at: laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

³ The CHRC notes that the terms "visible minority" and "Aboriginal" are increasingly outdated, and as such, they are used only to reflect their official usage in Canadian legislation and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the CHRC supports this.

The CHRC strongly supports the expeditious passage of Bill C-15.

The human rights issues facing First Nations, the Métis Nation, and Inuit are among the most pressing in our country. Implementing the UN Declaration, including through the adoption of Bill C-15 by Parliament, would represent a vital step towards promoting and protecting Indigenous rights in Canada. It would signal a clear commitment to advancing reconciliation.

The CHRC fully supports the view, as stated by the Truth and Reconciliation Commission in its Principles for Reconciliation, that the UN Declaration provides the framework for reconciliation.

The UN Declaration is the result of decades of advocacy and work by Indigenous peoples from around the globe and represents an international consensus regarding the “minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world” (Article 43). It is a strong, comprehensive, and unambiguous articulation and affirmation of the inherent rights of Indigenous peoples. Further, it sets out the obligations of States in respect to those rights and provides mechanisms to redress and protect against violations of them.

The CHRC recognizes that Canada has repeatedly expressed formal support for the UN Declaration, first in 2010, then in May 2016 without qualification, and more recently in legislation, such as the *Indigenous Languages Act*. Bill C-15 breathes life into this endorsement and charts a path towards full implementation.

The CHRC is aware that the House and Senate Committees will have heard from many Indigenous leaders and members of Indigenous communities and organizations in considering this Bill. We respectfully acknowledge the insight and recommendations they contribute to the vital discussion of how best to move forward with this Bill, and towards the full recognition, protection, and implementation of Indigenous rights.

III. KEY PRINCIPLES

a. Self-Determination and Free, Prior, and Informed Consent

The human rights of Indigenous peoples, including the right to self-determination, are indivisible and interdependent. The collective rights of Indigenous peoples and the individual rights of Indigenous persons of all ages, genders and abilities will only be adequately protected and properly fulfilled when Indigenous peoples are able to make their own decisions – through their own institutions and according to their own values and traditions. Free, Prior, and Informed Consent (FPIC) is one important practical application of the right to self-determination.

The UN Declaration is based on the acknowledgement that Indigenous peoples have suffered historical dispossession of lands, territories and resources through colonization. FPIC will help to ensure that Indigenous peoples’ rights will not be further eroded and that development activities, where they occur, are on the basis of true partnerships and equality between States, Indigenous peoples and industries.

The CHRC views FPIC as a mechanism to ensure in law the full participation of Indigenous peoples in decisions affecting them. FPIC underpins the full realization of a different type of relationship between Indigenous peoples and the State – one that is based on mutual respect, equality and fairness in a just and democratic society where human rights are respected.

b. Intersectionality

Intersectionality refers to the fact that some people may experience complex, multiple and mutually reinforcing forms of discrimination. For instance, Indigenous women and 2SLGBTQIA people, or Indigenous persons with disabilities, may experience unique forms of discrimination that would be best understood by considering the effects of all grounds at the same time. An approach that looks at each discriminatory factor separately, or that simply adds each factor together, would not adequately or appropriately reflect the nature of intersectional discrimination, nor the lived experiences of these individuals.

The UN Declaration specifically recognizes the rights of Indigenous elders, women, youth, children, and persons with disabilities, and calls on States, in multiple articles, to pay particular attention to these rights. The implementation of Bill C-15 must come with the recognition of the importance of an intersectional approach, and a commitment to applying such an approach wherever possible.

IV. IMPLEMENTATION OF BILL C-15

One area in which an intersectional approach will be critical is in the development of the action plan outlined in section 5 of the Bill. The CHRC recognizes that this section specifies that the action plan is to be developed in consultation and cooperation with Indigenous peoples. The CHRC wishes to reiterate the fundamental importance of ensuring that the voices of all Indigenous peoples, as rights-holders, are heard and that the action plan is reflective of and responsive to their realities and experiences.

Articles 18 and 19 of the UN Declaration affirm that Indigenous peoples have the right to participate in decision-making processes through representatives and representative institutions they choose for themselves, and that the State shall consult in good faith with these representatives. Meaningful consultation and cooperation will be essential in developing an action plan that will enable the full and effective implementation of the UN Declaration. To that end, it will be vital to ensure that Indigenous leaders, groups, organizations, and other representatives have the resources needed to be involved at every stage of the process of development of the plan.

V. MONITORING OF THE UN DECLARATION

The CHRC believes that it will be imperative that adequate and appropriate monitoring and redress mechanisms be put in place to ensure that Canada is living up to its Indigenous and human rights obligations as articulated in the UN Declaration.

We recognize that monitoring of the UN Declaration will be a key element moving forward. As Canada's National Human Rights Institution, the CHRC is well-suited to contribute to a robust domestic and international monitoring regime for the UN Declaration. The CHRC would welcome discussions regarding its role in any formal monitoring regime, should this be the will of Indigenous peoples and Parliament.

VI. CONCLUSION

The adoption of Bill C-15 by Parliament is vitally important. Equally important is the need for the Government to remain steadfast in its efforts to address the historical inequality and injustice faced by Indigenous peoples in Canada. Efforts should be doubled to implement all Calls to Action from the Truth and Reconciliation Commission and the Calls to Justice from the Inquiry into Murdered and Missing Indigenous Women and Girls. The Government's approach to negotiating and implementing land claims and self-government agreements requires significant, rights-based updating. Inequitable funding to Indigenous communities must end to ensure equal access to safe drinking water, adequate housing, education, healthcare, and child and family services. And the staggering over-representation of Indigenous peoples in Canada's criminal justice system must be addressed.

For generations, Indigenous peoples have been pushing for the recognition of their inherent right to self-determination and the full realization of all of their human rights. It is time to move forward. Implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in Canada is long overdue. The CHRC joins the chorus of voices calling for the expeditious passage of Bill C-15 through Parliament.