

Harper Government Unilateral federal legislation imposing over First Nations:

Bill C-45 *Jobs and Growth Act 2012* (omnibus bill)

- Status of Bill: Completed 3rd Reading at House of Commons; completed 1st reading at Senate.
- Includes *Indian Act* amendments regarding *surrendered and designated lands*; eliminates the need for double majority in community vote on land designation to a single majority; and eliminates the need for Governor in Council to approve this vote, changes to approval of Band Council and the Minister.
- Includes *Fisheries Act* amendments including definition of *Aboriginal Fishery* to “means that fish is harvest by an Aboriginal Organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes set out in a land claims agreement entered into with the Aboriginal Organization.”
- Includes technical changes to *Canadian Environmental Protection Act , 2012*
- Amends the *Navigable Water Protection Act* and the *Canada Labour Code*.

Summary & Issues

- Amendment to *Indian Act* means that is it easier to surrender reserve land, only requires that the majority who vote, to vote in favor of surrender or land designation; and delegates the decision to approve vote to Minister and Band Council; basically making Band Council responsible not government of Canada;
- Amendment to *Fisheries Act* means it is defining the right to fish, outside of section 35(1) of the *Constitution Act 1982*.
- Amendment of *Canadian Environment Protection Act* means less technical data required to proceed with process.
- As First Nations are under federal jurisdiction any changes to federal legislation affects us; as in the amendments of *Navigable Water Protection Act* and *Canada Labour Code*.
- **Government of Canada has not consulted with First Nations; Disregarding the Crown obligations for Consultation & Accommodation!**

Bill C-27 *First Nations Financial Transparency Act*

- Status of Bill: Passed at House of Commons; 1st Reading at Senate Nov. 28, 2012.
- Would require each First Nation to prepare and publically disclose audited consolidated financial statements And “Schedule of Remuneration and Expenses” with remuneration and expenses for its chief and each councilor And any *entity* that is required to be consolidated with the First Nation.
- First Nation must publish their Financial Audit & Schedule of Remuneration and Expenses on its Internet site within 120 days after the end of the fiscal year.

- **The Minister must publish the First Nations Audited Consolidated Financial Statements And Schedule of Remuneration and Expenses for Chief & Council & any Entity (Corporation) on the Department of Indian Affairs and Northern Development's website.**
- Court Remedies & Administrative Measures: If a First Nation doesn't comply with a Band member's request for the Audited Financial Statements or Schedule of Remuneration & Expenses for Chief & Council & any Entity that is required to consolidated with the First Nation then the First Nation member may apply to a Superior court for an Order requiring the council to carry out the duties set out in the Order;
- **Administrative Measures:** If a First Nation is in breach of a duty, the Minister may: require the council to develop an appropriate plan to remedy the breach; **the Minister may withhold moneys payable as a grant or contribution to the First Nation...until the First Nation has complied with its duty; or terminated any grant or contribution agreement.**

Summary & Issues

- Proposes Public Disclosure of Band Owned Enterprises,
- Disclosure of Information to Non-Band Members;
- There already exists a process for an interested party to apply for this information through the *Freedom of Information and Privacy Act*. Why create legislation that forces First Nations to disclose this information both on the First Nations website and on AANDC website?
- To disclose confidential information regarding Band owned Enterprises goes against the *Competition Act* and puts First Nations owned Entities at a disadvantage.
- To delegate a superior court with the authority to make an Order for a First Nations Council to provide a Band member with financial information and with the threat of sanctions by the Minister of withholding or terminating funding, creates costly and unnecessary legal proceedings. The impact of withholding or terminating funding would affect First Nations at a grass roots community level!
- First Nations have the ability to create systems to deal with this type of issues internally, without resorting to litigation.
- **This proposed legislation demonstrates that the federal government in 2012 still thinks it knows what's best for First Nations, the Paternalism continues.**
- **The proposed Court proceedings and Financial Sanctions demonstrate the federal government's heavy handed approach and unwillingness to have First Nations design for themselves Governance & Internal Dispute Resolution methods based on Indigenous Law.**

Bill S-6 *First Nations Elections Act*

- Status of Bill: Passed at the Senate; 1st Reading at House of Commons May 4, 2012.
- This is opt-in legislation for First Nations who do not have a Custom Election Code and whose election remains under the *Indian Act*.
- Extends election term from two to four years; has provisions for a re-call mechanism; elections can be contested in court and sets out offences and penalties in relation to election of chief or councilor.
- Provisions of the Bill empower the Minister of AANDC to order a First Nation under the Act, including one with a Custom Election Code in the event of a prolonged dispute or an election overturned by the Governor-in-Council.

Summary & Issues

- The proposed legislation interferes with First Nations Custom Election Codes and First Nations ability to resolve internally any dispute regarding Governance.
- As an example any First Nation with an ongoing dispute between Chief & Council, the Act would allow the Minister to order the Band under this Act, even though the First Nation has their own Custom Election Code.

Bill S-8 *Safe Drinking Water for First Nations Act*

- Status of Bill: Passed at Senate; 2nd Reading at House of Commons Nov. 26, 2012.
- Will allow the federal government in collaboration with First Nations establish federal regulations for drinking water; treatment of water and waste water; training and certification of operators of drinking systems; protection of sources of drinking water from contamination; monitoring, sampling and testing of waste water and reporting of tests results;
- Chief & council and operators to be held accountable for maintaining regulations and standards.

Summary & Issues

- No funding to bring First Nations water delivery and waste water up to standards, or for maintenance of systems.
- To create regulations for First Nations drinking water but no capacity to comply with the regulations. Setting First Nations up for failure.
- First Nations must be directly involved in the development of these regulations.
- Government must provide funding.

Bill S-2 *Family Homes on Reserves and Matrimonial Interests or Rights Act*

- Status of Bill: Passed by Senate; 2nd Reading at House of Commons Nov. 22, 2012
- First Nations can create their own laws, approval of membership, notify Attorney General;
- Does not recognize the “Collective ownership of homes and property on reserve and imposes “individual property ownership” concepts to collective ownership on reserve.
- Gives provincial court judges “jurisdiction” to make decisions orders based on provincial legislation, such as the *Family Law Act* and the “best interest of the child” when hearing an Emergency Protection Order application.
- The Act would allow Emergency Protection Orders to on reserve homes; Applicant whether First Nation member or non member can apply to provincial court and have “exclusive occupation” ordered by court (this means that it doesn’t matter who owns, occupies or lives at the house, if the applicant gets the court order then ALL OCCUPANTS can be ordered out of the house.)
- Fines of \$2000 - \$5000 if individuals do not comply with orders.
- Provides for input from Band Council on collective rights and ownership as only a submission to the court.
 - Who owns the houses on Reserve – the Band (Collective)not the individual.
 - Who owns the land on Reserve – the Band (Collective) not the individual.
- Application of provincial Family Law Act; under this legislation up the breakup of a common law relationship, the common law partner will have to pay the applicant for the house/improvements upon division of property. Even though you don’t own the home. There already exists case law on this, why legislate it?

Summary & Issues

- This legislation demonstrates the lack of understanding of collective vs. individual property ownership. It fails to consider First Nations views of property ownership.
- Does not provide a well thought out approach to housing shortages on reserve, domestic violence and its source or the need for a community based dispute resolution system.
- Provides for jurisdiction of provincial court judges to make Orders based on provincial law and not Collective ownership or collective rights.

Bill C-428 *Indian Act Amendment and Replacement Act*

- Status of Bill: 2nd Reading in House of Commons and Referred to the Standing Committee on Aboriginal Affairs and Northern Development

Preamble of the Act states:

- Indian Act outdated; application results in “the people of Canada’s First Nations being subjected to differential treatment” and “does not provide adequate legislative framework for “development of self-sufficient and prosperous First Nations.”
- GOC committed to “development of new legislation to **replace** the Indian Act that **better reflects the modern relationship** between it and the people of Canada’s First Nations” and “exploring creative options for the development of this new legislation in collaboration with the First Nations Organizations that have demonstrated an interest in this work”.
- Amendments: repeals limitation on by-law authority and the submission to the Minister prior to coming into force of by-law; repeals provisions dealing with residential schools; and repeals provisions giving the Minister authority over the handling of wills and estates on reserves.
- The Minister must report annually on the efforts to replace the *Indian Act* with amendments or legislation.

Summary and Issues:

- Legislates that the Minister must report annually on the efforts to replace the *Indian Act* with amendments or legislation.
- No indication that the Minister will Consult with First Nation’s on any amendment or legislation.
- Major impact on handling Wills & Estates on reserve, First Nations need to create their own system to deal with these matters, otherwise will be subject to other legislation on these matters.

Senate Bills

Bill S-207 *An Act to amend the Interpretation Act (non-derogation of aboriginal and treaty Rights)*

- Status of Bill: completed 2nd Reading in Senate.
- Amend the *Interpretation Act*, (which governs the implementation of all laws) to state that no enactment shall be construed as to abrogate or derogate from the aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.

Issues:

- **Only section 35 rights recognized by the Courts are: *hunting, fishing and trapping***

Bill S 212 *First Nations Self-Government Recognition Act*

- Status of Bill: Introduced November 1, 2012.
- Provides for a process for a First Nation to become a recognized as self-governing under its constitution and would recognize a First Nations exclusive power to legislate with respect to its lands and persons on those lands.
- **No Consultation on this Act or its implications.**