



Indigenous Activists Networks **Defenders of the Land, Truth Campaign, Idle No More**

**BRIEFING NOTE
ON
TRUDEAU GOVERNMENT
CREATING A NEW RELATIONSHIP WITH INDIGENOUS PEOPLES
(FIRST NATIONS, METIS & INUIT)
THROUGH
DEVELOPMENT OF FEDERAL RIGHTS BASED POLICY
[WHITE PAPER 2.0]
April 18, 2019**

Background on National Top-Down Two-Track Approach:

In December 2015, Prime Minister Justin Trudeau made an announcement about establishing a two-track approach to Indigenous policy: 1) closing the socioeconomic gap between Indigenous Peoples and non-Indigenous Canadians (**Indian Act Programs**), and 2) making foundational changes to laws, policies and operational practices based on the federal recognition (definition) of rights to advance (federal interpretation of) self-determination and self-government.

Question: What is the danger to First Nations? Answer: The federal two-track approach is a new legislative & policy “Framework” to take advantage of our people’s poverty and financially force First Nations (Treaty & Non-Treaty) into signing new modern agreements ending our existing sovereignty, jurisdiction & original relationship with our lands, territories and resources as Indigenous Nations!

Mandate Letters: The mandate letters of the two Ministers (Indigenous Services & Crown-Indigenous Relations) set out the original views and outline of a national “reconciliation” plan of the Trudeau government that can be seen to evolve over the past four years into the two tracks. The federal government expanded on its national “reconciliation” plan in 2017, by issuing **10 Principles on Relationships with Indigenous Peoples** and **Dissolving/Splitting Department of Indian Affairs**.

The federal two-track (**Indian Act vs. Self-Government**) approach to Indigenous Policy is now being implemented through the following elements:

- **Top-Down Approach:** Two **MOU’s** with AFN.
- **A Bilateral Mechanism** – this an **AFN-Federal Cabinet Committee** where the AFN National Chief & Prime Minister meet annually and AFN delegations meet federal Ministers semi-annually on shared priorities as set out in the **AFN-Canada MOU’s**.
- **A Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples** – Supposedly, this working-group was to “de-colonize” Canada’s laws & policies. During a July 2018 cabinet shuffle, a **Cabinet Committee on Reconciliation** was created by the Trudeau government.

- **10 Principles Respecting the Government of Canada's Relationship with Indigenous Peoples** – On July 14, 2017, issued 10 principles. These “10 Principles” are central to the federal “reconciliation” agenda and amount to “pre-conditions” in the development of all federal policy and law.
- **Dissolving/Splitting Department of Indian Affairs & Northern Development:** On August 28, 2017, Prime Minister Justin Trudeau announced the federal government was dissolving the Department of Indian Affairs & Northern Development and creating two new federal departments: one for **Indigenous Services** and one of **Crown-Indigenous Relations**. This federal restructuring of government is central to the Trudeau government’s two-track approach to Indigenous policy, law and in defining a “new” relationship with Indigenous Peoples (First Nations, Metis & Inuit). On April 8, 2019, the Trudeau government introduced an omnibus **Budget Bill C-97** into the House of Commons and buried within **Bill C-97** is legislation to create the two new departments (**Indigenous Services & Crown-Indigenous Relations**) in law, which the federal government is trying to pass before Parliament’s June 2019, recess.

Recognition and Implementation of Indigenous Rights Framework:

On February 14, 2018, Prime Minister Justin Trudeau announced his Liberal government intended to introduce a Bill into Parliament regarding a **Recognition and Implementation of Rights Framework** in 2018 that he wanted to become law before the 2019 federal election. The core of the planned federal “legislative framework” was to transition bands currently under the Indian Act into “self-government” agreements, or Comprehensive Claims Agreements/“Modern Treaties”, which Prime Minister Justin Trudeau has called a 4th level of “Indigenous Government” with a lower status than municipalities.

In September 2018, there was widespread rejection of the federal proposed “Framework” by Chiefs and First Nations across Canada. This resulted in a delay of the proposed “Framework” legislation being announced in a CBC news report on November 14, 2018.

What the CBC news report didn’t mention was the content of the **Statement from the Office of the Minister of Crown-Indigenous Relations**, also released on November 14, 2018:

Attributable to the Minister’s office...

Our Government is committed to advancing the framework, and to continue actively engaging with partners on its contents...through policy changes and the development of the Recognition of Rights and Self-Determination Tables. [emphasis added]

Since last fall, Crown-Indigenous Relations Minister Carolyn Bennett and Senior Assistant Deputy Minister Joe Wild have continued working with their “partners” on policy changes to advance the federal “Framework”.

Canada’s Development of a New Rights-Based Policy by June 2019 [WHITE PAPER 2.0]:

There is a four month (March-June) accelerated federal-AFN parallel process underway to replace the federal self-government and comprehensive land claims policies with a new “rights based” policy by June 2019, that will be used for a new self-government fiscal policy and negotiation mandates approved by the federal Cabinet for ALL negotiations involving what the federal government calls “pre-1975” Treaties, section 35 Aboriginal & Treaty Rights and the **United Nations Declaration on the Rights of Indigenous Peoples**.

According to an undated federal Graph the federal government intends “to replace the existing *Comprehensive Land Claims Policy and the Inherent Right Policy* with a new rights-based policy, by June 2019”. This graph was provided along with an undated federal document entitled “**Developing a New Rights-Based Policy: Summary of Current Approaches**”, to First Nations organizations in January 2019, by Crown-Indigenous Relations, Senior Assistant Deputy Minister, Joe Wild.

These contemplated policy changes are “unprecedented” in both their scope and their effects on the right of self-determination, Aboriginal Title & Rights and historic, pre-confederation Treaty rights. They are giving the whole process only four months, just 12 weeks, and with only select people as contacts. For the past several months, they have been using the 75 Recognition & Rights Tables and 50 “Modern Treaty” & Self-Government Tables to push this new policy approach. Including forgiving/repaying \$1.4 billion loans to those groups negotiating/settling under the comprehensive land claims policy.

In 2017, the Government of Canada announced that funding reductions for self-governing Indigenous governments under Canada’s own-source revenue policy would be suspended for up to three years while parties work toward a new self-government fiscal policy framework.

In January 2019, a Final Draft of **Canada’s Collaborative Self-Government Fiscal Policy** was adopted (**Indian Act** bands are under a different fiscal policy). The January 2019 Self-Government Fiscal Policy applies to:

- *the fiscal relationship between Canada and self-governing Indigenous Governments. For the purpose of this policy “Indigenous Governments” are defined as those Indigenous Governments operating under various self-government regimes, including:*
 - A comprehensive land claim agreement that includes a comprehensive self-government component;
 - A comprehensive agreement on self-government; or
 - A legislated comprehensive self-government arrangement. [emphasis added]

The new Self-Government Fiscal Policy also makes it clear that the section 87 tax exemption of the Indian Act will end: “Access by Indigenous Governments to tax revenues is an important component of the renewed fiscal relationship.”

CONCLUSION:

Based upon Canada’s “Summary of Current Approaches” document it seems the “rights-based” Policy contemplated for release June 2019, will be based on using the current “Modern Treaties”, “Self-Government Agreements” and First Nations specific legislation as precedents and templates for “rights-based” negotiations with those First Nations (Treaty & Non-Treaty) who have not entered into negotiations under Canada’s self-government/comprehensive claims policies or opted into First Nations specific legislation outside of the Indian Act.

Objective: To support a First Nations led process that delivers upon the AFN National Chief and Minister Bennett priority to replace the existing *Comprehensive Land Claims Policy* and the *Inherent Right Policy* with a new rights-based policy, by June 2019

Planning Committee

Membership:

- Senior officials from AFN; CIRNAC
SADM of TAG and 2 LTAs *ex officio*

Frequency: Meet monthly

Mandate:

- Planning Committee members work together on the design of a First Nations led process
- Guide engagement led by AFN regional affiliates; provide input on agendas
- Provide a channel of communication to responsively adapt engagement approach to address concerns
- Review engagement products and key reports due in Feb, April and August 2019

Role of Elected Leadership: AFN National Chief & CIRNA Minister

- Ongoing dialogue to occur at regular bilateral meetings
- Additional meetings could be scheduled at key deliverable milestones in February, April and August 2019

Role of AFN

- Lead First Nations-led process by convening rights holders through policy sessions in regions
- Member of Planning Committee
- Liaise with CIRNA SADM-TAG and the LTAs
- Input on engagement products and report deliverables

Joint Governance

An AFN/ CIRNA planning committee will ensure an open, productive and responsive channel of communication that facilitates constructive First Nations led policy development.

The Planning Committee will assist the AFN and its regional affiliates to have the necessary support to be successful conveners of rights-holders to ensure a First Nations led process, in keeping with UNDRIP, before adopting new policy.

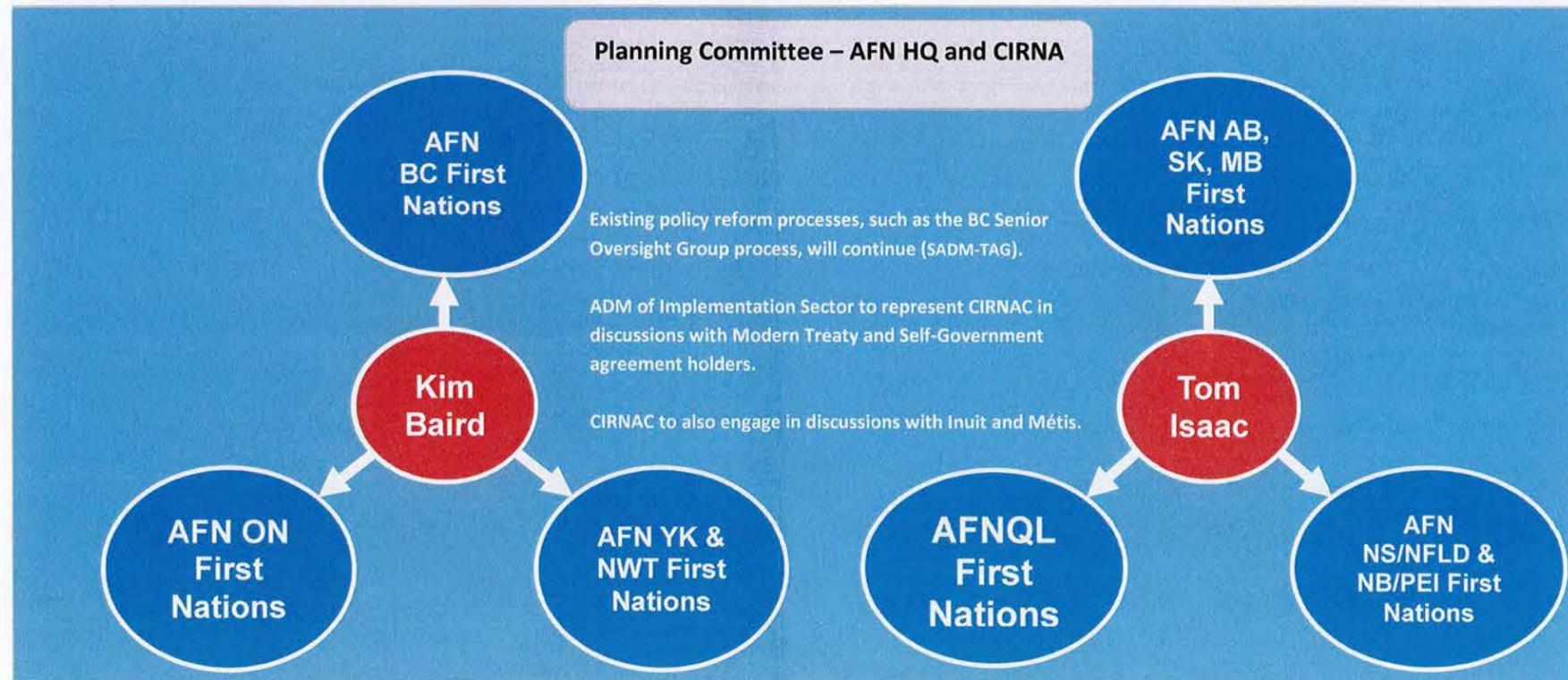
The Lead Technical Advisors (LTAs) are understood to be a supporting resource for the CIRNA SADM-TAG in this technical engagement in the development of a new policy. All engagement products and report deliverables produced by the LTAs will be reviewed by the Planning Committee.

Engagement Tools/Mechanisms

- Technical Paper, "Summary of Current Approaches" (January 2019) to present Canada's views at sessions
- AFN regional engagement agendas to be developed by AFN regional affiliate with input of LTAs; Planning Committee to review engagement agendas and provide guidance

Role of Lead Technical Advisors

- Ex officio Members of Planning Committee
- Act as Canada's lead technical advisor within engagement on new policy
- Act as Canada's representative in AFN regional policy sessions
- Provide advice to planning committee on engagement design
- Work with AFN regional affiliates and rights holders on regional engagement session
- Collect input on new policy from AFN regional engagement sessions in support of developing key reports



Engagement Milestone and Key Deliverables

- **February/March 2019:** Interim "Emerging Themes" Report from LTAs with and reviewed by Planning Committee
- **April 2019:** Final Report from LTAs submitted to Planning Committee with recommendations for policy renewal, including interim section on legislative opportunities (April 2019)
- **June 2019:** New Policy to be released
- **August 2019:** Final Report from LTAs submitted to Planning Committee with recommendations on legislative opportunities