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Canadian Legislation-FACT SHEET

The "Idle No More" movement has brought a lot of attention to the *Jobs and Growth Act, 2012*, chapter 31 of the 2012 Statutes of Canada (formerly known as Bill C-45). Although this Act is the most widely known and disputed throughout the country, there are a number of other pieces of legislation that have been brought forth recently by the Government of Canada.

The Assembly of Nova Scotia Mi'kmaq Chiefs and the team at Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) are releasing this Special Edition of our newsletter to provide information and to better explain the various bills and how they could impact the Mi'kmaq of Nova Scotia.

Message from the Assembly



Chief Terrance Paul,
Co-Chair of the
Assembly of NS
Mi'kmaq Chiefs

The Mi'kmaq of Nova Scotia have pre-confederation Treaties and have created processes to reflect this. Our Treaty Rights have already been recognized and affirmed by the Supreme Court of Canada through the 1999 Marshall decision.

The Assembly of NS Mi'kmaq Chiefs have developed a Framework Agreement which focuses on the existing covenant chain of Treaties and we have signed and implemented the Consultation Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process.

Recent legislation introduced by the Federal Government could have both positive and negative impacts for First Nations and Canadian citizens alike.

In Nova Scotia, changes to the *Fisheries Act* is of primary concern for the Assembly. In fact, the Assembly has recommended that we move forward with legal proceedings to ensure the protection of our Moderate Livelihood Fishery. This matter is presently before each community's Council for approval.

We also recognize the Mi'kmaq and the country's concern for the environment and we too see this as a very important issue!

The changes presented in the *Navigation Protection Act* (former *Navigable Waters*

Protection Act) and the *Environmental Assessment Act* could result in major impacts to the lands and waters that we have used since time immemorial.

"The Mi'kmaq leadership is committed to ensuring the protection of our Treaty Rights," said Chief Terrance Paul, Co-Chair of the Assembly. "We will stand strong against any legislation that could impact the lives of Mi'kmaq today, and for future generations."

Yours in Recognition of
Aboriginal and Treaty
Rights!

List of Legislation:

Bill C-27: *First Nations Financial Transparency Act*

Bill C-45: *Jobs and Growth Act, 2012*

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

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

Bill S-6: *First Nations Elections Act*

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

Bill S-207: *An Act to amend the Interpretation Act*

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



Chief Deborah Robinson and Chief Andrea Paul present Mi'kmaq Wooden Roses, made in Pictou Landing, to Chief Theresa Spence at their visit on Jan 6

Bill C-45: *Jobs and Growth Act, 2012*

What is Bill C-45? Bill C-45 is the number of the Bill introduced by the Federal government on Oct 18. The bill passed and then received Royal Assent on Dec 14 and is now known as the *Jobs and Growth Act, 2012*.

It is an omnibus bill that changes legislation in 64 acts or regulations. The act itself is over 400 pages long.

How does it impact the Mi'kmaq? The changes that Bill C-45 made to the *Fisheries Act, Indian Act, Navigation Protection Act, and Environmental Assessment Act*, are the biggest concerns for the Mi'kmaq. Detailed information on the facts and im-

pacts of Bill C-45 was released on Dec 17/12. This information and other supporting documents can be found at on the KMKNO website (*link on back page of this newsletter*).

The *Jobs and Growth Act, 2012* (Bill C-45) has been met with great frustration across Canada by First Nations, environmental groups and citizens.

The Assembly of NS Mi'kmaq Chiefs recognizes and respects their community members for joining in the important *Idle No More* movement. The voice of Canada's Aboriginal peoples must be heard!

While many of our Chiefs have joined the number of peaceful protests that have been happening all across Mi'kma'ki, they have also been working hard on a political level to bring forward the issues of the Mi'kmaq of NS.

The Assembly has continued to work on a Nation to Nation level to ensure that our Treaty Rights, lands, waters and environment are protected for future generations!

Letters have been sent to all levels of government about this legislation and meetings have been requested. A presentation was made to the Senate on the significance of our Moderate Live-

lihood Fishery and how this legislation could impact our Rights.

Representatives from the Assembly travelled to Ottawa to meet Chief Theresa Spence at Victoria Island, to discuss with her the next steps and to support her efforts.

The Assembly will continue to meet with technicians, advisors, and legal counsel to develop strategies on what must be done to fight this fast-tracked legislation and its potential impacts to the Mi'kmaq of NS.

Bill C-27: *First Nation Financial Transparency Act*

Sponsor: Minister of Aboriginal Affairs and Northern Development Canada (AANDC).

Last Stage Completed: Second reading in Senate

Purpose: To enhance the financial accountability and transparency of First Nations by requiring the preparation and public disclosure of their audited financial

statements and all monies paid to, and expenses reimbursed to a First Nation's Chief and each Councillor — whether acting in their role and in their personal capacity.

What does this mean? This Act would require First Nation Governments to prepare and publically disclose audited consolidated financial statements and schedules of

what the Band and any entity it controls pays to its Chief and Councillor. This includes any salary, honoraria, stipend or expenses paid to the Chief and Councillors whether they are acting as Chief or as a Councillor or not. ie: if a Councillor also sits on the Board of the Band's Housing Authority's as a private citizen, any salary or honoraria paid to that Councillor must also be declared in the Schedule of Remuneration and Expenses.

The audited statements and schedules of remuneration must be listed on the community website, available to community members upon request and listed on the AANDC website. Failure to prepare or disclose such information could result in withholding of contribution

funds or termination of an agreement.

How will this impact the Mi'kmaq? Mi'kmaq Chiefs of NS recognize the importance of accountability and transparency to their community members. The Chiefs' concern is that the bill does not address the real issues that challenge First Nations and in fact, provides new powers to the federal government. The NS Chiefs will continue to address these issues. AFN has provided information to Senators on the impacts of this Bill.

To follow the progress of this Bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5258273>



Assembly Chiefs and community members rally in front of Parliament Buildings - Jan 11

Bill C-428: *Indian Act Amendments and Replacement Act*

Sponsor: Rob Clarke, Rob Clarke, Desnethé – Missinippi – Churchill River, Saskatchewan, (Conservative)

Last Stage Completed: Second reading and referral to the Standing Committee on AANDC of the House of Commons

Purpose: To: (i) remove many outdated and unused sections of the *Indian Act*; (ii) remove all references to residential schools in the *Indian Act*; (iii) repeal the wills and estates sections in the *Indian Act*; and, (iv) return control over the publication of by-laws to First Nations governance bodies. The Bill requires the Minister to report annually to the “House of Commons committee responsible for Aboriginal Affairs on the work

undertaken by his or her department in collaboration with First Nations organizations and other interested parties to develop new legislation to replace the *Indian Act*.”

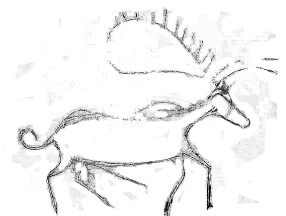
What does this mean? Band by-laws no longer require Ministerial approval before coming into effect. Every by-law made by the band council under this Act must be published on the band’s website, in the *First Nations Gazette* and in community newsletters. Band members must be provided with copies of the Band by-laws upon demand. With the repeal of the wills and estates section of the *Indian Act* it is unclear if provincial laws about wills and estates will now apply to on-reserve personal property under s.88

of the *Indian Act* which says that provincial laws of general application can apply on a reserve while no legislation will be in effect for on-reserve real property (land).

How will this impact the Mi’kmaq? The Mi’kmaq were not consulted before this Bill was introduced. There are concerns that this sort of amending of the *Indian Act* – especially without consulting with First Nations – will do nothing to improve the situation for First Nations people. Although Mr. Clarke says that the section requiring the Minister to report on efforts to reform the *Indian Act* “will allow for a lengthy and collaborative consultation period with willing First Nations partners to find the best way to replace the *Indi-*

an Act,” the section actually says the government must work with First Nations organizations and other interested parties. Who will be the other “interested parties” and will their opinions be more important than the views and wishes of the First Nations, including the Mi’kmaq of NS?

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5618344>



Bill S-6: *First Nations Elections Act*

Sponsor: the Hon. Marjory LeBreton, Leader of the Government in the Senate

Last Stage Completed: First Reading in the House of Commons

Purpose: The Bill makes few changes to how elections on reserve are presently run. It increases the term of Chiefs and Councillors from two years to four years. Includes provisions for a re-call mechanism; elections can be contested in a court and sets-out of-

fences and penalties in relation to the election of a Chief or Councillor. It is an “opt-in” provision: if a FN wishes to continue to hold elections every two years, it can. The Bill also moves appeals of contested elections from the Minister of AANDC to a court of competent jurisdiction.

What does this mean? Elections are an expensive and disruptive process. With two year terms, Chiefs and Councillors are running for re-election almost as soon as they take office. If there are

frequent turn-overs of Chiefs and Councillors, it is difficult to develop and implement long term objectives. A four year term will permit band councils to focus on the issues facing their communities rather than on re-election.

How will this impact the Mi’kmaq? This Legislation is the results of initiatives begun by the Atlantic Policy Congress of First Nation Chiefs (APC) and the Assembly of Manitoba Chiefs. It will only affect the First Nation communities which

choose to opt in to the legislation. It will not affect the Nova Scotian First Nations which operate under a custom election code unless that Band chooses to abandon its custom code and hold elections under the *First Nations Elections Act*.

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5307346&View=6>

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

Sponsor: the Hon. Marjory LeBreton, Leader of the Government in the Senate

Last Stage Completed: First Reading in the House of Commons, now in Second Reading

Purpose: Subsection 91 (24) of the *Indian Act* specifies that Canada has exclusive legislative authority over “Indians and Lands reserved for the Indians.” Therefore, provincial laws do not apply to the division of real property (land) on reserve lands. This legislation will make things consistent in our communities

in regards to property and what happens to it should a relationship end. It allows the value of matrimonial real property on a reserve to be computed and divided between the parties as an attempt to accommodate the rights of non-Band members. It does not deal with custody and access or spousal support. It allows First Nations communities to make their own laws relating to marriage breakdown and the division of property.

What does this mean?
Until a First Nation community passes its own laws

to deal with marriage breakdown and the division of property, this Act will apply. There are concerns that the Bill will not address the situation of Aboriginal women living on reserve in relation to domestic abuse or in the event of a relationship breakdown. The Bill may force families to go to provincial family courts, placing another financial burden on First Nations members who divorce or whose common-law relationship ends.

How will this impact the Mi'kmaq? This Act does not provide the necessary tools or address a band's capacity to access justice. Nor does it address underlying issues, such as housing shortages, family violence and the need for ways to handle dispute resolution at the community level.

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5138145>

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

Sponsor: the Hon. Marjory LeBreton, Leader of the Government in the Senate

Last Stage Completed: First Reading in the House of Commons, Second Reading now in progress

Purpose: This Bill parallels efforts across Canada in non-First Nation communities to protect drinking water and deal with wastewater. It is intended to permit the federal government to develop standards and regulations establishing drinking water quality standards, standards for training and certifying water and wastewater sys-

tems operators, water and wastewater treatment, monitoring, sampling and protecting, and protection of drinking water sources for First Nations.

What does this mean?
Bill S-8 gives sweeping powers to the federal government to regulate and to off-load responsibility for the administration and enforcement of regulations to province or municipalities.

How will this impact the Mi'kmaq? Consensus across Canada remains that investments are needed to support capacity for First Nations in this area, and that First Nations must be

directly involved in the development of regulations. This Act fails to provide First Nation communities the financial assistance necessary to ensure they will be able to construct and maintain infrastructure.

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5409479>



*Railway blockade in Millbrook - Jan 11th.
Photo courtesy of Millbrook First Nation*

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

Sponsor: Senator Gerry St.Germain (Conservative, Métis)

Last Stage Completed: First Reading

Purpose: The Bill provides that a self-governing First Nation may set its own citizenship criteria – and its citizens need not be Status Indians pursuant to the *Indian Act*.

In general, the Bill goes beyond the *Indian Act* to provide recognized First Nations with powers analo-

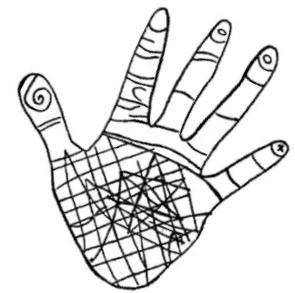
gous to those of a province. The limits and requirements for Ministerial approval of virtually every action of a Band Council are absent from the Bill. Although not referenced in this summary, the Bill also includes detailed provisions for the administration of justice, including policing, courts and tribunals.

What does this mean? There is little likelihood of this bill passing, the Bill should be viewed as template or discussion document to stimulate discourse between First Nations and

the Crown(s) about how to effectively achieve self-government.

How will this impact the Mi'kmaq? It could become a document which is reviewed by the Assembly of NS Mi'kmaq Chiefs to determine if it may provide guidance at the Negotiating Table as to how to move forward with self-government in the Mi'kmaq Nation of Nova Scotia.

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5809099>



Bill C-207: *An Act to Amend the Interpretation Act*

Sponsor: Senator Charlie Watt (Liberal), Inuit

Last Stage Completed: Second Reading in Senate, sent to the Standing Senate Committee on Legal and Constitutional Affairs on 7 June 2012 (has not yet been examined by the Committee)

Purpose: To ensure that any and all federal legislation cannot be interpreted to end or not respect Aboriginal title, Aboriginal rights and treaty rights that are recognized and affirmed by s.35 of the *Constitution Act, 1982*.

What does this mean? This means that if something in a federal law or

regulation could be interpreted to not respect the Aboriginal and treaty rights of Indians, Métis, and Inuit it will have no force or effect.

How will this impact the Mi'kmaq? This bill will have little or no impact as it is unlikely to pass in a Conservative dominated government. If it *did* pass it could affect things like AFS agreements and Communal agreements, harvesting rights, etc.

To follow the progress of this bill: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5329398>



Chief Spence supporters marching to Parliament Hill from Victoria Island - Jan 7

Process of Approving a Bill in Parliament

A bill must go through a number of specific stages in the House of Commons and the Senate before it becomes law. The process is complex and can include an introduction of the bill, first, second and third readings, consideration, reporting, passing and Royal Assent.

All bills must go through the same stages of the legislative process, but they do not necessarily follow the same route. Legislation can be adopted through a few different ways:

- A Minister or a Member (the sponsor) may introduce a bill, which will be given first reading immediately. The bill is then debated and then sent to a committee for clause-by-clause study.
- A Minister may move

that a bill is referred to a committee for study before the second reading.

- A Minister or a Member may propose a motion where a bill is presented by a committee and carried through the second reading stage without debate or amendment.

The role of the committee is to review the wording in the bill and approve or change it. It is at this stage that witnesses may be invited to appear before the committee to present their views and answer members' questions. This is the stage that Chief Terrance Paul appeared in front of the Senate in June 2012 to address the Mi'kmaq concerns with the changes to the Fisheries Act in Bill C-38.

Regardless of how a bill is brought forth, it will have to go through the report stage, be read a third time and sent to the Senate for passage before receiving Royal Assent.

A bill can become law only once it has been approved by both Houses of Parlia-

ment and received Royal Assent.

TYPES OF BILLS

1. public bills started by a minister is called "government bills"
2. "private member bills" are those bills started by members who are NOT in the cabinet.



*Editorial Cartoon that ran in the Chronicle Herald on Jan 13.
We must work together. Together, our voices are stronger.
It's time to make things right!*



Kwilmu'kw Maw-klusuaqn Negotiation Office Mi'kmaq Rights Initiative

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Kwilmu'kw Maw-klusuaqn Negotiation Office works on behalf of the Assembly of NS Mi'kmaq Chiefs in the negotiations and consultations between the Mi'kmaq of Nova Scotia, the Province of Nova Scotia and the Government of Canada.

KMKNO was developed by the Mi'kmaq for the Mi'kmaq. The purpose of these negotiations and consultations is to implement our Aboriginal and Treaty rights from the treaties signed by our ancestors in the 1700's.

BILL C-45 INFORMATION

<http://mikmaqrightrights.com/page.asp?ID=661>