**Background Information:**

1. Canada’s Promise to Implement UNDRIP:
   1. On May 10, 2016, Minister of Indigenous Affairs, Carolyn Bennet, announced that, “We are a full supporter of the [UNDRIP], without qualification, including free, prior, and informed consent.”
   2. On November 20, 2017, Justice Minister, Hon. Jody Wilson-Raybould announced that the Federal Government will support Bill C-262: *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*. Bill C-262 affirms UNDRIP, provides for the creation of a *national action plan to achieve the objectives of UNDRIP, and necessitates that the government take measures to ensure that the laws of Canada are consistent with UNDRIP.*
   3. Justice Minister Jody Wilson-Raybould has acknowledged that *UNDRIP implementation will be achieved through legislative and policy review and will be articulated “through section 35” of the Constitution Act, 1982.*
2. Law and Policy Review:
   1. In February 2016, Prime Minister Trudeau created a Working Group of Ministers on the Review of Laws and Policies. Included in Working Group’s mandate is: “to take a principled approach to the review of laws and policies to seek to ensure that the Crown is meeting its constitutional obligations with respect to: Aboriginal and treaty rights; international human rights standards, including UNDRIP; and supporting the implementation of the Truth and Reconciliation Commission’s Calls to Action.”
   2. On July 14, 2017, Minister of Justice Jody Wilson-Raybould, chair of the Working Group of Ministers, released the *10 Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples. These principles have shaped the law and policy reviews already underway and are the basis of the Federal Government’s approach to the Recognition and Implementation of Indigenous Rights Framework.* There was no First Nation input on the 10 Principles which has been a significant point of contention.
   3. Canada has determined on its own what laws and policies it will address and has taken a “piece by piece” approach on issue areas that align with federal priorities rather than First Nation priorities.
   4. Bill C-68 and C-69 (Fisheries Act, Impact Assessment Act, National Energy Board Modernization Act, Canadian Navigable Waters Act) were the first laws to undergo review. Although Regional Chiefs Isadore Day and Bill Erasmus were advisors involved in this process, most of their recommendations were ignored. *Instead of requiring free, prior, and informed consent, the new legislation requires that government agencies “aim to secure consent”.* In practice, this amounts to little more than consultation and is the verbiage used in the 10 Principles.
3. Recognition and Implementation of Indigenous Rights Framework:
   1. On February 14, 2018 Trudeau announced the Recognition and Implementation of Indigenous Rights Framework (hereinafter referred to as the Framework) with the stated goal of “building new mechanisms to recognize Indigenous governments and ensure rigorous, full, and meaningful implementation of treaties and other agreements” and to “advance self-determination including the inherent right of self-government.”
   2. A bill is expected to be introduced to Parliament in 2018 and Trudeau has stated that he wants it to become law before the next federal election in 2019.
   3. The Federal Government has established Recognition of Rights and Self-Determination Negotiation Tables across Canada (a list of participants can be found online, see Resource Materials). The outcomes of these tables will contribute to the planned Framework.

**Summary of Canada’s Indigenous Rights Framework:**

1. The core of the planned Framework is to *transition bands currently under the Indian Act into federally recognized “Indigenous Governments” (i.e. self-governing bodies whose rights are derived from section 35 of the Constitution Act, 1982).* Further, Trudeau announced that the *Comprehensive Land Claims Policy* and *Inherent Right to Self-Government Policy* will be replaced but that his administration will not consider opening the Constitution. This process will be led by Minster Bennet and Crown-Indigenous Relations and Northern Affairs Canada.
   1. Starting in 2018-19, the Federal Government will fund Indigenous participation in modern treaty negotiations through non-repayable contributions.
   2. Budget 2018 includes $51.4 million over two years to continue to support federal and Indigenous participation in the Recognition of Rights and Self-Determination Negotiation Tables.
   3. Budget 2018 set aside $101.5 million to support capacity development for Indigenous groups to facilitate their own path to reconstituting nations (i.e. creating bigger groupings based on ethno-linguistic/cultural lines).
   4. Please see Appendix A for a list of jurisdictions that could potentially be under First Nations control should they go ahead with an Indigenous Self-Government arrangement. This list was developed by INAC without First Nations input.
2. Another aspect of the Framework is *the development of a new fiscal relationship between the Federal Government and the new federally recognized “Indigenous Governments”.* The Department of Indigenous Services, which continues to provide funding for services to bands, will cease to exist once all First Nations become part of the new system (this is the stated goal of the Framework).
   1. Budget 2018 has set aside $188.6 million over five years to advance a new fiscal relationship with First Nations. Funding will build capacity in First Nations communities, support Indigenous institution-building, and support continued work with First Nations to establish a new fiscal relationship.
   2. $189.2 million has been set aside for 2018-19 to begin the implementation of new fiscal policy reforms that have been co-developed with self-governing Indigenous Peoples in Canada.
3. The Federal Government is in the process of launching a months-long engagement process with Indigenous Peoples, provinces, territories, and the rest of the Canadian public to develop the Framework. Atlantic First Nations began engagement with Minister Bennet in February as did national organizations (see item #11 under *Reference Materials* for session summaries). Minister Bennet is seeking engagement on:
   1. A new policy to replace the current *Comprehensive Land Claims Policy* and the *Inherent Right to Self-Government Policy;*
   2. How to reform government policies and practices to support the implementation of treaties and self-government agreements; and
   3. Mechanisms to support the rebuilding of Indigenous nations and governments, and advance Indigenous self-determination and the inherent right of self-government.

**Analysis:**

1. When Trudeau’s administration first agreed to work in partnership on measures to implement UNDRIP, it was decided that this would be accomplished through the co-development of a national action plan and by reviewing federal laws and policies. However, it was stated repeatedly by Justice Minister Jody Wilson-Raybould and others that UNDRIP implementation (including Article 19 referring to free, prior, and informed consent) would be articulated through section 35 of the *Constitution Act, 1982*. The Framework, as guided by the 10 Principles, is the Federal Government’s attempt to harmonize a watered-down version of UNDRIP with Canadian law. Other challenges to implementing UNDRIP include:
   1. The Supreme Court refusing to interpret Aboriginal rights as human rights or take a human rights approach to interpreting treaties – this is discriminatory, and a significant paradigm shift is needed should the Canadian Charter be compatible with UNDRIP.
   2. Although Canada has announced it views s. 35 as a “full box of rights”, this has not been the case historically and the federal approach to litigation management remains oriented towards denial and termination of Aboriginal rights.
   3. The Doctrine of Discovery and *terra nullius* must be rescinded and unextinguished Aboriginal title, which has both jurisdictional and economic components, must be recognized for UNDRIP to be implemented
2. The most important right recognized in UNDRIP is the right to self-determination. It is an overarching umbrella right, the essence of which is further developed in UNDRIP articles related to land rights, economic rights, governance, and free, prior, and informed consent. *Self-determination, in the true sense of the term, would be difficult if not impossible to accommodate within the confines of the Constitution Act, 1982.* Again, First Nations’ right to self-determination will be constrained should they decide to opt-in to an Indigenous Self-Government arrangement (see Appendix A for jurisdictional limitations).
3. The Framework and associated processes are not supportive of a true nation-to-nation relationship between First Nations and Canada as they:
   1. Openly reject Free, Prior, and Informed Consent (FPIC) as a guiding principle of the relationship between Canada and First Nations. This is made evident by *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* (Ten Principles) document which states that Canada will only *attempt* to honour FPIC. This amounts to little more than consultation.
   2. Call for the infringement of inherent and unextinguished rights and jurisdictions of First Nations. The Ten Principles document clearly states that infringement of Aboriginal rights will continue unabated in situations where Canadian courts find it “justified” or where it is found to be in the best interest of the nation.
   3. Advocate for the supremacy of the Canadian constitutional framework, thereby limiting the space for true self-determination and the exercise of inherent rights by First Nations. The Ten Principles document refers to “cooperative federalism” and asserts that governments should “ensure that Indigenous peoples are treated with respect and as full partners in Confederation.” Thus far, the Canadian Constitution has failed to protect the relationship between First Nations and Canada and reflects a 200-year-old structure and belief system that sees and treats First Nations as inferior. The inherent rights and jurisdictions of First Nations cannot be derived from the constitution of a foreign government.
4. The Framework and associated processes are an attempt to limit the fiduciary responsibility of the Crown while at the same time undermine First Nations control over their traditional territory.
   1. First Nations Financial Institutions (FNFI) are being tasked with undertaking fiscal relations reform and hold a significant amount of power in the implementation of the new fiscal framework. These financial institutions continue to reflect Indigenous and Northern Affairs Canada (INAC) positions on taxation, privatization, and financing bonds on capital markets.
   2. It is understood that FNFIs embody “a strong municipal approach to First Nations governments” as they delegate authority to First Nations but do not expand their fiscal autonomy or land base. These institutions will likely prepare First Nations to develop policies and tools to implement taxation and ultimately reduce the obligations the Crown owes First Nations.
   3. As stated in Volume II of the Royal Commission on Aboriginal Peoples: “A critical element of fiscal autonomy is a fair and just redistribution of lands and resources for Aboriginal peoples. Without such redistribution, Aboriginal governments, and the communities they govern, will continue to lack a viable and sustaining economic base, which is integral to self-government.”
5. Only First Nations can determine their path to decolonization. Canada has taken a unilateral approach to the development of the Framework and has done so on an extremely short timeline. Although they have stated that this is a voluntary process, they have limited First Nations participation by refusing to consider alternative models that focus on First Nation priorities.

**Appendix A:**

The Federal Government has been very clear on the limits of negotiations and has stated that they see *“...the scope of Aboriginal jurisdiction or authority as likely extending to matters that are internal to the group, integral to its distinct Aboriginal culture, and essential to its operation as a government or institution.”*

1. Potential Indigenous Self-Government arrangement jurisdictions:
   1. Establishment of governing structures, elections, and leadership selection processes
   2. Membership, marriage, adoption, child welfare, Aboriginal language, culture, and religion
   3. Education, health, and social services
   4. Administration of justice issues, including matters related to the administration and enforcement of laws or other jurisdiction which might include certain criminal laws
   5. Penitentiary and parole
   6. Environmental protection and assessment, fisheries co-management, gaming, and emergency preparedness
2. Jurisdictions outside the scope of an Indigenous Self-Government arrangement (non-negotiable):
   1. Powers related to Canadian sovereignty, defense and external relations
   2. International/diplomatic relations and foreign policy
   3. National defense and security
   4. Security of national borders
   5. International treaty-making
   6. Immigration and naturalization of aliens
   7. International trade, including tariffs and import/export controls
3. Other national interest powers outside the scope of an Indigenous Self-Government arrangement (non-negotiable):
   1. Management and regulation of national economy, including regulation of: the national business framework; fiscal and monetary policy; a central bank and banking system; bankruptcy and insolvency; trade and competition policy; intellectual property; incorporation of federal corporations; and currency.
   2. Maintenance of national law and order and substantive criminal law, including: offenses and penalties under the Criminal Code and other criminal laws as well as national emergencies and the “peace, order and good government” power
   3. Protection of health and safety of all Canadians
   4. Federal undertakings and other powers, including: broadcasting and telecommunications; aeronautics; navigation and shipping; maintenance of national transportation systems; postal service; census and statistics

**Reference Material:**

1. Carolyn Bennet announces that Canada is a full supporter of UNDRIP:

<http://www.cbc.ca/news/indigenous/canada-un-indigenous-rights-questions-1.3578074>

2. Justice Minister Jody Wilson-Raybould announces support for Bill C-262:

<https://www.fasken.com/en/knowledgehub/2017/12/indigenous-law-20171201>

3. Link to Bill C-262, *An Act to ensure that the laws of Canada are in harmony with UNDRIP*

<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-262/first-reading>

4. Announcement that UNDRIP will be implemented through section 35:

<https://www.cigionline.org/articles/will-canadas-support-undrip-breathe-new-life-section-35-constitution-form-free-and-prior>

5. Trudeau announces Working Group of Ministers:

<https://pm.gc.ca/eng/news/2017/02/22/prime-minister-announces-working-group-ministers-review-laws-and-policies-related>

6. 10 Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples

<http://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

7. Trudeau announces the Recognition and Implementation of Indigenous Rights Framework:

<https://pm.gc.ca/eng/news/2018/02/14/government-canada-create-recognition-and-implementation-rights-framework>

8. Recognition of Indigenous Rights and Self-Determination Discussion Tables:

<http://www.aadnc-aandc.gc.ca/eng/1511969222951/1511969264945>

9. Comprehensive Land Claims Policy and Inherent-Rights Policy to be replaced + Trudeau won’t consider opening the constitution:

<http://www.cbc.ca/news/indigenous/first-nations-reaction-trudeau-indigenous-rights-plan-1.4536098>

10. Budget 2018: Indigenous and Northern Investments:

<https://www.aadnc-aandc.gc.ca/eng/1520368281802/1520368298215>

11. Minister Bennet’s engagement on the Framework:

<https://www.aadnc-aandc.gc.ca/eng/1522086494578/1522086520382#chp2>