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**Canada's Legal Obligations to the Mi'kmaw, Wet'suwet'en, and Secwepemc Nations: A
Critical Analysis**

Indigenous Governance

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Canada's legal obligations to the Mi'kmaw, Wet'suwet'en, and Secwepemc Nations are under scrutiny in light of their inherent rights protected by Indigenous laws, Aboriginal, treaty, and title rights safeguarded in Section 35 of the Constitution Act, 1982¹, and the human rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This critical analysis aims to evaluate Canada's compliance with these legal obligations and the socio-economic impacts at stake if Indigenous and Aboriginal rights continue to be broken. By examining the intersection of Indigenous laws, Section 35 Aboriginal rights, and UNDRIP, this analysis seeks to shed light on the systemic challenges and inadequacies in Canada's approach to reconciliation. Furthermore, it explores the potential path forward that would align with Canada's commitment to meaningful reconciliation and address the socio-economic consequences of ongoing breaches of Indigenous and Aboriginal rights. The socio-economic consequences that we will be analyzing are the consistent systemically racist and/or sexist national systems like the RCMP, the Canadian healthcare system, and the childcare systems. Also, by analyzing the cases of the Mi'kmaw, Wet'suwet'en, and Secwepemc Nations, and Canada's legal obligations towards these nations that have been breached and/or misinterpreted, we can highlight the systemic challenges that overlap and converge between Nations.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international document that affirms equal rights and recognition of Indigenous Peoples, acknowledges their contributions to diversity and culture, and calls for the respect and protection of their rights, lands, and resources.² Stemming from UNDRIP comes Bill C-262 (which never made it past the Senate) and then Bill C-15.³ This Bill aims to create a National Action Plan to

¹ PPA124: "Legislative Excerpts: Constitution Act, 1982," p. 1-2

² United Nations, "United Nations Declaration on the Rights of Indigenous Peoples," p. 1-4

³ Warrior Life Podcast: Understanding UNDRIP & Bill C-15

align Canada's laws with the United Nations Declaration on the Rights of Indigenous Peoples. Bill C-15 clarifies that the UNDRIP applies in Canada, requires action to ensure consistency with the declaration, and does not take away existing rights. While it does not make UNDRIP law, it gives it legal standing⁴. These bills and declarations are a crucial component of one of the many reasons for the inadequacies of Canada's legal obligations to the First Nations of Canada. It is not just international human rights standards but Canadian law that is not being enforced, specifically in the Wet'suwet'en Nation⁵.

Canada's invasion of the sovereign Wet'suwet'en Nation, in violation of the rule of law, highlights the country's disregard for First Nation rights and prioritization of corporate interests⁶. The Coastal Gas Link pipeline project occurred against many Indigenous, Canadian, and International rules of law, primarily the UNDRIP Article 19, regarding having "free, prior, and informed consent"⁷. The Wet'suwet'en Nation has never ceded their lands, and their rights are protected by Canada's Constitution Act (1982) and international treaties⁸. Canada's actions, including violent arrests and removal of the Wet'suwet'en people, demonstrate a long history of breaking the rule of law when it comes to First Nations. The occupation and protection of their territory is a legally recognized right, and Canada's actions clearly violate human rights norms and international laws⁹. Also, the Wet'suwet'en Nation still has Aboriginal Title over their land; they never gave it up, and Aboriginal Title is the highest form of Aboriginal Rights¹⁰. As well, Section 35 also recognizes the pre-existing sovereignty of First Nations over their lands and

⁴ Warrior Life Podcast: Understanding UNDRIP & Bill C-15

⁵ Palmater, "RCMP invasion of Wet'suwet'en Nation territory breaches Canada's 'rule of law'"

⁶ Palmater, "RCMP invasion of Wet'suwet'en Nation territory breaches Canada's 'rule of law'"

⁷ Warrior Life Podcast: No Pipelines on Secwepemc Territory

⁸ Wet'suwet'en CGL 1: "Committee on the Elimination of Racial Discrimination", p. 2.

⁹ Palmater, "RCMP invasion of Wet'suwet'en Nation territory breaches Canada's 'rule of law'"

¹⁰ PPA124: Lecture: Section 35 Rights

imposes a duty to consult¹¹. Canada's disregard for First Nations rights demonstrated through the violation of the Wet'suwet'en Nation's territory and the breaching of international laws, highlights the country's failure to uphold the rule of law and prioritize corporate interests over First Nation sovereignty and human rights.

Very similar, the Secwepemc Nation has been dealing with the Trans Mountain Pipeline Expansion project. The Committee on the Elimination of Racial Discrimination wrote a letter to the United Nations Human Rights Office of the High Commissioner to inform them of the project's effects on the Secwepemc people¹². The Committee emphasized that the implementation of the Trans Mountain Pipeline Expansion Project was in the absence of free, prior, and informed consent and that it would have permanent impacts on the land rights of the Secwepemc people, thereby violating their rights as stipulated by the International Convention on the Elimination of All Forms of Racial Discrimination¹³. Not only are there many dangers, especially for the Secwepemc women concerning the 'man camps' during the pipeline construction, but it must be emphasized that the impacts of these destructive actions cannot be undone, whether it be with the community, the environment, or the rule of law¹⁴.

This connects to what has happened with fishing rights in the Mi'kmaw Nation. It has been 21 years since Donald Marshall Jr. was acquitted by the Supreme Court of Canada for illegal fishing, based on the Peace and Friendship Treaties of 1760-61¹⁵. Despite the court decision, the L'nuk people continue to be denied their treaty right to earn a "moderate livelihood" and create a framework for implementation¹⁶. This is yet another example of Canada

¹¹ PPA124: Lecture: Section 35 Rights

¹² United Nations Human Rights Office of the High Commissioner, "TMP + Secwepemc 2018"

¹³ United Nations Human Rights Office of the High Commissioner, "TMP + Secwepemc 2018"

¹⁴ Warrior Life Podcast: No Pipelines on Secwepemc Territory

¹⁵ The Eastern Door, "Reading: First Nations have their own legal authority to regulate their fishing rights"

¹⁶ The Eastern Door, "Reading: First Nations have their own legal authority to regulate their fishing rights"

not upholding treaty rights, let alone following the Canadian Constitution Act of 1982, which would allow the L'nuk to enact laws, rules, and regulations in a way comparable to how the Canadian Government can enact laws¹⁷. The Mi'kmaw Nation has struggled to exercise their fishing rights and maintain their traditional fishing practices. This experience of being cut off from their land is a reoccurring theme in many First Nations, ranging from access to hunting grounds, fishing spots, gathering places, and other important resources¹⁸. It connects to not just a loss of resources and income but a surge of socio-economic consequences that stem from a loss of traditional knowledge, a decline in self-sufficiency, and a weakening of community bonds¹⁹.

Due to these ongoing breaches of inherent, treaty, and human rights that First Nations face, there is no doubt that severe consequences have followed, impacting the most vulnerable individuals. There was a report that found that “suicide rates for First Nations were three to four times the national average, and the socioeconomic root causes included poverty, lack of housing, inadequate water and sewer services, families torn apart by residential schools and poor health care”²⁰. It has become not just what Canada has done but what they have not and continue not to do. The biggest obstacle is the absence of political will to act. Every succeeding Canadian government has taken the deliberate decision to ignore the pain and untimely deaths of First Nation children because of the economic crisis and neglect of First Nations in Canada²¹. A large part of that neglect is clean drinking water, a source many First Nations lack access to²². The water crisis seems to result from conscious choices to underfund critical infrastructure, and the government’s discriminatory underfunding extends to other areas such as housing and child and

¹⁷ The Eastern Door, “Reading: First Nations have their own legal authority to regulate their fishing rights”

¹⁸ Manuel, “*Whose Land: From Dispossession to Dependency*”, p. 19

¹⁹ Manuel, “*Whose Land: From Dispossession to Dependency*”, p. 19

²⁰ Palmater, “How Canada Turned a Blind Eye to the Suicide Crisis in First Nations”

²¹ Palmater, “How Canada Turned a Blind Eye to the Suicide Crisis in First Nations”

²² Palmater, “First Nations Water Problems: A Crisis of Canada’s Own Making”

family programs²³. Cindy Blackstock brought Canada before the Canadian Human Rights Tribunal, claiming that by purposefully underfunding child and family programs, the country discriminated against First Nations children in foster care and their families²⁴. How is a system meant to last if you don't provide enough money for training, staffing, or upkeep²⁵? Systemic racism highlights the need for substantial systemic changes. Systemic racism in healthcare has severe impacts on the lifespan and health outcomes of First Nations individuals, and it persists because it has been normalized and denied by those responsible²⁶. The RCMP, a system meant to protect, has massive issues of sexualized violence, racism, and misogyny²⁷. Again, this calls for urgent action from the federal government to ensure the safety of women, specifically First Nation women.

The need for meaningful reconciliation should be a top priority for the Canadian government because it is not just the moral but the lawful act. But for there to be true reconciliation, the truth must be revealed, justice must be served to make reparations, and discriminatory laws, policies, practices, and social norms in Canada must be reconciled with treaties, Indigenous rights, title, law and jurisdiction²⁸. There are countless amounts of irony and tricks when it comes to First Nations negotiations with Canada, making true reconciliation nearly impossible. As a result of many land policies, the small, underfunded nations must borrow money to have the funds to negotiate with Canada, which puts the many nations in debt²⁹. A spokesperson from a First Nation said, "Why are we borrowing money to talk about our

²³ Palmater, "First Nations Water Problems: A Crisis of Canada's Own Making"

²⁴ Obomsawin, "We Can't Make the Same Mistake Twice", Documentary.

²⁵ Palmater, "First Nations Water Problems: A Crisis of Canada's Own Making"

²⁶ Palmater, "What Joyce Echaquan knew"

²⁷ Palmater, "RCMP's toxic culture of sexualized violence requires external review"

²⁸ Palmater, "True test of reconciliation: Respect the Indigenous right to say No"

²⁹ Venne, "*Whose Land: Crown Title: A Legal Lie*", p.16

lands?”³⁰ From having 100% of the landmass, Indigenous Peoples across Canada were relegated by settlers to a small patchwork of reserves, which made up only 0.2% of Canada’s landmass, with settlers claiming 99.8% for themselves³¹. Another First Nation spokesperson explains that “[they] were to be kept penned in [their] 0.2% reserves unit [they] were starved out and rifted onto skid row in the city and gradually disappear as peoples”³². And is it not ironic that the administration (Government of Canada) that claims to be committed to reconciliation with Indigenous Peoples would be the first to advocate for First Nations people to leave their ancestral lands rather than confronting the water situation that they themselves created³³?

The analysis presented in this document highlights the urgent need for Canada to fulfill its legal obligations to the Mi’kmaw, Wet’suwet’en, and Secwepemc Nations. The scrutiny of Canada’s compliance with Indigenous laws, treaty rights, and human rights, as well as its often disregard for the United Nations Declaration on the Rights for Indigenous Peoples, reveals systemic challenges and inadequacies in the country’s approach to reconciliation. The ongoing breaches of Indigenous rights violate not only international and Canadian law but also have severe socio-economic consequences. The impacts range from the loss of traditional knowledge and self-sufficiency to the deterioration of community bonds and a surge of socioeconomic factors affecting the most vulnerable individuals. The lack of political will to address these issues has perpetuated the neglect and discrimination faced by First Nations, leading to alarming rates of suicide, inadequate access to clean water, underfunded childcare, and systemic racism within national systems like the RCMP and Canadian health care. Reconciliation must shift focus if Canada wants to truly reconcile with the First Nations people in this country. While

³⁰ Venne, “*Whose Land: Crown Title: A Legal Lie*”, p.16

³¹ Manuel, “*Whose Land: From Dispossession to Dependency*”, p. 20

³² Manuel, “*Whose Land: From Dispossession to Dependency*”, p. 20

³³ Palmater, “First Nations Water Problems: A Crisis of Canada’s Own Making”

reconciliation is negotiated, the space, respect, reciprocity, and compensation need to be given to First Nations in order for a resurgence of what it means to be Indigenous to take place³⁴. It is the responsibility and duty of all Canadians, Governments and citizens to carry out this pledge.

³⁴ Guest Speaker: *Taiiaki Alfred*

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