



## Indian Act Amendment and Replacement

### What is Bill C-428?

Bill C-428 is a private member's bill which was introduced by Conservative MP Rob Clarke (Desnethé-Missinippi-Churchill River, Sask.) on June 4, 2012. A report from the Standing Committee on Aboriginal Affairs and Northern Development regarding the Bill was presented to the House of Commons on May 5, 2013. Bill C-428 has been subject to criticism by First Nations as being an attempt to unilaterally amend the Indian Act—an act that Mr. Harper had said the government would not do at the Dec. 24, 2011 Crown-First Nations Gathering. Bill C-428, the Indian Act Amendment and Replacement Act, seeks to amend a number of sections of the Indian Act.

### Proposed Amendments to the Indian Act:

- Removing references to residential schools
- Removing obsolete language from Act
- Allowing First Nations to pass their own bylaws without federal permission
- Requiring the Minister of Aboriginal Affairs and Northern development to report annually to a parliamentary committee on the action taken in partnership with First Nations to develop new legislation to replace the Indian Act
- Removing the Minister's role in the administration of wills and estates and the approval in voiding wills and it will remove the minister's bylaw disallowance powers

### What are the Concerns of Bill C-428?

- The Federal government failed to engage in consultation with First Nations leaders, prior to proposing this Bill; as was upheld in the *Mikisew Cree First Nation v. Canada* case, it is the Government of Canada's duty to advance consultation, consideration and accommodation of first nation peoples' interests before any decision is made by the Government of Canada (Open Parliament, 2013);
- The Bill fails to support or facilitate collaborative consultation between First Nations and the Minister of Aboriginal Affairs and Northern Development on the Indian Act (particularly in reference to Minister reporting requirements on status of implementation of Bill);
- First Nations people identified concerns, issues of importance to their communities during Royal Commission on Aboriginal Peoples several years ago. The government has done little to respond to these issues (poverty, housing, abuse, violence, human-rights issues), this bill does not address any of these issues.

As Joe Delaronde, the spokesman for the Mohawk Council of Kahnawake, noted: "some of the laws in the Indian Act are laws we hold dear...like our right to live free of taxation for starters. So there are things we want to keep and obviously things we want to get rid of. What's important is that these decisions are

made by First Nations communities themselves” (Ottawa Citizen, 2012). Criticism aimed at Bill C-428 focuses around the core issues of: consultation, collaboration and the Bill’s failure to address issues of importance to First Nations communities in Canada (ie. violence, poverty, lack of access to clean water/nutritious food/safe and affordable housing). While the changes proposed within the Bill appear to be rather benign, the failure of the federal government to engage with and consult with First Nations prior to proposing the Bill, weakens the existing fiduciary duty to consult, establishing a negative precedent, that will continue to impact the inherent rights of all First Nations people in the future.

### **What Alternatives to Bill C-428 Could be Proposed?**

- Allocation of funding, to facilitate the capacity for First Nations to design and develop custom frameworks/strategies that will promote self-governance and autonomy (particularly, in area of land-management);
- First Nations must be provided with right to opt-out of legislation (rather than being subjected to the imposition of legislation);
- Legislation should be developed in consultation with First Nations, and framed around timing and priorities of the communities themselves, recognizing that many communities do not yet have the capacity to implement and enforce by-laws, or address the legalities of such by-law, should it be challenged;
- Focus upon fostering leadership capacity, engaging with First Nations (process must be First-Nation driven), recognizing First Nation jurisdiction over reserve lands and resources.

### **References**

Ottawa Citizen. (2012). “Parties split on how to get rid of the Indian Act.” Retrieved from: <http://www.ottawacitizen.com/life/Parties+split+Indian/7430124/story.html>