SIX NATIONS COUNCIL

Summary Analysis of Federal & Provincial Initiatives

Impacts and Opportunities

The following is a summary of key considerations on current pieces of legislation and initiatives that impact Six Nations of the Grand River Territory

Summary Analysis of Federal & Provincial Initiatives

Impacts and Opportunities

Setting the Context

Under the guise of reconciliation, the federal government has imposed an aggressive agenda on Indigenous peoples. There are currently two pieces of legislation before the Senate, an act respecting Indigenous Languages and an act respecting children, youth and families. Also in the Senate is Bill C-262, the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) Act passed second reading on April 4th, 2019.

As part of a Memorandum of Understanding with the Assembly of First Nations the federal government is 'jointly' working with an appointed Chiefs Committee on the Inherent Rights policy as well as the Comprehensive Claims policy. Leadership has also requested additional policy reviews for Specific Claims and Additions to Reserves.

Under the *Greenhouse Gas Pollution Pricing Act*, the federal government started to impose carbon pricing to provinces that do not have their own pricing scheme. At this time, the province of Ontario has cancelled its pricing scheme in place and First Nation citizens are reporting increases in the following:

- Hydro Bills
- Natural Gas
- Auto gas
- Possible economic development initiatives in the green energy sector

This summary captures key points from a number of analyses, including but not limited to, Yellowhead Institute, OKT Law, Association of Iroquois and Allied Indians.

Current Indigenous Legislative Agenda

Summary of Federal Legislation

In July 2016 the federal government did two things, first, they gave full support to the UNDRIP (with conditions), and second, committed to do a law and policy review that would bring all Canada's laws in line with UNDRIP. This work was supposed to be done through a Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples.

The working group conducted a number of 'hearings' in 2017 to receive submission from Indigenous groups on this topic. In July 2017, Minister Wilson-Raybould responded to the hearings and released a set of 10 principles respecting the government's relationship with Indigenous Peoples. These principles have since been analysed countless times by Indigenous peoples and are considered as a 'water down' version of how the federal government intends to implement the UNDRIP.

In February 2018, Prime Minister Trudeau announced that the federal government will develop – in full partnership with First Nation, Inuit and Metis people – a Recognition and Implementation of Indigenous Rights Framework.

> *"Reconciliation calls upon all to confront our past and commit to charting a brighter, more inclusive future. We must acknowledge that centuries of colonial practices have denied the inherent rights of Indigenous Peoples. The recognition and implementation of Indigenous rights will chart a new way forward for our broken promises, and injustices. We have listened and learned and will work together to take concrete action to build a better future and a new relationship."- Trudeau*

The Framework

In April 2018, the federal government released a guide/discussion paper that would support engagement with Indigenous people on the Framework. The discussion paper outlined two things:

- New tools that could be included in legislation to ensure the government respects it constitutionally-protected rights and self-determination.
- Tools to help replace existing policies i.e. *Comprehensive Land Claims Policy* and the *Inherent Rights Policy.*

According to the April 2018 Engagement guide/discussion paper the purpose of the legislation could be to ensure the recognition and implementation of rights is the basis for all relations between the federal government and Indigenous Peoples, support self-determine and ensure government accountability on all Indigenous matters. Indigenous governments across the country denounced the framework from varying degrees and called on the government to halt any further work on the Framework.

Six Nation Elected Council's Position

In July 2018 the Six Nations Elected Council took a principled position and formerly rejected the Framework based on safeguarding Six Nations of the Grand River's sovereignty. It should be noted that the framework was rejected for three main reasons:

1. Delegated authority is the only option on the table
2. Supremacy of the Canadian Constitution
3. "Self-government" as defined by Canadian policy is not sovereignty

It should also be noted that the only purpose of the Framework, from Canada's perspective was to create certainly for the government that Indigenous Peoples will not get in the way for development on traditional territories or assert rights over their traditional territories.

Veil Reset

In December 2018, after months of negative reactions to the Framework, Minister Bennett announced it would no longer proceed with developing the framework. This should be considered as a veil reset as both Bill C-91 and 92 have elements of the Framework build into the legislation which First Nations need to reject.

Bill C-91, An Act Respecting Indigenous Languages

The purpose of this Act can be summarized by the following:

- the Government of Canada recognizes that the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982 include rights related to Indigenous languages;
- the Minister of Canadian Heritage may enter into different types of agreements or arrangements in respect of Indigenous languages with Indigenous governments or other Indigenous governing bodies or Indigenous organizations, taking into account the unique circumstances and needs of Indigenous groups, communities and peoples; and
- federal institutions may cause documents to be translated into an Indigenous language or provide interpretation services to facilitate the use of an Indigenous language.

The enactment also establishes the Office of the Commissioner of Indigenous Languages and sets out its composition. The Office's mandate and powers, duties and functions include:

- supporting the efforts of Indigenous peoples to reclaim, revitalize, maintain and strengthen Indigenous languages;

- promoting public awareness of, among other things, the richness and diversity of Indigenous languages;
- undertaking research or studies in respect of the provision of funding for the purposes of supporting Indigenous languages and in respect of the use of Indigenous languages in Canada;
- providing services, including mediation or other culturally appropriate services, to facilitate the resolution of disputes; and
- submitting to the Minister of Canadian Heritage an annual report on, among other things, the use and vitality of Indigenous languages in Canada and the adequacy of funding provided by the Government of Canada for initiatives related to Indigenous languages.

This Bill is currently at the Standing Committee after passing second reading on February 20, 2019. A clause by clause study of the bill took place on March 18, 2019 and this bill is currently awaiting third reading. The government intends on having this Bill passed before it rises this summer.

Although this Bill is well intended, it does not go far enough to fulfill the stated intention of co-development nor First Nation control of their language efforts.

Analysis

Having a critical review of the various components within the Bill it should be noted that no proposed amendments would strengthen this Bill to safeguard the rights and interests of Six Nations of the Grand River. The following highlights areas of concern:

- There is no declaration of Indigenous languages as "Official Languages", despite the importance of the fabric and creation of Canada.
- No Indigenous rights to First Nation languages is actually granted or recognized in the Act. The Act references "in relation to" Indigenous languages, but this could mean one's personal right to speak rather than one's right to receive government services in their language.
- The Minister of Canadian Heritage retains all powers and future regulations, not First Nation governments.
- There is no specific or firm commitment in relation to funding for Indigenous government to support language revitalization. In, coupled with the lack of reference or support in the development of community or nation-based action plans for language recovery/revitalization.
- The Bill appears to utilize the same federally controlled framework concept for rights definition, limitation and scoping, as contemplated in the Framework which Six Nations had formerly rejected.

- The Bill outlines a new Office of the Commissioner of Indigenous Languages which would be controlled by Canada with no or limited powers in decision making or enforcement.

Six Nations Elected Council's Position

The Six Nations Elected Council have formerly rejected Bill C-91 based on the need to protect and safeguard our rights to our languages and our ability to recover, reclaim, revitalize, maintain and normalize our languages.

Bill C-92, An Act Respecting First Nation, Inuit and Metis Children, Youth and Families

This Bill is currently in the Senate Committee who is currently hearing submissions about the Bill. Like the Languages Act, it is expected to receive Royal Assent by the end of June 2019. The Bill seeks to:

- Affirm the rights of First Nations, Inuit and Métis to exercise jurisdiction over child and family services; and
- Establish national principles such as best interests of the child, cultural continuity and substantive equality to guide the interpretation and administration of the Bill.

National Standards

National Standards are important because the federal government has allowed provincial child welfare laws and policies to apply to Indigenous children, on and off reserve, and these differ significantly from province to province. The Bill opens with the statement that it must be interpreted according to the principles of the best interests of the child [BIOC]. The BIOC is imported from Bill C-78 the Divorce Act and does place importance to Indigenous families, communities, and the principle of cultural continuity.

These principles would guide Indigenous communities and provinces and territories on the delivery of child and family services to keep families together and reduce the number of Indigenous children in care. The Bill appears to impose the principles of the 'Best interests of an Indigenous child,' It outlines the following factors that would have to be considered when determining the best interest of an Indigenous child:

- The child's physical, emotional and psychological safety, security and well-being;
- The child's cultural, linguistic, religious and spiritual upbringing;
- The attachment and emotional ties between the child and significant persons in the child's life;

- The child's views and preferences;
- The child's needs and level of development;
- The importance to the child of an ongoing, positive relationship with his or her family, community and the Indigenous group to which he or she belongs; the importance of stability for the child; connection to the child's language and territory;
- Any plans for the child's care;
- Any family violence and its impact on the child; and
- Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.
- Priority given to preventative care.

The Bill highlights the need for the system to shift from apprehension to prevention, with a priority given to services that promote preventive care to support families. It would give priority to services like prenatal care and support to parents. Also, the proposed Bill would clearly indicate that no Indigenous child should be apprehended solely on the basis or as a result of his or her socio-economic conditions, including poverty, lack of housing or related infrastructure, or state of health of the child's parent or care-giver.

Analysis

Overall, in examining the entire system that Bill C-92 creates a nightmare for families, courts and agencies to try and navigate. In particular, families would have to jump through a number of loops to get the services they are owed, while courts and agencies will be challenged by increased administration and an unclear enforcement system.

Although, this is an important piece of legislation and fails Six Nations children in a number of areas. Although a number of communities, Indigenous organizations and agencies are working on amendments, it is the position of Six Nations Elected Council that the Bill, in its current form, is paternalistic in its view of co-development, falls short in its justice system reforms, and actually prevents Six Nations from moving forward to create and deliver a responsive 'wrap around' service to address poverty, housing, social services, and education services focused on the child and family. Based on this, the Six Nations Elected Council rejects Bill C-92 based on the following issues and concerns:

- The legislation is based on delegated authority or 'coordination agreements' which means if Six Nations moves forward with its own law, it would take precedence over most federal laws with exceptions.
- Bill C-92 only mentions funding in passing as a topic for negotiation. It fails to commit the federal government to provide funding at the legal standard as confirmed by the Canadian Human Rights tribunal. This means funding will not be available to address culturally appropriate programming, address historical disadvantages of underfunding and resources to ensure comparable quality and service levels.
- The provisions of the National Standards in Bill C-92 create substantial confusion across the board. Bill C-92 layers on top of Provincial and Indigenous laws and all three levels of law apply unless there's a conflict or inconsistency. Missing are key accountability measures and funding commitments and without some clarity and resources these provisions will end up echoing hollow promises rather than creating real change.
    - The provisions in the National Standards also place limits on Band Representatives. This means, notices to Band Representatives must not contain any personal information which leads to the questions of the role of Band Representatives moving forward.

Some other issues:

- Laws can be made by any "Indigenous group, community or people" – what does that include?
- Unclear scope of "child and family services" and other terms.
- Risk of uncertainty in the implementation of multiple laws at multiple levels.
- Questions on enforcement.
- No funding commitments announced yet to support development of Indigenous laws, or to support negotiation of Coordination Agreements.

Six Nations Elected Council's Position

The Six Nations Elected Council have formerly rejected Bill C-92 based on the need to protect and safeguard our rights to care for our children in a manner consistent with our cultural values traditions and principles.

Bill C-262, UN Declaration on the Rights of Indigenous Peoples Act

Bill C-262, currently before the Senate, is a private members Bill introduced to the House of Commons by MP Romeo Saganash. It is intended to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights on Indigenous People (UNDRIP). The Bill sets out key principles that must guide the implementation of the Declaration, provides clear public affirmation that the standards of the UNDRIP have 'application in Canada Law as well as a process for the review of federal legislation to ensure consistency with the minimum standards set out in the UN Declaration.

In addition, it also:

- Requires the federal government to work with Indigenous Peoples to develop a national action plan to implement the UN Declaration
- Provides transparency and accountability through an annual report to Parliament on progress made towards implementation.

Analysis

The Six Nation Elected Council should acknowledge that full implementation of the *Declaration* will require a long-term commitment and collaboration. We need the *Declaration* to work in our favour because so many of the laws and policies affecting the lives of Six Nations are profoundly unjust and rest on foundations of racism and colonialism. As the Truth and Reconciliation Commission reminded us over and over again, "reconciliation is going to take hard work."

The *UN Declaration* was the subject of one of the most extensive deliberation processes ever undertaken in the international human rights system. The collaboration between Canadian government representatives and Indigenous peoples during the final years of negotiation was a key factor in developing a text that could attain such broad, global support. **It should be noted, the final wording was a compromise, between states and Indigenous Peoples, and not the strongest text possible in setting a standard for protecting Indigenous rights.**

The development of the *Declaration* took more than two decades. Another decade has passed since the negotiations concluded. It is time for the government of Canada to commit to re-engage in a collaborative dialogue with Indigenous peoples to take the *Declaration* to the necessary next stage of domestic implementation. Bill C-262 provides a framework for doing so in a way that is inclusive of Six Nations, is principled, systematic, cooperative, transparent and accountable. The **Six Nation Elected Council will continue to monitor and safeguard our interest as this Bill proceeds.**

Inherent Rights and other Policies under Review

The federal government and the Assembly of First Nation signed a memorandum of understanding in July 2016 to review the Specific Claims policy as well as the Inherent Rights policy. In addition, First Nation has required a review of both the Comprehensive Claims and Additions to Reserves policy. This is a result of First Nation having been consistently critical of these policies since the 1970s. It should be noted, the Specific Claim, Inherent Right nor do the Comprehensive Claims apply to Six Nations under the current dialogue through the Global Solution. However, the Additions to Reserve policy have been of particular interest to Six Nations.

First Nation generally has expressed concern with the Additions to Reserves Policy process noting how costly and time-consuming it has been. It also prioritizes third party interest over those of First Nations. In 2010, the AFN and Canada worked on a new ART policy directive which was supposed to be worked on jointly. This did not happen as Canada moved forward on the directive unilaterally. Since then, Canada has taken a number of unilateral steps including:

- Bill C-86, a Budget Implementation Act & the Claims Settlement Implementation Act. These Acts changed the approval process for claim to Ministerial approval rather than an Order in Council.
- Created a federal ATR Advisory Body to identify elements within the process to address.

Next Steps

Develop an implementation proposal for SNEC approval based on A Global Solution:

- Follow up on a meeting with the Prime Minister Office, to establish a stand-alone fiscal table, separate and apart from the AFN table.
- Scope out a revenue sharing arrangement with the federal and provincial governments.
- Strengthen the process to deal with Land Rights and additions to reserves.

Carbon Tax

Carbon pricing or tax put a direct price on emissions. Generally, this means that greenhouse gas emitters—usually fuel producers and distributors—pay a designated amount per each tonne of carbon dioxide emitted from burning carbon-based fuels. In order to motivate emitters to decrease emissions, the price usually goes up slowly over time so households and industries have time to adjust and adopt less carbon-heavy practices. In Canada, the federal government is implementing a coordinated nation-wide carbon price, beginning at $10 per tonne of carbon dioxide equivalent emissions in 2018 and rising to $50 per tonne. To put this in the global context, as of 2017, over 65 jurisdictions, representing about 15% of global greenhouse gas emissions, have put a price on carbon.

Impacts to Six Nations People

While First Nation individuals are exempt for Carbon pricing, First Nation suppliers and vendors are not. This means in all cases that the price on carbon is passed onto the consumer with

purchasing anything that emits greenhouse gas such as hydro, gas, natural gas and other fossil fuel products. Many have noticed an increase in price at the gas pumps, hydro bills and natural gas bills. In essence, this is a tax.

First Nations in Alberta have successfully negotiated an exemption for Carbon pricing on levies, fees on fossil fuel based products. This mean First Nations may buy fuel tax-exempt for a registered retailer located on reserve with a valid exemption card. This includes bulk dealers such as natural gas.

Next Steps

The Six Nations Elected Council has committed to working with all First Nations in Ontario to negotiate an exemption for this pricing/tax similar to the arrangement in Alberta.

2019 Ontario Budget

The 2019 Ontario Budget is titled *Ontario's Plan to Protect What Matters,* shows the focus on returning the Province to balance after "inheriting a $13.5 billion deficit and more than one-third of a trillion dollars in debt from the previous government." The only ministries to see new investments are Health & Long-Term Care, Transportation & Education.

Indigenous Affairs received the second highest cut after the MNRF which further demonstrates their shift from reconciliation on Indigenous Rights to a balanced budget and economic drivers. Indigenous Affairs has been slashed from $146M to $74.4M. It is of great concern that there were no specifics or mention of which Indigenous priorities would be cut moving forward.

Based on a review of past years budgets, we did not see any assurances of the continuation of any Indigenous specific program dollars that would have stemmed from *'Our Journey Together'*. Past year's investments for specific Indigenous programs like mental health, youth justice and education did not receive a commitment to continue. This would deeply impact our health, social, justice departments which have relied on the provincial top up from *'Our Journey Together.'*

It is deeply concerning that the budget had no specific section/chapter for Indigenous investments which means we are now tied into mainstream programs. In the end, this means we are competing for dollars with everyone else. It is expected that a competitive, proposal driven process will be rolling out in each sector area with limited funding becoming available in each program area. This will force each of our departments at Six Nations to re-organize on how best to apply for dollars that would have normally come in multi-year contribution agreements.

For example, if our Social Services department was waiting for new spaces in child care from the province, we will now be required to compete for those spaces with everyone else across the province.

The Six Nation Elected Council should consider the following actions:

- Working with the opposition leaders as well as the Conservative Caucus on areas to reduce the red tape for Indigenous communities and provide assurance that funding will continue to flow in our departments without a competitive proposal driven process.
- Develop a child focused advocacy strategy that will ensure investments to Indigenous children and youth in the north match the investments for Indigenous children in the south.

- Will need to dig deep into an analysis on the impacts to mental health and addictions programs as the underlying tone is more red tape and less investments to Indigenous specific programming. Currently, the 2019 budget points to a cut of about $1B broadly moving forward.

Examine opportunities to Six Nations to maximum investments in the following areas:

- Economic Sovereignty
- Transportation
- Climate Change and Emergency Management
- Sports and Recreation

Broadly speaking, **Ontario's Plan to Protect What Matters Most**, shows focus on removing onerous red tape, daycare support, streamlining the healthcare system, new funding investments for education and tackling Ontario's substantial deficit and debt. From an Indigenous perspective, the potential is great for increased red tape which will put all Indigenous government administrations behind the eight ball when competing for dollars.

It is oblivious from the budget that the Provincial Governments approach to Indigenous people has shifted from reconciliation for its participation in past wrong-doing to promoting economic development. With a 49% cut in its budget the Ministry will be expected to promote collaboration and coordination across ministries on Indigenous policy and programs in partnership with First Nations, Métis and Inuit.