

Bill C-53: An Act (dis)Respecting First Nations Inherent Rights



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On June 21, 2023 - Indigenous Solidarity Day - the House of Commons introduced Bill C-53, *An Act respecting the recognition of certain Métis governments in Alberta, Ontario and Saskatchewan, to give effect to treaties with those governments and to make consequential amendments to other Acts*. This Act follows the Ontario government's recognition of seven historic Métis Communities in Ontario in 2017, and the 2003 Powley Supreme Court decision that created a test for the existence of historic Métis communities for Métis to access constitutional rights under Section 35.

Adding to this timeline are the recent protests by First Nations in Ontario to this legislation. They have significant concerns with the legislation and its implications.

First, the credibility of information to support the claims of historic Métis communities in Ontario is in dispute. Since 2020, **multiple commissioned** reports have outlined substantive errors in evidence supplied through the primary source: Métis Nation of Ontario (MNO). Second, Canada has never initiated a process with First Nations, Métis, and Inuit peoples to provide clarity on how to distinguish between the constitutional rights of each group or what happens in instances of disagreement, conflict, or invalid claim. The federal and provincial governments self-styled "distinctions-based approach" more often divides than distinguishes. Finally, and related, Bill C-53 uses the language of inherent rights in a province where there are none; at least not tied to historic Métis communities. Instead, the legislation effectively appropriates inherent

rights from the First Nations without free, prior and informed consent.

Offering more substance to these concerns, this Brief considers a First Nation - and specifically Anishinaabe - view on inherent rights and the place of Métis in the province.

A Condensed Overview of Anishinaabe Inherent Rights

Among the Anishinaabe - whose territory spans parts of present-day Ontario, Manitoba, Saskatchewan, and Quebec in Canada and across parts of Michigan, Wisconsin, Minnesota, and North Dakota in the United States - there are original teachings describing how the first ancestor was lowered to the earth. This spirit being was the first Anishinaabe in human-form placed on Turtle Island (the Americas) at the beginning of time. Following the original instructions provided by Gitche Manitowabi (the Great Mystery), the first ancestor journeyed the earth naming all living things and all places on, below and above the surface of the earth, including the seen and unseen.

In journeying, this ancestor learned of Anishinaabe kinship ties to all-our-relations and learned of the roles and responsibilities of each Anishinaabe. This ancestor provided Anishinaabe peoples with stories and teachings foundational to pre-/existing Anishinaabe inherent rights. These longstanding and enduring rights continue to be nurtured, practiced, and developed by the Anishinaabe over (at least) many thousands of years; and inherent rights precede the modern era nation-to-nation agreements with

the newcomers having existed for a few hundred years (e.g., from the gift diplomacy with the French Crown since 1615 to treaties with the English). The majority of Anishinaabe peoples consistently affirm that their inherent rights are not transferable, are inalienable, and no individual, collectivity, community, or nation can cede, take, or destroy them.

Anishinaabe inherent rights are foundational to self-government, and legitimize many other social, cultural, spiritual, and political aspects of Anishinaabe nationhood, including roles and responsibilities with more-than-human kinship relationships (e.g., as reflected in inclusive *dodem* structures of governance). The primary inherent rights holders among the Anishinaabe are members of the three fires confederacy: Ojibway, Odawa, and Potawatomi. These inherent rights holders repeatedly defended their rights militarily in conflicts against other First Nations, the British and the Americans. None of what is presented here is new. While there may be minor variation in details, there are numerous instances – in oral accounts, the written historic record, and in Anishinaabe mnemonic devices – providing ample evidence to support this overview.

In peacetime, the Anishinaabe continue the struggle to uphold their inherent rights, but Canada has endeavoured to eliminate and/or severely limit their inherent rights through agreements and colonial-settler legislative and judicial processes.

Where do Métis fit in this conceptualization of inherent rights?

In Ontario, there is actually a single example from our history that speaks to this question. Events surrounding the signing of Treaty No. 3 and its adhesions provide a strong example of who carries Anishinaabe inherent rights, how those rights operate, and whose nationhood existed over the territories. The negotiations for Treaty No. 3 originated from the defiant Anishinaabe nation denying the Crown right-of-way access through Anishinaabe territories without first signing treaty. During negotiations of the main portion of the treaty, the Anishinaabe acknowledged and negotiated inclusion of Anishinaabe family members who were of mixed ancestry (i.e., referred to as “half-breeds”). Lieutenant Governor Alexander Morris, who was

a primary negotiator of Treaty No. 3, submitted official government record confirming inclusion of the small number of families who lived among the Anishinaabe and were of mixed ancestry. For greater clarity, these half-breeds were recognized under Anishinaabe nationhood and not associated with the Manitoba Métis independence movement or any other distinct Métis movement. It begs the question: were and are these half-breed families a part of an ethnic enclave of Anishinaabe-métis?

Potential Consequences of Métis Rights Recognition in Ontario

If Métis peoples are distinct and no longer have ties to their First Nations relatives and there is little evidence to demonstrate any real historic presence in Ontario, then inherent rights for Métis peoples here, do not exist. In summary, driven by poor research and hollow assertions of rights, the MNO and Canada are effectively abrogating First Nations inherent rights. This leads to one logical conclusion for the fate of Bill C-53: it should not pass, at least not until the Métis can demonstrate to the Anishinaabe, among others, who are the authority on inherent Indigenous rights in this region, that there is a strong case. This is the path to recognition.

Perhaps it is possible that Métis from their historic homelands outside of Anishinaabe territory can exercise some general Section 35 Aboriginal rights in the province, but that rests on a strange move by the Supreme Court in the *Powley* decision. Drawing on the earlier *Van der Peet* decision, which created a test to confirm Aboriginal rights, the court excluded an Indigenous group’s need to demonstrate that Aboriginal rights “are those which have continuity with the practices, customs and traditions that existed prior to contact with European society.” In this sense, Métis rights would be the only rights that cannot be considered inherent; rather, they are dependent on the sovereignty of the Crown.

These state granted rights will always risk abrogating Anishinaabe nationhood, thus requiring Anishinaabe involvement in determining limits.

If the federal government pushes through its legislation, there is much potential for harm to First Nations. For instance, what will new laws, new treaties, or self

government agreements encompass; what happens when these arrangements conflict with First Nations treaty and inherent rights, UDRIPA, self-government agreements, or with unsettled land claims; what if there is First Nations opposition to development deals that have direct impacts on First Nations communities, their territories, or their jurisdiction?

In the era of Truth and Reconciliation, the least we should expect is consultation on legislation that will impact our rights? Instead, the Federal Government has opened a new legislative front on the ongoing fight against colonialism.

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