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**Prospectors and Developers Association of Canada's Submission to the Standing Committee
on Indigenous and Northern Affairs Regarding Bill C-15, *An Act respecting the United Nations
Declaration on the Rights of Indigenous Peoples***

April 8th 2021



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As the voice of Canada's mineral exploration community, representing more than 7,000 corporate and individual members, the Prospectors and Developers Association of Canada (PDAC) takes an active interest in regulatory and policy initiatives that shape the landscape within which our industry operates.

PDAC applauds the government taking steps towards reconciliation and the advancement of Indigenous, First Nation and Métis self-determination through Bill C-15: *An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. PDAC also acknowledges the many contributors to Bill C-262, which has been used as the basis for this Bill, including National Indigenous Organizations from across Canada and former MP Romeo Saganash. As the House of Commons Standing Committee on Indigenous and Northern Affairs has begun to study Bill C-15, PDAC welcomes this opportunity to share the perspectives of the exploration and development sector.

Building Relationships Between the Mineral Industry & Indigenous Peoples

PDAC works to support the development of positive relationships between Indigenous communities and industry, to promote responsible exploration practices and ensure Canada's regulatory and policy frameworks support the competitiveness of the mineral industry. To reinforce this commitment, in 2009, PDAC developed *e3 Plus*, the first ever framework for responsible mineral exploration, aimed to help industry improve social, environmental and health and safety practices. PDAC has also worked with the federal government to produce educational materials to expand knowledge of the mineral industry.

As the host of the world's annual premier industry event, PDAC facilitates expansive opportunities for companies and individuals to come together and share best practices in developing relationships with, and fostering increased participation by Indigenous Peoples in the economic opportunities generated by natural resource development.

Notably, the mineral industry is the largest private-sector industrial employer on a proportional basis of Indigenous Peoples in Canada and a key partner of Indigenous businesses from coast to coast to coast. As a leader in Indigenous engagement, this industry understands that developing and maintaining strong, open and trusting relationships with Indigenous communities is paramount and critical for collective success.

Successful relationship building in the mineral industry is accomplished by expanding Indigenous awareness and integrating traditional knowledge into company policies, employment, procurement, business development practices, and by establishing mutually-beneficial partnerships. These relationships have led to positive social and economic community development outcomes and directly



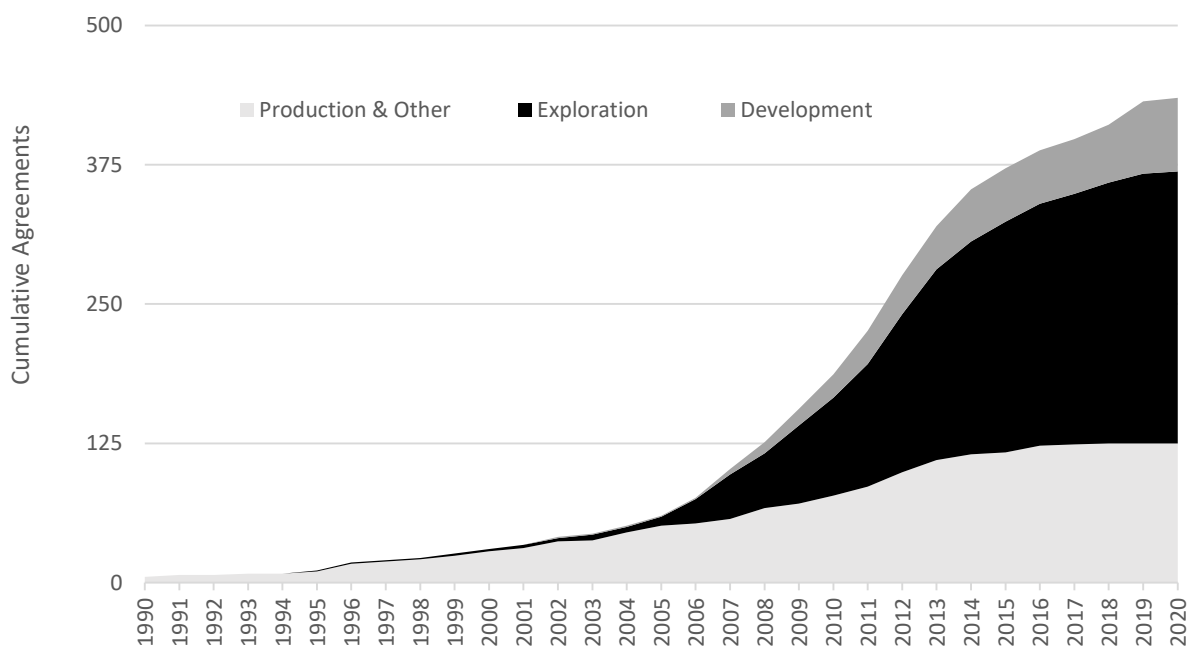
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contribute to Call to Action #92 outlined in the Truth and Reconciliation Commission of Canada's Calls to Action to advance reconciliation.

It is important to note that there have been nearly 500 agreements signed between mineral exploration and mining companies and Indigenous communities in Canada over the last 5 decades. Nearly 65% of these agreements have been established since 2010. Furthermore, well over half of these established agreements are for exploration-stage mineral projects. This highlights how the mineral industry has adopted a practice of conducting early and meaningful engagement with Indigenous Peoples in Canada, resulting in the prolific growth of Indigenous-industry mineral exploration agreements, as shown in Figure 1 below.

Figure 1 – Growth of Industry-Indigenous Agreements Over 50 Years in Canada



Source: <https://atlas.gc.ca/imaema/en/>



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PDAC Perspectives & Considerations for Bill C-15

Legislation Must Complement Industry Efforts

Of utmost concern for PDAC and our members, is that implementation of Bill C-15 must be complementary and only act to support and reinforce the significant efforts already being undertaken by the mineral industry to establish mutually-beneficial relationships with Indigenous Peoples. PDAC has long advocated for significant investments in housing, water, education and infrastructure in order to help communities build capacity and maximize economic participation. The Action Plan defined in Clause 6 of the draft legislation should aim to improve implementation of the Crown's constitutional duty to consult and accommodate, and contribute to improved social outcomes and quality of life for Indigenous Peoples. PDAC recognizes that targeted funding for skills training and entrepreneurship from the federal government will be necessary for capacity-building and to facilitate opportunities for meaningful participation of Indigenous communities in decision-making processes.

Improving Clarity Around FPIC

Maintaining the competitiveness of Canada's mineral industry relies on having a regulatory regime that is transparent, predictable, and provides certainty for all stakeholders. Over the last decade in particular, Canadian mineral exploration and mining companies have worked to establish processes that have not only met but exceed the standard of consultation and accommodation set out in the frameworks of Free Prior and Informed Consent (FPIC), resulting in the proliferation of Indigenous-industry agreements. Under this backdrop, the mineral industry has concerns about how Bill C-15 may create different expectations regarding FPIC as it relates to provincial / territorial legislation and the *Impact Assessment Act (IAA)*, and that a lack of clarity will lead to uncertainty for mineral projects, and existing agreements.

Bill C-15 intends to ensure alignment and consistency with the existing laws of Canada. PDAC's understanding is that the Bill would not create new obligations or regulatory requirements for industry, rather it is meant to support the government's implementation of its constitutional duty. PDAC also understands that the Bill is meant to affirm UNDRIP's application in Canadian law, however, the government should provide clarity regarding circumstances that require consultation, how relevant rights holders are determined and processes that can be taken in the event consent is unachievable.

Alignment with the *Impact Assessment Act (IAA)*

It has been stated that consideration was given to UNDRIP in the drafting of the IAA and that the IAA is an example of action taken to support the implementation of UNDRIP in Canada. The federal government's website also states that the Bill would not change Canada's existing duty to consult, or



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other consultation and participation requirements set out in the IAA.¹ With that said, our industry is concerned about what this means in practice. Incorporating Indigenous laws into federal laws will be a significant challenge in the coming years and leaving the discretion of major decisions in the hands of the courts during this period, will lead to further uncertainty for the success of projects and the related economic and social benefits they can provide Indigenous communities.

Guidance, Training and Support

The Ministry of Justice has stated that the intent of Bill C-15 is working together in partnership with respect, and that the legislation does not constitute a veto over government decision-making. The only way to achieve such goals and ensure consistency is through a common understanding by Indigenous communities, governments and industry of the scope of the legislation. This common understanding will only be achieved if the federal government commits to establishing broader guidance and training tools, as well as fiscal and policy support pieces to promote increased participation of Indigenous Peoples and communities in the mineral industry.

Industry Participation in the Action Plan

Clause 6 of Bill C-15 requires an Action Plan to be developed in consultation and cooperation with Indigenous Peoples and other federal ministers. The Action Plan must be completed within three years after the Bill's passing, with a process for monitoring the implementation of the plan. While the Action Plan needs to be constructed in consultation with government and Indigenous communities, this consultation work must also include all impacted industry stakeholders. PDAC welcomes the opportunity to be an active contributor to developing the Action Plan. As such, we recommend that government prioritize defining transparent and inclusive consultation processes to develop and implement the Action Plan.

Government Coordination in the Action Plan

As Bill C-15 intends to provide a legislative framework to ensure existing Canadian laws are consistent with the rights of Indigenous Peoples set out in the Declaration, adopted by the United Nations General Assembly in 2007, a high degree of government coordination will be required to develop a successful Action Plan. PDAC recommends that a whole-of-government approach needs to be applied in developing and implementing the Action Plan, including cross-ministerial collaboration and federal provincial and territorial coordination.

When mineral exploration and development is done collaboratively, the industry can provide significant tangible benefits to Indigenous Peoples and communities across Canada. Industry has made significant

¹ <https://www.justice.gc.ca/eng/declaration/about-apropos.html>



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strides over the last decade to improve engagement practices and establish a social license to operate. Bill C-15 has the potential to provide a framework that reinforces the positive steps taken by industry to date, but will only be successful if the federal government commits the necessary resources to allow meaningful and informed participation by Indigenous communities and businesses. The Bill must be clear, predictable and practical in order to give Indigenous proponents the opportunity to develop and grow and ensure Canada's mineral industry remains competitive on the global stage.

PDAC will continue to work with our members from across the country to identify and relay concerns. We look forward to collaborative engagement as Bill C-15 continues through the parliamentary process and as we move forward towards reconciliation together.

Sincerely,

Lisa McDonald
Executive Director
Prospectors & Developers Association of Canada (PDAC)

Cc: