



To: House of Commons Standing Committee on Indigenous and Northern Affairs

From: *Dän nätthe äda Kaaxnox* (Chief Steve Smith) on behalf of Champagne and Aishihik First Nations

Re: Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*

Purpose: To provide comments about Bill C-15, the proposed *United Nations Declaration on the Rights of Indigenous Peoples Act*, from CAFN's perspective as a self-governing Yukon First Nation.

1. Introduction

Thank you for providing an opportunity to make a written submission on Bill C-15. I am the *Dän nätthe äda* (Chief) of CAFN. The *Shadhäla Äshèyi yè Kwädän* (Champagne and Aishihik First Nations or CAFN) is a self-governing First Nation located in the Yukon Territory and northwest British Columbia, Canada.

The *Shadhäla Äshèyi yè Kwädän* (CAFN) people and government are named after two historic settlements: *Shadhäla* (Champagne), located on the Dezadeash River; and *Äshèyi* (Aishihik), at the headwaters of the Alsek River drainage. Champagne and Aishihik *Dän* (people) also lived throughout the region in other villages including Kloo Lake, Klukshu, Canyon, Shäwshe and Hutchi.

CAFN has more than 1,200 *Dän* (people) and is one of the largest of the 14 Yukon First Nations. The CAFN Traditional Territory spans 41,000 square kilometers in total (29,000 in the Yukon and 12,000 in British Columbia). The eastern edge of CAFN's Traditional Territory lies in the Yukon River watershed, while the larger, westerly portion lies in the Alsek River watershed which flows into the Gulf of Alaska. Much of Kluane National Park and Reserve and all of Tatshenshini-Alsek Park (BC) are part of CAFN's Traditional Territory.

Today, the CAFN's main government offices are located in Haines Junction, in addition to a busy office in the territorial capital of Whitehorse.

This submission will be confined to issues of specific concern to CAFN as a self-governing Yukon First Nation.

2. Diversity of Indigenous Peoples (Self-Governing Yukon First Nations)

CAFN submits that the federal government should consult directly with self-governing Yukon First Nations about Bill C-15 and the development of the Action Plan as a distinct subset of "Indigenous People" on a Nation-to-Nation relationship level and identify resources to ensure a meaningful engagement because CAFN and other self-governing Yukon First Nations have specific concerns as First Nations leading the way in self-government and modern treaties that may otherwise be ignored.

3. Defining Indigenous Governing Bodies

CAFN notes that British Columbia's *Declaration on the Rights of Indigenous Peoples Act* [SBC 2019] C. 44 ("DRIPA") contains a clause enabling the government to enter into decision-making agreements with *Indigenous Governing Bodies*. In Bill C-15, "Indigenous governing body" means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982.

DRIPA goes further than Bill C-15: it contains provisions that allow ministers to enter into agreements with Indigenous bodies to implement UNDRIP. DRIPA also allows the B.C. Cabinet to approve agreements to share statutory decision-making powers with Indigenous bodies or to delegate those powers to decision-makers agreed to by Indigenous bodies.

CAFN submits that Bill C-15 should be amended to include the provisions in DRIPA outlined above in relation to Indigenous Governing Bodies.

4. The Action Plan – More Realistic Timeframes

Bill C-15 states that federal government will work in consultation and cooperation with Indigenous peoples across the country to develop an action plan (within 3 years) that will include:

- Measures to address injustices,
- Mechanisms to support reconciliation,
- Direction that the Minister, in consultation and cooperation with Indigenous people, provide annual reports to Parliament on how they are bringing the declaration into Canadian law.

CAFN submits that section 6(4) of Bill C-15 should be amended to provide for more practical timelines to develop and operationalize an action plan (**ie.** 3 years) that incorporates appropriate consultation with rights holders (including self-governing Yukon First Nations like CAFN) across the country.

5. All Governments to Align in relation to Bill C-15

CAFN submits that all governments in Canada need to align in relation to Bill C-15. Provinces and territories should not be allowed to “opt out”.

The Declaration, attached as a Schedule to Bill C15, is an international human rights instrument that contains 46 articles that affirm the minimum human rights standards for the survival, dignity and well- being of Indigenous peoples throughout the world, and includes the recognition of rights specific to Indigenous self-determination and self-government; Indigenous rights to culture, language and identity; Indigenous rights not to be forcibly removed from lands or territories; Indigenous rights not to be relocated from lands without free, prior and informed consent and fair and just compensation upon agreement; and the recognition that Indigenous people have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.

CAFN submits that Yukon Government could be proactive in this regard and, in consultation with Yukon First Nations, enact its own territorial statute (consistent with Bill C-15) to implement UNDRIP in the Yukon. In the meantime, it is our view that Bill C-15 applies to the Yukon Government.

6. Non-Derogation Clause

CAFN wants to be certain that Bill C-15 is never interpreted to change the nature or character of UNDRIP by subordinating it to section 35(1) of the *Constitution Act*, 1982. CAFN acknowledges that the Bill contains a non-derogation clause, which states: “This Act is to be construed as upholding the rights of Indigenous Peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.”

In the context of Bill C-15 it is CAFN's desire to ensure that the legal effect of the non-derogation clause in Bill C-15 is that there are no negative impacts on modern treaties (such as CAFN's Final Agreement) as result of the Bill, and also that UNDRIP can only be used to build above and beyond what is already protected under section 35 of the *Constitution Act*, 1982 and to encourage interpretation and implementation of our existing agreements consistent with UNDRIP.

CAFN notes that the non-derogation clause in Bill C-15 is not the same as the non-derogation clause proposed in Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples (the “United Nations Declaration on the Rights of Indigenous Peoples Act”)*, which was sponsored by Romeo Saganash (Abitibi – Bale-James – Nunavik – Eeyou). CAFN asks that the federal government amend Bill C-15 to return to the language proposed in Bill 262, which is more explicit that there is no attempt to undermine or lessen the impact of the declaration in Canada and to somehow make it subordinate to any negative jurisprudence that has developed over time.

Aboriginal and treaty rights

2 (1) For greater certainty, nothing in this Act is to be construed so as to diminish or extinguish existing aboriginal or treaty rights of the Aboriginal peoples

of Canada that are recognized and affirmed in section 35 of the Constitution Act, 1982.

Declaration

(2) Nothing in this Act is to be construed as delaying the application of the United Nations Declaration on the Rights of Indigenous Peoples in Canadian law.

7. Proper Recognition of Self-Government in Bill C-15

CAFN submits that Bill C15 should be strengthened to properly recognize and implement self-government as originally expressed in UNDRIP. For example, Recital 12 of Bill C-15 could be moved to the body of Bill C-15 and be amended so that the following words would be added at the end of the clause, “and ways and means for financing their autonomous functions”. The clause would then read: “Whereas the Government of Canada recognizes that all relations with Indigenous Peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government and ways and means for financing their autonomous functions.”