



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

Brief from WaterPower Canada to
the House of Commons Standing
Committee on Indigenous and
Northern Affairs

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Introduction

This brief is submitted to the House of Commons Standing Committee on Indigenous and Northern Affairs (INAN) for the subject-matter study of *An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples* (Bill C-15) by WaterPower Canada (WPC). WPC is the national trade association that represents hydroelectricity producers, and their suppliers of goods and services. Waterpower is central to Canada's climate action, energy security, and economic competitiveness producing more than 60% of our total electricity.

Support for Reconciliation and Implementing UNDRIP in Canada

WaterPower Canada (WPC) supports the key principles of Bill C-15, which include: addressing injustices; combating prejudice; eliminating all forms of violence and discrimination against Indigenous Peoples, including systemic discrimination; recognizing the inherent rights of Indigenous Peoples, including the rights to self-determination and self-government; and promoting mutual respect, understanding, and good relationships. Pursuing these principles, which are also embedded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), will help our Members and all of us in Canada to continue the journey toward reconciliation, and to build social, economic and environmental justice and prosperity for Indigenous Peoples.

Legislative Issues and Implementation

Bill C-15 provides a framework for the implementation of UNDRIP in Canada. UNDRIP speaks to broader issues than resource development – it is about reconciliation and protecting basic human values. In the Canadian resource development sector, UNDRIP is not a complete revolution and is largely consistent with the Canadian legal framework as interpreted by the Supreme Court of Canada since 1982, including the Crown's duty to consult and accommodate Indigenous Peoples. As is the case with most legislation, there are key aspects to Bill C-15 that require refinement and clarification as it moves through the legislative process.

- It will be important for our sector to have a clear understanding of whether Bill C-15 will change any of the federal government's current legal obligations, or change the obligations and legal precedents already set through practices in relation to the Canadian resource development sector. If so, that could change what our Members are required to do with respect to their operations and other activities. Bill C-15 states that the federal government must "*take measures necessary to ensure that the laws of Canada are consistent with the Declaration.*" The legislation needs to confirm more explicitly that it does not imply the immediate application of the whole of UNDRIP in Canadian law. Rather, its intent is to require the federal government to determine, in consultation and cooperation with Indigenous Peoples, how the general principles set out in UNDRIP will be translated into specific programs, actions and/or legislation. To do so, the federal government will necessarily have to take into account various – and potentially competing – interests and perspectives both within Indigenous communities and Canadian society as a whole. The governmental discretion inherent to this process is fundamental. It is not for the courts to read-in UNDRIP-inspired measures into existing legislation, but rather for the federal government to carry this exercise.
- Throughout UNDRIP the phrase "*free, prior and informed consent*" is used when referring to Indigenous lands and traditional territories. WPC understands that Bill C-15 is not intended to change Canada's existing duty to consult Indigenous Peoples about projects developed on their traditional territories. WPC also understands that the principle of "*free, prior and informed consent*" does not entail the imposition of a particular solution on project proponents or Indigenous Peoples and that it does not grant a veto power over resource development; rather, it is a way to encourage dialogue, and a way of working together with Indigenous Peoples in the pursuit of consensus.

This will be important for providing certainty as new resource projects are being planned. The types of clarifications that would be helpful include: the processes that may be involved (for example, the Honourable David Lametti, Minister of Justice and Attorney General of Canada has previously stated that "*free, prior and informed consent*" is a process rather than a veto); mechanisms for determining appropriate representation; and processes to address potentially conflicting views about a potential development. It will be important that the federal government provide clarity before the legislation is passed and/or define in the legislation or the Action Plan, on how these provisions in UNDRIP that mention "*free, prior and informed consent*" will be implemented in coherence with existing Canadian law, and in particular, with Section 35 of the *Constitution Act*. Clarity on this issue is of particular importance due to instances where there can be uncertainty or conflict as to who speaks for Indigenous communities (e.g. elected Chiefs, Hereditary Chiefs, or the community at large), and/or where different Indigenous groups have overlapping traditional territories but conflicting views on whether economic development projects should proceed.

Finally, WPC is highly interested in understanding how the Action Plan referred to in Bill C-15 will be developed and implemented, since it will set the stage for how Canada will work with Indigenous Peoples in the future, including with respect to engagement on resource operations and projects. Given this, we believe the Action Plan process would benefit from a broad range of perspectives, including those of our Members who have important experience and insights in the development and use of Canada's water resources. Many of our members have established long-term, positive relationships with Indigenous Peoples across Canada. The learnings gained through these relationships are considerable and can contribute to deliberations as the legislation is passed, and when the Action Plan is developed and implemented.

Conclusion

There remains much work to be done to build long-term sustainable relationships with Indigenous communities across the country and to create opportunities for Canada and all Canadians to learn more from Indigenous Peoples, and about them and their relationships to the land and its resources. WPC and our Members are committed to continuing to contribute positively to this national dialogue and are interested in working with the federal government, Indigenous Peoples and other interested parties as we all move forward together on Canada's reconciliation journey.