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

FEBRUARY 2021

Our respective organizations have a common mandate: to improve the economic outcomes of Indigenous peoples in Canada through participation in major resource projects. We view economic development and participation as necessary conditions for achieving self-determination and improving the well-being of our peoples and our nations.

It is from that perspective that we provide this statement on Bill C-15. While we unequivocally support greater recognition of Indigenous rights, our economic aspirations require that the regulatory and legislative landscape for resource development, including the processes for consulting with and obtaining consent from Indigenous peoples, are clear.

Our right to economic development, which UNDRIP affirms, includes the right "to determine and develop priorities and strategies for the development or use of [our] lands, territories and other resources." This right is meaningless if we cannot attract investment or business partners to develop our resources.

Federal governance structures have often worked to deter investment in Indigenous lands and territories, and reduce our business competitiveness. C-15 has the potential to add one more barrier between Indigenous peoples and industry, on top of the Indian Act and other legislation. The added uncertainty, hurdles and risk to development on Indigenous territory makes it difficult for both Indigenous and non-Indigenous proponents to attract investment, and more expensive when they can, due to risk premiums. Undermining our own economy is not a recipe for prosperity and self-determination.

Bill C-15 is too important to rush, and too important to get wrong. UNDRIP legislation must support UNDRIP principles. To that end, we request and expect clarification on the following elements before C-15 legislation is passed:

- C-15 has the potential to create uncertainty for investment in Indigenous territory by being unclear about who can provide consent on behalf of a nation, including who has the authority of a "representative institution" as identified in UNDRIP. Project proponents need to know who can provide consent in order to obtain it. There needs to be a process by which nations make clear who can provide that consent on their behalf. The issue of how consent can be achieved by a representative institution – by referendum, Band Council Resolution or otherwise – also needs to be clear.
- Current jurisprudence on resource development in Indigenous territories relies heavily on inherent Aboriginal rights, as affirmed in s.35 of the Constitution; and the articulation of the duty to consent and accommodate in various Supreme Court cases. If C-15 changes the current process by which industry must consult with Indigenous peoples to obtain consent and project approvals, it must articulate how.
- The uncertainty in the legislation makes it likely that it will be used as a legal strategy to delay and stymie resource development projects by groups that oppose extractive and other resource projects under any circumstances, even those where Indigenous nations are overwhelmingly in favour. We want to make sure C-15 protects Indigenous rights, as self-determining nations, to make decisions about our own resources through our own representative institutions. As it stands we have legitimate concerns that C-15 will provide special interests with a tool to undermine this right in Canadian courts.

We support efforts that affirm our inherent Indigenous rights, and endorse the principles of UNDRIP. We want industry to meet higher standards for consultation and engagement, not minimum ones. But legislation that adds uncertainty to what Indigenous rights mean in practice, especially with regards to resource and infrastructure development, is not beneficial for Indigenous economic development. We need Bill C-15 to be amended so that it provides practical, not just symbolic, benefits for Indigenous peoples.