



WITHIN OUR CONTROL:

Improving the regulation of business-Indigenous peoples' relationships

November 2018

Part of the Regulatory Series: RegulateSmarter.ca



Canadian
Chamber of
Commerce

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INTRODUCTION

It is a time when many of the forces affecting Canada's competitiveness and our economic and social well-being are beyond our control.

From trade agreements to tax reductions and regulatory streamlining, our major trading partners have us on the competitive hot seat. Our attractiveness as a place in which to invest is slipping due to our relatively high and complex taxes compounded by a regulatory environment that is unpredictable.

We cannot control the actions of other countries. We can, however, seize the opportunity to create a positive tax and regulatory regime for Canadians. We have to take a hard look at both and be prepared to make changes to ensure businesses stay competitive, and that Canada remains an attractive place to invest, start a company and create the jobs upon which our economic and social well-being depend.

There are tens of thousands of federal regulations that touch all of us in our personal and working lives.¹ In this report, we're focusing on a relatively narrow, yet critical area of federal regulation; the relationships between businesses and Indigenous peoples.



¹ According to the Treasury Board Secretariat's Government-wide Administrative Burden Baseline Counts: Update 2017, there are more than 100,000 federal regulations. (www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/administrative-burden-baseline/government-wide-update-2016.html Accessed August 28, 2018) In 2015, the Treasury Board Secretariat reported 131,754 federal requirements that impose an administrative burden on businesses (Treasury Board Secretariat, 2015-16 Annual Report: Reducing Regulatory Administrative Burden and Improving Service Predictability, 2016.)



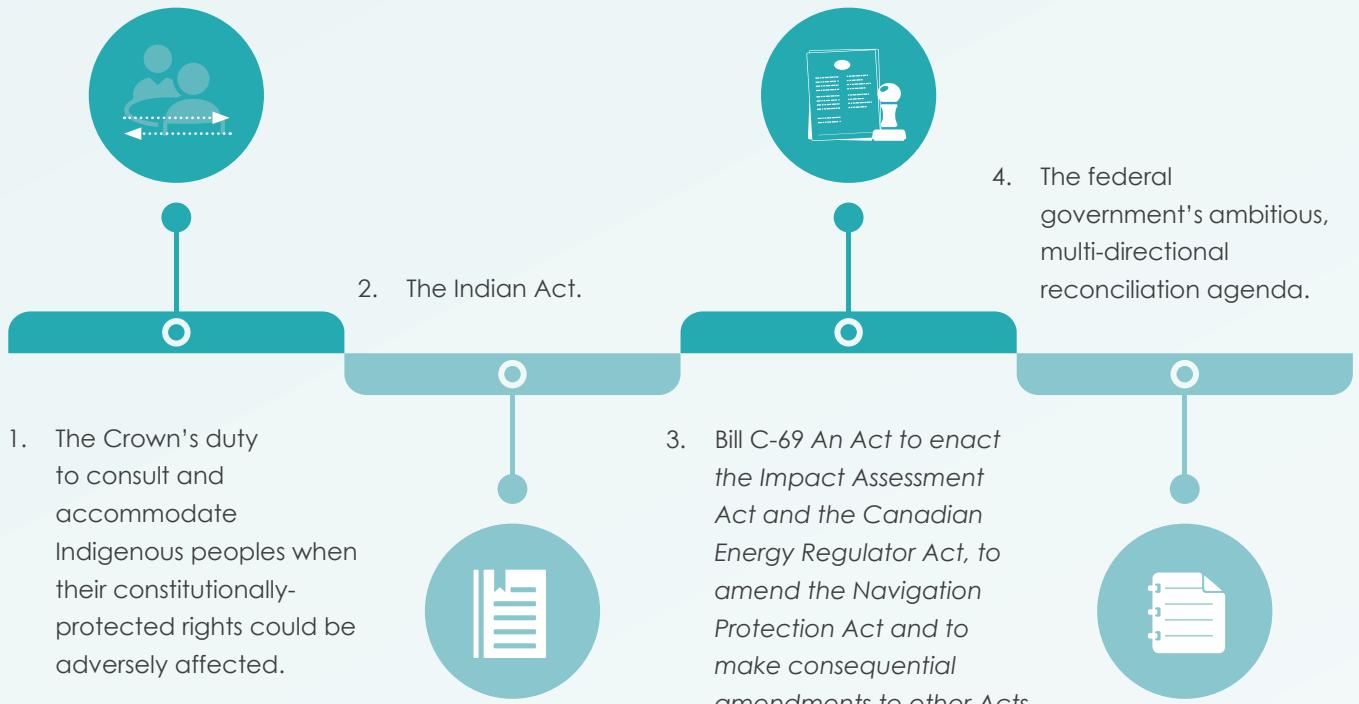
Improving the tools for businesses and Indigenous peoples to work better together will improve the fortunes of both and make us more competitive as a country. We can no longer afford to have arcane laws and regulations holding Indigenous and non-Indigenous peoples and businesses back. Not only do they hinder productive relationships between businesses and Indigenous communities, they add another layer of government-imposed costs to business which is a growing concern for companies operating in Canada and those considering investing here. They also have a high cost in lost opportunities for Indigenous communities.

Addressing the regulatory oversight of the relationships between business and Indigenous peoples would go a long way in fostering

reconciliation not only between businesses and Indigenous peoples, but amongst all Canadians. Reconciliation with Indigenous peoples in all facets of our society is important to move our country forward. If we can succeed it will also create greater certainty for business, be good for Indigenous peoples and all of Canada.

During the spring and summer of 2018, the Canadian Chamber of Commerce spoke with its members and other business people, in addition to representatives of Indigenous governments and economic development corporations. The relationships the organizations represented have with each other include rights holders, employers, customers, sources of capital, investors, partners, suppliers and First Nations economic developers.

While the discussions covered many issues, they often returned to four touchpoints on the relationships between businesses and Indigenous peoples:



Until the Crown, businesses and Indigenous peoples have clear, principles-based frameworks for their relationships that have the flexibility to recognize the differing situations of projects, too many times it will be left to the courts to chart the path forward and highlight in many cases what **does not** constitute respectful, meaningful consultation on the part of the Crown. This is not acceptable and certainly not how a country that is fighting for its competitive life wants to conduct, or be seen to conduct its affairs.

The shifting sands of regulation in Canada are causing companies to curtail their growth plans, pull out of projects or invest elsewhere. The businesspeople we spoke with said that regulation of the relationships between business and Indigenous peoples needs to have a period of certainty (a minimum of five-years was suggested) so that both can engage with each other and develop respectful, productive partnerships without the threat of the rules of engagement constantly changing.



THE CROWN'S DUTY TO CONSULT AND ACCOMMODATE INDIGENOUS PEOPLES

Little has changed in the two years since the Canadian Chamber examined the federal Crown's constitutional duty to consult and accommodate Indigenous peoples whose rights could be adversely affected by developments, where specific recommendations on how to improve its clarity for Indigenous peoples, businesses and itself were offered.²

The process remains as opaque and complicated as ever. Even the federal government struggles with executing its duty under the current process.

In its August 30 decision, *Tsleil-Wauthth Nation v. Canada (Attorney General)*, the Federal Court of Appeal found the federal Crown "... fell short of the required mark for reasonable consultation ... On the whole, the record does not disclose responsive, considered and meaningful dialogue coming back from Canada in response to the concerns expressed by the Indigenous applicants."³ The Federal Court's judgement that the federal government failed to adequately fulfil its duty was one of the reasons the Court quashed the Trans Mountain Pipeline Expansion Project.⁴ The Court instructed the federal

government to re-do its Phase III consultation for the project. "Only after that consultation is completed and any accommodation made can the Project be put before the Governor in Council for approval."⁵

In 2016, the Federal Court of Appeal ruled that the federal Crown's failure to adequately execute its duty to consult and accommodate Indigenous peoples' concerns with the Northern Gateway Pipeline project was the rationale for it quashing that project. The result: the project died and along with it the investments of the proponent and dozens of Indigenous communities as well as the hopes of others counting on the jobs and long-term economic opportunities it would bring.

While the federal government grapples with its own challenges with its duty to consult and accommodate processes, Canadian businesses and Indigenous peoples are often left navigating a process that is confusing, with inadequate guidance from the federal government and hoping that they come out at the other end whole with their respective rights and interests met. This is particularly concerning when the federal government, which has difficulties executing its own responsibilities, exercises its right to delegate the duty to consult to project proponents.

² Seizing Six Opportunities for More Clarity in the Duty to Consult and Accommodate Process, Canadian Chamber of Commerce, September 2016

³ Federal Court of Appeal Decision, *Tsleil-Wauthth Nation v. Canada (Attorney General)*, paragraphs 557-559, August 30, 2018

⁴ Ibid., paragraph 764. The Federal Court also found that the National Energy Board, "... unjustifiably excluded Project-related shipping from the Project's definition."

⁵ Ibid., paragraph 771

Companies invest heavily in projects, as well as conduct their duties properly and responsibly with the belief the Crown will do the same. Yet, they are at the mercy of the Crown. When it fails to execute its duties, projects and community benefits die.

An example of how the federal government's duty to consult and accommodate process falls short is its *Consultation and Accommodation Guidelines for Proponents*. Available since mid-2015 and still described as a draft, this document states, "Should the Government of Canada rely on the activities of industry proponents in meeting its obligations, it will clearly communicate this reliance to both the proponent and the potentially affected Aboriginal groups."⁶ While this document provides the advice to proponents to "develop the relationship" with Indigenous peoples as one of their first steps in moving their projects forward, it also advises them to "carry out consultation activities" without any apparent involvement of or more than vague guidance from the federal Crown. Amongst its missing elements are:

- Clarity concerning the triggers to the duty to consult and accommodate for project proponents.
- Guidance for Indigenous communities.
- Case studies that both businesses and Indigenous communities could use that demonstrate the relationship between Indigenous communities' strength of claim, the severity of the impact of a project and the intensity of consultation required.

A consistent framework is needed



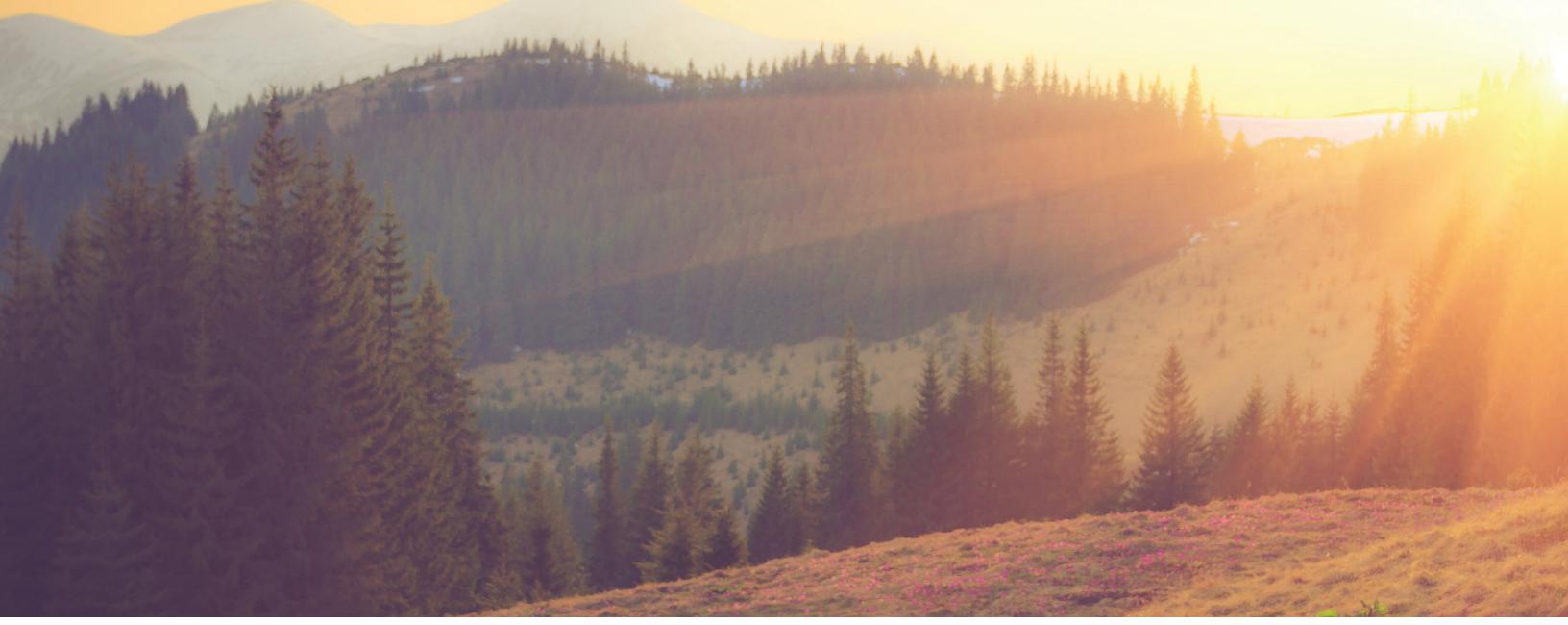
"...the federal government should clarify the rules of engagement for the private sector to engage with the Métis Nation. This will spur economic development and wealth creation for the Métis people and reduce uncertainty and regulatory burden for industry which works to the detriment of all Canadians."

- Métis National Council

⁶ www.aadnc-aandc.gc.ca/eng/1430509727738/1430509820338

Business people have no difficulty with the Crown delegating the procedural aspects of the duty to consult and accommodate, as it is often the most desirable path for themselves and Indigenous communities. While the details of the duty to consult and accommodate processes can and should vary according to the projects and Indigenous peoples involved, a consistent framework is required that includes essential information at the outset that includes:

- The aspect(s) of the project that has/have triggered the duty to consult and accommodate.
 - Which Indigenous peoples' rights are affected and who needs to be consulted because their rights have the potential to be affected.
 - The project's impact and intensity of consultation required (including case studies of previous projects that demonstrate when "low", "medium" and "high" intensity consultations were required.)
 - What information the Crown will provide to businesses and Indigenous communities, including:
 - Will it provide advice or direction only?
 - Will it be "on the ground" in Indigenous communities?
- If appropriate, a pre-consultation engagement process initiated by the Crown that brings the affected Indigenous peoples and proponent(s) together.
 - Guidance for the businesses and Indigenous communities involved on how to most effectively engage with each other.
 - How the consultation should be undertaken:
 - With whom the proponent should engage and consult, as it differs depending upon the Indigenous communities affected.
 - How the Indigenous community(ies) can engage with the proponent.
 - What information needs to be provided to, and received from the community(ies).
 - What resources will be available to Indigenous communities, (when needed) for assistance is demonstrated and/or requested.
 - What costs will be borne by whom.
 - What issues the consultation should cover and what is out of scope.



*"Indigenous peoples
need to engage as well.
If you don't participate
you're relinquishing your
ability to influence the
outcome."*

*- Thunder Bay business
person*

The Supreme Court has provided some clarification on the duty to consult and accommodate Indigenous peoples. An example is the Court's 2017 decision *Ktunaxa vs. British*



Columbia in which it noted that Section 35 of the Constitution guarantees Aboriginal peoples a process, but it does not guarantee them a particular result. The Court stated that Aboriginal consent is only required for "proven claims and only then in certain cases"⁷, such as Aboriginal title, and that the duty to consult does not provide a veto over land development.

Linear developments such as, pipelines, roads, railways and electricity infrastructure, provide their own set of consultation and accommodation challenges. Unlike mines or other site-specific projects, which require engagement, consultation, and accommodation with a single or relatively few affected Indigenous communities, linear projects can extend for up to thousands of kilometres and cross dozens of Indigenous lands/territories. This makes unanimous consent very unlikely and, at best, very complex to accomplish. That said, it can be done. Enbridge's Line 3 Replacement Program is an example.



⁷ Supreme Court of Canada, *Ktunaxa vs. British Columbia*, November 2, 2017

Enbridge's Line 3 Replacement Program is the largest project in the company's history, replacing more than 1600 km. of aging pipeline and associated facilities in Alberta, Saskatchewan, Manitoba as well as North Dakota, Wisconsin and Minnesota.

The Line 3 Replacement Program involved the most comprehensive Indigenous consultation and engagement initiative in Enbridge's history. In Canada, Enbridge engaged early in the project planning stage, before filing the project's application. At the direction of the National Energy Board, Enbridge consulted with more than 150 different Indigenous groups as far away as 300 km. from the existing pipeline right of way across Alberta, Saskatchewan and Manitoba. Results from these consultations informed final approval of the project by the federal government in 2016 and were reflected in conditions attached to the certificate authorizing its construction and operation. Construction commenced in 2017 and will be completed in 2019. Currently, there are no legal challenges based on Indigenous rights.

The Métis National Council has cited the Line 3 project as an example of where business is ahead of the Crown when it comes to consultation with and accommodation of Indigenous peoples. "Rather than waiting for Ottawa and the provinces to get their acts

together, Enbridge decided on its own that half of the Indigenous set-aside on the Line 3 replacement in Manitoba would go to Métis and that has enabled Métis construction companies to work out joint ventures with main contractors."

Strategic Engagement Agreements

In British Columbia, the provincial government has negotiated Strategic Engagement Agreements with dozens of First Nations. Rather than approaching the duty to consult and accommodate on a project-by-project basis, the agreements stipulate such things as:

- Each First Nation's rights.
- The engagement process and timelines for different levels/categories of projects.
- The responsibilities of government agencies, proponents and First Nations.

- A disputes resolution process.
- A process through which the province notifies First Nations of upcoming engagements.
- Capacity funding.⁸

Companies would welcome a similar approach by the federal government. Having these agreements in place creates certainty for the Crown, Indigenous communities and project proponents. Businesses know what to expect, what is expected of them and can build their engagements with Indigenous communities and consultations on behalf of the Crown.

Regional Development Plans

There are many gaps in regional planning in Canada. Addressing this would, in many business peoples' minds, offset and address issues related to obtaining consent. The issue of the number and scope of developments on or around Indigenous lands are a concern due to:

- The capacity of Indigenous communities to assess and respond to multiple development proposals simultaneously.
- The lack of a comprehensive assessment of the cumulative impacts of previous and current developments to use as a reference point for assessing new project proposals.

Regional development plans would assist Indigenous communities, businesses and the Crown to answer such questions as:

- What are the cumulative effects of developments to date?
- Do you need to stay out of this area?
- Is an infrastructure corridor the answer?

Some business people suggested the issues related to the need for regional development plans are much broader than any single regulatory agency as they affect all types of projects and need to be addressed through a separate Crown-led process.

⁸ <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/strategic-engagement-agreements>. Accessed September 19, 2018



THE INDIAN ACT

The infamous *Indian Act* continues to cast a shadow over relationships between businesses and First Nations. Despite some legislative options for First Nations wishing to exercise more economic autonomy,⁹ many relationships with off-reserve businesses and on-reserve economic development can only move forward at the behest of the federal government. For example, if a First Nation wishes to lease some of its on-reserve land to an off-reserve business, a permit from the federal government is required.

Replacing the Indian Act, however, is no easy matter as many governments have discovered. Several First Nations agree that, while the Indian Act is a social and economic paralyzer, there is no clear vision of what should replace it given the diversity of First Nations' social and economic development, as well as their capacity.

While many First Nations leaders believe the federal government needs to ultimately relinquish its jurisdiction over reserve lands, until that occurs there needs to be a mechanism to allow First Nations governments that desire it to extricate themselves from aspects of the Indian Act that do not require decades and millions of dollars in legal proceedings.



The federal government should allow First Nations to extricate themselves from one or more aspects of the Indian Act via a Band Council resolution and the demonstrated support of a clear majority of band members.



⁹ Examples include the *First Nations Land Management Act* (1999), *First Nations Commercial and Industrial Development Act* (2006) and *First Nations Certainty of Land Title Act* (2010).



RECONCILIATION

The federal government's ambitious and multi-directional reconciliation agenda is confusing for businesses and Indigenous communities. Too many initiatives are at play simultaneously and switching directions. More than a year-and-a-half after the Prime Minister gave six ministers¹⁰ the mandate to review all federal laws and policies affecting Indigenous peoples and nine months after committing the government to recognizing and implementing Indigenous rights into federal laws, policies and regulations, Canada's businesses (except for limited consultations with natural resource companies) have yet to be brought into the discussion. This situation has left a lot to interpretation for businesses and Indigenous communities.

There is a feeling in the business community that either the government does not have any direction or has already made up its mind on what reconciliation is going to look like and is just going through the motions.

"The government needs to be clear on what 'reconciliation' means. On the political level it means something completely different from the realities of what needs to happen to make a meaningful difference in Indigenous peoples' lives. I don't think the government understands the impact business has had—and can have—on improving Indigenous peoples' lives. They're missing a great opportunity to build for the future. Indigenous peoples are thinking 'way up here,' while the government is thinking 'way down there.'"

- Yellowknife business person

¹⁰ This 6-minister working group has been replaced by a Cabinet committee responsible for the recognition and implementation of Indigenous rights into Canadian laws, policies and regulations.

The relationships between many businesses/project proponents and Indigenous communities has evolved, while the government has yet to catch up. In many cases, Indigenous peoples are looking for more than a share of a project's revenues and employment. They want to be business owners and employers. "They're no longer saying 'What can you give us?', they're saying, 'This is what we want.'", said a Thunder Bay business person.

The business people we spoke with feel the fast pace and scattered approach of the federal government to reconciliation does not allow for effective engagement with Indigenous peoples and for other voices, like business, to be heard. Having not had the opportunity to provide their perspectives, many businesses are looking ahead with some trepidation to the legislation the federal government had promised to introduce by the end of 2018 regarding the recognition and implementation of Indigenous rights into Canadian laws, policies and regulations and its impact on their relationships with Indigenous peoples.

The sooner the federal government can provide clarity on the specifics of changes to federal laws and polices related to Indigenous peoples, the better it will be for businesses, Indigenous communities, the thousands of people who depend upon their relationships and our national competitiveness.

Further complicating matters related to reconciliation is the failure in some Indigenous business peoples' minds of the federal



government to “reconcile its own sovereignty” by taking responsibility for its treaty commitments and recognizing Indigenous peoples’ rights. Several business people said they felt recognition of rights is paramount and would allow other things to fall into place. However, until that happens a lot is left to interpretation and ultimately the courts.

The government needs to work with Indigenous peoples to choose priorities for reconciliation that need to be addressed and what success in achieving them would look like. Otherwise, we risk finding ourselves in a decade having made no progress at all.

UNDRIP

Canadian Chamber of Commerce members support the government’s commitment to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principles of 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* (in the Senate at the time of writing).

In its final report, the Truth and Reconciliation Commission called upon Canadian businesses to adopt the United Nations Declaration on the Rights of Indigenous Peoples as the framework for their relationships with Indigenous peoples. Many Canadian Chamber of Commerce members are doing so and had respectful, mutually-beneficial relationships prior to the

Declaration’s existence. It is time that Indigenous rights take their proper place in Canadian laws and regulations. That said, there must be clarity on how its articles will be interpreted. Much of the focus on the UNDRIP is on the effect of its principle of free, prior and informed consent (FPIC), equating it to the right to “veto” projects.¹¹ The Supreme Court has offered clarification on the subject of consent, including in the previously-cited 2017 Decision *Ktunaxa vs. British Columbia* in which it stated that Aboriginal consent is only required for “proven claims and only then in certain cases”, such as Aboriginal title.¹² The Federal Court of Appeal also addressed the issue of veto. In its August 30, 2018 Decision regarding the Trans Mountain Pipeline Expansion Project, it [the Federal Court] stated, “...the consultation process does not give Indigenous groups a veto over what can be done with land pending final proof of their claim. What is required is a process of balancing interests—a process of give and take. Nor does consultation equate to a duty to agree; rather, what is required is a commitment to a meaningful process of consultation.”¹³

There are other articles of UNDRIP that businesses believe will need to be made clear if it is to be effectively harmonized into Canadian laws, policies and regulations. An example is Article 32 which addresses the use of Indigenous lands, territories or resources. If UNDRIP is harmonized with Canadian laws, it will be essential for “acceptable” use of Indigenous lands, etc. to be defined.

¹¹ Article 19 of the Declaration states: “States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adoption and implementing legislative or administrative measures that may affect them.”

¹² Supreme Court of Canada, *Ktunaxa vs. British Columbia*, November 2, 2017

¹³ *Tsleil-Waututh Nation v. Canada (Attorney General)*, paragraph 494

The Truth and Reconciliation Commission's Call-to-Action 92

The Truth and Reconciliation Commission, in its 2015 report, called up Canadian businesses to:

"... adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework ..."

This would include, but not be limited to, the following:

- Commit to meaningful consultation, building respectful relationships and obtaining the free, prior and informed consent of Indigenous peoples before proceeding with economic development projects.
- Ensure that Aboriginal peoples have equitable access to jobs, training and education opportunities in the corporate sector and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
- Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law and Aboriginal—Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights and anti-racism."

While many larger companies have and continue to manage their relationships with Indigenous peoples within the spirit of this call-to-action, for smaller firms it is a tall order to provide workplace education programs. Research conducted in 2017 by Indigenous Works found that only 15% of medium and large Canadian companies are effectively engaging with Indigenous peoples.¹⁴ Not surprisingly, those companies that were engaging effectively are primarily large natural resource companies.

Canadian businesses know they must do more and the Canadian Chamber of Commerce has entered into a three-year partnership with Indigenous Works to provide its members with the tools to do so. Where the government could assist is in providing some core tools for smaller firms that do not have human resources departments to develop programs. Core educational materials developed in partnership with national Indigenous organizations should have been created long ago by the federal government and made available to all Canadians in a format that is easily adaptable for a variety of different applications (e.g., schools and business) and regions.

¹⁴ Researching Indigenous Partnerships: An Assessment of Corporate-Indigenous Relations, Indigenous Works, 2017



BILL C-69

Bill C-69 An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts (before the Senate at the time of writing) proposes to replace the National Energy Board (NEB) and replace it with the Canadian Energy Regulator. It would also give the NEB's responsibility for assessing the impact of proposed projects to a new Impact Assessment Agency of Canada. Another provision of the Bill would open the doors wider to more parties wishing to intervene in project reviews.

Bill C-69 has several positive aspects to it, including its Planning Phase which would oblige proponents to engage and plan with Indigenous communities early, the commitment to a "one project-one assessment" principle, an increased priority on improving Indigenous capacity to be involved in the business process for projects, the consideration of projects' social and economic impacts (positive and negative) and Indigenous peoples being represented on review panels.

Bill C-69 also states that impact assessments will integrate "scientific information and Indigenous knowledge."¹⁵ Businesses recognize the importance of traditional knowledge and

agree in principle with the government's efforts to actively involve Indigenous communities in the assessment process, but C-69 leaves much uncertainty on how Indigenous knowledge will be weighed in assessments. The legislation notes that "Any Indigenous knowledge that is provided to the Minister, the Agency, a committee referred to in section 92, 93 or 95 or a review panel under this Act in confidence is confidential and must not knowingly be, or be permitted to be, disclosed without written consent."¹⁶ This prevents proponents from being reasonably aware of the factors that may impact their projects. It is essential, given the broad umbrella of practices that fall under Indigenous knowledge, that the government provide additional clarity regarding what it is, how it will be considered, and what weight it will be given in the assessment process. Even more perplexing is that, if passed, Bill C-69 would see final decision making on major projects left to the Minister of Environment and Climate Change Canada and/or the Minister of Natural Resources. This added level of uncertainty will see investment in major projects become even more unattractive, projects dying and economic reconciliation hindered.

¹⁵ Bill C-69 An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

¹⁶ Ibid.

Several business representatives said the Bill would benefit from more of a business lens. This would include acknowledging the significant financial investments made by proponents in major projects and providing compensation to them when projects fail due to the Crown (or its agencies) failing to undertake its duties and responsibilities, for example the duty to

consult and accommodate Indigenous peoples. Compensation should also be provided to Indigenous communities that would have benefited from projects that do not proceed for the same reasons. The Northern Gateway and Trans Mountain Pipeline expansion projects are recent examples.



A WORD FOR BUSINESS

Government neither can, nor should, bear responsibility for all aspects of the relationships between Indigenous peoples and business. Just like all relationships, businesses need to nurture those with Indigenous communities even when they do not want their consent for a specific project. Businesses need to demonstrate they have a stake in the communities in which they operate by attending community events, building capacity and benefits that extend beyond the scope of their projects.

Companies would also go a long way in establishing relationships of trust with Indigenous communities by acknowledging that Indigenous peoples are their own subject matter experts. Proponents also need to recognize that their projects could have an impact on the security of communities and demonstrate they're prepared to address it.





TAKING CONTROL WHERE WE CAN

The federal government has made efforts to improve its regulatory processes with initiatives including requiring new regulations be assessed through a small business lens and the one-for-one rule. However, the reputation Canada once enjoyed as an attractive place to do business due to its stable legal and regulatory environment is declining. Companies are competing for capital worldwide and investors will not wait months, let alone years, for project approvals, specifically when there is the potential for approvals to be overturned due to the government failing to properly execute its duties. They will take their money elsewhere along with the jobs and social benefits that would have come along with the projects. The costs of complying with regulations represent

a significant proportion of overhead expense and net margin. The overlap and duplication of government regulations create additional, unnecessary costs to business and can become a nightmare for a company trying to navigate through them. Today, businesses must absorb the costs associated with regulatory compliance. There are no consequences for governments or regulators when their actions create delay or confusion. There needs to be a clear accountability framework established for both.

As Canada faces unprecedented uncertainty from sources we once thought we could count upon, there has never been a time when we needed more to seize the opportunity to take control of what we can.





RECOMMENDATIONS

1. Work with businesses, Indigenous peoples and other levels of government to develop a consistent duty to consult and accommodate framework that recognizes the different approaches to engagement, consultation and accommodation each community and project requires and clearly defines:
 - The aspect of the project that triggers the duty to consult and accommodate.
 - If the Crown will delegate all or some aspects of the consultation/ accommodation, which ones and when.
 - The Indigenous peoples affected and their rights (established and/or potential).
 - The level of consultation required and how it should be undertaken.
 - What information the Crown will provide to businesses and Indigenous communities.
 - What resources/capacity are required by the Indigenous communities and who is responsible for providing them and bearing any costs involved.
 - The Crown's involvement, including:
 - Primary contact person/resource.
 - Whether it will facilitate pre-consultation engagement between the proponent(s) and the affected Indigenous communities.
- o How the government will work with Indigenous peoples/governments and proponents throughout the process.
- Expectations of the affected Indigenous community(ies).
- Timelines (for proponents, Indigenous communities, and the Crown).
- How the Crown will monitor the consultation and accommodation negotiations between proponents and Indigenous communities to measure whether each met the expectations of them and their commitments.
2. Consider moving the duty to consult and accommodate to the Privy Council Office (PCO) which would encourage inter-departmental collaboration.
3. Where they do not exist, the federal government should negotiate Strategic Engagement Agreements with Indigenous communities that would provide predictability to business, Indigenous peoples and the Crown on what to expect and is expected from each for all projects.
4. The federal government, working with the provinces and territories, should conduct a review of where gaps in regional economic development plans exist. Once this review is completed, each level of government should work with the appropriate Indigenous communities and peoples to develop regional economic development plans that address historic and current developments, prospective developments and their impacts.

5. The federal government should allow First Nations to extricate themselves from one or more aspects of the Indian Act via a Band Council resolution and the demonstrated support of a clear majority of band members.
6. The federal government must provide clarity early in 2019 on the specifics of changes to federal laws and polices related to Indigenous peoples.
7. The federal government must “reconcile its own sovereignty” by taking responsibility for its treaty commitments and recognizing Indigenous peoples’ rights.
8. The federal government needs to work with Indigenous representatives/governments on defining reconciliation priorities (economic, rights and quality of life), the strategy for achieving them and the timelines for doing so.
9. The federal government must clarify how the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) will be interpreted if it is harmonized with Canadian laws.
10. The federal government, working with national Indigenous organizations and governments, should develop core educational materials in various media on the histories of Indigenous peoples as outlined in the Truth and Reconciliation Commission’s Call-to-Action 92. Once developed, this material should be made available publicly to all Canadians in formats that can be adapted for different applications and regions.
11. Regarding Bill C-69 (*An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*) the federal government should:
 - a. Clarify what Indigenous knowledge is, how it will be considered, and what weight it will be given in the assessment process.
 - b. Provide compensation to proponents when projects fail due to the the Crown or its agencies failing to undertake their duties and responsibilities, as well as to Indigenous communities that would have benefi ted from projects that do not proceed for the same reasons.



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