

CAPP represents companies, large and small, that are responsible for producing around 80 per cent of all the natural gas, natural gas liquids, crude oil, and oil sands across Canada, including offshore resources.

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## Bill C-15 – Background

CAPP supports an approach to implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Canada that preserves and enhances opportunities for reconciliation, including economic, social and environmental benefits for Indigenous communities. Resource development has been one of the strongest paths for building Indigenous prosperity in Canada.

Together, the **First Nations LNG Alliance**, **Indigenous Resource Network** and **Indian Resource Council** have stated that: “Our right to economic development, which UNDRIP affirms, includes the right to ‘determine and develop priorities and strategies for the development and use of [our] lands, territories and other resources.’ **This right is meaningless if we cannot attract investment or business partners to develop our resources.**”<sup>1</sup>

Ambiguities in Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, put these opportunities at risk by introducing uncertainty around project consultation and approvals, and new avenues for litigation in areas of established jurisprudence in Canada. As currently written, Bill C-15 will compromise the ability of the natural resource sector to attract the investment that would continue to support both reconciliation and Canadian prosperity. It is critical that the UNDRIP implementing legislation be well-designed. Bill C-15 must be amended if it is to support Indigenous economic opportunity and ongoing reconciliation.

## A CANADIAN APPROACH TO UNDRIP

Given the international context of UNDRIP, its text contains language and concepts – such as references to rights of redress, Indigenous governing institutions, and rights related to land and resources – that already have meaning in Canadian law. Instruments like the historic and modern treaties, the development of decades of jurisprudence, and Section 35 of the Constitution Act, 1982 are important elements of Canada’s legal framework.

Bill C-15 includes the full text of UNDRIP as a schedule. The Bill also includes language that could be understood to imply the immediate application of the whole of UNDRIP in Canadian law, ahead of the co-development of the proposed federal Action Plan. It will therefore be important for Parliament to define in Bill C-15 how concepts in UNDRIP will affect Canada’s existing legal framework, including the Crown Duty-to-Consult. It should be clear that the legislation will not undo important progress developed over decades in historic and modern treaties and decisions of the Canadian courts.

In 2016, CAPP issued a Discussion Paper<sup>4</sup> which endorsed the principles of UNDRIP as an important framework for reconciliation and we continue to support its implementation in a manner that is consistent with the Canadian Constitution and law.

**In a December 2020 letter to Minister of Justice David Lametti<sup>2</sup>, CAPP recommended the government address the following issues related to UNDRIP implementing legislation:**

1. Legislation should define the meaning and application of *Free, Prior and Informed Consent* (FPIC) in Canada so it is clear that no group will have a veto and unanimity either within or between groups is not a requirement;
2. Legislation should ensure that federal, provincial and territorial governments will retain their authority to make final decisions; and,
3. Legislation should make clear that the Action Plan process is the main vehicle for UNDRIP implementation in Canada.

**CAPP now recommends the following amendments to C-15 to address the issues identified above and to support a Canadian approach to UNDRIP implementation:**

1. C-15 should be amended in the preamble and in Section 4 to eliminate any confusion regarding the immediate application of UNDRIP in Canadian law. Amendments should reflect the government's intent that the Declaration is not a domestic federal law of Canada but is an international human rights instrument available as a resource to assist with the interpretation of domestic federal laws.
2. C-15 should be amended to recognize the jurisdiction of provinces and their ability to take their own approaches to UNDRIP, by replacing references to "Canadian law" with references to "federal law."
3. C-15 should be amended to clarify that Parliament does not intend to change other Canadian laws with the passage of the Bill, but rather will establish a process for the review of laws and, where appropriate, return to Parliament with proposed amendments to existing laws.
4. C-15 should be amended to define FPIC for the purposes of application in Canada. We propose the following: *A meaningful consultative process that aims to secure the consent of Indigenous peoples and provides Indigenous communities with a degree of participation and protection corresponding to the degree of impact on the exercise of Aboriginal and Treaty rights.*
5. The Action Plan process identified in C-15 should be amended to ensure tangible change and sustainable outcomes for Indigenous peoples. The Action Plan should ensure the provision of adequate resources and create government accountability; identify measures relating to improvement of Indigenous peoples' economic and social conditions; and promote consistency and efficiency between government departments and various levels of government. Finally, as the Action Plan is co-developed with Indigenous peoples, CAPP and our members seek the opportunity to participate in this dialogue where appropriate to our industry.

## IMPORTANCE OF SUCCESSFUL IMPLEMENTATION

- A lack of clarity surrounding implementation of UNDRIP could leave major questions to be settled by the courts and create uncertainty for investors as to whether or not Canada remains a predictable environment for consultation, project approval and investment. This will impact job and business opportunities for Canadians, including Indigenous Canadians.
- The *First Nations LNG Alliance*, *Indigenous Resource Network* and *Indian Resource Council* have said: “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.”<sup>3</sup>
- CAPP member companies’ efforts to support the development of sustainable Indigenous communities range from housing initiatives to environmental monitoring programs to standing discussion forums in our operating areas, with our most observable contribution as a driver of economic development and opportunity.
- In 2019, in the oil sands alone about \$2.4 billion was spent on procurement from Indigenous businesses; 16 per cent higher than in 2018 and 53 per cent higher than in 2017. For comparison, federal procurement from Indigenous businesses in 2019 was well below \$200 million.

### Sources:

<sup>1</sup> Joint statement on Bill C-15, First Nations LNG Alliance, Indigenous Resource Network and Indian Resource Council. [https://indigenousresourcenetwork.ca/?page\\_id=1381](https://indigenousresourcenetwork.ca/?page_id=1381)

<sup>2</sup> [https://www.capp.ca/wp-content/uploads/2020/12/CAPP\\_EDMS-382563-v3-Letter\\_to\\_Minister\\_Lametti\\_-\\_December\\_3.pdf](https://www.capp.ca/wp-content/uploads/2020/12/CAPP_EDMS-382563-v3-Letter_to_Minister_Lametti_-_December_3.pdf)

<sup>3</sup> Joint statement on Bill C-15, First Nations LNG Alliance, Indigenous Resource Network and Indian Resource Council. [https://indigenousresourcenetwork.ca/?page\\_id=1381](https://indigenousresourcenetwork.ca/?page_id=1381)

<sup>4</sup> <https://www.capp.ca/publications/capp-discussion-paper-on-implementing-the-united-declaration-on-the-rights-of-indigenous-peoples-in-canada/>