

May 12, 2023

Rylund Johnson
Chair, Standing Committee on Government Operations

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Re: Bill-85

Mr. Chair,

We write today regarding the United Nations Declaration on the Rights of Indigenous Peoples Implementation Act (**Bill 85**). We are heartened by the increased authorities specifically given to the Action Plan Committee, and overall, Bill 85 is in keeping with the change that Canada's Indigenous Peoples have been asking for in the implementation of this important international instrument.

While we see the great improvements between the extant United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) implementation legislation in Canada, we believe that the GNWT is in an excellent position to make its UNDRIP implementation legislation a leader that other forward-looking jurisdictions will model their legislation after.

Our recommendations are in keeping with previous recommendations we have made.¹

Collaboration and Cooperation and The Need for Indigenous-Led Co-Development

Bill-85 calls for “collaboration and cooperation” between the territorial government and Indigenous Governments and Organizations in implementing the Declaration. The Bill requires such collaboration and cooperation in making consistent the laws of the Northwest Territories with the Declaration² and in co-developing the action plan.³

Bill 85 describes that the Minister shall co-develop the action in collaboration and cooperation with Indigenous Groups and Organizations, as those terms are defined in the Act, and the Executive Council. The FMB recommends that one of the GNWT's Indigenous partners might “hold the pen” for drafting the action plan to support accountability and Indigenous-led progress. This could be included in the “Memorandum of Understanding for a Collaborative

¹ For example, on May 4, 2023, we issued a comment letter to the Government of Canada regarding its draft Action Plan.

² Bill 85 at s. 5(1).

³ Bill 85 at s. 9(1).

Approach to Implement The United Nations Declaration on the Rights of Indigenous Peoples in the NWT” (MOU) as a delegation from the Minister, or specifically in the text of the Bill.

In our view, this approach supports Indigenous Peoples growing capacity and wealth, and seizing opportunities to lead through Indigenous-led organizations and from the wisdom of Indigenous thought leaders. Indigenous-led solutions such as the *First Nations Fiscal Management Act*, the *First Nations Land Management Act* (and subsequent Framework Agreement on First Nations Land Management Act), and Indigenous institutions such as the First Nations Financial Management Board, First Nations Finance Authority, First Nations Tax Commission, Lands Advisory Board, National Indigenous Economic Development Board and many others support Indigenous leadership in making positive changes at a systemic level. Indigenous-led solutions are trusted by Indigenous governments and people, have better contacts and experience in First Nations communities, and are agile enough to keep pace with the needs of Indigenous peoples.

The roles of Indigenous governments and institutions must be recognized in UNDRIP legislation action plans and resourced accordingly to continue to build capacity in Indigenous communities. Increased and sustained capacity in more Indigenous communities will allow for greater participation in Indigenous-led solutions, ensuring communities can determine the best ways for them to respond to UNDRIP’s implementation and accurately represent their needs and goals. In our view, enabling one of the participating Indigenous Governments or organizations to be the primary drafter on the action plan will best ensure the spirit and intent of Bill 85’s co-development is achieved.

Indigenous Jurisdiction

The sections of Bill-85 renounce colonialism and discrimination, embrace different Indigenous social structures and traditions, and make provision to uphold Indigenous rights via legislation, policy, and administrative measures. The GNWT has clearly and unambiguously stated their intentions to make consistent the laws of the Northwest Territories with UNDRIP through collaboration with Indigenous Groups and Organizations and through the one-of-a-kind approach of having the Attorney General table a Statement of Consistency regarding government bills. In our view, these actions demonstrate the GNWT’s support for the consistent reflection and application of Indigenous rights, including Modern Treaties.⁴ FMB believes the natural next step in ensuring, nurturing, and supporting the consistent application of Indigenous rights is recognizing and implementing Indigenous jurisdiction and capacity, which allow Indigenous peoples to exercise their rights.

Having rights without the means to exercise them is a hollow victory, and one that does not achieve reconciliation. The inclusion and implementation of jurisdiction in the action plan will allow Indigenous Peoples to exercise their rights. The territorial government should ensure that

⁴ For example, Canada’s Collaborative Modern Treaty Implementation Policy, found at <https://www.rcaanc-cirnac.gc.ca/eng/1672771319009/1672771475448>

all subsequent development of legislation and policy pertaining to Indigenous rights incorporates elements of increased Indigenous jurisdiction.

As a starting point, the action plan might address the following:

- Jurisdictional clarity between Indigenous Governments and Organizations, on the one hand and territorial and municipal governments on the other;
- Legal paramountcy of Indigenous laws in their jurisdictions and clearly defined taxation rights;
- Standards for service delivery and option to transfer service responsibility to Indigenous governments;
- Autonomy over expenditures and use of traditional territories; and
- A mechanism to facilitate and acknowledge nation-to-nation relations.

The action plan ought to include specific initiatives to strengthen financial management capacity, revenue generation, and economic participation to fund the real cost of government for Indigenous communities, allowing those communities to fully realize and exercise their rights. This, and subsequent legislation and policy, will be powerful steps in the direction of reconciliation with Indigenous Peoples.

Implementation and Capacity

We positively note the strong measures that Bill 85 would put in place for implementation. These include the MOU and the establishment of the Action Plan Committee.⁵ We were pleased to see that s. 10(2)(e) of Bill 85 makes mandatory the provisions set out in the MOU for the action plan. These measures are novel as compared to other UNDRIP implementation legislation in the country. It is measures such as these that we think will cause the NWT to be a leader and precedent-setter in the country in relation to implementing UNDRIP.

While we were unable to find the MOU, we look forward to reviewing same when it becomes publicly available. We anticipate seeing clauses regarding financial capacity for participating Indigenous Governments and Organizations in order for such participants to execute their duties under the Memorandum, on the Action Plan Committee, and as may be otherwise required to implement Bill 85. Such capacity support will further enable the participating Indigenous Governments and Organizations to increase and fine-tune administrative capacity to undertake the work required in Bill 85 on an ongoing basis.

Recommendations

Based on the foregoing, we recommend the following:

- Section 9(1) provides that the Minister will co-develop the Action Plan with Indigenous Governments or Organizations and the Executive Council. We would propose that the

⁵ Bill 85 at s. 8(1)

Act or Memorandum of Understanding ought to set out that a member of a participating Indigenous Government or Organization should “hold the pen” on the Action Plan, which is co-developed in the manner set out in section 9(1);

- Section 10(2) ought to specifically include provisions to be included in the Action Plan regarding:
 - Initiatives to strengthen financial capacity and revenue generation;
 - Fiscal powers, economic powers and taxation powers, that Indigenous governments require;
 - Sharing of wealth and authority;
 - Indigenous jurisdiction for the exercise of rights and powers;
 - Mechanisms that support capacity development in Indigenous Governments and Organizations;
 - Standards for service delivery and the option to transfer service responsibility to Indigenous governments;
 - Autonomy over expenditures and use of traditional territories;
 - A mechanism to facilitate and acknowledge nation-to-nation relationships;
- The Action Plan ought to be an optional pathway that supports self-government for interested Indigenous groups; and
- Provision should be made for capacity funding for participant Indigenous Governments and Organizations in the text of the Act or in the MOU;

These recommendations are rooted in some of the fundamental principles that FMB has seen support Indigenous Nations across Canada to move from managing poverty to managing wealth. These principles are more clearly stated in FMB's [RoadMap Project](#).

Conclusion

Bill-85 sets out a unique and meaningful method of implementing UNDRIP. It includes good levels of detail in scope and in plans for implementation and signals a respectful approach to Indigenous Governments and Organizations that can grow trust and facilitate real reconciliation. We commend the GNWT on its approach to implementing UNDRIP and believe this approach to show leadership in this field.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per:



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