Submission to the Senate Standing Committee on Energy, the Environment and Natural Resources regarding Bill C-69

April 25, 2019

I am making this submission to the Senate and the Senate Standing Committee to express most emphatically, in the strongest manner available, that Bill C-69 and the regulations and government activities related to Bill C-69, be completely dis-associated of any and all commitments, preferences or references to the United Nations Directive Regarding Indigenous Peoples (“UNDRIP”).

There are four reasons that provide the rationale for this request: (i) legislative abuse, (ii) creating a two-tier country, (iii) subverting Canadian democracy and most importantly, (iv) severely impeding reconciliation with First Nations. These are set out in the four sections below:

Legislative Abuse – The UNDRIP is of separate, yet equal, significance to Canada as to that of environmental permitting of resource projects. While there is overlap between the two areas, it is a nefarious use of legislative authority to convert any portion or all of the UNDRIP aspirations into Canadian law or regulations under the cover of environmental permitting legislation.

I wish to draw the Senate members’ attention to four particular elements which are attendant to Bill C-69:

1) A statement which appears in the preamble to Bill C-69: “Whereas the Government of Canada is committed to achieving reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation and partnership”;

2) Public Statements pronounced on many occasions by the Prime Minister that Canada is committed adopting the UNDRIP;

3) A statement which appears on a Government webpage entitled Key Amendments to Bill C-69: “The amendments would more clearly reflect the Government’s commitment to the United Nations Declaration on the Rights of Indigenous Peoples”; and,

4) Statements which appear in the United Nations Declaration on the Rights of Indigenous Peoples:

   a) Article 19 - 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 adopting and implementing legislative or administrative measures that may affect them.
   b) Article 26 (2) - Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
   c) Article 32 (2) - States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
A simple sampling of Canadian citizens will reveal that a vast majority are unaware that UNDRIP exists, what it is, or that it serves to give Indigenous Peoples powers that non indigenous peoples do not possess. Further, an even smaller portion of the public understand the significance of the difference between “consult” and “consent”. The four elements set out above make it abundantly clear that Bill C-69 serves to move Canada from a “consult” regime to a “consent” regime. This is doing covertly what should be done publicly and thus is an abuse of legislative process.

**Creating a Two-Tier Country** – Many portions of the UNDRIP, particularly the establishment of “full, prior and informed consent” bestow powers to Indigenous Peoples that are not afforded to non-indigenous peoples. This establishes a country where the rights for one portion of the population can overrule the freedoms of another portion of the population.

I challenge anyone in the Senate, or for that matter Canada, to identify a country, civilization or society where having the rights or powers of some exceed the rights and powers of others has led to successful advancements. Two sets of rules did not work for African Americans, Jewish people in Nazi Germany and for LGBTQ people around the world. What is worse here, rather than having a large portion of the population with the ability persecute a small portion of the population, the UNDRIP aspects of Bill C-69 would lead to a small portion of Canada (Indigenous Peoples) having the ability to persecute a large portion of Canada (non-indigenous peoples).

**Subverting Canadian democracy** – Both indigenous and non-indigenous persons alike can vote in federal, provincial and municipal elections. However, non-indigenous peoples cannot vote in indigenous elections. Democracy is killed when control aspects of resource development are ascribed to individuals or bodies that are not elected by the general population of Canada.

The control that Canadians have over resource development comes by way of Parliament, aided and abetted by the sober second thoughts of the Senate. If Canadians do not like the actions of a particular Parliament, they can contact their local MP, the particular Minister or Ministers involved with the project or the Prime Minister. These elected representatives can be held accountable by public exposure which ultimately manifests in future voting to re-elect the MP. None of this balance of control would exist when non-indigenous Canadians wish to express disappointment or influence the actions of an indigenous Canadian. Democracy is lost under the auspices of the UNDRIP

**Impeding Reconciliation** – The Government has placed great emphasis on reconciliation with Indigenous Peoples. Conferring the benefits and powers attendant to the UNDRIP to Indigenous Peoples (alone) would build substantial animosity with the Canadian population at large. Such an action would not be viewed as an act of reconciliation, it would be viewed as the conferring of reparations. Both of these aforementioned perceptions would seriously harm reconciliation efforts.

The prediction of increased animosity towards Indigenous Peoples is evidenced by the failed Energy East Pipeline Project. Notwithstanding a complete lack of jurisdictional authority, the city of Montreal voiced rampant opposition to the Project and the federal government did not voice countering words nor did it assert its legislative authority to advance the Project. In effect, the federal government granted Montreal consent rights to the Project. The result? TransCanada Pipelines withdrew. Western Canada has built its animosity to Quebec to the point of reviving its efforts to separate from Canada. Jason Kenny, Alberta’s new Premier, has stated openly that Alberta will commence proceedings to revise Canada’s equalization formula – because Quebec receives equalization funding principally from Alberta but impedes Albert’s oil exporting ambitions. Providing consent and other rights to Indigenous Peoples
by way of Bill C-69 will provoke a similar response from non-indigenous peoples - increased animosity which would inevitably lead to the calling into question of the government support payments to First Nations.

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Canada’s Clarity Act is a spectacular piece of legislation. It ensures that Canadian’s are not subjected to ambiguous, obscure or opaque choices but rather are presented with clear and simple options. The attributes of the Clarity Act should be applied to Bill C-69. Nation changing initiatives such as UNDRIP should not be undertaken under the cloaking of Bill C-69 but should be brought to the nations’ consciousness by much more public means.

If any Senator disagrees with the aforementioned narrative, then such member should be eager and honoured to make the following public statement:

“Fellow Canadians, I wish to bring to your attention that with the passing of Bill C-69, we will be conferring rights and powers, including the ability to veto, to First Nations on resource development projects. These powers, however, will not be granted to the non-indigenous peoples of Canada.”

I think that nothing could be worse for Indigenous Canadians than to face the animosity of millions of non-indigenous Canadians because the former has more power than the latter over resource development projects.

If no Senator is prepared to make that statement, then Bill C-69 needs to be excised of the references to UNDRIP.

I would be honoured to discuss these views in person to the Senate and would do so at my own expense.

Most sincerely,

John P A Budreski