March 2019

**An Assessment of the Negative Health, Social and Economic Effects of Bills C-48 and C-69: An Indigenous Response**
Introduction

The Government of Canada has introduced two pieces of legislation, both currently being debated in the Senate, with far-reaching consequences for the Canadian economy.

Bill C-48 (Oil Tanker Moratorium Act) was introduced to “ensure that goods are transported in a safe and responsible way while protecting our marine environment and clean water” (Government of Canada, 2017) but unilaterally targets Canadian oil from reaching new markets while ignoring key environmental risks.

Bill C-69 (Strengthening the Proposed Impact Assessment, Canadian Energy Regulator, and Canadian Navigable Waters Acts) was introduced with the stated purpose of putting in place “better rules to protect our environment, fish and waterways, and rebuild public trust in how decisions about resource development are made”. The Government committed that Bill C-69 would ensure that “companies...have more clarity about what is required of them, and project reviews would be more predictable and timely, encouraging investment in Canada’s natural resources sectors” (Government of Canada, 2018a).

Numerous industry representatives and provincial governments have disputed the claim that these bills promote a “a strong economy”, and we join in their concern. It is our position that these two bills will have the primary effect of dampening investment in Canada’s resource sector, and as a result will impede our rights as Indigenous people, as confirmed in the United Nations Declaration on the Right of Indigenous Peoples (UNDRIP), to improve our economic and social conditions; rather they will deprive us of an important means of subsistence and development. We call on the Senate and House of Commons to significantly amend Bill C-69 and revoke Bill C-48 in order to meet their Treaty and other obligations to First Nations and Métis people.

Purpose of This Report

The poor investment climate for Canadian oil and gas under the current Government has already imposed dramatic impacts for the oil and gas producing First Nations in Western Canada. According to Indian Oil and Gas Canada (2018), our communities have seen the number of new agreements with industry fall by 95% and revenues by 75% since 2011-12 – representing an annual loss of over $18,000 for each on-reserve family.¹ Many of these families and communities already suffer from the effects of poverty. These are not impacts that our First Nations can absorb without severe cutbacks to self-funded education, infrastructure, health and cultural projects.

-$200 Million

First Nations oil & gas revenues down $200 million annually since 2011-12

$18,761

Loss per First Nations Family of 6

*Average annual loss from 39 oil & gas producing First Nations in Western Canada
It is instructive that in the Government of Canada’s own description of how Bill C-69 will affect Indigenous communities, they identify only: (1) its reference to UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples); (2) its use and protection of Indigenous knowledge; and (3) the establishment of Indigenous advisory panels and committees.

These are important but insufficient considerations, and serve to reinforce the paternalistic stereotype of Indigenous peoples as victims of resource development, needing protection by the federal government, rather than partners in it.

“This report aims to give a fuller picture of the relationship between First Nations and Métis people and the resource industry, with a focus on oil and gas. It outlines the anticipated changes and negative consequences to Indigenous health, social and economic conditions that Bills C-48 and C-69 will impose on First Nations and Métis communities as a result of depriving us of our ability to enjoy the benefits of resource development in our own territories. Bill C-69 is addressed more comprehensively in this report because of its scope and multiple and explicit references to Indigenous peoples, whereas our position on C-48 is straightforward: we are opposed to the moratorium.”
Indigenous Peoples and the Oil and Natural Gas Sector

For decades, Indigenous communities in Canada suffered the negative impacts of resource development, namely severe environmental degradation in their territories, without enjoying any of the benefits. This began to change following the 1974 Mackenzie Valley Pipeline Inquiry, which introduced the expectation of consultation and acceptance of resource development projects by affected Indigenous communities.

The position of Indigenous peoples in the resource industry was further strengthened in 2004 with the Supreme Court of Canada decision on Haida Nation vs. British Columbia, which determined that the Crown has a duty to consult with Indigenous peoples when making decisions that could impact their constitutionally protected rights, such as the ability to hunt, fish or trap on their traditional territories in the wake of extractive activities.

The Court further ruled that government could delegate procedural aspects of duty to consult to project proponents. Today, industry conducts the majority of project consultations.

As a result, many First Nations and Métis communities have developed business relationships with industry players from a position of strength, based on mutual interests and respect. During this time, Indigenous business experience and acumen has grown quickly.
Bill C-69 adopts a position that **First Nations and Métis people need to be protected from industry, when in fact, our interests have become progressively aligned over the past fifteen years.** Many of us are players in the industry in our own right – through sub-contracting, employment, revenue sharing, and joint partnerships. Up to eight separate Indigenous business consortiums have even proposed ownership of pipelines. We are no longer just passive royalty recipients.

**Many Indigenous people want a strong resource industry so that we can continue to expand our investments in, and benefits from, development – as employees, as partners and as owners. We are not against development; but we will no longer be bystanders to it.**

**Economic Benefits of Involvement in the Oil and Natural Gas Industry**

The economic benefits of Indigenous participation in the extractive industries are significant. In 2015, the average wage of Indigenous persons working in mining, quarrying and oil and gas was more than double the average across all industries - $98,952 versus $44,433 (Statistics Canada 2018c). The oil and gas industry alone employed 11,900 Indigenous people in 2015.

According to Statistics Canada (2017), Indigenous people were more than twice as likely as non-Indigenous people to work in natural resources, agriculture and related occupations (4.0% vs. 1.7%), while they were underrepresented in most “knowledge occupations” - professional, managerial and technical occupations which require post-secondary education.

Indigenous communities and the natural resource sector have been working closely for decades to improve the kind and number of opportunities available for Indigenous employees. There are still many barriers, such as workforce readiness and racism in the workplace; but according to rural First Nation people themselves, the most significant barrier is simply the availability of jobs (Statistics Canada, 2018b). In 2018, the unemployment rate for First Nations (11.2%) was more than double that of non-Aboriginal people (5.8%); and even worse in Western Canada (13.5% vs 5.4%) (Statistics Canada, 2018a). And that only includes those who are living off-reserve. We know the gap is much more severe on-reserve.

**Wages for Indigenous persons in the resource industry are more than double the average** - $98,952 versus $44,433
Employment opportunities for Indigenous people in rural Western Canada can be few and far between. Oil and gas, and the resource sector in general, is by far our best opportunity for well-paying jobs.

**Who is Employing Indigenous Peoples?**

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<th>% of Employees Working in Sector That Identify as Aboriginal</th>
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<tr>
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<tr>
<td>Extractive Sector</td>
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<td>Federal Public Service</td>
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<td>All Industries</td>
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7.8% 4.7% 3.9%

Sources: Statistics Canada, 2018c; Government of Canada, 2016

But the economic benefits go beyond employment. The oil and gas sector is also a huge contractor of Indigenous-owned businesses. The oil and gas industry in the oil sands alone purchased goods and services valued at $3.33 billion in 2015 and 2016 from 399 Indigenous companies representing 65 different communities in Alberta (CAPP, 2018). The federal government, by contrast, spent only $63 million, or 0.32%, of their $20 billion in procurement dollars nationally on Indigenous businesses in 2015, through the Procurement Strategy for Aboriginal Business (CCAB, n.d.).

**Suncor Alone has Spent $1.7 Billion More on Indigenous Businesses Than the Entire Government of Canada Since 1996**

Suncor Spending 1999 - 2018; Gov't of Canada Spending 1996 - 2014
The oil and gas industry also transfers payments/royalties directly to Indigenous governments. According to Natural Resources Canada’s Extractive Sector Transparency Measures Act, in 2017 conventional oil and gas producers transferred a total of $55 million (CAPP, 2018) - an important source of own-source-revenues for nations striving to exercise self-determination.

There is no better option for First Nations to earn own-source revenues and lift themselves out of poverty, than to participate fully in the resource development industry.

That is why the majority of First Nations affected directly by proposed pipelines projects have been in support of them and have signed agreements with project proponents.
Health Impacts of Employment and Income

The evidence that employment and income is tied to health and well-being is incontrovertible.

Health and employment go hand in hand: employment improves health status with its many social, psychological, and financial benefits; and healthy people are more likely to be employed due to the positive impact on an individual’s desire to work and their likelihood of being hired or retained (Benach et al, 2007; Uppal, 2009).

Good paying jobs make it easier for people to obtain quality housing, nutritious food, and educational and recreational opportunities for their children. In rural and remote Indigenous communities, a job usually means the difference between having an independent means of transportation or not, for example to go to a grocery store or take your children to the dentist. People with financial means are far more able to seek medical advice and treatment when they do have an illness, rather than suffer in silence while a condition worsens.
The flip side of this is that unemployment is bad for people’s health. According to the World Health Organization (WHO), the evidence of this negative relationship is large: “Being unemployed excludes people from social participation and the health benefits that it brings” (Benach et al, 2007, p. 53) with “more malnutrition, underweight, cardiovascular diseases and anxiety among unemployed” (ibid). The WHO further found that male unemployment affects the health of families, not just individuals, including “deteriorated health for the [spouses] as well as increased child abuse” (ibid, p. 54).

Looking more specifically in Canada, a study on the Health Impacts of Employment and Income Insecurity Faced by Racialized Groups by the Access Alliance, a Toronto NGO that conducts community-based research with historically marginalized communities, found that:

- Employment and income insecurity appear to be key causes of many of the pressing health issues that precariously employed, low-income racialized groups face.
- Prevalent health outcomes include mental health issues, digestive disorders, physiological impacts, cardiovascular impacts and workplace injuries.
- Employment and income insecurity can result in adverse impacts on children’s health and family wellbeing.
- Protracted employment/income insecurity and negative health exposures mutually reinforce each other in ways that lead to disempowerment and long-term deterioration of health (Access Alliance, 2011).

Indigenous people already face a high burden of mental health challenges as a result of colonialism, inter-generational trauma and economic marginalization. These are exacerbated by unemployment. Modrek et al, in their review of the impacts of recessions on health, found that “recessions, and unemployment in particular, can be significantly damaging to mental health, increasing the risk of substance abuse and suicide particularly for young men” (2013, p.1). Their review of the relevant literature furthermore found “an increase in alcohol related traffic accidents…binge drinking, and alcohol related hospitalization” during economic contractions (p. 9) including “consistently strong relationships between [recessions] and substance abuse in young adults and men” (ibid).

Sadly, the most consistent result across 78 studies examining the impact of recession and economic downturns on mental health was an increase in suicide, especially in working age men (ibid, p. 10); a situation Indigenous communities are already struggling to cope with and manage. This is compounded by the finding that Indigenous people are affected more severely, and for a longer duration, by recessions than their non-Indigenous counterparts (Statistics Canada, 2017).
Family Violence and Gender Implications of Unemployment and Economic Anxiety

An additional health impact from unemployment and economic downturns that is of particular importance in the context of Bill C-69 is an increase in Intimate Partner Violence (IPV), which includes physical violence, sexual violence, and psychological/emotional violence, including behaviour designed to control a victim's movements, interpersonal contacts, and access to financial resources (see Saltzman et al, 2002).

Schneider et al (2016) found that:

*Rapid increases in unemployment rates during the Great Recession were associated with increases in men's abusive behavior*...[E]conomic uncertainty plays an important role in relationship dynamics, above and beyond its direct effects on job loss and material hardship (p. 471).

This pattern aligns with a finding documented by Stark (2007), in which a loss of control in one domain (the economy) leads men to assert greater control in another domain (their intimate relationships).

As is well documented and discussed elsewhere, Indigenous women are already almost three times more likely than non-Indigenous women to report experiences of spousal violence (Holmes & Hunt, 2017). Economic uncertainty serves to aggravate this unfortunate state of affairs.

To summarize, there are predictable health impacts from policies that impede economic investment and development, thereby reducing employment opportunities and wages:

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**Health Implications of Economic Downturns**

1. An increase in anxiety, substance abuse and suicide, especially among working age men;
2. Physiological problems including malnutrition, cardiovascular issues, and digestive disorders;
3. A rise in family and intimate partner violence; and
4. Greater difficulty in re-entering the workforce due to exacerbated health issues.

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The Canadian oil and gas industry is suffering as a result of regulatory uncertainty. The sector has already lost over 100,000 jobs and tens of billions in investment. Bills C-48 and C-69 will exacerbate these woes, and First Nations and Métis workers, businesses and communities will be amongst those first and most affected.
The Right to Self-Determination and Livelihood

In the development of Bills C-48 and C-69, the federal government has reflected concern for a very narrow set of Indigenous rights. Indigenous rights go well beyond free and informed consent. Indigenous peoples also have the right to self-determination and livelihood, which these bills negatively impact. There can be no self-determination when a nation is dependent on the benevolence of the federal government to fund their education, health and cultural programming. Resource development is our best opportunity to reduce dependence and build the capacity to pursue our own strategies for development, not just those authorized by Indigenous Services Canada.

*Indigenous rights go well beyond free and informed consent. Indigenous peoples also have the right to self-determination and livelihood.*
United Nations Declaration on the Rights of Indigenous Peoples

Indigenous peoples have inescapable economic rights within Section 35 of the Constitution. However our rights to economic development are further elaborated and enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the Government of Canada has committed to respecting:

- **Article 3**
  Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

- **Article 5**
  Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

- **Article 20**
  (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

  (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

- **Article 21**
  (3) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

  (4) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
United Nations Sustainable Development Goals

Although not rights per se, it is worth noting that the first three objectives of the United Nations Sustainable Development Goals, which the Liberal Government committed in 2015 to supporting and implementing within Canada, call for: (1) an end to poverty; (2) zero hunger; and (3) good health and well-being. It furthermore commits to achieving the goal of ‘decent work and economic growth’ for all. Our First Nations and Métis communities will not be able to make progress on these and other sustainable development goals without a strong and growing resource economy in which we are full partners.

This Government has talked a lot about a renewed nation-to-nation relationship, based on a recognition of rights, respect, co-operation, and partnership. We ask them to respect our right to economic development.
Economic Reconciliation

The current Government of Canada has additionally made reconciliation with Indigenous peoples a central component of their mandate, and an aspect of the rationale behind Bill C-69.

We would like to remind the Government that the Truth and Reconciliation Commission of Canada (TRC) Call to Action #7s:

[Calls] upon the federal government to develop with Aboriginal groups a joint strategy to eliminate educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

We cannot see how the gaps between Indigenous and non-Indigenous Canadians will be satisfied without a strong natural resource economy and its concomitant employment needs. This is especially true in rural and remote regions of the country where most First Nations and Métis communities are located but where job opportunities in other sectors have been declining for decades due to trends in urban migration.

It is our belief that the regulatory burdens imposed by bills C-48 and C-69 furthermore undermine reconciliation between Indigenous and non-Indigenous peoples where it is arguably needed the most: in rural, Western Canada. Through these bills, the Government of Canada has positioned First Nations as the main hurdle to rural jobs and regional prosperity when in our opinion it is the government’s labyrinth regulatory approval process that is to blame. We have been misconstrued as opposing all development when for many of us, we simply want to be partners in it.

We no longer want Indigenous rights to be used by the Minister of Environment and Climate Change and the environmental lobby as an excuse to stop pipelines and other natural resource projects. There are more First Nations that have agreements with project proponents than are opposed to projects. We have a right to improve our economic and social conditions. A comprehensive commitment to Indigenous rights and reconciliation can only be manifested in expanding, not denying, these opportunities, yet that is exactly what Bills C-48 and C-69 do.

We have been misconstrued as opposing all development when for many of us, we simply want to be partners in it.
Proposed Amendments

We are broadly opposed to the mandates of both Bill C-48 and Bill C-69 due to their anticipated negative impacts on Indigenous economic, health and social well-being.

**Bill C-48**

Our position on Bill C-48 is that a moratorium is an unnecessarily sweeping and finite tool. It says that there is no balance to be achieved between economic development and environmental protection, that it’s one or the other. But we reject that. Environment and Climate Change Minister Catherine McKenna has said herself many times that “the environment and the economy go together”.

**A moratorium is an unnecessarily sweeping and finite tool. It says that there is no balance to be achieved between economic development and environmental protection.**

Communities, companies, government and scientists can work together to find some middle ground for sustainable development if the federal government does not shut that door on us. There is a way to regulate oil tanker traffic in northwest British Columbia that protects the integrity of the environment while giving First Nations and Métis peoples an opportunity to engage in much needed economic development.

We need to focus on developing regulations that protect the environment, not on laws that shut down investment and jobs in our communities.

**We do not want to see Bill C-48 passed.**

**Bill C-69**

With regards to Bill C-69, if the Government is intent on passing some kind of impact assessment legislation, we hope it is to improve the regulatory process, not to sabotage future resource development by embroiling it in inevitable court challenges.

We have consulted with industry on Bill C-69 and broadly agree with their suggested amendments to provide better certainty to investors and improve the attractiveness of the Canadian oil and natural gas sector, a sector in which we are directly involved and benefit from.
However there are specific provisions of Bill C-69 that infringe on First Nations and Métis rights that we take exception to:

1. PUBLIC PARTICIPATION & STANDING

Section 11 undermines First Nations’ sovereignty within their own territories. Under current legislation, there is a standing test used to determine who can participate during the regulatory review process. Bill C-69 would eliminate the standing test so that any member of the public, from anywhere in Canada, can participate. We believe removing the standing test could lead to adversarial interests undermining or overriding the interests of Aboriginal title holders, which would be unacceptable to us.

2. PRE-APPROVAL ENGAGEMENT

Section 7(1)(d) states that “the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project” that may cause “any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada.” This is so broadly stated that it could be argued to preclude any kind of engagement by the proponent, including consultations and negotiations with affected Indigenous communities. This is contrary to the advice provided by the Government’s Expert Panel on Bill C-69, who articulated that:

Public and Indigenous participants expressed a resounding desire and need for early engagement in project design and planning. Many saw early involvement as an opportunity to reduce conflict later in the IA process and as a way that adversarial relationships with project proponents might be avoided at the outset, prior to large investments of time and money into publicly contested options.

Indigenous people have the most leverage in negotiations with project proponents before permits or approvals are granted. As written, this provision would severely hamper our ability to develop mutually beneficial arrangements for project development and reduce our opportunity for meaningful engagement.
3. POLITICAL INTERFERENCE

Currently Bill C-69 gives broad discretionary powers to the Minister of Environment and Climate Change, including the ability to veto a project even if it has met the satisfaction of the affected Indigenous communities and the responsible regulatory bodies. We believe that political interference must be restricted in favour of a process that abides by the rule of law.

Former Liberal Minister Jody Wilson-Raybould described First Nations’ perspectives and fears on this matter eloquently:

*The history of Crown-Indigenous relations in this country includes a history of the rule of law not being respected.*

*Indeed, one of the main reasons for the urgent need for justice and reconciliation today is that, in the history of our country, we have not always upheld foundational values such as the rule of law in relations to Indigenous Peoples.*

*And I have seen the negative impacts for freedom, equality and a just society this can have first-hand.*

*So when I pledged to serve Canadians as your minister of justice and attorney general, I came to it with a deeply ingrained commitment to the rule of law and the importance of acting independently of partisan, political and narrow interests in all matters [emphasis added] (as quoted in National Post, 2019).*

Based on 150 years of experience, we are not comfortable with a Ministerial veto where our rights to economic development are involved.

We similarly believe that the opportunity for political interference in the extension of timelines is unacceptably high in this legislation and support stronger limits on the ability of the government to interfere in the regulatory process unduly.

As an aside, it is not clear to us why this legislation would fall under the purview of the Minister of Environmental and Climate Change when it explicitly broadens the scope of impact assessments to include economic, social and health impacts. It is our view that oversight would be better placed under the Minister of Rural Economic Development, given that almost all resource development projects covered by bill C-69 in Canada would take place in rural areas.
4. ECONOMIC BENEFITS NOT CONSIDERED

Resource development has arguably provided the most substantial opportunities for Indigenous people to participate in and benefit from the Canadian economy. Economic participation is critical to advancing reconciliation in Canada and supporting the rights of Indigenous peoples to self-determination and livelihood. As it stands, there is no specific requirement in Bill C-69 for review panels to consider the economic benefits of a project for Indigenous peoples, aside from a general statement in section 6(1)(c) that the purpose of the Bill is to take into account “all effects” of a project.

We recommend that the Government make explicit in Bill C-69 that decision-makers must consider the economic effects of projects, including economic benefits for Indigenous peoples, in the approval process. We cannot help but notice that the Government has made this their top priority when jobs in Montreal are at stake. We ask for the same consideration.

C-69 Proposed Amendments:

1. Public Participation & Standing: Reinstate a test for standing to ensure only those of us directly affected by a project can participate in its assessment.

2. Pre-Approval Engagement: Clarify that proponents and affected communities can indeed consult and negotiate with one another before regulatory approval is granted.

3. Political Interference: Restrict the excessive scope for political interference in the legislation by ensuring the independence of regulatory bodies and abiding by due process.

4. Economic Benefits Not Considered: Add a specific requirement that review panels must consider the economic benefits of a project for Indigenous peoples.
Conclusion

Our motivation, in this report and in all the work we do, is to defeat on-reserve poverty and generate our own revenues in order to actually exercise self-determination. Bills C-48 and C-69 are a tremendous threat to our continued ability to improve the well-being, health and prosperity of our members.

By increasing the risks for the oil and gas and other sectors, these bills and other government policies are already negatively impacting the level of investment in our territories. Our nations have lost royalty revenue and our people have lost business contracts and employment opportunities. The economic situation will only worsen should Bill C-48 and C-69 be passed.

As reaffirmed in the United Nations Declaration on the Rights of Indigenous Peoples, First Nations have not just the right “to obtain their free and informed consent prior to the approval of any project affecting their lands or territories” (Article 32) but also the right to “freely pursue their economic, social and cultural development” (Article 3), be “secure in the enjoyment of their own means of subsistence and development”, and “to engage freely in all their traditional and other economic activities” (Article 20). Bill C-48 and C-69 will severely impede our efforts at economic and social development by imposing burdensome processes and uncertainty on our investments and opportunities.

We are not in favour of indiscriminate development that damages the environment, or our people’s health and safety. We have been stewards of our territory for thousands of years and we take that responsibility very seriously.

But our people want the dignity of work. We don’t want the indignity of dependence. We are intent on taking control of our livelihoods and asserting our rights. We ask that the federal government stop putting up barriers that prevent us from fulfilling these intentions.
References


1 Based on a drop in moneys collected by IOGC from ~$250 million in 2011/12 to ~$50 million in 2017/2018 for 39 oil and gas First Nations representing 63,950 members; family of 6.
Indian Resource Council
www.IRCCanada.ca
@IRCCanada

National Coalition of Chiefs
https://coalitionofchiefs.ca

Aboriginal Equity Partners