



May 30, 2025

The Right Honourable Mark Carney, P.C., M.P.
Prime Minister of Canada
80 Wellington Street
Ottawa, ON
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Dear Prime Minister:

Senior officials of the Privy Council Office (Deputy Clerk Christiane Fox and Deputy Secretary to the Cabinet, Mollie Johnson) recently wrote to me in my capacity as National Chief in a letter dated May 23, 2025. The letter invited the Assembly of First Nations (AFN), “to consult and cooperate on proposed legislation on national interest projects and to continue to engage on its implementation,” and to do so by meeting in person or a written response by May 30, 2025. A three-page backgrounder was provided. AFN Regional Chiefs were apparently copied on that letter.

My first point is to remind the Crown that the Assembly of First Nations (AFN) is not a collective rights holder and that under the Charter of the AFN, the AFN receives delegated mandates to conduct advocacy on specific matters when and as directed by First Nations-in-Assembly. The AFN has not received a mandate from Chiefs on any aspect of your proposal because we have just received it and our next Assembly is scheduled to be held in July 2025. In addition, the Executive Committee of the AFN at this point has had less than a week to review the small amount of information shared; and are seeking preliminary legal and policy advice relating to the proposal, such as it is. Most importantly, it is not clear to the AFN whether or how the Crown has directly notified all First Nations rights holders on this matter as it should.

We anticipate First Nations will require clarification respecting many aspects of the proposal, beginning with the design of Crown-First Nations engagement and consultation, a timeline, and how First Nations rights holders are to be invited to respond to the Crown on this matter. We note that Parliamentary Committees that study bills often are not able to accommodate the numbers of First Nations likely wishing to engage on a matter of this magnitude and significance. In addition, Parliamentary process alone is not suitable or conducive to the depth of legal consultation likely required in this case to meet the Crown’s consultation and consent obligations.

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While we support efforts to protect First Nations and Canada from geopolitical and economic uncertainty, we are deeply concerned that the proposed legislation has the potential procedurally and substantively, to violate various collective rights of First Nations rights holders respecting lands, water, resources and First Nations inherent title, rights, and jurisdiction, as well as Treaty. Very clearly, the rights of First Nations under international law and the Constitution of Canada are at stake in this legislation. Presumably, the government has a draft of the proposed legislation and a consultation draft should be provided to all First Nations immediately. We note also First Nations have been disadvantaged by the ongoing exclusion of First Nations leadership from ministerial and First Ministers meetings on many of the topics raised in the letter.

We offer the following preliminary observations as an advocacy organization, and without prejudice to the rights of First Nations as rights holders or to positions the AFN may be directed to take in the future (and as more information becomes available from the Crown). This is not an exhaustive list of AFN's concerns given the unacceptably tight deadline proposed by PCO.

Preliminary Comments (Without Prejudice)

1. There is a lack of clear timelines for the process of legislative development before and after tabling of the proposed and unseen bill. The AFN has had this discussion in several prior legislative processes and we are not sure this proposal is informed by those experiences and precedents.
2. The Speech from Throne states: "As Canada moves forward with nation-building projects, the Government will always be firmly guided by the principle of free, prior, and informed consent." The material sent to the AFN by PCO expressed an intent to meet the consistency requirement in section 5 of the UN Declaration on the Rights of Indigenous Peoples Act and to create a new Major Federal Project Office with the intent of reducing project approvals from five years to two "all while upholding Canada's world-leading environmental standards and its constitutional obligations to Indigenous Peoples." The UN Declaration has several provisions relating to free, prior and informed consent standards (FPIC) including 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." We note that all of the legal obligations of the Crown in these matters are owed to each First Nation as rights holders and not to advocacy organizations like the AFN. At this time, we have no information on how the Crown plans to consult and meet its various legal obligations to all rights holders and what process will be made available to First Nations to discuss the raft of constitutional, Treaty and international rights implicated by the proposal.

3. The PCO letter and backgrounder lack detailed information and analysis of how the proposed legislation aligns or not with the Declaration itself and the consistency requirement provision (s.5) of the *UN Declaration on the Rights of Indigenous Peoples Act* (the UN Declaration Act). While the letter states a goal of “implementing the proposed legislation in a manner that respects the “UN Declaration Act”, that necessarily depends not only on legislative implementation but the actual content of the proposed legislation (that we do not have) and to what extent existing regulatory regimes and any reform of those also are consistent with the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples and uphold First Nations rights under section 35 of the Constitution Act, 1982 and Treaty. To date, First Nations have had no opportunity to discuss any of this with the Crown in a structured process with reasonable timelines (including how to operationalize the consistency requirement for legislation contained in section 5 of the UN Declaration Act).
4. The rights affirmed by the UN Declaration on the Rights of Indigenous Peoples are situated in the broader body of international law on the right of peoples to self-determination. This includes, inter alia, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as customary international law, all of which are legally binding on Canada. Canada has embraced the rights and obligations in the UN Declaration on the Rights of Indigenous Peoples without qualification in numerous policy statements and in the unqualified statutory commitments in the UN Declaration Act respecting full implementation of the Declaration.
5. We note the PCO letter states, “Additionally, consultations on specific major projects will continue to take place under existing regulatory processes.” As mentioned above, there are issues about the extent to which existing statutory and regulatory frameworks respect the rights of First Nations and whether these also meet the consistency standard required by s. 5 of the UN Declaration Act.
6. Without an actual consultation draft of the legislation, the AFN and First Nations rights holders cannot conduct a proper legal and policy analysis of the proposal.
7. There is a lack of detail and process on how the Crown will ensure that “national interest” projects will fully respect First Nations’ inherent rights, Treaties, jurisdiction, and all aspects of First Nations’ right to self-determination.
8. The proposed factors to be considered for designating “national interest” projects do not yet appear to include full respect of First Nations rights including free, prior and informed consent (note that FPIC is only one aspect of the right to self-determination under international law and we are not saying this is the only omission or concern First Nations may raise).
9. The envisioned “conditions documents” clearly carry significant risks for undermining First Nations legal rights, including meeting free, prior and informed consent requirements.

10. The concentration of authority in one federal minister risks marginalizing First Nations' oversight and voices.
11. There are numerous substantive issues that require discussion in a properly structured process. The only way the Crown can place itself in a position to not violate First Nations rights is to engage directly with rights holders in the process of legislative development. Based on the information so far shared, First Nations appear to be faced again with an *ad hoc* process of consultation and engagement on matters directly impacting the Treaty and inherent rights and jurisdiction of all First Nations and their right to self-determination.
12. One window approval means the constitutional and international rights of First Nations may be dealt with unevenly across the country.
13. The backgrounder states that once a project is deemed to be in the "national interest" the focus of federal review shifts from "whether" to build to "how" to build. There is no explanation of how FPIC requirements are factored into the "whether" to build decision-making as well as the "how".

In its current form, the proposal for legislation suggests a serious threat to First Nations exercise of Treaty rights, inherent rights, title and jurisdiction. At the same time, it creates a critical opening for substantive discussions on longstanding issues such as unresolved land claims, historical grievances, and the development of a legal mechanism to ensure legislation aligns with the UN Declaration.

This moment also offers a chance for First Nations and the Government of Canada to collaborate on tackling generational challenges, including climate change and the protection of lands and waters, if advanced in full partnership and cooperation with First Nations. It would be unfortunate, if this opportunity to close the gap on First Nations infrastructure is lost. First Nations' Free, Prior and Informed Consent must first be obtained. Otherwise, this legislation like so many before it, will become marred in conflict and protracted litigation, because First Nations rights have once again been ignored.

To follow upon that, your officials may reach out to Andrew Bisson, Chief Executive Office via email at abisson@afn.ca.

Megwetch,



Cindy Woodhouse Nepinak
National Chief

c.c.: AFN Executive Committee
Christiane Fox, Deputy Clerk of the Privy Council and Associate Secretary to the Cabinet
Privy Council Office
Mollie Johnson, Deputy Secretary to the Cabinet (Clean Growth) Privy Council Office