

# The New Impact Assessment Regime: Cooperation Agreements, the Return of Provincial Power & Discretionary Indigenous Rights

by Hayden King

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**EARLIER THIS YEAR**, Mark Carney's *One Canadian Economy Act* signalled the end of the era of reconciliation — or rather, the pretense of it — and brought us more fully back to the days of unfettered resource extraction on Indigenous lands. The legislation, which was followed by provincial versions in nearly every Canadian province, is designed to fast-track resource development by reducing regulatory delays and red tape, such as Indigenous rights. That's how many Indigenous people see it, at least.

## How could Canada create legislation affecting Indigenous people and lands without any consultation, after all?

And it is *consultation* at issue here. With the new laws comes a new approach to making decisions about resource development. How new projects will be approved, and at what stage Indigenous people will exercise their rights, are questions that remain mostly unanswered.

Following the legislation, Canada has begun negotiating a series of "Cooperation Agreements" with provinces that aim to streamline impact assessment and, correspondingly, consultation. Ontario and Manitoba have completed agreements, but the most concerning so far, Alberta's, is still accepting public comment. From now until March 27th, Canada will hear from Indigenous people how bad this agreement is.

### Impact! Then and Now

In the Trudeau era of federalism, there was an earlier attempt to revise the regulatory regime. The Impact Assessment Act (IAA) sought to create standards for

provinces and, importantly, make Indigenous participation in those processes a key element. While it went beyond what existed, Indigenous critics at the time (including myself) argued it didn't go far enough to recognize Indigenous jurisdiction. Now, it is being dismantled. In 2023, the Supreme Court ruled that the law encroached on provincial authority. And while the legislation was revised, responsibility for impact assessment is swinging even more toward provincial power.

This is bad news for Indigenous people.

The federal government's attempt to simplify impact assessments by reducing redundancy means, in practice, delegating more authority to provinces (which can *substitute* elements of the IAA). All agreements so far share the same basic architecture: the federal government will defer to provincial processes for many projects that would previously have been considered federal, with the stated goal of "one project, one review." In theory, this will make the approval process much quicker — though it means less diligence on environmental and Indigenous issues and less oversight from the federal government, which has certain constitutional obligations that provinces don't.

The details of these agreements differ somewhat. While Manitoba is taking a more moderate approach to environmental regulation and Indigenous rights, retaining elements of the original Impact Assessment Act, Ontario and Alberta have opted for the bulldozer.

## The Alberta Advantage: No Consent

The Duty to Consult is most often triggered in the environmental assessment process. Development is proposed (resource development or otherwise), and provinces scramble to figure out whose rights might be infringed. Once identified, a process for consultation begins. Processes vary from province to province, from organized to ad hoc. In recent years, the movement for consent, a principle captured in the UN's *Declaration on the Rights of Indigenous Peoples* (UNDRIP), has driven Indigenous communities to demand more, resulting in federal legislation enabling UNDRIP, a consent principle in Canada's *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, and the Supreme Court pushing for elements of consent in the Tsihqot'in and Kebaowek cases, not to mention Indigenous frameworks for consent.

The process for creating the Cooperation Agreements and the Agreements themselves are at odds with all of the above.

While most of the Cooperation Agreements, Canada, and the provinces agree to some variation of "affirming commitment to UNDRIP" in Alberta's agreement, the province declares that it "views UNDRIP as non-binding" — a signal that Alberta intends to undo any gains that have been made to ensure Indigenous participation in decision-making.

## Meanwhile, it reveals the federal government's new vision of federalism renders UNDRIP as optional.

This, in a context where Alberta believes the IAA remains constitutional. Alberta prefers no regulation and limited consultation. The Alberta Energy Regulator already faces criticism for inadequate consultation. Yet, the Alberta agreement states that "Canada will recognize Alberta as best placed to consult with Indigenous Peoples pursuant to Alberta's consultation policies and practices." Treaty 8 chiefs have pointed to decades of cumulative impacts — abandoned wells, tailings failures, declining water levels — as evidence that Alberta's existing regime has already failed.

For the federal government to defer authority to a province that has little interest in environmental regulation

or Indigenous rights only confirms the betrayal of consent or of any hopeful Indigenous-Crown relationship.

## “Zero consultation, zero notice and zero involvement”

Indigenous opposition to these agreements is growing. This is not surprising in Alberta, given that the agreement emerges directly from the Canada-Alberta MOU on energy collaboration, signed in November 2025. That MOU was negotiated with what Grand Chief Trevor Mercredi described as "zero consultation, zero notice and zero involvement of First Nations." Even the federal government's own Indigenous Advisory Council was not informed about the MOU before it was publicly announced. Chief Sheldon Sunshine of Sturgeon Lake Cree Nation warned that streamlined approvals risk "fast-tracking the demise of our people."

These concerns are national in scope. In the submissions on completed cooperation agreements, Matawa leadership in Ontario expressed outrage that "Canada's explicit handing over of constitutional jurisdiction over the natural resources contained within the James Bay Treaty No. 9 boundaries [to the province] is unacceptable." And Kebaowek First Nation in Quebec is "deeply concerned that the co-operation agreements risk enabling the federal Crown to withdraw from its constitutional responsibilities ... while framed as 'efficiency' or 'coordination', substitution in practice would allow the federal government to defer to provincial processes that do not share an equivalent mandate to safeguard Indigenous and Treaty rights or uphold nation-to-nation relationships."

Meanwhile, it is telling that industry submissions on the cooperation agreements are supportive and want to go even further toward stripped-down federal involvement. TC Energy, for instance, wants a "mechanism for delegating procedural aspects of the Crown's duty to consult (both provincial and federal) to project proponents." In other words, consultation should be led by the oil and gas sector.

## Betting on “Economic Reconciliation”

The deadline for feedback on the Manitoba and Ontario agreements has passed. But Alberta's has not.

So, submit that feedback and write those letters. There should be a critique of the process and the potential outcomes. Will it change the course of these Agreements?

Public servants are privately hoping so. But communities also need to be informed of the likely delegation of consultation and environmental regulation to provinces hostile to Indigenous rights. All the more so considering the scale of what's coming: the Ring of Fire mega-mine is proceeding in Ontario, Port of Churchill expansion in Manitoba, the explosion of liquefied natural gas infrastructure in B.C., and in Alberta, a proposed bitumen pipeline from the oil sands to the coast of British Columbia — and the likely end of the West Coast tanker ban.

## Accelerating resource development with less environmental regulation and discretionary Indigenous rights – the emerging landscape is bleak.

Of course, as demonstrated above, Indigenous people will push back. There is growing resistance in the form of community-based organizing against the federal legislation, legal challenges to specific resource projects and, very likely, outrage to come at this light approach to impact assessment. Canada and the provinces are betting that "economic reconciliation" will soften the blow. They believe that Indigenous rights can be converted into procurement contracts, resource revenue-sharing agreements and joint ventures. As long as there are economic benefits, they think, consultation and even consent can be bought. Are they right?

Hoping the bet pays, the Prime Minister and Premiers will continue to speak about respecting Indigenous rights and consultation — and blah, blah, blah — while they dilute them.

This is the new model of cooperation in the Carney era.

### CITATION

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