



Assembly of Manitoba Chiefs
EMPOWERING OUR NATIONS

April 25, 2019

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Honourable Seamus O'Regan
Minister of Indigenous Services
House of Commons
Ottawa, ON K1A 0A6

Honourable Carolyn Bennett
Minister of Indigenous Northern Affairs
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, QC K1A 0H4

Dear Minister O'Regan and Minister Bennett,

Re: The Creation of the Department of Indigenous Services and Crown-Indigenous Relations and Northern Affairs through Bill C-97

I write you to express concern regarding the creation of the Department of Indigenous Services and Crown-Indigenous Relations and Northern Affairs through Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures.

Recall my various correspondences to your offices sought to ensure that Canada involves Manitoba First Nations in how Canada deals with First Nations including the transforming of INAC and FNIHB to DISC and CIRNA:

- June 14, 2018 *Involving Manitoba First Nations and the AMC in Activities of Regional Federal Departments*: the AMC sought to involve Manitoba First Nations in the amalgamation of the regional First Nations and Inuit Health Branch within the regional office of Indigenous Services. In response, Minister Bennett indicated that the Manitoba Region has committed to funding to table items on transformation, and is committed to continuing to work with the AMC over the coming months to address transformation.
- November 28, 2018 *Indigenous Rights Framework* that called on Canada to stop work in its Indigenous Rights Framework, and identified issues with the pan-Indigenous approach and requirement to have Manitoba First Nations who seek to have 10 years grant sign onto the First Nations Financial Management Board.

That said, the AMC has become aware that there has not been any meaningful consultation with Manitoba First Nations on the creation of the Department of Indigenous Services and Crown-Indigenous Relations and Northern Affairs through Bill C-97.

BILL C-97 will wholly impact First Nation rights through the omnibus and ancillary approach through this Bill where additional Acts would come into force will impact First Nations without the meaningful discharging of the duty to consult and accommodate as follows:

- Subdivision A of Division 25 of Part 4 enacts the *Department of Indigenous Services Act*, which establishes the Department of Indigenous Services and confers on the Minister of Indigenous Services various responsibilities relating to the provision of services to Indigenous individuals eligible to receive those services.
- Subdivision B of Division 25 of Part 4 enacts the *Department of Crown-Indigenous Relations and Northern Affairs Act*, which establishes the Department of Crown-Indigenous Relations and Northern Affairs, confers on the Minister of Crown-Indigenous Relations various responsibilities relating to relations with Indigenous peoples and confers on the Minister of Northern Affairs various responsibilities relating to the administration of Northern affairs.
- Subdivision C of Division 25 of Part 4 makes amendments to other Acts and repeals the *Department of Indian Affairs and Northern Development Act*.
- Subdivision D of Division 25 of Part 4 makes amendments to the *First Nations Land Management Act*, the *First Nations Oil and Gas and Moneys Management Act* and the *Addition of Lands to Reserves and Reserve Creation Act*.

The AMC understands that Canada is not required to consult First Nations while it is drafting legislation. However, once a Bill is completed and in draft form, the Bill requires a due diligence review as to whether the Bill will or potentially impact First Nation rights which will determine whether the duty to consult and accommodate is triggered. Courts have stated numerous times that Canada must ensure it meets its obligations to consult with Indigenous peoples.

Canada's courts have defined in clear terms that consultation has to be meaningful and is not just a procedural check-box requirement. Consultation is a substantive requirement that requires meaningful engagement and dialogue.

First Nations and Canada must be treated as equals so that First Nations are provided with the capacity to make an informed decision and where there's free, prior and informed consent. Dialogue must be meaningful and there must be a willingness to change.

Canada needs to view and treat First Nations as constitutional partners. The courts have stated where there are impacts on a First Nation's rights or title, the Crown must examine the potential impacts, determine the strength of the claims and the seriousness of the impacts, and engage in a true and meaningful two-way dialogue.

As well, under international law, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) requires that governments obtain "free prior and informed consent" from First Nations. The Supreme Court has stated that the goal of consultation should be to obtain consent from the Nation affected so that "allegations of infringement or failure to adequately consult can be avoided by obtaining the consent of the interested Aboriginal group".

In light of the foregoing, the AMC is appreciative of the commitment to transformation and working with Manitoba First Nations. However, this does not discharge the duty to consult. To this end, I call you to commit to meet the Crown's obligation to consult with Manitoba First Nations on the creation of DISC and CIRNA.

Sincerely,

ASSEMBLY OF MANITOBA CHIEFS



Grand Chief Arlen Dumas

cc.: Prime Minister Justin Trudeau