



March 25, 2026

Via IAAC Portal

Impact Assessment Agency of Canada

22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3

Re: ACFN Submissions on the Draft Canada–Alberta Co-operation Agreement

ACFN is a Treaty 8 First Nation whose section 35 rights depend on rigorous, independent federal oversight. The Draft Canada–Alberta Co-operation Agreement departs from constitutional norms by elevating provincial primacy, constraining federal discretion, and weakening protections for Indigenous rights.

- **Predetermination and fettering:** Mandatory language signals predetermined outcomes and heightens the risk of unreasonable decisions where section 35 rights are engaged.
- **Erosion of federal responsibility:** The Agreement minimizes federal jurisdiction and conditions federal reliance on provincial assurances, undermining Canada’s Treaty 8 obligations.
- **Early off-ramps without safeguards:** The facilitation of early “no federal IA” decisions risks irreversible prejudice to Treaty 8 rights by eliminating federal involvement at the outset.
- **Statutory evasion and uncertainty:** The failure to anchor cooperation in the IAA’s substitution and harmonization provisions creates legal ambiguity and invites litigation.
- **Undermining UNDRIP and reconciliation:** Canada’s duty to consult is not preserved; UNDRIP is dismissed; and the provincial consultation and regulatory framework is presumed sufficient.
- **Removal of proven mechanisms:** The exclusion of Joint Review Panels eliminates a rights-protective tool used elsewhere.

Without prejudice to ACFN’s rights, title, and remedies, ACFN provides these submissions in good faith to urge Canada to correct the Agreement’s substantive deficiencies and to ensure any final agreement complies with section 35, Treaty 8, the honour of the Crown, and the statutory framework enacted by Parliament.

I. INTRODUCTION AND ACFN’S INTERESTS

Athabasca Chipewyan First Nation (“ACFN”) is a First Nation whose members exercise Aboriginal and Treaty rights protected under section 35 of the *Constitution Act, 1982*, including hunting, fishing, trapping, and cultural and spiritual practices.¹ These rights are highly sensitive to the cumulative industrial disturbance within ACFN’s territory and depend upon rigorous, independent, and constitutionally compliant assessment and regulatory processes.

ACFN has a direct and substantial interest in the Draft Canada–Alberta Co-operation Agreement (the “Agreement”).² If implemented, the Agreement would materially alter the regulatory, constitutional, and practical framework through

¹ being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 35.

² Impact Assessment Agency of Canada, *Draft Co-operation Agreement on Environmental and Impact Assessment between Alberta and Canada* (6 March 2026), [Co-operation Agreement].

which projects affecting ACFN's rights are screened, assessed, approved, and monitored. In ACFN's view, the Agreement diminishes federal oversight, undermines section 35 protections, and shifts the framework of rights protection away from robust regulatory processes onto Indigenous rights holders through costly litigation.

II. CONTEXT AND DEVELOPMENT OF THE AGREEMENT

The Agreement must be understood within the broader political and policy context that preceded its development. The policy direction animating the Agreement reflects a tension within federal commitments articulated in the May 2025 Speech from the Throne.³ In that speech, the federal government committed to pursuing co-operation agreements with all interested provinces and territories in order to advance a "one project, one review" approach to impact assessment.⁴ At the same time, the government affirmed that, as Canada advances nation-building projects, it would be firmly guided by the principle of Free, Prior, and Informed Consent ("FPIC").⁵ These commitments pull in fundamentally different directions.

FPIC is rooted in the fact of Indigenous sovereignty, and ACFN views informed consent as a necessity as we continue to affirm our inherent rights and stewardship duties. The Agreement as it is laid out compromises meaningful consultation in favour of creating efficiencies. A regulatory approach focused on consolidation, substitution, and administrative efficiency risks prioritizing speed and uniformity over the substantive, rights-based engagement that FPIC requires. The Agreement resolves this tension by privileging efficiency and provincial reliance, rather than by ensuring that streamlined processes remain fully consistent with the constitutional imperative to uphold section 35 rights through robust, independent federal oversight.

Canada and Alberta entered into a Memorandum of Understanding on Energy on November 27, 2025, committing to negotiate, on or before April 1, 2026, a co-operation agreement on impact assessments intended to reduce perceived regulatory "duplication".⁶ The Agreement was subsequently released on March 6, 2026, following a highly compressed negotiation period.

The Agreement was released with a severely constrained 21-day public comment period ending on March 27, 2026. This compressed timeline effectively precludes meaningful engagement by Indigenous rights holders whose constitutional rights are directly and profoundly affected. Far from facilitating informed participation, the truncated process undermines the principles of consultation and respect for Indigenous rights that Canada purports to uphold. The timing is especially egregious given the existence of concurrent and ongoing litigation challenging Alberta's constitutional initiatives and consultation framework,⁷ which heightens legal uncertainty and compounds the risks associated with advancing the Agreement in its current form.

Canada's rapid proliferation of similar co-operation agreements with other provinces under the Impact Assessment Act ("IAA") reflects a deliberate federal policy shift toward regulatory streamlining and increased reliance on provincial processes.⁸ However, the Agreement with Alberta raises uniquely serious concerns. Alberta's documented regulatory deficiencies, the extraordinary scale and intensity of industrial development within Treaty 8 territory, and the constitutional vulnerabilities already identified by ACFN and other Indigenous nations distinguish this Agreement from others and demand heightened federal scrutiny, not abdication. Proceeding with this Agreement despite these realities represents a profound failure to account for regional context, rights-holder experience, and Canada's constitutional obligations.

Nevertheless, ACFN is providing feedback on the Agreement in good faith, and without prejudice to ACFN's legal rights and remedies, to address its substantive deficiencies and improve its alignment with constitutional requirements

³ Canada, *Building Canada Strong: A Bold, Ambitious Plan for Our Future: Speech from the Throne to Open the First Session of the Forty-Fifth Parliament of Canada* (27 May 2025).

⁴ *Ibid.*, at p.12.

⁵ *Ibid.*, at p.17.

⁶ Impact Assessment Agency of Canada, *Memorandum of Understanding between the Government of Canada and the Government of Alberta: agreement to strengthen energy collaboration and build a stronger, more competitive, and more sustainable economy* (November 27, 2025).

⁷ See the most recent decision in one of our ongoing litigations: *Mikisew Cree First Nation v Alberta*, 2025 ABCA 304.

⁸ Impact Assessment Act, S.C. 2019, c. 28 [IAA].

and best practices reflected in other co-operation agreements. Canada is obligated to ensure that any final agreement reflects constitutional requirements, meaningful federal oversight, and the protection of Aboriginal and Treaty rights.

III. ERODING UNDRIP AND THE DUTY TO CONSULT

The Agreement’s explicit characterization of the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) as “non-binding,”⁹ and assertions that Alberta is “best placed” to consult Indigenous peoples, is legally incorrect and deeply concerning.¹⁰ For ACFN this language signals a narrow interpretive approach to Indigenous rights that is inconsistent with evolving Canadian jurisprudence and federal commitments to UNDRIP implementation.

Courts increasingly rely on UNDRIP as an interpretive aid for s. 35.¹¹ Embedding Alberta’s rejection of UNDRIP within the Agreement entrenches a restrictive interpretive approach that is incompatible with rights-expansive section 35 jurisprudence and runs counter to reconciliation-oriented decision-making.

By asserting that Alberta is “best placed” to consult with Indigenous peoples on projects primarily within provincial jurisdiction, the Agreement fails to require Canada to independently verify consultation adequacy, ensure accommodation, or intervene where provincial processes are deficient. Other agreements either affirm that each Crown retains its own duty to consult or adopt approaches that do not dismiss UNDRIP outright.¹² Alberta’s approach is uniquely dismissive and constitutionally vulnerable.

Engagement with ACFN and Indigenous peoples is being seriously curtailed by the requirement that any federal impact assessment decision required under the Agreement must be completed within a maximum of two years from the federal receipt of the initial project description.¹³ While this technically does not limit Canada or Alberta from coordinating with Indigenous groups respecting assessments or incorporating Indigenous-led assessments to fulfill Crown obligations,¹⁴ it creates ambiguity and uncertainty. Notably, the Agreement:

- Does not clearly affirm that each Crown retains responsibility for consultation within its jurisdiction.
- Is silent on how conflicts between provincial and federal assessments of rights impacts will be resolved.
- Does not explain how federal accommodation will be ensured if Alberta deems consultation sufficient.

Given ACFN’s long-standing critiques of Alberta’s consultation and regulatory framework, this ambiguity creates a real risk of unconstitutional dilution of federal consultation duties. As above, ACFN is currently engaged in active litigation challenging Alberta’s consultation and regulatory framework, alleging systemic failures to discharge constitutional obligations to ACFN and other section 35 rights holders, and as such any presumption that Alberta’s consultation processes are adequate or appropriate for federal reliance is unfounded.

In 2020, ACFN and Mikisew Cree First Nation (“MCFN”) filed both an action and a judicial review against Alberta, challenging its Consultation Policy. The Nations say Alberta’s Consultation Policy is unconstitutional and contrary to the duty to consult because it (1) only considers “site specific effects”; (2) excludes consideration of cumulative effects; (3) unreasonably limits accommodation; and (4) effectively immunizes consultation from judicial review. In March of 2021, the parties tried to negotiate a resolution. However, Alberta refused to consider or discuss any of the issues raised in the litigation and did not change its policy. Alberta then brought an application to strike the action that

⁹ Co-operation Agreement, Preamble.

¹⁰ UNDRIP contains many elements of customary international law and Alberta’s view that UNDRIP is non-binding is contrary to established case law on the application of customary international law as part of the Canadian common law: *Nevsun Resources Ltd. v Araya*, 2020 SCC 5.

¹¹ See *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024] S.C.J. No. 5, 2024 SCC 5, at paras 4 & 15 (S.C.C.); *Dickson v. Vuntut Gwitchin First Nation*, [2024] S.C.J. No. 10, 2024 SCC 10, at paras. 47 & 117

¹² This approach stands in stark contrast to other agreements. Manitoba expressly commits to alignment with UNDRIP principles. Ontario and Prince Edward Island take no position on UNDRIP but do not dismiss it. Notably, Ontario’s agreement expressly affirms that each Crown retains its own duty to consult.

¹³ Co-operation Agreement, s.5(1).

¹⁴ Co-operation Agreement, s.7(3).

was dismissed by the Alberta Court of the King's Bench; Alberta's subsequent appeal to the Alberta Court of Appeal was also dismissed.¹⁵

In addition, ACFN is bringing a claim in regulatory negligence against the province's life-cycle regulator. In 2024, ACFN filed an action against the Alberta Energy Regulator ("AER") and Alberta related to two major tailings spills from the Kearl Oil Sands Project in ACFN's territory. ACFN's claims against the AER are primarily in negligence and nuisance related to the AER's regulation of the Kearl facility, and the AER's failure to warn ACFN for nine months about a 2022 tailings spill, despite knowing that toxic tailings were seeping directly into lands and waters where ACFN members carried out their Treaty-protected way of life. ACFN also claims that Alberta's regulatory system concerning tailings management is unconstitutional and fundamentally fails to address cumulative impacts to ACFN's rights and traditional territory.

Alberta's regulatory system has failed the Nation and other Indigenous peoples throughout the province. A "one project one review" approach to impact assessment that places greater reliance on this fundamentally flawed system will be at the expense of ACFN's rights, future, and well-being as an Indigenous people. In this context, Canada's reliance on Alberta's consultation and regulatory processes would be undertaken with clear notice of their alleged constitutional deficiencies, heightening the risk of unlawful delegation and unreasonable decision-making.

IV. PROVINCIAL PRIMACY AT THE EXPENSE OF SECTION 35 AND TREATY 8 RIGHTS

For ACFN, the Agreement's unqualified deference to provincial authority materially alters the constitutional balance in a manner that prejudices the protection of section 35 rights and is a central deficiency of the Agreement. Unlike co-operation agreements concluded with other provinces, the Alberta Agreement employs strong and absolutist language, repeatedly asserting that Canada "will recognize Alberta as best placed" and "will rely on Alberta's" assessment and regulatory processes for projects deemed to be "primarily within provincial jurisdiction."¹⁶ The Agreement's mandatory language signals predetermined outcomes and a presumption of provincial sufficiency where federal constitutional responsibilities are engaged.

This framing reflects a province-centric conception of "one project, one review" in which provincial assessment is positioned as the default and federal involvement is cast as secondary or residual. By contrast, agreements with other provinces employ more qualified language, such as Canada being "committed to relying" on provincial processes "to the greatest extent possible", which more clearly preserves federal discretion and oversight.¹⁷

This framing is legally consequential. Treaty 8 rights are exercised across lands subject to intense and cumulative industrial disturbance. Projects affecting those lands necessarily engage federal jurisdiction and Canada's independent obligations to uphold the honour of the Crown. By positioning provincial assessment as the default and federal involvement as contingent, the Agreement substitutes administrative efficiency for constitutional compliance. Unlike other co-operation agreements that preserve federal discretion through qualified language, the Agreement advances a model that increases the likelihood of unreasonable decision-making where ACFN's rights are affected.¹⁸

Compounding these concerns, the Agreement does not: (1) define what constitutes a project "primarily within provincial jurisdiction"; (2) identify which Crown will make that determination; and (3) articulate the criteria to be applied. Indigenous rights holders must be co-decision makers on any such determinations.

The Alberta Agreement stands out as significantly more deferential to provincial authority than any other co-operation agreement currently in force or under consideration. Co-operation agreements should be carefully bounded administrative coordination tools. In absence of clear guardrails, the Agreement is likely to function as broad political assertion of provincial primacy to the detriment of ACFN and other Indigenous nations. In ACFN's view, this is an

¹⁵ See, *Mikisew Cree First Nation v Alberta*, 2024 ABKB 578 at 153 to 154, Alberta's appeal was dismissed in *Mikisew Cree First Nation v Alberta*, 2025 ABCA 304.

¹⁶ Co-operation Agreement, s.1(1).

¹⁷ See *Draft Co-operation Agreement between Prince Edward Island and Canada on Environmental and Impact Assessment* (3 November 2025) at s.1(1) [PEI Agreement].

¹⁸ See, for example: *Co-operation Agreement between Ontario and Canada on Environmental and Impact Assessment* (18 December 2025) [Ontario Agreement]; Canada & Manitoba, *Draft Co-operation Agreement between Manitoba and Canada on Environmental and Impact Assessment* (24 November 2025) [Manitoba Agreement].

irresponsible step to take at a time where this province is facing numerous suits concerning cumulative effects and their impacts on Indigenous people. ACFN's interest is in safeguarding our Way of Life, affirming our constitutionally held s. 35 rights; the Agreement fails to account for the limited avenues we have available to us living and working within our regional context, and it certainly undermines Canada's constitutional obligations.

V. FEDERAL INTERESTS UNDERMINED BY PROVINCIAL RELIANCE

The Agreement further departs from established practice in its treatment of federal jurisdiction and federal interests. The preamble places heavy emphasis on exclusive provincial powers under sections 92 and 92A of the *Constitution Act, 1867*.¹⁹ However, the Agreement fails to articulate any corresponding federal heads of power. This asymmetry is untenable and unique to the Alberta Agreement. Treaty 8 is an enduring constitutional compact between the Crown and the Indigenous signatories.²⁰ Canada cannot discharge its Treaty obligations by relying on provincial assurances.

Section 3 exacerbates this problem by allowing Alberta to self-certify that its processes are sufficient to address impacts that fall within federal jurisdiction, effectively shifting responsibility for Canada's constitutional obligations to the province.²¹ The Agreement displaces Canada's independent responsibility to ensure its constitutional obligations to ACFN are fulfilled.²² While governments may freely enter into intergovernmental agreements at the executive level unless restricted by statute, delegation of powers between levels of government is constitutionally prohibited.²³ Further, Supreme Court jurisprudence is clear that the party seeking to engage in consultation itself must possess the remedial powers necessary to do what is asked in connection with the consultation independently.²⁴

Other provincial agreements adopt a more balanced approach, recognizing the concurrent operation of federal and provincial jurisdiction and explicitly preserving federal authority to impose conditions, require legally binding mitigation measures, and ensure follow-up and compliance in relation to federal interests.²⁵ As such, the Agreement significantly weakens the articulation and protection of federal jurisdiction and is inconsistent with Canada's constitutional responsibilities.

VI. EARLY ASSESSMENT DECISIONS AND LOSS OF FEDERAL LEVERAGE

The Agreement strongly operationalizes an "early assessment" model that encourages and facilitates determinations that no federal impact assessment is required. Sections 1(1) and 3 are framed to support early off-ramps from the IAA with minimal clarity regarding how federal interests will continue to be protected once such a determination is made.

For ACFN, this is consequential. Once Canada determines that no federal impact assessment is required, the project exits the federal regime entirely. Although federal constitutional obligations technically remain, the primary procedural vehicle through which they are typically discharged is removed. This results in the loss of:

- Federal participation and standing rights;
- Access to federal participant funding;
- Federal expertise on fisheries, species at risk, navigable waters, and cumulative effects; and
- A federal decision record capable of meaningful judicial review on s. 35 grounds.

For ACFN, these early screening decisions are Crown decisions with immediate and lasting consequences for section 35 rights. Once an early off-ramp is taken, federal leverage to require binding mitigation, cumulative-effects analysis, and enforceable accommodation is substantially diminished or eliminated. Other agreements acknowledge

¹⁹ Co-operation Agreement, the Preamble.

²⁰ See *R. v. Badger*, [1996] 1 S.C.R. 771 and *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage), 2005 SCC 69.

²¹ Co-operation Agreement, s.3(1).

²² Co-operation Agreement, s.1(2).

²³ See *Nova Scotia (AG) v Canada (AG)*, [1951] SCR 31; *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No5.

²⁴ *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43, at para 59 [Rio Tinto]. While this is in reference to the powers of tribunals, the same question is raised with respect to Alberta's ability to address issues that are matters of exclusive federal jurisdiction.

²⁵ See, for example, the PEI Agreement; Ontario Agreement; and Manitoba Agreement.

this risk and preserve mechanisms to protect federal interests notwithstanding an early “no IA” determination.²⁶ Those agreements, particularly Prince Edward Island’s, more clearly describe the mechanisms through which federal interests may still be safeguarded, including the imposition of binding federal conditions.²⁷

The Alberta Agreement pushes the early off-ramp model further and with fewer safeguards, raising serious concern that federal leverage is lost at the very stage where it is most needed. This omission exposes ACFN to a heightened risk of irreparable prejudice to its Treaty 8 rights. ACFN is currently engaged in litigation with Alberta for failures to discharge constitutional obligations and because Alberta’s processes are fundamentally inadequate for the protection of ACFN’s Rights. This Agreement increases the likelihood that federal decision-making will be found unreasonable for failing to grapple with foreseeable adverse impacts on Indigenous rights.

VII. SUBSTITUTION, HARMONIZATION, AND DEPARTURE FROM THE IAA FRAMEWORK

The Agreement is also notable for what it omits. Unlike agreements with Ontario and other provinces, the Alberta Draft does not use the term “substitution” at all and makes no explicit reference to sections 31–33 of the IAA.²⁸ Nor does it clearly anchor co-operative assessments in section 114 of the IAA, which provides the statutory authority for project-specific arrangements.²⁹

Instead, section 4 of the Agreement refers only to vague “co-operative assessments,” creating uncertainty as to whether assessments will be legally unified or whether parallel federal and provincial processes may proceed simultaneously without clear authority. This approach departs most dramatically from the statutory framework of the IAA and risks regulatory incoherence. This uncertainty impairs ACFN’s ability to understand (1) which decision-maker bears responsibility, (2) which statutory standards apply, and (3) how rights-based concerns will be enforced.

By contrast, other agreements explicitly reference substitution and harmonized processes, clearly link implementing arrangements to section 114, and establish defined timelines and decision points.³⁰ The Alberta Agreement increases litigation risk and is an improper attempt to sidestep Parliament’s framework, undermining legal certainty and procedural fairness.

VIII. ABSENCE OF JOINT REVIEW PANELS

The exclusion of Joint Review Panels (“JRP”) from the Agreement removes a proven cooperative mechanism that has historically enabled integrated federal-provincial oversight while preserving federal accountability. For ACFN, JRPs have provided a more meaningful forum to address cumulative effects and cross-jurisdictional impacts central to Treaty 8 rights. Their omission further weakens the Agreement’s capacity to deliver constitutionally adequate assessments.

JRPs are expressly referenced in agreements with New Brunswick, Manitoba, Nova Scotia, and Prince Edward Island, and have a proven track record of federal-provincial cooperation, including in Alberta itself.³¹ The exclusion of JRPs from the Agreement further underscores its departure from established cooperative models and removes a key tool for ensuring integrated, transparent, and credible assessments.

IX. AN AGREEMENT UNTETHERED FROM STATUTORY AUTHORITY

²⁶ PEI Agreement, ss.3(2), 5(1)-(4), 6(1)-(2); Ontario Agreement, ss.3(1)-(2), 4(1)-(2), 5(1)-(2).

²⁷ PEI Agreement, ss.5(1)-(2).

²⁸ Ontario Agreement, s.4(2).

²⁹The absence of any specific reference to the anchoring provisions of the *IAA* is a significant concern: The conditions referenced in ss. 31 and 33 of the *IAA* should be included in any cooperative arrangement negotiated under s 4 of the *IAA*.

³⁰ Ontario Agreement, ss. 4-5; PEI Agreement, s.5(1)-(4); Manitoba Agreement, s.5.

³¹*Co-operation Agreement between New Brunswick and Canada on Environmental and Impact Assessment*, signed December 16, 2025; Manitoba Agreement; Draft Co-operation Agreement between Nova Scotia and Canada on Environmental and Impact Assessment, public comment notice dated February 13, 2026; and PEI Agreement; For example, the JRP for the Benga Mining Limited’s Grassy Mountain Coal project found the project was not in the public interest and has denied the provincial applications. Alberta Energy Regulator, “*Joint Review Panel Concludes Review of Grassy Mountain Coal Project*” (17 June 2021).

The Agreement's lack of explicit legal anchoring in the IAA appears designed to preserve Alberta's constitutional challenge to the Act.³² That objective is pursued at the expense of certainty for Indigenous rights holders. For ACFN, regulatory ambiguity translates into delayed protections, increased litigation, and a shift of the burden of rights protection from robust regulatory processes to the courts. An outcome that is inconsistent with reconciliation and the honour of the Crown.³³ By contrast, agreements with Ontario and other provinces closely track the text and structure of the IAA, providing clearer legal pathways and decision points. Alberta's agreement has minimal legal anchors and is thus the most likely to generate uncertainty and dispute.

X. FETTERING OF FEDERAL DISCRETION

The Agreement's mandatory language creates a serious risk of unlawful fettering. Generic "no-fettering" clauses cannot cure operative commitments that signal predetermined reliance on provincial processes. Where section 35 rights are engaged, such predetermination exposes federal decisions to reasonableness challenges for failing to meaningfully exercise statutory discretion.

The Draft Agreement's repeated use of mandatory language like "Canada will recognize" and "Canada will rely" raises serious concerns regarding the unlawful fettering of federal discretion. Although the Agreement contains generic "no-fettering" clauses, these provisions likely offer only limited protection where the operative language strongly signals predetermined outcomes.

XI. CONCLUSION: FEDERAL ABDICATION AND CONSTITUTIONAL RISK

Viewed as a whole, the Draft Canada–Alberta Co-operation Agreement is an outlier and legally tenuous. It is more dismissive of constitutional constraints, less grounded in the statutory framework of the IAA, and more politically assertive but legally fragile than any comparable agreement.

By contrast, agreements with Ontario and several other provinces demonstrate that substitution and harmonization can be pursued in a manner that preserves federal responsibility, respects Indigenous rights, and maintains legal coherence. The Alberta Agreement does not meet that standard and must not be finalized in its current form.

Yours Truly,



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Enclosure(s)

cc Athabasca Chipewyan First Nation Council
Minister Dabrusin – Environment, Climate Change, and Nature

³² Co-operation Agreement, s.10.

³³ *Rio Tinto*, at para 34.