

# Canada's response to concerns raised by the Committee on the Elimination of Racial Discrimination under its Early Warning and Urgent Action Procedure: Site C dam

## Introduction

1. On August 14 and 15, 2017, Canada appeared before the United Nations Committee on the Elimination of Racial Discrimination (the Committee), for the review of its combined twenty-first to twenty-third periodic report on the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD). The Committee issued its Concluding Observations for Canada on September 13, 2017.<sup>1</sup> In its Concluding Observations, the Committee requested that Canada<sup>2</sup> submit, within one year, information in response to the recommendations made in paragraph 20(e), which pertain specifically to development of the Site C Clean Energy Project (Site C or the Project).
2. By letter dated December 14, 2018, Canada received a request from the CERD under its Early Warning Urgent Action Procedure (CERD/EWUAP/Canada-Site C dam/2018/JP/ks) for information relating to Site C and how it conforms with obtaining free, prior and informed consent (FPIC) of affected Indigenous groups in the Province of British Columbia.
3. As stipulated in its Interim Report, submitted to the Office of the High Commission for Human Rights on March 4, 2019, given the similarity of the concerns raised and information requested on the Site C dam for both the Interim Report and under the EWUAP, Canada deferred providing information to the Site C issues in the Interim Report, opting to provide a more fulsome response to the December 14, 2018 request below.
4. The provision of the information by Canada in no way constitutes agreement that this situation is appropriate for consideration under the EWUAP. Furthermore, as the Committee is aware, Canada has not entered a declaration under Article 14 of the Convention, recognizing the competence of the Committee to receive or consider complaints by individuals or groups of individuals. Canada is thus providing the information below in answer to the Committee's questions as part of its periodic reporting.

## Executive Summary

5. Site C is a hydroelectric dam project being constructed on the Peace River in British Columbia that was subject to a joint federal-provincial environmental assessment between 2011 and 2014. The purpose of Site C is to provide energy and hydroelectric capacity for the people of the Province of British Columbia, while meeting provincial public policy goals, including contributing to global efforts to combat climate change. Both the federal and provincial governments have approved Site C. Following eight years of consultation with Indigenous groups, construction of Site C commenced in July 2015 and consultation with respect to construction remains ongoing. In December 2017, British Columbia decided to

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<sup>1</sup> CERD/C/CAN/CO/21-23 (adopted by the Committee August 24, 2017).

<sup>2</sup> Please note that the term "Government of Canada" refers to the Canadian federal government; the term "Canada" refers to federal, provincial and territorial (FPT) governments combined; and the term "province or territory (e.g. Québec, Manitoba, or the Yukon) is generally a reference to the government of the relevant province or territory.

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continue construction of Site C following a further independent review by the British Columbia Utilities Commission and additional consultation with Indigenous groups.

6. In Canada, the rights of Indigenous peoples are constitutionally protected and a government decision to approve a project may be challenged in court on the basis that consultation was inadequate, or the project unjustifiably infringes the Indigenous group's Aboriginal or treaty rights. In the case of Site C, Canadian courts have determined that the Crown has meaningfully and adequately consulted Indigenous groups. An outstanding court action has been brought by West Moberly First Nation and the Prophet River First Nation to determine whether the Project unjustifiably infringes these groups' treaty rights.
7. Canada and British Columbia have approached Site C in a manner that is consistent with the recent study of the United Nations Expert Mechanism on the Rights of Indigenous Peoples on free, prior and informed consent.<sup>3</sup> The process has sought to achieve consent of impacted Indigenous groups and has resulted in extensive environmental and cultural impact assessments, mitigation measures and the pursuit of benefit sharing agreements. To date, benefit agreements have been reached with six of the Indigenous groups who will be most impacted by Site C. These groups have confirmed in writing that they consent to or do not oppose the Project, and that they have been consulted and accommodated with respect to the effects of Site C on their constitutionally protected rights. Canada continues to consult, accommodate and negotiate with Indigenous groups who have not reached an agreement.

**Background**

8. In Canada, the Aboriginal and treaty rights of Indigenous peoples are recognized and affirmed under section 35 of the *Constitution Act, 1982* and are constitutionally protected. Canadian courts have elaborated on and clarified the meaning and scope of the protected rights of Indigenous peoples, including in relation to the Crown's legal duty to meaningfully consult, and where appropriate, accommodate when it is contemplating activities that may adversely affect potential or established Aboriginal or treaty rights.
9. As one of its *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, the Government of Canada has recognized that "meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources."<sup>4</sup> This Principle acknowledges the Government of Canada's commitment to a new nation-to-nation, government-to-government and Inuit-Crown relationship that builds on and goes beyond the legal duty to consult.
10. Similarly, in 2018, the Province of British Columbia introduced draft principles, modelled on the federal principles, that include a recognition of the "right of Indigenous peoples to

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<sup>3</sup> <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/FPIC/Canada.pdf>

<sup>4</sup> <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>. See Principle 6, p.12.

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participate in decision making in matters that affect their rights through their own representative institutions and the need to consult and cooperate in good faith with the aim of securing their free, prior and informed consent.” This Principle acknowledges British Columbia’s commitment to a new government-to-government relationship that builds on and goes beyond the legal duty to consult.<sup>5</sup>

11. The Government of Canada has committed to a renewed relationship with Indigenous peoples that is based on the recognition of rights, respect, cooperation, and partnership. In 2016, the Government of Canada announced that it would support and implement the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), domestically. The Declaration describes the individual and collective rights of Indigenous peoples, and is described in its preamble as a standard of achievement to be pursued in a spirit of partnership and mutual respect. It is noted that there are existing protections for Aboriginal and treaty rights in Canada, notably as provided by section 35 of the *Constitution Act, 1982* and the Canadian law on the duty to consult.
12. One of the goals of the Government of Canada and the Province of British Columbia, consistent with the United Nations Declaration on the Rights of Indigenous Peoples and FPIC, is to find new ways to work in partnership with Indigenous peoples through mechanisms that promote shared decision-making whenever possible, so as to promote consensus building, while also satisfying the requirements of section 35 of the *Constitution Act, 1982*
13. Consistent with the purpose of free, prior and informed consent, the duty to consult serves to protect the asserted or established rights held by Indigenous peoples in Canada from government action, including for example, where government action is involved in regulating and approving resource development projects. If an Indigenous group is not satisfied with the consultation that has occurred or the accommodations offered, government decisions can be the subject of judicial review by a court. Canadian courts, on judicial review, will assess the adequacy of the consultation process and any accommodation measures. Government decisions and actions may be quashed where the process or outcomes of consultation has been inadequate.<sup>6</sup>
13. In Canadian law, consultation does not mean Indigenous peoples have a veto over government decisions. Canadian courts have held that the duty to consult guarantees a process, not a particular result. In some circumstances, consultation will lead to substantive accommodation measures. There is no duty to reach agreement, but there must be good faith efforts and a commitment to a meaningful process by both the government and the Indigenous group whose asserted or established rights may be adversely impacted. Where adequate consultation has occurred, and reasonable accommodation offered, a development may proceed without consent. To the extent a project or government action is judicially determined

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<sup>5</sup> [https://news.gov.bc.ca/files/6118\\_Reconciliation\\_Ten\\_Principles\\_Final\\_Draft.pdf?platform=hootsuite](https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite)

<sup>6</sup> See for example: *Gitxaala Nation v Canada*, 2016 FCA 187 and *Tsleil-Waututh Nation v Canada*, 2018 FCA 153

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to infringe an Indigenous group's constitutionally protected rights, the government conduct must be justified as pursuing an important public interest in a proportionate way that minimizes impacts on rights.

14. This is consistent with commentary by the UN Special Rapporteur on the Rights of Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples, which notes that FPIC should be understood as an important principle aimed at protecting the fundamental human rights of Indigenous peoples. However, the principle should not be regarded as according Indigenous peoples a general “veto power” over decisions that may affect them. Rather, FPIC requires that consultations must be undertaken in good faith with the *objective* of reaching agreement or achieving consent.<sup>7</sup> Notably, the Expert Mechanism recently cited Canadian law—the decision of the Supreme Court of Canada in *Tsilhqot'in* — on the circumstances in which a government may decide to pursue an activity following the inability to obtain consent.<sup>8</sup>
15. The Site C hydroelectric project will be the third hydroelectric dam, generating facility, and reservoir on the Peace River. It is located in northeastern British Columbia, approximately 7 km southwest of the city of Fort St. John. It is a public infrastructure project being built by BC Hydro, a Crown Corporation, to provide energy and capacity for the people of British Columbia, while meeting Provincial public policy goals, including contributing to global efforts to combat climate change.
16. The location of the Site C dam is within the geographical boundaries of Treaty 8.<sup>9</sup> Treaty 8 is a historic treaty entered into in 1899 between the federal Crown and the “Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits” described in the treaty (an area of 840,000 square kilometers in what is now northern Alberta, northeastern British Columbia, northwestern Saskatchewan and the southern portion of the Northwest Territories). West Moberly and Prophet River are two First Nations in British Columbia that are signatories to, or have adhered to, Treaty 8 thereby creating reciprocal rights and obligations with the Crown.

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<sup>7</sup> See in particular “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/12/34 (15 July 2009), at paras. 45-49 located at: <http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-12-34-14-july-2009>; “Extractive industries and indigenous peoples”, Report of the Special Rapporteur rights of indigenous peoples, James Anaya, A/HRC/24/41 (1 July 2013); “Free, prior and informed consent: a human rights-based approach”, Study of the Expert Mechanism on the Rights of Indigenous Peoples, UN Doc A/HRC/39, 62 (10 August 2018) (“Study of Expert Mechanism”).

<sup>8</sup> “Free, prior and informed consent: a human rights-based approach”, Study of the Expert Mechanism on the Rights of Indigenous Peoples, UN Doc A/HRC/39, 62 (10 August 2018) (“Study of Expert Mechanism”) at para 37. Located at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/245/94/pdf/G1824594.pdf?OpenElement>

<sup>9</sup> See Project Description and Map (page 8) in the Report of the Joint Review Panel which can be located at: <https://www.ceaa-acee.gc.ca/050/documents/p63919/99173E.pdf>.

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17. Under Treaty 8, the Indigenous signatories agreed to cede, release and surrender their rights, titles and privileges within the geographical limits of the treaty, in exchange for treaty rights of hunting, trapping and fishing throughout the tract surrendered. The treaty rights to hunt, trap and fish are subject to the Crown's right to take up lands "from time to time for settlement, mining, lumbering, trading or other purposes" and the right to make regulations. In addition, under the terms of Treaty 8 the Crown agreed to set aside reserve lands, to make annuity payments, and to provide other specified benefits.
18. The Supreme Court of Canada in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 confirmed that Treaty 8 signalled a period of transition with respect to land use. The decision clarified that when taking up lands under the treaty, the Crown is required to consult and, if appropriate, accommodate Indigenous groups for adverse impacts to their rights. A potential treaty infringement may arise where the taking up of land leaves an Indigenous group with no meaningful right to hunt, fish or trap over their traditional territory.
19. While Site C is within the geographic boundaries of Treaty 8, the land required for the Project is a combination of land owned by the Crown, BC Hydro and individual private property owners.
20. The proposed Site C dam was subject to both federal and provincial environmental assessments and ministerial approval pursuant to federal and provincial legislation. The eventual approval of the Site C dam followed a rigorous three-year federal-provincial environmental assessment, between 2011 and 2014, which included two months of public hearings in Indigenous and local communities closest to the dam site conducted by an independent Joint Review Panel. Consultation with Indigenous groups who potentially could be adversely impacted by the Project was undertaken prior to, during, and following the environmental assessment process.
21. Ultimately, Site C was approved by both the provincial and federal governments. The federal government noted that "the concerns and interests of the Aboriginal groups have been reasonably balanced with other societal interests including social, economic, policy and the broader public interest."<sup>10</sup> Approval of the Project came with 77 provincial conditions and 18 multi-part federal conditions ensuring continued environmental regulation and oversight of Site C through construction and operations, as well as continuing requirements for engagement with Indigenous communities in the area.
22. Construction of Site C commenced in July 2015 with an approximate 8-year construction schedule.

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<sup>10</sup> Federal Order in Council 2014-1105 located at: <http://orders-in-council.canada.ca/attachment.php?attach=29922&lang=en>

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*Consultation processes, and accommodations proposed*

23. Consultation with Indigenous groups regarding Site C, including beneficiaries of Treaty 8, began in 2007, approximately 8 years before construction commenced.
24. A total of 29 Indigenous groups were consulted throughout the environmental assessment. In accordance with the honour of the Crown, and in fulfillment of Canada and British Columbia's constitutional obligations, Indigenous groups who had the potential to be most impacted by Site C were engaged in a process of deep consultation throughout the environmental assessment process for Site C. Various procedural and substantive accommodations were made throughout to address their interests, and where possible to avoid adverse impacts to their Treaty 8 rights.
25. The consultation, undertaken by Canada, the Province and BC Hydro, included extensive consultation on the need for the energy and capacity generated by Site C, and alternative energy resources available to meet that need.
26. In September 2014, provincial and federal government officials produced a comprehensive joint report on consultation activities conducted with Indigenous groups and accommodations made throughout the environmental assessment process (the Consultation Report).<sup>11</sup> The Consultation Report summarizes the procedural and substantive aspects of the consultation with all 29 Indigenous groups who were consulted throughout the environmental assessment (including 10 groups who are signatories or adherents to Treaty 8 and will be impacted by the Project<sup>12</sup>), as well as the measures proposed to mitigate potential impacts to these groups. Before finalizing the Consultation Report, the provincial and federal Crowns consulted with Indigenous groups on its content.
27. In addition to design changes and mitigation measures integrated into the Project, and as a result of the consultation process undertaken, British Columbia and BC Hydro offered to negotiate agreements in which additional accommodation measures would be provided to the most impacted Indigenous groups, and made accommodation proposals to those groups who were not interested in negotiating. The benefits available under these agreements and in accommodation proposals (see Appendix A) included financial benefits, land transfers to Indigenous groups, land protection measures and procurement opportunities.
28. Since 2014, Canada, British Columbia and BC Hydro have continued to consult with Indigenous groups in relation to the numerous authorizations required for construction of

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<sup>11</sup> The Federal-Provincial Consultation and Accommodation Report can be located at:  
[https://projects.eao.gov.bc.ca/api/document/58868f49e036fb010576803a/fetch/Federal\\_Provincial\\_Consultation\\_and\\_Accommodation\\_Report](https://projects.eao.gov.bc.ca/api/document/58868f49e036fb010576803a/fetch/Federal_Provincial_Consultation_and_Accommodation_Report)

<sup>12</sup> Doig River First Nation, Halfway River First Nation, Sauteau First Nation, Blueberry River First Nations, West Moberly First Nations, Prophet River First Nation, McLeod Lake Indian Band, Duncan's First Nation, Horse Lake First Nation, Dene Tha' First Nation. Note that the Government of British Columbia also continues to consult with Fort Nelson First Nation, a community in northern British Columbia.

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Site C. The ongoing consultation process includes regular information sharing through emails, bulletins, site visits, and in-person forums aimed at providing opportunities to provide information, seek input, and answer questions. There is also direct consultation on all authorizations applied for. The scope and form of the consultation varies for each authorization and with each group, but may include meetings, site visits, written correspondence and other direct engagement. Additionally, a Culture and Heritage Resource Committee (comprised of representatives of BC Hydro and Indigenous groups) provides guidance on the mitigation and management of impacts on cultural resources. All of these activities are ongoing. As an example of how ongoing consultation is being taken into account, based on input from Treaty 8 Indigenous groups, in September 2018, BC Hydro made a major re-adjustment of the alignment of a public highway that will be impacted by the Site C reservoir to avoid sites identified by Indigenous groups as culturally important.

29. In December 2017, following another independent review of Site C by the British Columbia Utilities Commission (BCUC) and a government-to-government consultation process with Indigenous groups, British Columbia decided to continue construction of Site C. The BCUC review focussed on the financial implications of continuing, suspending or terminating the project, and considered issues such as alternative energy sources and their relative costs. The government-to-government consultation process included in-person meetings with two provincial Cabinet ministers and invitations to Indigenous groups to provide their views in writing to inform the Cabinet's decision. Treaty 8 Indigenous groups, including West Moberly First Nations and Prophet River First Nation, participated in the BCUC review process. West Moberly First Nations and Prophet River First Nation were also among those Indigenous groups who met personally with the provincial ministers and provided written submissions for Cabinet's consideration, as part of the government-to-government consultation process.

***Canadian courts have found that the Crown fulfilled the duty to consult regarding Site C***

30. In late 2014 and early 2015, two Treaty 8 Indigenous groups<sup>13</sup> pursued legal challenges to the adequacy of consultation on Canada's decisions to issue approvals allowing Site C to proceed. In August 2015, West Moberly and Prophet River also challenged the adequacy of consultation in relation to some of the provincial permitting decisions, and brought an application for injunctive relief to halt construction, which had commenced in July 2015.
31. Two downstream Indigenous groups (Mikisew Cree and Athabasca Chipewyan First Nations) also brought a legal challenge to the federal environmental assessment approval, but discontinued the challenge after reaching agreement with BC Hydro and Canada regarding future involvement in consultation related to downstream monitoring.

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<sup>13</sup> West Moberly First Nations and Prophet River First Nation; originally, Doig River and McLeod Lake also brought challenges in this regard, but discontinued them.

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32. To date, all of the legal challenges to Site C have been dismissed by the courts or discontinued.<sup>14</sup> West Moberly and Prophet River First Nations brought appeals of the dismissal of their challenge to the environmental assessment approvals, including the conclusion that consultation had been adequate and meaningful. Those appeals were also dismissed,<sup>15</sup> and their applications for leave to the Supreme Court of Canada were dismissed.<sup>16</sup>
33. Canadian courts have held that the Crown has fulfilled its duty to consult and accommodate on Site C. The Crown has meaningfully and adequately consulted with Indigenous groups and appropriately accommodated their interests. The honour of the Crown has been upheld. The various legal challenges are summarized in Appendix B.

***Current litigation provides Indigenous groups the opportunity to advance their claims of Treaty infringement***

34. In 2015, the courts clarified that the question of treaty infringement relating to Site C could not be determined by statutory decision-makers and could not be challenged by way of judicial review. Rather, the Court held that the question of treaty infringement would require that an action be brought in which a proper evidentiary record could be developed and matters beyond the impact of the Project could be considered, including residual positions of an Indigenous group as a result of the loss of the land taken up.<sup>17</sup>
35. West Moberly First Nations and Prophet River First Nation commenced such court actions in January 2018, advancing the claims that Site C will unjustifiably infringe their rights under Treaty 8. The Committee's December 14, 2018 letter incorrectly states that the Union of BC Indian Chiefs (UBCIC) has "launched a civil suit against construction of the dam and asked for an interim injunction..." The moving parties (plaintiffs) in the extant court actions are the West Moberly First Nations and Prophet River First Nation.
36. Both Canada and British Columbia have filed responses to the civil claims brought by the two plaintiff Indigenous groups. In their Responses, Canada and British Columbia assert that while Site C will result in adverse impacts to the exercise of treaty rights in the vicinity of the dam site, the Project will not result in the loss of the Indigenous groups' meaningful right to hunt, fish, and trap in their traditional territories.

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<sup>14</sup> *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030 (CanLII); *Prophet River First Nation v. British Columbia (Environment)*, 2015 BCSC 1682; *Prophet River First Nation v. British Columbia (Minister of Forests, Lands and Natural Resource Operations)*, 2015 BCSC 2662 (CanLII); *Prophet River First Nation v. British Columbia (Minister of Forests, Lands and Natural Resource Operations)*, 2016 BCSC 2007 (CanLII).

<sup>15</sup> *Prophet River First Nation v. Canada (Attorney General)*, 2017 FCA 15; *Prophet River First Nation v. British Columbia (Environment)*, 2017 BCCA 58.

<sup>16</sup> *Prophet River First Nation, et al. v. Attorney General of Canada, et al.*, 2017 CanLII 40511 (SCC); *Prophet River First Nation, et al. v. Minister of the Environment, et al.*, 2017 CanLII 40513 (SCC).

<sup>17</sup> *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030, para. 52; *Prophet River First Nation v. British Columbia (Environment)*, 2015 BCSC 1682, para. 133.



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37. The creation of the reservoir for Site C will inundate a total of 5.5 square km of land, none of which is reserve land allocated to Indigenous groups or land owned or occupied by Indigenous groups. The land is a combination of land owned by the Crown, BC Hydro, and other private landowners.
38. West Moberly First Nations assert their traditional territory encompasses an area of approximately 127,821.56 square km for the exercise of their treaty rights. Their reserve covers 2000 ha and lies approximately 75 km from the future Site C dam site, none of which will be inundated. Prophet River's asserted traditional territory encompasses approximately 25,000 square km, and their reserve is located approximately 240 km north of the Site C project area, none of which will be inundated.
39. West Moberly pursued interlocutory injunctive relief seeking an order to prohibit continued construction of Site C while their treaty rights infringement claim was adjudicated. Their injunction motion was heard by the court over 14 days during the summer of 2018. In a decision dated October 24, 2018, the presiding justice dismissed the application for injunctive relief finding that the balance of convenience<sup>18</sup> favoured continuing with construction of the Site C project on the following basis:
- although West Moberly's claim raises a serious question to be tried, its chances of ultimately succeeding with halting Site C are not strong in law or evidence;
  - an injunction would likely cause significant and irreparable harm to the proponent, BC Hydro, its ratepayers and other stakeholders in the Project, including other Indigenous groups and that harm outweighs the risk of harm to West Moberly from not granting the injunction; and
  - West Moberly brought its injunction application late in the life of the Project, two and a half years after the start of construction, which significantly compounded the harm an injunction would cause.<sup>19</sup>
40. In any event, the Court agreed to West Moberly's request that the trial of their case proceed on schedule to conclude prior to inundation of the Site C reservoir "when the most significant component of the alleged harm to West Moberly's treaty rights will take place."<sup>20</sup>

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<sup>18</sup> Courts must consider the following questions in deciding whether to grant an interlocutory an injunction: (i) is there a serious question to be tried, (ii) would the applicant suffer irreparable harm if the injunction were refused, and (iii) does the balance of convenience favour the grant of an injunction. In cases involving constitutional matters, or statutory decisions, the third part of the test incorporates consideration of the public interest in determining the balance of convenience. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311.

<sup>19</sup> *West Moberly First Nations v. British Columbia*, 2018 BCSC 1835 at paras 8 and 276.

<sup>20</sup> *West Moberly First Nations v. British Columbia*, 2018 BCSC 1835 at para 363.

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*Engagement has led to agreement with a majority of the Treaty 8 Indigenous groups potentially impacted by Site C*

41. With respect to Site C, British Columbia and BC Hydro have negotiated, or are in the process of negotiating, Impact Benefit Agreements (to provide financial benefits and procurement opportunities) and Tripartite Land Agreements (to transfer ownership of land to Indigenous groups, and protect Crown lands) with the potentially impacted Treaty 8 Indigenous groups.
42. Those negotiations have led to confidential agreements between BC Hydro and British Columbia with six Indigenous groups, specifically: Doig River First Nation, Halfway River First Nation, Saulteau First Nations, McLeod Lake Indian Band, Duncan's First Nation, and Dene Tha' First Nation – all of whom are signatories or adherents to Treaty 8. Those agreements include financial benefits, today and annually for 70 years, transfers of land to the Indigenous groups, wildlife and habitat protection measures over Crown land, and procurement contracts for companies owned by or partnered with Indigenous groups. BC Hydro and Canada have also entered agreements with Mikisew Cree and Athabasca Chipewyan First Nations (Treaty 8 Indigenous groups in Alberta) regarding consultation with respect to downstream monitoring and effects.
43. All six of the Treaty 8 Indigenous groups who have negotiated agreements with British Columbia and BC Hydro have confirmed in writing that they consent to, or do not oppose, the Project, and that they have been adequately consulted and accommodated with respect to the effects of the Project on their constitutionally protected rights (see Appendices C1 and C2).
44. The McLeod Lake Indian Band, (a Treaty 8 adherent), strongly and publicly supports the Site C dam and provided submissions to the BCUC (see Appendix D). Their Chief also swore two affidavits filed in opposition to the injunction application brought by West Moberly First Nations, stating that suspending or terminating Site C would result in harm to the members of his band, and in the unravelling of reconciliation between the Crown and the McLeod Lake Indian Band.
45. It is Canada's objective to reach agreement and achieve consent from all potentially impacted Indigenous groups. Canada seeks to achieve this through consultation, accommodation and negotiation. While no agreement has been reached to date with West Moberly and Prophet River First Nations on Site C, Canada, British Columbia and BC Hydro continue to consult with these Indigenous groups, and where appropriate, implement measures to accommodate their interests. If agreement cannot be obtained, Canada will continue to ensure that the impacts on the rights of Indigenous groups are minimized and are appropriately balanced against the important energy-related, environmental and other objectives being pursued through Site C.