



March 25, 2019

**TransCanada Corporation**

**Symbol:** TRP (TSX/NYSE)

**Annual Meeting Date:** May 3, 2019

## Proxy Alert

### Recommendation: **FOR** shareholder proposal at TransCanada Corporation

**Filer:** Pension Plan of the United Church of Canada, supported by SHARE

## Shareholder proposal on Indigenous rights practices

In 2015, the Truth and Reconciliation Commission of Canada issued its report on the legacy of Canadian residential schools, including 94 Calls to Action. Call to Action 92 calls on the corporate sector “to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources”.

The Pension Plan of the United Church of Canada filed a proposal related to Indigenous rights policies and practices at TransCanada Corporation because it has a commitment to reconciliation in its own activities; recognizes that respect for Indigenous rights is a core principle of international conventions and declarations, and of Canadian law; and, because failure to respect Indigenous rights is material risk to companies in the energy sector in North America. The shareholder proposal reads:

*RESOLVED that the Board of Directors provide a report to shareholders, within six months following the 2019 Annual General Meeting and annually thereafter, prepared at reasonable cost*

*and omitting proprietary and confidential information, outlining how TransCanada respects internationally-recognized standards for Indigenous Peoples’ rights in its business activities.*

*Such report should describe the company’s policies, practices and performance indicators related to respecting internationally-recognized standards for Indigenous Peoples’ rights in existing and proposed wholly-owned projects, joint ventures, investments and acquisitions.*

*Internationally-recognized standards for Indigenous Peoples’ rights are the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169).*

### Material relevance of the issue

In the countries where TransCanada operates, the risks to companies that fail to align operations with internationally-recognized Indigenous rights are well documented, including reputational damage, regulatory intervention, litigation, project delays and disruptions, shut downs and financial loss.

In Canada and the US, poor Indigenous rights practices have contributed to the delay or cancellation of the Trans Mountain Pipeline Expansion, Northern Gateway Pipeline, Dakota Access Pipeline, TransCanada Energy East Pipeline, and TransCanada Keystone XL Pipeline, among others. In Mexico, TransCanada's Tuxpan-Tula Pipeline has been delayed due to inadequate consultation with Indigenous peoples and impacts to their land and cultural rights.

Poor Indigenous rights practices may also affect access to project finance. In response to concerns about inadequate Indigenous rights protections in North America, the Equator Principles Association banks are conducting a review of the Equator Principles. The outcome of this review could influence the availability of finance for future projects and affect cost of capital.

TransCanada shareholders require clear information about how their company has integrated Indigenous rights into policies, practices and performance indicators across the company in order to assess risk and stability, and analyse future performance.

## **Vote recommendation and rationale**

TransCanada's management responded to this proposal in its proxy circular. Management emphasizes the volume of communications that TransCanada provides related to Indigenous peoples: "Our current Corporate Responsibility Report, the public availability of our Indigenous Relations Policy, as well as, regular digital updates to the Indigenous relations section of our website, together, are an effective manner to communicate our approach and commitment to Indigenous relations".

TransCanada does communicate to the market on Indigenous relations and has produced additional information since the filing of this proposal. However, the information provided by TransCanada does not address the crux of the proposal: the integration of Indigenous rights into business practices across the company.

Management points to the Indigenous Relations Program's expertise and guiding principles. However, the company has not demonstrated how its practices ensure this expertise is not siloed in a single program, but integrated into governance and management decision-making across the company.

Management states: "we are proud of our work with Indigenous groups". However, TransCanada has not provided shareholders an explanation of the performance indicators that it uses to measure the success of its work, making assessment of progress and outcomes difficult for investors.

Management highlights the adoption of a North America-wide Indigenous relations policy published in February 2019. This is a positive step. However, the new policy remains silent on a core aspect of UNDRIP, which has been central to the delay and/or cancellation of North American pipeline projects: the need to obtain the free, prior, and informed consent (FPIC) of Indigenous peoples prior to the development of projects affecting their lands or territories, and other resources.

While UNDRIP is an agreement between states, companies have a normative responsibility to ensure that FPIC has been obtained under the United Nations Guiding Principles on Business and Human rights, IFC performance standards,

and Truth and Reconciliation Commission of Canada Call to Action 92.

Finally, management explains that “we demonstrate our commitment to building respectful, mutually beneficial, and lasting relationships every day and look forward to sharing more of our stories”. However, TransCanada’s actions both before and after the filing of this proposal fail to demonstrate that respect for Indigenous peoples and their rights have received due attention across the company:

- TransCanada’s Board of Directors lacks any training or expertise on Indigenous rights and history, and has no plan to remedy this.
- Only 156 head-office employees have received training on Indigenous rights and culture, out of TransCanada’s overall workforce of over 7,000 employees.

- Only 2.4% of TransCanada’s Canadian employees are Indigenous; less than half the industry average of 6% and the Indigenous population in Canada of 5%.
- In 2017, the most recent figures available, TransCanada spent \$75 million in direct and indirect contributions to Indigenous businesses. This amounts to just 0.86% of its overall community economic contributions, despite the concentration of Indigenous businesses and communities in areas where TransCanada operates.
- In January 2019, on request of TransCanada, Indigenous peoples were forcibly removed from their lands to facilitate project work on the Coastal Gaslink pipeline.

Given the company’s recent track record and the importance of Indigenous rights to its reputation and bottom line, both in the short and long term, we recommend a vote in favour of this proposal.

## SHARE’s Recommendation:

Vote **FOR** proposal at TransCanada on Indigenous peoples’ rights

Link to full proposal:

<https://share.ca/share-proposals/2019-indigenous-rights-transcanada/>

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