



UNIVERSITY OF
CALGARY

**Bill C-15: *An Act respecting
the United Nations
Declaration on the Rights of
Indigenous Peoples:*
Implications for Alberta and
Canada**

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June 2021

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Focus of this Lecture

1. Canada's International obligations to Indigenous Peoples living in Canada prior to this legislation.
2. What is the United Nations Declaration on the Rights of Indigenous Peoples (2007)? [UNDRIP]
3. What is Canada's history in relation to UNDRIP?
4. What does Bill C-15 do?
5. What is the difference between *free prior informed consent* in UNDRIP and Canada's Crown's constitutional duty to consult and accommodate aboriginal peoples?
5. What other flashpoints will Bill C-15 inflame or resolve in the larger project of reconciliation?

- **Aboriginal Law:** On April 17, 1982, Canada re-patriated its constitution in the *Constitution Act, 1982* and defined "aboriginal peoples" as including "the Indian, Inuit and Métis peoples of Canada" – *aboriginal law* is the mechanism that Canadian law uses to regulate relations with Indigenous people
- **Indigenous Law :** Indigenous Law is the mechanism to regulate relations within and among Indigenous people and is occasionally recognized by Canadian Courts



Relevant Language

- **Indigenous People living in Canada** prefer the name for themselves in their language and are mostly indifferent to the Canadian name accorded to them in English or French, although they may describe themselves as a First Nation to emphasize their political status and priority.
- **Canadian** residents have inherited the territories, resources and obligations of Britain arising from historical encounters with Indigenous Peoples, as well as incurring new obligations. They may not have participated in the history of Indigenous Peoples suppression and dispossession *but they live in a Canadian society that has prospered on that history.*

1. Two legally binding international instruments in the aboriginal context requiring “free prior informed consent”, are the Charter of the Organization of American States (OAS) (art. 106) and the American Convention on Human Rights (American Convention) (art. 33).
2. Although Canada has not acceded to the American Convention, it is a party to the OAS, and as such it is subject to the jurisdiction of the Inter-American Commission on Human Rights (IACHR).
3. First Nations have had recourse to IACHR, however a pre-condition is that domestic remedies must be exhausted and as an international tribunal the remedies are limited to exhortations to Canada.

1. In *Canada (Human Rights Commission) v Canada (Attorney General)* (2012), the Federal Court said:

The [Supreme] Court has held that in interpreting Canadian law, Parliament will be presumed to act in compliance with its international obligations. As a consequence, where there is more than one possible interpretation of a provision in domestic legislation, tribunals and courts will seek to avoid an interpretation that would put Canada in breach of its international obligations. Parliament will also be presumed to respect the values and *principles enshrined in international law, both customary and conventional.*

2. Any legislation must be explicit to oust this interpretive principle.

UNDRIP : Interpretation

3. However, in *Nunatukavut Community Council Inc v Canada (Attorney General)* (2015), the Federal Court agreed with the general premise that UNDRIP may inform the interpretation of domestic law and judicial review, however:

...in *Hupacasath*, Chief Justice Crampton of this Court [at para 51] stated that the question of whether the alleged duty to consult is owed must be determined solely by application of the test set out in *Haida* and *Rio Tinto*. I understand this to **mean that UNDRIP cannot be used to displace Canadian jurisprudence or laws regarding the duty to consult, which would include both whether the duty to consult is owed, and, the content of that duty.**

[106] Most significantly, the NCC did not identify an issue of statutory interpretation. Rather, it submits that UNDRIP applies not only to statutory interpretation but to interpreting Canada's constitutional obligations to Aboriginal peoples. No authority for that proposition is provided. Nor does the NCC provide any analysis or application of its position in the context of its submissions.

International Law: UNDRIP

1. The United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP) is a compromise document, adopted by the United Nations General Assembly on Thursday, 13 September 2007 (A/RES/61/295) by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). The UNDRIP webpage has a history of this document.
2. It is not an International Convention (International Treaty) but a strong declaration as to what the minimal international standards (Art 43) are to protect Indigenous Peoples.

UNDRIP webpage:

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>



3. UNDRIP consists of 24 Preambles and 46 Articles of the rights of Indigenous Peoples as individuals and collective rights which State(s) are charged to provide effective mechanisms for prevention, and redress, paraphrased as including:
- Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, without discrimination particularly based on their indigenous origin or identity. (Art 1 & 2)
 - A right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide, forced assimilation, destruction of their culture, religion, education, media, or any other act of violence, including forcibly removing children of the group to another group. (Art 7 to 9).



UNDRIP

- A right to self-determination such that they can freely determine their political status, this cannot be construed as authorizing or encouraging any action which would dismember or impair the territorial integrity or political unity of States (Art 46.1), while maintaining, strengthening and pursuing their distinct, political, legal, economic, educational, sustenance livelihoods, social and cultural institutions through autonomy or self-government in matters relating to their internal and local affairs with adequate financing while maintaining their nationality and participation in the State. (Art 3 - 6, 11 - 17, 20 - 24, 31, 33 - 36)
- Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. (Art 25)



UNDRIP

- Indigenous peoples have the right to own, use, develop and control to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and States shall give legal recognition and protections to them with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. (Art 26)
- States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. (Art 27)

4. Without the free, prior and informed consent of the Indigenous peoples concerned, [FPIC] through representatives chosen by themselves in accordance with their own procedures (Art 18):
 - they shall not be forcibly removed from their lands or territories absent agreement on just and fair compensation and, where possible the option of return (Art 10)
 - States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their FPIC or in violation of their laws, traditions and customs. (Art 11)
 - States shall consult and cooperate in good faith with the indigenous peoples concerned to obtain FPIC before adopting and implementing legislative or administrative measures that may affect them. (Art 19)

- Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their FPIC and, absent freely given agreement, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress. (Art 28)
- Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources, including ensuring that no storage or disposal of hazardous materials shall take place without their FPIC (Art 29) and Military activities shall not take place in the lands or territories of indigenous peoples, unless justified, or freely agreed with or requested by the indigenous peoples concerned. States shall undertake effective consultations with the indigenous peoples concerned, prior to using their lands for military activities. (Art 30)



UNDRIP - FPIC

- Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources, and States shall consult and cooperate in good faith with the Indigenous peoples concerned in order to obtain their FPIC **prior to the approval of any project affecting their lands or territories and other resources**, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. (Art 32)

UNDRIP - Implementation

- Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements and nothing in this Declaration is to be interpreted to derogate from them. (Art 37 and 45)
- All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals. (Art 44)
- States and United Nation Organizations shall provide assistance in implementing this Declaration (Art 39, 41 to 42).
- States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration (Art 38) and shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations, non-discriminatory **and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.** (Art 46)

Canada and UNDRIP

1. As noted above, Canada initially voted against UNDRIP.
2. Canada endorsed UNDRIP on November 12, 2010 with a qualified Statement of Support saying that the UNDRIP was an aspirational document that is non-legally binding and that it “does not reflect customary international law nor change Canadian laws”.
3. However, in May 2016 speaking at the UN Permanent Forum on Indigenous Issues, Indigenous and Northern Affairs Canada Minister Carolyn Bennett announced, “[w]e are now a full supporter of the declaration, without qualification. We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution.”

Canadian - UNDRIP

4. The *Truth and Reconciliation Commission* (2015) investigating Residential Schools called for the implementation of UNDRIP as a framework for reconciliation (Calls to Action 43 and 44).
5. The *National Inquiry Into Missing and Murdered Indigenous Women and Girls* (2019) [MMIWG] Calls For Justice included implementing UNDRIP (1.2 (v))
6. *Principles respecting the Government of Canada's relationship with Indigenous peoples* (2017) refer to UNDRIP and Mandate Letters to the Minister of Crown-Indigenous Relations (2019 and 2021) and the Minister of Justice and Attorney General of Canada (2019 and 2021) direct: “to ensure passage of the co-developed legislation to implement the [UNDRIP]”

7. Modern Federal legislation referenced UNDRIP, including:

- *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 in the Preamble and the Purpose section 8(c) contribute to the implementation of [UNDRIP].
- *Indigenous Languages Act*, SC 2019, c 23, in the Preamble and Purpose section 5 (g) contribute to the implementation of [UNDRIP] as it relates to Indigenous languages.

And in the Preambles "Whereas the Government of Canada is committed to implementing UNDRIP" in:

- *Department of Crown-Indigenous Relations and Northern Affairs Act*, SC 2019, c 29, s 337
- *Department of Crown-Indigenous Relations and Northern Affairs Act*, SC 2019, c 29, s 337 [These Acts divided the repealed *Department of Indian Affairs and Northern Development Act*, RSC, 1985, c I-6]

Canadian - UNDRIP

- *Department for Women and Gender Equality Act, SC 2018, c 27, s 661*
- *Canadian Energy Regulator Act, SC 2019, c 28, s 10*
- *First Nations Land Management Act, SC 1999, c 24*
- *Impact Assessment Act, SC 2019, c 28, s 1*

8. And ultimately...

Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples [Bill C-15]

Second Session, Forty-third Parliament,
69-70 Elizabeth II, 2020-2021

HOUSE OF COMMONS OF CANADA

BILL C-15

An Act respecting the United Nations
Declaration on the Rights of Indigenous
Peoples

AS PASSED

BY THE HOUSE OF COMMONS

MAY 25, 2021

1. Bill C-15 passed the House of Commons on May 25, 2021, the Senate on June 16, 2021 and is awaiting Royal Assent to become law.
2. It is limited to areas of Federal Jurisdiction under the *Constitution Act, 1867* in section 91.
3. It is a short act consisting of 7 sections, 23 Preambles and UNDRIP as a Schedule (the French version is original).

Bill C-15 at:

<https://parl.ca/DocumentViewer/en/43-2/3-2/bill/C-15/third-reading>

Bill C-15 - Preambles

1. In *Québec (Attorney General) v Moses*, [2010] 1 SCR 557 [*Moses*], the SCC noted that section 13 of the federal *Interpretation Act*, RSC 1985, c. I-21 provides “[t]he preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object,” and “a legislative preamble will never be determinative of the issue of legislative intent since the statute must always be interpreted holistically, it can nevertheless assist in the interpretation of the legislature’s intention ” (at para 101).
2. Notable Preambles include, (numbers are for reference):
 1. **Whereas the United Nations Declaration on the Rights of Indigenous Peoples provides a framework for reconciliation**, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith;

Bill C-15 - Preambles

2. Whereas the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada;
6. Whereas First Nations, Inuit and the Métis Nation have, throughout history and to this day, lived in the lands that are now in Canada with their distinct identities, cultures and ways of life;
7. Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;
8. Whereas the implementation of the Declaration must include concrete measures to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;



Bill C-15 - Preambles

9. Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and terra nullius, are racist, scientifically false, legally invalid, morally condemnable and socially unjust;
10. Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;
11. Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;
12. Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

Bill C-15 - Preambles

15. Whereas the implementation of the Declaration can contribute to supporting sustainable development and responding to growing concerns relating to climate change and its impacts on Indigenous peoples;
16. Whereas the Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority;
18. Whereas the Declaration **is affirmed as a source for the interpretation of Canadian law**;
22. And whereas measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;

4. Section 1 provides the short title as “as the *United Nations Declaration on the Rights of Indigenous Peoples Act*.”
5. Section 2 (1) provides the following definitions:
 - Declaration** means [UNDRIP] as set out in the Schedule
 - Indigenous peoples** has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*.
 - Minister**, for the purposes of any provision of this Act, means the federal minister designated as the Minister for the purposes of that provision under section 3.
6. Section 2 (2) provides that:
 - This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

7. Section 2 (2) is an unusual aboriginal non-derogation clause, in the phrasing "as upholding the rights of Indigenous peoples", although identical language is used in *An Act respecting First Nations, Inuit and Métis children, youth and families* and the *Indigenous Languages Act* above.
8. The normal phrasing is in the fashion of:

Nothing in this [Act] shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.
9. Courts should consider this difference in a progressive fashion, particularly given the Preambles, as looking to UNDRIP as a source of interpretation for constitutions, legislative and administrative review affecting Indigenous Peoples.

10. The suggestion above is more important, give the provision of section 2 (3) that “Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.”
11. Section 3 provides “The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.”
12. Section 4 provides “The purposes of this Act are to
 - (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and
 - (b) provide a framework for the Government of Canada’s implementation of the Declaration.”

13. In *Moses*, legislative purpose statements were described as “[t]he most direct and authoritative evidence of legislative purpose” at para 101. The Purpose section 4(a) appears to be directed at the Courts (given the directions in Section 2 (3), and the Purpose section 4 (b) appears to be directed at the Canadian Government.

14. Section 5 directs “The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.” This appears to principally *address existing laws*.

15. Section 6 (1) directs "The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration." [Action Plan] This would appear to be directed principally at *new initiatives*.

16. The Action Plan must include:

6 (2)(a) measures to

- (i) address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons, and
- (ii) promote mutual respect and understanding as well as good relations, including through human rights education;

- 6 (2) (b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration; and
 - 6 (3) measures related to monitoring the implementation, reviewing and amending the Action Plan.
17. That Action Plan must be completed as soon as practicable, but no later than two years after the day on which this section comes into force (s 6 (4)) and that must be tabled in each House of Parliament then must make it public. (Ss 6 (5) & (6))
19. Section 7 directs Annual Reports as to measures under Section 5 to ensure that the laws of Canada are consistent with the Declaration, and the Action Plan must be tabled with the Houses of Parliament, made public and be referred to the Standing Committees.

Bill C-15 – Implementing UNDRIP

1. Bill C-15 provides effectively two mechanisms potentially complementary, for implementing UNDRIP:
 - a. Court driven, under section 2 (3) with limited remedial powers; or
 - b. Government driven in consultation with Indigenous Peoples under:
 - i. section 5 by ensuring consistency of *current laws*; or
 - ii. section 6 by way of an Action Plan for *new measures*.
2. These have the potential for uncertainty and delay for all Canadians, both in the time and expense of Court proceedings and delays in Government negotiations with the scope UNDRIP.

Consultation v FPIC – Flashpoint #1

1. The Crowns' constitutional duty to consult and accommodate aboriginal peoples arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates *new* conduct that might adversely affect it in a non-trivial fashion.
2. The Crown is required to consult with affected Indigenous Nations and negotiate in good faith in order to accommodate their concerns but only, a good faith effort is required on both parties **but there is no requirement to agree.**
3. UNDRIP Article 32.2 to obtain affected Indigenous Peoples **free and informed consent** [FPIC] prior to *the approval of any project affecting their lands or territories and other resources.*

4. This may be difficult to resolve by Government negotiations.
5. One approach the Courts may use is by modifying *Tsilhqot'in Nation* (2014) in assuming claims to traditional territories valid, and assessing developments as infringements on those rights on the basis of the *Sparrow* (1990) test as modified by *Delgamuukw* (1997) expansion of compelling purposes to include development in association with UNDRIP Article 46 (2).
6. Academia has written extensively on this issue.

Provincial UNDRIP – Flashpoint #2

1. As noted, Provinces can incorporate UNDRIP into laws within their jurisdiction and British Columbia has done so in the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, on similar terms as Bill C-15, with the addition of the ability of BC Government to enter agreements with Indigenous Governments for joint-decision making agreements or consent to the use of statutory powers.
2. Manitoba has an anemic *The Path to Reconciliation Act*, C.C.S.M. C. R30.5, that calls in section 4 for “The minister responsible for reconciliation must guide the development of a strategy for reconciliation that (a) is to be guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in UNDRIP.

Provincial UNDRIP – Flashpoint #2

3. Other Provinces have promised to incorporate UNDRIP into their laws, but the Courts may determine that UNDRIP or its principal applies to them, in accordance with *Canada (Human Rights Commission) v Canada (Attorney General)* (2012) and *Nunatukavut Community Council Inc v Canada (Attorney General)* (2015).

4. In *Interlake Reserves Tribal Council Inc et al, v The Government of Manitoba*, 2020 MBCA 126 (CanLII), the AFN applied for intervenor status on consideration of an interim injunction for floodway construction by invoking UNDRIP, which was a novel argument, but that raises the larger problem raises the complex issue of reception of public international law into Canadian domestic law. Three reception issues flow from the submissions of the AFN.:

Provincial UNDRIP – Flashpoint #2

- [36] The first is the doctrine of adoption, the question being whether aspects of the UNDRIP are already part of Canadian common law because the aspect(s) reflect(s) customary international law and there is no conflicting domestic legislation (*see R v Hape*, 2007 SCC 26 at paras 35-39; and *Nevsun Resources Ltd v Araya*, 2020 SCC 5 at paras 86-95).
- [37] The second is the interpretive effects of the UNDRIP in relation to domestic law. International human rights law can be an interpretative aid for Canadian courts both as a contextual tool and for providing support or confirmation for the result of a purposeful interpretation of the Constitution (*see Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 70; and *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32 at paras 22-47).

[38] The third is the question regarding implementing the UNDRIP and the division of powers under *the Constitution Act, 1867*. While the UNDRIP is not a treaty, the discussion in *A-G Can v A-G Ont et al*, 1937 CanLII 362 (UK JCP), [1937] 1 DLR 673 (PC), as to how an international instrument is implemented into Canadian domestic law is important. Legislative implementation of international law is subject to the division of powers (see pp 679, 681-82; and *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 66).

The first two the adoption issue and interpretive issue, may in certain cases, be considered applicable to implement aspects of UNDRIP.

Provincial UNDRIP – Flashpoint #2

5. Inter-provincial boundary aboriginal claims have been made as Indigenous Peoples living in Canada predated provincial boundaries and differing considerations as to UNDRIP would exacerbate any resolution.

6. Likewise the Canada and US Border raise issues as to UNDRIP application, although the US has changed its position in an *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples* (January 2011) to say “The United States supports the Declaration, which— while not legally binding or a statement of current international law — has both moral and political force.” see: <https://2009-2017.state.gov/documents/organization/154782.pdf>

Indian Act Repeal – Flashpoint #3

1. Calls have been made to repeal the Indian Act, RSC 1985, c I-5, as racist, discriminatory, gendered, contrary to self-government etc. all of which UNDRIP would call for repeal.
2. However, what would its replacement be like? How would it be UNDRIP compliant?
3. This will require government consultation as Courts would be unable to do.

Flashpoint #?

1. Aboriginal litigation, of all kinds, is replete with references to UNDRIP, and its predecessor the ILO Convention 169.
2. As noted in the *Principles respecting the Government of Canada's relationship with Indigenous peoples* (2017).

The implementation of the [UNDRIP] requires transformative change in the Government's relationship with Indigenous peoples. The UN Declaration is a statement of the collective and individual rights that are necessary for the survival, dignity and well-being of Indigenous peoples around the world, and the Government must take an active role in enabling these rights to be exercised.

It would also be messy and interesting times

Naming:

David K. Laidlaw “Naming with intercultural competency and respect: an Indigenous terminology primer”, January 25, 2018 at <https://ucalgary.ca/news/naming-intercultural-competency-and-respect-indigenous-terminology-primer-0>

Indigenous as a descriptor originated internationally in the International Labour Organization (ILO) Indigenous and Tribal Populations Convention, 1957. This term carried through in the United Nations Declaration on the Rights of Indigenous Peoples (2007).

Indigenous is capitalized and the recommended academic use is to designate “Indigenous People living in Canada” as the original inhabitants in North America pre-dated national and provincial borders.

Nigel Bankes:

Nigel Bankes, *International Human Rights Law and Natural Resources Projects Within the Traditional Territories of Indigenous Peoples* (2010) 47-2 Alberta Law Review 457, 2010 CanLIIDocs 315, <https://canlii.ca/t/2czb>.

Nigel Bankes, Implementing UNDRIP: some reflections on Bill C-262 (Ablawg.ca post, November 27, 2018) at <https://ablawg.ca/2018/11/27/implementing-undrip-some-reflections-on-bill-c-262/>

Case Law:

Recent (50+) years is available on CanLII at <https://www.canlii.org/en/>

- *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 (CanLII) at para 351 see 348 to 356; Upheld: *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75, para 16.
- *Nunatukavut Community Council Inc v Canada (Attorney General)*, 2015 FC 981 (CanLII) at para 105 to 106.
- *Interlake Reserves Tribal Council Inc et al, v The Government of Manitoba*, 2020 MBCA 126 (CanLII) (Intervenor motion unsuccessful); *Interlake Reserves Tribal Council Inc et al v Government of Manitoba*, 2021 MBCA 17 (CanLII) overruling the unreported interim injunction.
- *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40, overruling the artificial distinction as to policy development versus legislative processes. This may contrast with Article 19 of UNDRIP.
- *Tsilhqot'in Nation v British Columbia*, [2014] 2 SCR 257, 2014 SCC 44

International Law:

UNDRIP webpage:

<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

- FPIC in French is expressed as “leur consentement préalable, donné librement et en connaissance de cause.”
- Article 111 of the UN Charter states: “The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America.” <https://www.un.org/en/about-us/un-charter/full-text>
- This has been expanded Arabic (per [Rule 51](#)) and as such General Assembly Instruments, such as UNDRIP are provided in the Official Languages which are equally authentic, including French.

Federal Legislation:

All Federal and Provincial legislation on CanLII at <https://www.canlii.org/en/>

- *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24
- *Indigenous Languages Act*, SC 2019, c 23
- *Department of Crown-Indigenous Relations and Northern Affairs Act*, SC 2019, c 29, s 337
- *Department of Crown-Indigenous Relations and Northern Affairs Act*, SC 2019, c 29, s 337 [These Acts divided the repealed *Department of Indian Affairs and Northern Development Act*, RSC, 1985, c I-6]
- *Department for Women and Gender Equality Act*, SC 2018, c 27, s 661
- *Canadian Energy Regulator Act*, SC 2019, c 28, s 10
- *First Nations Land Management Act*, SC 1999, c 24
- *Impact Assessment Act*, SC 2019, c 28, s 1

Federal Legislation:

Bill C-15 current text at <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/third-reading>.

Bill C-15 current status at:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11007812>

Library of Parliamentary Briefing (2021-01-20; revd: 2021-05-18) at:

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C15E

Predecessor Act (died on Order Paper and referred to in Nigel Bankes above)

Bill C-262 An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples at:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8160636>

Provincial Legislation & Polices

Alberta Statement: <https://www.alberta.ca/united-nations-declaration-on-the-rights-of-indigenous-peoples.aspx>

British Columbia: website:

<https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>

Declaration on the Rights of Indigenous Peoples Act, SBC 2019, c 44

Manitoba: *The Path to Reconciliation Act*, C.C.S.M. C. R30.5

Ontario: [*Bill 76, United Nations Declaration on the Rights of Indigenous Peoples Act, 2019*](#) in Committee: <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-76>

Northwest Territories: website: <https://www.eia.gov.nt.ca/en/gnwt-mandate-2020-2023/united-nations-declaration-rights-indigenous-peoples-undrip>

The balance of the Provinces and Territories have no publicly available information regarding UNDRIP.

Canadian Institute of Resources Law (CIRL)

<http://cirl.ca>

Publications

<http://cirl.ca/publications>

University of Calgary Faculty of Law Blog

<https://ablawg.ca>