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This series is intended to provide high level and short, easy to read information about some very complex issues. It should not be used as a substitute for expert advice. Links to sources and further reading suggestions are provided throughout for further exploration of the issues.

UNDRIP in the Canadian Context

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The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007,¹ defines and safeguards Indigenous² peoples' fundamental rights. For First Nations within Canada, some of the most relevant sections are: article 3 on the right to self-determination; article 4 on the right to self-government; article 10 against any forced removal from their lands; articles 11,12,13 on traditional practices, culture, and language; article 14 on education; articles 18-24 on political & economic rights; articles 25-29 on use of lands and resources, environmental protection, and cultural heritage; and articles 33-37 on Indigenous law and customs, treaties, and agreements.

UNDRIP is a non-legally binding document in international law. Even where international agreements create legal obligations for nation states, there is an international rule that a complainant must try to resolve issues within their country ("local", or "domestic" remedies), and exhaust those remedies before going to international courts.

In the Canadian context, the Declaration reaffirms rights that have always existed and never been extinguished. The word 'inherent' signifies that such rights existed before colonisation and the imposition of Euro-Canadian Law. The inherent right to self-government for example, stems from the sovereignty that Indigenous peoples living within what is now called Canada, exercised over themselves prior to contact with Europeans. Other inherent rights are rights to land and natural resources.³

UNDRIP certainly helps the implementation of inherent rights in Canada. Its language is extremely useful in further understanding, interpreting, and implementing the rights that are already recognized and affirmed in Section 35 of Canada's constitution. However, it does not force Canadian governments to act according to UNDRIP provisions. A United Nations Declaration is

a non-legally binding document in international law. States such as Canada do not generally need to deal with the real implications of what it says until such Declarations are adopted within the country's legal framework. Indigenous peoples also cannot rely on international courts to force Canada to abide by UNDRIP provisions. In most cases, international courts would ask the

¹ UNGA 10612, 13th September 2007.

² This article was drafted for a First Nations audience. "Indigenous" is used when referring to all Indigenous peoples – Including Inuit and Metis - within Canada. "Aboriginal" is the legal term used in Canada in reference to Indigenous rights and title (Section 35 of the Canadian Constitution)

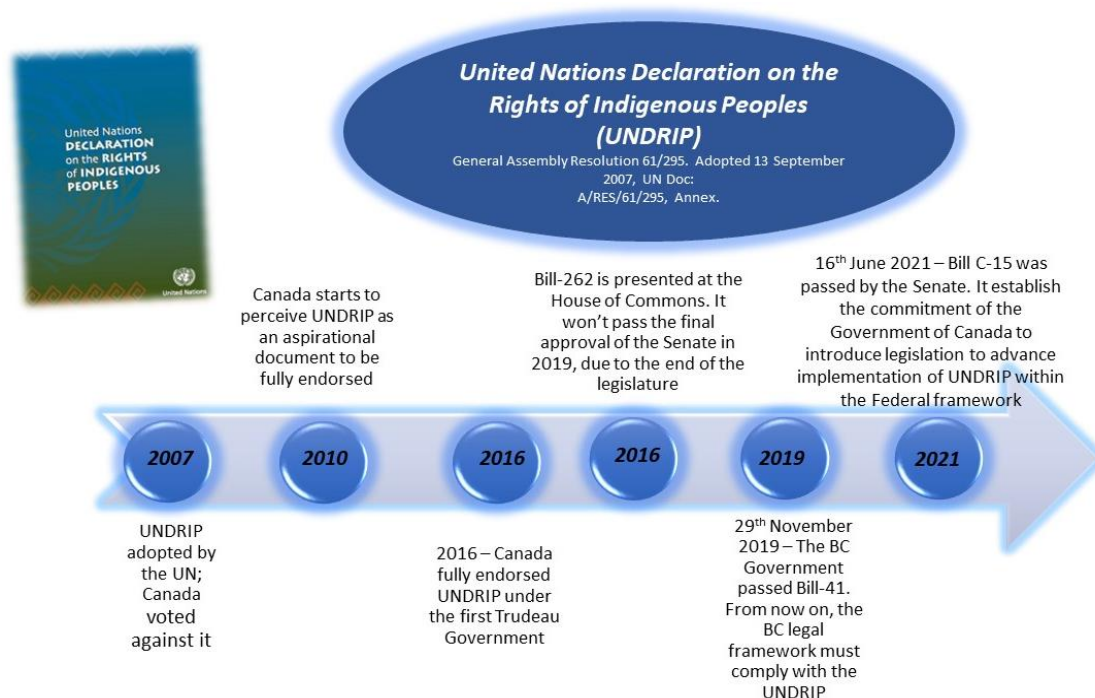
³ <https://fngovernance.org/our-inherent-rights/> (last accessed on June 21st, 2023).

complainant to first work within the country’s legal system to resolve a dispute.⁴ Through legislation, policy and case law, Canada has established mechanisms through which a First Nation can try to resolve issues – such as the legal procedures established for consultation and accommodation (see our related article: “On the duty to consult and accommodate”).

British Columbia was the first (and so far, only) province to pass a law enshrining UNDRIP. Bill-41, also known as the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), developed in cooperation with the BC Assembly of First Nations and passed in November 2019, requires the government to take all necessary steps to ensure that the provincial legal framework is consistent with UNDRIP. To do so, the BC Government must prepare and implement an action plan in cooperation with the Indigenous peoples of British Columbia. The plan was released on March 30th, 2022, and includes collectively identified objectives, as well as 89 priority actions, that form the long-term vision for implementing the UN Declaration in BC.⁵

At the national level, Canada’s position on UNDRIP has been less certain until recently. In less than 10 years, Canada shifted from voting against the adoption of the Declaration (2007) to endorsing it (2016). Such a shift could be seen as the peak of a long process that started in the ‘70s with the ratification of fundamental human rights legal instruments⁶, sustained pressure from Indigenous activists, and evolving Canadian case law regarding Aboriginal rights. In addition, in 2015 the Truth and Reconciliation Commission (TRC) declared UNDRIP a framework for reconciliation, encouraging provinces and the federal government to implement it into Canada’s legal framework⁷ (TRC, 2015, p. 3).

The United Nations Declaration on the Rights of Indigenous Peoples Act (the *Declaration Act* or *UNDA*) became Canadian law on June 21, 2021. The law says the Government of Canada must, in



⁴ <https://ijrcenter.org/exhaustion-of-domestic-remedies/>

⁵ <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples/implementation> (last accessed on March 9th, 2023).

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted 19 December 1966, UN Doc. ST/DPI/246, 999 U.N.T.S. 171 (entered into force 23 March 1976, accession by Canada 19 May - 1976), and International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, UN Doc. A/6316 (1966) 993 U.N.T.S. 3 (entered into force 3 January 1976, accession by Canada 19 May - 1976).

⁷ https://publications.gc.ca/collections/collection_2015/trc/IR4-6-2015-eng.pdf (last accessed on March 3rd, 2023).

consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. In the first sentences of the Act, the Government of Canada agrees with the TRC that UNDRIP is a framework for Reconciliation and further, that UNDRIP's principles "constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada". In December 2021, the Government of Canada commenced a two-phased consultation and cooperation process with Indigenous peoples with the aim of implementing the Act.⁸ The Action Plan resulting from this process was formally released by Canada on June 21, 2023.⁹

It is important to underline that these two new laws (DRIPA and UNDRIPA) and their associated action plans will not suddenly transform the implementation of Aboriginal rights in Canada in the way many First Nations might hope. But they do provide a way to use UNDRIP to assert and further define Aboriginal rights within Canada and hold governments to account. As well, with the passage of these Acts, Canadian courts will also be more likely to use UNDRIP to interpret Aboriginal rights, even in provinces and territories that have not adopted their own UNDRIP laws.

The framework for the reconciliation of rights in Canada grows stronger but remains a process of evolution through education, discussion, and debate. As Mi'gmaq legal scholar Naiomi Metallic concludes in her article *Breathing Life into Our Living Tree and Strengthening our Constitutional Roots*, "Reform will take sustained education and advocacy over the long-term by Indigenous peoples and their allies. It is going to be hard work and will take time. It will be important for Indigenous communities, their advocates and allies to hold Canada's and provinces' feet to the fire on implementation, including by continuously raising problems with poor implementation and taking governments to court for their failures when necessary. Court decisions that are weak in their interpretation of the UN Declaration must continue to be critiqued."

Read More:

Metallic, Naiomi, "Breathing Life into Our Living Tree and Strengthening our Constitutional Roots - The Promise of the United Nations Declaration on the Rights of Indigenous Peoples Act" (September 28, 2022). In *Rewriting the Canadian Constitution*, eds., Richard Alpert, Wade Wright, Kate Berger and Michael Pal (Forthcoming), Available at:

SSRN: <https://ssrn.com/abstract=4232531> or <http://dx.doi.org/10.2139/ssrn.4232531>

United Nations Declaration on the Rights of Indigenous Peoples Act (S.C. 2021, c. 14).

<https://www.laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html>

Bill-41 (2019) Declaration on the Rights of Indigenous Peoples Act

<https://www.bclaws.gov.bc.ca/civix/document/id/bills/billsprevious/4th41st:gov41-1>

United Nations Declaration on the Rights of Indigenous Peoples. Adopted by the UN General Assembly Resolution 61/295 of 13 September 2007. UN doc. A/RES/61/295.

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

UNDRIPA Action Plan <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/index.html>

⁸ <https://www.canada.ca/en/department-justice/news/2023/03/implementing-united-nations-declaration-on-the-rights-of-indigenous-peoples-act-next-phase-of-co-development.html> (last accessed on April 10th, 2023).

⁹ <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/index.html> (last accessed June 28, 2023)