



**Wolastoqey Nation's
Citizens' Guide to the Federal UNDRIP Act
and UNDRIP Implementation in Canada**

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WELCOME & INTRODUCTION

Introduction To The Citizens' Guide

Welcome to our Citizens' Guide on the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP" or the "UN Declaration"). We created this guide because Justice Canada has funded the Wolastoqey Nation in New Brunswick ("WNNB") to gather Wolastoqey voices on how UNDRIP should be put into action in Canada. Canada's UNDRIP Act sets out a framework for implementing the UN Declaration throughout Canada.

Our goal is to provide Justice Canada with a strong Wolastoqey perspective on how UNDRIP should be implemented, as well as share our priorities. By sharing clear information about UNDRIP and how Canada is putting it into practice, we hope to empower Wolastoqey community members to contribute their ideas.

We will use your feedback to create a final report for Justice Canada, one that reflects the unique needs and visions of the Wolastoqey Nation. This report will help Canada better understand how to support our rights and well-being when implementing UNDRIP.

By working together and sharing our voices, we can make sure that UNDRIP, and its incorporation into federal law, is truly meaningful for the Wolastoqey people.

WHAT IS UNDRIP?

The Origins Of UNDRIP

In 2007, the United Nations General Assembly adopted the UN Declaration. The UN Declaration is an international human rights document that sets out the collective and individual rights of Indigenous peoples around the world.

The UN Declaration was created over nearly 25 years through teamwork between countries and Indigenous peoples worldwide. Indigenous leaders from Canada played an important role in writing and negotiating it.

The rights set out in UNDRIP represent the "minimum standards for the survival, dignity and well-being of Indigenous peoples around the world". The UN Declaration includes many different rights, such as civil, political, economic, social, and cultural rights. These rights are similar to the human rights promises Canada has made in international agreements.

When the UN Declaration was first introduced, Canada, the United States, Australia, and New Zealand voted against it. However, over time, all four countries changed their positions. Canada first gave conditional support in 2010 and later, in 2016, fully endorsed UNDRIP without conditions, and committed to its full and effective implementation.

In 2021, Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the "federal UNDRIP Act"), creating a framework to advance the implementation of the UN Declaration at the federal level.

Key Principles And Rights Established Under UNDRIP

UNDRIP includes 46 articles, each addressing a different but connected aspect of Indigenous rights. These rights are all linked and equally important. To give a few examples, Article 3 affirms that Indigenous peoples have the right to self-determination, meaning they can make their own decisions about their communities, governments, and futures:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Another example is Article 8, which protects Indigenous peoples from having their culture, identity, or land taken away. It requires governments to prevent and address forced assimilation, displacement, and discrimination:

Article 8

1. *Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*
2. *States shall provide effective mechanisms for prevention of, and redress for:*
 - a) *Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
 - b) *Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*
 - c) *Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;*
 - d) *Any form of forced assimilation or integration;*
 - e) *Any form of propaganda designed to promote or incite racial discrimination directed against them.*

A final example is Article 28, which focuses on land rights and justice. It states that if Indigenous peoples' lands, territories, or resources have been taken, used, or damaged without their free, prior, and informed consent (also known as "FPIC"), that they have the right to fair compensation or the return of their land. When returning the land is not possible, compensation should be fair and equal, whether through land of the same quality and legal status, financial payment, or other forms of compensation:

Article 28

1. *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 free, prior and informed consent.*
2. *Unless otherwise freely agreed upon by the peoples concerned, 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.*

You can navigate through the UN Declaration, online, and read more about specific articles of interest, by [clicking HERE](#).

WHY THIS MATTERS FOR THE WOLASTOQEY NATION

Why This Matters?

Canada has passed the federal UNDRIP Act, which sets out a plan to put the UN Declaration into practice across the country. The UN Declaration itself contains 46 articles covering different but connected aspects of Indigenous rights, like the right to self-determination, protection against having culture or lands taken away, and a guarantee of compensation when land or resources are used without free, prior, and informed consent. These are just a few examples of the rights recognized in the UN Declaration.

With the federal UNDRIP Act, Canada promises to make its laws consistent with the UN Declaration, develop and carry out an action plan to meet its goals, and publish annual reports on its progress. These reports show that there is a lot of work happening with Nations across the country to advance the rights in the UN Declaration and the priorities in the Action Plan. The Wolastoqey Nation can be part of this process.

Additionally, recent court cases suggest the federal UNDRIP Act could help strengthen protections for Wolastoqey lands and require deeper consultation with the Wolastoqey Nation, especially when the “free, prior, and informed consent” standard under UNDRIP applies.

A Wolastoqey Vision For UNDRIP In Action

Justice Canada provided funding to the WNNB to hear from Wolastoqey communities about putting the UN Declaration into practice. Our goal is to offer Justice Canada a strong Wolastoqey perspective on how the federal government should implement the UN Declaration, making sure the unique experiences of the Wolastoqey people guide Canada’s efforts.

We hope this guide gives community members enough information about the UN Declaration, and how it is now part of federal law, to share meaningful and detailed feedback. This helps ensure our input is truly useful for Canada.

UNDRIP is broad and covers many areas. We need to figure out which rights are more of a priority for the Wolastoqey, at this time, and clearly tell Canada why they are important. By doing this, we can work together on real changes like better housing, more control over child and family services, and genuine involvement of Wolastoqey in decisions that affect our nation. In short, we want the UN Declaration to be more than just words on paper, it should actively support the betterment of our communities.



CANADA'S UNDRIP ACT: WHAT DOES IT MEAN?

What Is The Federal UNDRIP Act? What Does The Act Require Canada To Do?

The federal UNDRIP Act became law on June 21, 2021. The purpose of the federal UNDRIP Act is to recognize the UN Declaration as an important human rights tool that can guide how Canadian laws are understood and applied. It also creates a framework for putting the UN Declaration into action at the federal level.

The federal UNDRIP Act includes a series of introductory statements, followed by seven sections and an appendix that formally includes the UN Declaration as part of the federal UNDRIP Act.

As outlined in those seven sections, this law requires the Government of Canada to work together with Indigenous peoples to:

- Take all measures necessary to ensure the laws of Canada are consistent with the UN Declaration (section 5).
- Prepare and implement an action plan to achieve the objectives of the UN Declaration (section 6).
- Develop annual reports on progress and submit them to Parliament (section 7).

UNDRIP Legislation Throughout The Country

Canada's federal UNDRIP Act is not the only law that puts UNDRIP into action. Since the federal UNDRIP Act only applies to the federal government and to federal laws, provinces and territories can also pass their own UNDRIP laws. So far, British Columbia and the Northwest Territories have done this, working to make the UN Declaration part of the law in their regions.

Here in New Brunswick, however, no similar law has been passed. That's why we will focus on the federal UNDRIP Act and how the federal government is implementing UNDRIP.

Does The Federal UNDRIP Act Automatically Change Canadian Laws?

No. The federal UNDRIP Act does not automatically change Canadian laws. Instead, it requires the Government of Canada to work with Indigenous peoples to make sure federal laws follow the rights and principles in the UN Declaration.

This means reviewing current laws to see if they need to be updated and making sure new laws reflect the rights and principles of the UN Declaration. Since many laws touch on the rights contained in the UN Declaration, these laws will need changes over time. The federal UNDRIP Act sets up a whole-of-government framework for identifying and guiding such future changes, but it won't happen all at once.

Any updates to laws will go through the usual steps, including research, consultation, and approval by Parliament. Fully putting the UN Declaration into action will take time and ongoing work.

What Actions Has Canada Taken To Implement The Federal UNDRIP Act?

In June of each year, Canada releases its annual progress report on the implementation of the federal UNDRIP Act. There have been progress reports released since June of 2022. This report must be made in consultation and cooperation with Indigenous peoples. It covers what was done in the past year to:

- Align Canadian laws with the UN Declaration, and
- Develop and implement an action plan.

For those who are interested in browsing through all of the work that Canada has done, all of the annual progress reports on implementing the federal UNDRIP Act can be found on the Government of Canada's website, by [clicking HERE](#).

Align Canadian Laws With The UN Declaration

Section 5 of the federal UNDRIP Act requires Canada to work with Indigenous peoples to make sure federal laws align with the UN Declaration. Several laws are being reviewed and updated to ensure alignment with the UN Declaration, and new laws and regulations are being developed in partnership with Indigenous peoples. There are many examples, which you can find in the progress reports, but here are a few important ones to highlight:

An Act respecting early learning and child care in Canada (“Canada Early Learning and Child Care Act”)



On March 19, 2024, the *Canada Early Learning and Child Care Act* became law, supporting the Government of Canada's commitment to providing families with affordable, high-quality, and inclusive child care across the country. The federal government states that this measure advances Canada's human rights obligations, including those set out in the UN Declaration.

The Act emphasizes Indigenous self-determination in early learning and child care, ensuring that Indigenous children have access to culturally appropriate programs that reflect their communities' traditions and needs. Dedicated federal funding is being provided to implement this initiative, which forms part of the Canada-wide Early Learning and Child Care system.

This work is being guided by Indigenous leadership through partnership tables composed of First Nations, Inuit, and Métis Nation representatives at national and regional levels. These tables collaborate with the federal government so that Indigenous communities can lead the planning, priority-setting, and decision-making for their child care programs.

Canada indicates that this approach aligns with Articles 14, 15, 16, 20, 21, 22, 23, and 24 of the UN Declaration, addressing economic, health, and social rights, as well as those concerning education, information, and media.

Bill C-29 - An Act to provide for the establishment of a National Council for Reconciliation (“National Reconciliation Council Act”)

On April 30, 2024, Bill C-29 became law, establishing the National Council for Reconciliation—an independent, Indigenous-led non-profit organization to monitor and report on reconciliation progress in Canada. This law is also a response to one of the Truth and Reconciliation Commission’s Calls to Action.

The Council will:

- Track and evaluate reconciliation efforts across Canada.
- Develop action plans and review government policies affecting Indigenous peoples.
- Produce an annual report on reconciliation, which the Prime Minister must respond to.

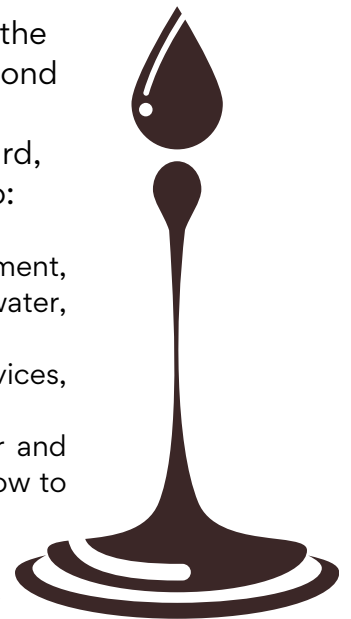
Canada says that this action aligns with Articles 5, 18, 19, and 34 of the UN Declaration. These are articles that speak to rights concerning participation in decision-making and Indigenous institutions.

On January 6, 2025, Parliament was prorogued until March 24, 2025. This means all government bills being reviewed in the House of Commons and Senate are automatically stopped and do not move forward, losing any progress made. Unfortunately, progress on some important laws has been halted, such as on the Bill below.

Bill C-61 – An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands

Bill C-61 was meant to address concerns raised by First Nations about the repealed 2013 *Safe Drinking Water for First Nations Act*. It passed second reading and was being studied by a committee when Parliament was prorogued in January 2025. To move its proposed amendments forward, it must be reintroduced in a new session as a new bill. The Bill aimed to:

- Recognize and affirm First Nations’ inherent right to self-government, including jurisdiction over water, source water, drinking water, wastewater, and related infrastructure on First Nation lands;
- Ensure adequate and sustainable funding for First Nations water services, comparable to those in non-First Nations communities;
- Establish minimum national standards for the delivery of drinking water and wastewater services on First Nations lands, with First Nations choosing how to apply them;
- Facilitate transboundary agreements to protect water sources;
- Provide pathways for consultation and cooperation on federal regulations.



Canada said that this Bill aligned with Articles 3, 4, 5, 8, 10, 11, 12, 13, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, and 37 of the UN Declaration. These are articles that speak to rights concerning self-determination, self-government and recognition of treaties; participation in decision-making and Indigenous institutions; cultural, religious and linguistic rights; economic, health and social rights; and rights concerning the environment and lands, territories and resources.

Develop And Implement An Action Plan

Section 6 of the federal UNDRIP Act requires the Government of Canada to work with Indigenous peoples to create and carry out an action plan to implement the UN Declaration. The 2023-2028 Action Plan was created over a two year period in partnership with First Nations, Inuit, and Métis peoples to identify measures needed to ensure federal laws are consistent with the UN Declaration. It outlines **181 key actions/priorities**.

Priorities have been categorized as follows: Shared Priorities, First Nations Priorities, Inuit Priorities, Métis Priorities, and Indigenous Modern Treaty Partner Priorities. Shared Priorities are commitments that address needs common to all Indigenous peoples, First Nations, Inuit, Métis, modern treaty and self-governing nations, and diversity groups, under the UN Declaration. First Nations Priorities are commitments that specifically respond to submissions from First Nations organizations, historic and numbered Treaty partners, and First Nations governments. Both of these priorities are most relevant for the Wolastoqey.

Here are some examples of the types of priorities that appear in the federal Action Plan:

- Co-develop a comprehensive approach to combat anti-Indigenous racism in support of Canada's new Anti-Racism Strategy (Shared Priorities, 4).
- Co-develop a redesign of the Additions to Reserve Policy (First Nations Priorities, 5).
- Pursue amendments and reforms to fisheries legislation, regulation, or policies to support self-determination and the meaningful implementation and exercise of Indigenous fishing rights, including Aboriginal and treaty rights (Shared Priorities, 36).
- Work with First Nations partners and representative organizations to advance the co-development of federal legislation that recognizes First Nations police services as essential services (First Nations Priorities, 10).
- Continue to support lifting of short- and long-term drinking water advisories in First Nations communities (First Nations Priorities, 16).

This plan is **not a final step but an ongoing process** that will continue to evolve in collaboration with Indigenous peoples. Canada has made some progress on implementing these key actions/priorities. Here are some examples of the work Canada says it has done to achieve these actions/priorities:

Recognizing First Nations Police Services as Essential Services

Since 2022, Public Safety Canada has been working with provinces, territories, and Indigenous organizations to discuss recognizing First Nations police services as essential and putting this into legislation. Over 230 meetings have been held with First Nations and their representatives to understand their priorities for this potential new law. In early 2024, an Indigenous-led process, organized by the Indigenous Leadership Development Institute, gathered input from First Nations, police services, and other groups on key parts of the proposed law. In 2024-25, Public Safety Canada is continuing to work with these partners to finalize the details before introducing the legislation.

Lifting Drinking Water Advisories

Since 2015, and as of February 20, 2024, 144 long-term drinking water advisories on public water systems in First Nations communities have been lifted. There are still 28 active long-term advisories in 26 communities. During this period, 271 short-term drinking water advisories were resolved before becoming long-term. Work is ongoing to address remaining advisories and to improve access to clean drinking water.

Rights Reconciliation Agreements in Atlantic Canada

In 2023, Fisheries and Oceans Canada (“DFO”) signed four new Rights Reconciliation Agreements and updated an existing agreement with 13 First Nations in Eastern Canada. These agreements create new ways for First Nations and DFO to work together on fisheries management. They set up joint committees or oversight boards made up of both DFO officials and First Nations representatives. These groups will provide advice and recommendations on important fishing-related issues to both the Minister of DFO and the Canadian Coast Guard and to Indigenous Chiefs.



WHAT ARE COURTS SAYING ABOUT UNDRIP?

Why Is It Important To Analyze How Courts Interpret The UNDRIP Legislation?

Understanding how courts interpret the federal UNDRIP Act is important in assessing its overall legal effect. When laws are passed by Parliament and provincial legislatures, they are shaped by court decisions; therefore, the courts play a major role in clarifying and evolving laws where there are ambiguities.

Since the federal UNDRIP Act was passed, courts have been tasked with determining two crucial issues. First, does the federal UNDRIP Act make the UN Declaration an enforceable source of rights, or does it serve primarily as an interpretive tool for existing and future laws? Second, even if the UN Declaration creates or strengthens certain rights, how will those rights be applied in practice? For example, does free, prior, and informed consent give First Nations a legal veto over projects if they do not consent, or is it more about ensuring a robust process of consultation?

These questions remain open because the UNDRIP Act itself is brief and unspecific about many details, consisting of only seven sections and attaching the full text of the UN Declaration as a schedule. It states that its purpose is to “affirm the Declaration as a universal international human rights instrument with application in Canadian law,” but it does not specify how these rights should be implemented in practice. Over time, court decisions should clarify the effects and limits of the Act.

Key Court Decisions On UNDRIP Legislation:

Kebaowek First Nation v. Canadian Nuclear Laboratories (2025 FC 319)

Facts of the Case

The Canadian Nuclear Safety Commission (the “Commission”) approved building a nuclear disposal site.[1] Kebaowek First Nation argued that the Commission should have applied the UN Declaration and the new federal UNDRIP Act when deciding whether Kebaowek had been properly consulted about the project.[2] Kebaowek asked the court to cancel the approval and send it back for more consultation,[3] claiming the Commission needed to respect Kebaowek’s right to consent under the UN Declaration.[4]

The court examined whether (1) the Commission was wrong to say it had no authority to apply the UN Declaration and the federal UNDRIP Act to the duty to consult, and (2) whether the Crown fulfilled its duty to consult Kebaowek.[5]

The Commission was wrong to say it had no authority to consider the UN Declaration or the federal UNDRIP Act when deciding whether Kebaowek had been properly consulted and accommodated.[6] Because of this, the Commission also made an error in its assessment of whether Kebaowek was adequately consulted and accommodated.[7]

How did the Court Interpret the Legal Effect of the Federal UNDRIP Act?

The following points were made when the court examined whether the Commission was wrong to say it had no authority to decide if the UN Declaration and the federal UNDRIP Act applied to the duty to consult and accommodate.

- The UN Declaration was incorporated into Canada’s positive legal framework through the federal UNDRIP Act, which means that UNDRIP may be used to interpret Canadian law and legal obligations.[8]
- The UN Declaration does not create new law or statutory obligations; rather, it is an interpretive lens to be applied to determine if the Crown has fulfilled its obligations prescribed at law.[9]
- The court says that a review of other court decisions shows that UNDRIP has not been recognized as creating new Aboriginal or Treaty rights. However, the Supreme Court has acknowledged that the rights in UNDRIP already exist, suggesting that the federal UNDRIP Act simply formalizes pre-existing rights.[10]
- All decision-makers, with the power to interpret the law, must actively consider how UNDRIP affects Canadian laws.[11]

[1] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 (CanLII), at [para 1](#) [Kebaowek].

[2] *Kebaowek*, at [paras 2-3](#).

[3] *Kebaowek*, at [para 5](#).

[4] *Kebaowek*, at [para 3](#).

[5] *Kebaowek*, at [para 42](#).

[6] *Kebaowek*, at [para 11](#).

[7] *Kebaowek*, at [para 11](#).

[8] *Kebaowek*, at [para 80](#).

[9] *Kebaowek*, at [para 76](#).

[10] Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5, at [para 17](#) [“Reference”]; see also Senwung Luk, “UNDRIP is now part of Canada’s “domestic positive law”. What does this mean?” (April 4, 2024), online: <https://www.oktlaw.com/undrip-is-now-part-of-canadas-domestic-positive-law-what-does-this-mean>; *Kebaowek*, at [para 76](#).

[11] *Kebaowek*, at [paras 81, 82, 85](#).

Kebaowek argued that the Commission should have considered several articles of UNDRIP when deciding whether the duty to consult and accommodate was properly met.[12] The following points were made when the court considered whether the Commission was wrong to conclude that the Crown had fulfilled its duty to consult and accommodate Kebaowek.

- FPIC is not a veto or absolute power, as it is subject to limitations of rights included in the UN Declaration.[13]
- Canada’s adoption of UNDRIP through the federal UNDRIP Act should bring more change than simply applying the existing section 35 framework as it is.[14] UNDRIP is an added contextual layer that informs the scope and content of the duty to consult and accommodate. [15]
- UNDRIP states that hazardous materials cannot be stored or disposed of on Indigenous lands without their free, prior, and informed consent. The proposed project falls under this rule, meaning the UNDRIP FPIC standard applies.[16]
- The UNDRIP FPIC standard requires a deeper level of consultation and negotiation, aimed at reaching a mutually acceptable agreement.[17] FPIC is a right to a robust process.[18]
- UNDRIP and the federal UNDRIP Act must be considered when deciding whether the Crown has properly met its duty to consult and accommodate.[19]

In conclusion, the Commission’s failure to consider UNDRIP as a relevant factor in assessing the adequacy of Crown consultation undermined the robustness of the process required by law.[20] The Commission’s unwillingness to adapt its approach in response to Kebaowek’s concerns resulted in a consultation process that did not meet this standard.[21]

Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5

The Supreme Court of Canada also discussed the status of the UN Declaration in a decision called *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5*, which will be referred to as “*Reference*”. This discussion took place while examining the context in which *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24 (the “*FNIM Act*”) was enacted. The *FNIM Act* was one of the federal laws created to help implement UNDRIP.

[12] Kebaowek, at [para 90](#).

[13] Kebaowek, at [para 97](#).

[14] Kebaowek, at [para 128](#).

[15] Kebaowek, at [para 129](#).

[16] Kebaowek, at [para 130](#).

[17] Kebaowek, at [para 130](#).

[18] Kebaowek, at [para 131](#).

[19] Kebaowek, at [para 132](#).

[20] Kebaowek, at [para 183](#).

[21] Kebaowek, at [para 183](#).



In its introduction, the Supreme Court of Canada noted that the UN Declaration became part of Canadian law through the federal UNDRIP Act:

“While the Declaration is not binding as a treaty in Canada, it nonetheless provides that, for the purposes of its implementation, states have an obligation to take, “in consultation and cooperation with Indigenous peoples, . . . the appropriate measures, including legislative measures, to achieve the ends” of the Declaration (art. 38). Recognized by Parliament as “a universal international human rights instrument with application in Canadian law”, the Declaration has been incorporated into the country’s positive law by the United Nations Declaration on the Rights of Indigenous peoples Act, S.C. 2021, c. 14 (“UNDRIP Act”), s. 4(a).” [emphasis added].[22]

The Supreme Court of Canada later reaffirmed in a subsequent paragraph that UNDRIP is part of Canadian law through the federal UNDRIP Act, emphasizing this point once again.[23]



Concluding Thoughts On Court Decisions

The legal effect of UNDRIP in Canada is still evolving as courts continue to interpret its application, after its incorporation into the federal UNDRIP Act. As was said by one court in British Columbia in 2024, that the Supreme Court of Canada’s comments in the *Reference* case, that UNDRIP is part of Canadian law, have created an opportunity for courts to gradually start considering UNDRIP’s principles and rights when relevant in legal cases.[24]

Recent cases show that UNDRIP’s legal role in Canada continues to develop. In *Kebaowek*, the Federal Court held that decision-makers can, and must, consider the federal UNDRIP Act when assessing the federal Crown’s duty to consult and accommodate Indigenous communities.[25] As well, the Supreme Court of Canada in the *Reference* decision confirmed that UNDRIP is part of Canada’s domestic law through the federal UNDRIP Act.[26] These rulings show that UNDRIP is becoming an important guide for interpreting Canadian law, even though courts are still figuring out exactly how it applies in each case. It is important to remember, however, that the federal UNDRIP Act only creates obligations on the federal government and although there are arguments to be advanced to make the case for why provincial governments should be bound by UNDRIP, the federal UNDRIP Act does not apply to them.

[22] *Reference*, at [para 4](#).

[23] *Reference*, at [para 15](#).

[24] *J.N.C. v A.G.H.*, 2024 BCSC 1783, at [para 219](#).

[25] *Kebaowek*, at [paras 81, 82, 85, 183](#).

[26] *Reference*, at [paras 4, 15](#).

THE GAP BETWEEN GOVERNMENT PROMISES AND REALITY

Where Is Canada Falling Short In Implementing UNDRIP?

Criticisms Identified By Indigenous Partners

Canada has been seemingly transparent in the criticisms that it has faced, within their Annual Progress Reports, as they have included comments, suggestions and criticisms received from Indigenous partners throughout the country. This has provided a glimpse into some of the areas that Canada has been falling short in implementing the federal UNDRIP Act. The Government of Canada emphasized three key takeaways from the feedback that it received from Indigenous partners in its 2024 progress report:

- 1** Need for more coordination and consistency in consultation and cooperation on the implementation of the Act
 - Partners called for consistent, comprehensive consultation processes across all federal departments, rather than isolated or siloed efforts.
 - Many emphasized that planning, facilitation, and agenda-setting for consultations should be driven by Indigenous communities themselves.
 - There is frustration with short feedback periods and limited clarity on how input is used.
- 2** Need for a clear implementation plan and reporting framework
 - Indigenous partners criticize the Action Plan for lacking concrete workplans, milestones, time-bound objectives, and measurable targets.
 - There is a strong call for a monitoring framework, with clear benchmarks and progress indicators accessible in digital format.
 - Partners want rigorous tracking to identify gaps—particularly those impacting women, diversity groups, and urban/off-reserve populations—and to ensure solutions form part of the Action Plan strategy.
- 3** Need for ongoing and adequate funding
 - Indigenous partners emphasize the need for stable, ongoing funding rather than short-term, proposal-based financing, so they can build capacity, retain staff, and fully participate in implementation.
 - Adequate resources are essential for Indigenous communities (including women's, youth, urban, and off-reserve groups) to engage in consultation, monitoring, and evaluation, rather than being given superficial involvement.
 - Offering sustained financial support is seen as a concrete way to respect and integrate Indigenous knowledge, languages, and governance systems in UNDRIP implementation.

The Introduction Of A Non-Derogation Clause Into The Federal Interpretation Act

On November 27, 2024, Bill S-13 became law. This new law updates the *Interpretation Act* by adding a non-derogation clause to make sure all federal laws respect Indigenous rights. The clause is as follows:

Rights of Indigenous peoples

8.3 (1) Every enactment is to be construed as upholding the Aboriginal and treaty rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.

One key shortcoming of this change is that it does not require all federal laws to be interpreted in a way that respects the rights recognized under the UN Declaration.

Section 5 of the federal UNDRIP Act states that the federal government will “take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.” By leaving UNDRIP out of this amendment, the government raises doubts about its commitment to its own Action Plan.

British Columbia, on the other hand, amended its *Interpretation Act* in 2021 to include a clause upholding section 35 rights **and the rights in the UN Declaration**. Despite having this example to follow, Canada’s omission of UNDRIP in its amendment represents a missed opportunity for Canada to meet its obligations under the federal UNDRIP Act. Including this requirement would have reinforced Canada’s commitment to implementing the UN Declaration.

In addition, Aboriginal and treaty rights have been recognized and affirmed under section 35 of the *Constitution* since 1982, and all Canadian laws are required to align with the *Constitution*. This raises questions about what additional protections the proposed change to the federal *Interpretation Act* would actually provide for Indigenous peoples. It is unclear whether reaffirming section 35 rights in this legislation adds any meaningful protections beyond what is already guaranteed.

Canada says that this action aligns with Article 37 of the UN Declaration. Article 37 affirms that Indigenous peoples have the right to have treaties, agreements, and other arrangements with states recognized, upheld, and enforced. It also clarifies that nothing in UNDRIP diminishes or negates the rights already established in these agreements.

The Lack Of Enforcement Mechanisms

A concern worth mentioning with the federal UNDRIP Act is its lack of clear enforcement mechanisms. While the federal UNDRIP Act directs the government to align Canadian laws with the UN Declaration and develop an action plan, it does not specify how failures to follow through will be handled. There is no built-in tribunal, penalty, or remedial process within the federal UNDRIP Act to ensure compliance.

Without a clear way to enforce the obligations placed on the federal government contained in the federal UNDRIP Act, a future government could decide to stop following it, potentially without any forms of redress. This could leave Indigenous peoples without a clear way to challenge non-compliance, other than speaking out publicly or relying on political pressure.

Evaluating Reported Progress

A closer look at some of the success stories the federal government promotes as progress on its Action Plan and the 181 key actions within it suggests that these accomplishments may sometimes be overstated, or that those directly involved in certain initiatives may not share the government's positive view of the work being done. In other words, in some cases, what the government presents as a step forward may not align with the experiences or expectations of the communities affected. A key example is the Rights Reconciliation Agreements in Atlantic Canada.



Many Wolastoqey people have expressed concerns about these agreements and the work being done on them and would not see them as a true example of UNDRIP being implemented. Critics have pointed out that these agreements have not led to genuine, rights-based management of fisheries. Instead, the process has often resulted in arrangements that simply bolster commercial interests, with decision-making power remaining largely advisory rather than truly shared. In some cases, First Nations were presented with “take it or leave it” offers that forced them to suspend their rights, reinforcing the view that these agreements are temporary, interim measures rather than a lasting step toward full self-determination.

Another example, not included in this Guide but nevertheless notable, is the *Impact Assessment Act*, which was enacted in 2019 and was an early attempt to reflect the government's purported commitment to UNDRIP. *The Impact Assessment Act* created an opportunity to enact new regulations that would allow the Minister to enter into agreements with Indigenous governing bodies to be considered as jurisdictions on specific lands. “Jurisdiction,” in this context, refers to any authority or body, whether federal, provincial, Indigenous, or international, that has the legal power to assess the environmental effects of designated projects.

Under Sections 114(d) and 114(e) of the *Impact Assessment Act*, once the regulations were in place, the Minister could have allowed these Indigenous bodies to assume certain federal impact assessment responsibilities on specified lands and be recognized as jurisdictions for applying the *Impact Assessment Act*.

At first glance, this might sound like meaningful participation or shared decision-making. However, to date, the government has not passed the regulations needed to actually bring that provision into force. Even if such regulations are eventually passed, the current model only “delegates” the technical work of conducting impact assessments. The final decision, whether to approve or reject a project, remains with the Minister.

The federal government nonetheless points to this arrangement as a step toward implementing UNDRIP. However, until amendments are enacted that effectively transfer decision-making power to Indigenous governing bodies, any claim that the *Impact Assessment Act* embodies a commitment to UNDRIP and Indigenous self-determination risks being largely symbolic rather than transformative.

The Legal Effect Of Canada's UNDRIP Acts

Maintaining The Status Quo?

With the passage of Canada's federal UNDRIP Act, UNDRIP is now part of Canada's domestic law; [27] however, courts have generally treated it as a tool for interpreting existing legal rights rather than as a source of new,[28] standalone rights.[29] The cases suggest that the rights recognized in the UN Declaration have not been accorded the full force of law with the passing of the federal UNDRIP Act. Rather, courts appear to be using it primarily to interpret and reinforce existing legal standards and obligations, including the federal Crown's duty to consult and accommodate.

By treating the UN Declaration only as an interpretive aid, courts may be reinforcing the status quo instead of implementing the full scope of Indigenous rights set out in the UN Declaration, ultimately weakening its transformative potential. While the government has taken steps to put the UN Declaration into action, the courts have been slower to apply these principles.

A More Robust Duty To Consult And Accommodate

Kebaowek clarifies that, although UNDRIP does not create wholly new laws or statutory obligations,[30] the UN Declaration and the federal UNDRIP Act must still be considered when determining whether the **federal Crown** has met its duty to consult and accommodate Indigenous peoples.[31] This new UNDRIP FPIC standard requires a deeper level of consultation and negotiation than the regular duty to consult and accommodate, aimed at reaching a mutually acceptable agreement.[32] Where it applies, the UNDRIP FPIC constitutes a right to a robust process.[33]

Kebaowek has the potential to strengthen the federal Crown's duty to consult and accommodate by moving toward more substantive, good-faith negotiations aimed at reaching agreement.[34] However, the court makes it clear that FPIC is not a veto or a guarantee of a specific outcome, nor is it an absolute right, under UNDRIP (e.g., Article 46), governments may sometimes limit these rights in certain situations.[35] The decision may also illustrate a growing expectation that, where UNDRIP's FPIC standard applies, where the federal Crown is involved, consultation must be robust and meaningfully incorporate Indigenous perspectives, bringing it closer to the vision set out in the UN Declaration.

[27] Reference, at [paras 4, 15](#).

[28] Reference, at [para 4](#); R. c. Montour, 2023 QCCS 4154, at [para 1287](#), cited approvingly in *Kebaowek*, at [para 76](#).

[29] *Kebaowek*, at [para 76](#); *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680, at [para 470](#).

[30] *Kebaowek*, at [para 76](#).

[31] *Kebaowek*, at [para 132](#).

[32] *Kebaowek*, at [para 130](#).

[33] *Kebaowek*, at [para 131](#).

[34] *Kebaowek*, at [paras 130-131](#).

[35] *Kebaowek*, at [para 131](#).

The UNDRIP FPIC standards apply when the federal government considers actions that may affect Indigenous peoples, such as:

- Removal from lands (Article 10);
- Loss or damage to lands, territories, and resources (Article 28);
- Environmental protection and hazardous material storage on Indigenous lands (Article 29);
- Development projects affecting Indigenous lands or resources (Article 32).

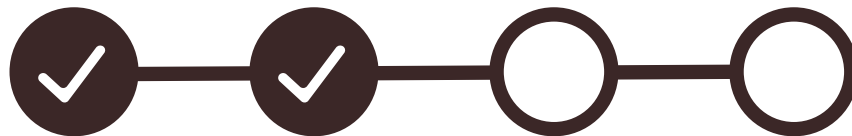
Since UNDRIP has only been incorporated into federal law, these obligations apply only to the federal government, for now. It is hoped that strengthening FPIC processes at the federal level will lead to broader adoption, encouraging provinces and territories to align their laws and policies with these standards. This could help ensure that Indigenous rights are protected consistently across all levels of government, preventing the application of different standards at different levels.

NEXT STEPS: THE PATH FORWARD

What Happens After The Release Of This Citizens' Guide?

After we release this Citizens' Guide, we will be hosting engagement sessions in Wolastoqey communities. During these sessions, you will be invited to share your thoughts, ask questions, and help shape the recommendations that go into our final report. We also plan to present our findings from these sessions at the Wolastoqey Nation's Annual General Assembly, where more community members can offer insights.

Once the draft report is ready, we will make it available for Wolastoqey community members to provide feedback. After gathering and reviewing your input, we will finalize the report and submit it to Justice Canada to be incorporated in Canada's work being done to implement the UN Declaration.



Continuing The Push For Meaningful Implementation

Wolastoqey community members are encouraged to think about how UNDRIP could be adopted or strengthened at the provincial level, similar to what has been done in British Columbia and the Northwest Territories. Getting involved in advocacy and community discussions can help make this happen. By joining our engagement sessions, asking questions, and holding governments accountable, both individually and together, we can push for stronger laws and policies that protect and support the betterment of the Wolastoqey Nation.

HAVE YOUR SAY: COMMUNITY ENGAGEMENT SESSIONS

Community Involvement

Your experiences, concerns, and hopes for the future are key to making sure the UN Declaration is put into action in a way that truly benefits the Wolastoqey Nation as a whole. By sharing your voice, you can help shape how the federal government addresses this important work.



How You Can Participate

We will be hosting engagement sessions with Wolastoqey communities, where you will be invited to learn about UNDRIP, ask questions, and share your thoughts. You do not have to be an expert, just come with an open mind. These sessions are expected to take place in the spring and summer of 2026.

Questions To Think About Before Attending A Session



- Which rights or topics in UNDRIP are most important to you or your family?
- What is needed to ensure that the rights that you have identified can be implemented?
- What changes would you like to see from Canada to better support Wolastoqey self-determination?
- How can we ensure Wolastoqey voices are heard in decisions that affect our lands and communities?
- How do we best ensure that Wolastoqey voices are accurately represented in the final report to Justice Canada?

RESOURCES & FURTHER READING

Below are some helpful links for anyone who wants to learn more about the UN Declaration and how Canada is implementing it. You'll find background information, official documents, and even a short video that explains the UN Declaration. If you want to dig deeper or stay updated on the latest developments, these links are a good place to start:

- [Visit the UN Declaration Homepage](#)
- [Read the UN Declaration](#)
- [Read Canada's Action Plan](#)
- [Read the Backgrounder on the UN Declaration Act](#)
- [Watch Video Explaining the UN Declaration](#)
- [Read Through the Annual Progress Reports on Implementing the federal UNDRIP Act](#)
- [Read About the Indigenous Partnership Fund](#)