

[11] Government of Canada, "Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act," [Online]. Available: <https://www.justice.gc.ca/eng/declaration/about-a-propos.html>.



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent and came immediately into force. This legislation advances the implementation of the Declaration as a key step in renewing the Government of Canada's relationship with Indigenous peoples.

The purpose of this Act is to affirm the Declaration as an international human rights instrument that can help interpret and apply Canadian law. It also provides a framework to advance implementation of the Declaration at the federal level.

This Act requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to:

- take all measures necessary to ensure the laws of Canada are consistent with the Declaration
- prepare and implement an action plan to achieve the Declaration's objectives
- table an annual report on progress to align the laws of Canada and on the action plan

This Act requires that the action plan include measures:

- to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination against Indigenous peoples, including elders, youth, children, persons with disabilities, women, men and gender-diverse and two-spirit persons
- to promote mutual respect and understanding, as well as good relations, including through human rights education
- related to the monitoring, oversight, follow up, recourse or remedy or other accountability with respect to the implementation of the Declaration

This action plan must also include measures for monitoring the implementation of the plan itself and for reviewing and amending the plan.

Next Steps

All federal departments will have important roles to play in implementing the Declaration.

As the next step, the Government of Canada will engage with Indigenous partners to understand their priorities for the action plan and to identify potential measures for aligning federal laws with the Declaration over time.

Engagement will be broad and inclusive; and will include national and regional Indigenous organizations, Indigenous rights holders, modern treaty and self-governing nations, women's and youth organizations, 2SLGBTQIA+ Indigenous persons, urban Indigenous people and other identified Indigenous groups.

The Act requires the action plan be developed as soon as possible and no later than two years after the legislation has come into force. Once completed, the plan must be tabled in Parliament and be made available to the public. The action plan can then be renewed and updated as needed.

Why do we need this legislation?

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.

This Act creates a lasting and action-oriented framework to advance the federal implementation of the Declaration in collaboration with Indigenous peoples. This framework establishes accountability and provides greater clarity regarding the path forward for Indigenous peoples, communities, industry and all Canadians. A legislative framework ensures sustained and continued efforts to uphold the human rights of Indigenous peoples now and in the future. This legislation also responds to the Truth and Reconciliation Commission's Call to Action 43 and the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice.

In this way, this Act provides a clear vision for the future, ensuring that, moving forward, federal laws reflect the standards set out in the Declaration, while also respecting Aboriginal and Treaty rights recognized and affirmed in the Constitution.

How did the Government of Canada work with Indigenous peoples on this Act?

Building on the support from Indigenous groups for former Private Member's Bill C-262, and following discussions with Indigenous partners, the Government of Canada used Bill C-262 as the floor for discussions on a new legislative proposal.

The Government of Canada developed the *United Nations Declaration on the Rights of Indigenous Peoples Act* through engagement with representatives of National Indigenous Organizations, Modern Treaty partners and Self-Governing Nations, rights-holders, Indigenous youth, Indigenous women, gender-diverse and two-spirit people, regional and other Indigenous organizations. The feedback received through this engagement process shaped the development of this Act. The Government of Canada also held discussions with provincial and territorial governments and industry stakeholders.

What is free, prior and informed consent?

References to “free, prior and informed consent” (FPIC) are found throughout the Declaration. They emphasize the importance of recognizing and upholding the rights of Indigenous peoples and ensuring that there is effective and meaningful participation of Indigenous peoples in decisions that affect them, their communities and territories.

More specifically, FPIC describes processes that are *free* from manipulation or coercion, *informed* by adequate and timely information, and occur sufficiently *prior* to a decision that Indigenous rights and interests can be incorporated or addressed effectively as part of the decision making process - all as part of meaningfully aiming to secure the consent of affected Indigenous peoples.

FPIC is about working together in partnership and respect. In many ways, it reflects the ideals behind the relationship with Indigenous peoples, by striving to achieve consensus as parties work together in good faith on decisions that impact Indigenous rights and interests. Despite what some have suggested, it is not about having a veto over government decision-making.

It is important to understand FPIC in context: different initiatives will have different impacts on Indigenous peoples' rights. FPIC may require different processes or new creative ways of working together to ensure meaningful and effective participation in decision-making.

There are many examples where collaboration, co-management or co-ownership are already taking place across the country. These types of approaches increase the credibility of the institutions and help to ensure the legitimacy of the decisions they make, which in turn helps to reduce litigation. Implementing the Declaration means building on these examples, looking for other ways in which we can work collaboratively on key issues, ensuring that decision making processes include the space (including the time and information required) for Indigenous peoples who stand to be affected to participate in and influence the process.

Learn more about some of these many examples of the [Declaration in action here](#).

What does this mean for the existing duty to consult?

The Government of Canada has a constitutional duty to consult Indigenous peoples when it considers measures that might adversely impact their potential or established Aboriginal or treaty rights. This has been consistently confirmed by the Courts. The Government of Canada has consistently worked to uphold this duty and has shown its commitment to taking additional steps to do so.

As the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples note, free, prior and informed consent builds on and goes beyond the legal duty to consult. Consultation obligations can also be set out in legislation or modern treaties.

Implementation of the Declaration through this Act will inform how the Government approaches meeting these legal duties going forward. It will do so in a way that provides greater clarity and creates greater certainty over time for Indigenous groups and all Canadians. The Act itself does not immediately change Canada's existing duty to consult Indigenous groups, or other consultation and participation requirements set out in legislation like the *Impact Assessment Act*.

What does this mean for natural resource development?

The implementation of the Declaration has the potential to make meaningful change to how Indigenous peoples, communities, and businesses participate in sustainable natural resources development. This includes having Indigenous peoples as full partners in the natural resource and net-zero carbon economy and ensuring that Indigenous peoples have a seat at the table for decisions that may affect their communities. Together, we can develop a stronger, more sustainable, and predictable path for Indigenous peoples, the Government of Canada, and industry.

The Declaration can be used as a guidepost in establishing those relationships, because when Indigenous peoples are provided the opportunity to participate as full partners in economic development, it is a reflection of their inherent right to self-determination.

Read this [additional backgrounder](#) for more information on what this means for the natural resource sector.

What does this mean for fisheries in Canada?

Fisheries, oceans, aquatic habitat, and marine waterways are economically and culturally significant for Indigenous peoples. The sustainable use of the fishery resource, the protection of fish and fish habitat, the conservation and management of our oceans, and, through the Canadian Coast Guard, the safety of those on the water and the protection of the marine environment, are shared priorities held in common with Indigenous peoples in Canada and the Government of Canada.

The Government of Canada works with Indigenous peoples through well-established processes to seek input in decision-making and management activities –, for example, advisory councils, collaborative management arrangements, and bilateral discussions. Through these relationships, the Government of Canada collaborates with Indigenous peoples in a manner that gives voice to the Declaration.

While the *Act* itself does not immediately change any operations, policies, or laws related to the Department of Fisheries and Oceans or the Canadian Coast Guard, implementing the Declaration means building off our current processes, partnerships, and collaborative arrangements with Indigenous peoples to look for other ways in which we can work together on key fisheries and aquatic resource issues in a manner that gives a voice to the Declaration.

The development of the action plan will be a venue for advancing discussions with Indigenous peoples on ways to achieve the objectives of the Declaration, while advancing efforts to ensure Indigenous people participate as full partners in the sustainable use of the fishery resource, the protection of fish and fish habitat, and the conservation and management of our oceans.

Does the United Nations Declaration on the rights of Indigenous Peoples Act affect provinces and territories?

The *United Nations Declaration on the Rights of Indigenous Peoples Act* only imposes obligations on the federal government. It is intended to create a framework to support the Government of Canada to further implement the Declaration.

This Act affirms that the Declaration is a universal international human rights instrument with application in Canadian law. This means that the Declaration is an important source to interpret provincial and federal law. In fact, provincial and federal courts are already using the Declaration in this regard.

The Truth and Reconciliation Commission called on all levels of government to adopt the Declaration as the framework for reconciliation. Many provincial and territorial governments in Canada are also using the Declaration as the framework for reconciliation and to actively engage with Indigenous peoples on matters that affect them.

The preamble to this Act specifically recognizes that provincial and territorial governments have their own approaches and authorities relating to the implementation of the Declaration. The obligations set out in the Act apply specifically to the Government of Canada, in consultation and cooperation with Indigenous peoples. This includes the requirement to take all measures necessary to ensure that the laws of Canada that fall within federal authority are aligned with the Declaration, the development of an action plan, and the tabling of annual reports in Parliament. Together, these provide a framework for the federal government's implementation of the Declaration. Nothing in the federal legislation prevents provinces or territories from developing their own plans and approaches for implementation of the Declaration, or require them to do so.

What does implementing the Declaration mean for Canada?

The *United Nations Declaration on the Rights of Indigenous Peoples Act* will provide a shared road map for Indigenous peoples, industry, communities and government to work together. It will help strengthen relations between the Government of Canada and Indigenous peoples. It will also ensure Indigenous rights are carefully considered in reviewing and updating federal laws that affect those rights.

Among the main goals of the Declaration is to support Indigenous peoples' exercise of the right to self-determination.

Recent events have also underscored the persistence and harm of systemic racism and discrimination that Indigenous people face on a daily basis. This Act requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to prepare an action plan that includes measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination against Indigenous people.

Over time, implementing the Declaration will deepen understanding and respect, while creating stronger and healthier Indigenous communities, and contributing to their and Canada's economic growth. That means jobs and opportunities that benefit all, while protecting the land, air and water. It means building a brighter future and a better Canada for all.

FOR MORE INFORMATION, VISIT:
[CANADA.CA/DECLARATION](https://canada.ca/declaration)