



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

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Supplementary Information

**Presentation from the
Kebaowek First Nation**

**Regulatory Oversight Report
for Uranium and Nuclear
Substance Processing
Facilities, Research Reactors,
and Class 1B Accelerators in
Canada: 2023**

Commission Meeting

February 26, 2025

Renseignements Supplémentaires

**Présentation de la Première
Nation des Algonquins de
Pikwàkanagàn**

**Rapport de surveillance
réglementaire des installations de
traitement de l'uranium et des
substances nucléaires, les
accélérateurs de particules de
catégorie IB au Canada: 2023**

Réunion de la Commission

Le 26 février 2025

Reconciliation and Implementation of the United Nations Declaration on the Rights of Indigenous Peoples



Truth and Reconciliation

The *United Nations Declaration on the Rights of Indigenous Peoples* is the framework for reconciliation at all levels and across all sectors of Canadian society.

— *What We Have Learned: Principles of Truth and Reconciliation*, p.3

Consult and Cooperate in Good Faith

States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

—*The United Nations Declaration on the Rights of Indigenous Peoples, Article 19*

Preamble UN Declaration on the Rights of Indigenous Peoples (2007)

“Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.”

WHAT UNDRIP DOES

- Emphasizes right to maintain and strengthen cultures, traditions and institutions
- Prohibits all discrimination
- Guides policy development, negotiations and litigation
- Asserts collective rights of Indigenous Peoples:
 - To remain distinct from surrounding societies
 - Supports all treaties and agreements
 - Pursue own visions of development
 - Promote full and effective participation in decision-making processes on issues that may affect them. Free, prior and informed consent based in the universal right of self-determination

Canada's United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)

On June 21, 2021, Canada's United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA), entered into force. This federal statute is a form of implementing legislation for the United Nations Declaration on the Rights of Indigenous People (UN Declaration).

The preamble of the UNDA states: ...[T]he 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. ...[T]he Declaration is affirmed as a source for the interpretation of Canadian law.

FREE PRIOR INFORMED CONSENT

The UN Declaration includes provisions relating to the free, prior and informed consent of Indigenous peoples, serves as a foundation for the Government of Canada's commitment to achieve reconciliation in Canada as set out in the United Nations Declaration on the Rights of Indigenous Peoples Act (2021).

One of the Government of Canada's principles for its relationship with Indigenous peoples is to recognize that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources. This is current law and is not subject to forward regulatory UNDA direction by Parliament. The Supreme Court of Canada has ruled that the UN Declaration is binding, positive domestic law in Canada.

UNDRIP & UNDRIPA: CASE LAW

- *Reference re An Act respecting First Nations, Inuit and Metis children, youth and families* decision (2024), SCC reaffirmed UNDRIP as a guiding international framework for recognizing and promoting the rights of Indigenous peoples.
- UNDRIP carries significant moral and political weight and helps guide domestic law and policies regarding Indigenous rights.
- The decision highlighted the passage of UNDA which was intended to implement the principles of UNDRIP into law.

SECTION 5: CONSISTENCY OF LAWS AND POLICIES WITH THE UNDA

- The Act directs that all laws of Canada, including but not limited to policies, and regulations, be made consistent with the principles embedded in the Declaration in consultation and cooperation with the Indigenous peoples, and that suitable accountability and reporting mechanisms be established.
- Consistency of Laws and Policies as a crucial element of UNDA that is required for transformative change; however, there has been little progress with the CNSC.
- Kebaowek First Nation v. Canadian Nuclear Laboratories Federal Court File No.: T-227-24
- Kebaowek's judicial review of CNSC failed to deal with a crucial legal issue namely the application of Article 29.2 and that its findings on the duty to consult and UNDRIP are incorrect or unreasonable as a result.

Section 35 Rights

- The UNDA does not diminish or take away any Treaty rights or inherent rights and title
 - The 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.
 - UNDRIP can be used to interpret Indigenous peoples' rights and related Crown obligations.

SECTION 35 INHERENT RIGHTS

Who speaks for the natural world?

Who speaks of the animals?

Who speaks for the trees?

Who speaks for the birds?

Who speaks for the fish?



INDIGENOUS RIGHTS ALSO INCLUDE

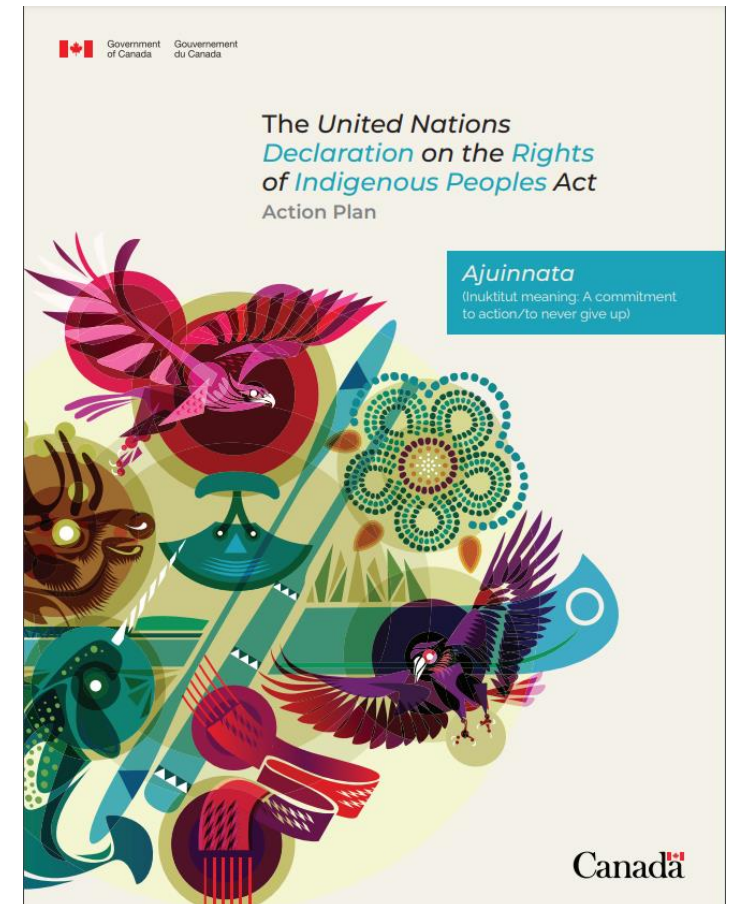
- Right to self-determination: to freely determine their political status and freely pursue their economic, social, and cultural development.
- Right to land, territory and natural resources.
- Exercise their rights collectively.

Moving forward with the UN Declaration and FPIC

- In 2024, Justice Canada developed Interim Guidance to federal departments on the application of Section 5 of UNDA.
- Canada must work meaningfully with First Nations to develop long-term guidance that is reflective of Canada's duty to consult, the Honour of the Crown, and clearly articulates what First Nations define as meaningful engagement based on their unique laws, traditions, and jurisdictions.

Time for a Transition : NPD UNDRIP PILOT PROJECT

- **APM 38:** Provide **predictable and flexible funding** to ensure Indigenous nations and organizations have the **capacity** to meaningfully participate in advisory, **co-management**, and **decision-making processes** tied to implementation of UNDRIP.
- Numerous Requests to CNSC to Implement a NPD pilot UNDRIP project
- Amendment of the May 2023 NPD TOR to match CNSC's current legal obligations of the UNDA
- CNSC Funding request to create consultation framework agreement amendment



Elevating Section 35 Rights and UNDRIP



- The Eagle representing First Nations: one wing represents Section 35 rights and the other wing represents the UN Declaration. It takes both wings to life up and give our rights as First Nations the ability to soar.

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