

UNDRIP: IMPLEMENTING PRINCIPLES INTO RECONCILI-ACTION



FIVE RECONCILI-ACTION POINTS

October 4, 2017
Coast Salish Territory

- 1. OPENING COMMENTS**
- 2. CANADA'S PRINCIPLES**
- 3. 5 RECONCILI-ACTIONS**

OPENING COMMENTS

- Only acceptable path to reconciliation is Nation to Nation UNDRIP implementation with Indigenous and Crown Mutual Consent
- UNDRIP was negotiated by Indigenous Peoples for Indigenous Peoples, we must not wait for Crown implementation, we must take ownership of UNDRIP requiring compliance at every step
- **Prior** – before rushing to make binding, dialogue must occur before implementation mechanism are strictly defined
- **Informed** – intellectual fervour applied to understanding ramifications of article by article implementation
- **Consent** – no unilateral, paternal, paramountcy-lead process, takes a partnership to implement

CANADA'S PUBLIC STATEMENTS

“The hard and sometimes painful truth is that many of our current realities do not align with the standards of the United Nations declaration, and as such they must be systemically and coherently dismantled” – Jody Wilson-Raybould

- **UNDRIP is “unworkable” and No “word by word” adoption**
- **No direct adoption of UNDRIP into law, implement by consultation, within the constitutional context of Canada**
- **Translation: cautious conservative implementation lead by Canadian Governments**
- **IPs must be proactive and require joint Indigenous and Crown compliance**

CANADA'S PRINCIPLES IN SUMMARY

1. **All relations... based on the recognition and implementation on right to self-determination, including self-government.**
 - Requires mutual commitment for federally change to policy and law and Indigenous nations to defining and governing our nations and governments within Canada
2. **Reconciliation is a fundamental purpose of section 35.**
 - Requires hard work, changes in perspectives and actions, compromise and good faith
3. **The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.**
 - Requires the federal government and its departments, agencies, and officials to act with honour, integrity, good faith, and fairness

CANADA'S PRINCIPLES IN SUMMARY

4. **Self-government is part of Canada's evolving system of cooperative federalism**
 - (a) Indigenous peoples foundational to Canada's constitutional framework; (b) involvement in the effective decision-making and governance; (c) transition away from the Indian Act; and (d) operation of Indigenous jurisdictions and laws.

5. **Treaties, agreements, and other constructive arrangements intended to be acts of reconciliation**
 - No preference of one mechanism of reconciliation to another. Prepared to enter into innovative and flexible arrangements with Indigenous peoples. Where agreements are formed, they should be based on the recognition and implementation of rights and **not their extinguishment, modification, or surrender**.

6. **Aim to secure FPIC when Canada proposes to take actions which impact them and their rights on their lands, territories, and resources.**
 - Build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together

CANADA'S PRINCIPLES IN SUMMARY

7. **Infringement of s. 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.**
8. **Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.**
 - Ensures Nations have fiscal capacity, access to land and resources and share in wealth generated from those lands and resource through new tax arrangements, fiscal transfers and resource revenue sharing
9. **Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.**
10. **A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.**

5 RECONCILI-ACTION POINTS

- 1. FPIC**
- 2. Legal Reform**
- 3. Right To Culture**
- 4. Requirements To Natural Resource Development**
- 5. Economic Treaty And Aboriginal Rights**

FPIC

- **FPIC sources: (1) Indigenous legal orders; (2) Constitution; (3) DTC; (4) G2G; (5) IBAs; and (6) UNDRIP**

ACTION ITEM:

National and Regional IP-Canada Advisory Group on FPIC:

- Regional differences for collectively strong implementation
- Draw from Indigenous Nation's legal orders
- Avoid pan-Indigenous approach
- Develop practical and incremental mechanisms to secure consent
- National Indigenous Caucus - regional coordination

LEGAL REFORM

- EA legal reform so far is an **IMPLEMENTATION FAIL**

ACTION ITEM:

IP-Canada Law Reform Advisory Group

- Canada's WG of Ministers on the Review of Laws and Policies Related to Indigenous Peoples – no IP official role
- IPs require partnership, capacity funding and advisors
- Role for Indigenous Bar Assoc. and CBA – Ab. law section
- Joint development of laws, regulations and policies

RIGHT TO CULTURE

- Canada acknowledges strong Indigenous cultural traditions and customs, including languages, fundamental to rebuilding Nations and that it has an active role and responsibility in ensuring the cultural survival of Indigenous peoples

ACTION ITEM:

IP-Canada Committee on Legal Protection of Indigenous Culture

- Priority intellectual property law reform for cultural protection
- Develop capacity mechanisms for IP reinvigoration/development of own Indigenous legal orders

REQ'TS FOR RESOURCE DEVELOPMENT

- Canada approving resource development with laws that infringe Indigenous and Treaty Rights and Title – (i.e., TransMountain, Site C, LNG terminals)

ACTION ITEM:

IP-Crown Committee on Resource Development develop req'ts:

- All future Crown approvals of Projects require a negotiated G2G agreement with affected IPs
- A "material consideration " of any project approval will be that the Proponent and affected IPs have negotiated IBAs
- Canada to legislate that IPs will be consulted on any legislative and/or regulatory reform

INDIGENOUS ECONOMIC RIGHTS

- Settled Canadian law that all Indigenous Rights and Title have “an inescapable economic aspect” – No federal revenue sharing

ACTION ITEM:

IP-Crown Revenue Sharing Working Group

- Seize on Canada’s commitment to fiscal capacity, access to land and resources and share in wealth generated from those lands and resource through new tax arrangements, fiscal transfers and resource revenue sharing
- Roles for AFOA, FNTC, FNFMB, CCAB, First Nation Major Project Coalition and Indigenous Bar Assoc. and CBA Ab. Sec.

QUESTIONS?

THANK YOU



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