



## About the Act

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The *United Nations Declaration on the Rights of Indigenous Peoples Act* (the Act) became law on June 21, 2021. Under the Act, the Government of Canada will work in consultation and cooperation with Indigenous peoples, to:

- Take all measures necessary to ensure the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration)
- Prepare and implement an action plan to achieve the objectives of the Declaration
- Develop annual reports on progress and submit them to Parliament

The Act is an important step in moving Canada's relationship with Indigenous peoples forward.

### Why 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 federal implementation of the Declaration in consultation and cooperation with Indigenous peoples. It ensures sustained and continued efforts to uphold the human rights of Indigenous peoples now and in the future and contains measures to hold the federal government accountable. 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 principles and rights set out in the Declaration, while also respecting Aboriginal and Treaty rights recognized and affirmed by the Constitution.



## The Act explained

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:

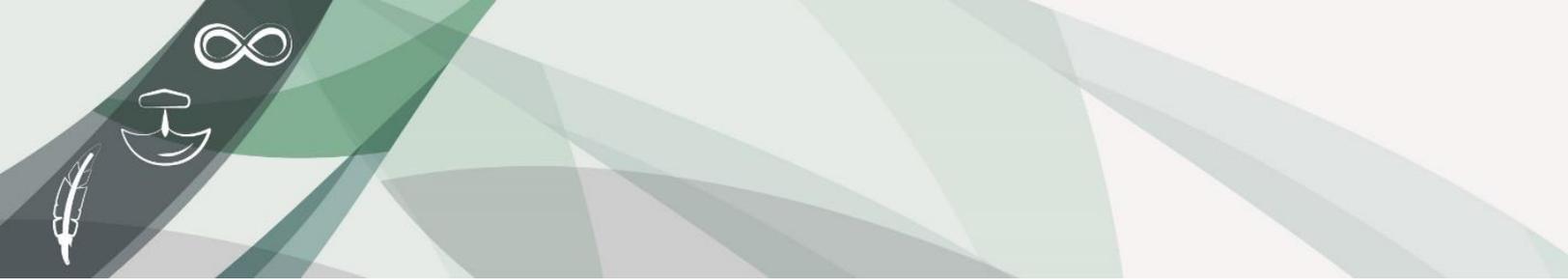
- Take all measures necessary to ensure the laws of Canada are consistent with the Declaration
- Prepare and implement an action plan to achieve the objectives of the Declaration
- Develop annual reports on progress and submit them to Parliament

Federal implementation of the Act, in consultation and cooperation with Indigenous peoples, will help:

- Create a roadmap to advance work together to implement the Declaration in Canada
- Protect, promote and uphold the human rights of Indigenous peoples in Canada
- Forge stronger relationships with Indigenous peoples and advance reconciliation
- Respond to calls from the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls
- Confront the harms of the Canada's colonial history and build a better future together

The preamble of the Act will guide this work, with an emphasis on:

- Viewing the Declaration as a framework for reconciliation, healing and peace
- Respecting and promoting the inherent rights of Indigenous peoples
- Addressing discrimination and racism, and denouncing discriminatory doctrines, policies and practices
- Affirming the constitutional protection of Aboriginal and treaty rights and that such rights are not frozen but can evolve and grow
- Taking into account the diversity of Indigenous peoples
- Respecting treaty rights, treaties and other agreements
- Basing all relations on Indigenous peoples' inherent right to self-determination, including the right of self-government



The Act affirms that:

- Aboriginal and treaty rights protected by section 35 of the *Constitution Act, 1982* will be upheld and are not lessened in any way
- The Declaration already has application as a tool to interpret Canadian law
- The Government of Canada is committed to work with Indigenous peoples to implement the Declaration

## **Ensuring the laws of Canada are consistent with the Declaration**

The Government of Canada is responsible for taking all measures necessary, in consultation and cooperation with Indigenous peoples, to ensure consistency of federal laws with the Declaration. This means taking measures to ensure that existing laws are consistent with the Declaration. It also means that the Government will take measures to ensure that future laws reflect the rights and principles of the Declaration.

### **Impact on existing federal laws**

Given the scope of the Declaration, many federal laws intersect with elements of the Declaration. We anticipate that some existing federal laws will need to be amended in order to better align with the Declaration. This legislation provides a whole-of-government framework for identifying and guiding such future changes. New legislation will also need to be developed with the Declaration in mind.

The full and effective implementation of the Declaration is a process that will take time as the federal government, in cooperation and partnership with Indigenous peoples, assesses changes that need to be made to laws, policies and practices to be consistent with the Declaration. Any future changes will need to go through regular policy development, engagement and parliamentary processes.

### **The Declaration as a human rights instrument**

The Act recognizes that the Declaration, like other international human rights instruments, can guide the interpretation of Canadian law. The Act also requires the federal government to take measures to ensure that federal laws are consistent with the Declaration over time. This means that the Government of Canada, in consultation and cooperation with Indigenous peoples, will identify measures to help align existing or new federal laws with the Declaration.



The Declaration affirms the human rights of Indigenous peoples – both collective and individual rights. These include the inherent rights to self-determination and self-government, as well as equality rights, rights relating to culture, spirituality, and identity, and rights relating to lands, territories and resources.

## **The legislation and the Canadian’s Constitutional framework**

Many of the rights affirmed in the Act are already reflected in the Constitution, notably the Canadian Charter of Rights and Freedoms and section 35 of the Constitution, which recognizes and affirms Aboriginal and treaty rights. The United Nations Declaration on the Rights of Indigenous Peoples Act does not amend the Constitution – but this legislation recognizes that the Declaration should inform how we understand and interpret the Constitution.

This legislation and Canadian law recognize that international human rights instruments, like the Declaration, can be used to interpret the Constitution, which is a “living tree” that evolves over time.

The Act, like other international human rights instruments or federal legislation, cannot amend or supersede the Canadian Constitution. However, they can inform how the Constitution and the law are interpreted and developed.

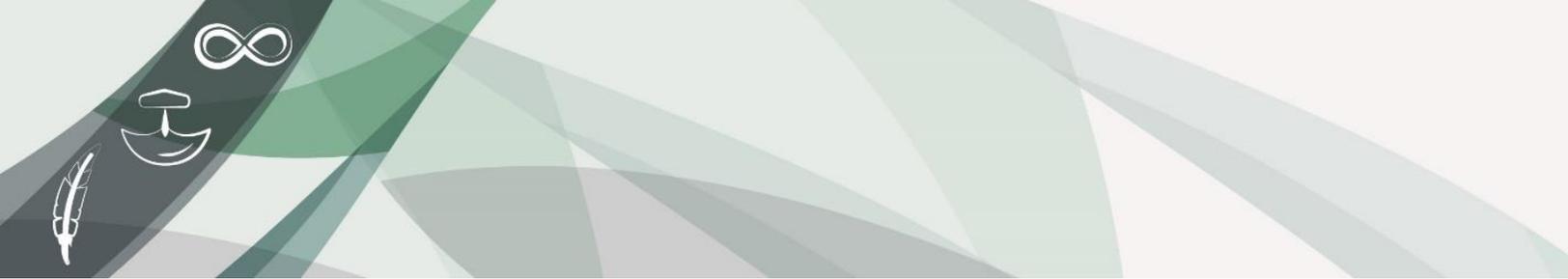
## **The action plan**

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

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

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



The Government of Canada will work in consultation and cooperation with Indigenous peoples to develop the action plan and take measures to ensure that federal laws are consistent with the Declaration.

A combination of Government-led consultation sessions and direct outreach led by Indigenous groups and organizations will be conducted to hear the views of as many Indigenous people as possible.

### **How the action plan will be created**

All federal departments will have important roles to play in implementing the legislation in consultation and cooperation with Indigenous peoples. As the Government of Canada considers the development of the action plan and the measures needed to ensure our laws are consistent with the Declaration in collaboration with Indigenous peoples, we expect some of the discussions will include identifying new, innovative processes and creative ways of working together.

### **Annual Report**

The *Act* requires the Government of Canada to report annually to Parliament on progress made to align the laws of Canada with the Declaration and on the development and implementation of the action plan. The annual report will contribute to accountability for making progress on implementing the Declaration.

This approach is consistent with the Declaration itself, which calls on states to collaborate with Indigenous peoples on appropriate measures, including legislative measures, to achieve the goals set out in the Declaration (Article 38 of the Declaration).

The annual report must be completed by the end of June each year, beginning in 2022. It will be available to the public on [Canada.ca/Declaration](https://Canada.ca/Declaration).

### **How the Act impacts 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. In fact, modern treaties have been described as an example of free, prior and informed consent in action.

The implementation of the Declaration 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.

## **Role of provinces and territories in Canada**

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. For example, British Columbia passed the Declaration on the Rights of Indigenous Peoples Act into law in November 2019.

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 way.

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 consistent with the Declaration, the development and implementation 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 requires them to do so.