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Introduction

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)—which was developed with significant input, advocacy, and diplomacy from Indigenous leaders from Canada—has become a global focal point in the accelerating effort to address legacies of colonialism and the on-going denial of rights, impoverishment, marginalization, and disempowerment of Indigenous peoples.¹ Adopted by the UN General Assembly in 2007, it has undergone a decade of development and consideration, including attaining the status of customary international law applicable to Canada. The Truth and Reconciliation Commission of Canada's Calls to Action called upon the "federal, provincial, territorial, and municipal governments to fully adopt and implement the [UN Declaration] as the framework for reconciliation" and upon many other bodies to adopt, comply with, or otherwise engage it. It has subsequently become a central public policy focus across Canada and in BC, as efforts to more comprehensively operationalize reconciliation through laws, policies, and practices at all levels progress.

On October 11, 2018, the Residential School History & Dialogue Centre at the University of British Columbia (UBC) convened a Special Dialogue: Implementing the *UN Declaration* in BC (see Appendix for the Dialogue program) that brought together a cross section of Indigenous, government, industry, labour, and civil society leaders to examine next steps in the path forward for the implementation of the *UN Declaration* in BC. The goal was to have a focused discussion on how the *UN Declaration* could be implemented in BC, moving beyond older and largely obsolete discussions on whether it should be implemented. A particular challenge to all participants was to imagine what the future might look like through "*UN Declaration*—tinted glasses" and to conceive of the work that must be done to make that vision a reality provincially. While there are, of course, roles the federal government and other jurisdictions must play, they were purposely not topics of the Dialogue.

In support of animating candid dialogue, Chatham House Rule was in effect at the event. This rule enables participants to reference information shared at the event, but not to reveal speakers' identities. In order to maintain this confidentiality, this report does not identify individual contributions. Rather, this report provides a brief summary of the critical themes and ideas explored during the Dialogue. This report also does not set out to review or describe the history, content, purpose, or scope of the *UN Declaration*—there are ample other sources and

¹ See Sheryl Lightfoot's leading text on this global Indigenous diplomacy: Global Indigenous Politics: A Subtle Revolution and the the streams of dialogue that have been developing globally on the UN Declaration, as in Hohmann and Weller, The UN Declaration on the Rights of Indigenous Peoples: A Commentary.

resources for this purpose.² It also does not set out to provide a comprehensive action plan or set of recommendations, of which there are already examples, and which must ultimately be developed in consultation and co-operation with Indigenous peoples.³ What the report does offer by sharing the discussion at the Dialogue is an important barometer of the current state of constructive efforts to understand and implement the *UN Declaration* in BC and momentum for moving forward in ways that facilitate the participation and input of all sectors of society.

Overview of the Dialogue

The Dialogue was expectedly diverse and expansive in scope. Indigenous leaders present stressed the importance of implementing the *UN Declaration* and the urgency of this work. Indeed, the indivisibility of upholding the *UN Declaration*'s minimum standards for the survival, dignity, and well-being of Indigenous peoples and addressing the pressing daily challenges of climate change, opioid addiction, poverty and joblessness, suicide, and other critical matters was recognized from the outset.

A significant portion of the Dialogue was also framed around implementation actions that are already underway. These include, most notably, federal Private Member's Bill C-262 (the *UN Declaration Act*) whose goal is to ensure that Canada's laws are in harmony with the *UN Declaration*. Bill C-262 has passed through the House of Commons and is currently under active review at the final stage of consideration in the Senate. A major theme throughout the Dialogue was the possibility of similar legislation being passed by the provincial government in consultation and co-operation with Indigenous peoples in BC. Commentary was also provided on new agreement models that BC has recently completed, including the *shishálh Nation Foundation Agreement* that, amongst other things, demonstrates a co-operative path

² See, for example: Assembly of First Nations, *Introduction to the UN Declaration*, https://www.afn.ca/wp-content/uploads/2018/02/17-11-27-Implementing-the-UN-Declaration-EN.pdf; CHRIP, *Fact Sheet on the UN Declaration*, https://quakerservice.ca/wp-content/uploads/2017/02/UN-Declaration-factsheet-Feburary-2017-1.pdf.

³ On November 27, 2018, the Union of BC Indian Chiefs and the BC Centre for Canadian Policy Alternatives have released a briefing paper and action plan for implementation in BC, https://www.ubcic.bc.ca/undrip_bc_law.

⁴ Bill C-262, An Act to Ensure that the Laws of Canada are in Harmony with the United Nations Declaration on the Rights of Indigenous Peoples, http://www.parl.ca/DocumentViewer/en/42-1/bill/C-262/first-reading; CHRIP, Key Elements of Bill C-262, https://quakerservice.ca/wp-content/uploads/2018/10/Key-Elements-of-Bill-C-262.jpg.

⁵ On November 29, 2018, the BC Government announced plans to co-develop new implementation legislation for introduction in 2019. See: BC, "Co-Develop Legislation to Implement UN Declaration," https://news.gov.bc.ca/18577.

for implementing the *UN Declaration* in the relationship between the BC government and the shíshálh Nation over the next 25 years.⁶

An emphasis was also placed on learning from experience, as implementing the *UN Declaration* does not occur in isolation from the broader work of transforming Crown-Indigenous relations. It was highlighted that work to transform these relations has involved both the steady, painstaking work of effecting incremental change—including through the courts—as well as attempts at effecting larger shifts. The birth of the modern treaty process in the 1990s, *The New Relationship* vison in 2004, the *Recognition and Reconciliation Act* pursued in 2008 and 2009, and the *Commitment Document* were all identified as critical efforts in BC to effect such foundational, relational shifts. At the same time, it was broadly acknowledged that none of these efforts has yet effected the transformational shift that was anticipated or is needed. The current focus on implementing the *UN Declaration* continues in the same vein of pursuing broad and systemic shifts and presents another opportunity to get it right.

This opportunity is crucial; throughout the Dialogue it was also emphasized that the implementation of the *UN Declaration*, if done appropriately, will signal an important shift from entrenched adversarial patterns of relations to deeper modes of co-operation. The substance of this co-operation should, amongst other things, be supporting the work of Indigenous self-determination and self-government and developing government-to-government structures, mechanisms, and processes that facilitate the interaction of Crown and Indigenous laws and jurisdictions.

Of course, there are other difficult questions and issues about implementation to address. These were confronted and explored throughout the day, including:

• How will implementation of the UN Declaration advance certainty and predictability?

⁶ BC, shíshálh Foundation Agreement, https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh_nation_foundation_agreement_-_final_-_ redacted-_signed.pdf; "shíshálh Nation and BC Sign Landmark Agreement," https://news.gov.bc.ca/18186.
7 BC, New Relationship, https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/new_relationship_accord.pdf; Discussion Paper on Instructions for Implementing the New Relationship (which mentions the Recognition and Reconciliation Act), http://www.mwpr.ca/cgi-bin/show_article_attachment.cgi?ID=3644&F=implementing_the_new_relationship_0309.pdf&X=1523853872000/implementing_the_new_relationship_0309.pdf; Proposed Commitment Document, https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/bc_-fn_commitment_document_oct_1_2015.pdf; First Nations Leadership Council and BC, Implementing the Commitment Document, https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/11/CCPA-BC_UBCIC_AppendixB_Commitment_Actions_2018.pdf and https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/11/CCPA-BC_UBCIC_AppendixB_Commitment_Vision_2018.pdf.

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- What are the implications for the economy?
- What models for consent-based decision making exist?
- What is the work Indigenous Nations must do to implement the UN Declaration, including in relations with each other?
- What does implementation mean for existing processes, structures and institutions?
- How is the work of re-building Indigenous Nations, governments, and legal orders intertwined with the work of implementing the *UN Declaration*?
- What is the role of legislation, policy, and agreement-making in implementation, and what are the implications for existing approaches to negotiations?
- What is the role of the public in implementation, and how will they be brought along?

The Dialogue did not answer all of these questions in detail; however, it developed shared perspectives and understandings that can help strengthen constructive collaboration in the broader work of reconciliation. This can advance the role of the *UN Declaration* in effecting these changes. It also deepened conversations and explored the extent to which policy changes and other innovations are occurring around the *UN Declaration* across BC, presenting the idea that the province might benefit from a more explicit and transparent instrument for implementation in BC.

Critical Implementation Considerations

Drawing on their diverse and extensive expertise, Dialogue participants highlighted a number of considerations that should inform implementation of the *UN Declaration* in BC. Some of these were basic and foundational—intrinsic to the *UN Declaration* itself—such as the Crown's implementation needing to be done in consultation and co-operation with Indigenous peoples. This is repeated in numerous articles of the *UN Declaration*, including article 38, which specifies that "States, in consultation and co-operation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration."

In addition to this foundational emphasis, the following six considerations are examples of major themes highlighted through the Dialogue.

A legislative foundation is key, but is only one of many necessary shifts for implementation

Throughout the Dialogue there was broad recognition that implementing the UN Declaration

will require legislative change. Simply stated, such change is inevitable, as the laws of BC are not currently aligned with the *UN Declaration*. Bill C-262 was continually held up as a good starting point, as it provides a legislative framework that affirms the *UN Declaration* and requires an action plan for legislative alignment as well as an annual progress report. In doing so, Bill C-262 provides a non-prescriptive legal blueprint for a coherent, systematic, and transparent implementation partnership between the Crown and Indigenous peoples that could be adopted to BC's context. At the same time, it was also highlighted that changes in policies, practices, agreement-making, and negotiations are needed to actualize implementation. It was acknowledged that the province has gained momentum in this direction, but that obstacles in legislation, policy, and practice remain and will need to be addressed in order to accelerate this progress. In addition to government agreements, agreements with industry were discussed as useful vehicles for aspects of implementation, including, for example, decision-making regimes that affirm the jurisdiction of Indigenous laws and economic models that respect ancestral territories.

Implementation must be aided by a public, coherent, and transparent process in which all actors can play a role

There are 16 Calls to Action that mention the *UN Declaration* explicitly. Directed at government, industry, educators, and civil society organizations alike, it is evident that implementing the *UN Declaration*, as part of the work of reconciliation, must engage all sectors of society. As was expressed at the Dialogue, however, there will always be voices and pockets of opposition to this work. In addition, there are legitimate concerns and challenges with how aspects of the *UN Declaration* will be implemented, including—but not solely—free, prior, and informed consent. For many participants, these realities create a need for an implementation approach that is designed to bring people along, building understanding and cohesiveness along the way. Basic practices around transparency, reaching out, engaging a broad cross section of society in the work, and processes that help non-governmental and non-Indigenous actors understand their roles and the actions they can take—as well as the broad strategies being pursued—were all seen as fundamental.

For these reasons, models such as Bill C-262 were generally supported throughout the Dialogue. While Bill C-262 does not prescribe steps needed to render Canada's laws consistent with the *UN Declaration*, its approach does require an action plan that is advanced over time, does provide space for broad input and participation, and will advance public responsibility for and understanding of implementation work through reporting and other mechanisms.

⁸ See Calls 24, 27, 28, 42-46, 48, 50, 57, 67, 69, 70, 86, and 92. TRC, *Calls to Action*, https://nctr.ca/assets/reports/Calls_to_Action_English2.pdf.

Creating space for relations that enable the standards of the UN Declaration to emerge is critical and can support Indigenous self-determination

Indigenous self-determination is foundational to addressing legacies of colonialism. Where colonialism has sought to disempower and infringe on all aspects of Indigenous peoples' lives with dire individual, familial, cultural, social, economic, political, and spiritual consequences, self-determination entails Indigenous peoples determining the paths and priorities for the future, including the re-building and re-constitution of Indigenous Nations and governance systems. This understanding is reflected in articles 3 and 4 of the *UN Declaration* which state:

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.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.⁹

One of the implications of these articles is that implementing the *UN Declaration* requires governments to follow Indigenous peoples' lead. More specifically, this means that for many of the standards to be implemented in an appropriate manner, implementation work must be aligned and intertwined with the work of Indigenous peoples determining and setting their paths forward. As such, Indigenous peoples have a central role in fully implementing the *UN Declaration* and ensuring that its standards are met. This work will include rebuilding patterns of relations, structures, and processes within and amongst Indigenous Nations, including governments and legal orders, in ways that define, for example, how free, prior, and informed consent will be approached and decisions made.

This emphasis on self-determination helps frame one way that governments must re-shape their laws, policies, and practices—to have the legal, political, and operational space and will to shape constructive arrangements according to the priorities and visions set by Indigenous peoples themselves. One-size-fits-all tools, prescribed models, fixed approaches to negotiations, a disproportionate focus on meeting limited Crown interests and objectives—all are inconsistent with meeting the standards in the *UN Declaration*. At the same time, governments must come to recognize the innate value of Indigenous peoples as self-

⁹ UN General Assembly, UN Declaration, 4-5, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

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determining title and rights holders and must learn how to invest in and support that selfdetermination work without the divisive and colonial practices that have so often been used in the past.

Economic reconciliation, predictability, and certainty are shared goals that will be advanced through meeting the UN Declaration's standards

The Dialogue sought to confront myths and narratives that have complicated and undermined the implementation of the *UN Declaration*. One of the most predominant narratives is that operationalizing rights recognition; free, prior, and informed consent; and other UNDRIP standards would be an economic burden. Throughout the Dialogue a range of perspectives were shared that expose these mistruths. These included exploration of how consent is already operationalized and providing certainty in many industry-Indigenous relationships; how uncertainty is actually grounded in continued rights denial and unjust relations; how the path to predictability depends on the formation of government-to-government structures and processes that recognize rights and determine how free, prior, and informed, consent will be operationalized; and how economic goals and interests are often shared, but are undermined through ineffective, inefficient, and adversarial processes in the absence of foundational just relations.

A by-product of these reflections was a broad condemnation of the ignorant conflation of distinct terms such as 'consent' and 'veto.' As has been explained at length and made patently clear elsewhere, consent and veto have different meanings politically, legally, and practically. But it was noted that in some sectors, including the media, there is a trend of toxic partisanship and lack of understanding of this fact. Continued work to stop the perpetuation of these misconceptions and to strengthen patterns of public discourse is necessary.

Implementation involves imparting an understanding of Indigenous rights as human rights

Connected to the need to combat misconceptions is a need for widespread understanding that the *UN Declaration* is not a document that 'creates' or 'grants' 'special' rights; rather, that the *UN Declaration* expresses established international human rights norms in the specific context of Indigenous peoples. These are human rights norms that Canadians have proudly championed

¹⁰ Joffe, "Veto" and "Consent," https://quakerservice.ca/wp-content/uploads/2018/10/Veto-and-Consent-Significant-differences-Joffe.pdf; Danesh, "Rhetoric Matters," https://www.theglobeandmail.com/news/british-columbia/rhetoric-matters-when-discussing-first-nations-role-in-resource-decisions/article33293082/.

globally for generations and that form part of Canada's national identity. For concerns about these same human rights norms to arise when expressed through the *UN Declaration* represents a double standard and is evidence of how much work remains to be done to overcome attitudes and notions that are antithetical to reconciliation.

In this regard it is also important to emphasize that the *UN Declaration* was developed through years of deliberation amongst states and Indigenous peoples. Every word and element of the document was rigorously considered over generations through a democratic process in which the Canadian State as well as Indigenous peoples in Canada participated. This development process is a key example of the painstaking work required to effect change, and is reflective of values held at the core of Canada's national politics and identity—values which Canadians should have no reason not to uphold in this context. Specifically, the *UN Declaration*'s provisions for anti-discrimination and protections for vulnerable persons in Indigenous communities (such as women, children, and Elders), as well as the recognition that LGBTQ and other persons may be vulnerable to human rights violations, were raised at the Dialogue as being of critical importance to the process of reconciliation in BC.

6

Implementation represents a renewed opportunity to set a new course and to build upon past efforts that have not been fully realized

Implementing the *UN Declaration* is consistent with previous efforts and processes that sought to secure the foundations for just relations in Canada. Obviously, the fight for adoption of section 35 of the *Constitution of Canada* was one such movement, which continues to inform the work of reconciliation in Canada. As noted earlier, however, multiple other efforts have been undertaken to animate this work. These efforts have developed in response to growing conflicts, the slow pace of change, and the overreliance on court processes—including limitations that have emerged in jurisprudence. The *Report of the Royal Commission on Aboriginal Peoples* was noted throughout the Dialogue as an essential document that still must help frame the work today. Specifically highlighted were institutions proposed within its recommendations that would help navigate many of the intractable and enduring challenges of reconciliation. To date, however, the foundational changes necessary to transform relations have not happened. The *UN Declaration* is now a focal point of the work to materialize such shifts, to achieve the goals of reconciliation, and to actualize the full promise of section 35.

These reflections on past efforts are an important reminder that there are lessons to be learned. The implementation of the *UN Declaration* is not an isolated endeavour to make substantial shifts. Throughout the Dialogue these lessons were underscored in a multiplicity of ways including discussion of how a successful shift requires changes in who is leading this work,

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how a broad cross section of voices and perspectives can participate, how the roles of lawyers and adversarial perspectives need to change, and what the dynamics of working together as Indigenous leadership and government look like.

Moving Forward

The Dialogue was a unique coming together of a broad cross section of leaders and influencers across BC. One outcome of the event was the clear utility of gathering such a diverse group how doing so challenges expectations and assumptions that are made about one another. As such, the Dialogue is a jumping off point for further events that will deepen shared understandings of how the UN Declaration should be implemented in BC and that will advance related work on the path of reconciliation.

The Residential School History & Dialogue Centre will be convening additional dialogues in 2019 to improve the understanding of critical matters that call for a relational approach. This is pivotal to a better future for Indigenous Nations and all British Columbians and Canadians.

For further information, contact the Residential School History & Dialogue Centre at communications.irshdc@ubc.ca.

For media inquiries, please contact Erik Rolfsen, UBC Media Relations, at erik.rolfsen@ubc.ca or 604-822-2644.

NEXT PAGE: 7idansuu (Edenshaw) James Hart, Reconciliation Pole: Honouring a Time Before, During and After Canada's Indian Residential Schools, 2015-17, red cedar, paint, copper, and abalone. Commissioned with support from the Audain Foundation and UBC's Matching Fund for Outdoor Art through infrastructure Impact Charges, 2017. Located on Main Mall at the intersection of Agronomy Road and Thunderbird Boulevard, UBC. Photo: Hover Collective.



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Appendix: Dialogue Program

October 11, 2018 | Special Dialogue: Implementing UNDRIP in BC

Time	Activity
8:00 AM	Registration & Coffee
9:00 AM	Opening
	Welcome to Territory
	Opening Remarks
	Setting up the Day
9:45 AM	Keynote Presentation
	Themes: Overview of the BC Government's current vision of implementation of
	UNDRIP. What has been done? Where are we going?
10:00 AM	Panel 1
	Themes: Perspectives of Indigenous leaders on the importance and approaches to
	implementing UNDRIP in BC, and in particular what changes to legislation and policy
	are needed, and how might those be pursued.
11:10 AM	Break
11:20 AM	Panel 2
	Themes: Perspectives on past and present efforts to make transformative or
	foundational shifts in relations. What have we learned from past transformative
	legislative and policy attempts? What do these lessons learned tell us about
12:30 PM	strategies and approaches for implementing UNDRIP in BC?
1:15 PM	Lunch & Keynote Presentation Panel 3
1.10 1 101	
	Themes: Perspectives on roles and responsibilities in implementing UNDRIP. What
	is the work Indigenous peoples must do? Government? Industry? Civil society? How does the general public support the work of implementation?
2:25 PM	Break
2:35 PM	Panel 4
	Themes: Perspectives on how implementing UNDRIP can help address conflicts and
	tensions in meeting our economic, environmental, and Indigenous rights goals. How
	do we implement UNDRIP in ways that will help find solutions and resolve these
	tensions, as opposed to intensify them? How do we operationalize free, prior, and
	informed, consent?
3:45 PM	Closing Remarks
4:00 PM	End

