

**Common Questions on the
United Nations Declaration on the Rights of Indigenous Peoples & Bill C-262**

Prepared by Jennifer Preston, John Dillon and Steve Heinrichs

1. What is the United Nations Declaration on the Rights of Indigenous Peoples, and why is it important?

The United Nations Declaration on the Rights of Indigenous Peoples is an international human rights instrument adopted by the UN General Assembly in 2007 after more than two decades of negotiations between representatives of Indigenous peoples and States. The Declaration provides a framework for reconciliation with Indigenous peoples, seeking to redress the systemic discrimination and violence faced by them. It also provides a guide for legislators, courts, human rights bodies and other institutions. In May, 2016, the Minister of Indigenous and Northern Affairs announced that “Canada is now a full supporter of the Declaration, without qualification.”

2. Does the UN Declaration give Indigenous Peoples new or special rights? Does it change Canadian human rights law?

The UN Declaration creates no new rights. It affirms Indigenous Peoples’ inherent, or pre-existing, collective human rights, as well as the individual human rights of Indigenous women, men and children. It applies existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples. While it does not automatically change Canadian law, courts are free to rely on declarations and are using them in interpreting human rights – as are Indigenous and non-Indigenous governments and human rights bodies. The Declaration is an authoritative instrument to clarify, interpret and expand the meaning and scope of domestic laws.

3. Are there costs for non-Indigenous Canadians if the UN Declaration is implemented? Will some of us, for example, lose our land?

Injustice is costly. As the apostle Paul said, “When one part of the body suffers, we all suffer with it” (1 Cor. 12:26). When Indigenous peoples in Canada experience the on going violations of basic human rights - like clean drinking water and equitable funding for child education – we all suffer. There’s a cost to our conscience and a cost to Canada’s moral fabric. And there’s a financial cost too; it’s expensive for Canada to maintain its mistreatment of Indigenous peoples. Think of all the legal expenses spent obstructing Indigenous rights in the courts.

Yes, it will take money and resources to collectively repair the fractured relationship with Indigenous peoples and to implement the standards of the UN Declaration. Our wealth has been at the cost of their impoverishment. But here’s the good news: Canada has engaged in large-scale national projects like this before – think of the Medical Care Act. *We can do this.*

Will you have to give up your personal property? No. The law does not work that way. And Indigenous peoples do not want to do to others what has been done to them. But they would like us to give our hearts and to join hands in this shared effort to heal “the body.”

4. We hear the phrase “free, prior and informed consent (FPIC)” in the media. What does it mean? Does it give Indigenous Peoples a veto over resource projects?

Free, prior and informed consent comes from Indigenous peoples’ inherent right to self-determination by affirming their right to say “yes” or “no” to resource projects that impact their lives and futures. FPIC requires that Indigenous peoples have access to all relevant information and sufficient time to make decisions based on their own forms of decision-making while free from coercion. The Supreme Court of Canada has ruled that the “full consent” of Indigenous peoples is required on “very serious issues.”

While there are several references to FPIC in the *UN Declaration*, the term “veto” is not used as it connotes complete and arbitrary power without considering the rights of others. The facts and law must be duly considered in all cases. When, after all due process, Indigenous peoples say no to a development project, the project proponent has the option of judicial review, as would happen in any other type of similar situation. Projects may be stopped, changed, revised, rerouted – the options depend on the facts and the law in each case.

If a resource development project has support from some Indigenous communities and not others, companies must not exploit divisions by, for example, offering inducements to some communities. Again, the facts and the law must be carefully weighed, and again, the project must fully respect the right of Indigenous Peoples to say “No”.

5. The UN Declaration affirms the rights of Indigenous peoples to their spiritual traditions. What does that mean for the churches? Can we still share our faith?

In Canada, the right to practice one’s religion is a “fundamental freedom” that is recognized by our Constitution. Christians, Jews, Muslims, Sikhs, Buddhists, and more, all have the right to practice and teach their spiritual traditions. Historically, Canada has not afforded Indigenous peoples that same right – think of the Indian Residential Schools, the criminalization of spiritual ceremonies like the Sundance and Potlatch, the struggle to have traditional practices recognized by federal prisons. The UN Declaration affirms that Indigenous peoples have the right to “manifest, develop, practice, and teach” their traditions (Article 12) and that States, like Canada, must honour such.

What does this mean for the Church? Here is an invitation to “Do unto others, as we would have them do unto us” (Jesus; Lk 6:31). The UN Declaration does not prohibit the sharing of gifts, like our spiritual traditions, with one another. But it does, like the gospel, speak against the imposition of such gifts or the suppression of other’s gifts.

- 6. Bill C-262 is a private member's bill that seeks to ensure that the laws of Canada are in harmony with the UN Declaration. If passed, would it change Canadian law overnight? And why is the current Liberal government reluctant to support the bill?**

Bill C-262 does not codify the *UN Declaration* into Canadian law immediately. It does provide a legislative framework for implementing the *UN Declaration*. It would also affirm its central significance in the process of national reconciliation, as called for by the Truth and Reconciliation Commission. The draft bill sets out the key principles that must guide implementation of the *Declaration*; affirms that the standards set out in the *UN Declaration* have "application in Canadian law"; requires a collaborative process for the review of federal laws to ensure consistency with the minimum standards set out in the *UN Declaration*; requires the federal government to work with Indigenous peoples to develop a national action plan to implement the *UN Declaration*; and provides transparency and accountability by requiring annual reporting to Parliament on progress made toward implementation of the *Declaration*.

All the elements of Bill C-262 fit the commitments of the Liberal government, so it is quite unclear why they are not yet supporting it. The Liberal Party supported the previous version of this private member's Bill when they were in opposition.

- 7. Nobody is happy with the broken relationship between Indigenous and non-Indigenous peoples. How will the UN Declaration help mend this relationship?**

The *UN Declaration* can be considered a blueprint for justice, reconciliation, healing and peace. Throughout history, Indigenous Peoples' human rights have repeatedly been denied – the direct cause of the broken relationship. To create a better future, Indigenous Peoples human rights must be respected, promoted, and protected. The *UN Declaration* is an essential tool for Indigenous Peoples and States to work in cooperation to change the existing paradigm, reject colonialism, and ensure Indigenous Peoples rights are honoured without discrimination.

- 8. What is the relationship between the UN Declaration and the Calls to Action of the Truth and Reconciliation Commission (TRC)?**

Of the TRC's 94 Calls to Action, no less than 16 lift up the UN Declaration, summoning governments, churches, businesses, law societies, libraries, and more to learn, adopt, comply with and/or implement its minimum standards. The TRC is "convinced that the UN Declaration provides the necessary principles, norms, and standards for reconciliation to flourish in twenty-first century Canada." In other words, if we desire the health, dignity, and well-being of both Indigenous and non-Indigenous peoples, this is a critical way forward – maybe 'the most important' way. We have an incredible opportunity to nurture peace, justice and joy here in Canada. We have been called. And together, we can do it. We really can.