

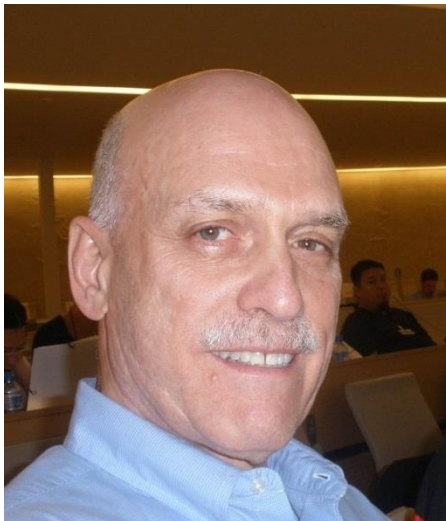
Words to Action

May 24, 2017
12:00 pm – 1:00 pm EST

Implementing the UN
Declaration on the
Rights of Indigenous
Peoples in Canada



Jennifer Preston is the Indigenous Rights program coordinator for Canadian Friends Service Committee, the peace and justice arm of Quakers. Jennifer was actively involved in the intensive lobbying efforts to ensure the successful adoption of the United Nations Declaration on the Rights of Indigenous Peoples in both Geneva and New York. She serves on an advisory body to the National Chief of the Assembly of First Nations with regard to implementation of the UN Declaration.



Paul Joffe is a member of the Québec and Ontario bars. He represents the Grand Council of the Crees (Eeyou Istchee) and collaborates with numerous Indigenous and human rights organizations in different regions of the world. His active involvement in international standard-setting processes includes those relating to the United Nations Declaration on the Rights of Indigenous Peoples; the American Declaration on the Rights of Indigenous Peoples at the Organization of American States; and the Indigenous and Tribal Peoples Convention, 1989. Paul is also an advisor to the National Chief's office of the Assembly of First Nations.

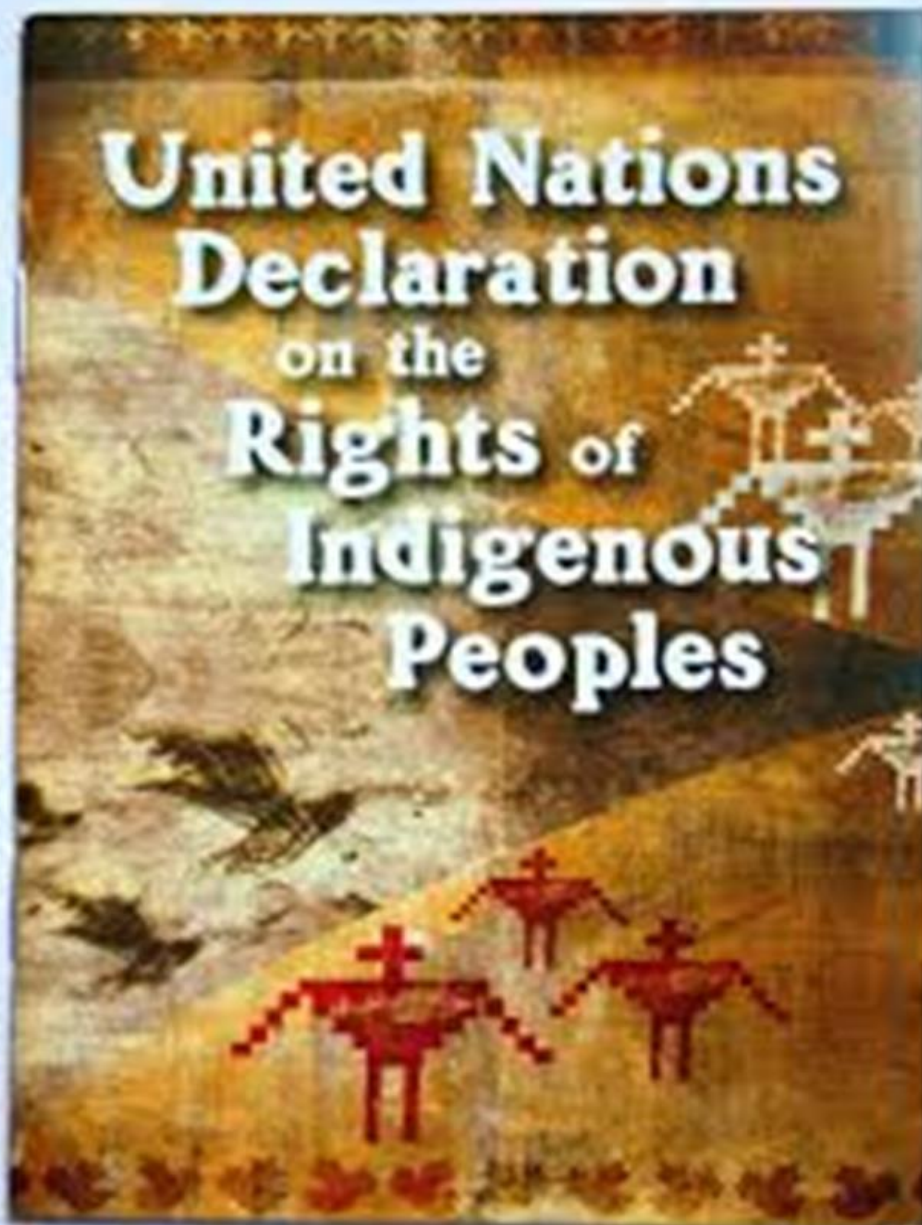
**Ontario Public Health Association
Webinar, May 24, 2017**

Words to Action – Implementing the *UN Declaration on the Rights of Indigenous Peoples*

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United Nations Declaration on the Rights of Indigenous Peoples



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

UN Declaration, preambular para. 7

The United Nations system's work on indigenous peoples' issues is guided by ... the **human rights-based approach**; gender equality; environmental sustainability; results-based management; and capacity development.

Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of **rights and corresponding obligations** established by international law...

System-Wide Action Plan on the UN Declaration on the Rights of Indigenous Peoples, United Nations, October 2015

Topics

1. *UN Declaration* – background and significance
2. Role of international human rights law in Canada
3. Rights and obligations related to health
4. Framework for reconciliation
5. Trudeau government commitments

1. *UN Declaration* – background and significance

- More than two decades of negotiations
- Role of Indigenous peoples' representatives
- Adoption by UN Human Rights Council June 2006
- Amended version adopted by UN General Assembly

- Most comprehensive international instrument on Indigenous peoples' human rights
- Urgency
- Reaffirmed three times by consensus by the UN General Assembly

1. *UN Declaration* – background and significance

The Declaration is a visionary step towards addressing the **human rights** of indigenous peoples. It sets out a framework on which States can **build or rebuild their relationships** with indigenous peoples. ... [I]t provides a momentous opportunity for States and indigenous peoples to strengthen their relationships, **promote reconciliation and ensure that the past is not repeated.**

UN Secretary-General (Ban Ki-moon), “Protect, Promote, Endangered Languages, Secretary-General Urges in Message for International Day of World’s Indigenous People”, 23 July 2008

1. *UN Declaration* – background and significance

- Interpret Indigenous rights and State obligations internationally and domestically, including s. 35 of *Constitution Act, 1982*
- Fill in the gaps in treaties and other agreements between Indigenous peoples and States
- Guide policy development, negotiations and litigation
- Transcend the “box” of domestic law
- Guide Nation-building and strengthen communities

2. Role of international human rights law in Canada

Aboriginal rights from the beginning have been **shaped by international concepts**. ... **Canada**, as a respected member of the international community, **cannot ignore ... new international norms** ... Whether we like it or not, **aboriginal rights are an international matter**.

Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada,
“Aboriginal Rights: International Perspectives”, Order of Canada Luncheon,
Canadian Club of Vancouver, Vancouver, British Columbia, February 8, 2002

2. Role of international human rights law in Canada

The various sources of international human rights law - **declarations**, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms - must, in my opinion, be **relevant and persuasive sources for interpretation** of the Charter's provisions.

Reference re Public Service Employee Relations Act (Alberta), [1987] 1 S.C.R. 313, at 348 (Dickson C.J. dissenting); cited with approval in *United States of America v. Burns*, [2011] 1 S.C.R. 283, para. 80

2. Role of international human rights law in Canada

It is a well-established principle of statutory interpretation that legislation will be **presumed to conform to international law**. ... courts will strive to **avoid constructions** of domestic law pursuant to which the state would be **in violation of its international obligations**, unless the wording of the statute clearly compels that result.

R. v. Hape, [2007] 2 S.C.R. 292, para. 53

2. Role of international human rights law in Canada

International instruments such as the [*UN Declaration on the Rights of Indigenous Peoples*] and the *Convention on the Rights of the Child* may also **inform the contextual approach** to statutory interpretation ...

First Nations Child and Family Caring Society of Canada v. Canada (Attorney General), 2012 FC 445, para. 353. Affirmed 2013 FCA 75

...the province and the family collaboratively worked to form a health care team to bring the best both had to offer to address J.J.'s ongoing treatment. **This approach recognizes the province's acceptance of the family's right to practice traditional medicine and the family's acceptance western medicine will most certainly help their daughter.** It is simply a recognition of what is in J.J.'s best interest. Such an approach bodes well for the future. **It is also an approach that is reflected in Article 24 of the *United Nations Declaration on the Rights of Indigenous Peoples* ...**

Hamilton Health Sciences Corp. v. D.H., 2015 ONCJ 229, para. 5

2. Role of international human rights law in Canada

... the significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character. ... [I]mplementation of the Declaration should be regarded as **political, moral and, yes, legal imperative without qualification.**

General Assembly, *Rights of indigenous peoples: Note by the Secretary-General*, UN Doc. A/67/301 (14 August 2013) (report of the Special Rapporteur on the rights of indigenous peoples, James Anaya), para. 67

2. Role of international human rights law in Canada

UN Declaration not binding in same manner as treaties, but has **diverse legal effects**:

- Governments and others may use *Declaration* for law, policy development and decision-making
- Canadian courts may use *Declaration* to interpret human rights in Canada
- Treaty bodies may use it to interpret international human rights instruments

3. Rights and obligations related to health

It is recognized that **self-determination** in social, political and economic life **improves the health** of Aboriginal peoples and their communities. Therefore, the CMA encourages and supports the Aboriginal peoples in their quest for resolution of self-determination and land use.

Canadian Medical Association, *Bridging the Gap: Promoting Health and Healing for Aboriginal Peoples in Canada* (Ottawa: Canadian Medical Association, 1994) at 14

UN Declaration, 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.

3. Rights and obligations related to health

UN Declaration, article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in **freedom, peace and security** as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

3. Rights and obligations related to health

UN Declaration, article 21

1. Indigenous peoples have the right, without discrimination, to the **improvement of their economic and social conditions**, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, **health** and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of **indigenous elders, women, youth, children and persons with disabilities**.

3. Rights and obligations related to health

UN Declaration, article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, **to be secure in the enjoyment of their own means of subsistence and development**, and to engage freely in all their traditional and other economic activities.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their **right to development**. In particular, indigenous peoples have the right to be actively involved in developing and determining **health**, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

3. Rights and obligations related to health

UN Declaration, article 24

1. Indigenous peoples have the **right to their traditional medicines and to maintain their health practices**, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

3. Rights and obligations related to health

... indigenous women continue to suffer from multiple forms of discrimination, in particular with regard to their access to employment, housing, education and **health care**, and continue to live in **poverty** in the State party ... The Committee notes the State party's commitment to **fully implementing the United Nations Declaration on the Rights of Indigenous Peoples (2007)**. Nevertheless, it remains concerned about the lack of a coherent plan or strategy to improve the socioeconomic conditions of indigenous communities, in particular indigenous women ...

Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, UN Doc. CEDAW/C/CAN/CO/8-9 (18 November 2016), para. 28

3. Rights and obligations related to health

... in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, ... development-related activities that lead to the displacement of indigenous peoples against their will ... denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4 (11 May 2000), para. 27

Health implementation – community level

- Culturally appropriate approaches to public health
- Options for health care in Indigenous languages
- Health services delivered in the community
- Capacity building for communities to deliver health care

Health implementation – community level

- Holistic approach to public health in the Indigenous context
- Critical importance of relationship building with Indigenous Peoples
- Any policies or laws must be developed in partnership with Indigenous Peoples
- Free, prior and informed consent must be respected in both development and delivery of health programs

Human rights, poverty and sustainable development

Poverty is a denial of human rights and human dignity.

UNICEF, *Poverty Reduction Begins with Children*, New York, March 2000, at 39 (Summary)

For indigenous peoples ... and others who rely directly on the products of forests, rivers, lakes and oceans for their food, fuel and medicine, environmental harm can and often does have **disastrous consequences**.

Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretariat*, UN Doc. A/HRC/34/49 (19 January 2017), para. 22

Human rights, poverty and sustainable development

No one is more vulnerable to poverty than children. Poverty perpetuates the cycle of disadvantage and inequity, which **robs millions of children of their potential** and causes irreparable damage that reverberates throughout a lifetime. **Putting children at the heart of poverty reduction is one of the best ways to break that cycle** and create a level playing field for every child.

UNICEF, *The State of the World's Children 2016: A fair chance for every child* (New York: United Nations Children's Fund (UNICEF), June 2016), at 69 (poverty)

Human rights, poverty and sustainable development

We resolve, between now and 2030, to **end poverty and hunger everywhere**; ... to **protect human rights** and promote gender equality and the empowerment of women and girls; and to **ensure the lasting protection of the planet and its natural resources**.

... we pledge that **no one will be left behind**. ... we wish to see the Goals and targets met **for all nations and peoples** and for all segments of society. And we will endeavour to **reach the furthest behind first**.

General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1 (25 September 2015) (adopted without a vote), at 3 (Declaration), paras. 3 and 4



4. Framework for reconciliation

TRC Call to Action 43

We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as **the framework** for reconciliation.

TRC Call to Action 44

We call upon the Government of Canada to develop a **national action plan**, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

4. Framework for reconciliation

TRC Call to Action 22

We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.

4. Framework for reconciliation

Reconciliation requires putting colonialism into the past, including beyond the *Indian Act*. It demands rebuilding Indigenous government and communities and in **closing the socio-cultural gap** between Indigenous and non-Indigenous peoples. It involves recognizing the Indigenous relationship with the land, respecting treaties, Aboriginal title and rights ... It is the politics of **nation building**.

Minister of Justice and Attorney General of Canada (Hon. Jody Wilson-Raybould),
“Notes for an address: 2016 Aboriginal Law Conference – Continuing Legal Education
Society of British Columbia”, Vancouver, BC, November 25, 2016

4. *UN Declaration* - Trudeau government positions

I [Prime Minister of Canada] expect you to work ... through established legislative, regulatory, and Cabinet processes to deliver on your **top priorities**:

- To support the work of **reconciliation** ... work with provinces and territories, and with First Nations, the Métis Nation, and Inuit, to implement recommendations of the Truth and Reconciliation Commission, **starting with the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples***.

Minister of Indigenous and Northern Affairs Mandate letter from Prime Minister Justin Trudeau, November 2015

5. *UN Declaration* - Trudeau government positions

We're **absolutely committed** to [the UN Declaration], as we are to the Calls to Action of the Truth and Reconciliation Commission.

Prime Minister Justin Trudeau, “The Current” (with Anna Maria Tremonti), CBC Radio, October 19, 2016

No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a **renewed, nation-to-nation relationship** with Indigenous Peoples, based on **recognition of rights, respect, co-operation, and partnership.**

Office of the Prime Minister (Rt. Hon. Justin Trudeau), “Minister of Indigenous and Northern Affairs Mandate Letter”, November 2015

5. *UN Declaration* - Trudeau government positions

I'm here to announce, on behalf of Canada, that **we are now a full supporter of the Declaration without qualification.**

Minister of Indigenous and Northern Affairs (Carolyn Bennett), Speech delivered at the United Nations Permanent Forum on Indigenous Issues, New York, May 10, 2016

... many of our **current realities do not align with the standards of UNDRIP** and, as such, they must be systematically and coherently dismantled.

Minister of Justice and Attorney General of Canada (Jody Wilson-Raybould), “Notes for an address: B.C. Cabinet and First Nations Leaders’ Gathering”, Vancouver, BC, September 7, 2016

Questions?