

BC'S ANTI-RACISM LEGISLATION: MANDATES AND PERSPECTIVES OF FIRST NATIONS IN BC

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British Columbia
Assembly of First Nations

Content Warning

This document covers topics including, but not limited to, colonial violence, systemic racism and Indigenous-specific racism and inequality. The information and material presented in this document may trigger unpleasant feelings, thoughts, and responses. The KUU-US Crisis Line Society provides a First Nations and Indigenous specific crisis line available 24 hours a day, seven days a week, toll-free anywhere in BC at 1-800-588-8717.

Disclaimer

This report was prepared by Tiskwat Consulting on behalf of the First Nations Leadership (FNLC), a collaborative working relationship between the political executives of the BC Assembly of First Nations, First Nations Summit, and Union of BC Indian Chiefs. The report was developed for the sole purpose of engaging with First Nations in British Columbia on issues related to anti-racism legislation. Funding for this project was provided by the Province of British Columbia's Ministry of Attorney General's Multiculturalism and Anti-Racism Branch. The material contained in this report reflects the best professional judgment of the project team, based on the information gathered and available at the time of its completion and as appropriate for the scope of work. Any use that a third party makes of this report, or any reliance or any decision based on it, is at the discretion and responsibility of such third parties. The information contained herein should not be construed as to define, limit, or otherwise constrain First Nations rights and interests.

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At-a-glance: First Nations requirements for provincial anti-racism legislation

This paper describes key interests and policy objectives of First Nations in BC to inform new provincial anti-racism legislation, as drawn from relevant resolutions, reports, standards, and plans, and summarizes as follows:

Component	First Nations Interests
Legislation Outcomes	<p><i>Needs to contribute to:</i></p> <ul style="list-style-type: none"> ● A greater understanding of the relationship between racism and colonialism unique to First Nations. ● Strategies specifically targeted to disrupt the unique forms of racism experienced by First Nations, interpersonally and structurally. ● Strategies that wholistically advance Indigenous human rights of First Nations in BC, recognizing that racism and colonial supremacy interfere with the full expression of title and rights and enjoyment of dignity, safety, and belonging. ● Government-to-government relationships between First Nations and the Province of BC.
Key Terminology	<p><i>Adopts terminology that:</i></p> <ul style="list-style-type: none"> ● Reflects the unique experiences of racism specific to First Nations. ● Advances a comprehensive understanding of the various forms of racism and the various forms through which it is expressed. ● Is consistent with the terms used in the Declaration on the Rights of Indigenous Peoples Act (including “Indigenous governing body”). ● Does not define terms more appropriately addressed in government-to-government relationships between First Nations governments and the Province.
Principles	<p><i>Upholds the following underpinning and cross-cutting understandings:</i></p> <p>Self-determination</p> <ul style="list-style-type: none"> ● Must not interfere with the jurisdiction of First Nations governments or impose conditions on First Nations governments. ● Must support the right of First Nations governments to make decisions with respect to the well-being of their members/citizens and involve First Nations governments in decision-making where those decisions affect their members/citizens, including by enabling agreements described in sections 6 and 7 of the Declaration Act. <p>Explicitly acknowledge and address First Nations-specific racism</p> <ul style="list-style-type: none"> ● Must acknowledge the specific racism, stereotyping, discrimination, and oppression experienced by First Nations peoples inextricably connected with settler colonialism as different from other racialized populations, in violation of Indigenous human rights, and requiring different actions and measures.

	<ul style="list-style-type: none"> • Must not group First Nations people together with other racialized populations that experience different forms of racism and stereotyping, and who have different forms of rights. <p>Embed an intersectional GBA+ lens in understanding and addressing racism</p> <ul style="list-style-type: none"> • Must acknowledge and account for the specific intersections experienced by First Nations peoples due to their First Nations identity combined with impacts of settler colonialism. This is different from other populations and requires different actions and measures. • Must acknowledge and account for the compounding harms for particular persons, including First Nations women and children, Two-spirit persons, and First Nations with disabilities. • Must require ongoing embedding of an intersectional GBA+ lens throughout implementation, to ensure that the intersections experienced by First Nations are treated as different from other populations in action planning, enforcement, reporting, and funding initiatives. <p>Embed a distinctions-based approach</p> <ul style="list-style-type: none"> • Must acknowledge the unique and distinct rights of First Nations, arising from their prior occupation, use, and title to the land. These rights, including the right to self-determination, decision-making on issues that may affect their people, and of data sovereignty, must be enabled. • Guides funding decisions in a way that is properly grounded in a distinctions-based approach that recognizes the unique rights and responsibilities of First Nations governments, which are not comparable or similar to those held by Métis, Inuit, urban, or other service-delivery entities. • Recognize that a proper understanding and application of a distinctions-based approach by public servants is necessary for all public servants across the provincial government, and of particular importance for those public servants who are involved in decisions relating to the Province’s funding of and engagement with First Nations, Métis, and Inuit in BC as related to anti-racism initiatives. <p>Consultation and cooperation with First Nations</p> <ul style="list-style-type: none"> • Must be carefully crafted to uphold the requirements in the Declaration Act for consultation and cooperation with title and rights holders for all key obligations. • Must be carried out with the intention of supporting the free, prior, and informed consent of affected First Nations. • Should enable agreements with Indigenous governing bodies as per sections 6 and 7 of the Declaration Act.
Scope	<p><i>The scope of the legislation must:</i></p> <ul style="list-style-type: none"> • Not interfere with the jurisdiction of First Nations governments or impose conditions on First Nations governments. • Advance a carefully considered phased approach to application of its various obligations that ensures that those advancing anti-racism obligations have the required expertise to do so.

	<ul style="list-style-type: none"> ● Not introduce an unresourced and unreasonable burden on First Nations governments and organizations. ● Consider priority sectors and entities where anti-racism recommendations or actions have been identified and validated by First Nations (e.g. health, justice), and/or which may have the greatest impact in advancing anti-racism improvements and understanding across the Province (e.g. across Ministries, school boards, etc.). ● Extend to consultants, institutions, and organizations that are carrying out work on behalf of organizations to which the legislation applies. ● Requires public education efforts about anti-racism and First Nations-specific racism so as to create a mindset shift among the general public.
Obligations	<p><i>Obligations and processes that the legislation establishes must:</i></p> <ul style="list-style-type: none"> ● Incorporate and reinforce the existing commitments and recommendations of the Declaration Act Action Plan, the Truth and Reconciliation Commission, the Report on Murdered and Missing Indigenous Women and Girls, In Plain Sight, the First Nations Justice Strategy, and the future independent investigation and report into systemic and Indigenous-specific racism in the provincial public education system. ● Be undertaken by public servants who have received education and training related to anti-Indigenous racism and cultural safety (aligned with call #57 of the Truth and Reconciliation Commission’s Call to Action). ● Be carried out in consultation and cooperation with First Nations governments and Indigenous governing bodies, and led by First Nations governments and Indigenous governing bodies when related to any First Nations-specific actions, timelines, assessments, standards, and reviews. ● Appropriately and uniquely recognize government-to-government relationships between the Province and First Nations governments (which should not be supplanted by any committee structure). ● Provide funding specific for First Nations governments and Indigenous governing bodies to advance healing and address the unique forms of racism and colonialism they experience.
Monitoring, reporting, and accountability requirements	<p><i>Expectations are that the legislation:</i></p> <ul style="list-style-type: none"> ● Reinforce and coherently connect with the Declaration Act annual report. ● Are developed and carried out in consultation and cooperation with First Nations governments and Indigenous governing bodies, and led by First Nations governments and Indigenous governing bodies when related to any First Nations-specific indicators and targets. ● Do not rely solely on data sources arising from the Anti-Racism Data Act, but utilize First Nations sources of data and acknowledge data ownership by First Nations for any data about First Nations people. ● Ensure that any reporting and the use of First Nations data follows First Nations data governance protocols, and involves them in interpretation, indicator and target development and data analysis.

Purpose

Anti-racism legislation is a key tool increasingly used by governments across Canada and beyond to uproot and dismantle systemic racism towards building a better, more inclusive society.

The mandate letter of the B.C. Attorney General, and Parliamentary Secretary for Anti-Racism Initiatives includes the following: “Work with community partners, including B.C.’s Human Rights Commissioner, to develop and pass an Anti-Racism Act to better serve everyone in BC.” This is intended to build on the Anti-Racism Data Act (ARDA) enacted in 2022, which aims to reduce systemic racism by enabling the collection of race-based data in order to illuminate inequities, gaps, and barriers experienced by racialized persons. It is also intended to build on other existing legislation in BC that address anti-racism in various ways, but which do not require or contain specific, proactive actions (BC Human Rights Code (1973); Civil Rights Protection Act (1981); Multiculturalism Act (1993)).

This work must respond to the unique rights, needs, and experiences of First Nations people, including the human rights standards described in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) which was adopted as the Province’s framework for reconciliation in the adoption of the *Declaration on the Rights of Indigenous Peoples Act* passed in 2019. There are four key areas of the legislation:

- Section 3 obligates the Province to make its laws consistent with the UN Declaration.
- Section 4 requires the Province to develop and implement an action plan, in consultation and cooperation with Indigenous Peoples, to meet the objectives of the UN Declaration.
- Section 5 requires regular reporting to the legislature to monitor progress on the alignment of laws and implementation of the action plan, including tabling annual reports by June 30 of each year.
- Sections 6 and 7 enable the Province to enter into a range of decision-making and consent-based agreements with Indigenous governing bodies.

To further these Declaration Act obligations, two key products have been developed which shape the work in developing anti-racism legislation. The *Declaration on the Rights of Indigenous Peoples Act Action Plan*, released in 2022, includes a theme of Ending Indigenous-Specific Racism and Discrimination, with 15 actions designed to advance fundamental changes to systems, behaviours, attitudes, and beliefs. Action 3.6 is a commitment to: “Introduce anti-racism legislation that addresses Indigenous-specific racism.”

What other legislation exists in Canada?

In Canada, 6 of 13 provincial and territorial governments have developed policy initiatives to tackle systemic racism and discrimination. This work ranges from developing strategies and action plans, to forming advisory councils or committees, to passing new legislation. At the jurisdictional level, Ontario was the first province to pass an anti-racism act in 2017. Most recently in 2022, Nova Scotia passed legislation on anti-racism policies across their provincial public institutions. Alberta proposed an anti-racism act but it was not passed.

Additionally, the *Interim Approach to Implementing the Requirements of Section 3 of the Declaration on the Rights of Indigenous Peoples Act* (Interim Approach) guides how the Province carries out consultation and cooperation with First Nations in the development of legislation which ensures consistency with the UN Declaration. The Interim Approach establishes five key points in time in the legislative development process, and how First Nations are to be involved throughout:

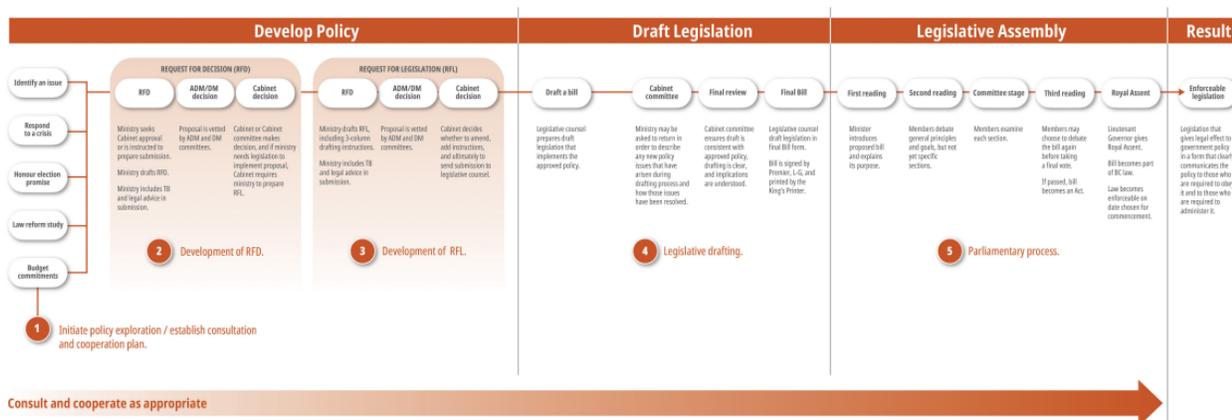


Figure 1: Five stages of the Interim Approach

Consistent with the Interim Approach, to date, the Province has met with a number of First Nations and First Nations organizations on their high-level policy interests in anti-racism legislation (Step 1 of the Interim Approach) which has informed the development of a Request for Decision (Step 2 of the Interim Approach). A discussion paper prepared prior to this final submission similarly described key interests and policy objectives of First Nations in BC that informed the Request for Legislation (Step 3 of the Interim Approach). That discussion paper was circulated to First Nations with the offer of written submissions and virtual or in-person meetings on a Nation basis throughout the late summer and fall of 2023. It was presented to the Chiefs at the assemblies of the BC Assembly of First Nations, First Nations Summit, and Union of BC Indian Chiefs in the fall of 2023 as well as at the First Nations Leadership Gathering. Direction and perspectives provided by First Nations governments and organizations in response to this paper have been carefully integrated, resulting in this final paper which, in addition to further consultation and cooperation with First Nations, will inform legislative drafting (Step 4 of the Interim Approach).

This paper begins with two sections that form the foundation of First Nations interests and requirements for anti-racism legislation – an analysis of the UN Declaration in the context of anti-racism, followed by a summary of existing mandates, reports, and recommendations endorsed by First Nations in BC as related to anti-racism. This is followed by a section that, drawing on that foundation and informed by further engagement carried out throughout late 2023, comprehensively describes First Nations requirements of the Province’s anti-racism legislation. A concluding section describes expected next steps.

UN Declaration & Anti-Racism Legislation

It is essential that the UN Declaration be read, interpreted, and implemented as a whole, inclusive of the preamble. All rights in the UN Declaration are universal, inalienable and indivisible and are also interdependent and interrelated with all of the other rights in the UN Declaration. It is from the starting point of the principles of self-determination, justice, equality and non-discrimination that we understand and interpret the remainder of the rights in the UN Declaration.¹

At the same time, it is important to undertake analysis to enable the specific standards in the UN Declaration to be practically applied in the context of specific pieces of legislation.

This section provides an analysis of the standards described in the UN Declaration as they relate to the broad proposed principles and legislative considerations of this anti-racism legislation. This analysis, along with the mandates described in the following section, have informed the discussion among First Nations about their requirements for this anti-racism legislation.

Right of Self-Determination and Self-Government

A central and guiding principle in the UN Declaration is that of self-determination. This means that other rights – including the right to freedom, peace, and security as distinct peoples – are inextricable from the collective rights related to self-determination and the inherent right of self-government. These rights are described in Articles 3, 4, 5, 7, 14, 37.

The UN Declaration defines the right of self-determination as the right of Indigenous peoples to “freely determine their political status and freely pursue their economic, social and cultural development.”²

The right of self-determination as described in the UN Declaration has two key pillars: the right to autonomy “in matters relating to their internal and local affairs” and the right to “maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”³ This dual aspect reflects that First Nations are autonomous to freely determine their own forms of government and “to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human

¹ Indigenous Bar Association. (2011). Understanding and Implementing UNDRIP. An Introductory Handbook. Available at: https://chrr.info/wp-content/uploads/2015/10/UNDRIP_Handbook_WEB.pdf

² UN Declaration, article 3.

³ UN Declaration, articles 4 and 5.

rights standards”⁴ and are also in relationship with other political and social structures, such as federal and provincial governments.

In summary, a commitment to First Nations self-determination means that the anti-racism legislation needs to not interfere with the autonomy of First Nations governments and should create pathways for government-to-government relationships on matters of shared interest, including dismantling racism towards First Nations citizens and governments in colonially-rooted provincial systems.

Right to Life, Integrity, Security, Freedom from Discrimination

The UN Declaration acknowledges that Indigenous peoples have been subjected to all forms of violent racism, including genocide, dispossession, forced assimilation, cultural destruction, and racist propaganda driven by “doctrines, policies and practices” that advocated the “superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences”.⁵ These actions are expressly prohibited and condemned as racist under the UN Declaration and governments are obligated to provide mechanisms to prevent and rectify such occurrences.

The broad and interconnected concepts of right to life, integrity, security and freedom from discrimination as set out in the preamble⁶ and Articles 2, 7, 8 and 9 mean that First Nations have the right to live and be secure in their identity as First Nations people and to belong to a community or nation. No discrimination of any kind may arise from the exercise of such a right.

The right to freedom from discrimination is related to Article 15, the Indigenous right to dignity and diversity of cultures, traditions and histories.⁷ States have obligations described in articles 8 and 22 to take measures, prevent and redress actions that assimilate and/or deprive Indigenous peoples of their integrity as distinct peoples, cultural values or identities.⁸

Combat Prejudice, Eliminate Discrimination, Promote Tolerance

Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

States shall take effective measures, in consultation and cooperation with the Indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among Indigenous peoples and all other segments of society (Article 15).

In summary, the right to life, integrity, security and freedom from discrimination, and the right to dignity and diversity of cultures and traditions means that the anti-racism legislation must: explicitly acknowledge and address First Nations-specific racism; enable culturally safe and

⁴ UN Declaration, article 34.

⁵ UN Declaration, preamble. para 4.

⁶ UN Declaration, preamble. para 5.

⁷ UN Declaration, article 15.

⁸ UN Declaration. article 8.

respectful systems and services (free from discrimination and racism) as well as services that break with the colonial history of segregation and inferior treatment; and, articulate the Province's role (in consultation and cooperation with First Nations) in combating prejudice and promoting tolerance as well as understanding and good relations (e.g. public education and information).

Economic and Social Rights

The economic and social rights described in the UN Declaration include the right of Indigenous peoples to engage in their ancestral practices related to health, education, and employment, and to administer those through their own institutions. Indigenous peoples also have the right to access state services without discrimination and to freely exercise their practices and speak their languages in those settings. Indigenous peoples have the right to achieve the highest possible standard of physical and mental health, which is inextricably connected to the fulfillment of all other human rights standards described in the UN Declaration.

This means that the anti-racism legislation must: apply comprehensively across a range of sectors (health, social, employment, and beyond); not interfere with First Nations peoples' rights to deliver their own services through their own institutions; support First Nations peoples to practice their traditions in the context of state-sponsored services; and must address First Nations-specific racism in these priority sectors in ways that support their substantive equality.

Right to Education without Discrimination

Education advances Indigenous peoples' individual and collective development; it is a precondition for Indigenous peoples' ability to realize the right of self-determination.⁹ First Nations have the right to educational autonomy. The right to education is broad and includes the rights of First Nations to establish and control their own educational systems and in their own languages,¹⁰ and have the right to access general public education without discrimination.¹¹

Additionally, the dignity and diversity of First Nations cultures, traditions, histories and aspirations shall be appropriately reflected in public

Rights to Culturally Safe Provincial Public Education without Discrimination

Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

States shall, in conjunction with Indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language (Article 14).

⁹ Expert Mechanism of the Rights of Indigenous Peoples, Expert Mechanism Advice No. 1 (2009) on the Rights of Indigenous Peoples to Education, annexed to the Study on lessons learned and challenges to achieve the implementation of the right of Indigenous peoples to education (A/HRC/12/33) at para 2.

¹⁰ UNDRIP, article 14 (1).

¹¹ UNDRIP, article 14 (2).

education.¹² For example, racist, culturally inaccurate, and discriminatory references to First Nations and their cultures must be removed from the curriculum.¹³ In view of the prevailing lack of understanding of and respect for the concepts and principles of First Nations education, to uphold this right, states are urged to support the building of understanding and respect for these methods of teaching and learning, including by providing adequate funding for initiatives by First Nations peoples and communities to strengthen or establish First Nations educational initiatives within these systems.¹⁴ Educational programmes and services for First Nations peoples must also be of high quality, culturally safe, and must not aim at or result in assimilation¹⁵. The right of educational autonomy includes the right of First Nations peoples to decide their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services that may affect them¹⁶.

Right to Health without Discrimination

The right to health is an indispensable element of First Nations' very existence and is also a central component of their right to self-determination.¹⁷ First Nations conceptions of health incorporate spiritual, emotional, cultural and social dimensions in addition to physical ones. Those concepts are inextricably linked and interplay with the realization of other UN Declaration rights, including development, culture, land, language and the natural environment. Forced assimilation, political and economic marginalization, discrimination and prejudice, poverty and other legacies of colonialism have also led to a lack of First Nations control over individual and collective health and poorer health outcomes.

Article 21 recognizes the right of First Nations to the improvement of their economic and social conditions without discrimination which is directly related to Article 24, which affirms the rights of First Nations to the access of social and health services without discrimination and the equal right of First Nations to the enjoyment of the highest attainable standard of physical and mental health.

UN Declaration Rights to Health Services without Discrimination

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.

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right (Article 24).

¹² UNDRIP, article 15 (1)

¹³ Indigenous Bar Association. (2011). Understanding and Implementing UNDRIP. An Introductory Handbook. Available at: https://chrr.info/wp-content/uploads/2015/10/UNDRIP_Handbook_WEB.pdf

¹⁴ Expert Mechanism of the Rights of Indigenous Peoples, Expert Mechanism Advice No. 1 (2009) on the Rights of Indigenous Peoples to Education, annexed to the Study on lessons learned and challenges to achieve the implementation of the right of Indigenous peoples to education (A/HRC/12/33) at para 10.

¹⁵ Ibid. para 13.

¹⁶ Ibid. para 15.

¹⁷ United Nations General Assembly. 2016. Right to health and indigenous peoples with a focus on children and youth: Study by the Expert Mechanism on the Rights of Indigenous Peoples. A/HRC/33/57

Although the outcome-based elements of Article 24 may be subject to progressive realization, obligations such as non-discrimination and equal treatment are of immediate effect.¹⁸ Similarly, environmental racism has directly impacted the health of First Nations for decades; Article 29 (2) requires governments to take effective measures to ensure that no storage or disposal of hazardous materials shall take place on the lands or territories of First Nations without their free, prior and informed consent.

Right to Employment without Discrimination

Connected to the rights to improvement of economic and social conditions and the right to development is the right of Indigenous peoples to enjoy all labour law rights and not be subjected to discriminatory conditions of employment.¹⁹ This would include areas such as hiring and promotion practices, equal remuneration for work of equal value, occupationally related benefits, and related aspects.

Right to Employment without Discrimination

Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law (article 17).

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary (Article 17).

Media and Public Education

First Nations have the right to establish their own media, and to access all forms of non-Indigenous media without discrimination.

As related to anti-racism legislation, this means that states should take steps to ensure that

state-owned media institutions work to dismantle First Nations specific prejudice and stereotypes, that First Nations cultural diversity is properly represented and that First Nations stories are accurately reflected – factual, dignified and ethical. They should also create and maintain opportunities for First Nations to articulate their perspectives, priorities and aspirations. The right to media without discrimination is particularly relevant in the context of the ongoing need to confront the pervasive inaccurate, unfair and/or distorted representations of murdered and missing First Nations women and girls as well the emerging phenomenon of residential school denialism. Both examples are rooted in the rejection or misrepresentation of facts used to undermine truth and reconciliation efforts.

Right to Media without Discrimination

Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination (Article 16).

Rights and Special Needs of Specific Groups

¹⁸ United Nations General Assembly. 2016. Right to health and indigenous peoples with a focus on children and youth: Study by the Expert Mechanism on the Rights of Indigenous Peoples. A/HRC/33/57

¹⁹ UN Declaration, article 17.

Articles 22 and 44 of the UN Declaration recognize the rights and special needs of Elders, women, youth, children and persons with disabilities. These articles ensure that in upholding all other articles of the UN Declaration, the unique circumstances facing specific age groups, genders, and conditions are accommodated.

In summary, this means that an intersectional GBA+ lens must be incorporated in the development and implementation of anti-racism legislation in order to ensure First Nations women, men and 2SLGBTQIA+ people benefit equally, and that the needs of those particularly vulnerable to human rights violations, because of the intersectional nature of oppression on the basis of age, gender, sexual orientation, and other factors, are proactively considered and provided for.

Rights of Specific Groups and Protection from Discrimination

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration (Article 22).

States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination (Article 22).

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals (Article 44).

Consultation and Cooperation

In the UN Declaration, states are required to consult and cooperate with Indigenous peoples with the objective of obtaining free, prior, and informed consent, before undertaking certain actions. Specifically, Article 19 describes that consultation and cooperation must occur “before adopting or implementing legislative or administrative measures that may affect” Indigenous Peoples, and must take place “through their own representative institutions”.

As related to the anti-racism legislation, this means that First Nations, through their representative institutions, have the right to be actively involved in developing and determining anti-racism strategies, and providing their free, prior and informed consent to any strategies that affect them.

Right to Consultation and Cooperation

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (Article 18).

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Article 19).

Key Reports and Mandates

First Nations in BC and Canada have a long history of illuminating the existence and harms of racism, and building consensus around recommendations. These reports and mandates endorsed by First Nations in BC are described below. These points of consensus, along with the UN Declaration analysis described in the foregoing section, have informed the discussion among First Nations about their requirements for this anti-racism legislation.

Key reports

First Nations in BC have developed and endorsed studies and reports related to anti-racism:

- ★ **Report on the Royal Commission on Aboriginal Peoples (1996)**
RCAP comprehensively commented on the role of racism and colonialism in driving inequity and recommended initiatives to address these inequities in social, education, health and housing outcomes.
- ★ **United Nations Declaration of the Rights of Indigenous Peoples (2007)**
The UN Declaration was adopted by First Nations in BC, with consistent calls and resolutions for accelerated implementation. It includes standards upholding the rights of Indigenous peoples to live freely without discrimination (see Appendix C).
- ★ **Truth and Reconciliation Commission (2015)**
In 2015, the Final Report of the Truth and Reconciliation Commission was released, which included 94 Calls to Action to eradicate systemic racism in Canadian society.
- ★ **Declaration on the Rights of Indigenous Peoples Act (2019)**
On November 26, 2019, the Province unanimously passed the Declaration on the Rights of Indigenous Peoples Act (Declaration Act) following a process of co-development with Indigenous Peoples in BC. It establishes the UN Declaration as the framework for reconciliation in BC.
- ★ **Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019)**
The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls called for an intersectional approach to eliminating systemic racism and violence against women, girls and two-spirit peoples.
- ★ **In Plain Sight: Addressing Indigenous-Specific Racism and Discrimination in BC Health Care (2020)**

The In Plain Sight report examined Indigenous-specific racism in health care; it closely examined the root causes of racism and how it is held in place. Among its recommendations, it specifically calls on the Province to introduce anti-racism legislation and policies.

★ **BC First Nations Justice Strategy (2020)**

The BC First Nations Justice Strategy brings First Nations and the Province into partnership to address poor justice system outcomes for First Nations in BC, including a focus on addressing systemic racism and associated inequities.

★ **Declaration on the Rights of Indigenous Peoples Act Action Plan (2022)**

This action plan provides a province-wide, whole-of-government approach to achieve the objectives of the UN Declaration over time. Theme 3 of this action plan commits action towards ending Indigenous-specific racism and discrimination with a set of specific goals, outcomes and required actions. Specifically, action 3.6 calls for: “The introduction of anti-racism legislation that addresses Indigenous-specific racism.”

★ **Anti-Racism Data Act (2022)**

One of the first pieces of legislation to be co-developed with Indigenous Peoples under the Declaration on the Rights of Indigenous Peoples Act, intended to support the collection, use and disclosure of demographic information within BC for the purposes of identifying and dismantling systemic racism and advancing racial equity, particularly in policing, health care, and education.

Key resolutions

First Nations in BC have passed resolutions to establish mandates related to anti-racism, including:

Entity	Resolution #	Therefore Be It Resolved
BC Assembly of First Nations		
BCAFN	11/2020	<p>Support for Indigenous Women, Girls and 2SLGBTQQIA+ people Declaration and Strategy</p> <ol style="list-style-type: none"> 1. The BCAFN Chiefs-in-Assembly supports the 2020 iteration of the Women’s Declaration; 2. The BCAFN Chiefs-in-Assembly commit to honouring Indigenous women, girls and 2SLGBTQQIA+ people, supporting healthy families and communities, and breaking the cycles of violence and colonialism; 3. The BCAFN Chiefs-in-Assembly recognize the many benefits of hosting the Women’s Dialogue Sessions, and the need for a strategic, action-oriented

		<p>plan to address the issues and calls to action identified in the Women’s Declaration;</p> <ol style="list-style-type: none"> 4. The BCAFN Chiefs-in-Assembly directs the BC Assembly of First Nations to develop a strategic plan for addressing the Women’s Declaration and other issues that impact Indigenous women, girls and 2SLGBTQQIA+ people, which should include, but not be limited to: <ol style="list-style-type: none"> a. Securing funds for the implementation of activities within the strategy; b. Working with like-minded organizations; c. A review of all BCAFN policies and advocacy initiatives to ensure they are inclusive of 2SLGBTQQIA+ people; d. A review of all BCAFN policies to ensure they promote an organization that is free from gendered and lateral violence; e. Ongoing action and advocacy to implement the 231 Calls for Justice and the Indigenous women and 2SLGBTQQIA+ people-led development of a National Action Plan; f. Advocacy for timely and efficient registration for those newly entitled to status pursuant to amendments to the Indian Act coming into force on August 15, 2019; g. A plan to hold regional Women’s Dialogue Sessions; h. Strategic initiatives regarding sexual assault supports, justice, and support for grassroots organizations and community-based initiatives; i. A plan to support the full and equitable participation of women, girls, and 2SLGBTQQIA+ people in political roles and in the workforce; and 5. The BCAFN Chiefs-in-Assembly directs the BC Assembly of First Nations Women’s Representative to oversee the design and implementation of this plan, and to report on progress at the BCAFN Annual General Assembly in 2020.
BCAFN	01/2021	<p>In Plain Sight Independent Review of Indigenous-Specific Racism In B.C. Health Care</p> <ol style="list-style-type: none"> 1. The BCAFN Chiefs-in-Assembly fully supports the In Plain Sight report and endorses its recommendations to eliminate anti-Indigenous racism from the BC health care system; 2. That the BCAFN Chiefs-in-Assembly urges the provincial government to advance the In Plain Sight report recommendations without delay, and with appropriate reporting and accountability for results back to First Nations patients, communities, and Indigenous Governing Bodies; 3. That the BCAFN Chiefs-in-Assembly urges the federal government to take systemic actions to eliminate racism from Canada’s health care system and establish proper recognition and legislation and tools to support First Nations governments to exercise their rights and jurisdiction in health; 4. That the BCAFN Chiefs-in-Assembly directs the Regional Chief and BCAFN staff to work with the First Nations Leadership Council to provide any necessary support to the implementation of the In Plain Sight reports, including integration into the action plan pursuant to the Declaration on the Rights of Indigenous Peoples Act; and 5. That regular progress reports on implementation of the In Plain Sight report be provided to the BCAFN Chiefs-in-Assembly

BCAFN	04/2021	<p>Support for FNEC to Develop a BC Specific Model for Capital Funding for First Nation Schools and Teacherages</p> <ol style="list-style-type: none"> 1. The BCAFN Chiefs-in-Assembly fully support the First Nations Education Steering Committee (FNEC) in their efforts to develop a proposal for a BC-specific funding model for First Nation school capital; and 2. The BCAFN Chiefs-in-Assembly call on Indigenous Services Canada to provide relevant data to FNEC to support the development of this proposal.
Union of BC Indian Chiefs Resolutions		
UBCIC	2021-13	<p>In Plain Sight Independent Review of Indigenous-Specific Racism in B.C.'s Health Care System. UBCIC Chiefs Council:</p> <ol style="list-style-type: none"> 1. Fully supports the In Plain Sight report and endorses its recommendations to eliminate anti-Indigenous racism from the BC health care system; 2. Urges the provincial government to advance the In Plain Sight report recommendations without delay, and with appropriate reporting and accountability mechanisms to ensure the results are transparently reported back to First Nations patients, communities, and Indigenous Governing Bodies; 3. Urges the federal government to take systemic actions to eliminate racism from Canada's health care system and establish proper recognition and legislation including section 9.1 of the Tripartite Health Framework Agreement, and tools to support First Nations governments to exercise their rights and jurisdiction in health; 4. Directs the UBCIC Executive and staff, working with the BC Assembly of First Nations and the First Nations Summit as the First Nations Leadership Council, to provide any necessary support to the implementation of the In Plain Sight reports, including integration into the action plan pursuant to the Declaration on the Rights of Indigenous Peoples Act and relevant international instruments; 5. Directs the UBCIC Executive to ensure that regular progress reports on the implementation of the In Plain Sight report be provided to the UBCIC Chiefs Council.
First Nations Summit Resolutions		
FNS	0913.07	<p>Condemnation of Human Biomedical Experimentation In Indigenous Communities and Residential Schools</p> <ol style="list-style-type: none"> 1. That the First Nations Summit Chiefs in Assembly: <ol style="list-style-type: none"> A. Condemn the action of the federal government for condoning and cooperating in the deeply disturbing and shocking nutritional and medical experiments involving Indigenous children; and B. Call on Canada to make an apology to the Indigenous victims and survivors of residential schools who were used as subjects in such experiments 2. That the First Nations Summit Chiefs in Assembly hold the view that these experiments reveal Crown conduct reflecting a pattern of genocide against Indigenous peoples.

		<ol style="list-style-type: none"> 3. That the First Nations Summit Chiefs in Assembly will not accept the Prime Minister's June 2008 apology as a catch-all recognition for all federal policy past, present and ongoing which have, and continue to, negatively impact Indigenous peoples. 4. That the First Nations Summit Chiefs in Assembly: <ol style="list-style-type: none"> A. Consider it imperative that residential school survivors, Indigenous peoples and all Canadians need to know the full truth of these experiments; B. Call on the federal government, all churches, the Canadian Red Cross and any other parties involved in the residential school system to immediately provide Indian Residential Schools Survivors, First Nations and the Truth and Reconciliation Commission with full and complete access to all available records on all experiments and procedures conducted on Indigenous communities and Indigenous children in residential schools and Indian Hospitals; C. Call on the federal and provincial governments, all churches and the Canadian Red Cross to initiate a strategic communications action plan, created in partnership with Indigenous Peoples, to ensure information regarding the scientific experiments and procedures is made public and available to victims and their families, including ensuring that such information is reflected in the public school education curriculum so that all Canadians can understand and be aware of the whole truth; and D. Call on the government to fund investigation into all cases in which children were subjected to electrical shock at Indian Residential Schools and where Indigenous Peoples were forcibly sterilized at both Indian and public hospitals. 5. That the First Nations Summit Chiefs in Assembly call on the federal government to fund: <ol style="list-style-type: none"> A. An examination of the extent of the residual impacts and intergenerational trauma caused by the nutritional and medical experiments; and B. A system for fair and just restitution for those persons and communities who suffered emotional and physical effects as a result of the experiments. 6. That the First Nations Summit Chiefs in Assembly call on the federal, provincial and territorial governments to recognize First Nation jurisdiction over research and data collection processes involving our people and communities and that the First Nation principles of Ownership, Control, Access, and Possession (OCAP) be respected and adhered to in the development of any future partnerships involving research.
FNS	0221.08	<p>In Plain Sight Independent Review of Indigenous-Specific Racism In B.C. Health Care</p> <ol style="list-style-type: none"> 1. Fully endorses the recommendations contained in the report, In Plain Sight which draw attention to systemic discrimination and the need to eliminate anti-Indigenous racism occurring within the BC health care system; 2. Urges the provincial government to promptly implement the recommendations set out in the report, In Plain Sight and to report progress

		<p>results back to First Nations patients, communities, and Indigenous Governing Bodies;</p> <ol style="list-style-type: none"> 3. Urges the federal government to take systemic actions to eliminate racism from Canada’s health care system, including the establishment of proper recognition legislation and tools to support First Nations governments in the exercise of their rights and jurisdictions in health; 4. Directs the First Nations Summit Political Executive and staff to work with the Union of BC Indian Chiefs and the BC Assembly of First Nations and like-minded organizations to support the implementation of the report, In Plain Sight, including integration into the action plan pursuant to the Declaration on the Rights of Indigenous Peoples Act; and 5. That regular progress reports on implementation of the report, In Plain Sight be provided to the First Nations Summit Chiefs in Assembly.
FNS	0621.05	<p>Call On Province to Commission An Investigation and Report Into Indigenous-Specific Racism and Discrimination In the Provincial Public Education System</p> <ol style="list-style-type: none"> 1. Resolves that the First Nations Summit Chiefs in Assembly: <ol style="list-style-type: none"> A. Fully oppose any racism and discrimination directed against First Nation learners in the provincial public-school system; and B. Support the identification of measures to eliminate racism and discrimination and commit to ensuring that the provincial government upholds the minimum human rights standards in the United Nations Declaration on the Rights of Indigenous Peoples, as mandated under the Declaration on the Rights of Indigenous Peoples Act. 1. Resolves that the First Nations Summit Chiefs in Assembly fully support the First Nations Education Steering Committee in its continued advocacy for systemic changes to address ongoing and persistent institutional, systemic and interpersonal racism and discrimination experienced by First Nation learners in the provincial public-school system. 2. Resolves that the First Nations Summit Chiefs in Assembly call on the Province of British Columbia to: <ol style="list-style-type: none"> A. Commission an independent investigation and report into systemic and Indigenous-specific racism and discrimination taking place in the provincial public education system; and B. Ensure that in carrying out this critical investigation and report, dedicated resources and processes will meet or beat those used to prepare the report, In Plain Sight, which similarly investigated racism in the BC public health system.
FNS	1021.09	<p>Supporting Anti-Racism Legislation and Framework</p> <p>That the First Nations Summit Chiefs in Assembly:</p> <ol style="list-style-type: none"> 1. Stand in solidarity with all Indigenous peoples and racialized minorities who are combating racism and experiencing grievous harm, fear, trauma, and hate; 2. Call upon the provincial government to ensure that First Nations Title and Rights Holders provide their free, prior and informed consent to any new legislative initiatives and frameworks. In particular, that First Nations Title

		<p>and Rights Holders are included as key decision-makers in the development of the new anti-racism legislation; and</p> <p>3. Direct the First Nations Summit Political Executive and staff to work with the Union of BC Indian Chiefs and the BC Assembly of First Nations, as the First Nations Leadership Council, to continue engaging with First Nations in BC and the provincial government on its anti-racism legislation, including ensuring that the legislation addresses the cross-sectoral nature of systemic racism, adopts a holistic, inclusive approach to eliminating the root causes of racism, and establishes an equitable, transparent system for race-based data collection.</p>
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First Nations requirements for anti-racism legislation

Colonialism in Canada has been, and is, perpetuated by racism. Colonialism is marked by segregation, exclusion, disempowerment, and dehumanization of First Nations peoples, based on racist and erroneous beliefs about their inferiority. This results in unjust oppression of First Nations, including social inequities and impediments to exercising Indigenous human rights.

Forms of Racism in the Context of First Nations People

Indigenous-specific racism

Refers to the unique nature of stereotyping, bias and prejudice about Indigenous peoples in Canada that is rooted in the history of settler colonialism. It is the ongoing race-based discrimination, negative stereotyping and injustice experienced by Indigenous peoples that perpetuates power imbalances, systemic discrimination and inequitable outcomes stemming from colonial policies and practices (2).

Interpersonal Racism

Interpersonal racism is what most people think of when they hear the term racism. It includes words and actions that happen between individuals. It is the expression of stereotypes, bias, prejudice, dislike or disdain by an individual towards a First Nations person (3). It can be overt, like threats, racist slurs or jokes, name calling, not hiring a First Nations person because of their race etc. *Microaggressions* are a subtler form of interpersonal racism that imply larger prejudices and stereotypes. Microaggressions can be categorized as microinsults (insensitive and disparaging comments) e.g. a teacher mispronouncing a First Nations student's name over and over, microassaults (discriminatory verbal abuse) e.g. enthusiastically endorsing the continued use of banned First Nations mascots despite knowing the adverse history, discord, and emotional harm they have incurred, and microinvalidations (dismissive and exclusion practices), e.g. "I don't see colour". Extant research suggests that these more subtle interpersonal forms of discrimination, though often subconscious, normalized and overlooked, may be just as detrimental as the overt forms of discrimination (4). Terms like "exclusionary behaviours" or "abuses" have been suggested as more accurate descriptions of the actions' emotional and material effects (5). *Violent racism* is an extreme form of interpersonal racism and includes acts of violence perpetrated against First Nations people because of their race (6). For example, misogynist views of indigenous women have fostered and legitimized physical and social violence, the most prominent example being the national crisis of missing and murdered Indigenous women and girls. All interpersonal racism is rooted in systemic racism.

Systemic Racism

Systemic racism is the perpetuation and maintenance of avoidable and unfair inequalities across racial groups through societal systems, structures, and institutions such as policies, legislation, and practices (7). Colonialism is the most pernicious, structured and comprehensive form of systemic racism in Canada, justified through creating and perpetuating racist beliefs about the inherent genetic, cultural and intellectual inferiority of First Nations peoples. This racism remains across Canadian institutions, displayed by discrimination of First Nations in housing, education, employment, finance, media, health care, and criminal justice *Epistemic racism*, another extensive form of systemic racism, positions First Nations knowledge systems as having less value than colonial knowledge systems, including what is considered to be 'knowledge' (8). *Environmental racism* is when environmental harms (e.g. pollution) or lack of access to protective environmental features disproportionately affects First Nations communities (9).

²⁰ Government of Ontario. (2022). Data Standards for the Identification and Monitoring of Systemic Racism. Available at: <https://www.ontario.ca/document/data-standards-identification-and-monitoring-systemic-racism/glossary>

²¹ Fitchburg State University. (2023). Anti-Racism Resources. Available at: <https://fitchburgstate.libguides.com/c.php?q=1046516&p=7602969>

²² Sue, D.W. et al. (2007). Racial Microaggressions in Everyday Life: Implications for Clinical Practice. *American Psychologist*. 62 (4), 271–286.

²³ Tulshyan, R. (2022). We Need to Retire the Term "Microaggressions". *Harvard Business Review*. Available at: <https://hbr.org/2022/03/we-need-to-retire-the-term-microaggressions>

²⁴ National Collaborating Centre for Indigenous Health. 2020. Indigenous experiences with racism and its impacts. 2020. Available at: <https://www.nccih.ca/docs/determinants/FS-Racism2-Racism-Impacts-EN.pdf>

²⁵ Addressing Racism Review. (2020). In plain sight: Addressing Indigenous-specific racism and discrimination in BC health care, full report. Available at: <https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Full-Report.pdf>

²⁶ Government of BC. (2023). Addressing Racism Working Glossary. Available at: <https://engage.gov.bc.ca/addressingracism/glossary/>

²⁷ National Collaborating Centre on Environmental Health. 2022. A renewed attention on environmental equity and justice. Available at: <https://nceh.ca/resources/blog/renewed-attention-environmental-equity-and-justice>

First Nations have relentlessly advanced work to dismantle racial discrimination and colonialism. This has included working in solidarity with other racialized and marginalized communities in Canada to advance anti-racism initiatives, and working with Indigenous peoples across the globe to advance Indigenous human rights.

There is now widespread recognition about the imperative to address racism and colonialism embedded in laws, policies, and systems across all sectors of Canadian society – including justice, education, environment, health care, and child welfare. Shifts are now occurring in law, policy, and relationships between First Nations peoples and federal and provincial governments, and Canada and BC remain in the midst of a transition from the colonial legacy to an equitable system that upholds the human rights of Indigenous peoples.

This anti-racism legislation has the potential to build upon and accelerate these efforts, provided that it meaningfully address the standards of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), and incorporate relevant anti-racism mandates established by First Nations in BC as described in the foregoing sections. This section distills these mandates and analysis of the alignment between the UN Declaration and proposed anti-racism legislation into key requirements that can inform the Request for Decision and legislative drafting process, specifically the:

- **Outcomes** that the legislation should advance;
- Key **terminology** that the legislation should incorporate;
- Underpinning and cross-cutting understandings and **principles** that must be upheld in the development and implementation of anti-racism legislation;
- **Scope** of the legislation, such as the entities the legislation should apply to;
- **Obligations** and processes that the legislation should establish, including consultation and cooperation with title and rights holders; and
- **Monitoring, reporting, and accountability** requirements.

Outcomes

Effectively disrupting First Nations-specific racism requires a deep understanding of its origins in colonialism, continuing ties with those colonial roots in structural and interpersonal racism and stereotypical beliefs, and how these colonial beliefs produce inequitable results for First Nations and violate the human rights standards described in the UN Declaration.

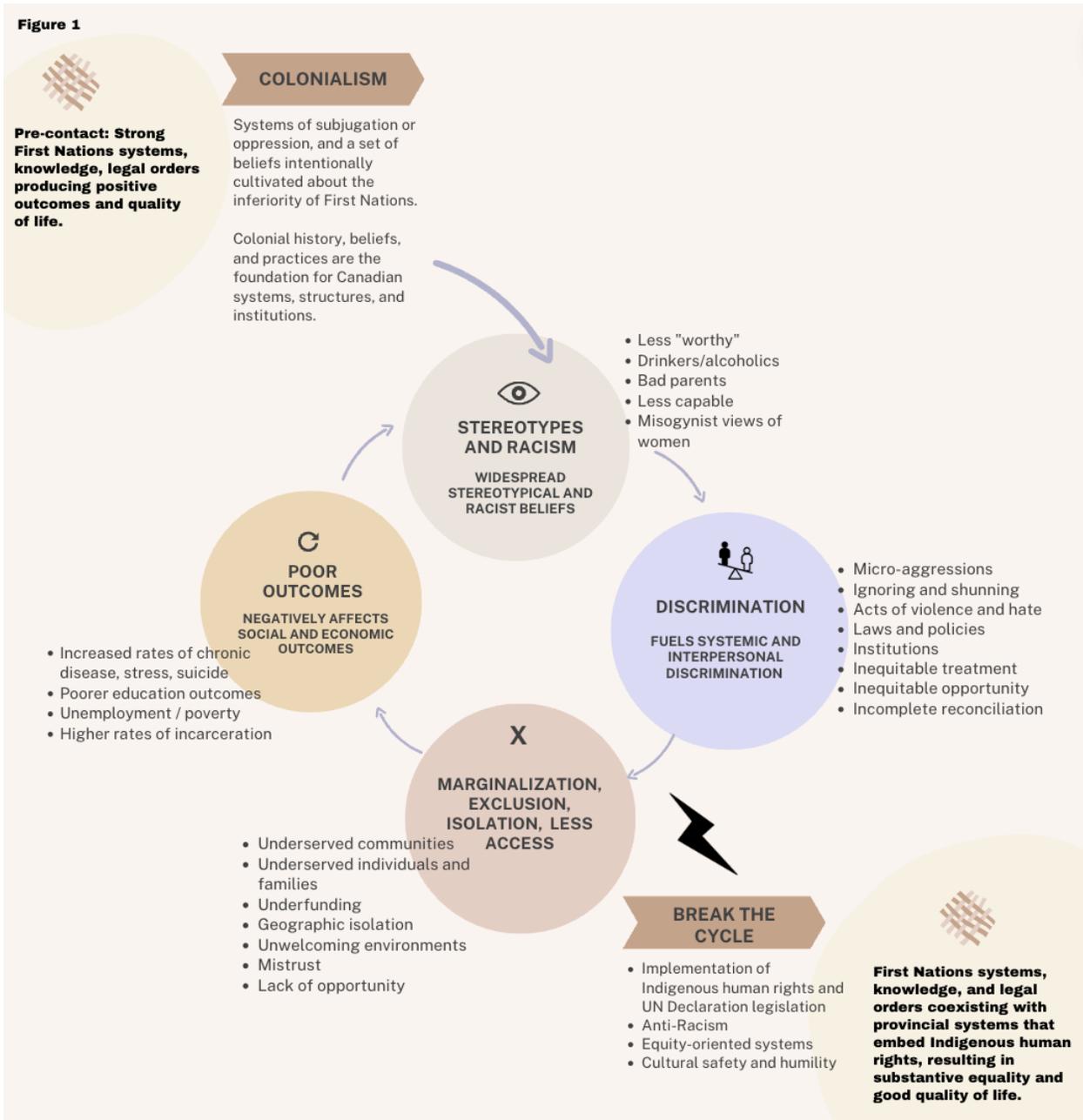


Figure 2: Relationship between colonialism, racism, and inequity impacting Indigenous peoples. Adapted from *In Plain Sight: Addressing Indigenous-Specific Racism and Discrimination in BC Health Care*

Prior to the arrival of Europeans, First Nations throughout what is now referred to as Canada had their own governance systems rooted in diverse worldviews, knowledge and beliefs, and implemented through their legal orders. Colonialism established a pernicious system of subjugation, paternalism, oppression and a set of beliefs intentionally cultivated about the inferiority of First Nations – that First Nations were incapable, diseased, and primitive, among others. These colonial beliefs and history underpin all systems and structures in Canadian

society and these together contribute to widespread racism, prejudice and stereotypes about First Nations.

The stereotypes of the past have evolved, but are still very much alive. Common stereotypes of First Nations include: drinkers/alcoholics and drug-seekers, bad parents, less capable, unfairly advantaged (get stuff for free). Another form of stereotyping, the romanticisation of First Nations peoples and cultures as nature-loving and traditional or stoic and wise for example, can be just as damaging as stereotypes considered more “negative” as they can lead to superficial, ignorant and condescending beliefs.

All of these beliefs perpetuate interpersonal and systemic racism ranging from micro-aggressions, to ignoring and shunning, to ridicule and condescension, to extreme acts of violence and hate – all compounded by policies of systemic exclusion, underfunding, and incomplete reconciliation (for example, continued lack of access to land and economic redress). This then means that First Nations are excluded and isolated from society and less likely to access services due to mistrust and unwelcoming environments. Overall, these factors lead to inequitable social and economic outcomes such as lower life expectancy,²⁸ higher rates of incarceration,²⁹ increased rates and faster progression of chronic disease,³⁰ and lower educational attainment.³¹

Without a widespread understanding that this is how inequities are produced, disparities are interpreted in ways that hold in place the negative stereotypes that non-First Nations people have about First Nations – inequities are blamed on incapability, genetic inferiority, laziness, and similar beliefs. Breaking this cycle involves systemic action – the implementation of Indigenous human rights and UN Declaration legislation, anti-racism approaches (including legislation) and advancing cultural safety and humility in all systems.

In summary, First Nations interests are that the anti-racism legislation contribute to the following outcomes:

- 
- A greater understanding of the relationship between racism and colonialism unique to First Nations.*
 - Strategies specifically targeted to disrupt the unique forms of racism experienced by First Nations, interpersonally and structurally.*

²⁸ Loppie Reading, C., & Wien, F. (2009). Health inequalities and the social determinants of Aboriginal peoples' health. Prince George, BC: National Collaborating Centre for Aboriginal Health.

²⁹ Singh, D., Prowse, S. & Anderson, M. (2019). Overincarceration of Indigenous people: a health crisis. *Canadian Medical Association Journal*. 191 (18) E487-E488.

³⁰ Addressing Racism Review. (2020). In plain sight: Addressing Indigenous-specific racism and discrimination in BC health care, full report. Available at: <https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Full-Report.pdf>

³¹ National Collaborating Centre on Indigenous Health. (2017) Education as a determinant of First Nations, Inuit and Métis Health.

Strategies that wholistically advance Indigenous human rights of First Nations in BC, recognizing that racism and colonial supremacy interfere with the full expression of title and rights and enjoyment of dignity, safety, and belonging.

Government-to-government relationships between First Nations and the Province of BC.

Terminology

Some of the key terms and concepts used in this paper are described below. Some of these terms are appropriate to describe in provincial legislation (e.g. Indigenous-specific racism) while others are likely not, at least at this time (e.g. free, prior, and informed consent).

- Anti-racism is the practice of identifying, challenging, preventing, eliminating and changing the values, structures, policies, programs, practices, profiles and behaviours that perpetuate racism.
- Indigenous-specific racism refers to the unique nature of stereotyping, bias and prejudice about Indigenous peoples in Canada that is rooted in the history of settler colonialism. It is the ongoing race-based discrimination, negative stereotyping and injustice experienced by Indigenous peoples that perpetuates power imbalances, systemic discrimination and inequitable outcomes stemming from the colonial policies and practices.
- Colonialism is the policy or practice of acquiring full or partial political control over another place or country, occupying it with settlers, and exploiting it economically. In the case of Canada, lands and resources were stolen from Indigenous peoples and a set of laws and public processes were designed to violate the human rights of the Indigenous peoples, violently suppress their governance, legal, social, and cultural structures, and force them to conform with the colonial state.
- Cultural humility is a life-long process of self-reflection and self-critique. Cultural humility requires an ongoing interrogation of one's assumptions, beliefs and privilege and how it impacts interactions with, and policies and practices affecting, Indigenous people. It is foundational to achieving a culturally safe relationship and environment.
- A culturally safe environment is the desired outcome and can only be defined by the Indigenous person receiving care in a manner that is safe and does not profile or discriminate against the person but is experienced as respectful, safe and allows meaningful communication and service. It is a physically, socially, emotionally and spiritually safe environment, without challenge, ignorance or denial of an individual's identity. To be culturally safe requires positive anti-racism stances, tools and approaches and the continuous practice of cultural humility.

- Discrimination is the unjust or prejudicial treatment of different categories of people, especially on the grounds of ethnicity, age, sex, or disability.
- Free, prior and informed consent includes the terms “free”, “prior” and “informed” and each has specific meaning. “Free” means there is no coercion, manipulation, or intimidation.³² “Prior” means that consent is sought in advance of any State decision, with sufficient and appropriate respect for Indigenous decision-making processes.³³ “Informed” means that necessary information is provided through a participatory process of consultation.³⁴
- Indigenous governing body is a term used in the *Declaration on the Rights of Indigenous Peoples Act* and means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982.
- Indigenous peoples has the same meaning as aboriginal peoples in section 35 of the Constitution Act, 1982.
- Interpersonal racism includes words and actions that happen between individuals expressing stereotypes, bias, prejudgement, dislike or disdain.
- Prejudice refers to a negative way of thinking and attitude toward a socially defined group and toward any person perceived to be a member of the group.
- Substantive equality refers to the requirement to achieve equality in opportunities and outcomes, and is advanced through equal access, equal opportunity and, the provision of services and benefits in a manner and according to standards that meet any unique needs and circumstances, such as cultural, social, economic and historical disadvantage.
- Systemic racism is the perpetuation and maintenance of avoidable and unfair inequalities across racial groups through societal systems, structures, and institutions such as policies, legislation, and practices. Colonialism is the most pernicious, structured and comprehensive form of systemic racism in Canada, justified through creating and perpetuating racist beliefs about the inherent genetic, cultural and intellectual inferiority of First Nations peoples.

³² Office of the United Nations High Commissioner for Human Rights, Free, Prior and Informed Consent of Indigenous Peoples, (September 2013), <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.

³³ *Ibid.*

³⁴ *Ibid.*

In summary, First Nations interests are that the anti-racism legislation adopt *terminology* that:

Reflects the unique experiences of racism specific to First Nations.

Advances a comprehensive understanding of the various forms of racism and the various forms through which it is expressed.

Is consistent with the terms used in the Declaration on the Rights of Indigenous Peoples Act (including using “Indigenous governing body” and not “Indigenous governing entity”).

Does not define terms more appropriately negotiated and defined in government-to-government relationships between First Nations governments and the Province (e.g. free, prior, and informed consent).

Principles

Principles describe fundamental standards that inform development, interpretation, implementation, and assessment. The following principles must be taken into account in the design and implementation of provincial anti-racism legislation.

Principle 1: First Nations Self-Determination

The right to self-determination and to self-government, including as described in Articles 3 and 4 of the UN Declaration, are crucial to the advancement of the human rights of First Nations in BC. The right of self-determination is a foundational right, without which indigenous peoples’ human rights, both collective and individual, cannot be fully enjoyed. As such, the right of self-determination grounds the rest of the rights in the UN Declaration³⁵ and should also ground BC’s anti-racism legislation.

In practice, this means that the anti-racism legislation must not interfere with the jurisdiction of First Nations governments or impose conditions on First Nations governments. It must also support them to make decisions with respect to the well-being of their members and citizens and involve them in decision-making where those decisions affect their members and citizens, including by enabling agreements described in sections 6 and 7 of the Declaration Act.

In summary, this *principle* means that the anti-racism legislation:

Must not interfere with the jurisdiction of First Nations governments or impose conditions on First Nations governments.

³⁵ EMRIP Study on self-determination in the UN Declaration, A/HRC/48/75

Must support the right of First Nations governments to make decisions with respect to the well-being of their members/citizens and involve First Nations governments in decision-making where those decisions affect their members/citizens, including by enabling agreements described in sections 6 and 7 of the Declaration Act.

Principle 2: Explicitly Acknowledge and Address First Nations-Specific Racism

Racism and discrimination is not unique to First Nations peoples and First Nations have stood in solidarity with other Indigenous groups and racialized peoples to address these forms of harm and oppression. While concerns relating to racism and hate exist in varying degrees in all racialized populations, aspects of this experience are different, magnified, and/or unique to First Nations populations. There are unique forms of racism and stereotypes that specifically target and harm First Nations peoples. Further, as outlined in the UN Declaration, there are specific Indigenous human rights related to life, integrity, security and freedom from discrimination as well as economic and social rights, including the right to systems and services without discrimination, notably in health, education and employment.

*In summary, this **principle** means that the anti-racism legislation:*



Must acknowledge the specific racism, stereotyping, discrimination, and oppression experienced by First Nations peoples inextricably connected with settler colonialism as different from other racialized populations, in violation of Indigenous human rights, and requiring different actions and measures.

Must not group First Nations people together with other racialized populations that experience different forms of racism and stereotyping, and who have different forms of rights.

Principle 3: Embed an intersectional GBA+ lens in understanding and addressing racism

The UN Declaration (Article 22) stresses that “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities”, including that “indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”

Racism is experienced differently by persons based on interdependent factors such as race, Indigeneity, age, language, sexual orientation, gender, socio-economic status, geographic location, and disability. We know that there are specific intersections that have created long-standing, distinct and disproportionate risks and harms for First Nations, such as those evidenced in [Missing and Murdered Indigenous Women and Girls](#) and the [In Plain Sight](#) reports, which describe First Nations-specific racism, misogyny and gender discrimination, as well as intersections related to inequities in socio-economic status, housing, education and geography.

*In summary, this **principle** means that the anti-racism legislation:*

Must acknowledge and account for the specific intersections experienced by First Nations peoples due to their First Nations identity combined with impacts of settler colonialism. This is different from other populations and requires different actions and measures.



Must acknowledge and account for the compounding harms for particular persons, including First Nations women and children, Two-spirit persons, and First Nations with disabilities.

Must require ongoing embedding of an intersectional GBA+ lens throughout implementation, to ensure that the intersections experienced by First Nations are treated as different from other populations in action planning, enforcement, reporting, and funding initiatives.

Principle 4: Embed a distinctions-based approach

The UN Declaration affirms the diversity and distinctions of Indigenous peoples, including in the preamble and articles 8, 15, and 37. The UN Declaration refers to Indigenous peoples as “distinct peoples” that have their own “distinct political, legal, economic, social, and cultural institutions” and the “diversity of their cultures, histories, traditions, and aspirations”.

A proper distinctions-based approach (and appropriate respect for Indigenous laws and jurisdictions), means that the scope of rights enjoyed by Indigenous people is contextual and that the Province’s relations and dealings with First Nations, Métis, and Inuit will be conducted in a manner that is appropriate for the specific context, recognizing and respecting the distinct and different rights, laws, legal systems, and systems of governance of each. A distinctions-based approach does not mean that First Nations, Métis, and Inuit will be engaged by the Province separately but equally. Rather, in the British Columbia context, proper application of a distinctions-based approach will necessarily result in circumstances where BC First Nations are engaged but other Indigenous peoples are not.

There is also significant diversity amongst First Nations. This diversity must be respected in approaches to respecting and upholding inherent, constitutional, and human rights, and the relationships formed between the Province and First Nations. Any government-to-government relationship is between each individual First Nation and the Province, and reflects the agreements, understandings, and processes developed between them.

*In summary, this **principle** means that the anti-racism legislation:*

Must acknowledge the unique and distinct rights of First Nations, arising from their prior occupation, use and title to the land. These rights, including the right to self-determination, decision-making on issues that may affect their people, and the right of data sovereignty, must be enabled.



Guides funding decisions in a way that is properly grounded in a distinctions-based approach that recognizes the unique rights and responsibilities of First Nations governments, which are not comparable or similar to those held by Métis, Inuit, urban, or other service-delivery entities.

Recognize that a proper understanding and application of a distinctions-based approach by public servants is necessary for all public servants across the provincial government, and of particular importance for those public servants who are involved in decisions relating to the Province's funding of and engagement with First Nations, Métis, and Inuit in BC as related to anti-racism initiatives.

Principle 5: Consultation and Cooperation with First Nations

The UN Declaration states that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. Article 19 of the UN Declaration reads, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

In stating "may affect," this article implies that there is no singular approach that will fit any given situation, and that the determination of the potential implications of any legislative or administrative measure should be assessed through engagement with the Indigenous peoples that it may affect. It is not the Province's role to unilaterally determine how an initiative may affect Indigenous peoples, and early engagement is needed to fully consider the possible implications, and therefore the associated intensity and associated approaches and timelines needed for consultation and cooperation. It has also been noted that additional processes or steps beyond consultation and cooperation may be required, in some cases to ensure that the particular rights and special needs of indigenous elders, women, youth and children and persons with disabilities are taken into account (as per Article 22), and in some cases to obtain free, prior, and informed consent (as per Article 19).

Consultation and cooperation with First Nations is foundational to the development of legislation and a requirement of the Province under the Declaration Act. Additionally, consultation, cooperation, and consent-seeking obligations should be reflected throughout the legislation, as related to key obligations and decisions.

*In summary, this **principle** means that the anti-racism legislation:*

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- Must be carefully crafted to uphold the requirements in the Declaration Act for consultation and cooperation with title and rights holders for all key obligations.*
 - Must be carried out with the intention of supporting the free, prior, and informed consent of affected First Nations.*
 - Should enable agreements with Indigenous governing bodies as per sections 6 and 7 of the Declaration Act.*

Principle 6: First Nations Data Sovereignty

First Nations data sovereignty is the right of a nation, group of people or individual to exert control over the governance of data collection, application, and ownership. This is an underlying right across all standards of the UN Declaration given the inextricable tie between data and self-determination. The companion to this anti-racism legislation, the *Anti-Racism Data Act*, seeks to increase the data available about racialized people. However, First Nations have unique data sovereignty rights in comparison to other racialized people, and have a much longer history of collecting, applying, and utilizing data to illuminate inequities.

*In summary, this **principle** means that the anti-racism legislation:*

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- Enable the expression of First Nations data sovereignty.*
 - Must not rely on the Anti-Racism Data Act as the sole source of information about First Nations-specific racism.*
 - Utilize existing reports and studies that describe First Nations-specific racism, and enables further First Nations-led reports and studies examining racism and its impact.*
 - Require the Province to work with First Nations and their representative organizations to identify, interpret, and apply data relevant to developing action plans, indicators, and accountability reports.*

Scope

The legislation will introduce obligations and requirements for taking action, being in compliance, and supporting accountability for anti-racism in BC. The Province has the authority to mandate these requirements on a range of entities and/or individuals in different ways, and can phase the application of these requirements to various bodies through time.

As with the *Anti-Racism Data Act*, the province is proposing to initially have this anti-racism legislation apply all provincial Ministries, and in the future, to consider extending it to apply to local public bodies (e.g. local governments) and other provincial agencies, boards, and offices.

Racism is a pressing and critical social priority requiring swift and comprehensive action. This is an urgent problem that results in harm and death for First Nations peoples. It is pervasive across all individuals, institutions, and sectors in BC. In this way, it is important that the anti-racism legislation includes a broad scope.

At the same time, however, most organizations, decision-makers, and individuals do not have the expertise to undertake anti-racism work in ways that do not result in further harm. There are common unintended consequences; for example, supporting increased numbers of First Nations peoples in the workforce often exposes them to systemic and interpersonal racism, and draws critical capacity from underfunded organizations and First Nations governments.

*In summary, First Nations interests are that the **scope** of the anti-racism legislation:*

Does not interfere with the jurisdiction of First Nations governments or impose conditions on First Nations governments.

Advances a carefully considered phased approach to application of its various obligations that ensures that those advancing anti-racism obligations have the required expertise to do so.



Does not introduce an unresourced and unreasonable burden on First Nations governments and organizations.

Considers priority sectors and entities where anti-racism recommendations or actions have been identified and validated by First Nations (e.g. health, justice), and/or which may have the greatest impact in advancing anti-racism improvements and understanding across the Province (e.g. across all provincial Ministries, school boards, etc.).

Extends to consultants, institutions, and organizations that are carrying out work on behalf of organizations to which the legislation applies.

Requires public education efforts about anti-racism and First Nations-specific racism so as to create a mindset shift among the general public.

Obligations

Anti-racism legislation will describe requirements to address racism and improve equity for racialized people. The Province is considering the following for inclusion in the legislation:

Assessments, Tracking, Planning

- Development and implementation of a whole-of-government action plan to address systemic racism in provincial government programs, policies, and services.
- Conducting anti-racism assessments.
- Create measurable targets and indicators.

Training

- Increase the foundational understanding, knowledge, awareness, and cultural safety practice of their staff, consultants, contractors, and volunteers, specifically related to Indigenous peoples' history, culture, and colonial violence.
- Development and implementation of standards for anti-racism training.

Independent Reviews

- Independent reviews of Indigenous-specific racism in programs, services, and policies.
- Authority to initiate independent assessment due to complaints of Indigenous-specific racism.

Funding

- Investment in programs, services, and grants for dismantling systemic racism, addressing community harms, and healing initiatives.

Processes of Engagement, Consultation, Cooperation

- Requirements for consultation and cooperation with First Nations in carrying out various obligations under the legislation.
- Requirements to engage with racialized groups in carrying out various obligations under the legislation.
- Striking a Provincial Committee on Anti-Racism, composed of racialized persons, to advise the Province on how to dismantle systemic racism and advance racial equity in BC.

In considering the foregoing concepts in light of the work First Nations have done in anti-racism, developing studies, reports, action plans, and recommendations to eradicate racism. The Province of BC has also made a set of key commitments in the Concrete Actions agenda and the Declaration on the Rights of Indigenous Peoples Act Action Plan. It is important to First Nations that these previous commitments, and the unique relationship between First Nations governments and the Province, are upheld.

*In summary, First Nations interests are that the **obligations** of the anti-racism legislation:*

Incorporate and reinforce the existing commitments and recommendations of the Declaration Act Action Plan, the Truth and Reconciliation Commission, the Report on Murdered and Missing Indigenous Women and Girls, In Plain Sight, the First Nations Justice Strategy, and the future independent investigation and report into systemic and Indigenous-specific racism in the provincial public education system.

Be undertaken by public servants who have received education and training related to anti-Indigenous racism and cultural safety (aligned with call #57 of the Truth and Reconciliation Commission's Call to Action).



Are carried out in consultation and cooperation with First Nations governments and Indigenous governing bodies, and led by First Nations governments and Indigenous governing bodies when related to any Indigenous-specific actions, timelines, assessments, standards, and reviews.

Appropriately and uniquely recognize government-to-government relationships between the Province and First Nations governments (which should not be supplanted by any committee structure).

Provide funding specific for First Nations governments and Indigenous governing bodies to advance healing and address the unique forms of racism and colonialism they experience.

Monitoring, reporting, and accountability

Anti-racism legislation will describe measures for monitoring, reporting, and accountability related to obligations of the Act. The Province is considering the following for inclusion in the legislation:

Progress reporting

- Require the Province to publish an annual progress report on the anti-racism action plan. The annual progress report will include actions taken in implementing the plan,

agreed-upon performance targets and indicators, and allow mechanisms for feedback by those impacted by racism.

Indicators and targets

- Provide that Ministries (and additional public bodies in the future), in collaboration and with the endorsement of First Nations, Métis, Inuit and other racialized community members, create, monitor, and report meaningful targets and indicators tracking their progress in achieving racial equity.
- Require Ministries (and additional public bodies in the future) to create, monitor, and address targets and indicators that track increase in the recruitment, retention, and promotion of First Nations peoples in their organizations, especially in senior positions.
- Require public bodies to respond to systemic racism uncovered through the *Anti-Racism Data Act* and other First Nations data.

External review

- Require the Minister to appoint an independent external examiner /reviewer to conduct an external assessment of the effectiveness and compliance with the anti-racism legislation every five years. The reviewer will perform this review in consultation with First Nations, Inuit and Métis peoples, Indigenous governing bodies, racialized people, the BC Human Rights Commissioner, the Provincial Committee on Systemic Racism, and others.

First Nations have a long history of developing reports and indicators to advance accountability, including some specific commitments related to the *Declaration on the Rights of Indigenous Peoples Act*. First Nations also have a completely different history, set of rights, systemic complexities, and interests as related to data, indicators, and reporting. It is critical to First Nations that these are taken into account and fully integrated into this proposed legislation.

*In summary, First Nations interests are that the **monitoring, reporting, and accountability** expectations of the anti-racism legislation:*

Reinforce and coherently connect with the Declaration Act annual report.

Are developed and carried out in consultation and cooperation with First Nations governments and Indigenous governing bodies, and led by First Nations governments and Indigenous governing bodies when related to any First Nations-specific indicators and targets.



Do not rely solely on data sources arising from the Anti-Racism Data Act, but utilize First Nations sources of data and acknowledge data ownership by First Nations for any data about First Nations people.

Ensure that any reporting and the use of First Nations data follows First Nations data governance protocols, and involves a shared process of interpretation, indicator and target development and data analysis.

Independent oversight of implementation of obligations to First Nations by First Nations, and other penalties for willful non-compliance with obligations under the new legislation.

First Nations Interests in Taking Action to Address First Nations-Specific Racism in BC

The proposed legislation would obligate the Province to develop an Anti-Racism Action Plan. First Nations in BC have led and endorsed a broad range of studies, reports, and resolutions - and existing Declaration Act Action Plan commitments - that must be honoured in such an Anti-Racism Action Plan. Some key themes that should be addressed in an Anti-Racism Action Plan include:

- Public education to address widespread public perceptions and common stereotypes of First Nations and shift mindsets including in areas like denialism, missing and murdered Indigenous people, place naming, status card use, and more.
- Mandatory First Nations-specific racism and cultural safety education and training for all regulated professionals across a broad range of sectors (e.g. education, health, social work, corrections, and more).
- Continue to support initiatives that return land to title holders.
- Address disproportionate environmental harm (cumulative impacts, climate change, pollution).
- External reviews of Indigenous-specific racism and discrimination in the provincial systems, notably education, to inform further action.
- Investment and prioritization of actions by systems and institutions (e.g. justice, education) that proactively lead to culturally safe, identity-affirming and racism-free services, settings/physical spaces, and staff.
- Advance provincial and federal commitments that lead to better collection of disaggregated demographic data, following a distinction-based approach and upholding First Nations data sovereignty, that continues to illuminate inequities.
- Fund Nations to develop initiatives that address community harms and heal affected communities.
- Address the erasure of First Nations people and languages from the landscape and physical spaces, including revitalizing First Nations place names and removing racist (colonial) names.
- Enabling the use of First Nations languages in personal identification (e.g. birth certificates, services card, etc.).
- Identifying indicators and ongoing measurement of racism and effectiveness of anti-racism efforts in accordance with First Nations data sovereignty.

Conclusion

Widespread anti-Indigenous racism in a range of systemic and interpersonal forms is the root cause of inequities for First Nations people, and is a continuing form of colonialism that violates Indigenous human rights. First Nations have done seminal work for decades to illuminate this issue and create recommendations and pathways to meaningfully address it.

As such, First Nations have a deeply significant interest and a deep subject matter knowledge to offer in the development of proposed anti-racism legislation. This paper has presented the core points of consensus and human rights analysis on anti-racism, informed by engagement carried out throughout the fall of 2023. It describes the key desired outcomes, terminology, and conditions for this legislation from a First Nations perspective, and thereby serves as a critical input to the legislative drafting work anticipated to come throughout the winter of 2023/24.

Consistent with the Interim Approach, First Nations also expect further consultation and cooperation with First Nations on the draft anti-racism legislation, and to be full partners in its future implementation.