

Indigenous Governing Bodies in the Declaration on the Rights of Indigenous Peoples Act



BRITISH
COLUMBIA



Purpose

This guidance is intended to support Indigenous Peoples, communities, leaders, organizations, and the public in understanding the ongoing implementation of the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act), specifically in relation to sections 6 and section 7, which speak to agreements between the provincial government and “Indigenous governing bodies”.

The Declaration Act establishes the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as the Province’s framework for reconciliation, as called for by the Truth and Reconciliation Commission’s [Calls to Action](#).

The Declaration Act aims to create a path forward that respects the human rights of Indigenous Peoples while introducing better transparency and predictability around work supporting reconciliation.

Background

The Declaration Act includes the following provisions:

“Indigenous governing body” 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.

6 (1) For the purposes of this Act, a member of the executive council, on behalf of the government, may enter into an agreement with an **Indigenous governing body**.

7 (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the executive council, on behalf of the government, to negotiate and enter into an agreement with an **Indigenous governing body** relating to one or both of the following:

- a. the exercise of a statutory power of decision jointly by
 - i. the Indigenous governing body, and
 - ii. the government or another decision-maker;
- b. the consent of the Indigenous governing body before the exercise of a statutory power of decision.



The definition of “Indigenous governing body” in the Declaration Act is a broad one that may include many forms of governing structures. Government can enter into agreements with Indigenous governing bodies through two mechanisms in the Declaration Act. These may be decision-making agreements that implement free, prior, and informed consent under section 7 of the Act, or other agreements under section 6 of the Act.

Who constitutes an Indigenous people that “holds rights recognized and affirmed by section 35 of the Constitution Act, 1982” is a matter that has been answered through the evolution of the law under section 35. The jurisprudence tells us the proper title and rights holder is rooted in the laws, histories, cultures, and traditions of Indigenous Peoples.

For example, in the trial decision in Tsilhqot’in Nation, the test for proper title and rights holder was articulated by the court as being the “historic community of people sharing language, customs, traditions, historical experience, territory and resources” (paragraph 470).

The Act does not seek to (nor could it) alter or change, or define, who the proper title and rights holder may be – rather it reflects the established understanding and answer to this question in evolving section 35 jurisprudence.

What constitutes an “entity authorized to act on behalf of Indigenous peoples” is a matter of Indigenous self-determination, as articulated in the UN Declaration including in articles 3, 4, and 5:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

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

Article 5: Indigenous peoples have 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.



Guidance

The idea of “authorization” in the definition of Indigenous governing bodies must be read as a form of “authorization” pursuant to Indigenous legal processes, traditions, and standards, consistent with the UN Declaration, that are undertaken as part of Nations expressing, re-building, and implementing their governance systems.

Given this definition, it is for Indigenous Peoples – not the Province – to determine what entity constitutes an Indigenous Governing Body. This has to be determined by Indigenous Peoples as part of their internal work, including the processes and mechanisms they use in establishing the authorization for that entity.

The Province does have an interest in achieving agreements with Indigenous governing bodies under sections 6 and 7 of the Act that deepen co-operation, develop innovative, accountable, practical and predictable processes of shared, joint, or consent-based decision-making, and support a principled approach to reconciliation consistent with the UN Declaration. In the course of negotiation of these agreements, it is for Indigenous governing bodies to share information regarding their authorization to act on behalf of an Indigenous People(s).

Working with Indigenous Peoples, as well as through engagement with other governments and partners, the Province will co-develop approaches, models, and policies regarding new models of decision-making that will support negotiations and agreements with Indigenous governing bodies. This work will proceed in collaboration and cooperation with Indigenous Peoples in accordance with the UN Declaration and the Declaration Act.

Additional Support

For questions specific to the Province’s approach to Indigenous governing bodies in the Declaration Act, please contact the Ministry of Indigenous Relations and Reconciliation through the office of the Assistant Deputy Minister for Negotiations and Regional Operations.

Additional information

[“Indigenous governing bodies” and advancing the work of Re-Building Indigenous Nations and Governments](#) is a useful background document that is housed within UBC’s Indian Residential Schools History and Dialogue Centre.

[Background on the Declaration Act and the Declaration Act Action Plan](https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples) is also available online at <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>.