

Declaration on the Rights of Indigenous Peoples Act

THE LEGISLATION

The Government of British Columbia has passed legislation that confirms the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as the framework for reconciliation in B.C.

Implementing the UN Declaration through the new *Declaration on the Rights of Indigenous Peoples Act* will establish a path forward that respects and upholds the human rights of Indigenous peoples while introducing additional transparency and predictability in the work the B.C. government and Indigenous peoples do together.

With the legislation, the B.C. government, Indigenous peoples, businesses and local governments will have additional tools to build effective relationships, clear processes and a robust and sustainable economy together.

The legislation supports transparent, co-operative, staged approaches through which the B.C. government will work collaboratively with Indigenous peoples, and engage with business and local governments, on programs, policies, legislation and decisions affecting Indigenous peoples and their rights. It will help all parties work together to invest in building a stronger B.C., including creating economic opportunities for Indigenous peoples, businesses, communities and families throughout the province.

The provincial government also recognizes that many companies in British Columbia have already embraced the principles of the UN Declaration and have built solid relationships with Indigenous peoples.

The B.C. government is committed to transparency as it moves forward with this work and develops the action plan required under the new legislation.

BUSINESS, INVESTMENT AND FINANCIAL COMMUNITY

How will this legislation affect investment in B.C.?

When government, Indigenous peoples and industry work together, it reduces conflict and brings about more predictability, and therefore stability. Bringing Indigenous peoples to the table is key to growing our economy – ignoring human rights only creates uncertainty for investors.

In the context of ongoing conflict related to unresolved Indigenous rights around the world, B.C.'s approach can create investment opportunities and a sound landscape for investment. As a jurisdiction tackling these issues in a comprehensive and innovative way by actively implementing the UN Declaration, B.C. becomes a more attractive place to invest. The new legislation, along with the agreements and initiatives the Province will continue to pursue with Indigenous communities, aims to create further certainty for investment and re-affirm B.C. as a world-leading destination for business and economic development.

Many leading companies investing in B.C. have introduced successful business models based on collaborative relationships with Indigenous governments, and as a result, are realizing improved investment certainty. This legislation supports further collaborative opportunities and enables successful partnerships with Indigenous governments. With responsible development that has the full participation of Indigenous peoples, B.C. can be marketed as a jurisdiction with strong environmental, social and corporate governance for investors looking for sustainable and ethical investment opportunities.

How will the Province bring its laws into alignment with the UN Declaration?

The new legislation sets the UN Declaration into the provincial legislative framework, so that over time as other laws are modified or built, they will be aligned with the UN Declaration. Existing B.C. laws will not change immediately, as bringing provincial laws into alignment with the UN Declaration will take time, and will involve consultation and collaboration





with Indigenous peoples. There will be opportunities for engagement with stakeholders including industry, local government and the public during this process.

How will the legislation affect assessment and permitting of natural resource projects in B.C.?

More than 25 years of court decisions in Canada have made it clear that government and industry have obligations to Indigenous peoples with regard to proposed resource development in their territories. This legislation doesn't change that.

Companies won't immediately see changes when the legislation comes into effect. Any changes to other pieces of legislation will take time and will involve companies and stakeholder groups as legislation in different sectors is examined.

This Declaration Act confirms the Province's commitment to working together in meaningful and effective ways, in keeping with the objectives of the UN Declaration. This is intended to set B.C. on a path to reducing the uncertainty on the land base that has challenged companies, investors and Indigenous peoples.

Companies are encouraged though to continue to build relationships with First Nations as they have been doing.

Does this legislation lead to the reopening of existing regulatory decisions, permits or certificates?

No, the legislation will not result in the re-opening of existing permits or certificates or affect current regulatory timelines.

Does the legislation change requirements to consult with First Nations on projects?

No, the legislation is enabling legislation, and does not explicitly make changes to regulatory frameworks, operational decision-making, or consultation requirements.

Future changes will take time and will be done in collaboration with Indigenous peoples. Key stakeholders, including business and local governments, will have a role in this process.

How will this legislation affect decision-making, including in relation to land and resources?

There is not expected to be any immediate effect on statutory decision-making, and processes will continue as is at the present time, including meeting consultation obligations with Indigenous peoples and policy objectives in relation to building government-to-government relationships.

The legislation does create room for new approaches to certain decision-making agreements with Indigenous governments. It outlines a clear, transparent process for how the Province and Indigenous governments may enter into agreements that relate to statutory decision-making powers that will promote reconciliation, bring more predictability for all parties, respect Indigenous rights, and provide for the administrative fairness and transparency that government and businesses expect and need.

There must be authorities within other relevant legislation for the Province to enter into such joint decision-making or consent requirement agreements with an Indigenous government. This means there would need to be subsequent amendments to other legislation in many cases to allow for such agreements. This process would take time, and be done in consultation with Indigenous peoples, stakeholders and local government. In anticipation of the commitment to legislation implementing the UN Declaration announced in 2018, the new *Environmental Assessment Act* created room for the two pieces of legislation to work together.

The Declaration Act sets out a transparent process to be followed prior to entering into certain decision-making agreements related to joint exercise of statutory authorities, including transparency requirements for ongoing consultation with affected parties prior to, and throughout negotiations.

What types of agreements can be negotiated under the legislation?

There is already a variety of agreements related to engagement with Indigenous governments that the Province enters into for different purposes (e.g., benefit sharing, consultation on permitting processes, engagement on policy initiatives, land and resource information sharing and management). Notable examples include a number of strategic engagement agreements and recent agreements with shísháhlh Nation and Heiltsuk Nation. The continuation of those kinds of agreements and other collaborative negotiations remains important.

The new legislation enables an additional type of joint decision-making agreement between the Province and Indigenous governments. These kinds of decision-making agreements would focus on higher level, strategic decision-making interests, not individual permitting processes.

Legislative amendments would be required to enable such joint decision-making power if such mechanisms are not already in place within the other relevant legislation.

These types of decision-making agreements would provide for shared accountability and shared legal responsibility



(e.g. shared accountability to stakeholders for decisions made jointly). Such agreements would require public notice, and involvement by local governments and other stakeholders. Agreements would set out the rules and processes for decision-making, and be subject to *the Judicial Review Procedures Act*, ensuring that decisions are administered in accordance with administrative fairness and accountability, and subject to judicial review, if challenged.

The Province anticipates entering into these decision-making agreements with Indigenous governments over time and when both parties agree that the conditions are right. The conditions will be determined on a case-by-case basis in collaboration with the relevant Indigenous governments and may be dependent of the subject at hand (e.g. the conditions may differ between child welfare and land-based decision-making).

Does the legislation provide Indigenous nations' the right to veto resource projects in B.C.?

The Province retains authority for making decisions in the public interest. The legislation does not provide for the ability to veto decisions on resource projects.

The provincial government will continue to make decisions. However, there are many decisions that need to be made with Indigenous peoples. This legislation provides the tools to get to an orderly, structured, transparent process for that. Instead of conflict and litigation, this new approach moves the province toward respectful partnerships that foster predictability, good jobs and opportunities, while respecting the rights of Indigenous peoples.

The legislation creates room for consent-based decision-making agreements between the Province and Indigenous governments, when such agreements are in place. Any such agreement would establish transparent processes for how decisions will be made for specific projects or decisions, which must include the principles of administrative fairness and transparency.

If the Province and an Indigenous government can't reach consensus by working together, can the Indigenous government say no to a project in its territory?

There is a better chance of reaching consensus on a project by working together. But there may be times when the Province and an Indigenous government work collaboratively together and are not able to agree on a decision, and the project does not proceed. In other instances, the Province may determine a decision is in the public interest and allow a project to proceed even if consensus is not reached. Every project is unique, with many factors that go into the decision-making for approvals. In all cases, due process and collaboration in good faith are required.

The legislation will help ensure that there is transparency and clarity in new joint decision-making or consent requirement processes, so that businesses, project proponents, investors and local governments will know from the beginning of the process what is expected. Any decision, whether by the Province alone or together with an Indigenous government, under any such agreement, must be administratively fair and be able to withstand judicial review, if challenged.

How could this legislation impact existing benefits agreements (e.g. IBAs) that resource companies have with Indigenous nations?

The legislation does not change existing benefits agreements between companies and Indigenous nations but it may support their implementation. It also does not require or govern private-sector agreements with Indigenous nations. Ministries will be available to work with companies to provide guidance on situations where conflicts may exist about impact benefit agreements and questions about connections to this legislation.

Could the legislation result in re-opening existing natural resource benefits sharing agreements with the Province (e.g. Economic and Community Development Agreements, Pipeline Benefits Agreements)?

No, the legislation does not re-open existing natural resource benefits sharing agreements between Indigenous nations and the Province. Those agreements will continue to be administered in accordance with their terms and conditions.

