From mineral tenures to nuclear projects: The evolving role of UNDRIP in Canadian domestic law

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In 2025, both the B.C. Court of Appeal and the Federal Court of Canada issued significant decisions that speak to the role of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in interpreting and applying provincial and federal laws. Although subject to appeal, the decisions have immediate and far-reaching consequences for Indigenous peoples, project proponents, and governments.

Key takeaways

1. **UNDRIP is now part of Canadian law as an interpretive tool**: Both the B.C. Court of Appeal and the Federal Court confirmed that UNDRIP must inform the interpretation of statutes and constitutional obligations, though it does not create new standalone rights.
2. **Legal and policy implications are significant**: Inconsistencies between domestic laws and UNDRIP are justiciable, and regulatory bodies may consider UNDRIP when assessing Crown decision-making.
3. **Consultation standards are evolving**: Canada and British Columbia's legislation to embrace UNDRIP as a framework for reconciliation raised the standard for consultation beyond what the common law would otherwise have required.
4. **British Columbia may amend its UNDRIP legislation in response to these decisions.** If so, what will that look like, and will the federal government follow suit?

Background

UNDRIP is a declaration adopted by the United Nations General Assembly in 2007, outlining the rights of Indigenous peoples. It emphasizes the need to respect and promote their inherent rights, setting minimum standards for the survival, dignity, and well-being of indigenous people. UNDRIP affirms rights such as self-determination, self-government, and control over traditional lands and resources. A key aspect is the requirement for states to seek free, prior, and informed consent (often contracted to

FPIC) from Indigenous peoples before approving projects that affect Indigenous people's lands or resources, in an effort to ensure meaningful participation and agreement.

In 2019, the British Columbia government enacted the *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 (the *B.C. Declaration Act*), making it the first Canadian jurisdiction to embrace UNDRIP as a framework for reconciliation. The *B.C. Declaration Act* aims to align B.C. laws with UNDRIP's standards, contributing to its implementation and advancing reconciliation efforts. Among other things, it mandates the Province to take all measures necessary to ensure the laws of B.C. are consistent with UNDRIP, in consultation and cooperation with the Indigenous peoples in B.C.

In adopting UNDRIP, the provincial government asserted that its intent was not to give UNDRIP itself "legal force and effect" but, at the same time, the Province was going to "bring these internationally recognized standards into provincial law" and that UNDRIP could be used "as an interpretative aid[1]"

In 2021, the Province amended the *Interpretation Act*, R.S.B.C. 1996, c. 238 to add a requirement that every Act and regulation in British Columbia must be "construed as being consistent with the (*B.C. Declaration Act)*."

In the legislature, the opposition questioned the effect this amendment to the *Interpretation Act* would have on provincial decision-making, but the government did not fully respond. During the committee stage, M. De Jong posed a hypothetical to the Hon. D. Eby (Attorney General at the time): when the Province is considering a disposition of land, would the Province have to consider the provisions of UNDRIP that spoke to the right of Indigenous peoples to "determine and develop priorities and strategies for the development or use of their lands or territories and other resources" (article 2 of UNDRIP) or that states must consult Indigenous peoples "in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories…" (article 32 of UNDRIP)? Instead of responding, the Attorney General ended debate and brought the amendments forward for decision, with third reading and Royal Assent soon after.[3] Recent decisions of Canadian courts (discussed below) have answered that question with a clear "yes."

In 2021, the Canadian federal government enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (the *Federal Declaration Act*). The *Federal Declaration Act* expresses a commitment to "fully adopt and implement the Declaration as the framework for reconciliation" and affirms UNDRIP as "a source for the interpretation of Canadian law". Section 4 of the *Federal Declaration Act* states that its purposes are to "affirm the Declaration as a universal international human rights instrument with application in Canadian law; and provide a framework for the Government of Canada's implementation of the Declaration".

In *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5, the Supreme Court of Canada held that the *Federal Declaration Act* incorporated UNDRIP into the country's positive law.

As discussed below, this year, the decisions in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430, and *Kebaowek First Nation v. Canadian Nuclear*

Laboratories, 2025 FC 319, have provided further analysis on the effect of UNDRIP in Canada.

Gitxaala v. British Columbia (Chief Gold Commissioner)

British Columbia Supreme Court (2023 BCSC 1680)

In 2023, Gitxaala Nation and Ehattesahet First Nation challenged the operation of B.C.'s automated online mineral tenure registry system, which allowed "free miners" to register mineral claims on Crown land without prior consultation with affected First Nations. The petitioners argued that system breached their rights under s. 35 of the *Constitution Act, 1982*, the honour of the Crown, s. 3 of the *B.C. Declaration Act* , and UNDRIP.

On September 26, 2023, the B.C. Supreme Court found that granting mineral claims under the *Mineral Tenure Act* triggered a duty to consult and held that the absence of a system for pre-registration consultation breached that duty. However, in doing so, the Court did not accept that the *B.C. Declaration Act* implemented UNDRIP into B.C. law and concluded that UNDRIP "remains a non-binding international instrument". The judge stated that:

> "A correct, purposive interpretation of DRIPA does not lead to the conclusion that DRIPA 'implemented' UNDRIP into domestic law. Instead, DRIPA contemplates a process wherein the province, 'in consultation and cooperation with the Indigenous peoples in British Columbia' will prepare, and then carry out, an action plan to address the objectives of UNDRIP" (para. 466).

The Court declined to determine the question of whether the mineral claims regime was consistent with UNDRIP, finding that the question was beyond the proper role of the court.

The Court suspended its declaration - that the mineral claims system under the *Mineral Tenure Act* triggered a duty to consult – for 18 months to allow the government to "consult and design a regime that allows for consultation".[4] Following this decision, the government has released its Mineral Claims Consultation Framework (MCCF), which now includes a consultation process for mineral claim applications which may impact First Nations.

See BLG's earlier analysis of the B.C. Supreme Court decision here.

British Columbia Court of Appeal (2025 BCCA 430)

The Gitxaala and Ehattesaht First Nations appealed the B.C. Supreme Court's refusal to adjudicate whether the B.C. mineral claims regime was consistent with UNDRIP. On appeal, the First Nations sought declarations that the mineral claims regime was inconsistent with UNDRIP.

On December 5, 2025, a majority of the B.C. Court of Appeal allowed the First Nations' appeals. In doing so, the Court undertook a detailed analysis of UNDRIP's role in provincial law, focusing on *B.C. Declaration Act* and B.C.'s *Interpretation Act*..

Writing for the majority, Justice Dickson (with Justice Iyer concurring) made several key findings:

- "Properly interpreted, the [*B.C. Declaration Act*] incorporates UNDRIP into the positive law of British Columbia with immediate legal effect. This does not mean that s. 2(a) of the [*B.C. Declaration Act*] creates or confers new substantive legal rights or obligations arising from UNDRIP."[5]
- Section 8.1(3) of the *Interpretation Act* "imposes a statutory rebuttable presumption of consistency between British Columbia enactments and UNDRIP, which is functionally akin to the presumption of conformity."[6]
- "UNDRIP should be applied as a weighty source for the interpretation of Canadian law in accordance with the presumption of conformity", and "should not be treated as a mere "non-binding international instrument" to which modest, moderate, or significant weight, or no weight at all, may be optionally ascribed in the interpretive exercise."[7]
- "A matter is not rendered non-justiciable simply because it raises complex or controversial issues with social or political dimensions."[8]
- "Properly interpreted, s. 3 [of the *B.C. Declaration Act*] does not preclude judicial adjudication of whether a British Columbia law is consistent with UNDRIP or oust the courts' jurisdiction to do so when asked by an Indigenous litigant to resolve a dispute with the Crown on an allegedly duty-triggering inconsistency."[9]

Writing in dissent, Justice Riley agreed with the majority's conclusion on the status of UNDRIP under British Columbia law, but disagreed on justiciability of questions arising from the *B.C. Declaration Act*. Justice Riley concluded that the *B.C. Declaration Act* guided the government's statutory obligations with respect to consultation, but that it was not the role of the courts to resolve inconsistencies between British Columbia's laws and UNDRIP.

Both the majority and dissent agreed that UNDRIP is no longer merely aspirational or "soft law" in British Columbia. It is part of the province's legal architecture as an interpretive tool, and the B.C. government is under a statutory duty to align provincial laws with UNDRIP – though its substantive effect depends on the enabling statutes and the nature of the specific UNDRIP provisions.

Applying this interpretive lens, the majority found that the mineral grant regime under the *Mineral Tenure Act* "is manifestly inconsistent" with UNDRIP and declared that the Crown's "conduct in establishing an online system allowing for automatic registration of mineral claims without requiring prior consultation and cooperation of affected Indigenous peoples is inconsistent with article 32(2) of [UNDRIP].[10] As the Gitxaala only appealed on the lower Court's refusal to award declaratory relief, the Court did not determine whether the *Mineral Tenure Act* is invalid or make directions to amend the legislation in a manner consistent with UNDRIP.

On February 3, 2026, B.C. applied for leave to appeal the decision to the Supreme Court of Canada. Premier David Eby stated that the decision and recent events have "created confusion and concern about the intent of [the *B.C. Declaration Act*] and reconciliation work generally. We are seeking to appeal that decision at the Supreme Court, while we work with First Nation partners on amendments to get back to the original intention of the [*B.C. Declaration Act*]." The Gitxaala First Nation stated that it is confident "justice will prevail" and urged B.C. to focus on implementing *B.C. Declaration*

Act rather than fighting in court. We will advise on any further updates on the appeal when available.

Premier David Eby has indicated that the B.C. government may introduce amendments to the *B.C. Declaration Act* and the *Interpretation Act* to counter the effect of the decision in *Gitxaala*, but has not explained what those amendments might be.

Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319

At the federal level, there is also recent caselaw that UNDRIP may be used to assess the sufficiency of consultation by the federal government.

On February 19, 2025, the Federal Court in *Kebaowek First Nation v. Canadian Nuclear Laboratories* held that the Canadian Nuclear Safety Commission's (CNSC) failure to apply UNDRIP as an interpretive lens when assessing whether the Crown fulfilled its duty to consult and accommodate constituted an error of law.

The applicant, Kebaowek First Nation, sought judicial review of the CNSC's January 8, 2024 decision granting Canadian Nuclear Laboratories Ltd. an amendment to its Nuclear Research and Test Establishment Operating Licence for the Chalk River Laboratories site, authorizing construction of a Near Surface Disposal Facility.

The Court determined that UNDRIP has been incorporated into Canada's positive law and must therefore inform the interpretation of Canadian statutes and constitutional obligations, including the duty to consult and accommodate. Citing recent Supreme Court of Canada authority and the preamble to the *Federal Declaration Act*, the Court confirmed that UNDRIP is not an independent source of enforceable rights, but rather establishes minimum standards and a framework that constrains and guides interpretation of Canadian legal obligations.

Key findings include:

- "The jurisprudence supports the conclusion that the UNDRIP is clearly an interpretive lens to be applied [by administrative and judicial decision-makers, including tribunals such as the CNSC] in the analysis of section 35 rights."[11]
- "The [CNSC's] Decision that it did not have the jurisdiction to determine and apply the UNDRIP is an error of law and is misaligned with the presumption of conformity."[12]
- "[T]he UNDRIP [free, prior, and informed consent] standard requires a process that places a heightened emphasis on the need for a deep level of consultation and negotiations geared toward a mutually accepted arrangement."[13]
- "FPIC is a right to a robust process…it is not a veto or a right to a particular outcome."[14]

Canadian Nuclear Laboratories Ltd. appealed the Federal Court's decision in *Kebaowek*. The Federal Court of Appeal heard the appeal in October 2025, but it has not yet released a decision.

Implications

Together, these decisions signal a significant shift toward embedding international Indigenous rights standards within Canadian legal frameworks. They affirm the justiciability of inconsistencies between domestic laws and UNDRIP and mandate that the Crown address these inconsistencies in its consultative processes. However, significant questions remain:

- **How will UNDRIP and the B.C. and Federal *Declaration Acts* expand the scope of other existing legislation?** Will courts import the principle that governments must seek "free, prior and informed consent" – or other principles of UNDRIP – where that is not explicitly contemplated in the enactment?
- **How will Canada and British Columbia's duty to consult be interpreted in other contexts?** At present, the common law contemplates a range in scope of consultation, depending on the strength of a claim to Aboriginal rights and the severity of the potential adverse impact on the right to inform the depth of the duty to consult. Will courts increasingly and consistently require that Canada and British Columbia seek the free, prior, and informed consent of Indigenous peoples contemplated by UNDRIP at *every* level of consultation efforts, or will that only apply where a strong claim of Aboriginal rights faces a severe potential adverse impact?
- **If British Columbia does amend its *Declaration Act,* what will those amendments look like?** Will it also amend the related provisions of the *Interpretation Act*? Will the federal government also revisit the Federal *Declaration Act*, given an apparent shift in focus by Prime Minister Carney? More broadly, if UNDRIP is not the proper framework for reconciliation, what should replace it?

From an immediate and practical perspective:

- **Federal and British Columbia officials will need to reassess their consultation processes to ensure they reflect UNDRIP principles.** This likely includes making serious efforts to obtain the free, prior, and informed consent of Indigenous groups as part of consultation, at least where the duty to consult is at the "high" end of the scale.
- **For industry proponents, the decisions underscore the importance of robust, transparent, and early engagement with Indigenous communities to gain their support.** Building trust and fostering genuine collaboration will help mitigate legal risk and enhance project certainty. In practice, this means moving beyond minimum compliance with common law standards of consultation and toward proactive strategies that address broader Indigenous interests, concerns, and expectations.

Ultimately, these decisions reinforce that UNDRIP is no longer aspirational – it is a binding interpretive tool shaping federal and British Columbia law. Future projects and regulatory decisions made by the federal and British Columbia governments, regulators or agencies will need to account for this evolving legal landscape.

BLG regularly advises clients on matters involving Indigenous rights and their interaction with regulatory frameworks and project development. If you have questions about the implications of UNDRIP, the *B.C. Declaration Act*, the *Federal Declaration Act,* or the recent decisions in *Gitxaala* and *Kebaowek* for your projects or operations,

please contact the authors, any of the key contacts listed below, or a member of BLG's Indigenous Law Group.

Footnotes

[1] British Columbia, *Official Report of Debates (Hansard)*, 41st. Parl., 4th. Sess., No. 286 (30 October 2019) at 10373; British Columbia, *Official Report of Debates (Hansard)*, 41st. Parl., 4th. Sess., No. 291 (19 November 2019) at 10520; British Columbia, *Official Report of Debates (Hansard)*, 41st. Parl., 4th. Sess., No. 292 (19 November 2019) at 10558, 10567. Cited in *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 86.

[3] British Columbia, *Official Report of Debates (Hansard)*, 42nd. Parl., 2nd. Sess., No. 137 (23 November 2021) at 4321-4322.

[4] *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at para. 599.

[5] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 7.

[6] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 125.

[7] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 129.

[8] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 173.

[9] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 175.

[10] *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at paras. 193, 200.

[11] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at para. 82.

[12] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at para. 84.

[13] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at para. 130.

[14] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at para. 131.

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