Understanding Free, Prior and Informed Consent Under UNDRIP in Canadian Resource Development

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Few legal and policy developments have generated more discussion in Canada's forestry and mining sectors over the past decade than the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP").

For many resource developers, UNDRIP is often associated with a single concept: "free, prior and informed consent" ("FPIC"). Some regard FPIC as an Indigenous veto over development. Others see it as a framework for reconciliation and improved project certainty. The reality lies somewhere in between. As governments continue to implement UNDRIP across Canada, understanding its practical implications has become essential for anyone involved in **natural resource development**.

What is UNDRIP?

The United Nations General Assembly adopted UNDRIP in 2007 after more than two decades of negotiations involving governments and Indigenous peoples from around the world. The declaration contains 46 articles addressing a broad range of **Indigenous rights**, including rights relating to culture, language, governance, education, economic development, lands, territories and resources.

Canada formally endorsed UNDRIP in 2010. British Columbia subsequently enacted the *Declaration on the Rights of Indigenous Peoples Act* in 2019 and the federal government followed with the ***United Nations Declaration on the Rights of Indigenous Peoples Act*** in 2021. Neither statute automatically incorporates every provision of UNDRIP into Canadian law. Instead, both establish frameworks intended to align laws, policies and decision-making processes with UNDRIP principles.

Free, prior and informed consent

UNDRIP refers to obtaining the "free, prior and informed consent" of Indigenous peoples before decisions are made that may affect their lands, territories or resources.

"Free" means decisions should be made without coercion or undue pressure. "Prior" means engagement should occur before important decisions are finalized. "Informed" requires that Indigenous communities receive sufficient information to understand potential impacts. "Consent" contemplates a process directed toward achieving agreement rather than merely notifying affected communities of decisions already made.

There are differing views as to how FPIC, and UNDRIP itself, fits within the existing constitutional framework governing Aboriginal and treaty rights.

For more than 20 years, Canadian courts have developed the Crown's duty to consult and, where appropriate, accommodate Indigenous peoples when government decisions may adversely affect asserted or established rights. Consultation may be required even before rights have been conclusively proven. At the same time, courts have generally distinguished consultation from a legal requirement to obtain consent, except in limited circumstances involving established Aboriginal title. Another trend, however, is the tendency of appellate courts to recognize international normative laws as being incorporated into, or at least informing the interpretation of, the laws of Canada.

Does FPIC create a veto?

The federal and provincial governments say that implementation legislation has not transformed FPIC into an absolute Indigenous veto over resource development. Governments continue to approve forestry, mining, energy and infrastructure projects without specific consent. Conversely, the practical effect of UNDRIP has been to increase expectations that governments and proponents will work collaboratively with Indigenous communities and seek consensus wherever possible. The trend is toward partnership, participation and relationship-building rather than unilateral decision-making.

The impact of 'Gitxaała' and the Mineral Claims Consultation Framework

The most significant recent mining development has been the British Columbia litigation concerning mineral tenure. In the recent *Gitxaała* decision, the British Columbia Supreme Court concluded that the province's mineral claim registration process was inconsistent with the Crown's duty to consult because mineral claims could be acquired electronically without

any consultation with affected First Nations.

The province's response was the creation of the Mineral Claims Consultation Framework. Implemented in 2025, the framework replaces automatic registration with a consultation-based process that requires engagement with affected First Nations before mineral and placer claims are granted.

For the mining industry, the significance of the reform extends well beyond British Columbia. Mineral tenure systems across Canada were largely designed before modern consultation jurisprudence emerged. The decision signals that consultation obligations may arise much earlier in the development process than many governments and proponents historically assumed.

The case also illustrates how UNDRIP principles are increasingly influencing practical regulatory reforms rather than simply generating policy discussions.

The significance of 'Yahey'

Another important development is the *Yahey* decision involving Treaty 8 rights in northeastern British Columbia. Although the case arose primarily in the context of forestry, oil and gas, hydroelectric and infrastructure development, its broader significance lies in the court's focus on cumulative effects. Rather than examining projects individually, the court considered the combined impact of decades of industrial activity on the meaningful exercise of treaty rights.

For forestry and mining proponents, the lesson is clear: Governments and regulators are increasingly expected to consider projects within a broader regional context. Even relatively modest developments may be assessed against the backdrop of existing and anticipated industrial activity.

UNDRIP action plans

Implementation efforts continue through both provincial and federal action plans. British Columbia's Declaration Act Action Plan provides a framework for aligning provincial laws, policies and programs with UNDRIP principles. The province continues to publish progress reports and advance initiatives aimed at increasing Indigenous participation in decision-making.

At the federal level, Canada's Action Plan under the federal UNDRIP legislation identifies numerous measures intended to advance reconciliation, strengthen Indigenous participation in governance and improve cooperation between governments and Indigenous peoples.

For industry participants, these initiatives signal that UNDRIP implementation is becoming an increasingly important consideration in regulatory and project-planning processes.

Lessons for industry

The most important lesson for resource proponents is that Indigenous engagement can no longer be viewed as a regulatory requirement addressed near the end of the project approval process.

Successful projects increasingly depend on early relationship-building, transparent information-sharing and meaningful Indigenous participation throughout project planning, construction, operation and closure. Many of Canada's most successful resource developments now involve more than just impact benefit agreements; they include environmental monitoring partnerships, revenue-sharing arrangements, procurement opportunities and equity participation. These approaches often avoid litigation and delay and achieve long-term certainty and durable relationships.

At the end of the day, UNDRIP should be understood neither as an absolute veto nor as a symbolic statement of aspirations. It reflects an ongoing evolution in the relationship between Indigenous peoples, governments and resource developers.

For Canada's forestry and mining sectors, understanding that evolution is becoming an essential component of obtaining and maintaining the legal, regulatory and social licence required for successful resource development in the years ahead.

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