



Module 3 - Indigenous Rights

In this unit, you will learn about:

- The historic and modern Treaties.
- The Indigenous rights: section 35 of the *Constitution Act* (1982).
- The *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP).
- The Call to Action #92: Business and Reconciliation.

Funded by the Government of
Canada's Apprenticeship Service
Program

Canada

Module Overview

1. Treaties in Canada

- 📖 What Are Treaties?
 - ❓ Are Treaties still valid under Canadian jurisdiction?
 - ❓ What are Comprehensive Land Claim Agreements?
 - ❓ The Treaties form the basis of the relationship between the Crown and the First Nations Peoples.
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2. Understanding Indigenous Legal Rights

- 📖 What Are Indigenous Rights?
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The Indian Act is the primary law the Federal government uses to administer Indian Status, local First Nations governments and the management of reserve land. The Indian Act pertains to people with Indian Status, it does not directly reference:
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3. Reconciliation through Business

- 📖 Business Reconciliation for SMEs
-

4. UNDRIP

📖 What Is UNDRIP?

- ❓ For over a decade, Canada refused to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Why?
-

- What are your thoughts on Indigenous self-governance and its importance in today's society? What are some of the potential benefits and challenges of implementing Indigenous self-governance?
- ❓

Treaties in Canada

What Are Treaties?

The *British North America Act* (1867), now the *Constitution Act* (1867), created the Dominion of Canada and, by section 91(24), gave the Parliament of Canada exclusive jurisdiction over “*Indians, and Lands reserved for the Indians*”. In 1939, the Supreme Court decided that the term “*Indians*” in section 91(24) included the Inuit.

“Canada is a test case for a grand notion - the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences. The story of Canada is the story of many such peoples, trying and failing and trying again, to live together in peace and harmony.”



Highlights from the Report of the Royal Commission on Aboriginal Peoples

1996

What Are Treaties with Indigenous Peoples?

Treaties are agreements made between the Government of Canada, Indigenous groups and often provinces and territories that define ongoing rights and obligations on all sides.

These agreements set out continuing treaty rights and benefits for each group. Treaty rights and Aboriginal rights, commonly referred to as Indigenous rights, are recognized and affirmed in section 35 of the *Constitution Act (1982)* and are also a key part of the *United Nations Declaration on the Rights of Indigenous Peoples* which the Government of Canada has committed to adopt.

Treaties with Indigenous peoples include both:

- Historic treaties with First Nations.
- Modern treaties, also called **comprehensive land claim agreements** with Indigenous groups.

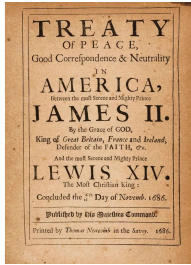
Starting in 1701, the British Crown entered into treaties with Indigenous groups in the British colonies of North America, which would later become parts of Canada. The treaties supported peaceful economic and military relations. The Crown is the legal name for the British and later Canadian federal, provincial and territorial governments.

Over the next 200 years, the Crown signed treaties that defined the respective rights of Indigenous peoples and European newcomers to use the North American lands that Indigenous peoples traditionally occupied. The historic treaties signed after 1763 provided large areas of land, occupied by First Nations, to the Crown, transferring their Indigenous title to the Crown in exchange for reserve lands and other benefits.

The treaty-making process was formally established by the Royal Proclamation of 1763.

The Government of Canada recognizes 70 historic treaties in Canada signed between 1701 and 1923.

✓ 1701-1760



Treaties of Peace and Neutrality

During the British-French struggle for control of North America, their existing commercial partnerships with First Nations evolved into crucial military alliances. This resulted in much needed

support for both sides and the formation of early treaties, such as the Albany Deed in 1701. Following the conclusion of the Seven Years' War, British military commanders established two treaties in 1760. The Treaty of Swegatchy was formed with the primary group of French Aboriginal allies, while the Huron-British Treaty was signed with the Huron-Wendat of Lorette. These treaties initiated a neutral period for France's former Aboriginal allies. In return, they were granted continued access to traditional territories for the Algonquins, protection for First Nation village sites, the right to trade with the British, and the preservation of traditional practices for the Huron.

✓ 1725-1779



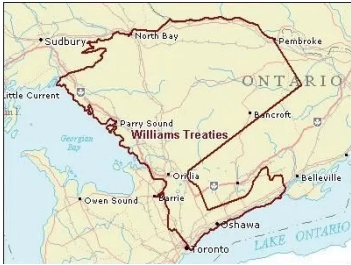
Peace and Friendship Treaties

From 1725 to 1779, the British authorities in Nova Scotia engaged in a series of treaty signings with the Mi'kmaq, Maliseet, and

Passamaquoddy tribes of the Maritimes

region. These tribes had been long-standing allies of France in Acadia for more than a century. As allies, the Mi'kmaq, Maliseet, and Passamaquoddy were frequently mobilized and fought against the British military and colonists during the various conflicts between France and Great Britain.

✓ 1764-1862/1923



Upper Canada Land Surrenders and the Williams Treaties

Between 1764 and 1862, agents of the Indian Department and Indigenous peoples negotiated over 30 land

cessions in the Great Lakes region. These land surrenders, typically involving one-time cash payments with limited ongoing obligations, facilitated the development of southern and eastern Ontario.

In 1916, a joint Commission of inquiry established by Ontario and Canada recommended the negotiation of a new treaty in the area spanning from Georgian Bay to the Ottawa River, Lake Simcoe, and the lands west of the Bay of Quinte. The resulting 1923 Williams Treaties, named after the head of the Royal Commission, entailed the transfer of all lands in the region to the Crown in exchange for a fixed one-time cash payment.

✓ 1850-1854



Robinson Treaties and Douglas Treaties

In 1850, William Robinson entered into negotiations with the Aboriginal inhabitants, primarily Ojibwa, of the northern Great Lakes region. Two treaties were established as a result:

one for the north shore of Lake Superior (Robinson-Superior Treaty) and another for the Lake Huron and Georgian Bay areas (Robinson-Huron Treaty). These treaties differed significantly from those negotiated in the southern part of the province, as they guaranteed the creation of reserves, annuities, and the continued rights of hunting and fishing on unoccupied lands. In the same year, James Douglas commenced negotiations for the first of fourteen treaties with specific Island First Nations. These treaties were concluded between 1850 and 1854 and involved the surrender of lands near Hudson Bay Company posts and in Victoria. In exchange, the Indigenous peoples were granted the ongoing rights to hunt and fish, the establishment of reserve lands, and a one-time payment.

✓ **1871-1921**



The Numbered Treaties

Following the acquisition of the Rupert's Land charter from the Hudson's Bay Company in 1869 and the establishment of the Province of Manitoba in 1870, the Dominion of Canada initiated a series of treaty negotiations between 1871 and 1921 with the objective of securing Aboriginal title in the Northwest. These treaties, modeled after the 1850 Robinson Treaties, encompassed 11 agreements that covered the Prairie region, northern Ontario, and the Peace River and Mackenzie River valleys.

Known as the Numbered Treaties, these agreements played a significant role in facilitating the expansion of agriculture and settlement across the Canadian Prairies, as well as the construction of the transcontinental railway. Furthermore, they served to assert Canadian sovereignty throughout the Northwest Territories. The Numbered Treaties are a crucial component of Canada's history and have had a lasting impact on the development and growth of the country.

Source: Government of Canada, "Summaries of Pre-1975 Treaties": <https://www.rcaanc-cirnac.gc.ca/eng/1370362690208/1544619449449>

These treaties form the basis of the relationship between the Crown and 364 First Nations, representing over 600,000 First Nations peoples in Canada.

Canada and First Nations often have differing views with respect to the implementation of historic treaties. These issues are complex and are not easily resolved.

Are Treaties still valid under Canadian jurisdiction?

Yes.

No.

What are Comprehensive Land Claim Agreements?

Historic Treaties.

Modern Treaties.

The Treaties form the basis of the relationship between the Crown and the First Nations Peoples.

True.

False.

Understanding Indigenous Legal Rights

What Are Indigenous Rights?

Indigenous rights, also referred to as Aboriginal rights, are collective rights of distinctive Indigenous societies flowing from their status as the original peoples of Canada. These rights are recognized and affirmed by **Section 35** of the *Constitution Act* (1982).

The Constitution does not define Indigenous rights under section 35, but they can include:

- Indigenous title or ownership rights to land.
- Rights to occupy and use lands and resources, such as hunting and fishing rights.
- Self-government rights.
- Cultural and Social rights.

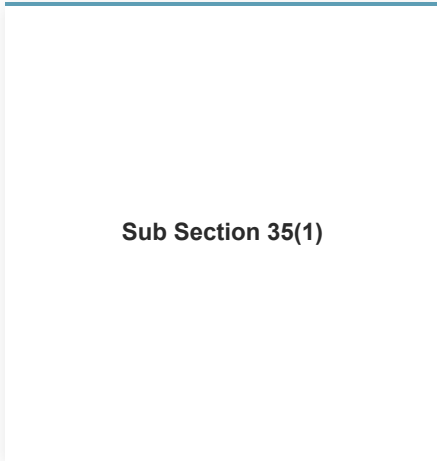
Indigenous rights under section 35 vary from group to group depending on the customs, practices and traditions that have formed part of their distinctive cultures.

The Government of Canada has a **duty to consult**, and where appropriate, accommodate Indigenous groups when it considers conduct that might adversely impact potential or established Aboriginal or treaty rights.

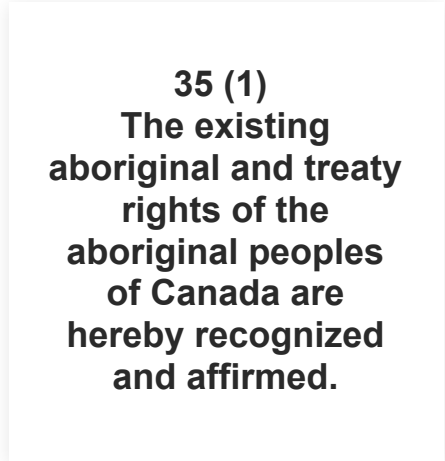
Section 35 of the *Constitution Act* (1982)

Flipcard 1

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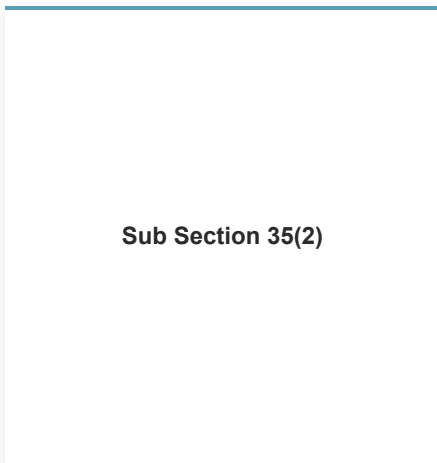


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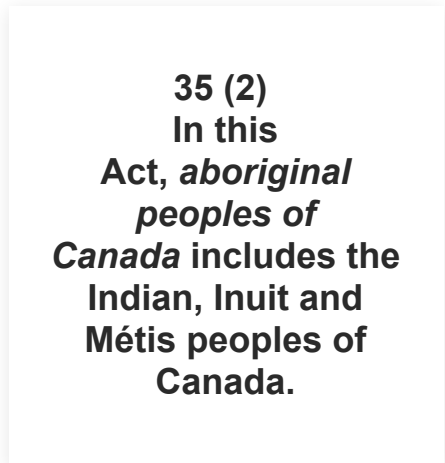


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Flipcard 3

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Sub Section 35(3)

Back

35 (3)
For greater certainty, in subsection (1) *treaty rights* includes rights that now exist by way of Land Claim Agreements or may be so acquired.

Flipcard 4

Front

Sub Section 35(4)

Back

35 (4)
Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. [1]

What Are Treaty Rights?

Treaty rights are rights set out in either a historic or modern treaty agreement. These rights are recognized and affirmed by section 35 of the *Constitution Act* (1982).

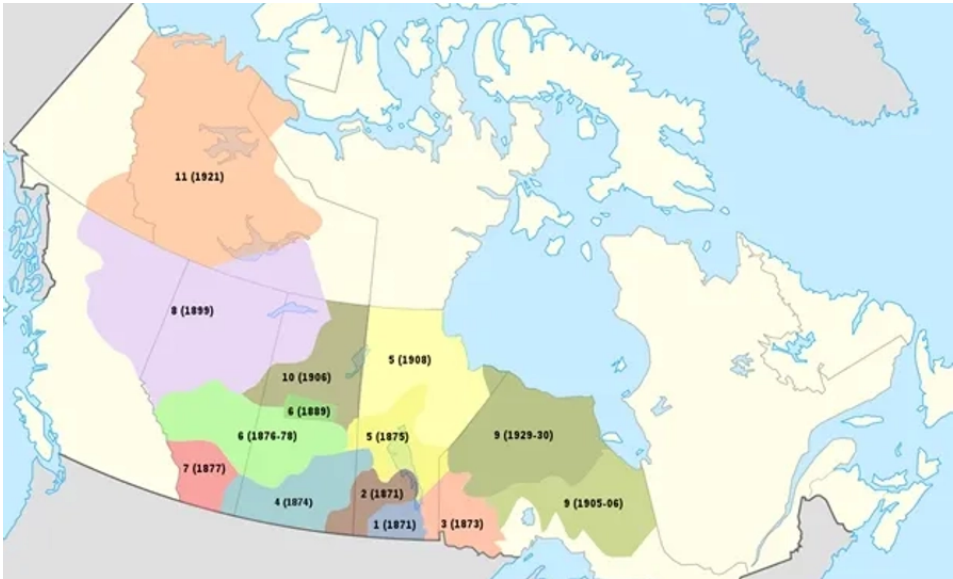
Treaties define specific rights, benefits and obligations for the signatories that vary from treaty to treaty. Treaties and treaty rights also vary depending on the time and circumstances in which they were negotiated.

For example, in historic treaties, signed before 1975, treaty rights and benefits often, but not always, include:

- Land to be set aside for First Nations use only, known as **reserves**.
- Money to be paid to a First Nation every year, known as **annuities**.
- **Hunting and fishing rights** on unoccupied Crown land.
- **Schools** and teachers on reserves are to be paid for by the government.
- **One-time benefits**, such as farm equipment and animals, ammunition and clothing.

Modern treaties negotiated with Indigenous groups after 1975, can include, among other things:

- Consultation and participation requirements.
- Ownership of lands.
- Wildlife harvesting rights.
- Financial settlements.
- Participation in land use and management in specific areas.
- Self-government.
- Resource revenue sharing and measures to participate in the Canadian economy.
- Preparations for when the agreement takes effect, such as implementation and planning.



Treaty Interpretation

The Canadians (British) and the First Nations were at the same meetings, listened to the same speeches (translated) and signed the same pieces of paper. Yet they had (and still have) two totally different concepts of what the treaties were about, and what each side was promising. The differences in understanding are rooted in two totally different worldviews, and two totally different concepts of land ownership and colliding purposes.

Indian Act

First Nation citizens who are governed under the Indian Act and reside on reserve fall under federal jurisdiction for healthcare, education and many forms of social provisions that are for the rest of the population a matter of provincial responsibility. Their reserve lands and collective wealth are under federal control, managed “in trust”—unless they have taken advantage of certain federal programs that provide for a degree of independent economic management and funding arrangements. Despite the dominant role of the federal government, **Section 88 of the Indian Act** provides that provincial laws of general application apply to individuals who are governed under the Indian Act.

Métis have never been subject to the Indian Act. For health, education and social provisions they are served in similar fashion to the general population, though there are now many federal programs (in employment and business development for example) for which they are eligible as Indigenous people.

The British Crown and the Signatory First Nations of Historic Treaties...

Answer options for numbered inputs below:

① a) *the same*

b) *a different*

had 1: ___ understanding of land ownership.

The Indian Act is the primary law the Federal government uses to administer Indian Status, local First Nations governments and the management of reserve land. The Indian Act pertains to people with Indian Status, it does not directly reference:

- Non-Status First Nations Peoples.
- The Métis.
- The Inuit.
- All of the above.
- Métis and Inuit.

End of Section 2

Reconciliation through Business

Business Reconciliation for SMEs

Even entrepreneurs or small and medium-sized enterprises (SMEs) have a role to play in business reconciliation. Your day-to-day operations likely will not require a duty to consult process or consultation with a community, but there are many ways to support the Indigenous economy.

Actions that could advance business reconciliation include the following, non-exhaustive list below. Make sure to click on each checkbox as you proceed with your reading.

Inclusive Leadership Actions

- Develop a cultural learning model for you and your business to ensure that everyone is on the same page in an ever-evolving learning process. This could involve hiring a consultant, attending a talk or event, participating in a Kairos Blanket Exercise, or contacting a local Indigenous organization with a program suited to your organization
- Conduct an internal review of business practices and policies to ensure support for minority and Indigenous owned businesses. CCAB's Progressive Aboriginal Relations (PAR) program can be useful for laying the groundwork for achieving your Indigenous relations goals and confirming your corporate performance in Aboriginal relations.
- Become a member of an Indigenous business association. While CCAB is the largest and only national Aboriginal business group, there are many regional organizations that are excellent at making connections between non-Indigenous and Indigenous companies.

Business Development

- Build business-to-business relationships by contacting local chambers of commerce and Indigenous-led organizations. These organizations will know many of the businesses operating in your local area. The Canadian Council for

Aboriginal Business (CCAB) houses the largest directory of Indigenous businesses in Canada with over 10,000 firms. Since Indigenous businesses offer services in all areas of business, there is capacity to work with Indigenous printers, caterers, contractors, security, designers, consultants, etc. to help grow your business.

- Attend networking events.



Procurement

- Use Indigenous-sourced products. Stock them in your store, use them in your office, or display a local artist's work in your workspace. Purchasing authentic goods and services from Indigenous businesses promotes Indigenous knowledge and values.
- Promote Indigenous businesses to your staff, business partners or customers. This is a proven method of building an Indigenous presence in your local economy.



Community Relationships

- Take part in community activities such as Indigenous-run events, or even donate your own time, resources, or volunteer support for cultural activities. Beyond improving community wellness, this can create potential networking and business opportunities.
- Hire Indigenous staff. Reach out to community offices, economic development corporations or other Indigenous organizations with your job postings.
- Offer on-the-job training or mentorship to help youth or new employees to succeed. Government grants may subsidize Indigenous hires that benefit your company's bottom line and the Indigenous employee.



Canadian Council for Aboriginal Business' Guidebook

The "Business Reconciliation in Canada" [Guidebook](#) released by the Canadian Council for Aboriginal Business (CCAB) is a resource that provides guidance to businesses on how to advance reconciliation efforts with Indigenous peoples in Canada. The guidebook aims to help businesses understand the importance of Indigenous inclusion and the economic opportunities that can arise from building meaningful relationships with Indigenous communities. It covers topics such as the history and context of reconciliation, understanding Indigenous cultures and

perspectives, engaging with Indigenous communities, implementing successful Indigenous procurement strategies, and promoting Indigenous employment and entrepreneurship. The guidebook serves as a practical tool for businesses looking to incorporate reconciliation principles into their operations and contribute to Indigenous economic development.



Partner with Indigenous Businesses

[Visit page](#)

There is often confusion around the relationship between Indigenous Peoples and the rest of Canada. In the business context, many view an Indigenous partnership to be no different than partnering with any other group that makes up the multicultural fabric of Canada.

As the First Peoples of Canada, Indigenous Peoples have long played a key role in the history of commerce in Canada. While the economic contributions of Indigenous people have been immense, it cannot be denied that full participation in the Canadian economy was prevented due to the colonial history in Canada and legal restrictions provided by the Indian Act.

The Indigenous private economy alone contributes roughly \$12 billion annually, and these numbers only continue to increase. The Indigenous population is also younger and growing faster than Canada's population as a whole—thus, questions of skills, labour and innovation are of key importance to both Indigenous communities and the Canadian economy. Impressive gains are being made in the areas of entrepreneurship and individual economic achievement. Indigenous peoples are creating new businesses at nine times the Canadian average. The **Indigenous business community is over 50,000 strong** and an estimated 12 per cent of those are large community-owned firms. In 2016, approximately 5 per cent of the Canadian population identified as Indigenous. Between 2006 and 2011, there was a 21 per cent increase in the number of Indigenous workers and 38 per cent of the Indigenous population has some type of post-secondary accreditation.

Ensuring Indigenous people play a meaningful and substantial role in the economy is the most relevant and impactful way forward for economic and business reconciliation in Canada.

The **Seventh Generation Principle**, based on the Haudesonee (Iroquois) oral tradition, encourages us to make choices that enable us to meet the needs of the present generation without compromising the quality of life and health of local ecosystems seven generations into the future. This principle guides modern “green” initiatives and informs the current social and political notions of sustainability. Non-Indigenous industry should apply itself to working with communities in ways that meet existing needs while ensuring that resources are available for future generations. This requires a holistic approach co-created by the corporate actor and the community of interest.

1. **The Business Case for Business Reconciliation.**

The Indigenous economy contributes over \$30 billion annually to the Canadian economy and includes more than 50,000 Indigenous firms across Canada. Indigenous businesses have expanded rapidly in recent years, tripling in number from 20,195 in 1996 to 62,330

in 2016. The rapid growth of the Indigenous economy aligns with demographic trends of Indigenous Peoples, with this population growing at a rate four times faster than the non-Indigenous population in Canada—having grown by 42.5 per cent since 2006.

Considering these trends, there is considerable pressure on non-Indigenous partners to strengthen their Indigenous engagement efforts to ensure the continued prosperity of future generations.

2. The Corporate Social Responsibility (CSR) Case for Business Reconciliation.

By demonstrating a genuine commitment to business reconciliation, your company can address the widening socio-economic gap between Indigenous and non-Indigenous Peoples. The ethical values of your CSR strategy will filter down to internal and external stakeholders, addressing community challenges, educating staff and distinguishing your company as a thought leader. CSR initiatives can ensure that your company is adapting to changes in government policy and local and national culture.

A commitment to business reconciliation provides opportunities for new partnerships including hiring Indigenous staff.



92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
- ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
- iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

End of Section 3

UNDRIP

What Is UNDRIP?

The United Nations Declaration on the Rights of Indigenous Peoples is about the respect and recognition of the human rights of Indigenous Peoples.

On June 21, 2021, the ***United Nations Declaration on the Rights of Indigenous Peoples Act*** received Royal Assent and came into force. This Act provides a roadmap for the Government of Canada and First Nations, Inuit and Métis Peoples to work together to implement the UN Declaration based on lasting reconciliation, healing, and cooperative relations.

The implementation of the Action Plan and of the UN Declaration will contribute to the Government of Canada's continued efforts to break down barriers, combat systemic racism and discrimination, close socio-economic gaps, and promote greater equality and prosperity for Indigenous Peoples.

Click on each checkbox as you read along.



Timeline

The United Nations Declaration on the Rights of Indigenous Peoples is the result of almost 25 years of collaboration between UN member states and Indigenous Peoples from around the world. Indigenous leaders from Canada played a significant role in its development, including drafting and negotiating.

- 2007 - The United Nations General Assembly adopts the United Nations Declaration on the Rights of Indigenous Peoples. Canada votes against the UN General Assembly resolution.
- 2010 - Canada endorses the Declaration fully consistent with Canada's Constitution and laws.
- 2015 - The Truth and Reconciliation Commission calls on all levels of governments to adopt the Declaration as the framework for reconciliation.

- 2016 - Canada fully endorses the Declaration and commits to its implementation. Canada and Indigenous groups begin discussions to explore new ways to advance the recognition of Indigenous rights and self-determination based on community priorities
- 2021 - The Government of Canada releases its component of the National Action Plan, the *Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People*, by addressing the complexity and interrelated nature of the causes of violence.
- 2021 - The United Nations Declaration on the Rights of Indigenous Peoples Act receives Royal Assent and comes into force.



UNDRIP Implementation

On June 21, 2021, Bill C-15, or *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (the UNDRIP Act), became law in Canada.

The *UNDRIP Act* states the Government of Canada must take every measure necessary to ensure laws in Canada are consistent with UNDRIP through the preparation and implementation of an action plan.

While NWAC believes the *UNDRIP Act* represents an important step toward reconciliation and recognizing the rights of Indigenous Peoples in Canada, we also believe it is of critical importance that Indigenous women, youth, Two-Spirit, transgender, and gender-diverse people are equally and thoroughly engaged throughout the consultation process for the implementation, and creation, of a UNDRIP action plan.

Embedded Document



DOWNLOAD FILE

<https://nwac.ca/assets-knowledge-centre/NWAC-UNDRIP-Final-Report-English.pdf>



Indigenous Women

Indigenous women face a greater burden of racism and sexism compared to non-Indigenous women. Their physical health and safety are compromised by the increasing presence of extractive development in or around their communities. This is particularly concerning because Canadian governments and law enforcement have acknowledged that Indigenous women and girls experience more frequent and severe violence than others. The risk to Indigenous women and girls is heightened by the large number of men who come to the region to work in extractive industries. These men, empowered by their economic status, openly express racist and sexist attitudes that they may suppress in other contexts. They use stereotypes to justify harassment and violence against Indigenous women and girls, portraying them as "drunk, easy, and asking for it." The requirement to address the violence experienced by Indigenous women is urgent, as resource development creates a dangerous environment for them. Therefore, if Canada is committed to implementing UNDRIP, it must consider how extractive industry development negatively impacts the health and safety of Indigenous women and girls.



Why Understanding Indigenous History Is Important?

The phrase, "we are all treaty people" is an effective way of expressing the legal obligations that all Canadians have to uphold the terms of the treaties. And in order to ensure that they are not breaking the contract, Canadians must educate themselves about the obligations and responsibilities they have to Indigenous nations and to the land.

A common view among Canadians is that treaties only benefit Indigenous people. Many see the Indigenous rights secured through treaty making as privileges unfairly withheld from non-Indigenous Canadians. The truth is, it is because of treaty making that Canadians are able to enjoy the benefits of living on this continent. Without treaties, Canadians would be illegally occupying this land.

Treaties in Canada - Historica Canada



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<https://media.easygenerator.com/api/media/document/ff06064f-01b7-4b5d-abc5-c24ea96b1df0/external-preview>



By “spirit and intent,” I am referring to the First Nations understanding of the Treaties, and respecting and recognizing that perspective. It’s time for change. Now is our time. First Nations are pushing and pursuing every opportunity for cooperation. We know there are ways we can work together that benefit all and honour the promise we made to one another. First Nations want to be full partners in designing a collective future—for our communities and the country as a whole.”



Shawn Atleo

Former AFN Chief

For over a decade, Canada refused to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Why?

- The Harper government supported the declaration in principle but took issue with its provisions around land claims and the duty to consult.
- The Supreme Court of Canada had already said that governments must consult Indigenous groups prior to making decisions that might impact their life.
- Existing international human rights instruments already applied to Indigenous Peoples.
- Canada expressed concerns that the protections would contradict national laws. It requires the federal government to ensure Canadian laws are consistent with the Declaration. It also requires the government to prepare and implement an action plan to achieve its objectives within two years.
- All of the above.

What are your thoughts on Indigenous self-governance and its importance in today's society? What are some of the potential benefits and challenges of implementing Indigenous self-governance?

You have reached the end of the Module