



# UNDRIP Implementation in BC

BCCAT Annual Conference

–November 6, 2024–

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\* Note the opinions and views  
expressed are my own and  
not that of the Province of BC

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# Declaration on the Rights of Indigenous Peoples Act

Royal Assent: November 28, 2019



Hon. Scott Fraser

Minister of Indigenous Relations and Reconciliation

# Framework for Implementing UNDRIP in BC

*Bill-41 (2019): Declaration on the Rights of  
Indigenous Peoples Act*

## Bill-41 (2019)

# *Declaration on the Rights of Indigenous Peoples Act*

Requires the Province to do the following,  
**in consultation and cooperation** with  
Indigenous peoples:



Align **provincial laws** with the UN  
Declaration



Establish an **Action Plan** to meet  
objectives of UN Declaration



Produce an **Annual Report** on progress

# Interim Approach

October 2022

INTERIM APPROACH TO IMPLEMENTING  
THE REQUIREMENTS OF SECTION 3 OF THE

## Declaration on the Rights of Indigenous Peoples Act

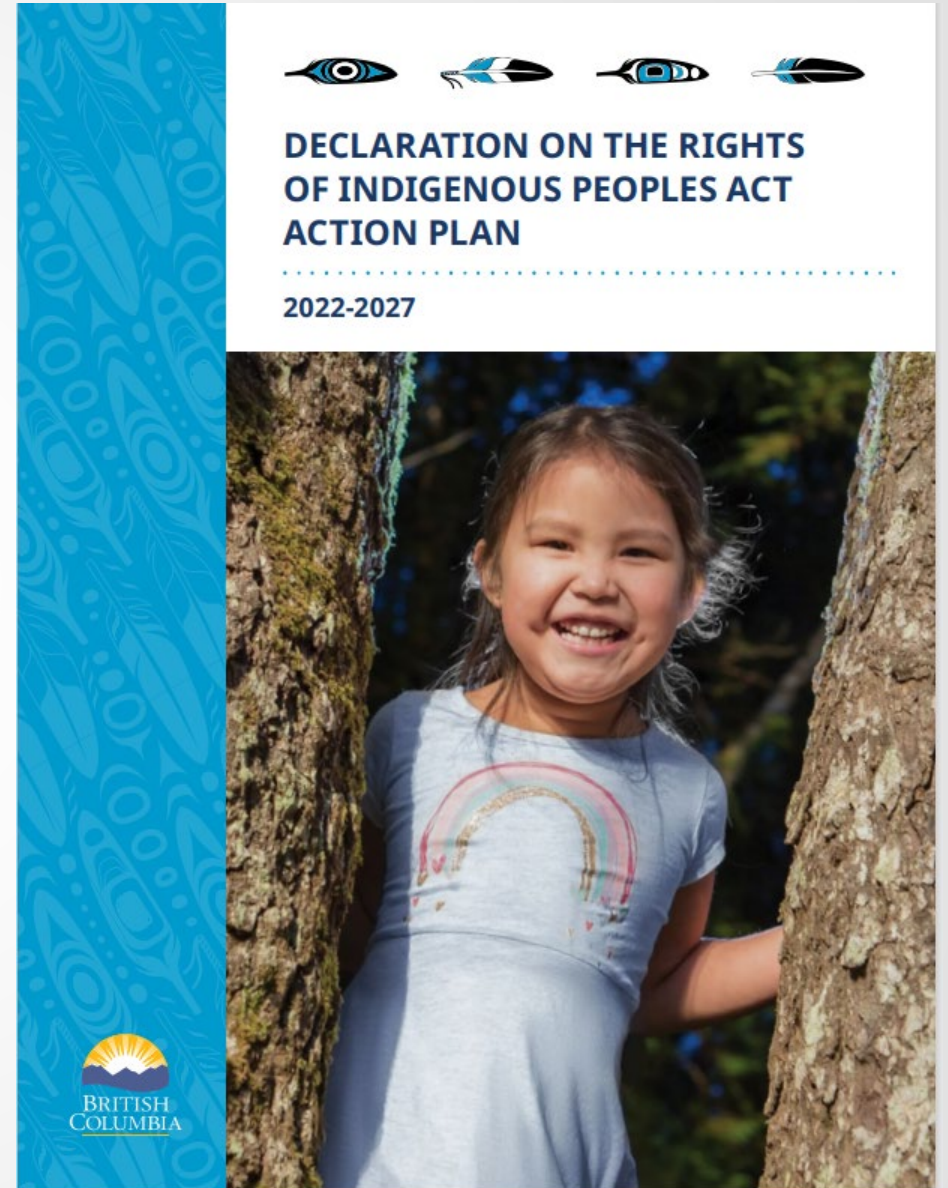
*Prepared by the Declaration Act Secretariat*



BRITISH  
COLUMBIA

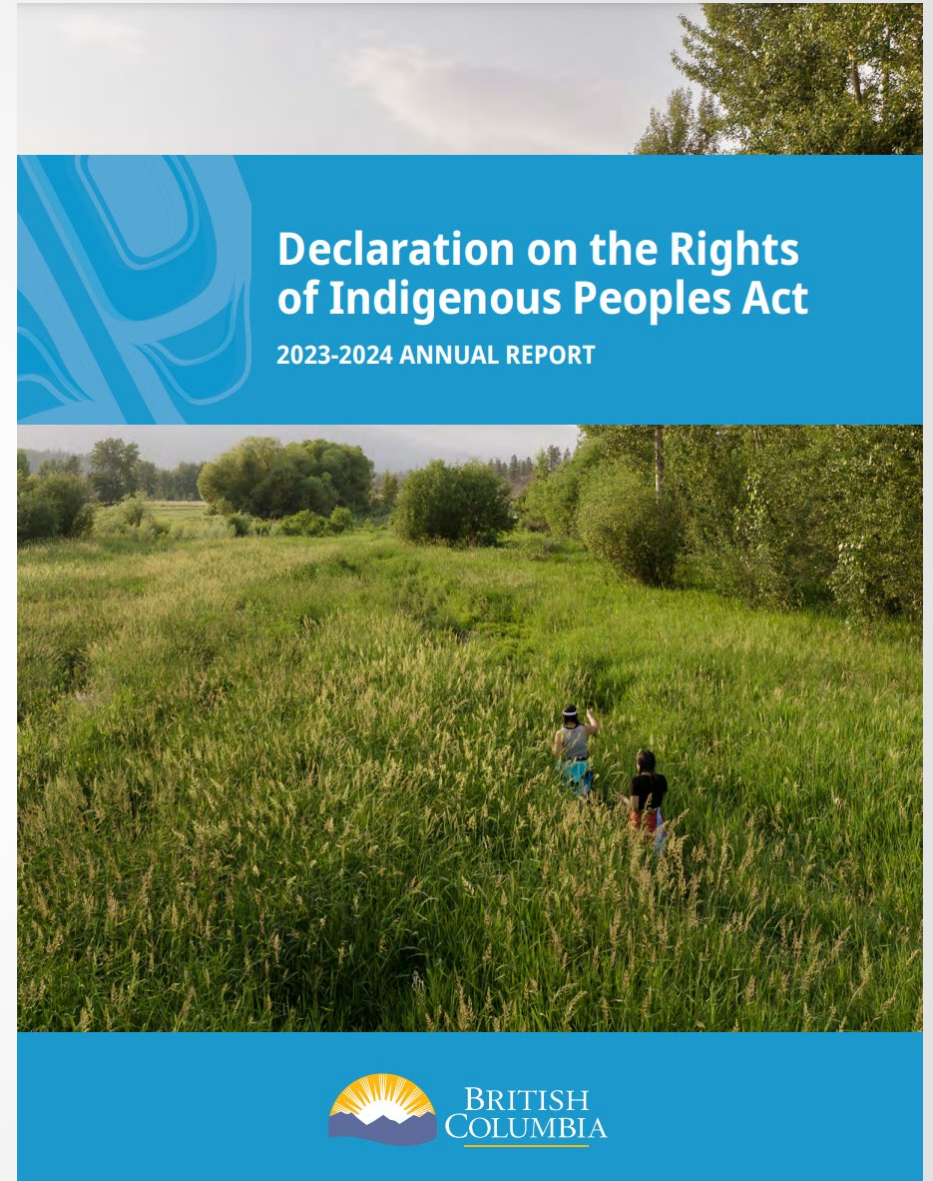
# Declaration Act Action Plan

March 2022



# *Declaration Act Annual Reports*

Every year by June 30



Bill 29 - 2021

# Interpretation Amendment Act, 2021

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 *The Interpretation Act, R.S.B.C. 1996, c. 238, is amended by adding the following section:*

## **Section 35 of *Constitution Act, 1982* and Declaration**

**8.1** (1) In this section:

"**Declaration**" has the same meaning as in the [\*Declaration on the Rights of Indigenous Peoples Act\*](#);

"**Indigenous peoples**" has the same meaning as in the [\*Declaration on the Rights of Indigenous Peoples Act\*](#);

"**regulation**" has the same meaning as in the [\*Regulations Act\*](#).

(2) For certainty, every enactment must be construed as upholding and not abrogating or derogating from the aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section 35 of the [\*Constitution Act, 1982\*](#).

**(3) Every Act and regulation must be construed as being consistent with the Declaration.**

### Commencement

2 This Act comes into force on the date of Royal Assent.



# *Kits Point Residents Association v Vancouver (City), 2023 BCSC 1706*

*Vancouver Charter*

## **General rule that meetings must be open to the public**

**165.1** (1)A meeting of the Council must be open to the public, except as provided in sections 165.2 to 165.8.  
(2)The Council must not vote on the reading or adoption of a by-law when its meeting is closed to the public.

## **Meetings that may or must be closed to the public**

**165.2** (1)A part of a Council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:

(e)the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure could reasonably be expected to harm the interests of the city;

...

(k)negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the **interests of the city** if they were held in public;

# *Kits Point Residents Association v Vancouver (City)*, 2023 BCSC 1706

[171] *UNDRIP* emphasizes the importance of Indigenous self-government, including the right of Indigenous peoples to:

- a) self-determination, including the right to “freely pursue their economic, social and cultural development” (Article 3);
- b) “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 4);
- c) “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” (Article 5);
- d) “determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in development and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions” (Article 23).

[172] In light of this statutory “overlay”, the relevant statutory provisions of the *Vancouver Charter* must be construed in a manner that upholds the rights of Indigenous peoples and in a manner that is consistent with *UNDRIP: Gitxaala* at para. 418.

# *Kits Point Residents Association v Vancouver (City)*, 2023 BCSC 1706

## *Was the City's interpretation of "the interests of the city" reasonable?*

[182] I disagree with the submission of the petitioners that the "interests of the city" equates only to the interests of the Vancouver residents in their communities. While I acknowledge the Development will undoubtedly affect the interests of many Vancouver and Kits Point residents, I do not accept such a narrow and limited definition of the term as it is used in s. 165.2(1)(k). Such a definition ignores the interests of the City itself, and also those of the Nation. It is my view, that "the interests of the city" encompass a variety of considerations including the reputation of the City, fiscal issues, and the consideration to be given to a wide variety of stakeholders, including the relationship between the City and the Nation. When consideration is given to the City's interests in its relationship with the Nation, it was incumbent on the City to recognize the historical and legal context of the Development, and an interpretation of the *Vancouver Charter* consistent with *UNDRIP* and the *DRIPA* legislation. Given this context and the unique circumstances of this Development, the City's approach was to recognize its jurisdictional limitations, and to choose not to use the negotiations for the Services Agreement as a leverage to change the Development. In my view this was a reasonable approach within the meaning of the "interests of the city".

## When do UNDRIP standards apply?

# Report of Special Rapporteur James Anaya (2009)



**General Assembly**

Distr.  
GENERAL

A/HRC/12/34  
15 July 2009

Original: ENGLISH

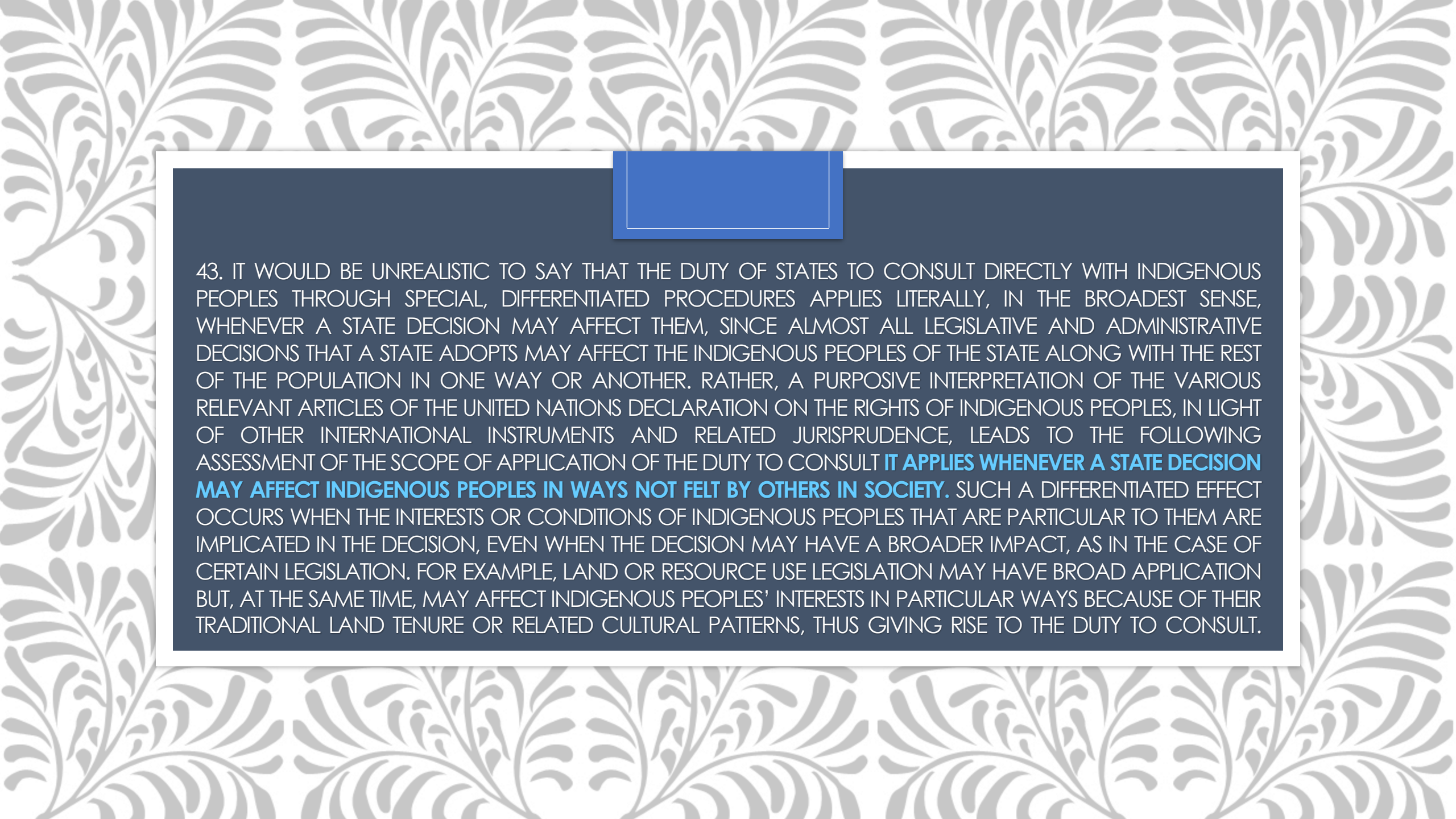
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HUMAN RIGHTS COUNCIL  
67th session  
agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

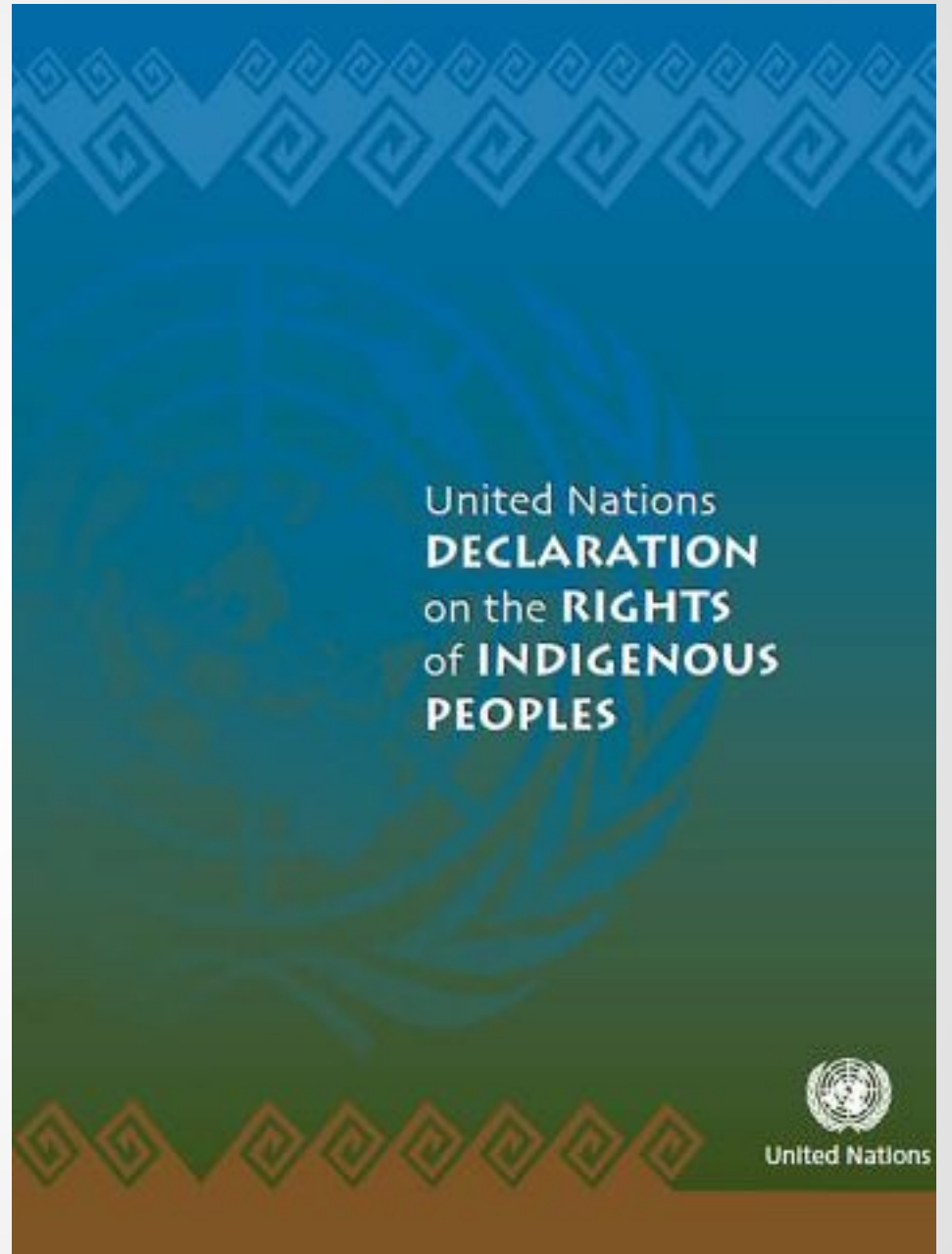
**Report of the Special Rapporteur on the situation of human rights  
and fundamental freedoms of indigenous people, James Anaya\***





43. IT WOULD BE UNREALISTIC TO SAY THAT THE DUTY OF STATES TO CONSULT DIRECTLY WITH INDIGENOUS PEOPLES THROUGH SPECIAL, DIFFERENTIATED PROCEDURES APPLIES LITERALLY, IN THE BROADEST SENSE, WHENEVER A STATE DECISION MAY AFFECT THEM, SINCE ALMOST ALL LEGISLATIVE AND ADMINISTRATIVE DECISIONS THAT A STATE ADOPTS MAY AFFECT THE INDIGENOUS PEOPLES OF THE STATE ALONG WITH THE REST OF THE POPULATION IN ONE WAY OR ANOTHER. RATHER, A PURPOSIVE INTERPRETATION OF THE VARIOUS RELEVANT ARTICLES OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, IN LIGHT OF OTHER INTERNATIONAL INSTRUMENTS AND RELATED JURISPRUDENCE, LEADS TO THE FOLLOWING ASSESSMENT OF THE SCOPE OF APPLICATION OF THE DUTY TO CONSULT **IT APPLIES WHENEVER A STATE DECISION MAY AFFECT INDIGENOUS PEOPLES IN WAYS NOT FELT BY OTHERS IN SOCIETY.** SUCH A DIFFERENTIATED EFFECT OCCURS WHEN THE INTERESTS OR CONDITIONS OF INDIGENOUS PEOPLES THAT ARE PARTICULAR TO THEM ARE IMPLICATED IN THE DECISION, EVEN WHEN THE DECISION MAY HAVE A BROADER IMPACT, AS IN THE CASE OF CERTAIN LEGISLATION. FOR EXAMPLE, LAND OR RESOURCE USE LEGISLATION MAY HAVE BROAD APPLICATION BUT, AT THE SAME TIME, MAY AFFECT INDIGENOUS PEOPLES' INTERESTS IN PARTICULAR WAYS BECAUSE OF THEIR TRADITIONAL LAND TENURE OR RELATED CULTURAL PATTERNS, THUS GIVING RISE TO THE DUTY TO CONSULT.

# United Nations Declaration



# BRITISH COLUMBIA FIRST NATIONS JUSTICE COUNCIL

JUSTICE THROUGH SELF-DETERMINATION



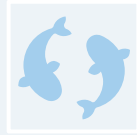
# BC First Nations Justice Strategy

Two Paths	Relevant Strategies
<ul style="list-style-type: none"><li data-bbox="504 575 1403 806">➤ <b>Track One:</b> Reformation of the current justice system</li><li data-bbox="504 849 1403 1080">➤ <b>Track Two:</b> Restoration of First Nations Legal Traditions &amp; Structures</li></ul>	<ul style="list-style-type: none"><li data-bbox="1465 575 2339 806">➤ <b>Strategy 2:</b> Advancing First Nations Self-determination</li><li data-bbox="1465 849 2339 1158">➤ <b>Strategy 8:</b> Aligning Legislation in the Justice Sector with the UN Declaration</li></ul>



# The Importance of Implementing Indigenous Perspectives.

## How to Become Informed:



More Indigenous Decision-makers



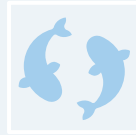
Hiring Indigenous Consultants



Establish an Advisory Committee

What additional opportunities are there for advancing reconciliation & the rights of Indigenous people?

# Advancing Reconciliation



Self-determination & Self-governance



Upholding Indigenous Perspectives



Making Resources Available & More Flexible



Elders Education  
 Health Lands Media  
 Territories Employment  
 Human rights  
 Cultural heritage Water  
 Self-government  
 Children



A young girl with long hair, wearing a colorful striped shirt, is climbing a tree in a forest. The scene is captured from a low angle, looking up at the tree trunk and the girl. The background is filled with green foliage and tall trees. The word "QUESTIONS?" is overlaid in white text on the image.

QUESTIONS?