



THE UNIVERSITY OF BRITISH COLUMBIA



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HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Panelist	Ms. Kasari Govender
Panel	Panel 6: The role of human rights institutions
Time	13.30 – 14.45
Date	Friday 24 February 2023
Location	Robert H. Lee Alumni Centre University of British Columbia 6163 University Blvd Vancouver, BC

Speaking notes

BC's Human Rights Commissioner

- Thank you for the opportunity to be here with you all today. I'm honoured to have been invited to participate in this conversation about monitoring the implementation of the UN Declaration on the Rights of Indigenous Peoples.
- Before I continue, I want to acknowledge that I am calling in from Vancouver, Canada, on the unceded and traditional homelands of the Coast Salish peoples, including the Musqueam, Squamish and Tsleil'Waututh Nations. And I want to ground my comments in my gratitude to the Coast Salish peoples who have cared for these lands and waters for generations. This gratitude comes with a responsibility to dismantle colonialism in both large and small ways, which we are reminded of regularly through our work at BC's Office of the Human Rights Commissioner, and which has been central to our approach to human rights oversight in the province of British Columbia.

Background

- My office is still fairly new. We officially opened in September 2019, when I began my appointment as BC's first fully independent human rights commissioner. In October 2019, the province passed the Declaration on the Rights of Indigenous Peoples Act (or, the Declaration Act for short). The Declaration Act mandates government to bring provincial laws into alignment with the UN Declaration and develop and implement an action plan to achieve the objectives of the UN Declaration in consultation and cooperation with Indigenous Peoples.
- Minister Fraser of BC's Ministry of Indigenous Relations and Reconciliation said in the legislature when the bill was introduced:

o "Through this legislation, we are recognizing the human rights of Indigenous peoples in law... this is no ordinary bill and our proceedings today are certainly extraordinary ... we believe that implementing the UN Declaration on the rights of Indigenous peoples [sic] will help us continue to build a stronger British Columbia that includes everyone. This is about ending discrimination, upholding human rights and ensuring more economic justice and fairness. We are at an important moment in history. This new law is a critical step towards true and lasting reconciliation."



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- Reflecting the joint drafting of Bill 41, Indigenous leaders attended the “extraordinary” proceedings when it received Royal Assent, and Cheryl Casimer of the First Nations Summit noted:

o “Our shared commitment to implement the UN declaration calls for a transformative change in the government’s relationship with Indigenous peoples. This law is a key step to that transformation. The shift to a human rights foundation and approach to reconciliation will foster greater understanding and more harmonious relations among Indigenous peoples and other British Columbians. It will support a new modernized relationship.”

- Flowing from this legislative enactment, the government has set up a secretariat, tasked with assisting across government to ensure provincial laws align with the UNDRIP. They recently produced interim guidance on how to go about aligning laws, noting that one of the purposes of the Declaration Act is to Affirm the application of the UN Declaration to the laws of B.C.
- However, on the litigation side, the government is pursuing a litigation strategy based on the premise that the Declaration Act does not give independent legal force to the articles of UN Declaration, but rather merely put into place a process for the evolution of law over time.
- They are making this argument in the context of the joined *Gitxaala Nation v. Chief Gold Commissioner of B.C. et al.* and *Ehattesaht First Nation v. His Majesty the King in right of B.C. et al.* cases.
- Both cases, to be heard before B.C.’s Supreme Court, are seeking a judicial review of the Mineral Tenure Act and the process used by the provincial government to grant mineral claims on the territories of First Nations. Currently, these are granted without consultations with the respective First Nations. Both First Nations are arguing that the Declaration Act provides a legal right for First Nations to be consulted about potential adverse effects on their Aboriginal rights and title before claims are granted.
- My office has been granted leave to intervene in those cases, and we are arguing that the Declaration Act is justiciable in BC courts as a quasi-constitutional human rights statute that affirms the application of UNDRIP to the laws of British Columbia.
- A key part of my mandate is to promote compliance with international human rights law in B.C., including UNDRIP. I believe this litigation is critical to that mandate and to the future of human rights—and specifically Indigenous rights—in this province.

Monitoring implementation

- As you can see, in BC the legal impact of UNDRIP is still to be determined, despite the path breaking step of adopting it into domestic legislation. I have described to you one of the ways that my office is working to enforce the rights of Indigenous peoples as contained in UNDRIP.
- Another is through policy and law reform – for example, through providing advice to government in their implementation of new legislation governing the collection of race-based data to support the development of equity seeking public policy. Additionally, we joined Indigenous leadership in advocating for changes to our human rights law to



specifically prohibit discrimination on the basis of Indigenous identity – which I’m pleased to say was a success, and that change has been adopted.

- We are also working on a broad monitoring project, which we call the Baseline Project. This is a multi-year community engagement and research initiative to map the state of human rights across British Columbia.
- The Baseline Project will provide a comprehensive understanding of human rights by focusing on intersecting issues across B.C. Drawing on one of my office’s key guiding principles— ‘nothing about us without us’ — this project aims to center the perspectives of people with lived human rights experience and the organizations that support them. The project is designed around the 4 R’s of a decolonizing approach to research: responsibility, reciprocity, relevance to communities, and reflection among those involved in the research.
- Our approach aims to capture a broad provincial perspective through surveys and indicators as well as an in-depth community perspective through interviews and focus groups.
- From 2022-2024 we are doing in-depth research in communities across British Columbia, starting with four communities in fall 2022. Each cycle of community research involves focus groups led by our network of Community Connectors. These Community Connectors are organizations and groups like First Nations governments, community organizations and public institutions. In addition to this, we are conducting interviews and launching a province wide survey for community organizations and service providers working across the province.
- Collectively, these tools will establish a baseline of human rights in B.C. which allow us to better monitor and evaluate change over time.
- Our project will develop two main resources:
 - o Community briefs will provide in depth analysis of human rights issues, contexts and solutions in each of the communities participating in the project. These briefs help us to understand pressing human rights issues priorities in these communities. The first four communities we are working with are Cranbrook, Chetwynd, Chilliwack and Terrace.
 - o Also, a biennial province wide human rights report will provide a broader overview of human rights trends and dynamics across the province by drawing on province wide surveys, polling and interview data. This report aims to monitor progress on key human rights indicators to better evaluate the impact of human rights work.
- UNDRIP provides a key set of standards by which to assess our human rights baseline. While every level of government has repeatedly committed to reconciliation and dismantling the impact of colonization, such commitments are not always reflected in the experiences of Indigenous peoples and communities across the province.
- Poverty and income inequality disproportionately impact Indigenous peoples, Indigenous families disproportionately face state interference and children are still removed from their communities and homes at concerning high rates, Indigenous people continue to be arrested and detained by police at significantly higher rates than other groups, and Indigenous people continue to face discrimination when trying to access health care services. Since May 2021, thousands of unmarked graves of children have been discovered on the grounds of residential schools across Canada,



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most recently just this week on Tseshaht territory on Vancouver Island. We hear about all these ongoing human rights issues and more in our consultations with First Nations and Indigenous leadership.

- So, while the Declaration Act was an important step in adopting UNDRIP and respecting the rights of Indigenous peoples in BC, it was no means the last step. The work monitoring the progress of UNDRIP implementation continues, as does the larger project of decolonization. Those are my comments, and I look forward to our discussion.