

# FORESTRY IMPACTS: UNDERSTANDING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

By Ian MacNeill

Photo: iStock



Three First Nations themed banners were added to the former US embassy, across from Parliament Hill, during this year's National Indigenous Peoples Day. The building is slated to be converted to a centre dedicated to Indigenous people.

In a recent mandate letter to incoming Minister of Forests, Lands, Natural Resource Operations and Rural Development, Doug Donaldson, Premier John Horgan stated his government would be “fully adopting and implementing” the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Under the circumstances it’s fair to ask how much impact this might have on the forest industry, especially considering that Premier Horgan’s letter goes on to say “I expect that you will...work with the Minister of Indigenous Relations, First Nations and communities to modernize land-use planning and sustainably manage BC’s ecosystems, rivers, lakes, watersheds, forests and old growth.”

## History of UNDRIP

UNDRIP, first adopted by the UN General Assembly in 2007 with 144 member states in favour set out the in-

dividual and collective rights of indigenous peoples with respect to culture, identity, language, employment, health, education and other issues. It was also a global recognition that indigenous people have been on their lands since time immemorial, that many still continue to live on those lands, and that they have a right to the protection of them as well as a say in how they are used, which is of course the significant aspect of the declaration when it comes to resource industries like forestry.

The Canadian government originally stated that while it supported the “spirit” of the declaration it could not vote in favour, arguing that it was fundamentally incompatible with Canada’s constitutional framework, including the *Charter of Rights and Freedoms* and Section 35 of the *Constitution Act, 1982*, which deals with Aboriginal and treaty rights. There was particular concern with Article 19,

which seemed to imply that governments needed to secure the consent of indigenous peoples on matters of public policy, and Articles 26 and 28, which could potentially open the door to the renegotiation or even repudiation of historically settled land claims. However, in 2016 Canada officially adopted the declaration and promised to implement it fully and “without qualification.”

## Potential Impact of UNDRIP

One of the main reasons Canada officially adopted UNDRIP, as the department of Indigenous and Northern Affairs (INA) points out on its website, is that a declaration is just that, a declaration. Unlike a treaty or covenant it is not legally binding. For that reason it cannot be used in a court of law to influence arguments about timber tenure allocation. Despite that, adopting it as the federal government did in 2016 and what the

provincial government appears to be doing now sends a signal that its principles are going to be respected with respect to how laws are written and business conducted. It will not force so much as guide and influence.

Reading through the declaration line by line, it's easy to see why some regard it as aspirational rather than a reflection of reality. It describes a world that could or should be rather than one that exists today, says Mike LeBourdais, Chairman of the Tulo Centre for Indigenous Economics and previously Chief of the Whispering Pines Band, who describes it as a "shiny new house" aboriginal people and at least some politicians are currently building a foundation to support. The stuff and substance of that foundation will flow from issues related to rights and title, he says. Ultimately, Canada's aboriginal people need to have the right not just to occupy land and have a say in its management, but to own it, something the *Indian Act of 1876* still prevents them from doing. He expects that to change, saying there is political will in Ottawa to move forward on the issue. Doing so will give Aboriginal people more say in how their lands are used and also confer powers of taxation, crucial for development. "We're tired of watching logging trucks driving by every day loaded with our logs and getting nothing out of it," he says. "We want a better split on stumpage and rent and we want our environmental protections accommodated. We're here to stay and we better learn to get along." In the meantime, he adds, "As far as forestry and the TLA is concerned, accommodation needs to take place before a saw is put to a tree."

### The Legal Perspective

Rob Miller, a lawyer with MT+Co. who heads up the company's First Nations Economic Development group, says that while Canadian law today often seems to fall well short of the spirit and intent of UNDRIP, Supreme Court decisions—including both *Delgamuukw* (1997) and *Tsilhqot'in* (2014)—are moving us inevitably in that direction. "There is recognition of indigenous control and ownership of resources and of seeking indigenous consent prior to development," he says. That recognition is leading to rapid policy changes at both the national and provincial level. "The engagement that is occurring between

different ministries and First Nations' communities is markedly different today than it was 10 years ago," he says. "There is greater consultation, greater accommodation and more discussion of consent, and I don't see that stopping any time soon." Ultimately, that will be a positive thing for both industry and First Nations because it will lead to more certainty, he adds.

### A Business Perspective

A number of forestry companies in BC are well ahead of the curve when it comes to greater consultation, greater accommodation and more discussion of consent. Miller points to Ecora, an engineering and natural resources consulting company based in Kelowna providing technical services including geotechnical, structural and civil engineering, environmental assessments, and forest estate modeling. Its client base includes major licensees as well as no fewer than 33 Aboriginal communities throughout BC, says company President and CEO Kelly Sherman, who has more than 15 years of experience relationship building with First Nations. Through experience, Ecora has developed what could be seen as a template for developing successful relationships with First Nations. "By remaining trustworthy barriers are broken down and strong relationships are built," he says, adding that it is vitally important to understand the importance of elders and their traditional knowledge—preaching western science while remaining tone deaf to traditional values will not benefit the relationship.

"If you go on the land with an open mind and are prepared to listen and respect what you are hearing you will learn a lot and have a better perspective on how to manage the land," he explains. "There's always a practical midpoint. First Nations are interested in the land, industry is interested in the product, and that can make for a very good marriage." And stay out of the politics; neutrality is a safe haven when there are fluctuations in the balance of power within communities. He adds that successful relationship building with any one First Nations' community can lead to the opening of the doors of opportunity in others. It certainly has for Ecora, and it could for other forest companies willing to embrace the spirit of UNDRIP and use it as a guide going forward.

Ultimately no forest company operating in BC is going to be forced to adopt UNDRIP or go beyond the practices of consent and accommodation used today via UNDRIP, but those that do embrace it and live it rather than pay lip service to it are more likely to prosper in this emerging economy.

British Columbia has a new government and the new Minister of Forests is sitting down with staff and those involved in forestry to fully understand the province's forest policy. So it's too soon to predict exactly what "fully and completely" adopting UNDRIP is going to mean, especially with respect to such important and pressing issues as tenure allocation and reform. However, it's safe to say that based on the experience of those already working with First Nations who have adopted it both in spirit and in practice; it has enormous potential to benefit aboriginal people, industry, and all British Columbians who believe in progressive social and economic development.▲

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