

# To dream together: Indigenous peoples and human rights dialogue report

Approved by the OHRC: September 2018

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“The key is where we are at today, which is knowledge exchange... We have an uncertain partner in Canadian society – so we have to have safe and welcoming places to do that, to dream together.”

- Dialogue participant

## Acknowledgements

We acknowledge that Indigenous Peoples are the original inhabitants of this land. For thousands of years, they have developed distinct languages, cultures and ways of life, and also rich laws and legal traditions. The Ontario Human Rights Commission's offices in downtown Toronto are in the traditional territory of the Anishinaabek of the Mississaugas of the New Credit. We also give respect to the Chippewa, the Haudenosaunee and the Wendat peoples.

We recognize the long history and contributions of First Nations, Inuit and Métis Peoples, and support their vision of living justly in harmony with one another and in all our relations.

The Indigenous Peoples and Human Rights Dialogue would not have been possible without the significant efforts and guidance of the Organizing Panel, whose members contributed their wisdom every step of the way. We sincerely thank:

- Karen Drake, Ontario Human Rights Commissioner and Associate Professor, Osgoode Hall Law School
- Jeffery Hewitt, Assistant Professor, University of Windsor Faculty of Law, and past-President, Indigenous Bar Association of Canada
- Juliette Nicolet, Policy Director, Ontario Federation of Indigenous Friendship Centres Nicole Richmond then-Director of Justice, Chiefs of Ontario.

The Ontario Human Rights Commission (OHRC) also thanks our partners who provided financial or in-kind support, including:

- Osgoode Hall Law School
- Office of the President of York University
- Canadian Race Relations Foundation
- Ontario Federation of Indigenous Friendship Centre
- Chiefs of Ontario
- Métis Nation of Ontario
- University of Toronto Faculty of Law
- Indigenous Justice Division, Ministry of the Attorney General.

Dialogue participants benefited greatly from the guidance, teachings and reflections of traditional knowledge keeper Nancy Rowe of the Mississaugas of the New Credit First Nation, and Elders Alex Jacobs (Whitefish Lake First Nation), Marlene Pierre (Fort William First Nation) and Pauline Shirt (Saddle Lake Reserve, Alberta, with deep connections to Toronto's Indigenous community). We also thank Vera Pawis-Tabobondung for so ably and gracefully facilitating discussions, as well as moderators Jeffery Hewitt and OHRC Commissioners Maurice Switzer and Karen Drake.

We extend our sincere appreciation to all participants and speakers at the Dialogue. Special thanks to keynote speaker James Anaya, Dean of the University of Colorado Law School and former United Nations Special Rapporteur on the Rights of Indigenous Peoples, who delivered a public lecture at the University of Toronto Faculty of Law. We would thank other participants who travelled from afar to join us, including: Leonard Gorman and Steven A. Darden of the Navajo Nation Human Rights Commission, The Honourable Leonard S. (Tony) Mandamin who serves on the Federal Court and is an ex officio member of the Federal Court of Appeal, The Honourable Romeo Saganash, Member of Parliament for Abitibi-Baie James-Nunavik-Eeyou, and Paul L.A.H. Chartrand, Professor of Law (retired), counsel to DDWest LLP, and Michif Elder.

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## I. Introduction

### Background and context

The Ontario Human Rights Commission (OHRC) has a mandate under the Ontario *Human Rights Code* (the *Code*) to address and prevent systemic discrimination and advance a fair and inclusive society where everyone is valued and treated with equal dignity and respect. The *Code* prohibits actions within provincial jurisdiction that discriminate against people, including Indigenous peoples, based on a protected ground in five protected social areas.<sup>[1]</sup> Our 2017-2022 strategic plan, *Putting people and their rights at the centre*, commits to reconciliation and advancing the human rights of Indigenous peoples.

We are taking active steps along this path. One of the most important was to bring together diverse Indigenous people and members of the human rights community, as part of a three-day (February 21 – 23, 2018) Indigenous Peoples and Human Rights Dialogue, to discuss a vision of human rights that reflects Indigenous perspectives, world views and issues. The OHRC hosted the dialogue with York University's Osgoode Hall Law School, in collaboration with Indigenous knowledge keepers, academics and

organizations, at the Native Canadian Centre.

This report summarizes key points of the discussion and recommendations arising from this dialogue, which featured the collective wisdom of Indigenous Elders, knowledge keepers, academics, political and government leaders, advocates, lawyers, policy makers and activists. Representatives of the OHRC, Human Rights Legal Support Centre, Social Justice Tribunals of Ontario, and the Canadian Human Rights Commission also took part.

Participants discussed several key questions, including:

- What are Indigenous perspectives of human rights?
- What might Indigenous world views, constitutions and laws contribute to the ongoing evolution of human rights?
- How can federal and provincial statutory human rights institutions, including commissions, tribunals and legal service organizations, adapt their *processes* to better advance Indigenous peoples' human rights? What, if any, amendments would be required to existing human rights *legislation* to ensure Indigenous peoples' human rights are better protected?
- What are the most effective ways to implement a broad range of human rights set out in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* at the federal and provincial levels? What legal or policy considerations should be addressed?

James Anaya, Dean of the University of Colorado Law School and former United Nations Special Rapporteur on the Rights of Indigenous Peoples, delivered a public lecture at the University of Toronto Faculty of Law on February 21, 2018. Other presenters included:

- Paul L.A.H. Chartrand, Professor of Law (retired), counsel to DDWest LLP, Michif Elder
- Leonard Gorman and Steven A. Darden, Navajo Nation Human Rights Commission
- The Honourable Leonard S. (Tony) Mandamin who serves on the Federal Court and is an ex officio member of the Federal Court of Appeal
- Sylvia Maracle, Executive Director of the Ontario Federation of Indigenous Friendship Centres (OFIFC)
- The Honourable Romeo Saganash, Member of Parliament for Abitibi-Baie James-Nunavik-Eeyou, whose private member's bill to implement *UNDRIP* recently passed second reading in Parliament.

The organizing panel, Indigenous Elders and traditional knowledge keepers provided guidance in setting the agenda and structure for the dialogue. People also benefited throughout the dialogue from the guidance, teachings and reflections by traditional knowledge keeper Nancy Rowe of the Mississaugas of the New Credit First Nation, and Elders Alex Jacobs (Whitefish Lake First Nation), Marlene Pierre (Fort William First Nation) and Pauline Shirt (Saddle Lake Reserve, Alberta, with deep connections to Toronto's Indigenous community).

The sessions were structured to encourage open dialogue in keeping with Indigenous customs and practices, including short presentations (10 minutes), loosely based on one of our four main dialogue themes, followed by a much longer question and answer period. The discussions were ably facilitated by Vera Pawis-Tabobondung and moderated by Jeffery Hewitt and OHRC Commissioners Karen Drake and Maurice Switzer.

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## OHRC journey leading up to the dialogue

As a key first step, the OHRC made a commitment in 2017 to make Indigenous human rights and reconciliation a focus of our work going forward. While the OHRC worked to improve the human rights system for Indigenous peoples for several years, it formalized this commitment in *Putting people and their rights at the centre*, its 2017-2022 strategic plan. This followed extensive dialogue and public engagement, particularly with Indigenous peoples.

Inspired by the Truth and Reconciliation Commission's [Calls To Action](#), *Putting people and their rights at the centre* sets out four major commitments, including to “embody human rights through reconciliation.” This commitment includes working towards:

- Sustainable and trusting relationships with First Nations, Metis and Inuit communities in urban and rural areas throughout Ontario
- Greater understanding of the impact of colonialism on Indigenous peoples
- A human rights paradigm for Ontario that reconciles Ontario's human rights system with Indigenous frameworks, concepts, processes, and laws
- Accountability for systemic racism and discrimination against Indigenous peoples.

The OHRC has several specific ways it is working to achieve these results, including:

- Deepening our analysis and understanding of human rights through reconciliation with Indigenous cultures, laws, concepts of collective community rights and responsibilities, treaties, and the UN *Declaration on the Rights of Indigenous Peoples*
- Engaging our Commissioners and senior leaders in dialogue with Indigenous leaders and communities to form sustainable and trusting relationships with First Nations, Metis and Inuit communities in urban and rural areas throughout Ontario, while acknowledging their status as nations (p. 14).

The dialogue was an excellent opportunity to take both of these steps.

However, this depth of sharing and engagement would not have been possible without significant prior OHRC outreach and engagement. The OHRC is committed to regularly engage with Indigenous communities, organizations and leaders across Ontario, and to work together to find solutions to human rights issues that are of particular interest to Indigenous peoples.

Since being appointed in 2015, Chief Commissioner Renu Mandhane, along with other OHRC commissioners, senior leaders and staff, have travelled extensively across the province to meet with Indigenous Chiefs and leaders, individuals and groups. We have met with community members, leaders of Indigenous Friendship Centres, Band Councils, and Indigenous youth, to learn how the OHRC can best follow the path set out by the Truth and Reconciliation Commission and build new and lasting relationships based on trust. See Appendix 2 for a list of engagements.

We co-organized listening circles with Friendship Centres to help us understand concerns in diverse communities across Ontario, including Toronto, Thunder Bay, Sioux Lookout, Kenora, Fort Francis and Dryden. In 2017-18, we engaged with more than 1,560 people through public education sessions on the theme of reconciliation and human rights, with another 489 people engaged through meetings with Indigenous leaders and circles, dialogues and consultations. In 2017, we signed an official [cooperation agreement](#) with the Ontario Federation of Indigenous Friendship Centres, committing us to work together to address systemic discrimination.

The OHRC also had several meetings to develop a relationship with the Chiefs of Ontario and to support each other's work on advancing the human rights of Indigenous peoples. This included attending the All Ontario Chiefs Conference in Lac Seul First Nation in June 13-15, 2017, where a motion (41/17) was passed calling for “the establishment of a working formal collaborative relationship with OHRC to address discrimination against First Nations people in Ontario.” The motion included a focus on establishing coordinated policy development and advocacy, communications and mutual training.

The February 2018 Dialogue was also significantly informed by our numerous and ongoing conversations with communities during our strategic planning process, and our work to meet our strategic priority of Indigenous reconciliation. For example, we launched a public inquiry into the over-representation of Indigenous and racialized children in Ontario's child welfare system (see findings in February 2018 OHRC report, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare*). This inquiry supported the community's long-standing concern that Indigenous children and families are over-represented in the child welfare system.

As well, in *Under Suspicion*, our April 2017 research and consultation report on racial profiling in Ontario, included a focus on Indigenous peoples, documenting people’s reported experiences of racial profiling while shopping, travelling, accessing health care and dealing with children’s aid societies. The OHRC also intervened in *Gallant v. Mississauga*, a case at the Human Rights Tribunal of Ontario involving the use of Indigenous-themed mascots in minor league hockey. We intervened, in part, to better understand and bring to light the impact of racism and cultural appropriation, especially on Indigenous youth who are struggling to cultivate a strong identity in the aftermath of cultural genocide.

The OHRC has been guided in all of these efforts by Commissioners Karen Drake, who is a citizen of the Métis Nation of Ontario, and Maurice Switzer, a citizen of the Mississaugas of Alderville First Nation. Commissioners Drake and Switzer were instrumental in informing the development and delivery of a mandatory three-day staff training session on Indigenous reconciliation. This session included a full day visit to the Mississaugas of the New-Credit First Nation (MNCFN). MNCFN knowledge keeper Nancy Rowe, who hosted us at MNCFN’s Kinomaagaye Gaamik Lodge, has continued to provide us with important strategic advice and feedback since visit. The OHRC has also benefited extensively from our Community Advisory Group, which includes many Indigenous persons with relevant subject matter expertise.

Hearing directly from Indigenous Chiefs and leaders, individuals and groups across Ontario about their daily challenges, perspectives and world views has revealed a significant disconnect between Indigenous peoples and the current human rights system. We have learned that Ontario’s *Human Rights Code* and our own institution and mandate bear significant traces of colonialism (for example, in the perceived primacy of the *Code* over Indigenous law and custom).

We have also learned that our individual-rights based system is not ideally set up to effectively deal with some of the biggest issues facing Indigenous communities. So we must fundamentally rethink how the OHRC engages with Indigenous peoples across Ontario, and how human rights laws and institutions can be made more relevant and respectful of our nation to nation relationship with Indigenous peoples. This rethinking of human rights *with* Indigenous peoples – to better recognize and respect Indigenous sovereignty and amplify Indigenous human rights perspectives – was a main reason for this dialogue.

Rethinking relationships and processes, more broadly, from the perspective of an equal treaty partner, meant ceding power and control to make room for Indigenous voices to be heard not only at the Dialogue, but also in its very design, goals, purpose and execution.

As part of our commitment to reconciliation, we want to continue to work together with Indigenous peoples, including through ongoing dialogues, to build a vision of human rights that steps beyond existing boundaries and truly reflects the issues, perspectives and aspirations of Indigenous peoples across Ontario.

We recognize that we have only just started on the path of reconciliation and decolonization. We will make every effort to ensure that the next steps we collectively take will be transparently guided by the knowledge and wisdom shared through dialogues like this one.

This report outlines the main issues and themes discussed at the dialogue, as a public record, both for the OHRC and Indigenous and other participants.<sup>[2]</sup> Our findings here will help inform future steps along the path to advance reconciliation through human rights. Our findings may also be used to advocate for broader systemic changes within but also beyond Ontario’s human rights system.

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## II. Key dialogue themes

### 1. On walking together, meaningful engagement and reconciliation

The theme of reconciliation surfaced on many occasions as one relevant to our historical moment and conversation. The Truth and Reconciliation Commission strongly reflected the Canadian context of reconciliation in its efforts to not only build awareness and understanding of the legacy and impacts of Indian Residential Schools (i.e. to bear collective witness to these “truths”), but also, more fundamentally, “to heal and repair the relationship between Canada and Indigenous peoples” resulting from this and colonialism and cultural genocide more broadly. The TRC describes reconciliation as “an on-going individual and collective process that will require participation from all those affected by the IRS experience,” including First Nations, Inuit and Métis former Indian Residential School students, their families, communities, churches, former school employees, governments and other Canadians.<sup>[3]</sup>

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#### Reconciliation as decolonization

People most often described reconciliation as a project and process of decolonization. This involved restoring just and equitable relationships on an interpersonal, institutional and societal level, including by fulfilling existing Indigenous rights and treaty obligations, and, more fundamentally, respecting Indigenous sovereignty and restoring “true partnership” on an equal footing:

“There cannot be reconciliation in the absence of justice; not if colonialism is still perpetuated in this country.”

Many people cited the *United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)* and the TRC’s Final Report and Calls to Action as providing an overarching framework for reconciliation.

Some voiced critiques of using human rights as a framework to advance reconciliation. For instance, one person said, “*We should not confuse what we are doing with human rights with reconciliation,*” drawing attention to the limitations of statutory law in creating and maintaining harmonious and just relations.

Another person said:

“Our concept of law is different...If you want justice, you have to look at the fundamental issue of human beings, and not just tinker with institutions and law... You need to build [just] human beings.”

Some participants felt it was premature to be discussing reconciliation, and talked about the need for internal healing within Indigenous communities as a precondition for any future reconciliation among peoples:

“We have to acknowledge in this work that we’re doing that there’s been 500 years of decimation of our people and forced assimilation. Our people are recovering and we’re at the tip of my shortest fingernail in the recovery process.”

“Reconciliation can only realistically begin in the year 3001. For the next 50-100 years, [people] need to step out of the way and let us run our institutions, and then we can have a conversation about reconciliation.”

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#### Repairing all our relations: Revitalizing and re-centering Indigenous knowledge

Revitalizing and restoring Indigenous laws and traditions stood at the centre of this reconciliation project for many participants. For example, Aaron Mills, who is Anishnaabe and a member of the Bear Clan from Couchiching First Nation, Trudeau Scholar, lawyer and doctoral candidate at University of Victoria, called for a fundamental paradigm shift in his [May 15, 2017 Walrus Talk](#) video broadcast, which was well-received at the dialogue. Centering “right relationships” – with the earth and all orders of being – over merely human “rights,” Mill explained what an Indigenous approach to justice might look like, starting from a place of gratitude and reciprocity, rather than expectation and entitlement:

The single most important thing to understand about yourself is how to be a good relative. At the very heart of being a good relative is a very simple idea: mutual aid. [This] requires a politics of attunement, which privileges listening, watching and careful reflection...It contrasts starkly with what I experience as the politics of loud pronouncement, of liberal societies like Canada. “My voice,” now and always, and critically, as of “right,” “entitled...”

“... When you experience community as a constellation of gifts, the natural response of belonging isn’t expectation but gratitude. And because of our gratitude, we reciprocate...And here we come to a critical point about belonging being anchored in gratitude and not expectation. A gift is offered freely... This has enormous implications for what reconciliation means. I think we’ve hardly begun its work, because most of us don’t yet accept that the earth is at the centre. Our [Indigenous] law does. It’s truly the law of the land. And I want you to live as if you know that Indigenous law matters for your life, for your family, for your community. At Canada 150, I hope you choose to be a good relative.”

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### **Walking together in a good way**

People also spoke more generally about how mainstream organizations can constructively engage and work “in a good way” with Indigenous peoples to advance justice, human rights and reconciliation.

Some argued that a key starting point was appreciating why Indigenous communities may not trust mainstream institutions:

“All the British asked for originally was peaceful settlement. Now we have 90% of our people suffering from water-borne diseases in one community.”

Participants stressed that trust must be earned through demonstrated commitment over time. We were advised to be prepared for the ups and downs that can arise in relationships and engagements, and be prepared and committed to sustain dialogue over the long term:

“You have to have patience...Because the first phase of discourse is the head aches, the heart aches and you go through that process first. Finally by like the 15<sup>th</sup> meeting you open that dialogue.”

People further underlined how it was important that organizations learn and understand the history of colonialism and its ongoing impacts and legacies in the present:

“To address the injustices, we have to begin with history: where are we rooted, where are we from?...The story needs to be started with the history that created the structures. The [historical] context needs to be exposed...Courts and tribunals live in a permanent present that is innocent, and assumes that everyone is already equal.”

“More work needs to be done to tell our stories and to make space for these to be heard.”

Many participants felt a key starting point for meaningful reconciliation was to apply critical anti-colonial scrutiny to foundational institutional structures and ways of doing things:

“You cannot reconcile colonial structures with just outcomes.”

“People have a mistaken notion that colonization happened in the past. Many well-meaning people do not realize the extent they are still operating in colonial frameworks.”

They encouraged organizations to begin their efforts by looking at their own institutional structures and arrangements rather than promoting various strategies and initiatives:

“It can’t just be about making space for us [in your institutions]. We need to see systemic change, a fundamental change to do things differently.”

Recognizing Indigenous sovereignty and its implications for how organizations relate to Indigenous peoples was central to the fundamental change required:

“The objective is to reconcile the pre-existing sovereignty of Indigenous peoples with the assumed sovereignty of the Crown – this should be the key starting place.”

People further highlighted the limitations of focusing efforts too narrowly on improving access to services, in the absence of organizational transformation.

“Achieving justice is more important than simply accessing it.”

We were cautioned about quick fixes:

“This is not a journey of one life but many’<sup>[4]</sup>... You need to be in it for the long haul. Those in it for short-term goals are bound to be the most disappointed.”

“Sometimes when we run fast, there is more damage done and we have to unravel a new mess.”

Participants encouraged organizations to spend more time listening and creating spaces for authentic exchange instead of rushing to act or respond:

“You have to allow people to tell their whole story before asking questions... Listening to understand is different than listening to critique and build boundaries. It means listening even when you hear something you don’t like and not disengaging.”

“The key is where we are at today, which is knowledge exchange... We have an uncertain partner in Canadian society – so we have to have safe and welcoming places to do that, to dream together.”

The continuous failure of organizations to listen and learn from past mistakes came under strong censure:

“I’m frequently the only non-governmental White person in the room when these conversations are held. I just call it racism. At a certain point willful blindness to not understand a group of people who aren’t like you, that’s what it is.”

Organizations were cautioned against glossing over differences among Indigenous nations, peoples and citizens in terms of culture, age, gender, geographic location, sexual orientation, etc. Speakers called for organizations to avoid adopting an overly simplified “pan-Indigenous approach” when engaging Indigenous peoples and making changes:

“I am wary of a pan-Indian approach. Our chiefs would not accept that.”

People also stressed the need for mainstream organizations to engage not only formal Indigenous representative bodies but also with grassroots community members. Some raised concerns about the extent that current governing structures within Indigenous communities truly reflect the interests and concerns of the communities being governed. Participants highlighted various colonial influences on these structures, and how some voices are being marginalized. One example was that Political Territorial Organizations<sup>[5]</sup> (PTOs) and Band Councils<sup>[6]</sup> were in part created by the Crown with the specific purpose of engaging with Canadian colonial structures. We heard that such political bodies do not necessarily have inherent authority within traditional Indigenous cultures, that we should not view our engagements with PTOs, Chiefs and Band Councils as a substitute for engaging with traditional knowledge keepers, Elders, and everyday grassroots community members (both on- and off-reserve).

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### **Amplifying Indigenous voices and co-navigating halls of power**

Participants highlighted a potential role for mainstream human rights organizations, including the OHRC, to amplify Indigenous voices and human rights concerns. For some, the preferred method of doing this was to support Indigenous efforts to advocate for Indigenous rights, while others also called for the creation of empowering spaces and platforms *within* mainstream institutions (see Section 3a for further discussion).

Some people advised human rights and other justice-seeking institutions to “vacate the space” entirely to make room for Indigenous voices and organizations.”

“Vacate space so indigenous People can exercise their sovereignty... This is about the acceptance of the total transfer of control from mainstream institutions to Indigenous institutions and actors... The point at which you get to say ‘here is the practice of Indigenous human rights’ must be in the control of Indigenous folks. White folks cannot be in control.”

Several speakers also underlined the need for human rights and other justice organizations to stand up as an ally with Indigenous people and advocates, in support of Indigenous peoples’ rights:

“There is a role for human rights institutions to be a go-between with the state, to support Indigenous advocates. [A] lot of the time human rights institutions have more legitimacy and authority than Indigenous advocates, so you can help to magnify our voices and help us get heard... You have access to others that we may not.”

Part of this potential brokering role involves helping Indigenous advocacy groups with less familiarity with government and mainstream institutions, to understand how government functions and to navigate “the halls of power”:

“If you [the OHRC] understand government bureaucracy and know how government works and acts that would be great. [You] could be helpful for organizations that haven’t completely wrapped their head around this.”

Another person noted the limitations of accessing government decision-makers, highlighting a potential support role here for the OHRC:

“We often advocate [for a policy change] and then at the last minute [the government] pull[s] it... Could we have a little red telephone to call the OHRC?... We have to figure out ways to better collaborate with mainstream human rights institutions so that when those moments happen at the last minute, we have someone to talk to who may be able to help.”

“We need ally-ship, smart strategic thinking. There will always be... people who will feel threatened by changes to the status quo, who will resist equality, for fear that they will lose power... We need the OHRC, universities and legal institutions to hold strong against the push back and stand up for us because you can take it.”

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## **2. Indigenous perspectives on human rights**

Much of the discussion centered on diverse Indigenous perspectives on human rights, including its strengths and limitations as a framework, and how Indigenous world views, constitutions and laws might relate and contribute to the ongoing evolution of human rights.

### **a. On the relationship between Indigenous peoples, the state and human rights law**

Drawing on themes discussed above around reconciliation, participants highlighted the importance of clarifying Indigenous peoples’ relation to the state more generally, as a critical starting point for determining their relationship to the human rights system:

“Before we think about the OHRC’s relationship with Indigenous peoples, we need to take a step back and think about the broader relationship with Indigenous peoples.”

“The [more] fundamental challenge is that we have not agreed on the doctrinal foundation for the relationship between Indigenous people and the state. So here we are looking at human rights. [But we have yet to resolve] the human right of self-determination... This raises significant problems and challenges for human rights commissions. How can we muddle our way through this? This will be a challenge... We need to establish the framework for land sharing... To reconcile society on a nation-to-nation basis, this is the start. One party cannot write all the rules. They need to be co-developed and co-drafted.”

Many argued that this required creating more representative Indigenous governing institutions and putting them on an equal footing with the crown.

“This is the key problem. We don’t have those institutions to represent us. Instead we rely on their institutions, which have little political legitimacy with Indigenous peoples.”

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### **Learning from the two row wampum belt: “You can’t use the master’s tools to dismantle the master’s house”**

Three distinct viewpoints emerged on the appropriate relationship between Indigenous peoples and human rights laws and institutions. These were often shaped by views on the relationship between Indigenous peoples and the state more generally.

The first viewpoint highlighted the irreconcilability of traditional Indigenous law and western liberal human rights legal traditions, emphasizing the need for Indigenous communities and institutions to be autonomous and free from Canadian settler legal interference (including the human rights system):

“There is an assumption that we should accept the settler law... We’ve been suspicious of the law. It’s a story told by conquerors to uphold those structures of dominance. The law made my people’s existence illegal.”

“If we are thinking about how to develop institutions that take into account Indigenous world views, then you can’t do that from a colonial point of departure, which is about rights, but have to forget everything essentially.”

People made many references to the famous maxim coined by Black poet and civil rights activist Audre Lorde (“the master's tools will never dismantle the master’s house”)<sup>[7]</sup>:

“Using the colonizer’s tools to take down his house doesn’t work...The Supreme Court of Canada has been ruling in our favour for 20 years now and we’re still talking about [realizing our] human rights, something’s not working.”

At several points in the proceedings, the two row wampum belt<sup>[8]</sup> was brought out and/or referenced to explain the appropriate relationship and way forward. Holding the belt up for all to see, one speaker said, “I want to talk about the belt I brought.”

“I’m presuming most people have heard about this. It’s called the *Gusweñta*. It is arguably the first Treaty made with Europeans, Dutch people. It’s very simple, and very profound. The rows show two paths travelling in parallel that symbolize the path of Indigenous peoples and the path of the newcomers...Parallel lines don’t meet. They respect each other, but they don’t interfere. You do not try to steer one another’s boat. The Royal Proclamation of 1763<sup>[9]</sup> said Indian tribes of North America are nations; that they had sovereignty on their lands. This (pointing to wampum belt) is what this says...This is an extremely important concept. I don’t believe [many people] understand what this relationship entails...The day will come when we are operating totally our own canoes.”

Someone else added, “We already have our own institutions,” and described the specialized functions and division of roles within traditional Indigenous clan-based systems of governance. “We have law schools and courts and tribunals. All of this is not recognized based on the doctrine of *terra nullius*<sup>[10]</sup> – the assumption that settlers were filling a vacant space.”

“Rather than wasting time trying to make [Indigenous law/world view] fit into the world view of non-Indigenous peoples, we can create a parallel equal process for Indigenous people that would better align [with our traditions] and be funded...That parallel process would have to be designed by Indigenous people and that’s where we can take the time to develop it...We have good people around this table [that could help to do this].”

Many people felt rebuilding Indigenous institutions on culturally autonomous lines and recovering traditional knowledges was a top priority:

“Through assimilation we don’t even know ourselves, our laws and our clan systems. It is good to have rights in *UNDRIP*, but if there are no institutions in place, then we cannot realize those rights positively.”

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#### **“Making strategic use of the master’s tools”: Using the human rights system to combat discrimination and marginalization**

A second general viewpoint was that Indigenous engagement with western laws and institutions is a strategic necessity. For example, speakers explained the necessity of engaging and holding public systems accountable for fulfilling Indigenous rights:

“These systems will be imperfect because they are not derived from Indigenous thought. But we exist in these systems, and so need them.”

“I am one of those people that believe that Indigenous peoples should pick up the tools of the white man and use it to our benefit.”

“If we can read and interpret the white man’s book, maybe we can change a few things in there to help people in dealing with generations to come. We should teach our people the ways of doing that.” (Indigenous Elder)

There was considerable discussion about whether the best way to make strategic use of the human rights system involved “us[ing] current institutions or creat[ing] something new”:

“Is there a way we can take what is useful, including a human rights-based discourse, and then use it to create something that is representative of Indigenous peoples?”

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#### **Towards a third path: reshaping human rights laws and institutions through an Indigenous lens**

The third key viewpoint expressed at the dialogue rejected the choice between Indigenous traditional ways, *or* the way of western human rights. Instead, people suggested creating a distinct and unique Indigenous approach to human rights with its own accompanying Indigenous-led human rights institutions. Showing the capacity for western law (including human rights) to accommodate and even take on Indigenous forms, one speaker highlighted how in earlier times, British authorities had recognized Indigenous forms of law-making:

“The wampum belt brought in earlier was actually from the English Crown to Indigenous people. It was a form of international law...This tells us that there was a time in the 1700s where Indigenous law was recognized and understood by the English crown, where they actively participated in a form of Indigenous law making...If in 1764 the English crown could understand and engage with Indigenous law [as a form of international law], then why wouldn’t they be able to now? So it is possible for human rights law today to take Indigenous forms. Here is the proof...How can the human rights and Indigenous relationship work? It’s in the belt.”

This reflection prompted a series of further probing questions, including:

“How does a statute start from a place of love – starting with trust and friendship and respect – versus assumed sovereignty?”

“How can we create a system that recognizes what has always existed since time immemorial without having to root through colonial systems or a human rights lens that is colonially shaped?”

Another person concluded, “We want a day when Indigenous communities have their own human rights institutions.”

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#### **b. Gaps and limitations of existing human rights approaches**

Many people drew attention to the colonial premises underlying human rights legislation, most notably the presumption of Crown sovereignty:

“We need to examine the construction of human rights. They are not only about the individual, but Crown sovereignty and the control of human beings by them.”

Another person highlighted the general failure of domestic human rights legislation, including the Ontario *Human Rights Code*, to adequately recognize the unique status of Indigenous Peoples:

“Our people need to stick to the principle of equal but different. We must maintain our principles...There is a need to understand human rights held by Indigenous people as being more than what non-Indigenous people have. Then the mainstream system can begin supporting our [Indigenous] communal systems.”

The predominant focus of Western liberal human rights philosophy is on the rights of individuals vis-à-vis the state. The Western liberal paradigm of rights protection has thus tended to neglect positive rights obligations (e.g. state duty to promote and advance equality, versus simply protecting individuals *against* discrimination), as well as collective rights and responsibilities:

“My own work has been looking at rights as understood in relational ways, in ways that can overcome their individualism. The best relational approach to rights is still not the same, however, as beginning with responsibility. Responsibility is a more active word to protect people from the abuse of power”

“Responsibilities are to the collective [whereas] human rights is the western colonial individualist way.”

“Instead of referring in the human rights system to respondents, refer to them as ‘duty holders’...These are small changes that can make a big shift.”

One of the key recommendations in this respect was to give greater emphasis in domestic human rights law and policy to collective rights and responsibilities, drawing from *UNDRIP*.<sup>[11]</sup> People also called on human rights institutions to advance the public’s understanding of collective rights through public education.

“[Members of the government and public] can’t understand how collective rights work, how individuals exist within that collective, how individuals can assert them and how they don’t conflict with individual rights. So maybe human rights commissions can help the government understand this. How they’re in no way in conflict with individual rights. They have trouble with it, beyond hunting and fishing. [Their view] is so individualistic...So this ally-ship is something commissions can do.”

We also heard criticism of the reactive nature of human rights enforcement. People emphasized the need for the human rights system to increase its capacity to proactively deal with systemic human rights issues. One of the recommendations was to create a separate stream and process for handling systemic human rights complaints:

“I would just affirm one of the recommendations from Indigenous women’s groups – it is also a theme that has come out with the [Ontario Federation of Indigenous Friendship Centres] regarding [the Human Rights Legal Support Centre] – we need a systemic complaints system...We’ve seen [the current system] is so limited, so adversarial.”

The OHRC was encouraged to proactively intervene in cases to remove systemic institutional barriers, particularly those rooted in policy. One person said, “If you have the ability to intervene follow up to get changes in Policy.” The speaker further encouraged the OHRC to use its educational mandate to help the public understand why systemic changes are so needed:

“It would be helpful if the OHRC could use its educational mandate to tell the story about how the [policy] changes will mitigate the harm. Bring it back to the story that began [the problem]. Explain how things should change on the ground, provide the metrics for change, so people who are not lawyers will see and recognize the change when it happens.”

People argued that communicating the work being done and progress being made could help dispel some of the cynicism many have about the usefulness of the law as an instrument of change:

“The grassroots feel suspicious of law, but they might see the connection to the parts of their lives that matter if the work and progress being made is communicated.”

Several people further recommended the OHRC use its powers of inquiry under the *Code* to reveal and expose systemic Indigenous human rights violations. We were also encouraged to make use of our powers to initiate and intervene in human rights applications where systemic factors are at play:

“We [the CHRC and OHRC] have the power to initiate complaints. How do we take on bigger systemic cases? There is still a lot to be done to respond to the Truth and Reconciliation Commission [Final Report and Calls to Action].”

People also felt the limited protection of rights to language, culture, land, and basic needs such as housing and water was another major area of deficiency in domestic human rights law:

“Rights violations are more than just about service under-delivery or non-delivery. They are also, more fundamentally, about rights to culture and safety which underpin these other rights.”

“The mandate of the *Human Rights Code* – what is currently understood as human rights – is too narrow. The right to housing, to food, to not have to leave your home [for services etc.], these are all important [but are not currently covered by the *Code*].”

Many speakers called for an expansion of human rights legal frameworks to better address such issues, including by better integrating *UNDRIP* and constitutionally held Indigenous rights under section 35 of the *Constitution* into federal and provincial human rights law.

Critiques of domestic human rights law went beyond content to include their form. “The way our law is constructed gets in the way of us doing what is right,” one person contended. “Law is a construct like the economy. What form it must take in order to be law is a construction.” The same speaker gave the example of a drum currently housed in a museum that was painted by an Anishnawbe artist with legally significant inscriptions that communicate and embody Indigenous law:

“People do not see the law in the drum... No one has seen this as a treaty. The power of western law is so strong, that no one has to see it. It is seen as an artifact rather than a treaty equivalent to reviewing British law on paper.”

Any effort to reconcile western liberal human rights and Indigenous legal traditions, from this perspective, will need to address and respect these fundamental differences not only in forms of law-making but also in underlying world views and epistemologies.

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### c. On traditional Indigenous approaches to human rights

There was considerable discussion on the distinctive qualities of an Indigenous approach to human rights and law more generally. The key role of spirituality in underpinning Indigenous law was consistently mentioned:

“Can we rethink human rights from a non-western perspective that is not based on dignity as a founding principle, but spirituality and what it means to be human?”

“I just want to remind myself and others in here that we are spiritual human beings...We have this great history of the Creation Story. This is where we get human rights in our great minds and all our beautiful bodies. The spirit is the most important part of our being.”

We heard that spirituality played a critical role in building respect for the rights of others, and helping to preserve justice and peace from the bottom up:

“Our laws are inherent in us, in our ways. How we come to our Great Law begins with spiritual practice that has been handed down, that opens your heart and mind...Those practices have been lost for so many people. We have to start with how practices are done, and intention, so that our laws are embodied and brought in that way.”

At the same time, this speaker recognized the value of enshrining rights formally in law, since “many groups of people in this society... don’t recognize the mutual benefit of us walking this path together and are not interested in spirituality. In that case, we still have to legislate rights.”

People contrasted the tendency in western liberal law to focus on prescriptive rules and negative sanctions with a more holistic, positively-oriented, values-based Indigenous approach:

“The word for human rights in our Wikwemikong language – Gichi dibaakonegewin tamajawich – means to live well, a good life. That is the right of every human being. That’s what society’s rules should focus on. Are the young people enjoying life? Do they have hope for the future?”

The same person described a painting by Roy Thomas (entitled Indian Law) representing Indigenous teachings and law through a scenic portrait. He explained its symbolism:

“The pine trees are straight and tall, they represent honesty. The rocky mole stands for strength and perseverance. The grass is soft. It stands for kindness and love. The moose stands for sharing, as the Anishnawbe depend on it for eating. This painting symbolizes four of the seven grandfather teachings, all in one picture. These teachings tell you how you should behave. Canadian criminal law tells you how NOT to behave. When our people do wrong, an Elder said, we try to teach them the right way to behave.”

Another person talked about what an Indigenous approach to human rights might look like:

“One of the teachings is love. Imagine creating a law about how to generate love, rather than prescriptive ‘don’t do this, don’t do that’ rules.”

Throughout the dialogue, much emphasis was placed on the importance of taking a values-based approach to the law:

“How do we begin to talk about the values that shape us, that are meaningful, about how to live a good life?”

“If you look at the [Labrador Inuit Constitution in the Nunatsiavut Constitution Act](#), you will see the application of a values-based instead of a rules-based approach. I think this is a promising approach... It is a mishmash of values being applied to specific facts that has promise, as opposed to technically analyzing word by word.”

Another speaker talked about how the Union of Ontario Indians exemplified such a principled approach to law-making:

“The Union of Ontario Indians developed a [constitutional template](#), and it was up to member communities to create their own local constitutions with local implications. The primary value is the Creator gave us sovereignty so that we can manage our own affairs and govern ourselves... [The template] talks about the seven core values of Indigenous peoples (love, courage, respect, wisdom, truth, honesty, humility) and allows people to expand on them in their community... I think those [values] cover anything that’s in any human rights code.”

Another common theme was to place more emphasis on relationships and responsibilities to the collective.

“Let’s talk about relationships – Indigenous relationships, treaty relationships, not rights, which is a particular European philosophical concept. Principles shape relationships... You need to reverse the order. The key is a values approach, and then responsibilities, and then right.”

“Anishinabek law does not mention anything about rights, just roles and responsibilities to all our relations.”

“The Supreme Court of Canada talks about the rights of Indigenous people before the English and the French, and that always puzzled me. I’ve never met someone who spoke the old language who talks about ‘rights.’ When I’m talking about treaty rights, I talk about relationships, treaty relationships. Some people have never heard the concept of rights. It’s responsibilities.”

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### 3. *UNDRIP* and Indigenous peoples’ contributions to the evolution of human rights

Among the most discussed topics at the dialogue was the critical role and implications of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* for understanding and implementing human rights for Indigenous peoples in Ontario, Canada and the world.

#### a. *UNDRIP* background and context

In a public keynote lecture, S. James Anaya set some important historical context for the development of the *Declaration*.

The United Nations General Assembly adopted the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) on September 13, 2007. *UNDRIP* provides an internationally recognized framework for measuring the human rights of Indigenous peoples,<sup>[12]</sup> setting the “minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.”<sup>[13]</sup> *UNDRIP* protects both the individual and collective rights of Indigenous peoples including on issues relating to land, culture, identity, religion, language, health, education and community. While Canada was originally one of four countries (along with the U.S., Australia and New Zealand) to vote against its adoption in 2007, Canada issued a [Statement](#) in November 2010 endorsing the principles of *UNDRIP*, and in May 2016, the Minister of Indigenous and Northern Affairs [announced](#) that Canada is now a full supporter of the declaration. For more on the history of *UNDRIP* and development in collaboration with Indigenous peoples around the world, see this [Historical Overview](#).

Anaya described how what began as a dialogue among members of a five-person working group (“a subcommittee of a subcommittee”), gradually expanded over two decades to a much broader and deeper conversation, at times with upwards of 2,000 people. Anaya said that the end result of this highly inclusive process was a Declaration that very much reflected Indigenous peoples’ experiences and perspectives:

“The tools have been transformed so fundamentally through the *UNDRIP* process... From stories of human rights violations, we derived the principles and standards and norms of what should happen.”

This public keynote address at the University of Toronto Faculty of Law, “Indigenous people and human rights: a dialogue with James Anaya,” was hosted by the OHRC in partnership with the University of Toronto Faculty of Law on February 21, 2018. Anaya is the Dean of the University of Colorado Law School and former United Nations Special Rapporteur on the Rights of Indigenous Peoples.



## b. Some working premises and keys to understanding *UNDRIP* and Indigenous contributions to the evolution of human rights more broadly

Anaya was confident in the ability of human rights discourse to accommodate a range of competing interpretations and world views.<sup>[14]</sup> He highlighted the distinct Indigenous contributions to the interpretation and evolution of human rights, including through *UNDRIP*'s 46 Articles, which he broke down into five main types of rights:

- The right to equality
- The right to self-determination and political participation
- The rights to cultural integrity, including language, culture and spiritual tradition
- The right to land and property
- Rights to economic and social justice.

He showed how the rights declared in each of these domains have expanded conventional human rights frameworks and interpretations, to better address collective rights and responsibilities and recognize the sovereignty of Indigenous peoples *within* states.<sup>[15]</sup> One participant noted that it was precisely these differences in emphasis and interpretation, and fear of the political implications arising from this, that delayed the *Declaration*'s development and adoption.<sup>[16]</sup>

When questioned about whether human rights provided the best framework for structuring Indigenous communities' relations with the state, Anaya highlighted the evolution of his own thinking:

“Yes [human rights provide the best framework], because this is the only existing mechanism we have to implement these fundamental values. My earlier scholarship tore down rights discourse. I no longer do that. I didn't find that helpful. It didn't lead to anything, practically speaking.”

Many people similarly affirmed the strategic value of *UNDRIP*, not only as a human rights instrument, but also as a “*framework for decolonizing Indigenous relations to the state*,” and advancing reconciliation more broadly:

“*UNDRIP* begins by recognizing we are Peoples equal with all others, but unique...Recognizing rights declared in *UNDRIP* will enhance the harmonious relations of Indigenous peoples with the state. It will help to reset the relationship from colonialism to a more democratic, just one. It is key to moving beyond a colonial relationship towards one where Indigenous people choose our own future (i.e. self-determination).”

“I have been racking my brain for two years on how we're going to get all Aboriginal peoples unified. I think *UNDRIP* is something we can all get around and be supporting.”

In his keynote presentation, Anaya clarified that *UNDRIP* should not be understood as granting new, additional or special rights, but rather as elaborating existing international human rights laws, norms and obligations, as set out in the *UNDHR* and other legally binding human rights covenants and instruments, including the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.<sup>[17]</sup> What is new is only their application and explicit translation in the Indigenous context, a point affirmed on several occasions at the dialogue.

“One of the things I want to clarify is with respect to Bill C-262 and *UNDRIP*, Bill C-262 using *UNDRIP* as a framework does not create new law. The rights created in *UNDRIP* are inherent and they exist because we exist as Indigenous Peoples...One of the things people fail to notice: article 2.2<sup>[18]</sup> says that the *UNDRIP* already has application in Canadian law and article 3 of Bill C-262<sup>[19]</sup> confirms that the *UNDRIP* is a human rights instrument that has application in Canadian law. The Supreme Court of Canada has already said that declarations and international human rights documents are relevant and persuasive instruments and sources to interpret domestic legislation in this country.”<sup>[20]</sup>

– The Hon. Romeo Saganash, MP

Various speakers further described *UNDRIP* as providing a “baseline standard” for interpreting and evolving human rights laws, as these apply to Indigenous peoples. One speaker said:

“*UNDRIP* should be used to interpret domestic legislation. I am not sure if this requires an amendment to domestic human rights law or if there is room for interpretation within existing frameworks. [Whichever the case] *UNDRIP* should be a framework for government action.”

There was significant discussion about whether *UNDRIP* should be interpreted and applied as a broad set of orienting values and/or prescriptive rules:

“I wanted to briefly talk about how do you interpret *UNDRIP* in Canada. To me it's not complicated. People think of it as specific rules to be applied. *UNDRIP* is about people's relationships – state and Indigenous people...You have to interpret and apply it as a mishmash of values to a particular context versus parsing out the particular provisions and words...Human rights are all interdependent. If people view these things as hard and fast rules, it's a problem...You have to look behind the words to the idea the words are trying to express. You have to balance it all, see the relationship between all these standards, to get states to develop good, practical, workable relationships with Indigenous people.”

“The spirit and intent of *UNDRIP* is the key, not just the words.”

For one participant, this meant not understanding *UNDRIP* as a set of rights to be implemented in Canadian law, but rather as a set of values to help inform approaches to Canadian law to ensure consistency of spirit and intent:

“International human rights law is not static. Rather than inscribe *UNDRIP* in Canadian law, [Canadian law] should retain an active dialogue with the rights articulated in *UNDRIP*.”

However, not everyone agreed with this approach. For example, one speaker held that *UNDRIP* should be understood as “a set of legal rights to be implemented,” and not simply as a set of values or standards to be considered or aspired to, emphasizing *UNDRIP*'s legal standing and effect domestically. Other people appeared to support both viewpoints simultaneously (i.e. *UNDRIP* as both a set of legal rights to be implemented and broad set of orienting values). They felt that nothing precluded a statement of principle or value from having legal effect, as a right that can be claimed by a right holder, and enforced by an international or domestic court.

## c. Challenges relating to *UNDRIP*

The main challenges raised about *UNDRIP* primarily concerned implementation, including its uneven implementation across national and sub-national jurisdictions. Various people highlighted the failure of Canada and its provinces to date to adequately and effectively implement *UNDRIP*:

“I have learned that international human rights laws really coddle Indigenous people and advocate for their interests. However, they are often just [received as] words

by governments who do little to move beyond terra nullius<sup>[21]</sup> approaches and foundations.”

We also heard questions about the implications of *UNDRIP* for existing treaty rights in the Canadian *Constitution*. For example, one speaker highlighted the applicability of *UNDRIP* to all First Nations, Inuit and Métis peoples in Canada, irrespective of whether or not they have recognized treaty rights, flowing from their fundamental status as inalienable human rights. However, another speaker worried that this might relativize or “domesticate” existing legal treaty rights. Anaya clarified: “Treaty rights are still rights that connect with internationally affirmed rights. *UNDRIP* only protects and preserves such rights – or should only.” He recognized that it may also, simultaneously, expand such rights beyond treaty rights holders.

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#### **d. Advancing implementation of *UNDRIP***

##### **Towards legislative and regulatory reform: recognizing the unique status of Indigenous peoples in domestic human rights law**

People offered many recommendations on what Anaya called “the challenge of implementation.” There was broad support for legislative and regulatory reforms, in cooperation with Indigenous peoples, to bring domestic laws into alignment with *UNDRIP*’s standards and establish a framework of accountability for doing so:

“Everyone has locked onto *UNDRIP* as a robust framework for Indigenous rights, complementary to what we have...*UNDRIP* should be a framework for government action...Human rights institutions should promote these rights and lobby to ensure that there is a role for international human rights law including the *Declaration* [domestically]. [They] should be using *UNDRIP* to interpret domestic legislation.”

Many people emphasized the critical importance of recognizing in the *Code* the unique status of Indigenous peoples as “equal but different” from other protected groups, owing to their unique Constitutional status as First Peoples:

“There is a need to understand human rights held by Indigenous people as being more than what non-Indigenous people have.”

People talked about the prospect of embedding a more explicit reference to *UNDRIP* within the Ontario *Human Rights Code*, akin to the interpretive provision in the *Canadian Human Rights Act* (2008, c.30, s.1.2).<sup>[22]</sup> One person asked, “Do you want an interpretive clause that says *UNDRIP*, perhaps?”

Currently, Indigenous identity is protected against discrimination under the grounds of ancestry, race, colour, ethnic origin, place of origin, citizenship” and creed. The possibility of adding a whole new Indigenous specific ground was also raised:

“None of the 17 *Code* grounds encompass Indigenous experience. Maybe *UNDRIP* language can be written into the *Code*.”

Some people asked if such specific recognition of Indigenous status and *UNDRIP* was necessary or could simply be inferred and read into the *Code*, based on existing legal obligations. One person said, “I am not sure if this requires an amendment or if there is room for interpretation within existing frameworks.”

Nevertheless, participants were all in broad agreement about the critical importance for the OHRC, and other human rights and government bodies, to ground Indigenous human rights work firmly in the principles and standards set by *UNDRIP*:

“*UNDRIP* is a very good foundation document on which to base OHRC strategic planning and how you will approach things...It was very well done and its rationality was very good. It sets a floor for what can be done. It encompasses a broad range of consultations and participation.”

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##### **Monitoring *UNDRIP* implementation domestically**

Speakers further emphasized the critical importance of using *UNDRIP* as a measuring stick for monitoring legislation, policies and practices:

“It is not just those laws but also how people on the ground are implementing those laws and policies [that is important and must be monitored].”

The lack of quality data measuring the outcomes of Indigenous peoples in many key institutions was raised as a significant barrier to effective monitoring of *UNDRIP* implementation. Without data tracking such outcomes across a range of institutions, people said it was difficult to identify the nature, depth and scope of barriers Indigenous peoples face, and gauge the progress society is making in advancing the rights and well-being of Indigenous peoples:

“We need data to serve as a metric of change – Is the policy doing the work it’s supposed to? How can we quantify the magnitude of the problem in services that are provided by government if we don’t have data?... One of the issues in Ontario is language. Nunavut specifically negotiated the right to access the language in Inuktitun...One of the things the OHRC could do would be to quantify how many children could benefit from access to services in their language. I think it’s really helpful to quantify the problem... [This] is a cross-jurisdictional problem and no one is taking action. With better information we can construct better solutions.”

People argued that the lack of such data made it difficult to measure and evaluate the impact and success of interventions currently aimed at improving Indigenous peoples’ lives and service. It also made it harder to establish trust and accountability for meaningful and tangible change.

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##### **Call for an Indigenous Peoples’ Human Rights Commission**

Will David, Senior Advisor with Inuit Tapirit Kanatami (ITK), presented ITK’s position paper<sup>[23]</sup> calling for the creation of a new “Indigenous Peoples Human Rights Commission.” The core mandate and function of this independent body would be to ensure the harmonization of legislation nationally, consistent with *UNDRIP*, and to promote and protect Indigenous human rights, including by:

- Monitoring compliance within areas of federal (and potentially provincial and territorial) jurisdiction, promoting and assessing implementation of the UN *Declaration* nationally
- Providing expertise, advice, guidance, assistance and support to jurisdictions – including subnational jurisdictions – that may lack expertise on Indigenous peoples human rights and the UN *Declaration*.

David explained some of the rationale for this call for a new, independent Indigenous-run commission:

“Government departments have powerful incentives to assess their own conduct as adequate even where it is not.”

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The Hon. Romeo Saganash, MP, spoke about his private members Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the UNDRIP* (“*UNDRIP Act*”) which was officially adopted by the Government of Canada on May 30, 2018. He began by providing a personal backstory to this Bill:

“I’ve been in Parliament for six years in the House of Commons. I will be leaving in two years. I want to make sure I leave that place with something. Bill C-262 is that something. It determines who I am as a person. Cree is the first language I spoke before going to residential school. When I came out of residential school, I set out to do two things. I wanted to go back to the bush, which I did for a few years. The other was to reconcile with the people who put me away for 10 years. I spent 23 years in that process, including my time in Geneva adopting the *United Nations Declaration*. So by bringing Bill C-262, it allows me to complete the circle from the UN back to Canada.”

Saganash described Bill C-262 as “the first piece of legislation in the history of this country that explicitly rejects colonialism.” He further described it as being responsive to the TRC Calls to Action # 43 and 44<sup>[24]</sup>:

“*You adopt through legislation and implement through policies and programs. That’s why the Truth and Reconciliation [Call to Action #43] uses both terms: adopt and implement.*”

He contended that the *UNDRIP Act*, 2018 does just this, at the national level. It officially adopts *UNDRIP* as “a universal international human rights instrument with application in Canadian law” (in s. 3, and Preamble), committing to “take all measures necessary to ensure that the laws of Canada are consistent with the United Nations *Declaration on the Rights of Indigenous Peoples*” (s. 4), “in consultation with indigenous peoples in Canada.” It also requires the Government of Canada, “in consultation and cooperation with Indigenous peoples,” to “develop and implement a national action plan to achieve the objectives of the United Nations *Declaration on the Rights of Indigenous Peoples*” (s. 5, emphasis ours), and within 60 days after April 1<sup>st</sup> of every year from the present to 2037, to “submit a report to each House of Parliament on the implementation of the measures...for the relevant period” (s. 6).

“Bill C-262 will help us clarify a lot of issues,” Saganash stated of its overall value and significance, “because for the last 150 years, Canada has been an adversary against Indigenous peoples rights.” Saganash highlighted some of the broader implications of Bill C-262 for understanding Aboriginal rights in Canada going forward:

“I think the legislation will help us avoid many difficulties in the future. We have never really agreed about the content of Aboriginal rights in this country. Does it include my right to speak Cree, to ask questions in Cree, and do my presentations in Cree?”

Saganash suggested that the adoption of the *UNDRIP Act* will support the reframing of “Aboriginal rights” as enshrined in section 35 of the *Constitution* as fundamental human rights, subject to international human rights norms and standards as set out by *UNDRIP*.

Participants expressed further hope that *UNDRIP* could help build a new and more just legal order in Canada that remedied the injustices of existing legal regimes, including the *Indian Act*.<sup>[25]</sup>

People emphasized the critical importance of “co-developing” *UNDRIP* action plans in close and equal partnership with Indigenous peoples, as a model of new decolonized relationships. Speakers further highlighted the importance and need for provinces and territories to play their part by developing, implementing and monitoring their own action plans to align policies, laws and actions with *UNDRIP*, in co-operation with Indigenous peoples and federal authorities. For example, one person said:

“Federal implementation [of *UNDRIP*] is insufficient without provincial cooperation. [This is because] there is a lot of interaction in Canada between provincial and federal governments which have profound impact for [our people].”

Anaya and others at the dialogue also emphasized the need to increase understanding and awareness of *UNDRIP* among public officials across all sectors of society. This education and awareness-raising should provide public officials with concrete interpretive guidance on how *UNDRIP* may be implemented in their respective domains.

One person said what is needed is a “*Rights Recognition Framework*” that “provides guidance on the path to implementation...It is important not only to educate on the content of *UNDRIP* but how these are intended to operate, and mechanisms of implementation.” Another speaker noted that this requires “promoting research and implementation tools on the *UNDRIP*.”

Anaya and others also stressed the need to build public awareness, empathy and support for Indigenous human rights. They highlighted the need for public education campaigns to help tackle stereotypes and myths about Indigenous peoples, and ensure longer-term sustainability, co-operation and compliance with *UNDRIP*. Anaya further advised that to help shape public opinion, “We also need to be in positions where we can influence decisions... We need greater visibility as journalists, etc. in mainstream media.”

Several people recommended a role for the OHRC in helping local policy and law makers understand the meaning and applications of *UNDRIP* in their domains:

“How do you ensure that *UNDRIP* is brought to life in the *Code*? There is already an existing principle that you should do that, as upheld by the Federal Court of Appeal when the CHRC used *UNDRIP* in the Child welfare case.<sup>[26]</sup> My concern, however, is where Indigenous peoples are forced to assert their [*UNDRIP* enshrined] rights, where lawyers and judges may lack knowledge of international law, it’s not a good conversation to have, and there are a few court cases where it’s gone disastrously wrong. The OHRC could do something to bring all of our knowledge up. The expertise is held in the auspices of the OHRC, and you have a high degree of credibility. [The OHRC] could be a neutral space that could give life to the *Declaration*, and de-mystify problems [of interpretation and application].”

Another person further recommended translating *UNDRIP* into Indigenous languages to promote rights holders use of it.

Many people stressed the need for dialogue and consensus-building among and between Indigenous peoples in Canada, to effectively realize the promise of *UNDRIP*, including its recognition of Indigenous sovereignty, self-determination, and Indigenous forms of governance and customary law. One person said that this “requires Indigenous nations to unify and forge agreement on their own laws and constitutions and forms of land tenure, and their inter-relations.”

“If we’re going to really implement the United Nations *Declaration*, we have to do some self-determining. Self-determination starts with you, your family and your community. There are 633 First Nations in Canada. That’s not by accident, that’s by design through the *Indian Act*. The solution is in our diversity – when we learn to work together and with our cousins...I think that we have to understand not just the impact of Canadian sovereignty, with Métis brothers and sisters, we need to start talking about Indigenous sovereignty and how we are going to reconcile our nations.”

Anaya encouraged Indigenous peoples to maintain optimism about the potential fruits of dialogue with government and mainstream organizations, in the effort to advance *UNDRIP*. He said:

“I come from an optimistic stance. In 1929, an Indigenous Canadian man challenged the *Indian Act* at the League of Nations in Geneva. He did not succeed, but his optimism set a precedent. The persistence of this optimism through many meetings in the ‘70s and ‘80s in Geneva ultimately led to *UNDRIP* and the realization of the rights earlier called for.”

He was optimistic that non-adversarial modes of engagement could bring about change:

“We need to engage government in a non-adversarial manner and be open to what they have to say...I think we need to appeal to their sense of fairness and rule of law, and their rationality – and be optimistic that there can be progress.”

However, not everyone shared this optimism, with some people highlighting the “changing same” of Indigenous colonization and marginalization over time, and consequent “colonial fatigue syndrome” resulting from this. Others advocated for focusing individual and collective energies on rebuilding Indigenous cultural institutions and systems of governance and law for the long-term renewal and well-being of Indigenous communities.

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## 4. Key Indigenous human rights issues and concerns on the ground

This section highlights the salient human rights issues, themes, and concerns discussed, arranged by sector and area.

### a. Language and culture

One key issue was conserving and promoting Indigenous language, which was squarely positioned as a human right inseparable from, and at the core of, Indigenous identity, culture and dignity:

“Our language is the most important human right that we have. It tells me who I am.”

“What makes us human? Is it not language that makes us human, and distinct people?”

People raised significant concerns about the declining transmission of Indigenous languages across generations, noting the key role of language in cultural reproduction:

“I’m from the Crane Clan in Mattagami. Leaders of our country need to know how important it is that we restore our language to our people. A lot of it was lost in the residential school. If you hear about our home town, we have fewer and fewer people who speak the language, and then none because the last person died.”

In addition to the ongoing historical impacts of colonialism and deliberate state policies of cultural genocide, participants also attributed such language and culture loss to contemporary forces and situations. “Our children are taken out of their communities for education, healthcare [etc.] where people cannot communicate in their language,” one person said, highlighting the lack of adequate comparable services and opportunities in adjoining regions.

The failure of public service providers to provide service in culturally and linguistically accessible forms was a major human rights concern identified. For some, it had life and death consequences:

“Some Indigenous people, because of who they are, don’t have rights, to basic healthcare and life. In northern Ontario, I met a woman whose friend had to fly to a southern town for medical treatment. Police found her frozen body due to a lack of communication. Someone was supposed to pick her up. She was unilingual – Cree.”

Participants encouraged the OHRC to “*support the revitalization of Indigenous languages*,” including through the provincial education system. “*Where is my grandson going to learn his language?*” one person asked, highlighting the key role of the education system in transmitting language to the next generation and the imperative of engaging mainstream systems to demand linguistically and culturally competent, relevant and equitable service. “*What can the OHRC do about this?*” another person asked, recommending the OHRC intervene to require the teaching of Indigenous language within the school system:

“French language is required in school, but not Indigenous languages. They can delay Indigenous language education until Grade 4 in elementary schools on reserve. The goal really is not to produce bilingual people, but rather just to give young people a taste of the language. So I think the OHRC can help with those barriers and address this issue.”

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### b. Basic needs – land, food, water, housing etc.

Much was said about the failure of prevailing human rights approaches to adequately address fundamental first-order needs such as food security, clean water and safe and accessible housing. Many people identified these as issues of primary importance for Indigenous communities that were inadequately addressed by domestic human rights legislation.

One person highlighted the significant impact of geographic location in shaping the different kinds of human rights issues of primary concern to different Indigenous communities:

“We need to think about the physical location of these rights. I am from James Bay, Treaty 9 area, which is in the far north of Ontario. Our communities have our language and culture – we are land-based. But we don’t have schools and all the other stuff: housing to live in, drinking water... We have mining and hydro companies knocking on our doors saying ‘we want to consult with you, partner with you, we want to dam the rivers, we want you to buy into this.’ Our kids are being removed hundreds of miles away en masse to go to school. We are under-resourced in our education and schools and our health services. Where is the role for the OHRC, HRTO and human rights system in that? How do we get the houses built, the water purified? That is part of the systemic racism. Part of the reason things are the way they are in those communities is the result of layers upon layers of human rights violations over many generations. It’s important to consider these realities when we’re talking about upholding rights.”

The same speaker drew further attention to the lack of awareness about the OHRC and its work in her community, and the limitations of the *Code* and the OHRC’s mandate in addressing such first-order needs:

“If I said OHRC in my community, I’d have trouble finding people who know what it is or how to access it to facilitate their rights...[Most] would not see it as an adequate mechanism to uphold their rights.”

While people recognized that human rights, in at least theory, had the potential to encompass such issues, as exemplified by *UNDRIP* and other international human rights instruments (e.g. *International Convention on Social, Economic and Cultural Rights*), they recommended that domestic human rights bodies explore ways of expanding domestic human rights law and policy to better address such challenges:

“The right to housing, to food, to not have to leave your home [for services etc.], these are all important [but not currently covered by the *Code*]. What can we do to help with these other things that western law doesn’t see as human rights like water, not travelling for school. What do we have in our tool box to help support that?”

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### c. Education

The education system was raised on many occasions as an area of human rights concern. Issues discussed ranged from the geographic barriers to accessing educational institutions, to the need to further integrate Indigenous language, culture and history study into curriculum at all educational levels:

“The way forward is through education...[I recommend the] hiring [of] Indigenous educators to write curriculum that could implement all of this knowledge and principles [of human rights, *UNDRIP*, Indigenous philosophies of reciprocity etc.] into Junior Kindergarten and onwards so this becomes the norm and what we think about.”

People also called for the integration of educational curriculum about Indigenous human rights. As Anaya observed, “How do we get non-Indigenous peoples to engage [with Indigenous peoples] without being perceived as a threat – as seeking special treatment?” His response:

“Education at the youngest, earliest level, so people understand that these are not special rights...This is a long-term project – the mainstreaming of education about Indigenous peoples and human rights, through an Indigenous lens, in the mainstream education systems, from a young age, including in universities...This should be a subject that mining executives are exposed to in their youth.”

Another topic that arose many times was the key role of the education system in raising the consciousness of current and future generations of Ontarian and Canadian youth. As well, people called on Indigenous organizations to play their own lead role in transmitting and promoting traditional knowledge to the next generation.

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### d. Child welfare

Many people raised human rights-related concerns about the crisis of over-representation of Indigenous children and youth within the child welfare system. People spoke of the ongoing, systematic and unfair apprehension of Indigenous children into state care:

“Children’s Aid Societies are accusing families of denying children food for participation in traditional ceremonies in their first year of life. The OHRC has a role to play. We have to get back to our ways.” (Indigenous Elder)

Additional concerns ranged from the cultural inadequacy of child welfare services to the underfunding of child welfare agencies, and misallocation of resources *away from* Indigenous families, extended kin and other potential community-based systems of care and support *towards* mainstream care providers. One speaker further highlighted the unequal funding received by Indigenous child welfare agencies and inadequate implementation of the *First Nations’ Child and Family Caring Society* case:

“We are still dealing with lack of funding for Indigenous child welfare issues.”

Other participants called for the redistribution of child welfare funding to community-based initiatives and interventions, voicing criticisms of existing child welfare institutions (including Indigenous ones). One Indigenous Elder related:

“Quite some time ago, our council of grandmothers had approached our area council to tell them that we wanted our children back into our communities and that those children were stolen from us and they were raised in a society that confines them. And we wanted to bring them back home to refill the cup, and we didn’t get too much of a response...What the grandmothers want is to take care of our own children in our own communities, not with the child welfare agencies that exist now in our territories. Almost every family in our territory has something to do with that agency. They do not work with us. They collect money and they are pretending to be an Indian system, but they are practising the white values and keeping our children away from us. We don’t want the money to go to child welfare agencies. We want funding to come to the community so we can set up our own welfare systems.”

People emphasized the critical role of Elders, knowledge keepers, rites of passage, and cultural institutions in transmitting cultural knowledge to the younger generation and building stronger, healthier and more resilient young people, families and communities.

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### e. Criminal justice system

Addressing the over-representation of Indigenous people within the criminal justice system was a major priority area of human rights concern. “Without a change,” one person noted, “a majority of prisoners will be Indigenous in the future.”

The Honourable Leonard Mandamin, former Provincial and Federal Court judge and current Faculty Co-ordinator for Aboriginal Justice Seminars at the Banff School of Management, and Adjunct Professor at the University of Alberta School of Native Studies, emphasized the importance of adopting Indigenous cultural approaches in the justice sector. He stressed the need to expand the horizon of understanding and administration of justice beyond the overly narrow current focus on punishing, deterring and managing immediately presenting safety “risks.” He said:

“The Ontario criminal justice system is failing Indigenous people by its bias and exclusive focus on ‘safety’...Incarceration is supposed to be the strongest deterrent. By that token, we should find that Indigenous communities are the most peaceful. But that is not the case. Harm and crime are very high. What is happening?”

Justice Mandamin called for an alternate focus on addressing the underlying root causes contributing to criminal involvement, including by creating the necessary social, economic and cultural conditions for healthy thriving. “Indigenous approaches are different in terms of achieving justice...When our people do wrong, an Elder said, we have to teach them the right way to behave” he explained, contrasting this approach with the prevailing punitive approach that focuses on negative sanctions and prohibitions:

“If something goes wrong, how do you help that person become part of society again, walk a new path, walk a better path, have a good life, become literate, find employment, etc. instead of brutalizing them further through incarceration...and the messages that imprints on the individual [in terms of their individual value and social worth].”

There was broad agreement that rectifying Indigenous over-representation within the criminal justice system will require more far-sighted, holistic, proactive and Indigenous-informed solutions than the current system allows. Justice Mandamin insisted:

“If you are going to address incarceration, you need to shut off the flow [upstream]. We need to see children growing up with dreams, who have a chance to acquire skills, to celebrate [in community] and have fun. That has to be a priority...Families who are raising children need to be secure so that they can make the children secure. [They need to have] jobs, employment etc...Much has also already been said about the importance of language, traditions and culture, and celebrations of identity – by artists, performers, and writers.”

Justice Mandamin further highlighted how prevailing paradigms and structures within the justice system were limiting the ability of otherwise well-meaning and designed programs – such as the *Gladue* sentencing principles – to positively and substantively improve outcomes for Indigenous peoples. He contended that this was in part because people writing *Gladue* reports were not empowered to address underlying social and economic conditions and factors, largely due to the justice system’s focus on short-term

safety risks and punishment over all else.

He added:

“Today probation officers only write documents. They used to be able to go into communities to get to know them, and work on solutions, but they no longer have time and a budget for this.”

Within this systemic context, Justice Mandamin noted:

“*Gladue* sentencing loses its meaningfulness, because [the people administering it] are so overwhelmed with workload and budget, that there is very little you can do, to show people how to live. There is no time or resources allocated for this. It becomes only lip service.”

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## f. Health

Several references were made to difficulties Indigenous peoples encountered in health services. These included issues of access, such as barriers posed by the distant location of such services and/or the failure of governments to adequately fund and support health services in Indigenous communities. Participants also and particularly emphasized barriers resulting from the failure to provide services in a linguistically accessible and culturally competent way:

“My mom had to go to Kingston to receive health care, which is the distance from Manitoba to Northern Alberta. She shared a room with another woman who was speaking Cree. The nurses didn’t understand her [roommate]. It was night. So my mom as a patient had to translate.”

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## 5. Institutional responses on the ground

This section profiles some of the existing efforts, successes, challenges and lessons learned from human rights and justice sector institutions that have consciously set out to better serve Indigenous peoples and advance Indigenous human rights.

### a. Navajo Nation Human Rights Commission

Steven A. Darden, Chair of the Arizona-based Navajo Nation Human Rights Commission (NNHRC), and Executive Director Leonard Gorman spoke about the history and activities of one of the few Indigenous-directed and led human rights commissions in the world.

The NNHRC was established by order of the *Navajo Nation Human Rights Commission Act* ([2 N.N.C. §920 TO 924](#)) in October 2006. Gorman noted that most of the NNHRC’s work deals with relations with non-Navajo people in the border communities. This is in keeping with the original impetus for the creation of the NNHRC following a fatal police shooting of a Navajo man in a border town Walmart store. Gorman added that part of the appeal of adopting a human rights framework was “finding a place in the world community,” as a nation among nations. He said:

“The Navajo counsel decided human rights is better at addressing the issues of the Navajo people than civil rights because, as we learned, we’re not a member of ‘civil society.’ We’re [autonomous] Indigenous people – we have our own beliefs, cultures and lands.”

Gorman described four main functions (responsibilities) of the NNHRC:

1. Educating Navajo people about their human rights
2. Providing advice and support to individuals whose rights may have been violated
3. Assessing race relations in border towns including through public hearings
4. Conducting research, advocacy and capacity-building work to identify and address human rights issues faced by Navajo people.

Gorman described various initiatives fulfilling these functions. For example, the NNHRC developed cultural competency curriculum for police services and municipalities, drawing attention to the unlawfulness of “stop and frisk practices,” where Indigenous people were being stopped and searched by police and forced to empty their medicinal bundles:

“We educated officers that they can’t demand that Indigenous people empty their medicines.”

He also talked about the education challenges they face because of the diversity of Navajo belief systems:

“One of the biggest challenges is our own people. It can be easier to interact with non-Indigenous people and more difficult to talk to our own because the Navajo have become so diversified in our belief systems...Our own grandparents, for example, say they don’t believe in what we are saying about ‘human rights’ – this is one of our biggest challenges.”

The NNHRC takes part in national and international forums on human rights, including being a party to the negotiation and development of *UNDRIP* in Geneva and the Organization of American States’ *Declaration on the Rights of Indigenous Peoples*.

Another challenge the NNHRC mentioned was reconciling western and Indigenous approaches to law and justice.

“It is a challenge in using a process that is foreign to us. Navajo natural law consists of five laws (Navajo fundamental law)...We have been warned against mixing Navajo approaches and western ones. Where do we draw the line, when we have to legislate? How do we bridge these laws and not be assimilated into the mainstream in the process?”

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### b. Canadian Human Rights Commission, National Aboriginal Initiative

Cassandra Bright, Community Engagement Officer with the Canadian Human Rights Commission (CHRC), spoke about recent efforts to promote relationships and advance human rights for Indigenous peoples as part of their National Aboriginal Initiative (NAI). This work is based on five core values:

1. Indigenous peoples have an inherent right to self-determination and self-government
2. First Nation legal traditions and customary law are important
3. Indigenous people have pre-existing Aboriginal and Treaty rights

4. Women and men have equal human rights
5. Indigenous people have the right to be free from discrimination.

A significant portion of Bright’s presentation focused on the introduction of a new interpretive clause in the *Canadian Human Rights Act* (CHRA) resulting from the adoption of (2008) *Bill C-21: An Act to Amend the Canadian Human Rights Act*.<sup>[27]</sup> The new clause requires that the CHRA be “...interpreted and applied in a manner that gives due regard to First Nations’ legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.”<sup>[28]</sup>

Bright said that in practice, the interpretive provision is “usually raised in defence of a human rights complaint against an Indigenous government.” The CHRC, in partnership with the Indigenous Bar Association, held an Elders Gathering in 2010 to seek Elders’ advice on how best to understand this new interpretive provision. Bright said:

“Instead of telling us about Indigenous laws, [the Elders] told us that the CHRC should not be interpreting Indigenous law, but rather Indigenous peoples and communities should be interpreting it.”

The only decision to date citing this provision, *Tanner v Gambler First Nation, 2015 CHRT 19*, involves a Gambler First Nation woman (Tanner) who had successfully been nominated to run for the position of Chief, only to be told later that she was ineligible because she was not a blood descendant of John (Falcon) Tanner as required by section 4.2(a) of the Gambler First Nation’s Election Law. The Tribunal found, among other things, that the applicant had been discriminated against by the Gambler First Nation, based on ancestry, when it excluded her from running for Chief due to this customary Descent Rule. The Tribunal found that the Descent Rule was not reasonably necessary for the exercise of an inherent right to self-government, nor was it grounded in Gambler First Nation’s customs (for more information, see the [CHRC summary](#) of this case).

While not taking issue with the content of the *Tanner* ruling itself, Bright and other participants nevertheless raised concerns with the idea that Indigenous customary law should be a matter adjudicated by a non-Indigenous legal authority:

“You are seeing a non-Indigenous person deciding the reliability of traditional knowledge from the community. They have the decision on what they think is customary law.”

Bright highlighted the challenges the CHRC can face in considering customary Indigenous law, when investigating a complaint to determine if there is sufficient evidence to refer it to the Human Rights Tribunal:

“So far, community members and Elder testimony has been used to investigate traditions and laws...What we are finding is that there is a lot of diversity within Indigenous communities...Sometimes not all community members and Elders agree on what is custom and tradition. There are differing levels of knowledge of traditional practice...and sometimes a practice thought to be traditional is actually the result of the *Indian Act*...It has been revealing to see how much the *Indian Act* has actually become a part of our communities...There may also be situations where people are reluctant to provide contrary information or opinions...They are scared to share for fear of being made an outsider.”

Bright further described how the CHRC, in response to feedback received at the Elders Gathering, refocused their efforts on developing a toolkit<sup>[29]</sup> with guidelines for community-based dispute resolution. She said:

“One of the things we’ve heard discussed today is, as a western institution, we can’t be interpreting Indigenous law. It’s not our place. So as part of listening, we are trying to encourage a community-based dispute resolution process, not using Canadian western forms of law.”

She said that instead, they were encouraging people to draw on their own cultural traditions in the design of such processes:

“Our kit is practical. It recommends incorporating your own practices and so is not prescriptive.”

Bright also described the CHRC’s later efforts to support Indigenous women’s human rights and access to the justice system, including hosting eight Indigenous women’s roundtables over the 2012-2014 period. The CHRC issued a summary report in 2016 – “[Honouring the Strength of Our Sisters: Increasing Access to Human Rights Justice for Indigenous Women and Girls](#).” Bright shared many lessons learned and recommended practices arising from these one-day roundtable discussions, for example emphasizing the importance of active listening and careful, intentional design of such forums, in collaboration with Indigenous partners.

Bright provided several broader recommendations to advance Indigenous human rights. She described a case where a provincial human rights body told an Indigenous applicant to go to the federal human rights institution, which in turn told them to go back to the province, after which time the limitation period for their complaint expired:

“Instead of relying on you as an individual, ‘do I take this to the province or the CHRC?’ – it is a mess in some cases – people should be able to file their complaints with the provincial commission or anywhere [province or CHRC], and then they [the provincial and federal human rights institution] should figure it out internally.”

To increase Indigenous access to and use of the human rights system, Bright further recommended human rights bodies receiving complaints “provide ways for people to file complaints orally or in person” and “develop mobile units that go into communities and take appointments.”

She further suggested that such human rights institutions partner with Indigenous people trained in Alternative Dispute Resolution, to help mediate human rights complaints. The CHRC has already compiled a list of such practitioners across the country who have also been trained by the CHRC. Organizations were further encouraged to follow the examples of the Yukon Human Rights Commission and CHRC in creating internship programs and opportunities for Indigenous students to gain valuable, meaningful employment experience and receive academic credit in the process.

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### c. Ontario Human Rights Legal Support Centre

Jamie Lynne McGinnis, Legal Counsel and Indigenous Service Outreach Committee Coordinator at the [Human Rights Legal Support Centre](#) (HRLSC),<sup>[30]</sup> spoke about the HRLSC’s many and concerted efforts to better serve and advance the human rights of Indigenous peoples. The HRLSC’s mandate is to provide legal and support services to people who have faced discrimination contrary to Ontario’s *Code*.

McGinnis outlined a brief chronological history of the HRLSC’s efforts to advance Indigenous human rights following the organization’s creation a decade ago. This included:

- Fulfilling an early commitment to having at least three Indigenous lawyers on staff (10% of HRLSC’s total lawyer staff)
- Designating one of these positions in the north
- Creating Indigenous service guidelines and protocol (originally in 2010, updated in 2014 and 2016)
- Forming an Indigenous Service Outreach Committee in 2011, chaired by the Director of Legal Services, which meets every two months to review Indigenous complaints and issues
- Creating a new designated Indigenous Human Rights Advisor (HRA) staff position in 2014, to provide front-line intake service for Indigenous clients
- Forming an official partnership with the Ontario Federation of Indigenous Friendship Centres in 2015 to launch the Provincial Aboriginal Human Rights Training

- Initiative, to deliver training to Friendship Centre staff across the province to promote access to legal services for Indigenous people experiencing discrimination
- Partnering with a Sault Ste. Marie community legal clinic to host Indigenous articling students at the HRLSC
- Expanding the Indigenous staff complement to its current level of five, with Indigenous staff now existing at every level of employment and service, based in London, Thunder Bay and Toronto.

McGinnis described the legal services the HRLSC provides to clients and explained how the HRLSC’s Indigenous Service Delivery guidelines function in practice.<sup>[31]</sup> She also briefly reviewed some of the notable cases supported by the HRLSC which were decided at hearing and which ruled in favour of the Indigenous applicant.

McGinnis highlighted some of the positive results of the HRLSC’s focused efforts to better serve Indigenous peoples, including their steady increase in the number of Indigenous callers from 2014 to 2018, increasing from 71 in 2014/2015 to 230 only halfway through the 2017/2018 fiscal year. And she noted the general increase in the frequency and diversity of services offered.

She emphasized that effectively delivering Indigenous services and outreach required not only having Indigenous staff on board, at all levels, but also creating an inclusive, responsive environment to retain Indigenous staff. She talked about her first-hand experience working at the HRLSC:

“As an Indigenous person, I am proud to work at the Human Rights Legal Support Centre, where Indigenous staff ideas and opinions are received, respected and encouraged...To work in an organization that is encouraging of our viewpoints helps to reconcile being an Indigenous person with being a lawyer working in a colonial system.”

Among the challenges she shared was reaching communities in the far north of Ontario. “Some northern Indigenous people do not have a phone and most of our service is phone-based,” she said, noting further room for improvement: “My experience is that people do not know we are there and that we are free.” Another “issue we often face from our indigenous clients was the jurisdiction question” – sorting out which entity has jurisdiction over an issue, which can be complex at times.

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#### **d. Social Justice Tribunals of Ontario (SJTO)**

The [Social Justice Tribunals of Ontario](#) (SJTO) is a cluster of eight Ontario-based adjudicative tribunals (including the Human Rights Tribunal of Ontario), with a mandate to resolve applications and appeals brought under several statutes relating to child and family services oversight, youth justice, human rights, residential tenancies, income support, compensation for victims of violent crime, and special education.

Marisha Roman, lead for the SJTO’s Indigenous Insights Initiative (III), spoke about the work the SJTO is currently doing to increase Indigenous access to its social justice tribunal services. Roman explained that the aim of the III is “to become more relevant and accessible” and “to identify First Nation, Métis and Inuit needs in interacting with our tribunals, including the information and services we provide and the approaches we take to resolving people’s legal issues and disputes.”

“Our approach is through dialogue and collaboration to understand the challenges or barriers that may exist for First Nation, Metis and Inuit clients in accessing SJTO services. [It] is based on active listening.”

One of the main ways this approach takes concrete, culturally responsive form is through Elder-led “talking circles.” Roman said:

“A knowledge keeper, Francis Anderson, initiated the idea of resolving issues through talking circles. She takes the role of being the facilitator, but also the grandmother and centre, being the Elder in the circle.”

Describing each talking circle as “unique,” Roman stated that the SJTO was currently in the process of “trying to move the ad hoc talking circle approach to something more formal.”

The SJTO also increased its outreach efforts, including through in-person meetings with key Indigenous organizations, and hosting information sessions for the public to gain knowledge and awareness of member tribunal services. The SJTO was also building staff capacity, including through cultural competence training and “cultural intelligence building,” to better understand and serve Indigenous clients.

Roman shared her optimism about the ability of Indigenous staff in large mainstream organizations like the SJTO to make a difference. She said:

“[I was once] asked ‘how do you reconcile your identity as Indigenous with working within the child welfare system?’ I said I am the one to do the mediation. I bring my humanity, in terms of what I am doing to make the person engaged in the process. A lot of the people we deal with are parents who feel like the agency doesn’t listen to them – they are not heard. So I can model what it is like to be heard and listened to. I can be that model.”

Roman said that one of the key challenges facing the SJTO was the lack of Indigenous identity data to gauge the numbers of Indigenous people accessing SJTO services. This made it difficult to measure the impact of their efforts to improve accessibility.

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#### **d. Indigenous Justice Division, Ministry of Attorney General**

Dr. Kirsten Manley-Casimir, Acting Legal Director with the Indigenous Justice Division (IJD) in the Ontario Ministry of the Attorney General, delivered a presentation on the history, mandate and work of this unique Indigenous-led, oriented and focused justice division.

She talked about the tragic circumstances surrounding IJD’s creation in 2015, following the back-to-back deaths of four young Indigenous men from northern Ontario. First, in 2006, two young men died in a fire in a police holding cell at a Kashechewan First Nations police detachment. Then, less than a year later, another young man died in custody at the Thunder Bay District Jail, and shortly thereafter, a 15-year-old boy attending school in Thunder Bay was found dead in the river. In each case, a Coroner’s Inquest<sup>[32]</sup> was held. “The families of these four young men insisted there needed to be an Indigenous juror from a remote northern community to make the recommendations meaningful,” Manley-Casimir explained.

It became evident to the families and their lawyers, including Kimberley Murray and Mandy Wesley, that the way the jury list is composed systemically excluded First Nations jurors. This led to the August 2011 launch of an independent inquiry into First Nations Representation on Ontario Juries, conducted by the Honourable Justice Frank Iacobucci. Recommendation #5 from his final [Report](#) called on the “[t]he Ministry of the Attorney General [to] create an Assistant Deputy Attorney General position responsible for Aboriginal issues, including the implementation of [the Iacobucci] Report.”

The lawyers who represented the young men at the Inquest went on to become the first Indigenous Deputy Attorney General (Kim Murray), and the Executive Advisor/Legal Counsel (Mandy Wesley) of the Indigenous Justice Division. For more on the outcomes of this inquiry, which led to the creation of The Debwewin Jury Review Implementation Committee (Debwewin), see [The Debwewin Final Report](#) (April 2018) which contains a summary Debwewin’s advice to the Deputy Attorney General on how best to implement the recommendations contained in the Iacobucci Report.



Manley-Casimir explained that IJD’s mandate is “to implement the *Iacobucci Report* recommendations and to lead the implementation of the TRC justice sector ‘*Calls to Action*.’” She further described IJD’s mission: “to support the reclamation of Indigenous legal systems” and, more broadly, “strengthen justice for Indigenous people in Ontario”.

Manley-Casimir noted that one thing that distinguishes IJD from other government bodies is that “all of our work is guided by an Elders Council. We ask them for guidance on everything.” As well all of their work “is rooted in Indigenous law and teachings,” and guided by “a fearless leader” in Deputy Attorney General Kimberley Murray, former (2010-2015) Executive Director of the Truth and Reconciliation Commission of Canada.

Among the programs and services offered and funded by IJD is the Restorative Justice Program, which expanded from nine to 54 programs across Ontario. Manley-Casimir explained that due to their emphasis on locally-shaped, culturally-based practice, these programs “look completely different in remote communities and urban communities.”

A second major IJD funding stream provides funds directly to Indigenous communities “to revitalize Indigenous legal systems” – with IJD being potentially the only such government entity in Canada doing this. In some communities, this involves “gathering Elders to come up with Indigenous legal principles.” In others, “they have processes based on Indigenous law to figure out what structures need to be put in place to operationalize those programs.” For some communities, this entails doing public education on Indigenous law, so that it is understood and promoted in the community. “To date, we have funded 24 projects focused on this,” said Manley-Casimir.

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#### **e. Restorative justice initiatives**

The Honourable Justice Leonard Mandamin shared some promising practices in the justice sector. He described a restorative justice program in the Siksika [First Nation](#) in southern [Alberta](#), which made use of Indigenous justice circles to deal with young offenders as an alternative to the court system. He contended that the success of this program’s approach was evident in the significant reduction in the number of youth in that community later involved in the criminal justice system. “They were able to achieve that outcome by showing a good way to live,” he noted.

He also described a protocol developed in the same community to deal with family violence. This protocol used traditional mediation methods and sacred bundles to convey traditional teachings and law:

“When you opened it, there was a story associated with each item. The pipe contained a teaching about family violence. If you are violent to family you will lose that person.”

Barbara General, Justice Director of the Six Nations of the Grand River, also described key features of their restorative justice programs (Indigenous Dispute Resolution project) and the Haudenosaunee justice system and philosophy underlying it. She described how the Six Nations of the Grand River came to develop their restorative justice program and victim services:

“We gathered the statistics of the Six Nations. We looked and found that we have about 500+ citizens going through the criminal courts, and we found that there was no support. The majority of the people are men and they are there on a monthly basis. Many have multiple charges and some have more than 30 charges...Then we looked at who they are harming and found that it was mainly family members in their communities. So our victim services need to [also] address this.”

She noted that their growing staff complement (now 15 people) and service outreach: “We have services for workers, offenders, victims and others.” She further noted: “There are many people who do not trust the police or outside agencies, so they only reach out to us.” General emphasized the key importance of revitalizing Indigenous legal and cultural systems to restore the well-being of Indigenous peoples.

Both their victim services and restorative justice programs integrate traditional laws and philosophies, including lessons from the GANOHONYOHK (Thanksgiving Address), The Story of Tadadoho, the formation of the Haudenosaunee Confederacy, the Great Law of Peace (Gayanashagowa) and the *Code of Handsome Lake* (Gaiwiiio), a moral and ethical code developed by an early 19<sup>th</sup> century Seneca prophet which “reminded people to return to the Good Mind.”

The restorative justice programs developed by the Six Nations of the Grand River all drew from these foundational teachings. General said:

“Our principles are drawn from the stories that inform our practices...So, based on the story of The Great Law and the Story of Creation, we help the victim and person [who victimized them]...The Thanksgiving address reminds us of our true leader, the natural environment and the animals that live in harmony. As people, we are supposed to live like this as well.”

General also stressed the importance of integrating Indigenous languages into their programs:

“We are incorporating a language component into our ceremonies. It is really important to integrate that into our work. That is what makes us distinct as people and our people often forget that.”

Looking back, she said “it took a long time to start using that language in our value system and other internal documents. It was a ‘big process.’” Looking ahead, we learned at the dialogue that the Six Nations of Grand River were currently working on developing their own tribunal system.

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## **Appendix 1: Key recommendations**

Dialogue participants made many recommendations. Here is a summary of the key recommendations, for the OHRC, Ontario and Canadian Human Rights institutions and systems more broadly, all levels of government and other organizations in the business of delivering public services to Indigenous peoples. Some of the recommendations, although directed towards a particular actor (e.g. government, human rights institutions), may be relevant across sectors and organizations. Recommendations do not necessarily reflect the consensus of dialogue participants, unless explicitly stated otherwise.

### **A. Recommendations for the OHRC (\*in addition to all recommendations in B & D below)**

1. Promote understanding and monitoring of *UNDRIP* in Ontario.
2. Promote ongoing dialogue about Indigenous peoples’ human rights and *UNDRIP* implementation.
3. Amplify Indigenous voices and human rights concerns.
4. Act as an ally including (where appropriate) helping to support and facilitate Indigenous peoples’ communication with government.
5. Use the OHRC’s powers to advance systemic policy changes in key institutional areas (e.g. justice, education, child welfare).
  - (a) Analyze and report on Indigenous identity data to monitor and evaluate the state of Indigenous human rights fulfilment.
  - (b) Use public inquiry and legal intervention powers to expose Indigenous human rights violations and enforce Indigenous people’s human rights.

(b) Educate and communicate to the public about the impact and benefits of systemic changes resulting from OHRC interventions.

6. Prioritize, advance and promote Indigenous language rights as a human right, and within the education system.

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## **B. Recommendations for human rights institutions in Canada and Ontario**

7. Use *UNDRIP* as the organizing framework for understanding, interpreting and implementing Indigenous peoples' human rights in Canada.
8. Interpret human rights laws and advance policies in alignment with *UNDRIP*.
9. Develop mechanisms to systematically monitor, track and report on *UNDRIP* implementation.
10. Promote understanding, translation and use of *UNDRIP* for domestic human rights duty and rights holders.
11. Monitor, track and publicly report on organizational best practices respecting, protecting and advancing Indigenous peoples' human rights. This could include issuing a report card.
12. Strengthen the human rights system's capacity to deal with systemic human rights issues, including by creating a separate stream for handling systemic human rights applications.
13. Give greater emphasis in human rights law, policy and education to collective human rights and responsibilities.

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## **C. Recommendations for governments at all levels in Canada**

14. Use *UNDRIP* as the organizing framework for understanding, interpreting and implementing Indigenous peoples' human rights in Canada, including but not limited to "Aboriginal rights" under the *Constitution*.
15. Review and amend domestic legislation, including human rights law, to ensure alignment with and accountability for implementation of *UNDRIP*.
16. Consider legislative reform to the Ontario *Human Rights Code* to better recognize, respect and reflect Indigenous rights and unique constitutional status and to give greater visibility and effect to *UNDRIP*.
17. Create a National Action Plan for implementing *UNDRIP*, in partnership with Indigenous peoples and the provinces and territories.
18. Develop mechanisms to systematically monitor, track and report on *UNDRIP* implementation.
19. Support the development and maintenance of autonomous Indigenous institutions to advance Indigenous human rights.
20. Strengthen domestic human rights law and policy to better address social, economic and cultural rights.
21. Equitably fund public services for Indigenous communities and address cultural, linguistic and geographical barriers to service.

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## **D. Recommendations for organizations in general (including government, public, private, non-profit sector and human rights institutions)**

See also Section 1 ("On walking together, meaningful engagement and reconciliation") for more general advice in the below respects.

22. Recognize and respect Indigenous peoples' sovereignty and right to self-determination.
  - (a) Interrogate and transform colonially-shaped organizational paradigms, structures and relations of power underlying and shaping program and service provision.
  - (b) Empower Indigenous peoples and perspectives, including by vacating institutional space to support and make way for Indigenous peoples and organizations to exercise sovereignty in your service area.
23. Engage in ongoing dialogue and relationship-building, as equal partners. Value cultivating and preserving good relationships over (but not necessarily to the exclusion of) short-term actions and deliverables.
24. Increase representation of First Nations, Métis and Inuit people at all staff, management and governance levels, and create inclusive, empowering work environments to help ensure Indigenous staff retention.
25. Design and provide services in a culturally and linguistically accessible, relevant and competent manner.
26. Collect Indigenous identity data to monitor and evaluate service access and outcomes for Indigenous peoples.

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## **Appendix 2: Chronology of OHRC Indigenous listening circles and location visits (2016-2018)**

- April 19, 2016: Chief Commissioner attendance at the Six Nations General Meeting in Ohsweken, Ontario
- July 7, 2016: Chief Commissioner meeting with the Ontario Federation of Indigenous Friendship Centres' Youth Council in Hamilton, Ontario
- July 9, 2016: Chief Commissioner speech at the OFIFC's Annual General Meeting in Hamilton, Ontario
- February 13-16, 2017: Chief Commissioner trip to Kenora and Sioux Lookout
  - Grand Chief Frances Kavanaugh (Grand Council Treaty #3)
  - Chief Clifford Bull, Lac Seul FN
  - Listening circles at the Ne Chee Friendship Centre (Kenora); Nishnawbe-Gamik Friendship Centre (Sioux Lookout)
- February 27-March 3, 2017: Executive Director and Director of Policy, Education, Monitoring and Outreach trip to Dryden and Fort Frances, Ontario, to meet with Indigenous leaders and community
- May 10, 2017: Chief Commissioner trip to London, Ontario
  - Meeting with Chief Leslee White-Eye, Chippewas of the Thames First Nation
  - Meeting with Al Day, Executive Director, N'Amerind Friendship Centre
- June 13-15, 2017: OHRC Director of Policy, Education, Monitoring & Outreach attendance at the All Ontario Chiefs Conference at Lac Seul First Nation
- July 8, 2017: OHRC signs Memorandum of Understanding with the Ontario Federation of Indigenous Friendship Centres at their AGM at the N'Amerind Friendship Centre, London, Ontario
- March 5-9, 2018: OHRC Chief Commissioner tour of Timmins, Moosonee and Moose Factory, Ontario, accompanied by Commissioner Maurice Switzer, Executive

Advisor, and Director of Policy, Education, Monitoring & Outreach.

- Meetings in Timmins included:
  - Nishnawbe Aski Nation Deputy Grand Chief Jason Smallboy
  - Timmins Native Friendship Centre
- Meetings in Moosonee and Moose Factory included:
  - Grand Chief Johnathon Solomon, Mushkegowuk Council

- June 18, 2018: Chief Commissioner and staff participation in Timmins Leadership Forum Planning Session.

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[1] Protected grounds are: age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status (including single status), gender identity, gender expression, receipt of public assistance (in housing only), record of offences (in employment only), sex (including pregnancy and breastfeeding), sexual orientation. **Protected social areas** are: housing, employment, goods, services and facilities, membership in unions, trade or professional associations, and contracts. For more information, see [Guide to your rights and responsibilities under the Human Rights Code](#).

[2] Italics are used throughout this Report to indicate direct verbal quotes which are as close to verbatim as possible but not necessarily verbatim, as they were captured by OHRC note-takers without the assistance of a recording device. Names of persons and organizations have been omitted, in keeping with the spirit of openness and confidentiality desired for the dialogue, except where persons were officially representing an organization in a speaker role, and/or where it would be otherwise near impossible to conceal the identity of the speaker, given the contextual information. Indigenous is used throughout to refer to First Nations, Inuit and Metis, inclusively.

[3] Source, TRC website, <http://trc.ca/websites/trcinstitution/index.php?p=10>, retrieved Sept. 11, 2018. For more on “what is reconciliation,” see video by Senator Murray Sinclair, Chair of the TRC <https://vimeo.com/25389165>.

[4] Here, the participant was citing the advice of Senator Murray Sinclair.

[5] “Political Territorial Organizations (PTO) are secretariat bodies that represent large groups of First Nation communities in Ontario. Each PTO serves its member communities in various capacities, mainly through political leadership and advocacy, education, jurisdiction and negotiation, lands and resources, intergovernmental affairs, health, etc. There are four PTOs in Ontario, servicing more than 100 First Nation communities. The governing body of each PTO is made up of an elected leadership, including Elders, youth and regional advisory councils, as well as a Board of Directors.” (Source: Ontario Library Service North, First Nations Language Portal, Retrieved September 11, 2018 from [www.olsn.ca/fnlanguages/?id=tri\\_cou\\_pto.asp&label=Tribal%20Councils%20&%20PTOs](http://www.olsn.ca/fnlanguages/?id=tri_cou_pto.asp&label=Tribal%20Councils%20&%20PTOs)). For more information on Ontario's PTOs, visit the websites of the Anishinabek Nation – Union of Ontario Indians, Association of Iroquois & Allied Indians, Grand Council of Treaty #3, and Nishnawbe Aski Nation.

[6] “Tribal [Band] Councils are central, advisory bodies that represent First Nation communities in specific geographic regions of Ontario. Councils are comprised of a Board of Directors, which generally includes the First Nation Chief and one additional representative from each member community” (ibid.).

[7] See Audre Lorde’s collection of essays, *The Master’s Tools Will Never Dismantle the Master’s House*, Penguin Books, 2018. The full quote reads: “For the master's tools will never dismantle the master's house. They may allow us to temporarily beat him at his own game, but they will never enable us to bring about genuine change.”

[8] For more on the history of the Two Row Wampum Treaty, also known as *Guswenta*, see [www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/](http://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/).

[9] For more on The Royal Proclamation, see [https://indigenousfoundations.arts.ubc.ca/royal\\_proclamation\\_1763/](https://indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/), retrieved June 12, 2018).

[10] For more on the doctrine of terra nullius, see [www.ictinc.ca/blog/christopher-columbus-and-the-doctrine-of-discovery-5-things-to-know](http://www.ictinc.ca/blog/christopher-columbus-and-the-doctrine-of-discovery-5-things-to-know), and the Truth and Reconciliation Commission’s *Calls to Action* #45 and 46 which call for the explicit repudiation of this concept, as part of any meaningful reconciliation.

[11] Precedent for this focus on duties exists in other jurisdictions, such as England, South Africa and Australia, where human rights legislation explicitly places a positive onus on public bodies to proactively advance human rights “duties” (see for example, the [UK Public Sector Equality Duty](#)).

[12] UN declarations provide internationally recognized “standards” for measuring countries’ compliance with international human rights law (including norms, covenants and conventions). According to UN Special Rapporteur S. James Anaya – who announced in August 2008 that he will measure state conduct *vis-à-vis* Indigenous peoples by the yardstick of *UNDRIP* – *UNDRIP* represents:

an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law [...] The principles and rights affirmed in the *Declaration* constitute or add to the normative frameworks for the activities of United Nations human rights institutions, mechanisms and specialized agencies as they relate to indigenous peoples. (Human Rights Council, 2008. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, UN Doc. A/HRC/9/9 of 11 August 2008, paras. 85 and 88. fn 30, p5-6: 30).

[13] *UNDRIP*, *ibid.* Article 43.

[14] Describing human rights as “universal” and “inherent” (being “about the essence of human dignity”), Anaya highlighted how “our understanding of them is variable”, shaped by our underlying worldviews and philosophies. By way of illustration, he pointed to tensions inherent in the very first “consensus” articulation of human rights in the 1948 *Universal Declaration of Human Rights (UNDHR)*. This *Declaration*, he argued, reflects both a classical western orientation in its focus on such liberal democratic values as the individual’s right to equality and *freedom from the state*, alongside a more communitarian approach, in its call upon the state to meet basic social welfare needs, of individuals and communities, as a *state responsibility*, flowing from these same rights.

[15] For example, while the human right to “equality” is conventionally understood in western liberal terms as equality of the individual, *UNDRIP*, Anaya argues, expands this interpretation, emphasizing the communal dimension of this right, including the right to equality of Indigenous communities and “peoples.”

[16] One speaker explained: “[The dominant perspective] divides the world between individuals and the state as they know it. States have an inability to recognize rights beyond this. They fear the exercise of rights by people not part of the club [e.g. non-state ‘Peoples’]. The reason the *Declaration* took so long was that states felt the need to defend the system from Indigenous human rights claims and demands which were about families, communities, hunting, land... The governments were focused on individual rights like the Ontario *Human Rights Code*.” Noting the importance of word choice in the *Declaration*, another speaker added: “They had to fight over every word in that *UNDRIP*, and ‘peoples’ was a very important word, because you can legally subjugate populations [a term only signifying a mass of individuals versus national community], but you can’t do that to peoples.”

[17] The *International Bill of Human Rights* consists of the [Universal Declaration of Human Rights](#) (adopted in 1948), the [International Covenant on Civil and Political Rights \(ICCPR\)](#), 1966) with its two Optional Protocols and the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#), 1966). The two covenants entered into force in 1976.

[18] Article 2(2) of the *UNDRIP Act* (Bill C262) states: *Nothing in this Act is to be construed as delaying the application of the United Nations Declaration on the Rights of Indigenous Peoples in Canadian law.*

[19] Article 3 of the *UNDRIP Act* (Bill C262) states: *The United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007, and that is set out in the schedule, is hereby affirmed as a universal international human rights instrument with application in Canadian law.*

[20] For Supreme Court of Canada decisions, see for example *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 70, online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do> and *R v Hape*, 2007 SCC 26 [2007] 2 SCR 292 [*Hape*] at paragraphs 39, 46, 53, 56., online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2364/index.do>. These SCC decisions are further summarized in a Special Report by the Centre for International Governance Innovation entitled *UNDRIP Implementation Braiding International, Domestic and Indigenous Laws* (see page 2).

[21] For more on the European colonial doctrine of *terra nullius* - that no one owned land prior to European assertion of sovereignty - including its applications in the Canadian context, see *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256.

[22] See “Related Provisions” document, appended to the *Canadian Human Rights Act* — 2008, c. 30, s. 1.2:

*Regard to legal traditions and customary laws*

1.2 In relation to a complaint made under the *Canadian Human Rights Act* against a First Nation government, including a band council, tribal council or governing authority operating or administering programs and services under the *Indian Act*, this *Act* shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.

[23] See ITK’s (April 2017) position paper, “[Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada through comprehensive legislation](#).”

[24] TRC Calls to Action #43 and #44 “call upon federal, provincial, territorial and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation” (43) and also (44) “call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration of the Rights of Indigenous Peoples*.”

[25] One person argued: “Section 6.1 [[Persons entitled to be registered](#)] in and of itself is cultural genocide. You are telling us who we are and when we count. Amendments and Bill C-262 will hopefully be a tool to eradicate all these rules that we have to live up to in order to be who we are.”

[26] See *First Nations Child and Family Caring Society of Canada v Canada* (Minister of Indian Affairs and Northern Development) 2016 CHRT 2, and Federal Court of Appeal decision, *Canada (AG) v Canadian Human Rights Commission*, 2013 FCA 75.

[27] Receiving Royal Assent in 2008, this Bill repealed section 67 of the CHRA which had previously excluded matters under the *Indian Act* from human right scrutiny.

[28] Emphasis added. CHRC. (2014). *Special Report to Parliament on the Impacts of Bill C-21 (An Act to Amend the Canadian Human Rights Act)*. Retrieved July 11, 2018 from <https://www.chrc-ccdp.gc.ca/eng/content/special-report-parliament-impacts-bill-c-21-act-amend-canadian-human-rights-act>.

[29] See the CHRC’s (2013) [A toolkit for developing community-based dispute resolution processes in First Nations communities: rights, responsibility, respect](#).

[30] The HRLSC is an independent agency funded by the Government of Ontario through the Ministry of the Attorney General. The HRLSC operates under the direction of a board of directors appointed by Lieutenant Governor in Council. It is one of three core human rights institutions in Ontario, alongside the Human Rights Tribunal of Ontario and the Ontario Human Rights Commission.

[31] McGinnis said that when a person who self-identifies as Indigenous engages the HRLSC’s services, whether through their toll-free phone number, walk-in or referral, they are offered the option of receiving support/consultation from an Indigenous Human Rights Advisor (HRA). Services are provided in 140 languages including Cree, Oji-Cree, Mohawk and Ojibway. The HRA then assesses if there may be a breach of the *Human Rights Code*. If this is the case, the person is referred on for an Application Interview. During the Application Interview, the person will receive a legal opinion on the merits of their claim. If it is evident that there are language or other barriers to drafting the application, the HRLSC can provide assistance with this. If the case goes to mediation or a hearing, Indigenous clients may request further support from an Indigenous lawyer, who will conduct mediation or hearing interviews. In each case, the HRLSC will consider representing the client before an HRTTO adjudicator.

[32] In Ontario, a Coroner’s Inquest involves a public hearing conducted by a coroner before a jury of five community members for the purpose of informing the public about the circumstances of a death. Although the jury’s conclusions are not binding, they can help answer whether the deaths were accidental or not, and can also come up with recommendations on how to prevent deaths in the future.

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ISBN/ISSN:  
Print 978-1-4868-2723-7 | HTML 978-1-4868-2724-4 | PDF 978-1-4868-2725-1