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Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Canada

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Origins of UNDRIP

History of UNDRIP

- In 1982, the UN Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities released a study about the systemic discrimination faced by Indigenous peoples worldwide.
- The UN Economic and Social Council (UNECOSOC) responded to these findings by creating the Working Group on Indigenous Populations (WGIP), in order to focus exclusively on Indigenous issues worldwide.
- WGIP began to draft a declaration of Indigenous Rights in 1985.
  - In 1993, the initial draft was submitted to the Subcommission on the Prevention of Discrimination and Protection of Minorities, which approved it the following year.

History of UNDRIP (cont'd)

- Upon its approval, the draft declaration was sent to the Commission of Human Rights, which established the Intergovernmental Working Group (IWG).
  - The IWG consisted of human rights experts and over 100 Indigenous organizations.
- At the conclusion of the IWG process in 2005, a 'compromise text' was submitted to the Human Rights Council (HRC).
- That text was adopted by a majority vote of the HRC in June 2006.
  - Two of the 47 members of the HRC voted against adoption of the text:
    - Canada; and
    - Russia.

UNDRIP Adopted by the UN General Assembly

- UNDRIP was adopted as a resolution of the UN General Assembly on September 13, 2007.
  - 144 states voted in favour.
  - 11 states abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).
  - 4 states voted in opposition (USA, Australia, New Zealand and Canada).
    - All four of the dissenting states have since, with varying reservations, endorsed UNDRIP.

Examples of substantive concerns

- New Zealand:
  - “Four provisions in the Declaration are fundamentally incompatible with New Zealand’s constitutional and legal arrangements, with the Treaty of Waitangi and with the principle of governing for the good of all our citizens. These are article 26 on lands and resources, article 28 on redress and articles 19 and 32 on a right of veto over the State.”
- Australia:
  - “Secondly, with regard to lands and resources, the declaration’s provisions could be read to require recognition of indigenous rights to lands without regard to other existing legal rights pertaining to land, both indigenous and non-indigenous.”

Examples of procedural concerns (cont'd)

- Russia:
  - "The text clearly does not enjoy consensus support. It has not been duly endorsed by all interested parties. Furthermore, in the course of this session, a non-transparent format was chosen for work on the document. That ensured that a group of countries, on the territory of which live a significant number of those who may be considered indigenous peoples, was excluded at a decisive stage from the negotiation process. Such an approach is a source not only of regret to us, but also of fundamental disagreement. We hope that the manner in which the declaration is to be adopted will not set a negative precedent for the General Assembly's activities or for the United Nations work in developing new norms and standards."

Examples of procedural concerns (cont'd)

- USA:
  - "We worked hard for 11 years in Geneva for a consensus declaration, but the document before us is a text that was prepared and submitted after the negotiations had concluded. States were given no opportunity to discuss it collectively. It is disappointing that the Human Rights Council did not respond to calls we made, in partnership with Council members, for States to undertake further work to generate a consensus text. This declaration was adopted by the Human Rights Council in a splintered vote. That process was unfortunate and extraordinary in any multilateral negotiating exercise and sets a poor precedent with respect to United Nations practice."

Examples of procedural concerns (cont'd)

- Canada:
  - "Over the past year, had there been an appropriate process to address these concerns, and the concerns of other Member States, a stronger declaration could have emerged, one acceptable Canada and other countries with significant indigenous populations and which could have provided practical guidance to all States. Very unfortunately, such a process has not taken place."
  - "By voting against the adoption of this text, Canada puts on record its disappointment with both the text's substance and the process leading to it. For clarity, we also underline our understanding that this Declaration is not a legally binding instrument. It has no legal effect in Canada, and its provision do not represent customary international law."

Examples of procedural concerns (cont'd)

- Australia:
  - "Australia and others repeatedly called for a chance to participate in the negotiation on the current text of the declaration."
  - "We are deeply disappointed that no such opportunity has been afforded to us. Having an opportunity to negotiate the text would have allowed us to work constructively with the entire membership of the United Nations to improve the declaration, and might have resulted in a text that enjoyed consensus."

Examples of drafting concerns

- Canada:
  - “Unfortunately, the provisions in the Declaration on lands, territories and resources are overly broad and unclear and are susceptible of a wide variety of interpretations, discounting the need to recognize a range of rights over land and possible putting into question matters that have already been settled by treaty in Canada.”
- USA:
  - “The Declaration on the Rights of Indigenous Peoples, if it were to encourage harmonious and constructive relations, should have been written in terms that are transparent and capable of implementation. Unfortunately, the text that emerged from that failed process is confusing and risks endless conflicting interpretations and debate about its application.”
  - “We are deeply disappointed that in seeking to make a practice difference in the lives of indigenous peoples around the globe, the international community had not been presented with a text that is clear, transparent or capable of implementation. Those fundamental shortcomings, unfortunately, mean that the document cannot enjoy universal support to become a trust standard of achievement.”

Examples of nations self-defining interpretations

- Sweden:
  - “Sweden declares that the lands or territories of indigenous peoples mentioned in article 29.2, article 30 and article 32.2 of the Declaration will be interpreted as such lands or territories that are formally owned by indigenous peoples. Sweden is furthermore of the opinion that article 32.2 shall be interpreted as a guarantee that indigenous peoples must be consulted, not as giving them a right of veto.”
- Thailand:
  - “First, Thailand understands that the articles dealing with the right to self-determination and related rights, as enunciated, inter alia, in articles 3, 4, 20, 26 and 32 of the Declaration, shall be interpreted in accordance with the principles of territorial integrity or political unity as stated in the Vienna Declaration and Programme of Action.”
- Suriname:
  - “With regard to the provisions pertaining to free, prior and informed consent, my delegation would like to state that this concept should not be understood as an encroachment upon the rights and duties of the State to pursue society’s interests by developing its natural resources and achieving sustainable development and improving the lives of the population as a whole, and the indigenous part of our people as well.”

The Shift in Government Position Since 2007

Canada's Original Position

- In his address to the General Assembly before the vote, Canada's UN ambassador, John McNee, said Canada had "significant concerns" over UNDRIP's wording on provisions addressing lands and resources, as well as another article calling on states to obtain prior informed consent with indigenous groups before enacting new laws or administrative measures.
- McNee said Article 26 was "overly broad, unclear and capable of a wide variety of interpretations" that could lead to the reopening of previously settled land claims and existing treaties.

Canada's Original Position (cont'd)

- Aboriginal Affairs Minister Chuck Strahl said Canada opposed UNDRIP because it lacked clear guidance for implementation and conflicted with the existing Canadian Charter of Rights and Freedoms, which the government believed already protected the rights of Aboriginal peoples.
- Prime Minister Stephen Harper (as he was then) said: "we shouldn't vote for things on the basis of political correctness; we should actually vote on the basis of what's in the document."

Endorsement with Reservations

- Canada signaled a change in its position on November 12, 2010 when the Harper government endorsed UDRIP, with reservations.
- The endorsement stated:
  - “The Declaration is an aspirational document which speaks to the individual and collective rights of Indigenous peoples, taking into account their specific cultural, social and economic circumstances.”
  - “Although the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada.”

Adoption “Without Reservations”

- In its 2015 election platform, the Liberal Party stated that it would “enact the recommendations of the Truth and Reconciliation Commission, starting with the implementation of [UNDRIP].”
- On May 9, 2016, Canadian Justice Minister Jody Wilson-Raybould opened the 15th session of the UN Permanent Forum on Indigenous Issues:
  - “…we can and will breathe life into section 35 of Canada’s Constitution, which recognizes and affirms existing Aboriginal and treaty rights, by embracing the principles or minimum standards articulated in the United Nations Declaration on the Rights of Indigenous peoples and guided by the dozens of court decisions that provide instruction. My colleague and friend, the Honourable Carolyn Bennett, will be making a statement tomorrow about the Declaration.”

Adoption “Without Reservations” (cont’d)

- The next day, also at the 15th session of the UN Permanent Forum on Indigenous Issues, Carolyn Bennett, Canada’s Indigenous and Northern Affairs Minister announced that Canada was now a full supporter of UNDRIP ‘without qualification’:
  - “I’m here to announce, on behalf of Canada, that we are now a full supporter of the Declaration without qualification. We intend nothing less than to adopt and implement the declaration **in accordance with the Canadian Constitution**.” [emphasis added]
  - “By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada.”
  - “Canada believes that our constitutional obligations serve to fulfill all the principles of the declaration, including ‘free, prior and informed consent’”

Adoption “Without Reservations” (cont’d)

- On July 12, 2016, Jody Wilson-Raybould spoke at the Assembly of First Nations 37th annual general assembly in Ontario.
- Her speech made the government’s stance on UNDRIP less clear:
  - “Simplistic approaches such as adopting the United Nations declaration as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work actually required to implement it back home in communities.”
  - “Accordingly the way the UNDRIP will get implemented in Canada will be through a mixture of legislation, policy and action initiated and taken by Indigenous Nations themselves. Ultimately, the UNDRIP will be articulated through the constitutional framework of section 35.”

Support for Bill C-262

- In November 2017, the government announced that it would support the adoption of *Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*.
- Jody Wilson-Raybould stated that Liberals were prepared to support the NDP private member's bill that would force the government's hand to implement all provisions of UNDRIP:
  - "With the direction and leadership of Prime Minister Justin Trudeau, our government will support Bill C-262. The bill acknowledges the application of the UN declaration in Canada and calls for the alignment of the laws of Canada with the UN declaration."
  - "This step alone, however, will not accomplish the full implementation of UNDRIP. A comprehensive approach, one that our government is committed to, will require other appropriate measures."

Provincial Responses - BC

- British Columbia has committed to being the first province to put UNDRIP into legislation.
  - Such legislation has not yet been tabled.
- In his throne speech in February of 2019, John Horgan said:
  - "I know it will be more than symbolic….We need to address reconciliation in British Columbia, not just for social justice... but for economic equality for all citizens, Indigenous and non-Indigenous."
  - "For too long uncertainty on the land base has led to investment decisions being foregone, and I believe that that hurts Indigenous people and it hurts other British Columbians."
  - The goal is “mandating government to bring provincial laws and policies into harmony with the declaration.”

Provincial Responses - Alberta

- The Government of Alberta issued a statement that the intention of its implementation of the principles of UNDRIP is to renew its relationship with Indigenous communities so that First Nations, Métis and Inuit have every opportunity to participate in all aspects of Alberta society, while maintaining their cultures and unique identities.
- Further, the government stated:
  - “We believe that addressing the concerns, aspirations and priorities of Indigenous peoples in Alberta is integral to strong and vibrant communities fully participating in all matters that concern them.”
  - “We are at an early stage in this continuing dialogue with Indigenous peoples and communities about implementing the principles of the UN Declaration in Alberta. It will take time as we take each step together.”

Provincial Responses - Ontario

- On March 21, 2019, Ontario introduced Bill 76, *United Nations Declaration on the Rights of Indigenous Peoples Act, 2019.*
  - Has been referred to the Standing Committee on General Government.
- Bill 76 requires the Government of Ontario to take all measures necessary to ensure that the laws of Ontario are consistent with UNDRIP.
- The Government of Ontario published a paper titled “The Journey Together: Ontario’s Commitment to Reconciliation with Indigenous Peoples”, which states:
  - “Many of the principles reflected in [UNDRIP] are consistent with Ontario’s approach to Indigenous relations and reconciliation, which is rooted in a commitment to establish and maintain constructive, co-operative relationships based on mutual respect that lead to improved opportunities for all Indigenous peoples. Ontario will work in partnership with Canada and Indigenous partners as the federal government moves forward on its national plan to implement UNDRIP, and will take a strong, supportive and active role in considering policy options to address UNDRIP.”

The Legal Status of UNDRIP in International Law

Status in International Law

- UNDRIP was one of 291 resolutions adopted during the 61st session of the General Assembly.
- Only treaties and conventions are instruments that give rise to legal obligations under international law.
    - UNDRIP is neither – it is a resolution.
- Resolutions are statements of generally agreed-upon standards which are not themselves legally binding.
    - "A Declaration and a Recommendation is generally a document of intent, and, in most cases, does not create a legally binding obligation on the countries which have signed it. The terms are often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. Declarations and Recommendations cannot be ratified." (UNESCO)
- Some provisions of a resolution may reflect customary internal law.
- UNDRIP's status as customary international law is not clear.

Legal Status of UNDRIP in Domestic Law

Status in Domestic Law: Case Law

- UNDRIP has been referred to in over 50 court cases in Canada.
- A consensus has yet to emerge from the case law as to the normative weight that should be afforded to UNDRIP.
- Some decisions have held that UNDRIP is not legally binding and is of limited legal consequence in Canadian law.
- For example:
  - *Snuneymuxw First Nation v. Board of Education – School District #68*, 2014 BCSC 1173; and
  - *Ross River Dena Council v. Canada*, 2017 YKSC 5.

Status in Domestic Law: Case Law (cont'd)

- In *Snuneymuxw First Nation v. Board of Education – School District #68*, 2014 BCSC 1173, Justice Hinkson was not prepared to accept the relevance of UNDRIP:
  - "At the outset, I must state that I am unable to accept the reliance placed by the petitioners upon the Declaration. The Declaration has not been endorsed as having legal effect by either the Federal Government or the Courts. Canada is a signatory to the UNDRIP, but has not ratified the document. The Federal Government, in announcing its signing of the Declaration, stated that the Declaration is aspirational only and is legally a non-binding document that does not reflect customary international law nor change Canada's domestic laws. This fact has been recognized by Canadian courts in considering the application of the Declaration, as well as the fact that the document is too general in nature to provide real guidance to courts..." (at para 58)

Status in Domestic Law: Case Law (cont'd)

- In *Ross River Dena Council v. Canada*, 2017 YKSC 59, the Court declined to use UNDRIP to inform the interpretation of a constitutional document:
  - "*UNDRIP* was adopted by the General Assembly of the United Nations on September 13, 2007. It is undisputed that, as a declaration, it is a nonbinding international instrument. Unlike treaties, declarations are not signed or ratified. Canada has endorsed *UNDRIP,* meaning that it has expressed its political support for the Declaration. Article 26 of *UNDRIP* recognizes that Indigenous peoples have the right to own, use, develop and control the lands which they have traditionally occupied. Further, states are required to give legal recognition and protection to those lands." (at para 302)
  - "Canada and RRDC agree that *UNDRIP* can be used as an aid to the interpretation of domestic law, however, there may be an issue about whether *UNDRIP* can be used to interpret the Constitution." (at para 303)

Status in Domestic Law: Case Law (cont'd)

- On the other hand, some decisions have embraced UNDRIP and have held that it can be used to inform the interpretation of domestic law.
- For example:
  - *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445;
  - *Nunatukavut Community Council Inc. v. Canada (Attorney General),* 2015 FC 981; and
  - *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4.

Status in Domestic Law: Case Law (cont'd)

- In *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445, the Federal Court embraced UNDRIP.
- Justice MacTavish concluded that it was possible to look at UNDRIP for three purposes:
  - to prefer an interpretation of a statute (in that case the *Canadian Human Rights Act*) that is more consistent with Canada's international obligations;
  - to inform the contextual approach to statutory interpretation; and
  - to identify values and principles that should inform the interpretation of the legislation (at paras 350-354).

Status in Domestic Law: Case Law (cont'd)

- In *Nunatukavut Community Council Inc. v. Canada (Attorney General),* 2015 FC 981, the Court agreed that UNDRIP could be used to inform the interpretation of domestic law, but could not displace jurisprudence regarding the duty to consult:
  - "When interpreting Canadian law there is a rebuttable presumption that Canadian legislation is enacted in conformity to Canada's international obligations. Consequently, when a provision of domestic law can be ascribed more than one meaning, the interpretation that conforms to international agreements that Canada has signed should be favoured." (at para 103)
  - "That said, in *Hupscasath*, Chief Justice Crampton of this Court stated that the question of whether the alleged duty to consult is owed must be determined solely by application of the test set out in *Haida* and *Rio Tinto.* I understand this to mean that UNDRIP cannot be used to displace Canadian jurisprudence or laws regarding the duty to consult, which would include both whether the duty to consult is owed, and, the content of that duty" (at para 104)

Status in Domestic Law: Case Law (cont'd)

- In *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4, the Canadian Human Rights Tribunal stated:
  - "Furthermore, the Panel believes that national legislation such as the *CHRA* must be interpreted so as to be harmonious with Canada's commitments expressed in international law including the UNDRIP." (at para 81)

Status in Domestic Law: Case Law (cont'd)

- UNDRIP was not discussed in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, but it was referred to in the factum of the appellant (paras 91-92):
  - "The Court of Appeal's approach is an affront not only to the foundational principles of s. 35, but also the human rights of the Tsilhqot'in people and other Aboriginal groups under international law.257 Canada has formally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples*, which states that:

    all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust."
  - "Among other critical provisions, the *Declaration* confirms that "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use …""

Status in Domestic Law: Legislation

- No statute has yet implemented UNDRIP as an instrument into domestic law.
- It has been referenced in several statutes, which seem to reflect aspects of UNDRIP:
  - Manitoba's *Path to Reconciliation Act*, which has been in force since March 15, 2016, calls upon the responsible minister to develop a "strategy for reconciliation" guided by the calls to action of the Truth and Reconciliation Commission and principles set out in UNDRIP.
  - British Columbia's Bill 51 – 2018, *Environmental Assessment Act* states that the purpose of the Environmental Assessment Office is to support reconciliation with Indigenous peoples by supporting the implementation of UNDRIP.
    - Section 7 states that a reviewable project may not, without the consent of an Indigenous nation, proceed
      - on treaty lands if the final agreement with the Indigenous nation requires this consent, or
      - in an area that is the subject of an agreement, between an Indigenous nation and the government, that
        - » requires this consent, and
        - » is prescribed by the Lieutenant Governor in Council.

Status in Domestic Law: Legislation (cont'd)

- The preamble of Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* which is currently being debated in the Senate states "whereas the Government of Canada is committed to implementing the United Nations declaration on the Rights of Indigenous Peoples"

Status in Domestic Law: Legislation (cont'd)

- These acts fall short of full Free, Prior and Informed Consent ("FPIC").
- Ontario has introduced Bill 76*, United Nations Declaration on the Rights of Indigenous Peoples Act, 2019.*
  - Passed Second Reading on March 21, 2019 and has been referred to the Standing Committee on General Government
- BC has pledged to implement UNDRIP through legislation, which has yet to be introduced.
- Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*:
  - Passed Third Reading in the House of Commons on May 30, 2018.
  - Referred to the Standing Senate Committee On Aboriginal Peoples on May 16, 2019.
  - The Committee report was presented to the Senate without amendment on June 11, 2019.

Have these Developments Advanced Reconciliation?

Advancement of Reconciliation?

- There are likely differing views on this question.
- Canada is one of few countries in the world with constitutional protection of Aboriginal rights.
  - Others include Australia, Bolivia and Ecuador.
  - Several other countries have carried out constitutional reforms or adopted legislation that recognizes indigenous peoples' individual and collective rights, including Argentina, Brazil, Colombia, Guatemala, Mexico, Paraguay, Peru and Venezuela.

Advancement of Reconciliation? (cont'd)

- The relationship between UNDRIP and the duty to consult and Aboriginal title case law is unclear.
- If FPIC really means free prior and informed consent, then it is contrary to Canada's constitutional law, as it is clear that *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 does not give a right to a veto.
  - *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 indicated federal and provincial governments can infringe Aboriginal title if consent is not achieved.
- If FPIC does not really mean free prior and informed consent then what does it mean?
  - Contrast with terms of ILO Convention 169
  - Consider implications for other articles such as article 10
- How does it differ from our constitutional case law?
    - This remains to be determined.

Advancement of Reconciliation? (cont'd)

- Bill C-262 seeks to move forward Canada's implementation UNDRIP in a way that shifts more power to courts.
- Section 3 says UNDRIP "is hereby affirmed as a universal human rights instrument with application in Canadian law". But what does this mean?
- The government has announced that it will support Bill C-262 after previously expressing concern.

Advancement of Reconciliation? (cont'd)

- In 2017, Dwight Newman and Ken Coates warned that UNDRIP "does not take into account the complexities of constitutional, legal, and political relations between Indigenous peoples and the Government of Canada."
  - Bill C-262 tries to prescribe that the courts may start applying UNDRIP in interpreting Canadian law and the Canadian Constitution, however whether a federal statute can alter constitutional interpretation is a challenging legal question.
  - "If it can, the act has the potential to unleash a legal struggle of titanic proportions, as each and every policy of the federal, provincial, and territorial governments is subjected to an international test that was not designed to match Canadian circumstances."

Advancement of Reconciliation? (cont'd)

- In a brief to the House of Commons Standing Committee on Indigenous and Northern Affairs regarding Bill C-262 on April 17, 2018, Dwight Newman warned about internal inconsistences in Bill C-262, the unpredictable effects of Bill C-262 on other statues, and that Bill C-262 requires further study in multiple committees.
- Dwight Newman also stated:
  - "However, I must also come to say that Bill C-262 as presently drafted is framed in ways that have the potential to cause enormously negative unintended consequences."
  - "Working to implement UNDRIP is good policy…This Bill is not drafted in accordance with well-accepted norms of legislative drafting. Canada's Indigenous peoples deserve our best work in every respect, including legislative drafting, and it is unacceptable to have a lesser standard of legislative drafting in this context."

Advancement of Reconciliation? (cont'd)

- On June 3, 2019, the former Supreme Court of Canada Justice John C. Major, wrote an opinion addressed to Senator Lillian Dyck, Chairperson of the Standing Senate Committee on Aboriginal Peoples.
- Major's letter reaffirmed Newman's analysis and proposed reforms to mitigate some potentially serious issues with the drafting of Bill C-262:
  - "While the Bill's objectives are laudable and represent an important response to the norms [in UNDRIP], when considered as a potential Canadian statute, there are serious issues with the Bill and its implications that need to be considered carefully and that may lead to possible reasons to amend aspects of the Bill."
  - "International instruments are not a part of Canadian law unless they have been implemented through statute. In doing so, the statute must make its intent to implement sufficiently clear. It is not clear to me that wording such as "is hereby affirmed" and "with application in Canadian law" indicates an intention to implement UNDRIP in the future rather than immediately. Such ambiguity and vagueness should be avoided."

Advancement of Reconciliation? (cont'd)

- Gordon Christie, professor at the Peter A. Allard School of Law wrote:
  - "Should UNDRIP come to be part of Canadian law, it would set hard legal standards, could form the basis for legal arguments, would suggest legal remedies, would be legally binding and, in particular, would generate enforceable legal obligations."
  - "The troubling form of uncertainty, however, is in relation to how the federal government will act over the next few years. It is currently sending mixed signals, occasionally offering indications it is willing to move the country in the direction of a full embrace of the spirit and intent of UNDRIP, but also on occasion sending strong signals that it hopes to "embrace" UNDRIP in a way that would sap UNDRIP of its decolonizing strength in the Canadian context."

Advancement of Reconciliation? (cont'd)

- In 2018 the Centre for International Governance Innovation and the Wiyasiwewin Mikiwap Native Law Centre published a special report entitled "UNDRIP Implementation: More reflections on the Braiding of International, Domestic and indigenous Laws.
- The preface states:
  - "Since the Government of Canada's "embrace" of UNDRIP at the United Nations Permanent Forum of Indigenous Peoples in May 2016, much has happened to set the stage for an ambitious implementation agenda. Yet actual progress remains slow and largely illusory."
- It has numerous papers written by some highly regarded individuals and tackles many of the questions and challenges inherent in efforts to implement UNDRIP in Canada

Advancement of Reconciliation? (cont'd)

- In his paper, "Asserted v. Established Rights and the Promise of UNDRIP" Professor Robert Hamilton states:
  - "The Supreme Court of Canada's (SCC's) assumed authority to unilaterally determine the rights of Indigenous peoples, while acceding to asserted state authority, entrenches a power imbalance that undermines the meaningful implementation of UNDRIP's norms."
- Such statements raise very interesting questions regarding whether the UNDRIP actually advances reconciliation and, if so, how that will be achieved.

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