



EFN Law in BC: Changing Jurisdictions and Local Responsibilities

siwłk^w (WATER) FOR ALL - OUR RESPONSIBILITY

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See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

WATER SUSTAINABILITY ACT

[SBC 2014] CHAPTER 15

Assented to May 29, 2014

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Outline - EFN Jurisdiction

1. Indigenous Law in Canada
2. United Nations Declaration on the Rights of Indigenous Peoples + Free Prior & Informed Consent (FPIC)
3. EFNs as Aboriginal Rights
4. Processes for FPIC

INDIGENOUS LAW 101

APPLICATIONS

* Basis for governance and environmental Stewardship within Nations' territories

* Evidence in support of Aboriginal title and rights cases in courts

Applicable to real, messy human communities to help solve mundane, everyday problems.

"The intellectual process of deliberating & reasoning to apply rules according to context."

INDIGENOUS LAW IS:

- * A way for large groups of people to collectively govern themselves
Process for solving problems, making decisions, creating safety, maintaining or repairing relationships
- * Culturally informed
As many distinct Indigenous legal traditions as there are nations
- * Alive but not always intact or explicitly in use.
At this time in history requires articulation, recognition, revitalization

RESOURCES

Stories
Songs
Dreams
Oral histories
Personal Memories & Experiences
Elders
Families
Kinship Roles
Language
Conventions
Practices
Artifacts
Witness Testimonies
Historical Anthropological Research
Trial Transcripts

Indigenous legal traditions usually involve interaction of two or more sources.

SOURCES

Sacred Law

Natural Law

Laws from Divine or from outside human beings

Deliberative Law

Proximate source
Laws from social interactions

Customary Law

Positivist Law

Laws from central process or enactment

1. Specific research question
workshop

5. Implementation & evaluation

4. Synthesis & organizing within a legal framework

METHODOLOGY

2. Analysis of existing resources

3. New interviews & ground truthing
case analysis

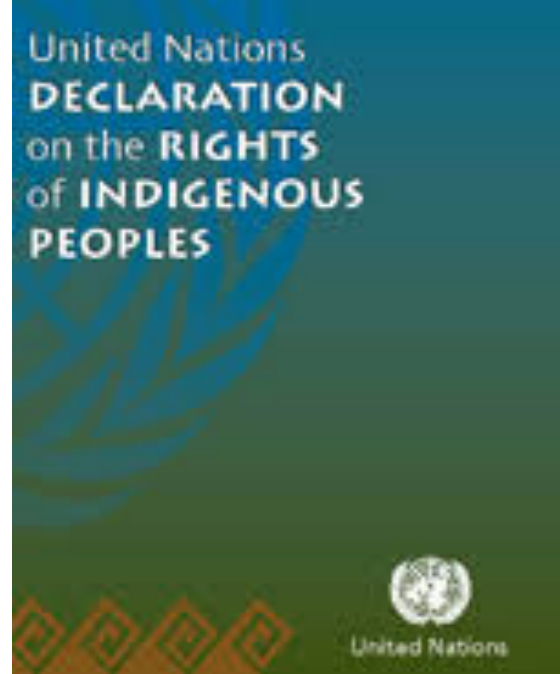
2. The Declaration

Canada as a signatory

The principle: Free, prior & informed consent

Federal and provincial endorsement of FPIC

Operationalizing in MOU's and provincial law i.e. fish farms



3. EFNs as Aboriginal Rights

Section 35, *Constitution Act*, 1982

EFNs are conditions necessary for
aboriginal rights i.e. fishing

EFN policies or declarations

Beyond “consultation &
accommodation”



A Note About Terminology

Aboriginal Law	Indigenous Law
Aboriginal is a term defined in the Constitution of Canada.	Indigenous – broad term not defined within Canadian law.
Aboriginal law is a branch of Canadian Law. Eg. Like environmental law or family law.	Indigenous Law are all legal principles and processes within a specific Indigenous legal tradition. Eg. Syilx, Secwépemc, or Cree law.
About Aboriginal rights , Treaty rights and Aboriginal Title within Canadian Law. Eg. Duty to Consult, Aboriginal Title.	Needs further categorization or differentiation. Eg. Nêhiyaw (Cree) wekito legal principles (responding to human danger and harm).

4. Processes for FPIC

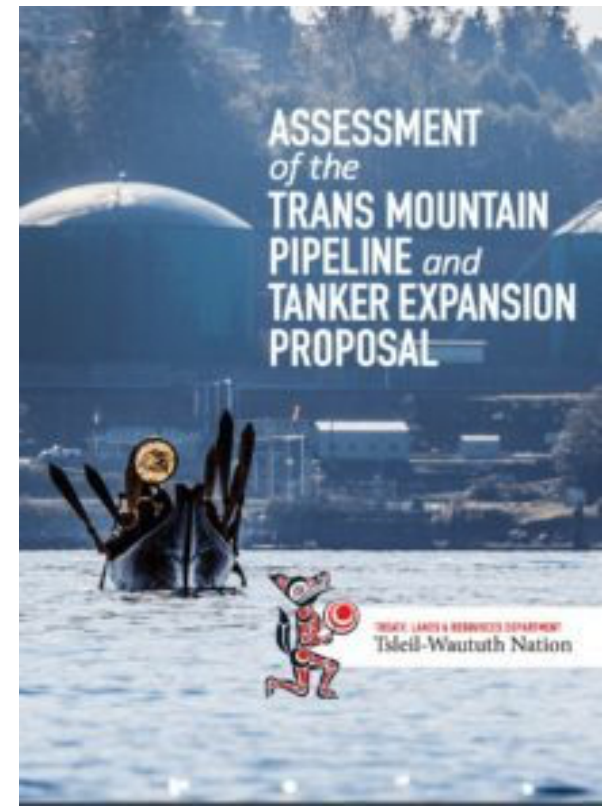
Parallel jurisdiction

Gov't to Gov't agreements

Watershed plans

Watershed-specific EFNs

Community monitoring



4. Processes for FPIC cont'd

Water Sustainability Plans can express:

- Parallel decision-making processes
- EFNs and adaptation over time i.e. licence amendments

s.121 no compensation:

Lessons from the Great Bear Rainforest





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Thank You

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