BCCA on *Gitxaala*: What Does UNDRIP Mean for Resource Development in British Columbia and Canada?

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On December 5, 2025, the British Columbia Court of Appeal (the **Court of Appeal**) released its decision, ***Gitxaala v British Columbia (Chief Gold Commissioner)*** (***Gitxaala***), overturning the lower court's decision and ruling in favour of Gitxaała Nation and Ehattesaht First Nation (the **Appellants**). This judgment represents the first appellate-level interpretation of BC's ***Declaration on the Rights of Indigenous Peoples Act*** (**DRIPA**) and its relationship to the application of the ***United Nations Declaration on the Rights of Indigenous Peoples*** (**UNDRIP**) to the provincial laws of British Columbia (**BC**). The decision adds to the evolving body of case law on the intersection of Indigenous rights and resource development in BC.

Background

The respondents to the appeal included various BC governmental entities (the **Respondents**). The central issue on appeal concerned the province's mineral tenure system under the BC ***Mineral Tenure Act***.

The Appellants challenged BC's automated online mineral claim registration system, which allowed "free miners" to stake mineral claims on Crown land, without conducting any prior consultation with potentially affected First Nations (the **Mineral Claims Regime**). They argued this process breached the Crown's duty to consult, violated the honour of the Crown, and was inconsistent with both UNDRIP and DRIPA.

While UNDRIP is a non-binding international instrument, the federal government of Canada has signaled its commitment to implementing its principles through measures such as the federal ***United Nations Declaration on the Rights of Indigenous Peoples Act*** (the **Federal *UNDRIP Act***).

BC has gone further, making reconciliation-driven amendments to its ***Interpretation Act***,[1] as well as to other pieces of provincial legislation. Importantly, it is the only province that has enacted legislation (i.e., DRIPA) committing itself, in consultation and cooperation with Indigenous peoples in BC, to take all measures necessary to ensure BC laws are consistent with the principles articulated in UNDRIP.

[1] In particular, section 8.1 of the *Interpretation Act* provides that "every enactment must be construed as upholding and not abrogating or derogating from the aboriginal and treaty rights of Indigenous peoples as recognized and affirmed by section of the 35 *Constitution Act, 1982*" and that "every Act and regulation must be construed as being consistent with [UNDRIP]".

Lower Court Decision

On September 26, 2023, the BC Supreme Court published its **decision** regarding the Mineral Claims Regime. It declared that the system failed to incorporate any meaningful methods of consultation and was inconsistent with the Crown's duty to consult. The Court stated that while UNDRIP should be used as an interpretive aid when interpreting BC laws, DRIPA does not implement UNDRIP into BC domestic law, nor does it create rights that are justiciable in court. As such, the trial judge declined to rule on whether the Mineral Claims Regime was inconsistent with UNDRIP, calling UNDRIP a "non-binding" international instrument.

Court of Appeal Decision

On appeal, the majority of the Court of Appeal addressed this issue directly, disagreeing with the trial judge's interpretation of the legal effect of DRIPA and UNDRIP in BC. With respect to whether DRIPA creates enforceable duties, the majority concluded that, when read together with recent amendments to BC's *Interpretation Act*, DRIPA imposes immediate, positive statutory obligations on the provincial government. These include taking concrete, diligent, steps to align provincial laws with UNDRIP, with immediate effect, and ensuring the duty to consult has been met within provincial decision-making, conduct and laws.

Ultimately, the majority of the Court of Appeal declared that the Mineral Claims Regime was inconsistent with UNDRIP.[2] It concluded that by implementing DRIPA, BC assumed a statutory obligation to consult and cooperate in aligning its laws with UNDRIP principles. This obligation informs and reinforces the existing duty to consult and accommodate under section 35 of the *Constitution Act, 1982*, as articulated in **Canadian case law**.

Gitxaala signals a judicial willingness to give meaningful legal effect to statutes incorporating international instruments like UNDRIP into domestic law. The Court of Appeal affirmed DRIPA's purpose and rejected the notion that UNDRIP should be treated as mere "soft law." Governments that choose to adopt international instruments through legislation are expected to comply with the obligations under those instruments.

[2] Specifically, the requirement that a state fulfill its obligations to consult with an Indigenous group, as identified in article 32(2) of UNDRIP.

Court of Appeal Dissenting Opinion

While the majority of the Court of Appeal held that the issue of inconsistency was a justiciable matter (i.e., one properly within the courts' jurisdiction), Justice Riley disagreed. He concurred with much of the majority's reasoning, including the conclusion that DRIPA incorporates UNDRIP into BC's positive law with immediate legal effect. However, he took an opposing position on whether courts have any role in assessing inconsistency between provincial laws and UNDRIP. Justice Riley answered this question in the negative, stating:

> *By making judicial pronouncements on inconsistency between UNDRIP and specific provincial laws, the court would be inserting itself into the law reform process in a manner that strays outside the proper role of the judicial branch in our constitutional democracy*.

What Does *Gitxaala* Mean for Alberta and other Provinces?

While Alberta has no provincial equivalent to BC's DRIPA, that does not mean UNDRIP-related challenges may not arise in the province.

The Federal *UNDRIP Act* applies in Alberta and across Canada for matters under federal jurisdiction. **A recent example** originated in Québec, where a First Nation challenged the Canadian Nuclear Safety Commission in Federal Court for failing to consult in accordance with UNDRIP. The Federal Court agreed with the First Nation and sent the matter back to the Commission "to reconsider if the duty to consult and accommodate in this case was fulfilled in view of the principles articulated in UNDRIP". Notably, the Federal Court used both mandatory and permissive language, stating at times that UNDRIP *must* be considered, while elsewhere suggesting it *may* be used as an interpretive tool. The decision offered limited clarity and is now under appeal.

At this time, the Government of Alberta has not signaled any intention to incorporate UNDRIP into provincial legislation. In fact, Alberta formally opposed the Federal *UNDRIP Act* prior to its enactment in 2021, joining five other provinces in expressing concerns with its federal implementation. While industries operating within provincial jurisdiction, such as resource development, remain largely unaffected at present, UNDRIP may nonetheless have significant implications in any province for matters under federal jurisdiction.

Conclusion

The uncertainty surrounding *Gitxaala* has sparked considerable interest, particularly among resource and infrastructure proponents seeking clarity on its implications for their operations, projects and investment plans in BC. While the decision signals that UNDRIP cannot be ignored, it leaves open critical questions about its practical application in other BC-specific circumstances and industries as well, such as water licenses and allocations, forestry tenures and cutting permits, oil and gas operations, agricultural land leases on Crown lands, and renewable energy projects.

The *Gitxaala* decision was narrowly focused on the BC mineral tenure system, allowing for registration of mineral rights without consultation with affected Indigenous peoples, and concluded that was a breach of the BC government's obligations. However, it is arguable that the *Gitxaala* decision applies to other laws and resource authorization processes and decisions across BC as well. If those laws, processes and decisions also lack adequate consultation with affected Indigenous groups at the point of initial authorization, they could face potential UNDRIP-like challenges in the future.[3]

We are closely monitoring these developments and will soon publish a follow-up resource addressing the most common questions raised since the decision was released. For further information about this decision, please contact any member of our **Business Law** group or **Energy** group.

[3] It is important to distinguish the Mineral Claims Regime from BC's petroleum and natural gas (PNG) tenure framework. Under the Mineral Claims Regime, the act of staking a claim immediately conferred certain rights upon the claimant. By contrast, the BC PNG tenure regime incorporates an Indigenous consultation process prior to the conferral of any rights on the applicant. We will provide more information on BC and Alberta tenure regimes as it relates to this topic in our upcoming Part 2 of this series.