



Discussion Paper – UNDRIP and
MAANG (LOON) DODEM Responsibilities

A paper to generate discussion on the implications of the application of UNDRIP

On Federal laws In Relation to:

**Equality and Discrimination, Wills and Estates, Employment and Labour, Human Rights
and Racism.**

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Introduction

The Anishinabek Nation has been asked to provide feedback on the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act*. This Act requires that by June 21st 2023 the federal government, in consultation with First Nations, develop a 10 year plan to implement the United Nations Declaration on the Rights of Indigenous Peoples¹ (“UNDRIP”). This plan is to make all federal laws consistent with UNDRIP over a ten-year period. The purpose of this paper is to generate discussion from First Nations.

This document has been developed and arranged to identify each topic of concern to Anishinaabe people in relation to all UNDRIP sessions, based on the Anishinaabe Dodem system. According to Gordon Waidebence baa the Anishinaabe Dodem or clan system is a complete form of governance. When the seven primary Dodems take care of their responsibilities there would be no other issues for Anishinaabe to be concerned about. The Anishinaabe Dodem system is comprehensive.

The Late Edward Benton’s book *Mishomis: The Voice of the Ojibway*, said the people of the Maang (Loon) Dodem are of the Ojibway. The Maang Dodem alongside the Crane Dodem were given the power of chieftainship because they had natural abilities to do leadership. Each claiming to be the original Chief Clan/Dodem. They were both given the respect of chieftainship to work together to bring balance to the government with each serving as a check on the other. Between the two Chief Clans/Dodems stood the Fish, which was sometimes referred to as the Water Clan/Dodem. The Fish Dodem members would settle disputes between the two Chief Clans/Dodems if a decided vote needed to be cast. This built-in ability of the Dodem System to resolve differences of opinion greatly added to its effectiveness as a governing body

The Anishinaabe Dodems as explained by Elder Gordan Waidebence baa for the Ngo Dwe Waangizid (Guiding Principles),

Dbaadendiziwin (Humility). The Maang Dodem is the Internal Chieftain. The Loon dives and sees the happenings inside the water. The Maang Dodem is known as the ‘Inside Chief’ as it is responsible for settling disputes and issues within its community.

We have provided a comparison describing how the UNDRIP may be implemented and operate with the Dodemaag System of Governance from the perspective of the Maang Dodem by updating of federal legislation. There are many current categories of federal legislative responsibility that would be included. The following are some of those Dodem responsibilities, issues and relevant UNDRIP articles.

¹ <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

Maang (Loon) Dodem – Subtopics and Issues

Our traditional internal community governance and representation was based on our Dodem (Clan) which was centered on our kinship and family. The Dodemaag system of governance was given to our ancestors from the Creator. We were born into our Dodem. Each Dodem has its traditional roles and responsibilities. The Dodemaag was our traditional governance system, with intricate methods of organizing work, and a way of defining the roles and responsibilities of each community member from children to Elders, to ensure everyone lived ‘Mno-Bimaadziwin’. Each community member was significant in the Dodemaag. This perfect Dodemaag governance system was in place to give direction to each member for their purpose in life, from birth. This perfect form of balanced governance was a way of organization enabled Anishinaabe people to exist since time immemorial.

Matters of fairness, equality and rights were foremost in all laws of the Nation and of the community. Traditional laws were developed in every community and were respectful of each member and how they would conduct themselves. Laws were developed for the betterment and survival of the whole community and Nation.

While the Dodemaag System was in power, the Anishinaabe people suffered no famine, sickness, or epidemics. There was said to be no wars and very little violence in these days when the Clan (Dodem) System was strong. The Clan (Dodem) System was built on equality in justice, voice, law, and order. It reinforced by its very nature the teachings and principles of a sacred way of life. It is interesting to think of where our society might be today if the people had held the Clan (Dodem) System together in its original form and power.

..... *Edward Benton-Benai baa*

a) Equality & Discrimination, Human Rights and Racism.

The entire colonial process was based on the subjugation and genocide of the Indigenous peoples. Equality was not on the agenda of the colonizers, and discrimination was a practice of power and was not even a word until the seventeenth century. By this time, Indigenous peoples were deeply discriminated upon and suffered for reasons of their race, culture, language, spiritual and traditional beliefs. Indigenous people were denied the basic human rights that today, make up the International Human rights that are the basic rights and freedoms that human beings are entitled to.

Canada also has Civil and Human Rights, which is also entrenched in the Constitution of Canada 1982, which is the Supreme Law for Canada. In 1982, the Canadian Constitution section 35 reaffirmed treaty rights and the rights of ‘Aboriginal’ people. The Canadian Constitution was a game changer for Indigenous people. Utilizing the Human Rights for equality against discrimination and racism created case law which continues to evolve and advance our Nations today. We have come a long way, but we still have a journey to continue.

Anishinaabe people have experienced significant losses due to discrimination, racism and inequality in basically every aspect of their lives, from, and **not limited to**, residential schools, child welfare systems, the Sixties Scoop, youth over representation in detention institutions, adults over incarceration rates, no rights to vote, methods of segregation such as the reservation system, inequalities in education, health care, child welfare disparities of care, salary inequities, token positions of employment, housing inequalities, poor healthcare.

b) Wills and Estates

Anishinaabe people that hold possession of property/lands on a First Nation must have their Wills approved by the Minister of Indian Affairs to ensure the heirs to the reserve land is another member of that particular First Nation. With some First Nations examining their intentions for their own Citizenship Code for their Nations, this will be significant to some that have few options for heirs to their estate.

There is a lower threshold for First Nations when it comes to making a Will, by only ensuring the qualifying features are identified to express their wishes for their estate. The process is less formal.

Wills and estates of First Nations people who are “ordinarily resident on a reserve” or on Crown Land are not governed by The Wills Act or The Succession Law Reform Act (SLRA).

Estate Living Off-Reserve

If a First Nations person was living off a reserve at the time of death, the estate is the responsibility of the province, territory, or country where they lived. All off-reserve specifications would be in place in accordance with the SLRA.

Estate Living On-Reserve

With a Will, First Nations can leave a Certificate of Possession (CP) for land to any family member as long as they are able to inherit the CP land. (They must be members of the same Band. If a First Nation person usually lives or lived on a reserve, their estate is handled by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

Under the Indian Act, CIRNAC can:

- Appoint estate administrators or executors
- Approve Wills so they can take effect
- Transfer reserve lands from the estate to heirs or beneficiaries
- Determine the heirs if someone dies without a Will
- Serve as administrator if the family does not or cannot settle the estate
- If CIRNAC is the administrator, it will distribute estate assets according to the Will or the intestacy provisions of the Indian Act.

Invalidating a Will

Under section 46(1) of the Indian Act, the Minister of CIRNAC has the authority to invalidate a Will under certain circumstances. The Minister can invalidate a Will if:

- It was executed under duress or undue influence (that means the person was put under pressure to sign the Will and they did not want to do so).
- The person whose Will it is did not have the capacity (that means the person making the Will did not have the mental ability to do so).
- The Will would impose hardship on those whom the testator should have provided for, such as dependent children.
- The Will disposed of reserve land against the interests of the Band
- The Terms of the Will are vague or uncertain, or
- The terms are against public interest.

Transferring an Interest in Reserve Lands

Reserve lands are owned by the Crown for the use and benefit of Band Members. Band members must obtain a CP from the Band, which shows what share of the reserve land belongs to that individual member – similar to a title deed elsewhere. An interest in reserve lands can only be transferred in accordance with the Indian Act. Specifically, pursuant to section 50 of the Indian Act, an interest in reserve lands can only be transferred to other members of the Band that have a right to reside on the reserve lands. Consequently, a Band member cannot gift his or her interest in reserve land to someone who is not a member of the Band.

Valid Will Under the Indian Act

The formal requirements for the Will of an Indigenous person who lived on-reserve does not have to conform to provincial Succession Law Reform Acts; rather, under section 45(2) of the Indian Act, a Will is valid as long as it:

- Is in writing
- Is signed by the person whose Will it is (called the Testator), and
- Indicates the wishes of the testator with respect to how their property should be dispersed or disposed of.

c) Employment & Labour

Indigenous people are one of the four groups designated by the Employment Equity Act. (along with visible minorities, people with disabilities and women)

Effective April 2012, all departments and agencies under the Public Service Employment Act are required to use an Affirmation of Aboriginal Affiliation Form (AAAF) for advertised and

non-advertised, internal, and external appointment processes when the persons proposed for appointment or appointed have self-declared as Aboriginal and the appointment process:

- Has a selection limited to Aboriginal peoples, or members of designated employment equity groups that include Aboriginal peoples; or
- Has applied as a merit criterion the organizational need of increasing the representation of Aboriginal peoples, or increasing the representation of members of designated groups, including Aboriginal peoples; or
- Involves selection from an Aboriginal inventory, or Student Employment Programs in the Federal Government used to increase the representation of Aboriginal peoples, or of designated groups, including Aboriginal peoples.

The courts have determined that, for the purposes of section 87 of the Indian Act, employment income is personal property. In the case of employment income earned by an Indian, therefore, what must be determined is whether the employment income is situated on a reserve. The courts have directed that connecting factors must be considered when making this determination. Revenue Canada, after receiving representations from interested Indian groups and individuals, has identified several connecting factors that can be used to determine whether employment income is situated on a reserve.

The location of employment duties is a major connecting factor. However, the Department also recognizes that employees of bands, tribal councils, or organizations that operate on behalf of band or tribal councils may perform most of their activities off reserve. For employees, the connection to a reserve is that the employer is resident on a reserve and the Indian is employed in a non-commercial activity for the social, cultural, educational, or economic development of Indians who for the most part live on reserves.

With a view to assisting the Indian community, the Department has developed the following guidelines, incorporating the various relevant connecting factors, that describe the employment situations covered by section 87 of the Indian Act. The treatment of other income related to employment is also discussed.

It should be noted that when applying all the connecting factors, there may be unusual or exceptional circumstances where:

- The income may not be taxable even though it does not fall within one of the guidelines; or
- The income may be taxable even though it appears to fall within one of these guidelines.

Guideline 1

When at least 90% of the duties of an employment are performed on a reserve, all of the income of an Indian from that employment will usually be exempt from income tax.

Guideline 2

When:

- The employer is resident on a reserve; and
- The Indian lives on a reserve

All the income of an Indian from an employment will usually be exempt from income tax.

Guideline 3

When:

- More than 50% of the duties of an employment are performed on a reserve; and
- The employer is resident on a reserve, or the Indian lives on a reserve.

All of the income of an Indian from an employment will usually be exempt from income tax.

Guideline 4

The employer is resident on a reserve; and

The employer is:

- An Indian Band which has a reserve, or a tribal council representing one or more Indian Bands which have reserves, or
- An Indian organization controlled by one or more such Bands or Tribal Councils, if the organization is dedicated exclusively to the social, cultural, educational, or economic development of Indians who for the most part live on reserves, and

The duties of the employment are in connection with the employer's non-commercial activities carried on exclusively for the benefit of Indians who for the most part live on reserves;

All of the income of an Indian from an employment will usually be exempt from income tax.

Employment-Related Income

The receipt of unemployment insurance benefits, retiring allowances, Canada Pension Plan Payments, Quebec Pension Plan Payments, Registered Pension Plan Benefits or Wage Loss Replacement Plan Benefits will usually be exempt from Income Tax when received as a result of employment income that was exempt from tax. If a portion of the employment income was exempt, then a similar portion of these amounts will be exempt.

First Nation employers are not automatically covered by federal employment and labour laws by virtue of s. 91(24) of the Constitution. The presumption is that all employers, even First Nations, are under provincial employment laws. There can be dual jurisdiction depending on the test.

MOVING FORWARD WITH DODEMAAG GOVERNANCE

The Truth and Reconciliation Commission released in 2015 the 94 Calls to Action. Within this extensive report can be found, the results noted from engagements across the country

with those individuals that wished to share their personal truths and experiences and provide direction for recommendations on a healing path forward.

Every one of the 94 Calls to Action are all directly related to Equality and Discrimination and Human Rights and Racism that has been imposed upon Indigenous Peoples since the beginning of colonization. The foundation of colonization is genocidal discrimination, racism, and infractions of human rights of Indigenous Peoples. The Maang Dodem has a significant role to play in pushing forward the Calls to Action, as this is precisely aligned with the purpose and role of the Maang Dodem. The 94 Calls to Action are a significant key to fulfilling the role and intention of the Maang Dodem. Subtopics of the Maang Dodem align within the TRC at every level, inclusive of matters of Wills and Estates and Employment and Labour for Indigenous peoples. Implementing all 94 Calls to Action of the Truth and Reconciliation Commission would be one of the objectives of the Maang Dodem.

When reviewing the UNDRIP Articles, please keep these tips in mind²:

- The UN Declaration sets out the minimum rights of Aboriginal people;
- The preamble provides a background to the UN Declaration, including its purpose and how to interpret the rights;
- The articles set out the rights – they are the heart of the UN Declaration;
- Articles should be read together - we must not think of each article as separate from other articles
- The UN Declaration recognizes rights of individual Aboriginal people – but also recognizes that some rights are collective rights, belonging to entire communities or nations or peoples
- The UN Declaration should be read with other international human rights instruments to understand the full range of Aboriginal people’s rights

Some Relevant UNDRIP Articles

Human Rights, issues of discrimination, and racism are the foundations and focus of the entire document of UNDRIP articles. It would not be practical for us to include all 46 Articles of UNDRIP. For purposes of this document and the intention of the Anishinabek Nation having various presentations on other respective Dodems that also include and overlap in various Articles, we will keep our presentation within the limits of what the internal Maang Gimaa would attend to. In consideration of the role of the Maang Dodem and the internal relations for this specific document, we will focus largely upon the internal matters of the Nation and the subtopics identified.

² Pp.6 2011. Indigenous Bar Association. *Understanding and implementing the UN Declaration on the Rights of Indigenous Peoples – An Introductory Handbook.*

Article 1 Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all 8 human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law

Article 2 Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity

Article 4 Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 7 Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 9 Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 15 Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories, and aspirations which shall be appropriately reflected in education and public information. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16 Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17 Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 21 Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of

their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities.

Article 22 Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities in the implementation of this Declaration. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 34 Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35 Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 44 All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45 Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46 Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. In the exercise of the rights enunciated in the present Declaration, human rights, and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.

Movement Forward – Implementing UNDRIP in Canada

Questions for Discussion (Aligned with Maang Dodem Sub Topics)

1. Which of these subtopic issues are priority to the Maang?
2. What issues of discrimination and racism do you feel to be a priority for Anishinaabe people?
3. What concerns can employment and labour practices for First Nations be resolved with UNDRIP?
4. What issues do you see as most important for Wills and Estates for Anishinaabe people?
5. How can UNDRIP support Indigenous people in efforts to eliminate discrimination?
6. What kind of legal recognition or protection is needed to support Indigenous peoples Wills and Estates?
7. How can the federal government improve employment and labour laws for First Nations?
8. What should the federal government do in regard to Indigenous rights and Human Rights?
9. What kind of legal recognition do you feel Indigenous people require to move forward on issues of the Maang Dodem?
10. What kind of processes would you like to see over the next 10 years to make federal legislative change reflective of UNDRIP?