The Province of British Columbia is likely to be the first government in Canada to pass legislation to implement the UN Declaration on the Rights of Indigenous Peoples. Bill 41 – 2019 –the Declaration on the Rights of Indigenous People's Act—establishes an important new legal framework to advance reconciliation that is likely to make a meaningful difference in how long-standing conflicts between the Indigenous peoples and the Crown governments are resolved.

First adopted by the General Assembly in 2007, the UN Declaration on the Rights of Indigenous Peoples was the culmination of decades of struggle by Indigenous peoples for recognition of their unique place within the global community, and of their inherent rights as peoples in a world dominated by nation states. The Declaration sets out a framework for the application of universal human rights and fundamental freedoms to Indigenous peoples in order to establish minimum standards for their survival, dignity and well-being throughout the world.

However, despite Canada's tradition of international leadership on international human rights, it took almost another decade for the federal government to fully endorse the UN Declaration. Stephen Harper's Conservative government first took the view that the UN Declaration was "incompatible" with Canada's Constitution and unworkable in the context of domestic laws and policies, later endorsing it only as an "aspirational document" while objecting to the substance of its provisions. Canada joined the rest of the world in formally endorsing the UN Declaration "without qualification" in 2016. In her speech to the United Nations Permanent Forum on Indigenous Issues, Minister Carolyn Bennett stated that by adopting and implementing the UN Declaration, "we are breathing life into Section 35 and recognizing it now as a full box of rights for the Indigenous peoples of Canada."

British Columbia's Bill 41 sets a new bar for UNDRIP implementation. The BC legislation builds on the foundation of federal Bill C-262 introduced in 2016 with government support by NDP Member of Parliament Romeo Saganash. Although C-262 passed third reading in the House of Commons in May 2018, it failed to clear the Senate before the recent federal election. Fundamentally, the two bills share many of the same key features. They both affirm the application of the UN Declaration to federal or provincial law. They also require the governments to "in consultation and cooperation with Indigenous peoples" to "take all measures necessary" to ensure that their laws are consistent with the UN Declaration. These broad commitments are grounded in a recognition that specific steps will be required, and to that end both bills propose that the governments must, again through consultation and cooperation, prepare and implement action plans to "achieve the objectives of the Declaration", and to provide annual reports to the legislature on the implementation of the action plan by specific dates.

Significantly, the BC bill also includes an additional innovation (s. 7 decision-making agreements) that provide opportunities for a Minister, acting on the authority of a Cabinet directive, to negotiate and conclude agreements with Indigenous governments that will give effect to shared decision-making or consent arrangements on matters that are within the scope

of that Minister's statutory decision-making responsibilities. The inclusion of this provision is reflective of BC's experience with shared-decision making agreements under BC's New Relationship policies, and reflects the participation of Indigenous peoples in the drafting of the legislation.

In our assessment, each of these elements of the new BC legislation is likely to make meaningful contributions towards reconciliation, and to inform future legislative development elsewhere in Canada.

Translating the preamble and provisions of the 46 articles of the UN Declaration into domestic Canadian law will require careful consideration by Indigenous peoples and Crown governments. The minimum standards set out in the Declaration provide a lens through which Canadian laws and policies can be considered, and a baseline against which progress towards reconciliation within our constitutional framework can assessed. As the Declaration is not, in and of itself, a legal framework like a convention that can be directly applied, interpretation will be required.

In this respect, the provisions of both Bill 41 and C-262 provide clarity for the courts, who have understandably struggled in face of previous government ambivalence about the UN Declaration. By affirming that the Declaration applies within domestic Canadian law, the legislation will enable the courts to look to specific provisions as guidance when interpreting Section 35 of our Constitution. This is clearly what the federal government intended when Minister Bennett spoke about the Declaration "breathing life into Section 35 and recognizing it now as a full box of rights". Given the important role that our courts have played in interpreting Section 35 to date, the affirmation of the Declaration as having application to federal and provincial law will assist all parties in resolving issues by providing a set of normative international standards as guidance.

Further, the legislation contemplates the need for specific measures by government to bring statutory law into alignment with the standards set out in the Declaration. Some critics of the legislation contend that this "cannot be implemented in any meaningful way", but fail to acknowledge that government action is the best—and perhaps the only--means by which legislative change can be achieved. Repudiating the legacies of government actions of the past necessarily requires meaningful government action in the present.

There can be no doubt that this is a significant undertaking when the full scope of legislation and regulation that affect Indigenous peoples is considered, but the scope of the undertaking should not detract from the importance of the task. For more than a century, the fundamental rights of Indigenous peoples have been undermined by laws directed at them (such as the *Indian Act*) or more commonly but no less effectively, by laws which conceived of Canada as a *terra nullius* in which the existence of Indigenous peoples and their pre-existing Indigenous legal orders was denied and delegitimized. The commitment to take "all measures necessary" to ensure that legislation is consistent with the minimum standards set out in the Declaration through a process of consultation and cooperation is be applauded as a progressive and practical approach to enabling Indigenous peoples become full partners in Confederation. Full

implementation of the Declaration recognizes that the current legal framework does not come close to meeting the standard of good faith reconciliation.

British Columbia has long been the centre of the ongoing struggle between Crown and Indigenous perspectives over who has jurisdiction over Indigenous peoples and their lands, territories and resources. Much of this struggle has played out in the courts, with little progress towards treaties or other forms of reconciliation. With the introduction of Bill 41, the province is now clearly shifting from conflict to collaboration, and signaling a commitment to a new relationship in which the minimum standards set out in the Declaration will inform the development of a new legal framework for mutual recognition and shared responsibilities for the governance of our shared home.

Significantly, the introduction of Bill 41 was warmly welcomed by BC's business community. Developments have often been collateral damage in the jurisdictional conflicts between Crown and Indigenous governments. Industry leaders are expressing hope that the framework for shared decision-making and obtaining the consent of Indigenous peoples introduced in the legislation will create greater certainty, opportunity and prosperity. Given the importance of BC's resource sector – particularly forestry, mining and the fishery – building a legislative and policy framework for development premised on seeking Indigenous consent and meaningful participation of Indigenous peoples in development projects has the potential to unlock the Province's economy, and create access to new markets for products that meet the highest global standards for environmental and social performance. BC can model its approach on existing international standards already in use around the world, including the performance standards of the World Bank and the International Finance Corporation, as well as market-based standards like the Forest Stewardship Council and the Initiative for Responsible Mining Assurance.

We anticipate that the federal government, other provinces and territories will pay close attention as Bill 41 moves through the legislature and becomes law, particularly given promises by Canada and the Northwest Territories to introduce similar legislation within the coming year.

OKT will be following all of these developments closely, and will provide specific commentary on key elements of the BC legislation as it moves into the committee hearings stage of consideration.