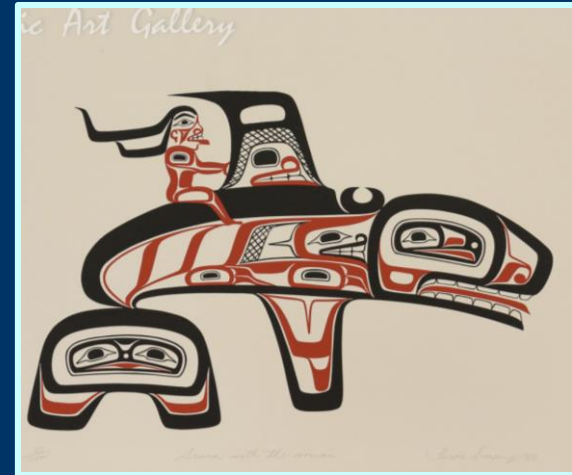
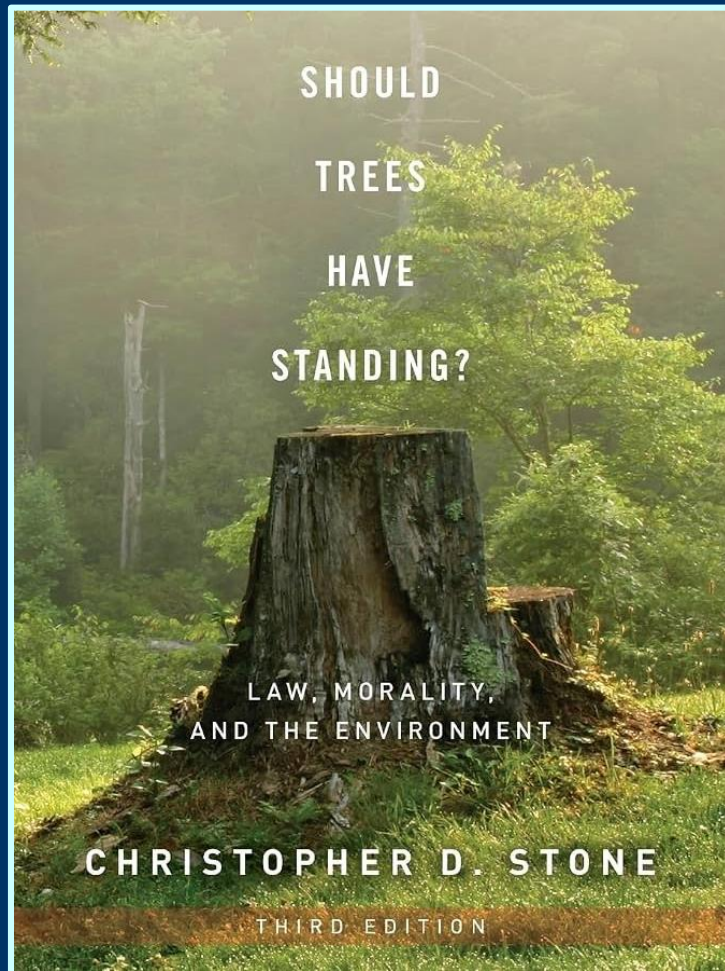


Orca Personhood and Indigenous Legal Orders



What is a legal order?

A legal order is the system of law and legal principles that guide how a society governs itself. Indigenous legal orders are living systems of law grounded in community, relationships, and shared responsibilities.

Robert A. Williams, Jr.

Regents Professor, E. Thomas Sullivan Professor of Law

Founding Faculty Chair, Indigenous Peoples Law and Policy Program (IPLP)

University of Arizona Rogers College of Law

Tucson, Arizona



Who Is This Guy from Arizona, and What Does He Know About Orca Whales?

- **Enrolled member of the Lumbee Indian Tribe of North Carolina and a Law Professor at the University of Arizona where I helped to found the Indigenous Peoples Law and Policy Program (IPLP).**
- **There are no whales of any kind in Arizona, but I do know a bit about Canadian First Nations law, particularly as it has been applied in British Columbia, having represented the Carrier Sekani and Hul'qumi'num Treaty Groups before the Inter-American Commission on Human Rights.**
- **Managed the IPLP Support Team for the Mandate of the UN Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay from 2020-2024, which focused particularly on Indigenous Peoples rights in protected areas and stewardship of environmental resources.**

Orca Personhood and Indigenous Legal Orders

- I've also taught Indigenous Peoples Human Rights and Comparative Indigenous Rights for the past 45 years and what I'd like to achieve in this talk today:
 - Offer a comparative perspective on how the challenges of securing Orca Personhood in Canada can be understood against the backdrop of Indigenous Peoples around the world who are fighting for recognition of legal personhood for their eco-systems, rivers and oceans, sacred sites and animals that are at the center of their worldview, their creation stories, their livelihoods, and their laws, customs and traditions.

Orca Personhood and Indigenous Legal Orders

Key Terms and Concepts

- ***“Legal Order”***
 - **A legal order is the system of law and legal principles that guide how a society governs itself:**
 - **Canada’s Constitution**
 - **English common law**
 - **Sharia (Islamic) law**

Indigenous Legal Orders

Indigenous legal orders are living systems of law grounded in community, relationships and shared responsibilities:

- Tsawwassen First Nation Constitution:

“The Tsawwassen First Nation, by virtue of having the inherent right provided by the Creator, exercises its responsibility for the well being of its Members, as the ancestors of our Nation have exercised this as a matter of right since time immemorial.”

- The Haida Nation Constitution:

“The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect; and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations.”

Key Terms and Concepts

Rights of Nature Movement

- *The idea that Nature has inherent, inalienable rights to exist and regenerate, regardless of its usefulness or value to humans.*

Legal Personhood

- *Legal personhood is the primary legal tool and mechanism the Indigenous-led Rights of Nature Movement has utilized to grant ecosystems and things in Nature the right to exist, flourish, and be protected against harm.*

The Rights of Nature Movement and Legal Personhood

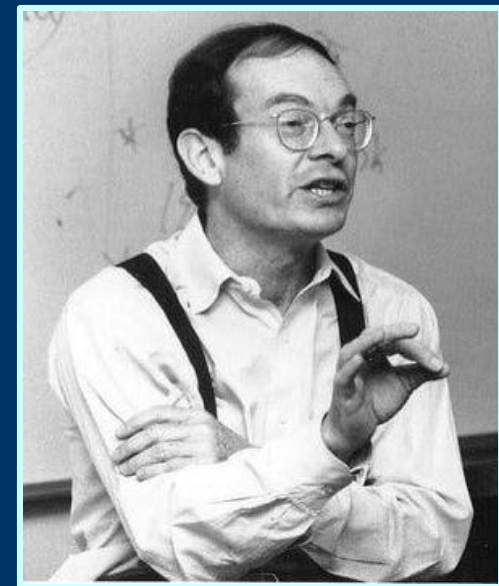
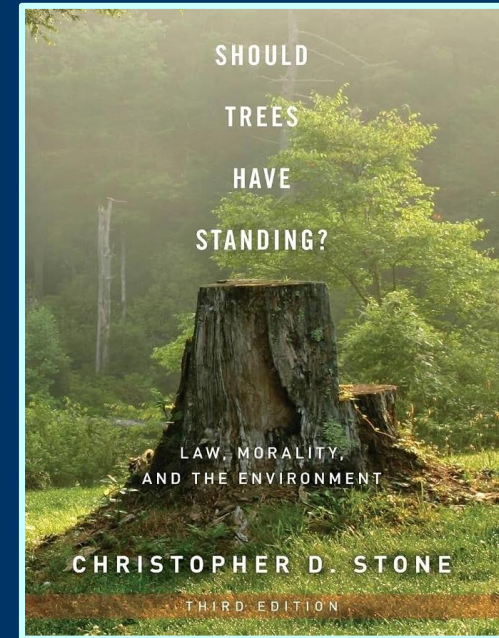
- Under English common law, inherited by Canada, the United States and other English-derived colonial settler-states, things in Nature, such as rivers, oceans, forests, animals and discreet eco-systems are viewed as potential property interests meant to be controlled by humans for their benefit, rather than entities with independent rights.
- For example, under the English common law, the phrase “the harpoon holds the whale” stands for the legal rule that the whaling crew retains rightful ownership of a struck whale, even if the attached line breaks, so long as their marked harpoon remains embedded in the animal.
Ghen v. Rich (1881).



A bowhead whale found in 2007 was carrying a harpoon from the 1880s, proving it had survived a hunting attempt more than a century earlier.

The Rights of Nature Movement

- The first significant legal challenge to this idea of things in Nature regarded as a private property interest at the disposal and control of humans traces back to a seminal 1972 law review article that was turned into a book, written by legal scholar Christopher D. Stone, *Should Trees Have Standing?*
- Stone's basic argument was that just like corporations that are treated as "persons" under the law (allowing them to own property and sue), granting legal personhood to a river, forest or animal gives it legal standing to have human guardians sue on its behalf if it is polluted, threatened or destroyed.



The Rights of Nature Movement and Indigenous Peoples

- Born out of the revolutionary idea asserting that Nature has inherent, inalienable rights to exist regardless of its usefulness or value to humans, the Rights of Nature Movement has been led by Indigenous Peoples around the globe, most usually in resistance to large-scale energy and natural resource extraction projects.
- The primary tool used by Indigenous Peoples to secure rights for their eco-systems, rivers and oceans, sacred sites and animals that are at the center of their worldview and livelihood has been securing their legal personhood under their colonial settler-state's legal system.



***Te Awa Tupua* (Whanganui River Claims Settlement Act of 2017)**



- ***Te Awa Tupua* (Whanganui River Claims Settlement Act of 2017)** granted legal personhood to the Whanganui River, sacred to Māori Indigenous Peoples.
- The Whanganui River is managed through a unique co-governance partnership between the New Zealand government (the Crown) and the local Māori *iwi* (tribes).
- **Dual Representatives:** The river is represented by a dual-office called ***Te Pou Tupua*** (the Human Guardians), consisting of two people who serve as the "human face" of the river. One is appointed by the Whanganui *iwi* and the other by the New Zealand government.

The Human Guardians (*Te Pou Tupua*) of the Whanganui River

- **Legal Duty**: The two guardians do not represent the political interests of any party. They have a strict legal obligation to protect the health, well-being, and "dignity" of the river as an indivisible whole.
- **Legal Standing**: Can take legal action, sue polluters, or participate in resource hearings on the river's behalf.
- **Te Kōpuka**: A separate, broader 17-member collaborative strategy group helps guide long-term planning, bringing together local Māori leaders, district councils, tourism operators, conservation groups, and energy companies to create a unified ecosystem strategy grounded in Māori law (the Māori legal order).



Turama Hawira

Turama Hawira is a highly experienced advisor and educator. He was mentored in the ritual practices of the Whare Wānanga o Aotea.



Keria Ponga

Keria Ponga, together with her late husband Royce Te Rangitautahi Ponga, has been central to many key efforts for the Whanganui River.

New Zealand Leads the Way: Taranaki Maunga Treaty Settlements 2025



- **The Taranaki Maunga Treaty Settlements of 2025 granted Mount Taranaki, regarded by the Māori as a sacred living relative and a source of spiritual, physical, and cultural sustenance, legal personhood.**
- **Taranaki Maunga will be jointly managed by eight members—four appointed by the local Māori *iwi* (tribes) and four appointed by the government Crown. Their sole legal duty is to advocate for the health and well-being of the mountain.**

The Global Movement for the Rights of Nature and Legal Personhood

The *Te Awa Tupua* framework has catalyzed international imitation in courts and legislative bodies in countries around the world.

Bangladesh:

In 2019, the High Court of Bangladesh decided that the Turag River and all 700 rivers in the country were “living entities” with rights as “legal persons.” To implement this landmark decision, the National River Conservation Commission was appointed in *loco parentis* and charged with preventing pollution and encroachment. These rights can be enforced against both private and public (government) entities.



The Global Movement for the Rights of Nature and Legal Personhood

Peru:

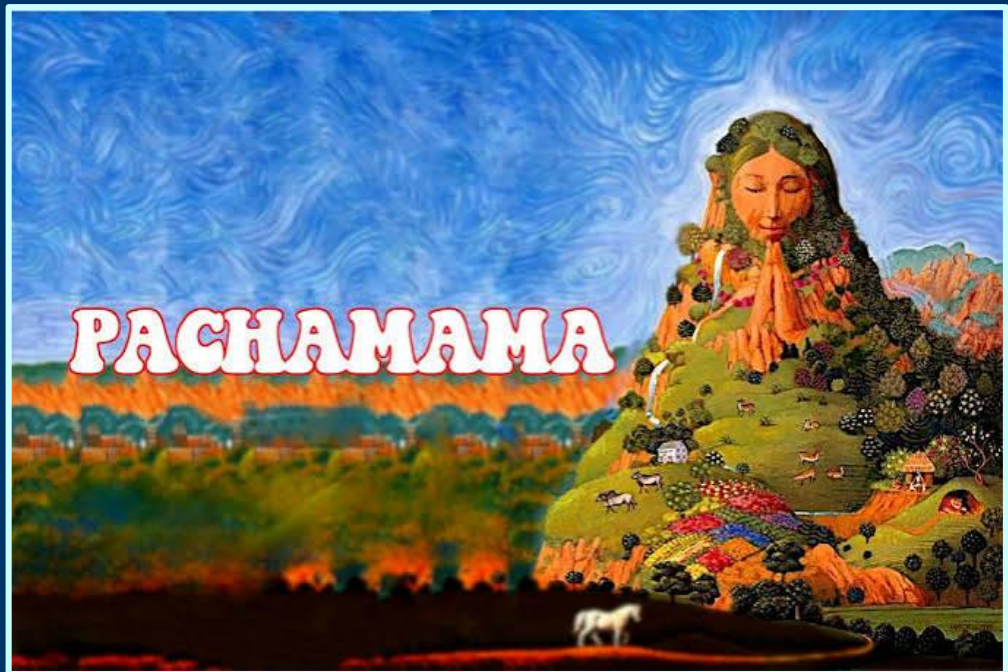
- Two 2025 provincial ordinances in Peru granted legal rights to at least 175 stingless bee species within biosphere reserves under threat from deforestation and invasive killer bee species.
- Indigenous peoples have drafted Biocultural Community Protocols documenting traditional ecological knowledge to ensure Indigenous wisdom legally guides local land stewardship.
- Indigenous groups are creating Bee Sanctuaries where vulnerable species can breed without the threat of agriculture or logging.
- The *Las Meliponicultoras* movement empowers Indigenous women, youth, and men to practice traditional, non-destructive beekeeping (*meliponiculture*).



The Global Movement for the Rights of Nature and Legal Personhood

Ecuador:

- In 2008, Ecuador became the first country to recognize the rights of nature in its Constitution. Under Chapter 7 of the Constitution, “Pachamama,” or Mother Earth, is granted the right to exist and to “maintain and generate its cycles, structure, functions, and its processes in evolution.” Under this change, individuals and communities can bring legal action if these rights are violated, holding both public and private entities accountable.



The Global Movement for the Rights of Nature and Legal Personhood

Colombia:

- In 2016, Columbia's Constitutional Court recognized the Atrato River (2016) as “a legal subject with rights to protection, conservation, maintenance and restoration.”
- In 2018, Columbia's Supreme Court recognized the Colombian Amazon ecosystem “as a subject of rights.”
- Colombia officially banned all new oil and large-scale mining projects in its Amazon biome on November 13, 2025, safeguarding an area the size of Sweden, covering 42% of the country's total landmass.



The Global Movement for the Rights of Nature and Legal Personhood in North America



- The Rights of Nature Movement has spread to Canada and the U.S.
- In February 2021, Quebec's Magpie River became the first ecosystem in Canada to be granted legal personhood through twin resolutions passed by the Innu Council of Ekuanitshit and the Minganie Regional County Municipality. The river's legal status includes the right to sue.
- To enforce these protections, the river is represented by jointly appointed Guardians from the Innu and local municipal governments.

The Global Movement for the Rights of Nature and Legal Personhood in North America

United States:
The \$4 billion 2026 Skagit River Hydroelectric Project Relicensing Settlement includes \$1.35 billion to build fish passages demanded by three affected Washington State tribes and provides payments to those tribes and funding for habitat restoration.

Seattle mayor signs \$4 billion Skagit River dams settlement

The agreement to fund the Skagit Hydroelectric Project for the next five decades marks the culmination of years of negotiations between local tribes and the city.



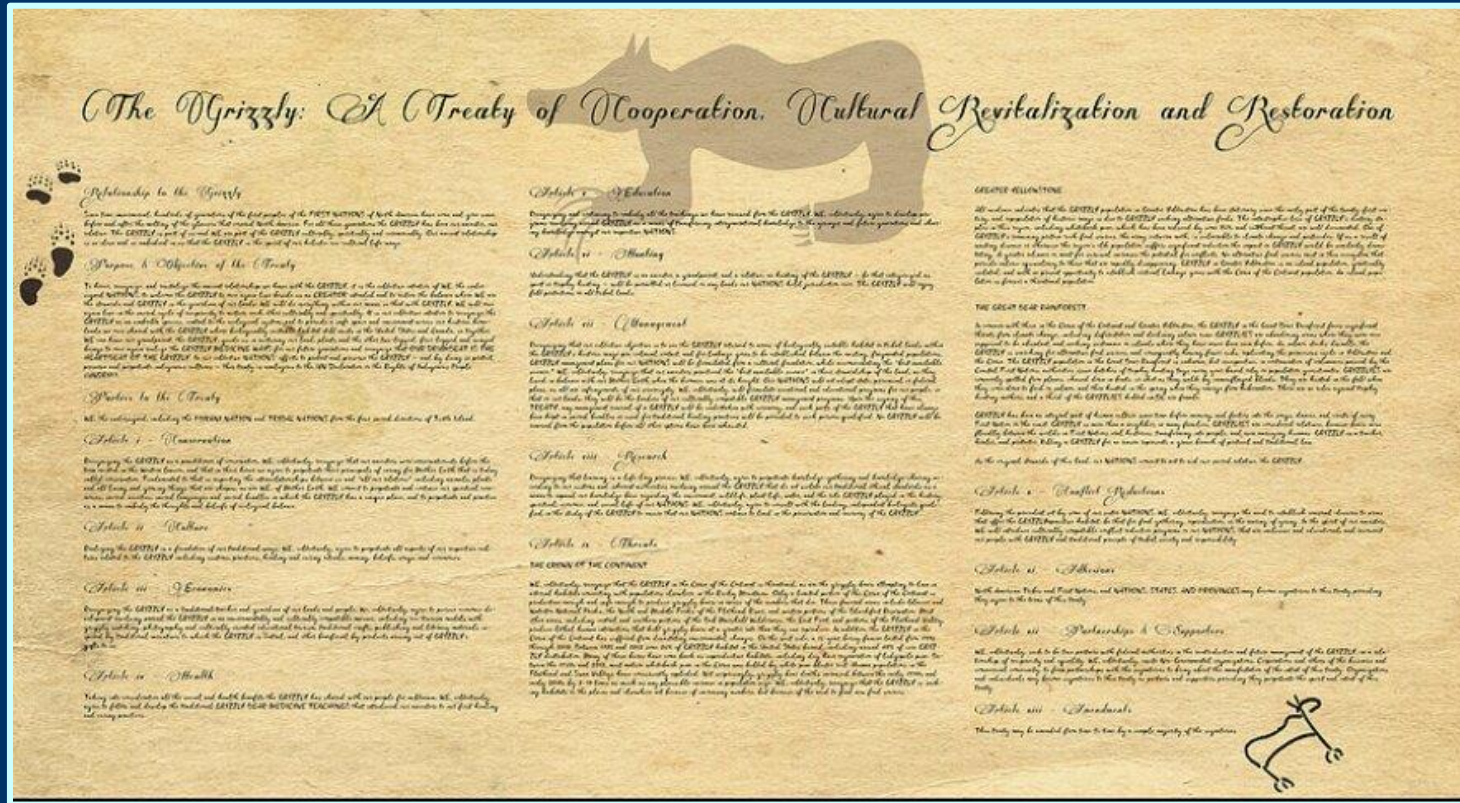
Author: Elizabeth Wiley, Kipp Robertson
Published: 8:37 AM PDT May 12, 2026
Updated: 6:13 PM PDT May 12, 2026



SEATTLE — Seattle Mayor Katie Wilson signed a multi-billion dollar settlement on Tuesday, ending years of negotiation between the city and local tribes.

The [\\$4 billion relicensing agreement](#) addresses environmental and cultural concerns tied to Seattle City Light's three dams on the Upper Skagit River. The settlement includes \$979 million to build fish passage at all three dams, as well as payments for tribes and funding for habitat restoration.

The Global Movement for the Rights of Nature and Indigenous-Led Declarations of Legal Personhood



Canada and the United States:
In 2016 the Grizzly Treaty, recognizing bears' rights to exist in a healthy ecosystem, was signed by more than 200 U.S. and Canadian tribal nations.

An Indigenous-Led Declaration of Legal Personhood for Whales

- *He Whakaputanga Moana* (Declaration for the Ocean) was signed by Indigenous leaders from New Zealand, Tonga, Tahiti, Hawai'i, and the Cook Islands in March 2024.
- Recognizes whales as legal persons with inherent rights to freedom of movement and migration, a healthy environment, protection of their complex natural behaviors, languages and songs and population restoration.
- Utilizes Indigenous-led traditional practices like *rāhui* (temporary ritual restrictions or bans) to close off areas from shipping, commercial fishing, or deep-sea mining when whales are migrating.
- Establishes a Whale Protection Fund to support habitat restoration and marine surveillance.
- Frames whale rights in Indigenous rather than Western terms and legal orders; directly generated concrete legislation within two years.



New Zealand Leads the Way Again!



A law for the tohorā: New Zealand bill seeks personhood for whales

- In 2026, Māori and Green Party MP Teanau Tuiono introduced the *Tohorā Oranga Bill*, based on *He Whakaputanga Moana* (Declaration for the Ocean), in New Zealand's Parliament to recognize that whales and other cetaceans as legal persons with inherent rights.

Tohorā Oranga Bill

- The Tohorā Oranga Bill is grounded in *te ao Māori* ; a Maori term encompassing Māori culture, traditions, philosophy, and the holistic way Māori view their interconnected relationship with the environment, society, and the spiritual realm.
- The legislation adopts a relational, values-based approach rather than a purely extractive or harm-reduction model of conservation.

The Challenge

- **Most Indigenous peoples have fundamentally different philosophical and legal perspectives on the Rights of Nature Movement compared to mainstream non-Indigenous environmental groups.**
- **While both advocate for the protection of the earth, their core worldviews, legal orders, and ultimate goals often diverge.**

Comparative Perspectives

Separation vs. Interconnectedness:

- Mainstream Western environmentalism largely operates on a nature/culture dichotomy—viewing humans as managers trying to fix or minimize their footprint on a separate "environment".
- Indigenous worldviews often reject this separation and view humans as an intrinsic, interconnected part of Nature, fundamentally bound to all living and non-living entities.

Personhood vs. Reciprocity:

- Non-Indigenous legal strategies often frame Rights of Nature as granting nature "human-like" rights, such as legal personhood, in order to sue on its behalf.
- Indigenous philosophies, such as the concept of *Pachamama* (Mother Earth) in Ecuador or Indigenous legal orders in British Columbia, are built on relational concepts and reciprocity. These traditions emphasize duties and responsibilities to the earth rather than just claiming rights for it.

Conservation vs. Sovereignty:

- Non-Indigenous groups primarily focus on broad conservation, preservation, and anti-corporate clauses.
- Indigenous peoples share a protective ethos (managing an estimated 80% of the world's biodiversity), their primary focus is often on self-determination, treaty rights, and sovereignty over their ancestral lands.

Western Legal Orders and Indigenous Legal Orders: Implementation Challenges:

- Because of these differing motivations, Canadian courts, like most other Western colonially-derived courts, may engage in “balancing” the relative rights of Nature versus humans, prioritizing broad “human” needs over specific Indigenous territorial and cultural rights of stewardship and eco-system protection.



Meeting the Challenge: Best Practices

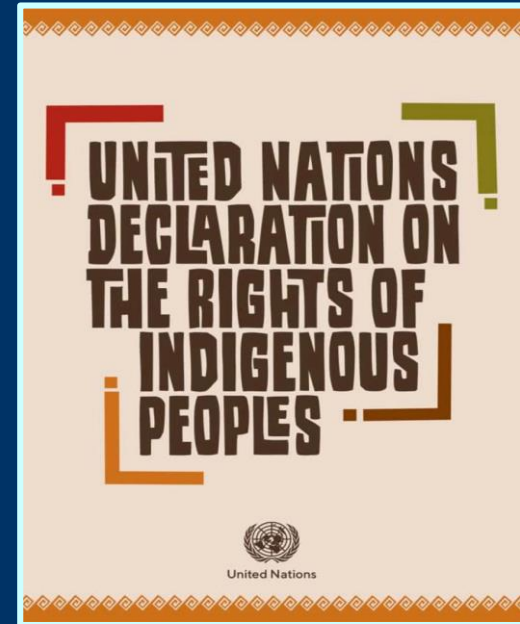
Promoting the Campaign for Orcas Personhood based on the UN Declaration on the Rights of Indigenous Peoples

- Adopted in 2007, UNDRIP is an international legal document that affirms the rights of Indigenous peoples and constitutes the minimum standards for their survival, dignity and well-being. Canada initially voted against endorsing UNDRIP in 2007 but later endorsed it in 2010.
- In B.C., the Province released a Declaration Act Action Plan in early 2022 to support the implementation of the UN Declaration. The Action Plan came more than two years after the provincial government passed UNDRIP into law in 2019.
- Little has been done by either governments to ensure that Canadian and B.C. law and processes are in line with the Declaration.

Meeting the Challenge of Securing Colonial Settler-state Recognition of First Nations Legal Orders

Best Practices

- Promote the rights of Indigenous Peoples under UNDRIP to their ancestral territories and lands, and the rights to protect them, making caretaking and stewardship of the environment and the Orca Whale part of the minimum standards for their cultural survival, dignity and well-being.
- Promote and advocate for Orca Personhood based on UNDRIP and its recognition of Indigenous legal orders to protect the right of Indigenous Peoples to the conservation and protection of the environment and the productive capacity of their lands, territories, resources and waters.



Meeting the Challenge of Securing Colonial Settler-state Recognition of First Nations Legal Orders

Best Practices

- **Expand and Strengthen your Orca Personhood Human Rights Campaign:**
 - B.C. and Canadian First Nations Letters of Support;
 - Cross-Border U.S. Indigenous alliances and support;
 - Indigenous and non-Indigenous NGO alliances and support;
 - Human rights and public education initiatives;
 - Legal and political advocacy;
 - Media and communications strategies.



United Nations Declaration on the Rights of Indigenous Peoples

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 29

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The Challenge: Building Legal Capacity to Protect Orca Personhood

- The decolonization of settler state colonial law with the recognition of legal personhood for Orca Whales will not be easy.
- Develop and Support a multi-pronged legal advocacy strategy.

Potential Domestic and International Legal Actions

Canadian Law

- Injunctions (Interlocutory or Permanent);
- Compensatory Damages;
- Exemplary/Punitive Damages;
- Declaratory Judgments;
- Public Nuisance;
- Private Nuisance;
- Trespass to Land/Waters.

International Law

- UN Special Rapporteur on the Rights of Indigenous Peoples;
- UN Human Rights Council Periodic Review (2028);
- UN CERD Petition;
- OAS Inter-American Commission on Human Rights.

The Challenge

Building, Strengthening and Reviving B.C First Nations Legal Orders Respecting Orca Whales

Best Practices from around the Indigenous World:

- ***Calling on Elders, Native speakers, and Indigenous and non-Indigenous scholars and resources to revive, reconstruct, and advance First Nations legal orders;***
- ***Developing Effective Governance Institutions to Address this Challenge;***
- ***The Importance of Your Campaign Partners:***
 - Supportive NGOs and Foundations;
 - Allied environmental and human rights organizations;
 - University-based Legal Clinics and Academic Research Programs;
 - Like IPLP!