UN Declaration on the Rights of Indigenous Peoples Canada Needs to Implement This New Human Rights Instrument

On September 13, 2007, the United Nations General Assembly adopted the *UN Declaration on the Rights of Indigenous Peoples* by an overwhelming vote of 144-4. The UN Secretary-General, other prominent international leaders, and human rights experts hailed this historic event as a victory for the human rights of the world's most disadvantaged and victimized peoples.

There are over 370 million Indigenous people worldwide. Indigenous peoples urgently require international affirmation and protection of their human rights. Their rights are routinely trampled by national governments, even when these rights are entrenched in law.

Canada was one of only four states that opposed the *Declaration*. Government ministers characterize the *Declaration* as incompatible with Canada's Constitution and the Canadian Charter of Rights and Freedoms. They state that the *Declaration* affirms only the collective rights of Indigenous peoples and fails to balance individual and collective rights or the rights of Indigenous and non-Indigenous peoples. No credible legal rationale has been provided to substantiate these extraordinary and erroneous claims.

We, the undersigned, have researched and worked in the fields of Indigenous rights and/or constitutional law in Canada. We are concerned that the misleading claims made by the Canadian government continue to be used to justify opposition, as well as impede international cooperation and implementation of this human rights instrument.

The *Declaration* contains some of the most comprehensive balancing provisions that exist in any international human rights instrument. Article 46 of the *UN Declaration* states that every provision must be interpreted "in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith". These are the core principles and values of not only Canada's Constitution, but also the international system that Canada has championed.

Further, seventeen provisions in the *Declaration* address individual rights. The *UN Declaration* also states that the rights of Indigenous peoples may be limited when strictly necessary "for the purpose of securing due recognition and respect for the rights and freedoms of others". This approach allows for both flexibility and balance.

In response to Canada's position, the UN High Commissioner for Human Rights and former Supreme Court of Canada Justice, Louise Arbour, publicly expressed her "astonishment" and "profound disappointment". The Declaration provides a principled

framework that promotes a vision of justice and reconciliation. In our considered opinion, it is consistent with the Canadian Constitution and Charter and is profoundly important for fulfilling their promise. Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations.

As a member of the UN Human Rights Council, Canada has a duty to "uphold the highest standards" of human rights for all. This mandate is guided by principles of impartiality, objectivity and non-selectivity. Elimination of politicization of human rights is a vital objective. For Canada to act otherwise is prejudicial to Indigenous peoples' human rights. It undermines Canada's credibility and international role.

September 13, 2007 was a shameful day for Canada but a tremendous achievement for the world's Indigenous peoples and the international system. It is time for the government of Canada to cease publicizing its misleading claims and, together with Indigenous peoples, actively implement this new human rights instrument.

Signed by:

Professor Jennie Abell, Director, Institute of Women's Studies, University of Ottawa

Merle C. Alexander, Barrister and Solicitor

Professor Sharry Aiken, Faculty of Law, Queen's University

Warren Allmand, former Attorney General, Minister of Indian Affairs and President of Rights and Democracy

Professor Kirsten Anker, Faculty of Law, McGill University

Professor Rachel Ariss, Department of Sociology, Lakehead University

Professor Constance Backhouse, Faculty of Law, University of Ottawa

Professor Michael Barutciski, Glendon School of Public Affairs, York University Professor Nigel Bankes, Faculty of Law, University of Calgary

Tom Berger, Barrister and Solicitor

Professor John Borrows, Law Foundation Chair in Aboriginal Justice, Faculty of Law, University of Victoria

Professor Nehal Bhuta, Faculty of Law, University of Toronto

Dougald Brown, Barrister and Solicitor

Professor Michael Byers, Canada Research Chair in Global Politics and International Law, University of British Columbia

Murray Browne Barrister and Solicitor

Paul Cavalluzzo, Barrister and Solicitor

Professor Larry Chartrand, Faculty of Law, University of Ottawa

Professor Gordon Christie, Faculty of Law, University of British Columbia

Professor Lynda Collins, Faculty of Law, Common Law Section, University of Ottawa

Paul Copeland, Barrister and Solicitor, Bencher (director) of the Law Society of Upper Canada

Wendy Cornet, Cornet Consulting and Mediation Inc.

Professeur François Crépeau, Chaire de recherche du Canada en droit international des migrations / Canada Research Chair in International Migration Law, Directeur scientifique / Scientific Director, Centre d'études et de recherches internationales / Centre for International Studies, Faculté de droit / Faculty of Law, Université de Montréal

Paul Crowley, Barrister and Solicitor

Professor Margaret Denike, Coordinator, Human Rights Program, Carleton University

Professeur Denys Delâge, Faculté de sociologie, Université Laval

Marlys Edwardh, Barrister and Solictor

Fay Faraday, Barrister and Solicitor

Professor L. M. Findlay, Director, Humanities Research Unit, University of Saskatchewan

Professor Craig Forcese, Faculty of Law, University of Ottawa

Stacey M. Edzerza Fox, Barrister and Solicitor

Professor Evan Fox-Decent, Faculty of Law, McGill University

Professor Donald Galloway, Faculty of Law, University of Victoria

Myriam Gervais, Research Associate McGill Centre for Research and Teaching on Women

Professeur Sébastien Grammond, Vicedoyen à la recherche / Vice-Dean, Research Section de droit civil / Civil Law Section Faculté de droit / Faculty of Law, Université d'Ottawa

Peter Grant, Barrister and Solicitor

Professor Vanessa Gruben, Faculty of Law, University of Ottawa

Debra Hanuse, Barrister and Solicitor.

Veryan Haysom, Barrister and Solicitor

Professor Sakej Henderson, Research director, Four Direction Council, Research Director, Native Law Centre of Canada

Professor Shin Imai, Director, Intensive Program on Aboriginal Lands, Resources and Governments, Faculty of Law, Osgoode Hall, York University

Barbara Jackman, Barrister and Solicitor

Professor Michael Jackson, Faculty of Law, University of British Columbia

Paul Joffe, Barrister and Solicitor

Roger Jones, Law and Policy Consultant

Professor Jennifer Koshan, Faculty of Law, University of Calgary

Lois Leslie, Barrister and Solicitor

Professor Linda Kreitzer, Faculty of Social Work, University of Calgary

Professeur Émérite, Jean-Paul Lacasse, Faculté de droit, Université d'Ottawa

Professeure Emérite Andrée Lajoie, Faculté de droit, Université de Montréal

Professor Lucie Lamarche, Chaire Gordon F Henderson en droits de la personne / Gordon F. Henderson Human Rights Chair, Université d'Ottawa

Professeur François J. Larocque, Directeur du programme national / National Program Director, Faculté de droit, Université d'Ottawa

Chief Wilton Littlechild, former United Nations Permanent Forum member.

Professor Jennifer Llewellyn, Faculty of Law, Dalhousie University

Professor Roderick Macdonald, Faculty of Law, McGill University

Professor A. Wayne MacKay C.M., Faculty of Law, Dalhousie University

Professor Audrey Macklin, Faculty of Law, University of Toronto

Professor Joseph Eliot Magnet, Faculty of Law, University of Ottawa

Louise Mandell, Barrister and Solicitor

Professor Egla Martinez, Institute.of Interdisciplinary Studies/Human Rights, Institute. of Women's Studies, Carleton University Professor Maxine V. H. Matilpi, Director, Academic and Cultural Support Program, Faculty of Law, University of Victoria

Professor June McCue, Faculty of Law, University of British Columbia

Professor Kent McNeil, Faculty of Law, Osgoode Hall, York University

Professor Errol P. Mendes, Faculty of Law, University of Ottawa

John Merritt, Barrister and Solicitor

Loretta Michelin, Director of Legal, Services with the Nunatsiavut Government

Professor Patricia Monture, Department of Sociology, University of Saskatchewan

Maria Morellato, Barrister and Solicitor

Nancy A. Morgan, Barrister and Solicitor

Professor Bradford W. Morse, Faculty of Law, University of Ottawa

Alex Neve, Secretary General, Amnesty International Canada (English-Speaking Branch).

Professeur Pierre Noreau, Faculté de droit, Université de Montréal

John Olthuis, Barrister and Solicitor

Arthur Pape, Barrister and Solicitor

Professeure Sylvie Paquerot, École d'études politiques, Université d'Ottawa

Laurie Pelly, Barrister and Solicitor

Bruce Porter, Director, Social Rights Advocacy Centre

Professor Dianne Pothier, Faculty of Law, Dalhousie University

Professor Emeritus Richard J. Preston, Faculty of Anthropology, McMaster University

Professor Janna Promislow, Faculty of Law, Osgoode Hall, York University

Owen Rees, Barrister and Solicitor

Professor Ben Richardson, Faculty of Law, Osgoode Hall, York University

Professeur Guy Rocher, Centre de recherche en droit public, Université de Montréal

Allan Rock, former Member of Parliament and Ambassador to the United Nations

Professor Sanda Rodgers, Faculty of Law, University of Ottawa

Professor Rémi Savard, Département d'anthropologie, Université de Montréal

Professor William A. Schabas,, Director, Irish Centre for Human Rights National University of Ireland, Galway

Professor Craig Martin Scott, Director, Nathanson Centre on Transnational Human Rights, Crime and Security, Faculty of Law, Osgoode Hall, York University Professor Elizabeth Sheehy, Faculty of Law, University of Ottawa

Professor Peter Showler, Director, The Refugee Forum, Human Rights Research and Education Centre, University of Ottawa

Professor Brian Slattery, Faculty of Law, Osgoode Hall, York University,

Richard Spaulding, Barrister and Solicitor

Professor Joanne St. Lewis, Faculty of Law, University of Ottawa

Mary Ellen Turpel-Lafond, British Columbia Representative for Children and Youth.

Lorne Waldman, Barrister and Solicitor

Professor Rosemary Cairns Way, Faculty of Law, Common Law, University of Ottawa

Michael (Jerry) Wetzel, Barrister and Solicitor

Professor Christiane Wilke, Faculty of Law, Carleton University

Peigi Wilson, Barrister and Solicitor

Gary Yabsley, Barrister and Solicitor

Maxwell Yalden, former Canadian Human Rights Commissioner and member of the United Nations Human Rights Committee.

Professor Norman Zlotkin, College of Law, University of Saskatchewan