

Regional Roundtables 2023-2024

Indigenous Border Mobility and UNDA Action Plan Measure SP52

British Columbia Regional Roundtable
January 23, 2024



Government
of Canada

Gouvernement
du Canada

Canada

WELCOME

- Today's Schedule
- Elder Support Available
- Regional Indigenous Affairs Advisors Available



INTRODUCTIONS

CBSA: Indigenous Affairs Secretariat

- **CBSA:** Responsible for managing and enforcing over 100+ Acts of Parliament for Canada's international borders at Ports of Entry.
- **Indigenous Affairs Secretariat:**
 - Established February 2018
 - Addresses border crossing issues for Indigenous peoples, including facilitation of Indigenous travellers and their sacred goods
- [CBSA.Indigenous Affairs Secretariat-
Secretariat aux affaires autochtones.ASFC@cbsa-asfc.gc.ca](mailto:Secretariat_aux_affaires_autochtones.ASFC@cbsa-asfc.gc.ca)

IRCC: Indigenous Border Crossing Division

- **IRCC:** Responsible for right to enter and remain in Canada under the *Immigration and Refugee Protection Act* (IRPA).
- **Indigenous Border Crossing Division:**
 - Established January 2023
 - Addresses border mobility challenges faced by Indigenous peoples and communities, including supporting new legislation and policy
- IRCC.IndigenousMobility-MobiliteAutochtone.IRCC@cic.gc.ca



OBJECTIVES

OVERVIEW

United Nations
Declaration on the Rights
of Indigenous Peoples
Act Action Plan (UNDA
Action Plan)

Action Plan Measure
Shared Priorities 52
(APM SP52)

IMPLEMENTING ACTION PLAN MEASURE

Solutions to address
barriers faced by
communities at border

Changes to legislative right
to enter and remain in
Canada under *Immigration
and Refugee Protection Act*
(IRPA)

Policy solutions to related
concerns

DISCUSS OTHER PRIORTIES

Experience of crossing
borders

Movement of sacred and
ceremonial cultural items
and medicines

Improving and easing
trade



SETTING CONTEXT

2017	2018	2021	2023 (March)	2023 (June)
Minister's Special Representative (MSR) Report: potential proposed solution – amend s.19 of <i>Immigration and Refugee Protection Act</i>	Government of Canada Commitment: "...longer-term process with concerned First Nations, Inuit and Métis communities to discuss potential solutions to a number of more complex border-crossing issues"	United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA): UNDA receives Royal Assent	Bilateral Leader-level Commitment: Release of Prime Minister-President of the United States Joint statement	UNDA Action Plan: including Action Plan Measure Shared Priority 52 (page 35) – related to UNDRIP Article 36



United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan **2023-2028**

CANADA.CA/DECLARATION



ACTION PLAN MEASURE SHARED PRIORITIES 52

The Government of Canada will take the following actions in consultation and cooperation with Indigenous peoples:

Pursue **legislative amendments** to the *Immigration and Refugee Protection Act*, **amendments to relevant Regulations** and **revisions to policies** in order to address complex border crossing and migration challenges faced by Indigenous peoples divided by Canada's international borders, **including options to amend Canada's right of entry provision**, and **work and study permit requirements**.

Engagement with Indigenous peoples and their representative organizations to implement the action plan measure is being initiated in **2023**, with a view to **advancing amendments and policy reforms in 2024**. In parallel, the Government of Canada will continue **discussions with international partners** on Indigenous border crossing issues.

(Canada Border Services Agency; Immigration, Refugees and Citizenship Canada)



BASIS FOR DISCUSSION – section 5 UNDA

Federal Laws

Requires that the Government of Canada take **all measures necessary** to ensure that **federal laws are consistent with the UN Declaration**

Consultation and Cooperation

Measures to ensure consistency of federal laws must be taken in **consultation and cooperation** with Indigenous peoples

Distinct from **Duty to Consult** (s.35 *Constitution Act, 1982*)

Scope & depth varies for each initiative



CURRENT LEGISLATION – ENTRY OF PEOPLE

Immigration and Refugee Protection Act, section 19(1)

*Every Canadian citizen within the meaning of the Citizenship Act and every person registered as an Indian under the Indian Act has the **right to enter and remain in Canada** in accordance with this Act, and an officer shall allow the person to enter Canada if satisfied following an examination on their entry that the person is a citizen or registered Indian.*

Who is included?

- Persons registered under the *Indian Act*,
- Canadian citizens (CCs); and,
- Permanent residents (PRs) - ss.19(2) and 27(1)

Note: Persons registered under *Indian Act* do not require work/study permit

But: section 19(1)....

- **Does not explicitly** refer to Canada's Treaty Partners or First Nations people
- **Does not** include Indigenous peoples outside Canada (unless registered under *Indian Act*, CCs or PRs)
- **Does not** refer to document requirements
- For rest of IRPA, persons registered under *Indian Act* (if not CCs/PRs) are considered 'foreign nationals'



EXAMPLES OF ADVERSE IMPACTS: FAMILIES

“The imposition of the Canada-US border has been, in the eyes of First Nations, destructive of family, cultural, governance and other connections with US Tribes which are of great importance to their identity as well as to their cultural survival.”

- Ministerial Special Representative (MSR) Report

“...[D]ifficulties experienced with respect to Native American spouses who are not registered as Indians under the *Indian Act* and who wish to reside with their First Nation spouse in Canada”

- MSR Report

“Situations of divorce or separation involving spouses or former spouses residing on different sides of the Canada-US border where family visits respecting children may become complicated for a variety of reasons...”

- MSR Report



TRAVELLER MODERNIZATION

- Over the coming months and years, CBSA will undertake a **series of important improvements** as part of the Traveller Modernization initiative.
- Through Traveller Modernization, we will modernize our infrastructure and processes at Canada's ports of entry, including by introducing **new technology for travellers**.
- More **touchless border processing** will shorten wait times and reduce possible disease transmission points.
- Ultimately, this will ensure the **long-term safety, security and integrity of our borders**.

Biometrics

Changing Technology

Modernization



SOME IDEAS SO FAR

SCOPE	REMAINING IN CANADA	DOCUMENTS	ACCOMPANYING ISSUES	PUTTING CHANGES IN PLACE
<p><u>Outside Canada</u> Non-resident Aboriginal Peoples of Canada</p> <p>All members of federally recognized Tribes in U.S. or Tribes in border states</p> <p><u>Inside Canada</u> Citizens /Members of Treaty and/or First Nations</p> <p><u>Inside/outside Canada</u> Flexible List</p>	<p>Work without permit</p> <p>Study without permit</p> <p>Admissibility?</p> <p>Health care</p>	<p>Federally recognized U.S. Tribal cards</p> <p>Enhanced Tribal Cards</p> <p>Treaty and/or First Nations citizenship/ membership cards</p>	<p>Trade and entry of goods</p> <p>Indigenous Training Services</p>	<p>Traveller Modernization</p> <p>Indigenous Affairs Services</p>



THANK YOU

- We look forward to discussing these issues today
- Any initial questions?
- Written feedback welcome:
 - **CBSA:** CBSA.IndigenousAffairsSecretariat-SecretariatAuxAffairesAutochtones.ASFC@cbsa-asfc.gc.ca
 - **IRCC:** IRCC.IndigenousMobility-MobiliteAutochtone.IRCC@cic.gc.ca





BREAKOUT SESSIONS



BREAKOUT DISCUSSION 1

SCOPE

Purpose: Discuss who to include in legislative amendment expanding right of entry

Context: Three groups have a right of entry under IRPA:

1. Persons registered under the *Indian Act*;
2. Canadian citizens (CC)
3. Permanent residents (PR)

R. v. Desautel: “Aboriginal peoples of Canada” means modern-day successors of Aboriginal societies that occupied Canadian territory at the time of European contact, even if such societies are now located outside Canada (*Supreme Court did not address Aboriginal right to enter Canada*)



BREAKOUT DISCUSSION 1

SCOPE

Opening Discussion:

- Has your community experienced challenges at the border?
- **Outside Canada:** Which Indigenous Peoples outside Canada should have a right to enter and remain in Canada under IRPA?
- **Inside Canada:** Is it enough that IRPA refers to persons registered under the *Indian Act* or should there be an additional reference to First Nations and/or Treaty Partners? If so, how?



BREAKOUT DISCUSSION 1

EXAMPLES

1. Refer to federally recognized U.S. Tribes
 - a. All members?
 - b. With proximity to U.S.-Canada border?
 - c. With connections in Canada?
2. Non-resident Aboriginal peoples of Canada (*Desautel*)?
3. Citizen or Member of a First Nation and/or Treaty Partner but not registered under *Indian Act*



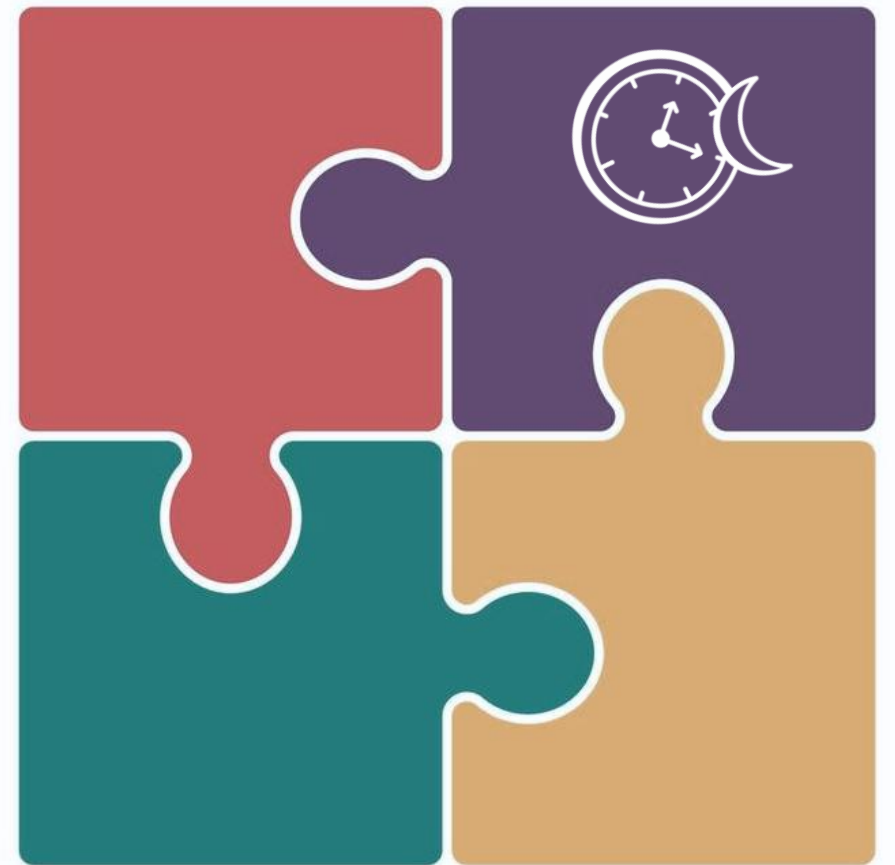
BREAKOUT DISCUSSION 2

REMAINING IN CANADA

Purpose: Discuss priorities for someone staying in Canada, should everyone be able to stay as long as they like?

Context: Under IRPA, persons registered under the *Indian Act* and Canadian citizens have a right to enter **and remain in** Canada

In practice, this means that a person cannot be removed from Canada, similar to a Canadian citizen. Persons without a right to remain can be removed (criminal inadmissibility).

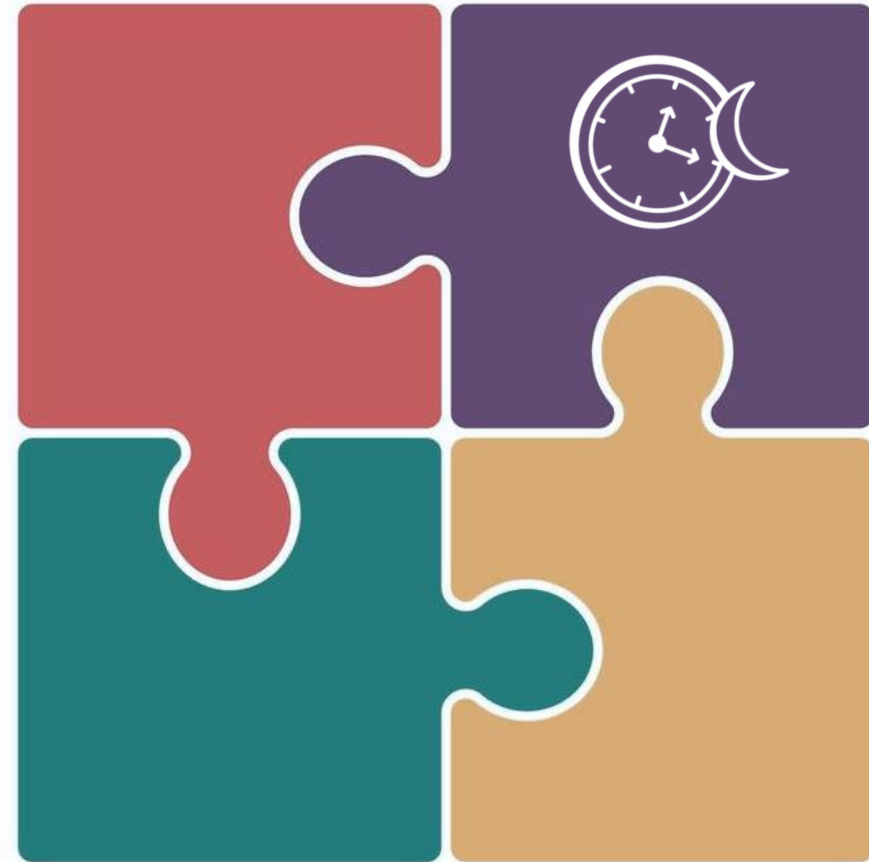


BREAKOUT DISCUSSION 2

REMAINING IN CANADA

Opening Discussion:

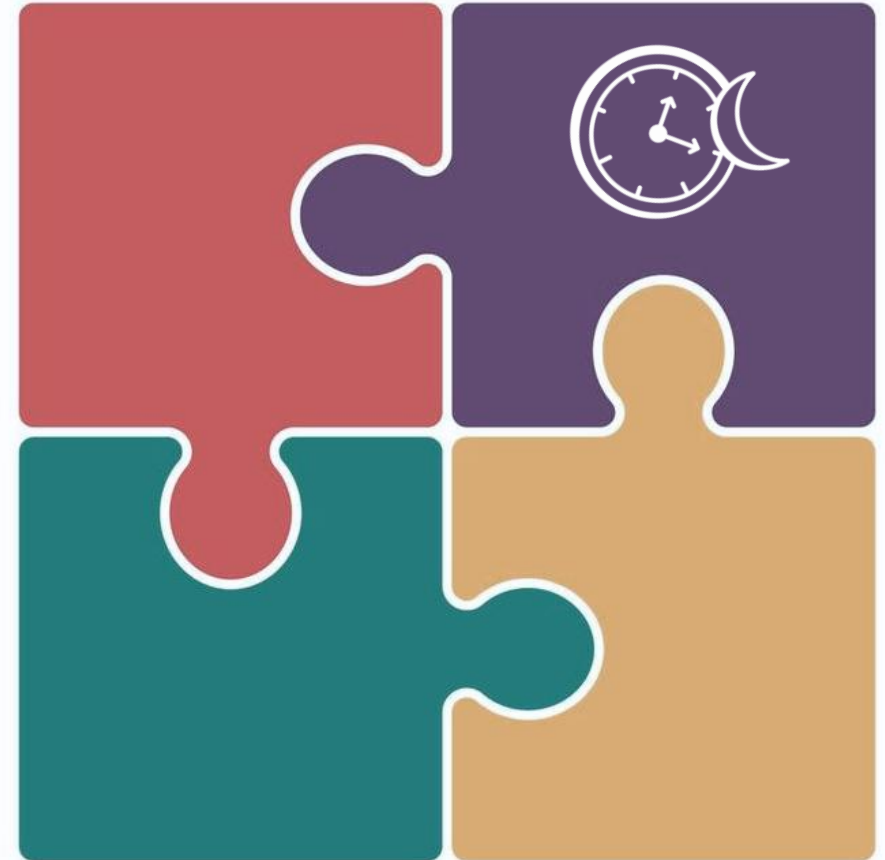
- Are there additional considerations/priorities when it comes to remaining in Canada (e.g. ability to study, work, etc.).
- Should there be any restrictions to the right to enter and remain in Canada (criminal offences)?
- Is changing the immigration status of Indigenous people who would now be technically “foreign nationals” under IRPA a priority?



BREAKOUT DISCUSSION 2

EXAMPLES: REMAINING IN CANADA

- Exemptions from work and study permits
- Raise with provinces and territories on implications re: access to health services; driver's licence, etc.
- Views on any limitations e.g. IRPA's most serious inadmissibilities

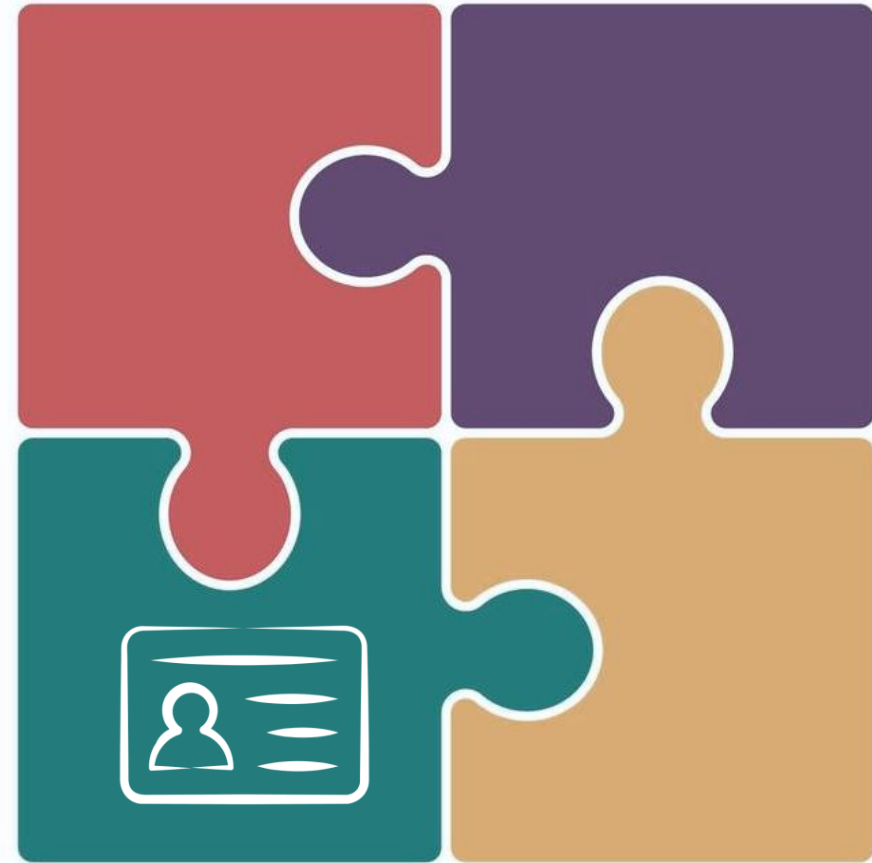


BREAKOUT DISCUSSION 3

DOCUMENTS

Purpose: Discuss what documents an individual could show to a Border Services Officer

Context: Currently, there are no documentary requirements for right of entry; however, Border Services Officer must be “satisfied” person has right of entry



BREAKOUT DISCUSSION 3

DOCUMENTS

Opening Discussion:

- What identification documents are used in your communities?
- What documents could be presented at the border to demonstrate identity as a person with a right of entry to Canada?
- What are important considerations for Border Services Officers when they see documentation they may not recognize or be familiar with?



BREAKOUT DISCUSSION 3

EXAMPLES: DOCUMENTS

- Enhanced Tribal ID
- Documentation issued by First Nation and/or Treaty Partners
- Clear guidance/protocols



BREAKOUT 4 & PLENARY 5: Accompanying Issues & Putting Changes in Place (Slido)

English

<http://tinyurl.com/Vancouveren>



Français

<http://tinyurl.com/Vancouverfrançais>



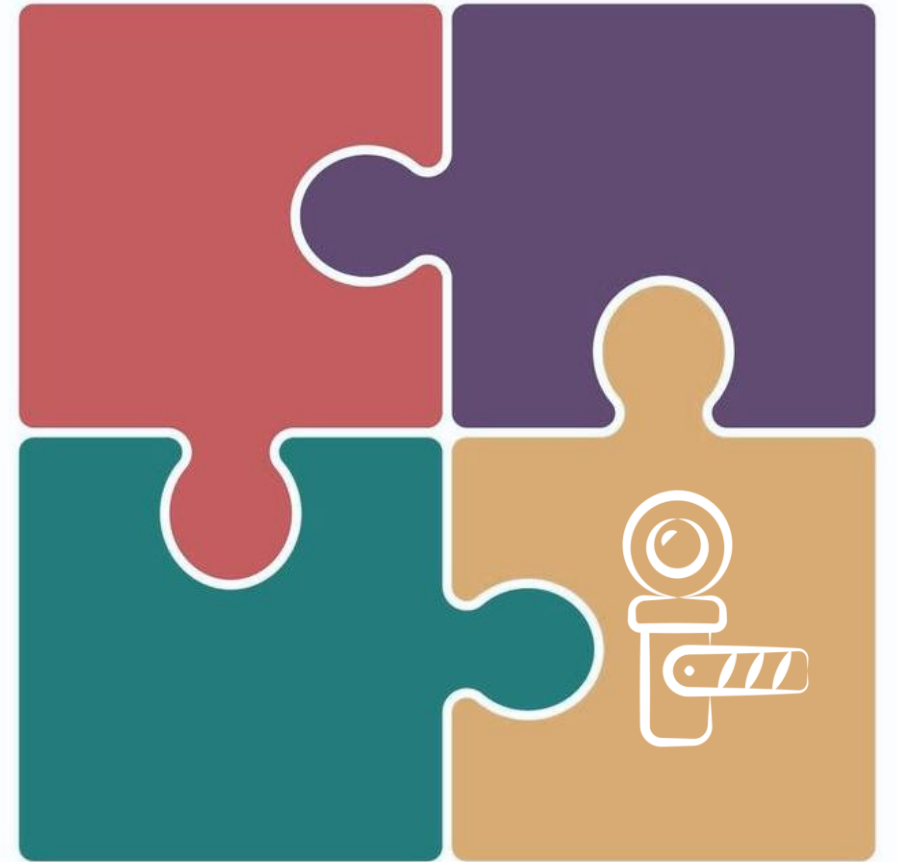
BREAKOUT DISCUSSION 4

ACCOMPANYING ISSUES

Purpose: To better understand what other issues tied to the mobility of Indigenous Peoples are important for the Government of Canada to consider

Context: A variety of topics may be of specific interest to Indigenous Peoples:

- the experience of crossing borders (including using technology-based solutions);
- the movement of sacred and ceremonial cultural items and medicines; and
- improving and easing trade.

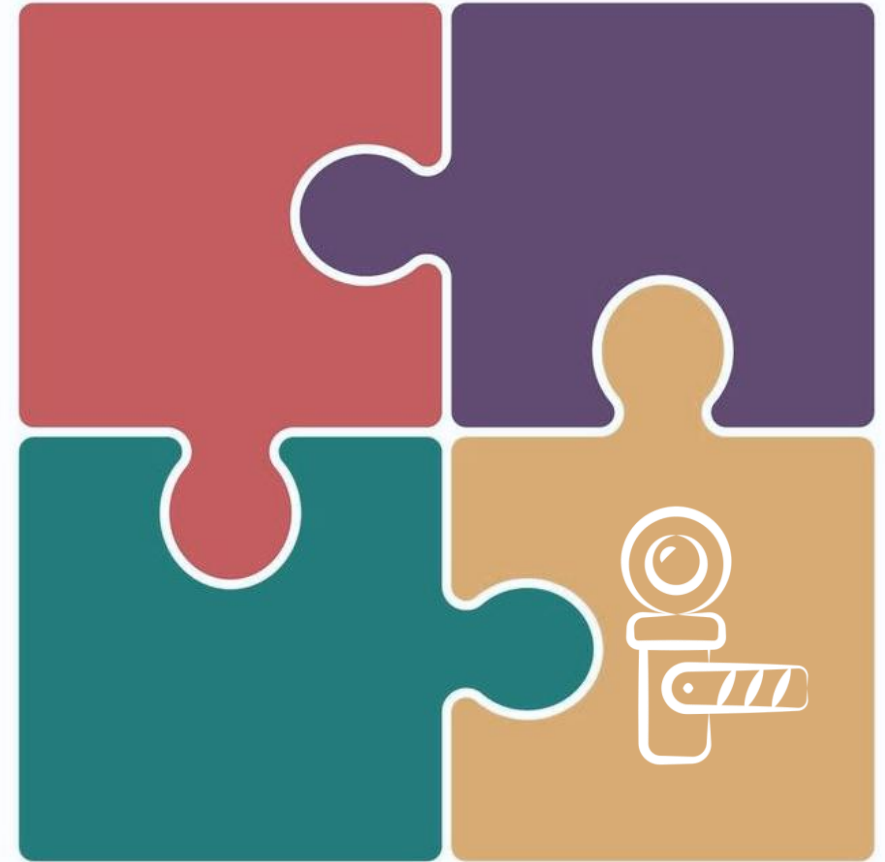


BREAKOUT DISCUSSION 4

ACCOMPANYING ISSUES

Opening Discussion:

- Does your community/government offer training on your culture and history? Can you provide details?
- Do you have recommendations on how to support cross border trade?
- Would you be interested in further discussion with CBSA on technology based solutions to facilitate travel across Canada's border? Can you provide details?



BREAKOUT DISCUSSION 4

ACCOMPANYING ISSUES

Examples:

- Indigenous Sacred Bundle Presentations by Regional Indigenous Affairs Advisors
- Specialized Training
- Collaborative Training
- Use of technology-based solutions at the border

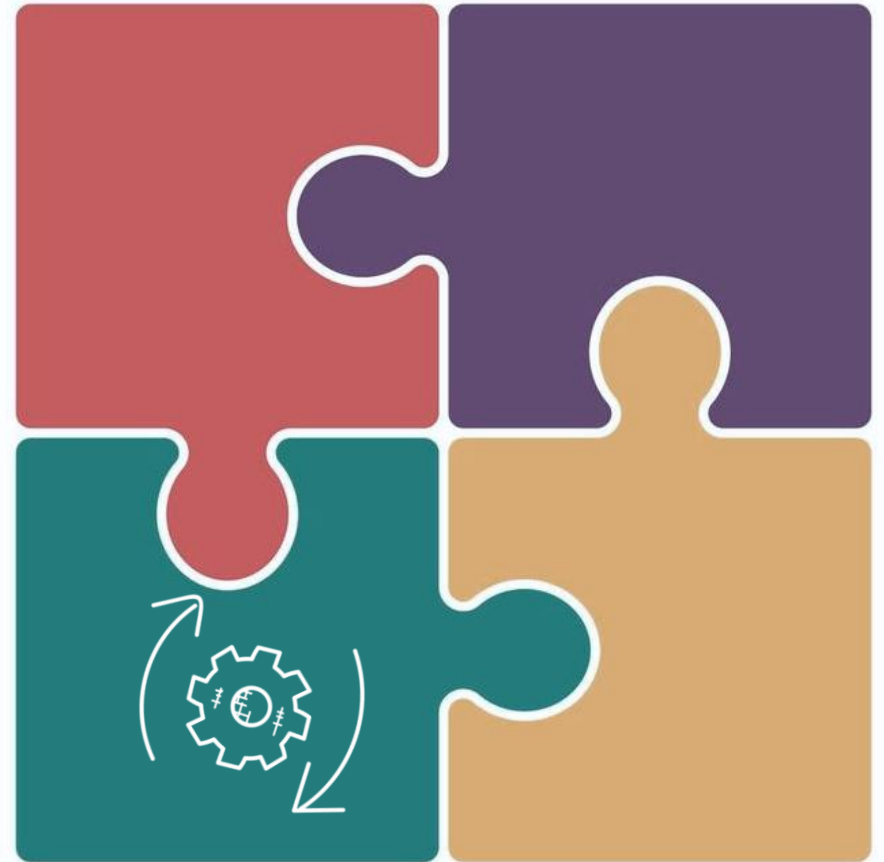


PLENARY DISCUSSION 5

PUTTING CHANGES IN PLACE

Purpose: How can we help put changes in place in a way that meets the needs of Indigenous people?

Context: The IAS supports the CBSA as it engages, respects, cooperates and partners with Indigenous Peoples. Guided by the 4 pillars of People, Operations, Policy, and Engagement, IAS is working to improve the border crossing experience for Indigenous Peoples.

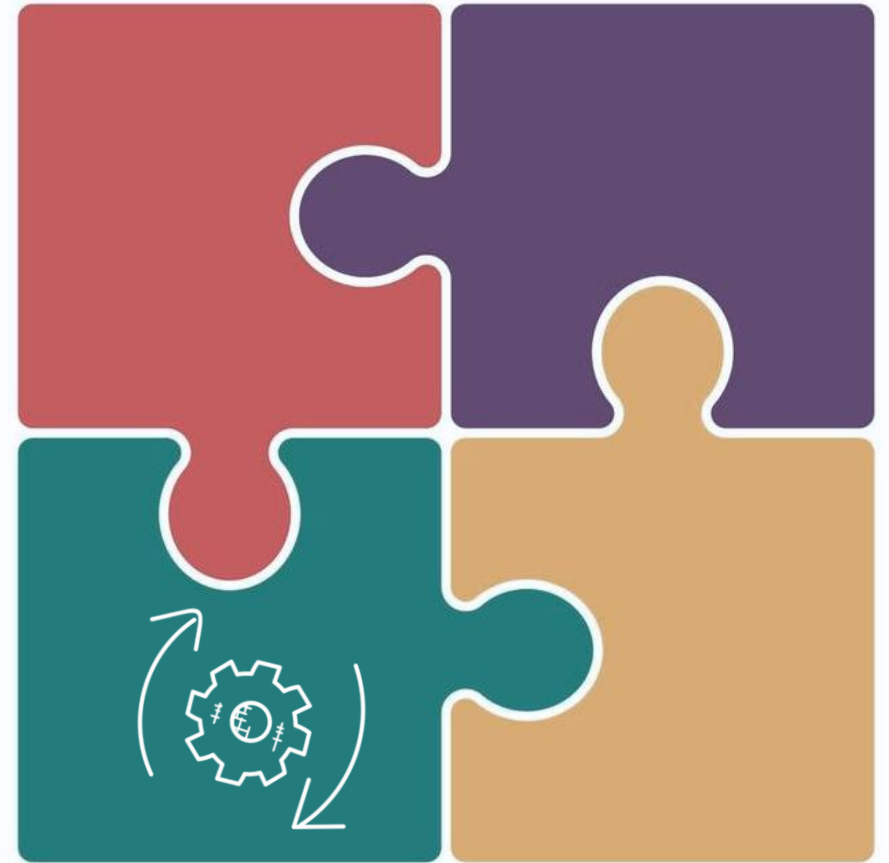


PLENARY DISCUSSION 5

PUTTING CHANGES IN PLACE

Opening Discussion:

- Are you aware of the services offered by the IAS, either **regionally** or **nationally**
- What recommendations do you have on how IAS services should be delivered (e.g. proximity to community, type of supports needed)?
- How can CBSA best engage with you on programs, policies and laws that it develops?

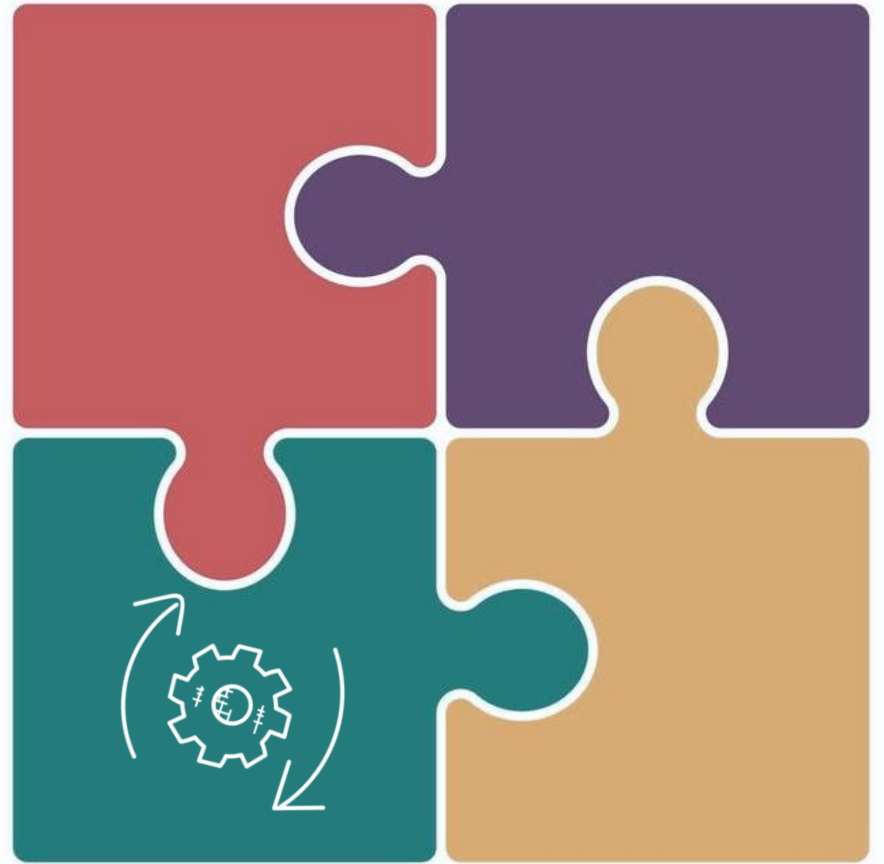


PLENARY DISCUSSION 5

PUTTING CHANGES IN PLACE

Examples:

- Facilitation of Indigenous delegations
- Direct Indigenous community engagement
- Coordination of subject matter expertise advice on Indigenous-led identification implementation



ANNEX 1: TERMINOLOGY

UNDA: In 2016, the Government of Canada endorsed the UN Declaration without qualification and committed to its full and effective implementation. On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration Act) received Royal Assent and immediately came into force. It creates a lasting framework to advance the implementation of the UN Declaration at the federal level.

Action Plan: In keeping with the *UN Declaration Act*, the Government of Canada worked in consultation and cooperation with Indigenous peoples to identify the measures necessary to ensure federal laws are consistent with the UN Declaration, and to co-develop an action plan to achieve the objectives of the UN Declaration. In December 2021, Justice Canada launched a two-phased broad, inclusive and distinctions-based consultation and cooperation process with Indigenous peoples to advance the implementation of the *UN Declaration Act*. On June 21, 2023, the UNDA Action Plan, was tabled in Parliament.

Action Plan Measure: The Action Plan includes 181 important Action Plan Measures that: reflect priorities and proposals identified by First Nations, Inuit and Métis; contribute to achieving the objectives of the UN Declaration; and align with specific topics covered by the *UN Declaration Act*.



TERMINOLOGY cont.

Regional Indigenous Affairs Advisors: Develop, build and foster positive relationships with local Indigenous communities to promote interrelationships and mutual understanding while supporting CBSA legislation. They assist and participate in a variety of outreach activities with the Indigenous communities. They also assist Indigenous communities to enhance their understanding of CBSA, and promote the recruitment of Indigenous people. Further, they provide assistance and guidance to CBSA staff in how to address issues with the Indigenous communities while also assisting at Ports of Entry to ensure the admissibility of persons and goods and that policy and procedures are applied in a culturally appropriate manner.

Right to Enter and Remain: Under the *Immigration and Refugee Protection Act*, persons registered under the *Indian Act*; Canadian citizens; and, permanent residents have a right to enter and remain in Canada. Officers must allow a person to enter Canada if the officer is satisfied, following an examination on the person's entry, that the individual is registered under the *Indian Act*, a Canadian citizen or a permanent resident.

Study Permit: Foreign nationals are required to obtain a study permit (unless exempted) for engaging in academic, professional, vocational or other education or training that is more than 6 months in duration at a designated learning institution in Canada. Persons registered under the *Indian Act* are exempt from requiring a study permit.

Work Permit: A work permit or authorization to work without a permit is required in order for a foreign national to be allowed to work in Canada. Persons who are registered under the *Indian Act* are exempt from requiring a work permit.

ANNEX 2: CBSA REGIONAL INDIGENOUS AFFAIRS ADVISORS

National Indigenous Portfolio Coordinators

- *East:* JD Marchand JamesD.Marchand@cbsa-asfc.gc.ca
- *West:* Melody Shute Melody.Shute@cbsa-asfc.gc.ca

Pacific Regional Indigenous Affairs Advisor

- Robin Rattlesnake (Robin.Rattlesnake@cbsa-asfc.gc.ca)



