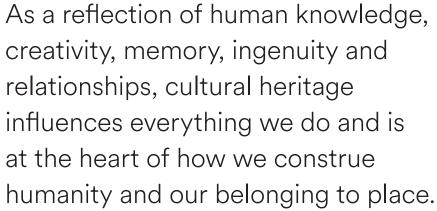


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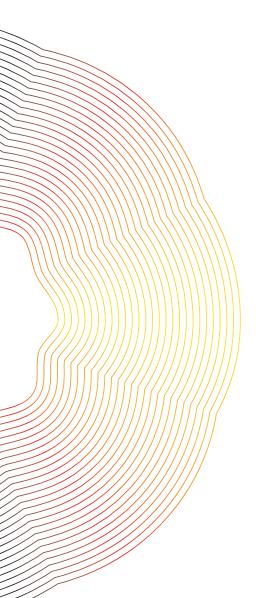


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Introduction

The concept of cultural heritage is broad and multilayered: it is a narrative connecting the past to the present, a bridge between landscape and meaning, and often a complex and volatile negotiation of claims to identity and ownership. As living heritage, Indigenous cultural heritage (ICH) has been and continues to be influenced by the settler colonial state. Past and ongoing colonial policies and structural inequalities have resulted in generations of disruptions of Indigenous lifeways, cultural traditions, languages, social organization and connections to the land. These traumatic experiences of dispossession are now part of Indigenous living heritage; they are part of the stories and teachings that inform Indigenous identities and concepts of health and wellbeing, and how people live together and on their lands. In this way, the efforts to safeguard ICH today must also be understood as a deliberate and active practice of resistance and resilience.

Indigenous Peoples recognize that safeguarding their cultural heritage, in its many diverse and varied experiences and expressions, is critical to building positive, sustainable, culturallyrich futures. There are many efforts today to recognize, revitalize, protect and celebrate ICH. Much of this work is led by Indigenous heritage experts and organizations, in partnership with Canadian, provincial and federal governments and heritage institutions, who are attempting to redress the harmful effects of colonialism on Indigenous Peoples through the implementation

of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Truth and Reconciliation Commission's (TRC) Calls to Action. There is still a long way to go to unravel and address this dark history, while at the same time empowering future generations. We assert that international instruments, such as the 2003 Convention on the Safeguarding of Intangible Heritage (2003 Convention) could be valuable in supporting Canada in fulfilling its commitments to Indigenous Peoples.

Indigenous Peoples recognize that safeguarding their cultural heritage, in its many diverse and varied experiences and expressions, is critical to building positive, sustainable, culturally-rich futures.ⁱ

This reflection paper explores the unique qualities of ICH in Canada and current approaches to recognizing and safeguarding it. This work is considered within larger frameworks of cultural landscapes, ongoing ICH work in Canada, and the 2003 Convention as a resource for recognizing and protecting ICH.

Definitions and Approaches

Indigenous Cultural Heritage

It is difficult to find a direct translation for cultural heritage in Indigenous languages. The closest translations often relate to the sacred, or to knowing oneself. Indigenous Peoples understand and describe cultural heritage according to their perspectives, traditions and languages. While creating one definition of Indigenous heritage is difficult, generally this would include ideas, experiences, worldviews, objects, forms of expression, practices, knowledge, spirituality, kinship ties, places and land valued by Indigenous Peoples. Each of these concepts is inextricably interconnected, holds intrinsic value to the well-being of Indigenous Peoples and affects all generations.ⁱⁱ

Living Heritage

Cultural heritage is often understood in the realms of physical – or tangible – elements, such as landscapes, monuments, tools, dwellings, trails, foods and works of art. It is the intangible elements, such as songs, stories, dance, teachings, memories, knowledge and ceremonies – called living heritage – that give meaning to tangible heritage and which stand alone as heritage values.ⁱⁱⁱ For instance, a woven basket might have a design that tells a story or represents a family crest, or it might hold memories of gathering berries or roots that are specific to a person, place or time. Likewise, through the act of crafting the basket, the basket-maker is reproducing, and perhaps transmitting, cultural knowledge. In other words,

the basket as a tangible expression of cultural heritage cannot be fully understood apart from its intangible meanings.

Indigenous cultures are primarily oral cultures, and as such, living or intangible heritage are the foundations of governance structures, legal traditions, important protocols and ceremonies, social structures, and specialized knowledge systems. These living traditions are unequivocally linked to the land and often cannot be truly understood outside that context.

Cultural Landscapes

Indigenous living heritage is, quite literally, anchored to the land. Indigenous Peoples have special (sometimes even familial) relationships with the land itself, as well as with the animals and spiritual beings found there. Being present on the land, behaving and interacting in appropriate ways, according to teachings, is central to safeguarding these relationships, and transmitting land-based knowledge and laws.

The land provides a canvas, rich with resources that Indigenous Peoples can draw on to imagine, enact and transmit heritage values and practices. Land-based practices and knowledge that inform heritage values include fire regimes, resource harvesting, travel and trail-making, occupation, storytelling, singing and dancing, making and enjoying art, birth and burial practices, puberty and gender-specific ceremonies, ecosystem management, accessing medicines, and visiting and trading with other groups. These activities

Many Indigenous knowledge holders, and the few remaining language speakers, are growing older and passing on. A critical window is closing for the transmission of living knowledge, practices, values and languages.



take place in culturally prescribed ways, at certain times of the year, in particular locations, and are informed by generations of on-the-ground observations and informed decision-making.

While the land provides resources for Indigenous Peoples to produce and maintain living heritage values and practices, the land itself is transformed through human activities. Such landscapes, called cultural landscapes, are reflections of the living heritage created and nurtured there through practice, in the ways that people care for, protect, travel across, harvest, pray, teach and learn on the land. Cultural landscapes are recognized under the 1972 World Heritage Convention as "combined works of nature and man," and are eligible for inclusion on the World Heritage List.vi One of the tidiest definitions of a cultural landscape is "an idea embedded in a place."vii The definition conveys the critical importance of human experience and imaginings of a place, rather than its physical condition or age. While the emphasis is on the heritage values and practices, the place itself matters.

Recognition and protection of cultural landscapes is an essential step in the protection of ICH, as well

as the continued health and integrity of the land. UNESCO recognizes the tangible and intangible heritage value of landscapes co-created by people and nature and infused with cultural histories, practices and meanings as cultural landscapes.viii Two recent examples of cultural landscapes recognized by UNESCO are the Pimachiowin Aki cultural landscape, created and maintained by the Anishinaabe people in Manitoba and Ontario, and Writing on Stone/Áísínai'pi in the Milk River Valley of Alberta, which was created by the Blackfoot people and today is managed through the Provincial Parks Act of Alberta with full participation by Blackfoot communities. These cultural landscapes were inscribed as UNESCO World Heritage Sites in 2018 and 2019, respectively.ix

Despite growing awareness of the importance of land to understanding and safeguarding ICH, the land bases of Indigenous Peoples throughout Canada and the world are facing threats on multiple fronts. It is critical that heritage work recognizes and incorporates protections for Indigenous lands and positions Indigenous Peoples as the guardians of their lands.

Challenges to Indigenous Cultural Heritage

While many people acknowledge and celebrate Canada's rich and diverse cultural heritage, this diversity, as it relates to Indigenous Peoples, is under threat, and has been since contact. ICH faces a number of pressing threats and challenges. These include structural and ontological challenges, as well as direct threats to Indigenous lands.

Canadian Heritage Policies

Current heritage laws and policies in Canada focus on the recognition and protection of physical heritage values – most often buildings, monuments and objects. While recognized for its value in inspiring the creation of tangible heritage, living heritage does not enjoy similar legal or policy protections. This is an urgent concern for Indigenous Peoples, as much of what is considered invaluable cultural heritage is living heritage.

Who Is Interpreting and Safeguarding Indigenous Heritage?

Heritage protection approaches led by archaeological theory and methods based on Eurocentric values (and often non-Indigenous archaeologists) can eclipse Indigenous systems of knowledge by erasing or mischaracterizing Indigenous values and relationships with the past and the land. This can result in the repositioning of Indigenous Peoples as objects open to non-Indigenous interpretation and consumption, rather than the creators, owners, interpreters and protectors of their own heritage.

The continuing debate around the stewardship of ICH delves into the issues of Indigenous rights. UNDRIP Article 11 affirms the right of Indigenous Peoples to "practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature." Likewise, UNDRIP Article 31 recognizes Indigenous Peoples' right to "maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions." xi

Recognition and protection of cultural landscapes is an essential step in the protection of ICH, as well as the continued health and integrity of the land.

It is undeniable that most artifacts that are considered prehistoric in Canada are of Indigenous origin. Indigenous Peoples were the original manufacturers, users and designers of these objects. When Indigenous Peoples are denied the ability to

The effects of a destabilized climate impact all facets of Indigenous life, from cultural practices and transmission of knowledge, to connections to place over generations and the words and meanings associated with those places.

interpret and caretake their cultural heritage, their human rights are affected. It is therefore vital that Indigenous Peoples are recognized as leaders and decision-makers in interpreting and safeguarding ICH, a turn which must also include acceptance within professional heritage circles of the use of Indigenous research methods and protocols for handling and sharing knowledge.

Climate Crisis, Development and Land Alienation

The crisis of climate change is a serious and immediate concern to the protection of heritage worldwide. The effects of a destabilized climate impact all facets of Indigenous life, from cultural practices and transmission of knowledge, to connections to place over generations and the words and meanings associated with those places. Climate change issues are particularly acute for Indigenous Peoples today because they have fewer options for adapting to environmental changes due to the loss of access and ownership of so much of their land and waters. The vulnerabilities of Indigenous heritage protection are exacerbated and compounded by industrial and state encroachment and development on Indigenous lands.

There is an active – and growing – network of policy and research groups working collaboratively to identify and address these challenges at multiple scales. Bodies like the UN Convention on Biological Diversity (CBD)^{xii}, UNESCO's Local and Indigenous Knowledge Systems (LINKS) program^{xiii}, and the Conseil québécois du patrimoine vivant at the provincial level, recognize the important role of Indigenous knowledge, language and experiences in combating climate crisis and developing pathways to resilience. We join with these and other international and regional working groups to

call for continued work to connect understandings of the mechanisms of climate change with the onthe-ground ways it is affecting ICH and Indigenous communities, and to develop culturally and scientifically-informed responses.xiv

Inadequate, Limited and Disproportionate Funding

Heritage protection in Canada has been considerably underfunded, particularly in comparison to other programs and initiatives, such as language programs, scientific research and climate change. To date, there has been limited or no funding specific to ICH in Canada with the exception of a few basic grants that are cumbersome and confusing to access and offer only minimal funding. At the national level, the Indigenous Heritage Circle (the Circle) is the only non-profit, Indigenous organization dedicated to safeguarding ICH. The Circle advocates for the voice of Inuit, First Nations and Métis people on all matters relating to Indigenous heritage. The Circle supports actions and policies consistent with the UNDRIP, the TRC's Calls to Action, and the laws and protocols of Indigenous Peoples. Its primary focus is on Canadian issues and initiatives, but it is also committed to supporting Indigenous cultural heritage (ICH) internationally. The Circle's concept of heritage is rooted in Indigenous realities that link the intangible and tangible and the natural and cultural.

The other organization that has been advancing Indigenous heritage, language and arts in British Columbia and Canada is the First Peoples' Cultural Council (FPCC), which is an Indigenous-governed Crown agency that provides leadership for revitalizing ICH, languages and arts in B.C. It was established in 1990 through provincial legislation

(First Peoples' Heritage, Language and Culture Act). FPCC's vision is that Indigenous languages, arts and heritage in B.C. are thriving and that the unique cultural knowledge expressed through each is recognized and embraced by the general B.C. population. Despite the efforts of the Circle and FPCC, neither agency has been able to gain sustainable funding for ICH and have thus not been able to meet their mandates and provide critically needed outreach, support and grant funding to their Indigenous partners. Sustainable, comprehensive, and immediate funding is desperately needed to safeguard this fragile and vital part of Canada's history. Indigenous control and stewardship over Indigenous Cultural Heritage will not be realized without secure and sufficient funding for Indigenous heritage organizations.

For Indigenous Peoples, teaching and learning are sacred responsibilities, undertaken over many years on the land.

Language, Teaching and Loss of Knowledge Keepers

As oral cultures, transmitting knowledge to future generations is essential. UNDRIP (Articles 11 and 13) affirms that the right to transmit Indigenous languages, cultural knowledge and practices to future generations is a human right. For Indigenous Peoples, teaching and learning are sacred responsibilities, undertaken over many years on the land. The process of teaching and learning can be understood as the process of creating and affirming living heritage, and the transmission of this knowledge to future generations. This process involves many aspects of ICH: connections with cultural landscapes, language, prayer, resource harvesting and carrying out responsibilities to one's community.

Many Indigenous knowledge holders, and the few remaining language speakers are growing older and passing on. A critical window is closing for the transmission of living heritage knowledge, practices, values and languages. Recognizing these threats to the transmission of their living heritage, Indigenous organizations and communities are prioritizing language revitalization and opportunities for land-based teaching and learning. Nevertheless, challenges to safeguarding ICH remain. All of the challenges described above have increased the urgency for creating robust policies and programs for the protection of ICH in Canada.



Safeguarding Indigenous Cultural Heritage

Indigenous cultural heritage occupies a unique place in the realm of the world's heritage. Due to the prominence of intangible elements of Indigenous heritage, and because of its inextricable ties to specific places on the land, the survival of ICH depends on the ability of Indigenous Peoples to actively engage in meaningful practices in places that matter to them. Denying Indigenous Peoples the right to interpret and practice their living heritage on their lands can result in lasting harm to Indigenous communities and lands, and the loss of heritage for future generations. This is a position that many Indigenous Peoples in Canada find themselves in today. Fortunately, the gravity of this situation is increasingly being recognized by international and national governments, Indigenous communities and organizations, and professional groups who are taking steps to recognize Indigenous Peoples' rights to their cultural heritage, and to protect both tangible and living heritage.

International Efforts and Commitments

Over the past several decades the United Nations, through UNESCO, has developed a number of significant instruments for safeguarding cultural and natural heritage, including a focus on protecting the rights of the world's Indigenous Peoples and their heritage. International instruments particularly applicable to the safeguarding of ICH in Canada include

the UNDRIP and the 2003 Convention on the Safeguarding to the Intangible Cultural Heritage. These instruments offer benchmarks, principles, funding opportunities, practical support through training resources, and access to a worldwide community of other nations and groups working on similar issues.

National Efforts and Commitments

In 2016, Canada announced its full support of the UNDRIP and committed to adopting and implementing the articles of the declaration. Political appetite for enshrining the UNDRIP in Canadian law was recently called into question, however, when Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples, was not given a third reading in the Canadian Senate, effectively killing the bill.** Supporters of the UNDRIP were buoyed, though by the June 2019 passing of the Indigenous Languages Act (Bill C-91), which includes some key elements of the declaration. At the provincial level, in 2019 the Government of British Columbia announced its intention to introduce legislation to reconcile provincial laws with the UNDRIP.

At the national level, the Government of Canada has also committed to addressing the 94 Calls to Action, an outcome of Truth and Reconciliation Commission, an eight-year process (2007-2015) undertaken by the Canadian government to





understand the far-reaching and enduring effects of residential schools on Indigenous nations, communities and individuals. The TRC Calls to Action are explicit in calling for governments and organizations throughout Canada to adopt and enact the principles of the UNDRIP (Calls to Action #43 and 44.)** Indigenous heritage is also at the heart of TRC Calls to Action dealing with rights to language and culture, and in calls to decolonize Canadian heritage policies and institutions.

Canada's commitments to implementing the UNDRIP and the TRC Calls to Action are a step in the right direction. Delivering on these commitments will require substantial shifts in policies and protocols governing heritage protection and land management. This will only be achievable through a sustained willingness of Canadian governments and heritage professionals to take direction and learn from Indigenous peoples about how best to interpret and safeguard their ICH.

Indigenous and Other Efforts and Commitments

Recognizing the urgent need for new approaches to safeguard and support the continued

transmission of Indigenous cultural heritage, Indigenous communities and organizations throughout Canada are writing and enacting their own heritage laws and policies concerning the protection of their cultural heritage.xvii A resurgence in Indigenous laws and legal traditions across Canada has helped to provide structure and support heritage work, particularly in the areas of heritage interpretation, control and transmission.xviii

These efforts are supported by provincial and national-level organizations like the **Indigenous** Heritage Circle, First Peoples' Cultural Council and the First Peoples' Leadership Council, which have been instrumental in bringing attention and resources to the recognition and protection of ICH. Further, there is a growing movement among academics and heritage institutions to decolonize museums and archives, and to secure a leading role for Indigenous methodologies and approaches to heritage research. Many Indigenous heritage objects (including ceremonial items and ancestral remains) are held in repositories or private collections outside of Indigenous communities and there is work being done to ensure that these objects are repatriated to their families and communities of origin.xix

2003 Convention as a Resource

UNESCO has a long history of supporting and promoting heritage protection. For decades, most of this attention was focused on tangible heritage: the built environment, landscape features and artifacts.** The 2003 Convention represents a turn in heritage work by focusing on the importance of safeguarding intangible cultural heritage, particularly at the community level. It provides an international framework to support nations, organizations and Indigenous Peoples to safeguard their living heritage. This framework is explicit in its support of Indigenous communities and groups centering heritage work around their own interpretations and values, and in line with their wishes for transmission and dissemination. In its Preamble, the 2003 Convention recognizes that "communities, in particular Indigenous communities, groups and, in some cases, individuals, play an important role the in the production, safeguarding, maintenance and recreation of the intangible cultural heritage."xxi

As of 2018, 178 States have ratified the 2003 Convention, which has been in force since 2006. Canada has not ratified the 2003 Convention and has not introduced specific federal legislation regarding the protection of Indigenous cultural heritage. Concerns about how and by whom living heritage values should be identified, issues around national and Indigenous Peoples' abilities to maintain control over heritage dissemination, and

the onerous work of compiling and maintaining inventories of living history (and the utility of such inventories) have been cited as reasons why Canada has not become a state party to the 2003 Convention. Given Canada's commitments to implement the UNDRIP and the TRC Calls to Action, it is incumbent upon Canadian policymakers and heritage professionals to reflect on and consider how the 2003 Convention could help in delivering on these commitments.

The 2003 Convention has tremendous potential for supporting the safeguarding of ICH in Canada, including through:

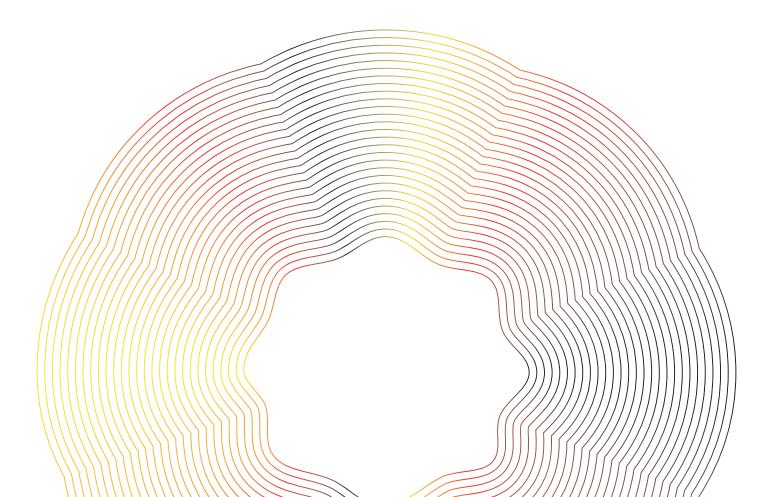
- Providing practical support, including training and capacity building, for Indigenous Peoples engaging in safeguarding activities, such as language revitalization, art and music festivals, funding for Indigenous artisans and cultural training programs, educational initiatives and the development of Indigenous approaches to heritage archiving and dissemination.
- Facilitating connections with a worldwide network of Indigenous Peoples, governments and organizations engaged in similar work. This could be especially beneficial in addressing global issues affecting ICH, like the climate crisis.
- Access to funding opportunities for recognizing, safeguarding, revitalizing and celebrating ICH.

Considerations: Risks and Benefits

Like Canada, New Zealand has not signed on to the 2003 Convention. Some of the concerns - cautious optimism - expressed by Te Manatū Taonga, New Zealand's Ministry for Culture and Heritage, may resonate with Canadian law makers and Indigenous Peoples. They are worth thinking about should Canada consider becoming a signatory to the 2003 Convention. In a discussion of the potential risks and benefits of becoming a signatory to the 2003 Convention, Te Manatū Taonga has stressed the need for clarity in the text of the Convention around definitions of heritage protection, interpretation and cultural property.xxv Further, since nation states (not Indigenous Peoples) are signatories to the Convention, extensive consultation with the Māori would be necessary. Finally, New Zealand has raised questions about the use (and cost) of heritage

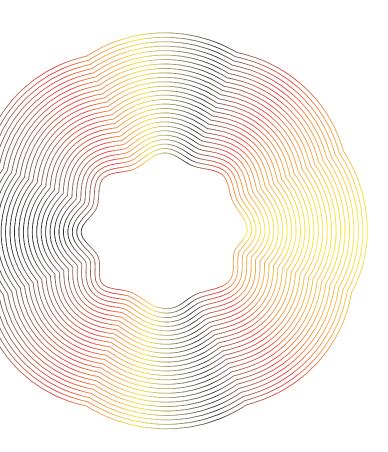
inventories as a tool for protecting intangible heritage and the potential risk of a loss of Indigenous control over heritage interpretation and sharing as a result of published inventories. Despite these cautions, New Zealand has not ruled out joining the Convention in the future.

The apprehensions expressed by New Zealand are largely rooted in concerns about who has the right or authority to control narratives around Indigenous heritage interpretation and dissemination. Similar concerns have been raised by Indigenous Peoples across Canada, especially in the context of museums and archives.** If Canada does decide to consider ratifying the 2003 Convention, a key part of this process will be determining the role of Indigenous Peoples in establishing the terms of engagement with the Convention.



Conclusion and Options

Values placed on living heritage by Indigenous Peoples do not exist separately from the intangible meanings and practices that inspired its manufacture; this is what gives heritage its value and motivates its protection. Given its centrality to Indigenous identities, health, language, and ways of life, it is crucial that Indigenous communities be supported to ensure the continued transmission of their heritage to future generations. This type of safeguarding could take the form of documentation or explicit promotion of the practice of heritage values (e.g., storytelling or resource harvesting).



There is an opportunity for Canada to work with Indigenous Peoples and national Indigenous organizations, in collaboration with other federal departments and agencies, to further understand the current standing of the 2003 Convention; why the Convention was not signed by Canada in the past; how it is currently being advanced by UNESCO and its signatory states; the potential challenges and opportunities it may offer if Canada was to join the Convention; and its future potential and process for ratification by the Canada. As part of this process, there would also be opportunity to engage in a national dialogue about the 2003 Convention alongside other Canadian stakeholders who have expressed interest in its ratification, such as folklorists in the Atlantic provinces, and the Conseil québécois du patrimoine vivant.xxvii

In light of Canada's pledges to implement both the UNDRIP and the TRC Calls to Action now is the time to engage more fully with available resources in support of these commitments.

Such a move would also be in line with Canada's role as an active state party to the 1972 World Heritage Convention**

Heritage Convention**

and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.*

The 2003 Convention offers just such a resource for moving forward with this work, with the potential to serve as a catalyst for creating new, productive spaces for discourse and action on the future of living heritage recognition and protection, and the role of Indigenous Peoples in leading the way.

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- ¹ There is tremendous diversity among Indigenous peoples and communities in Canada. Over 630 First Nation communities belong to more than 50 Nations and speak over 50 languages. Further, there are 53 Inuit communities in the north speaking a number of Inuktut dialects. Métis people live in communities across Canada, primarily in the prairies and western regions. (Dunlop, Gessner, S., Herbert, Parker, & Wadsworth, 2018) (Crown-Indigenous Relations and Northern Affairs Canada, 2017)
- This definition is from the national Indigenous Heritage Circle website. For a full definition go to http://indigenousheritage.ca (Indigenous Heritage Circle, 2019)
- The term "living heritage" is increasingly used by UNESCO, such as in recent publications by the Secretariat of the 2003 Convention on Living Heritage and Indigenous Peoples. (United Nations Educational, Scientific and Cultural Organization, 2019)
- ^{iv} (Pawlowska-Mainville, 2014) (Andrews & Buggey, 2008)
- ^v (Harrison, 2010)
- vi (United Nations Educational, Scientific and Cultural Organization, 1992)
- vii (Smith, 2010)
- viii (United Nations Educational, Scientific and Cultural Organization, n.d.)
- ix (United Nations Educational, Scientific and Cultural Organization, n.d.)
- x (United Nations General Assembly, 2007)
- xi (United Nations General Assembly, 2007)
- xii Canada has been a party to the UN Convention on Biological Diversity since 1993.
- xiii (Nakashima, Rubis, Bates, & Avila, 2017)
- ** For an example of this work, see the recent (May 2019) North American Convention on Biocultural Diversity. (The First North American Dialogue on Biocultural Diversity, 2019)
- $^{\mbox{\tiny XY}}$ (Bill C-262, United Nations Declaration on the Rights of Indigenous Peoples Act, 2019)
- xvi (Truth and Reconciliation Commission of Canada, 2015)
- xvii See for instance (Bain, 2017)
- xviii See for instance (West Coast Environmental Law)
- xix See for instance (Collison, Bell, & Neel, 2019)
- ×× (Bortolotto, 2007)
- xxi (United Nations Educational, Scientific and Educational Organization, 2003)
- xxii (United Nations Educational, Scientific and Cultural Organization, n.d.)
- xxiii (Poicus, 2014) (Gauthier, 2011)
- xxiv (Loode, 2019)
- xxv (Te Manatū Taonga/Ministry of Culture and Heritage)
- xxvi See for instance (Laforet, 2014)
- xxvii (MacKinnon, 2104) (Conseil québécois du patrimoine vivant, 2017)
- xxviii (United Nations Educational, Scientific and Cultural Organization, 2005 Reprint)
- xxix (United Nations Educational, Scientific and Cultural Organization, 2015 Reprint)

