

A) Nowhere in Canadian law are there clear rules governing the domestic legal status of international law

- 1) IL should be recognized in domestic courts unless irreconcilable conflict with domestic law
- 2) IL should not be recognized in domestic courts unless the gov't explicitly makes it part of domestic law
- 3) IL can be used by domestic courts to interpret domestic law

B) In Re Residential Schools, a case concerning abuses allegedly perpetrated after the UNGC became international law, the victims were simply seeking a declaration by the court that conduct carried out with respect to residential schools was inconsistent with the UNGC. The court ruled that it lacked "the jurisdiction to award a declaration on the basis of a non-legal or political code of conduct." (i.e., the UNGC is not legally binding in Canada)

E) SHAME & PREJUDICE QUOTES FROM MONKMAN MATERIALS

C) Likely those accused of genocide in Canada would argue that even if they are guilty of the underlying criminal acts, they intended to help Indigenous children adapt to CDN society and/or they directed their actions toward individuals, not groups

D) Canada ratifies the UNGC in 1952

F) In Canada, evidence is coming to light of deliberate spread of disease, withholding vaccinations, forced sterilization, and systematic discrimination against Indigenous Peoples/Children

G) CAHWCA authorizes Canada to criminally prosecute citizens and non-citizens in Canadian courts for genocide, either at home or abroad

H) PRIVATE LEGAL SUITS (VS) PUBLIC CRIMINAL PROSECUTIONS OF GENOCIDE

I) The Canadian gov't helped bring the full UNGC to Canada in 2000 by enacting the Crimes Against Humanity and War Crimes Act (CAHWCA) which expressly adopts the Rome Statute of the International Criminal Court (ICC)

J) CAHWCA s. 9(3) states that the Canadian gov't must both consent to and conduct the prosecution of genocide under this act

K) UNGC 2(e) forcible transfer is the strongest legal argument

L) In 2005, the Supreme Court of Canada, ruled that removing Indigenous children and forcing them to attend residential schools was not grounds for suing the gov't → AND that specific "wrongful abusive acts" would have to be proven by individuals to justify legal action → the court concluded that the "foreseeable risk of sexual assault to the children was not established" according to the standards of the time

M) The Rome Statute incorporates the UNGC into its definition of genocide

O) In summary, Canadian courts have found the UNGC is inapplicable in Canada due to ① the principle of non-retroactivity and ② its "political" nature

P) In Malboeuf v. Saskatchewan lawyers for the gov't argued that the events giving rise to Malboeuf's claims of genocide committed by the gov't pre-dated the UNGC, thus making it irrelevant. The court agreed by striking out any reference to the UNGC

N) Could the standard of fault be lowered from intent to destroy a group to either ① knowledge one's acts likely will destroy a group, ② recklessness or willful blindness to the realistic possibility of this effect, or ③ negligence

R) A number of prominent genocide scholars argue that even if there was no overarching and provable intent to destroy Indigenous Peoples as a group in whole or in part in a given area, if the end result had genocidal consequences that was or even could have been foreseen, then genocide can be understood to have occurred

S) The UNGC codifies existing international customary law, meaning abuses/acts could have been "genocide" under international law well before 1948/1951 (i.e., Mugesera v. Canada)

T) Portions of the UNGC were excluded from the Criminal Code → thus genocide in Canada only means 2(a) "killing members of the group" and 2(c) "deliberately inflicting conditions of life calculated to destroy a group" → these omissions have important ramifications for what Indigenous Peoples can claim as genocide in Canadian courts

Q) Acts of genocide committed within Canada must have taken place after 17 July 1998 (the international adoption of the Rome Statute) → this is called a non-retroactivity principle