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Land Use Policy Frameworks in Canada and Aotearoa New Zealand: Examining the Opportunities and Barriers of Indigenous-Led Conservation and Protected Areas

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Abstract: Indigenous Peoples throughout the world have been displaced from their ancestral territories through colonial land use management. Indigenous Peoples have pushed settler-colonial governments to shift their policy frameworks to better support Indigenous rights and leadership across land management, but particularly in conservation. In Canada, this has recently involved the development of Indigenous Protected and Conserved Areas. Combined with pressure from international organizations, Canada's Federal Government has dedicated substantial funds to support the establishment of these areas and to achieve conservation and reconciliatory goals. In Aotearoa New Zealand, Māori groups have shaped new legislation that recognizes legal personality status for natural features, which contrasts with Western understandings of land ownership. Indigenous-led conservation in Canada faces many interrelated barriers grounded in colonial histories that complicate land jurisdictions, reconciliation, and protected area networks. This research reveals some of this complexity by examining how Indigenous-led conservation can contribute to more equitable and consensus-based decision-making frameworks in land use management. Policy and legal analyses of Canadian, Aotearoa New Zealand, and international conservation and human rights documents inform our results. We affirm that Indigenous-led conservation can foster relationships between Indigenous Nations and Crown governments. They can also provide steps towards reconciling colonial injustices, supporting Indigenous self-determination, and advancing more sustainable land use systems.

Keywords: protected areas; policy; settler-colonialism; reconciliation; legal personality; Aotearoa New Zealand; Indigenous Protected and Conserved Areas (IPCAs); Canada



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1. Introduction

Protected areas have historically facilitated the displacement and exclusion of Indigenous Peoples from their ancestral lands¹ in settler-colonial states such as Canada and Aotearoa New Zealand [1]. Through these processes, Indigenous Peoples' rights have been ignored or infringed upon, which has resulted in ongoing disruptions to land-based education, economies, food security, and cultural continuities [2–8]. International environmental and human rights organizations, specifically the United Nations and International Union for the Conservation of Nature, have increasingly set specific goals and standards for signatory and member countries that have spurred a shift in the roles Indigenous Peoples play in conservation over the last three decades [9–12]. These commitments have focused on reductions to greenhouse gas emissions, biodiversity protection, and area-based conservation. They have also included calls for countries to better recognize and support Indigenous rights in conservation systems. Conserving large areas of natural ecosystems is vital for climate change mitigation because they support ecosystem services, carbon seques-

tration, and biodiversity [13]. Protected areas that target high biodiversity are particularly important to build more resilient ecosystems that reduce risks to climate hazards.

Alongside these international human rights and conservation movements, Indigenous Peoples' political actions in settler-colonial countries have increasingly pushed state government management policies to better recognize Indigenous rights [14–20]. One result of this has been partnerships between Indigenous Nations or communities and state governments, which have facilitated various Indigenous-led conservation initiatives. This is in addition to the diversity of continued Indigenous stewardship and land-based practices that exist outside of state relationships. Canada and Aotearoa New Zealand are two examples of settler-colonial countries that have advanced innovative policies that support Indigenous rights in Crown² conservation systems. These countries share similar British colonial histories that inform their contemporary legal structures and conservation governance systems. Both countries are also amid their own reconciliation movements to recognize colonial histories and address significant inequities [21,22]. However, it is important to note that these similarities are broad, and each country has unique factors that influence its protected area policies, Indigenous rights frameworks, and reconciliatory processes.

Since 2018, the Canadian Federal Government announced various commitments to financially support Indigenous-led area-based conservation through the establishment of Indigenous Protected and Conserved Areas (IPCAs). This could facilitate both national and international conservation and reconciliatory objectives [23,24]. In Aotearoa New Zealand, Crown efforts to redress Treaty of Waitangi breaches have facilitated ground-breaking Māori-led conservation policies through the recognition of legal personality status for natural features [22]. Each of these movements builds upon existing cooperative arrangements and have the potential to challenge settler-colonial land use practices and policies with new Indigenous-led partnerships. They also provide opportunities for Indigenous communities to develop sustainable economies, support cultural continuities, and assert Indigenous land rights, while also minimizing risks to local ecosystems [24–27]. Examples of Indigenous-led conservation are not without their critique. The failures of Crown governments to recognize Indigenous rights and tensions over colonial land use, understandings of “ownership”, and decision-making authority in conservation spaces complicate the establishment of new Indigenous-led protected areas [28–30].

As the Government of Canada rushes to adopt area-based conservation measures that also adhere to reconciliation goals, protecting lands through Indigenous-led conservation must be investigated to ensure they do not replicate colonial legacies of exclusion or rights infringements. Only three IPCAs have been established through the federally supported avenue since its announcement in 2018. Canada currently recognizes 144 types of protected area designations with over 200 individual and layered land use policies [31]. In addition to protected area networks, land jurisdiction in Canada is complex and a source of notable conflict over land use decisions [32–34]. This diversity leads to serious complications as Indigenous communities navigate complex land use management decisions and seek partnerships with stakeholders during IPCA establishment.

Our research unravels some of these complexities through an assessment of how Indigenous-led conservation in Canada and Aotearoa New Zealand can contribute to innovative policy frameworks that recognize and support Indigenous rights. Our results are informed by policy and legal analyses of Canadian, Aotearoa New Zealand, and international conservation and human rights documents [35]. We first provide some historical context for Indigenous-led conservation in Canada and an overview of land jurisdiction conflicts. We then present our analyses of some Canadian conservation policies that affect IPCA establishment, and of legal personality legislation in Aotearoa New Zealand. Lastly, we discuss the opportunities and barriers to IPCA development in Canada. This paper focuses on the Canadian sub-national jurisdiction of British Columbia (BC) due to the province's unique historical and land use policy context. Almost all of BC is unceded territory, which means no historical treaties or modern land claim agreements exist that officially transfer land ownership to the Crown. This contributes to legal tensions and

contradictions within Crown legislation and potentially more incentive for the Crown to enter into cooperative arrangements with Indigenous Nations [36]. Another important factor in BC is the province's extensive natural resource industries that continue to fuel controversy and greatly impact land use decisions [30]. Legal personality status in Aotearoa New Zealand is included because of its potential to inform current conservation policies and Indigenous–Crown relationships in Canada. IPCAs have the possibility to change land use management through novel Crown–Indigenous partnerships that support Indigenous rights and climate change mitigation. We do not suggest that IPCAs are the only or best way to address these issues. Instead, this paper examines how Indigenous Nations and Crown governments can work together to foster Indigenous-led conservation and reconcile colonial injustices, support Indigenous self-determination, and create more sustainable land use systems.

2. Materials and Methods

Our main objective for this paper is to examine Canadian conserved area designations and policies that impact IPCA development. Two authors from our team (Emalee A. Vandermale and Courtney W. Mason) have experience with community-based research examining Indigenous-led conservation and IPCA establishment. These research experiences informed the questions we asked in this paper and the policy analysis methods we chose. As a lawyer, Jordyn Bogetti was integral to the legal analysis components of this research.

Data for this paper are based on policy and legal analysis of international and Canadian Indigenous rights and conservation policies [35,37]. We reviewed original legislation and policy documents accessed from the official websites of each pertaining organization. More specifically, we reviewed protected area and reconciliation legislation from the Canadian Federal Government and BC Government, formal IPCA agreements between Indigenous Nations and Crown governments, and guiding conservation and Indigenous rights documents from international organizations. We also reviewed specific Indigenous-led legal personality legislation from Aotearoa New Zealand (see Appendix A for a detailed list). When combined, these analyses revealed some of the complexity of Crown–Indigenous relations regarding land use management and protected area establishment. Legal analysis provided insights into the ambiguity and leeway of legislation, while policy analysis allowed us to examine the ways this legislation impacts communities. Our results also consulted the Canadian Protected and Conserved Areas Database which accounts for all protected areas and other effective area-based conservation measures in Canada [31].

Our results are not a complete examination of every policy or designation type in Canada. Instead, we chose to profile legislation and designations that have existing Crown–Indigenous partnerships or those that are most common. We also did not include data from all provinces and territories. Only those from the province of BC were included because of our team's research experience in these areas and their unique considerations for Indigenous rights and Indigenous-led conservation.

3. Contextualizing Indigenous-Led Conservation in Canada and BC

3.1. The Rise of Indigenous-Led Conservation in Canada

Indigenous Peoples, their territories, and their relationships with them were, and continue to be, targeted by settler-colonial land use policies in ways that undermine Indigenous sovereignty and assert settler-colonial power. Settler-colonial nation-building processes were diverse and spread across the continent through the 19th and 20th centuries. Three of the most impactful tools were flawed and miscommunicated treaties, the imposition of the reserve system and natural resource industries, and the formation of parks and protected areas [38–43]. Settlers and officials from the emerging Canadian state used these tools to reshape Indigenous lands into colonial spaces. This included the physical removal and containment of Indigenous communities, persuasion and coercion, and legal, economic, and political marginalization. The effects of these processes of land

dispossession are far-reaching and complex, and many communities are still healing from these injustices [18,44].

Canada's colonial legacies and continued impacts of land dispossession greatly inform contemporary land management decisions. Indigenous communities across Canada have always refused some colonial policies and pursued multiple avenues to assert their presence, rights, responsibilities, and decision-making authority over their territories in land use management. Conservation is one area where Crown institutions have evolved to respect Indigenous rights and responsibilities to their lands [45–49]. Examples of these changes include roles created for Indigenous Peoples on advisory boards, provisions in conservation legislation that protect Aboriginal³ or treaty rights, and cooperative management agreements [50]. Despite these shifts, Crown conservation agencies are still widely criticized for failing to support Indigenous rights and responsibilities to their lands [51–53].

Indigenous Peoples' resistance and action have gradually been met by international conservation and human rights organizations who have recognized Indigenous rights in their guiding frameworks. Across the globe, biodiversity declines, climate change, and ineffective conservation strategies aimed at addressing these issues have prompted international conservation agencies to re-examine their standards. Canada's conservation policies have been greatly influenced by the United Nations Convention on Biological Diversity, including the 2010 *Strategic Plan for Biodiversity 2011–2020* and the 2022 *Kunming-Montreal Global Biodiversity Framework* [9,10]. These frameworks outline specific goals and targets for signatory countries to achieve, and include calls for the consideration, respect, and integration of Indigenous Peoples' knowledge, practices, and needs into biodiversity protection. Despite enthusiastic commitments and action from signatory countries, global biodiversity rates continue to decline [54,55].

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has also shaped Canada's conservation policies. UNDRIP is a universal framework of human rights standards for the well-being, survival, and dignity specific to Indigenous Peoples [12]. While not a legally binding document, UNDRIP recognizes the unique injustices Indigenous Peoples have faced from colonial processes and calls for state governments to uphold Indigenous rights protected in international and domestic laws. It also includes requirements of free, prior, and informed consent (FPIC) for any legislative or administrative measures affecting Indigenous Peoples and their lands and territories. Canada was one of four other settler-colonial countries to originally vote against UNDRIP, the others being the United States, Australia, and Aotearoa New Zealand.

3.2. Land Jurisdiction Conflicts

Land jurisdiction in Canada is complex. Crown sovereignty over all lands in Canada, and especially BC, remains contested. Most lands in central and eastern Canada are under historical treaties, signed primarily from the late 18th century to early 20th century. The legal legitimacy of these historical treaties has been called into question, due primarily to the generally coercive nature in which they were created and Canada's failures to uphold treaty obligations or acknowledge Indigenous laws [33,38,56]. Land jurisdiction and cooperative agreements in these areas are inherently complex but in different ways to unceded territories in BC [29,57,58]. Modern agreements have secured important rights for Indigenous Nations but are criticized for failing to recognize Indigenous laws and worldviews [59,60]. Both historical and modern agreements are critiqued for primarily benefiting settler-colonial interests. The inherent power-imbalances in these agreements and the importance of land to both Indigenous Nations and Canada's continued settler-colonial context have resulted in legal plurality and tensions over ultimate or shared jurisdiction for all land in the country [61,62]. According to Canadian governments, land jurisdiction is divided between federal and sub-national governments, and private ownership (which includes Indigenous ownership determined through modern land-claim agreements) as determined in Canada's colonial legal system and *The Constitution Act* [50].

The province of BC is a unique sub-national jurisdiction in Canada because of its historical and land policy context. Only small areas of the province were included in historical treaties, with the remaining areas left as unceded land. As a result of this high percentage of unceded land, jurisdiction is legally contested [1,34]. This has led to great land use conflicts, with many Indigenous Nations settling or currently pursuing land claim agreements and court cases to affirm their rights and title to their lands (see the BC Treaty Commission [63]). Another unique aspect of BC is the diversity and overlapping territories of Indigenous Nations. There are currently over 200 distinct First Nations recognized in the province [64]. Crown understandings and legal frameworks of land jurisdiction are largely divisive and do not align with Indigenous worldviews [65]. This can limit the extent to which Crown legal systems can recognize and account for Indigenous governance and stewardship.

Jurisdictional conflicts lead to serious challenges for land use decisions and widespread IPCA development across the country. Under colonial law, landowners have the authority to establish and manage protected areas in lands and waters under their jurisdiction, but they may work with other landowners to facilitate management objectives. Indigenous Nations have repeatedly defined and refined their treaty terms, unceded territories, and land sovereignty through Canadian courts, and other refusals of colonial law and assertions of Indigenous legal systems (for some examples, see the Berger Inquiry [66], *Tsilhqot'in Nation v. British Columbia* [67], *Sahtu Dene and Metis Land Claim Settlement Act* [68], and Council of the Haida Nation and British Columbia Haida Title Lands Agreement [69]). Indigenous-led conservation has great potential to continue this work and represents an assertion of Indigenous sovereignty to their lands [24,25,70–72]. However, Indigenous-led conservation should be considered as one of a variety of tools Indigenous communities can use to address colonial legacies of dispossession and imposed jurisdiction.

Conservation practices are significant issues related to contemporary land use management because of Canada's ambitious international commitments to conserve 30% of its lands and 30% of its oceans by 2030 [73]. This would double the current conserved area network. To do so without involving Indigenous Peoples risks replicating settler-colonial histories of dispossession, exclusion, and marginalization. The following results examine policy frameworks that influence current IPCA development in Canada and also consider what Aotearoa New Zealand's legal personality framework can offer new park designations.

4. Results: Policy Frameworks for Indigenous-Led Conservation in Canada and Aotearoa New Zealand

4.1. Canadian Reconciliation and Conservation Commitments

In a delayed response to international pressures and continued Indigenous resistance, the Government of Canada announced two waves of commitments to increase biodiversity protection [74,75]. Area-based targets are at the forefront of these plans, the most recent being to protect at least 30% of both lands and waters by 2030. This goal includes specific efforts to partner with Indigenous Peoples and provide funding for Indigenous-led conservation. Furthermore, although Canada originally opposed UNDRIP, national inquiries into the mistreatment of Indigenous Peoples and infractions of their rights have spurred a reconciliatory movement across Canada [76,77]. BC was the first Canadian government to adopt UNDRIP legislation in 2019 with the *Declaration on Rights of Indigenous Peoples Act* [78]; the Federal Government followed in 2022 with the *UNDRIP Act* [79].

With their renewed commitments to conservation and reconciliation, Crown governments recognized that they could not legally proceed with vast protected area creation without partnering with Indigenous Peoples. A key part of this has been working with academic, policy, and Indigenous organizations to determine a path forward, which resulted in the creation of the IPCA concept. IPCAs were quickly endorsed by the Federal Government as a way to work towards both conservation and reconciliation goals. The leading framework for IPCAs describes them as having various definitions and manifestations

but sharing three characteristics: (1) they are Indigenous-led; (2) they have a long-term commitment to conservation; and (3) they elevate Indigenous rights and responsibilities to their lands [24]. This includes inherent, constitutional, and internationally recognized rights. Responsibilities refer to a move beyond rights and towards an Indigenous perspective of being in relation to the land and upholding respectful obligations of these relationships [24,80]. Only Indigenous Nations can establish IPCAs and report them to count towards international commitments. Some Nations declare IPCAs outside of Crown-recognized avenues, while others are established in partnership with Crown governments. To progress their conservation commitments, the Federal Government created a funding pathway to assist Nations to establish and recognize IPCAs or build capacity for IPCA development [81].

Since 2018, the Government of Canada has dedicated over CAD 1.2 billion to support Indigenous-led area-based conservation [82]. As of 31 December 2022, Canada has conserved 13.6% of its terrestrial and 14.7% of its marine areas [83]. More protected areas are being considered and proposed, 42 of which are Indigenous-led [84]. To double Canada's conserved area network, Crown governments and Indigenous Nations must navigate complicated decisions and reconcile with colonial land use policies.

4.2. Canadian Protected Area Networks

Federally, Canada has a range of designations of conserved areas in both terrestrial (land and inland waters) and marine environments under their administrative authority. See Table 1 for an overview of some federal protected area designation types, governing authorities, enacting processes, management, and protections. See Figure 1 for a map of these designations across Canada. Not all of Canada's federally governed protected areas are included in our analysis, only those that have existing Crown–Indigenous partnerships or those that are most common. Parks Canada, Environment and Climate Change Canada, and Fisheries and Oceans Canada are the three main managing authorities at the federal level. They are responsible for establishing and managing conserved areas under each designation's legislation. All protected area legislation recognizes Aboriginal and treaty rights in accordance with s. 35 of *The Constitution Act* [50]. Each designation type follows similar guidelines for its establishment and management process. While there are differences, a similarity they share is that all of these acts require some level of consultation with, or consent from, local communities, sub-national governments, and Indigenous Nations to establish a protected area. Most federal designations also have area-specific management plans that allow opportunities for co-management agreements or other involvement from local communities and Indigenous Nations. The range of bio-geopolitical contexts across the country creates great diversity across and within each category of designation. Individual governments have their own enacting legislation and language surrounding conserved areas and may prioritize slightly different purposes for each, which leads to many designation types. All jurisdictions have comparable protections for terrestrial protected areas, even if they have a different title. All government conservation agencies contribute to area-based targets for Canada's commitment to international biodiversity protection.

Similar to the federal system, BC has a range of protected area designations that differ in terms of the establishing process, the purpose of designating the area (conservation or recreation), and the allowed or prohibited activities. Unlike the federal protected area network though, BC's provincial protected areas are primarily terrestrial due to jurisdictional authority. The sub-national level of authority is particularly important in BC; so little of the province is under federal jurisdiction, which means the provincial government plays a large role in protected area establishment. Provincial protected areas in BC are divided into six main types of protected area designation. Five of these are managed by BC Parks under the current Ministry of Environment and Climate Change, and the last, wildlife management areas, are managed by the current Minister of Forests, Lands, and Natural Resources and Rural Development. See Table 2 for an overview of BC Parks' designation types, governing authorities, enacting processes, management,

and protections, and Figure 2 for a map of these areas. BC's protected area policies and management structures have historically excluded consideration for Indigenous Peoples' rights or perspectives regarding land stewardship. More recently, collaborative approaches to land use planning that involve Indigenous communities have progressively influenced BC's protected area network [48,85]. One example of this is the conservancy designation which includes provisions for Indigenous rights. This designation has been celebrated for its alignment with international guidelines for Indigenous-led conservation and collaboration, as well its contributions to Indigenous communities' stewardship practices and economies. However, this remains an isolated case and legislative recognition of Indigenous rights at the provincial level in conservation is still lacking compared to other sub-national jurisdictions, such as Canada's three territories.

Table 1. Federal protected area designations.

Designation	Governing Authority and Enacting Process	Management Options	Level of Protection
National Parks and Reserves	Parks Canada Established under <i>Canada National Parks Act</i> . Must consult with sub-national governments, Indigenous communities, and local communities.	10-year management plans informed by advisory boards, consultation with local communities and Indigenous Nations. Can have cooperative agreements with Indigenous governments.	Prohibits all industrial development and commercial extractions. Tourism and recreation are encouraged.
National Marine Conservation Areas and Reserves	Parks Canada Established under <i>Canada National Marine Conservation Areas Act</i> . Must consult with sub-national governments, Indigenous communities, and local communities	10-year management plans informed by advisory boards, consultation with local communities and Indigenous Nations. Can have cooperative agreements with Indigenous governments.	Prohibit natural resource exploration and extraction, substance disposal. Fishing and commercial shipping may be allowed with a permit.
National Wildlife Areas	Environment and Climate Change Canada Established under <i>Canada Wildlife Act</i> . Can only be designated on federal lands and waters. Based on selection criteria.	Management plans created in consultation with local communities and Indigenous Nations. Can have cooperative agreements with Indigenous governments.	Permitted activities and access are controlled by permits and site specific. Prohibited activities include those that could harm wildlife or habitat (Schedule 1, Wildlife Area Regulations, CRC, c. 1609). Some extraction or agricultural use may be permitted.
Migratory Bird Sanctuaries	Environment and Climate Change Canada Established under the <i>Migratory Birds Convention Act</i> . Can be established in any jurisdiction, not only federal land and waters. Based on selection criteria.	Do not have management plans, rely on the Migratory Bird Sanctuary Regulations. Exceptions where land-claims agreements and co-management agreements require plans.	Permitted activities are controlled by permits and site specific. Prohibited activities include migratory bird hunting, nest disturbance, firearm possession.
Marine Protected Areas	Fisheries and Oceans Canada Established under the <i>Oceans Act</i> . Ministers can designate a marine protected area by order if it is not inconsistent with land claims agreements that have been approved by the federal government.	Should coordinate development of a network of marine protected areas, in collaboration with other federal ministers, sub-national governments, affected Indigenous organizations, and coastal communities. May coordinate with other governments or establish advisory or management bodies.	Prohibited activities include oil and gas exploration and development, mining, dumping, bottom trawling. Pre-existing oil and gas licenses can still be exploited in areas.
Marine Refuges	Fisheries and Oceans Canada (generally). Policy-based designation, not established under a specific legislative provision. Most are defined closures under the <i>Fisheries Act</i> .	Individual basis allows opportunities for Indigenous management or collaboration.	Aimed at protecting specific species or ecosystem features so permitted or prohibited activities reflect those protections.

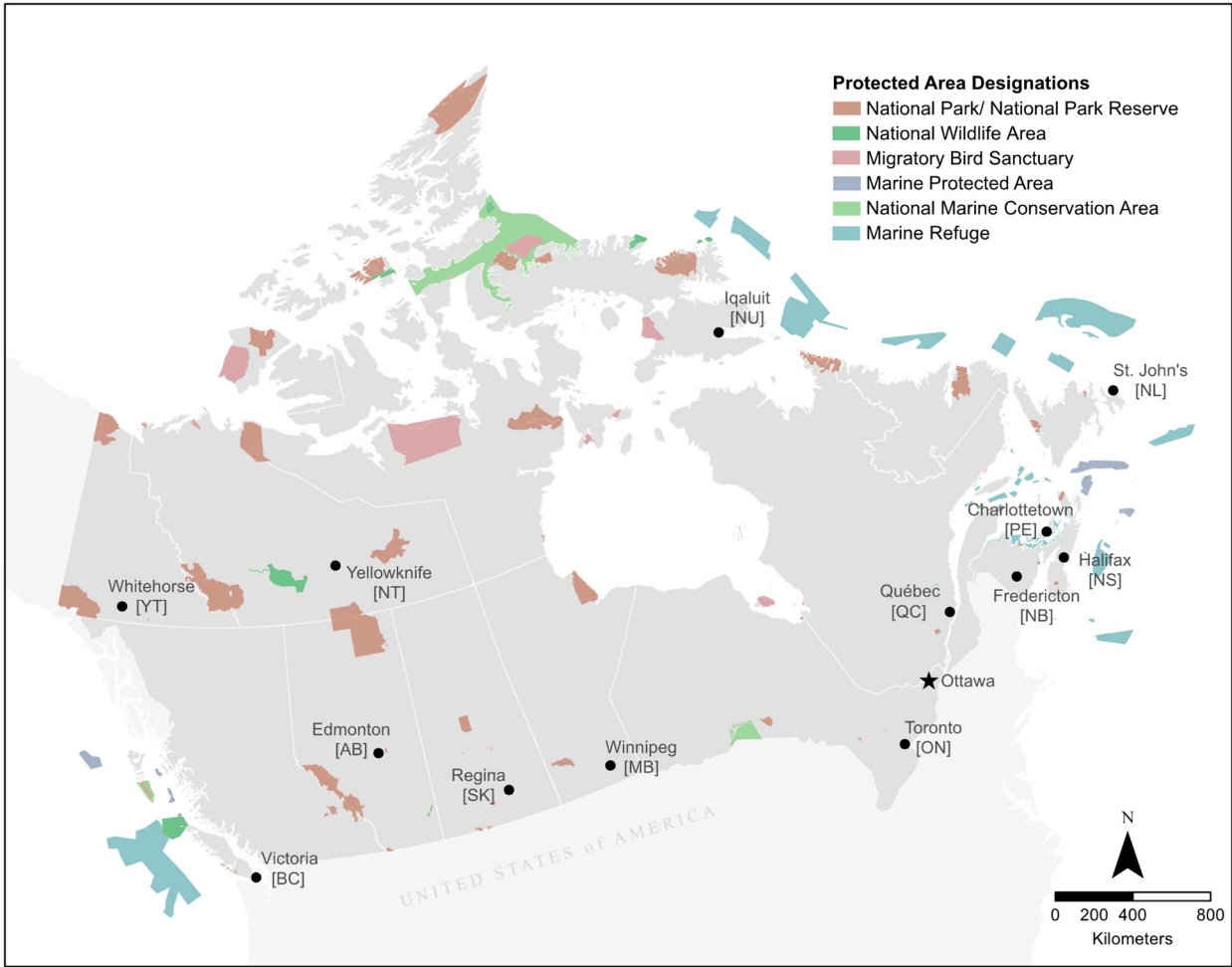


Figure 1. Map of selected federal protected area designations. Map created by Olea Vandermale, 2023.

Table 2. BC Parks’ protected area designations.

Designation	Governing Authority	Management Options	Level of Protection
Provincial Parks (Class A, B, and C)	BC Parks Established under the <i>Parks Act</i> . By order, the Lieutenant Governor in Council may extend the boundaries for a park, or consolidate two or more parks. Other changes to park boundaries can only be made by an act of legislature.	Class C Parks are managed by a locally appointed board rather than the Minister. May make agreements with First Nations to exercise Aboriginal rights and access for social, ceremonial or cultural purposes. Can make management agreements with other governments (federal, sub-national, local), or any other persons.	Tourism and recreational use are primary purposes. Class A and C prohibit commercial resource extraction, hydroelectric, logging, mining activities. Class B permits some uses of land and natural resources if they are not detrimental to park recreational values.
Conservancies	BC Parks Established under the <i>Parks Act</i> . By order, the Lieutenant Governor in Council may extend the boundaries for a park, or consolidate two or more parks. Other changes to park boundaries can only be made by an act of legislature.	Same management options as for Provincial Parks (above).	Recognizes the importance of Indigenous food, cultural, and ceremonial use. Prohibits commercial logging, mining, and non-run of river hydroelectric. Low impact economic use that aligns with Indigenous use is permitted.

Table 2. *Cont.*

Designation	Governing Authority	Management Options	Level of Protection
Ecological Reserves	BC Parks Established under the <i>Ecological Reserve Act</i>. By order ecological reserves can be established on Crown land, expanded, or removed, unless they have been included in the <i>Protected Areas of BC Act</i> Schedule. Ecological reserves can be added to the schedule by order.	The Ministry of Environment and Climate Change is responsible for managing ecological reserves. Volunteer wardens assist with park management by contributing knowledge and experience.	Strictest protections in BC. Purpose is conservation not tourism, low-impact recreation may be allowed. Research and conservation directed activities are permitted. All extraction activities are prohibited. There is no ministerial discretion to allow economic activities.
Protected Areas	BC Parks Established under the <i>Environment and Land Use Act</i>. Created by an order-in-council which must set out the boundaries, prohibited activities, and any other restrictions.		Individually determined. Protections selected during establishment, can be permissive or strict as required.

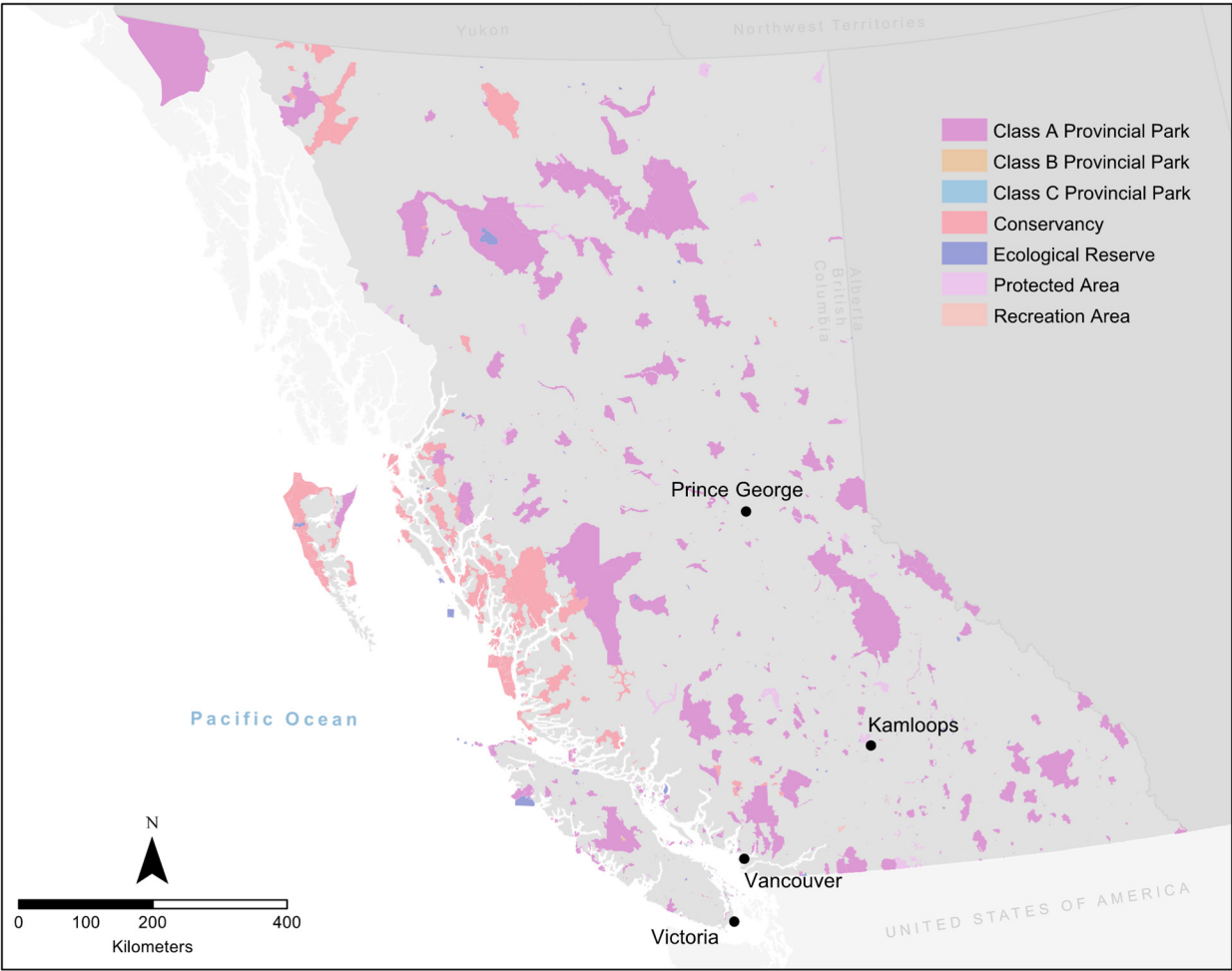


Figure 2. Map of BC Parks’ protected area designations. Map by Olea Vandermale,2023.

4.3. Legal Personality Status in Aotearoa New Zealand

Aotearoa New Zealand has a unique network of protected areas ranging from conservation areas to national parks and reserves that include marine, freshwater, and terrestrial areas. Most of these areas are governed by the Department of Conservation, an agency of the New Zealand Government [86]. As in other settler-colonial countries, Māori, the Indigenous Peoples of Aotearoa, have historically been excluded from Crown park management

that perpetuated Western environmental and economic values of conservation, resource extraction, tourism, and recreation [87,88]. However, it must be understood that these similarities are broad and settler-colonial processes, conservation policies, and histories greatly differ between and within each country. Indigenous Peoples from these countries have experienced displacement and cultural loss resulting from colonial park management, but also resiliency to these systems and innovation to produce new pathways of effective conservation practices [22,89,90].

Unique to Aotearoa New Zealand is the 1840 Treaty of Waitangi, the founding written agreement between representatives of the British Crown and some Māori leaders that outlined the settlement of Aotearoa and the protection of Māori traditional rights. Similar to historical treaties in Canada, the Treaty of Waitangi was also problematic in several respects. The Māori translation of the Treaty has been criticized for mistranslations that have altered the meaning and understanding of its terms. Also, some iwi (tribes) refused to sign the Treaty altogether [88]. The 19th-century land wars, the assertion of colonial legislation, and the subsequent disenfranchisement of Māori communities resulted in colonists ignoring and infringing on many communities' rights, specifically those regarding jurisdiction of their lands [91,92]. Since the 1970s, a growing Māori cultural revival and international human rights pressure spurred the New Zealand Government's Treaty of Waitangi claim settlements to redress for losses of land and other implications of the Crown's breaches of the Treaty. These settlements greatly changed Crown–Māori relationships and protected area regimes to better reflect Māori customary rights and guardianship over their natural resources [93,94]. One result of this was the creation of legal personality status for natural ecosystems and resources with the disbanding of the Te Urewera National Park in 2014, the return of this land to the Tūhoe People (the group of Māori of this region), and legislative recognition of its own legal personality.

During the British invasion and settlement of Aotearoa in the 19th and 20th centuries, the Ngāi Tūhoe iwi of Te Urewera were systematically dispossessed of their historic lands [95]. During this time, Te Urewera was designated as a national park and managed by the New Zealand Department of Conservation. Although they never signed the Treaty, in 2008 the Tūhoe People entered into Treaty of Waitangi claim negotiations with the Crown as the best way to secure the return and autonomy of management of Te Urewera. For years, the two parties negotiated the terms of this return of the land but remained caught up on the language and legal rhetoric of land "ownership" [26]. In the Tūhoe worldview, land ownership goes against the very nature of the relationship between people and the land. In this context, the Tūhoe are of the land, born with responsibilities to it, not rights or power over it; the ecosystem is a living entity that cannot be owned. Crown negotiators and the Tūhoe proposed the concept of legal personality to neutralize questions of ownership to both parties, to reflect (however imperfectly) the Tūhoe worldview and to fit this protected area designation within a Western legal framework. This was accepted by the Tūhoe and formalized in the *Te Urewera Act 2014* at which point the national park was dissolved [96]. The act further grants the forest, Te Urewera, access to New Zealand's political and legal system, meaning it could technically own property and receive reparations, and ensures the area remains a protected area [97].

The *Te Urewera Act 2014* affirmed the legal personality of Te Urewera and transferred governance of the area from the New Zealand Government's Department of Conservation to the Te Urewera Board. The Board is made up of both Tūhoe and Crown representatives who act as guardians of the area and govern Te Urewera based on Tūhoe customary laws and values. The Board represents and acts in the interest of Te Urewera, not their own, and seeks unanimous agreement or consensus [26,97].

Since the *Te Urewera Act 2014*, two other iwi have pursued legal personality status for areas of their ancestral lands as part of their Treaty of Waitangi settlements. Firstly, the Whanganui iwi formalized legal personality status for the Whanganui River with the *Te Awa Tupua Act 2017* [98]. The *Te Awa Tupua Act 2017* reflects the Māori worldview of the river as a whole, living, spiritual entity. This drastically conflicts with the New Zealand

Government's understandings of land use regulations that are largely siloed and smaller than the watershed level. The legal personality status for the Whanganui River represents more consolidated land and aquatic protections in an otherwise fragmented New Zealand system [99]. Secondly, eight iwi of the Te Papakura o Taranaki (formerly Egmont National Park) finalized a collective redress deed with the Crown, which determined the legal personality of Taranaki Maunga (Mount Taranaki) within the park [100].

Legal personality, as a collaborative and cross-cultural process, has helped bridge gaps between Māori and Crown understandings, practices, and legal systems of land use. It shifts the focus of land management and rights-based ideas of ownership to that of Māori-based guardianship and relations with the land, which moves beyond a rights-based discourse. This has opened up space for the Crown to better understand and work with Indigenous worldviews, while also supporting environmental protection [101]. For the local iwi, these processes have helped them revive their relationships and customs with their previously dispossessed land and reconnect their worldviews to their ancestral areas in novel ways. They also benefit from economic opportunities to participate in guardian roles and develop industries, such as tourism or sustainable forestry [102].

Critics of the legal personality model contend that it may limit future ownership claims and construe Māori worldviews. While legal personality reflects and interprets an Indigenous worldview, it does so within a hierarchical and biased European system that has not been created to benefit Indigenous Peoples [28]. Furthermore, the act of translating Indigenous languages and concepts into English necessarily limits the understanding of Māori relationships to their land, but all legal personality legislation also contains Māori language [103].

5. Discussion: Examining Opportunities and Constraints to Indigenous-Led Conservation in Canada

5.1. Reconciliation Policies

The reconciliation policy frameworks for the BC provincial government and the Government of Canada demonstrate promising steps towards enshrining Indigenous rights across all Crown laws in these jurisdictions. All federal conservation legislation contains some provisions requiring consultation with or consent from Indigenous Nations and the recognition of Indigenous rights as outlined in s. 35 of *The Constitution Act* [50]. Definitions of Indigenous rights remain ambiguous and unequally articulated in sub-national legislation, and the Crown governments' practice of attaining consent or seeking consultation has historically been flawed [20,104,105]. The Federal and BC Governments' UNDRIP legislation provides a framework to legally define and apply Indigenous rights across all Canadian laws. One of the most impactful effects of implementing UNDRIP in Crown legislation is the requirement for FPIC. This would drastically change land use management across the country by mandating joint decision-making for all Crown lands.

Already, the Federal Government has been using joint decision-making agreements to manage protected areas for decades. For example, the *Gwaii Haanas Agreement* and *Edézhíé Establishment Agreement* demonstrate how the Haida and Dehcho Peoples, respectively, have worked with and alongside Crown conservation legislation while also upholding their own laws [106,107]. Through these agreements, the Haida and Dehcho Peoples have been able to assert their rights, build nation-to-nation relationships, and facilitate conservation and Indigenous land use objectives on part of their ancestral territory [24,108,109]. It is important to note that both of these agreements are the result of decades of Indigenous resistance, political advocacy, and legal battles, and, until very recently, have been exceptions to the Crown protected area approach [110–112]. The Federal Government's general reconciliation processes have repeatedly been called out for their selective or performative nature and a failure to enact wide-scale changes to recognize UNDRIP and disrupt colonial systems [29,32,113–118]. In BC, the provincial government's implementation of UNDRIP has been a deeply contested process. Questions surrounding joint decision-making and natural resource economies have fueled contention across government, public, and industry

groups and delayed the provincial government's implementation of UNDRIP [119]. Reconciliatory processes and fully realizing UNDRIP require long-term processes of relationship building and consultation with Indigenous Peoples across the country. The Federal and BC Governments are in the early stages of these movements, but it is clear that UNDRIP's impacts on conservation and other land use management could be drastic.

5.2. International Commitments and Federal Support for IPCAs

Canada's international commitments to area-based targets, specifically when they include calls for increased Indigenous involvement and leadership, have provided both motivation and a framework for Crown governments to support IPCA establishment. In the eight years since responding to these calls, the Federal Government has provided funding for various Indigenous-led conservation projects in 94 different communities [84]. Despite the various benefits realized from these projects, funding from the Federal Government remains inconsistent and insufficient [120]. This IPCA funding program does not include any mention of Indigenous rights, which is a fundamental criterion for leading definitions of IPCAs [81]. It also requires Indigenous Nations to attain the support of sub-national governments and report IPCAs so they can count towards area-based targets. These factors exclude Nations who wish to establish IPCAs outside of Crown-recognized avenues from accessing this funding.

Canada's first biodiversity plan announced in 2016 also did not consult Indigenous Peoples before being created [121]. This plan was criticized for focusing too closely on area-based conservation measures without challenging larger colonial land use systems that contribute to climate change and do not recognize Indigenous rights [29,122]. Scholars suggest Crown governments must enact structural changes in colonial land use systems to better recognize and support Indigenous knowledge, self-determination, rights, and responsibilities to their lands both within and outside of protected area networks [30,116,123–125]. Furthermore, tight timelines to achieve area-based targets can rush the required relationship-building processes necessary for IPCA development [29]. This temporal constraint may also compromise the effectiveness and integrity of conservation and which IPCAs are supported, as Canada may focus on protecting the easiest and largest areas and ignore other important biodiversity and local factors [122]. It is important to follow IPCAs across the country to examine the roles that they play in balancing international commitments with effective and lasting changes to Crown–Indigenous relationships and land use management.

5.3. Protected Area Networks

The diversity of protected area designations in Canada leads to great complexity as Indigenous communities seek out partnerships to bolster IPCA development. While this may change as more are created, the three IPCAs established since federal support began in 2018 all have co-designations and management partnerships with Crown governments. Co-designations provide some financial support and legal protection for IPCAs, especially those that face natural resource development, but can also add further complexity. All protected area establishment processes require consultation with all levels of government, Indigenous Nations, local communities, and the public. This takes a considerable amount of time. Indigenous Nations must also consult with their communities and Crown governments, which, depending on the prohibitions, size, and location of each candidate IPCA, can add to this temporal barrier and come with resource challenges [120]. The diversity of designations may allow Indigenous Nations some flexibility to pursue management frameworks, purposes, and provisions that align with their specific goals. For example, the Dehcho First Nations co-designate their IPCA, Edézhíé, as a national wildlife area because they were most concerned with wildlife species and habitat protection rather than tourism development, which a national park designation may have been better suited for [126].

The benefits of co-designations also come with compromises. There are very few legal mechanisms in Canadian conservation systems that acknowledge Indigenous land jurisdiction and governance. Some examples are land-claim settlements and conservation

legislation (which are concentrated in Canada's three territories) that affirm sole or joint Indigenous ownership, and Indigenous governance in protected areas. These include, but are not limited to, the *Tlicho Land Claims and Self-Government Act* [127], the Yukon Territory's *Wildlife Act* [128], and the Northwest Territories' *Protected Areas Act* [129]. Most cooperative agreements between Crown and Indigenous governments in IPCAs encounter some tension regarding the "politics of recognition" that may necessitate sacrificing some aspects of self-determination [30,90,114]. However, co-designations still provide important protections, funding, and other support for Indigenous Nations as they seek to protect their ancestral territories, especially when these include consensus-based decision-making frameworks [72,108]. How these relationships and protections will endure and the potential of IPCAs to continue to push Crown protected area networks remain important factors as IPCAs are developed across the country.

5.4. Land Jurisdiction

Current land jurisdictional barriers are paramount to all aspects of IPCA creation. Crown sovereignty over all lands in Canada, and especially BC, remains contested due to questions over the legitimacy of historical treaties, the presence of unceded territories, and Canada's disregard for Indigenous laws. Most land available for IPCA establishment through this federally supported avenue is officially (as per colonial Crown law) under provincial governments' jurisdiction in the provinces, and the Federal Government's jurisdiction in the territories. Without the widespread implementation of UNDRIP, specifically FPIC, inconsistent recognitions of Indigenous sovereignty, and a lack of support for Indigenous-led conservation from sub-national governments, Indigenous Peoples continue to face barriers to gain the support needed to establish IPCAs [61,125]. Examples from BC and Ontario demonstrate how Provincial Governments have prioritized natural resource extraction and their own ultimate authority, which has resulted in challenges for Indigenous Nations to create IPCAs [82]. Recent movements demonstrate how this tide is shifting in small pockets in BC, where Indigenous Nations have achieved landmark title cases or have partnered with Indigenous governments in historically high-conflict areas [67,69,130]. Despite these progressions, mining tenures and provincial governments' reluctance to withdraw their support for the industry remain one of the largest barriers to IPCA development [125,131,132].

Furthermore, Crown governments retain ultimate ownership of IPCAs. As discussed above, Canada's omission of Indigenous rights in their IPCA funding program and limited mechanisms to recognize Indigenous governance and land jurisdiction can limit how IPCAs manifest and suggest some concessions of self-determination. Current IPCA agreements and older co-management agreements demonstrate joint structures and hybrid understandings of land jurisdiction and management [106,107,133]. Indigenous Nations continue to pursue a variety of ways to increase decision-making authority over their territories, such as through land claim agreements, court cases to affirm title of their lands, or impact-benefit agreements, to name a few. IPCAs and their increasingly cooperative decision-making structures may have important influences on these processes, and land ownership or ultimate sovereignty in general.

5.5. Learning from Aotearoa New Zealand and Considerations for the Development of IPCA Legislation in Canada

Settler-colonial states that are working through rematriations and redresses while also advancing climate change mitigation can learn from the ways the Māori and New Zealand Government have reflected an Indigenous worldview in a Western governance system. Barriers to IPCA development in Canada are vast. Each challenge is grounded in tensions over the Crown's recognition of Indigenous rights, self-determination, and sovereignty of their lands. While no specific legislation exists for IPCAs in Canadian law, current IPCAs established both within and outside of Crown systems, and Canada's UNDRIP acts, have set new precedents for protected area creation that supports nation-to-nation relationships

and hybrid legal systems. As IPCAs are rooted in Indigenous worldviews, IPCA legislation could challenge colonial laws and help neutralize current land use management and jurisdictional debates for parcels of Indigenous lands, as demonstrated with legal personality in Aotearoa New Zealand [26,97].

Importantly though, IPCA legislation must be Indigenous-led and avoid rigid provisions that suggest a pan-Indigenous approach to conservation. Indigenous worldviews and perspectives are diverse across and within each Nation. Our considerations of legal personality status for potential IPCA legislations in Canada are postulations at opportunities, not prescriptive attempts to advise policy creation. Additionally, for some, state recognition of IPCAs comes with its own contentions that necessarily compromise the meaning of IPCAs as an assertion of Indigenous self-determination [29,30]. IPCA legislation can risk upholding colonial law and ignoring or compromising Indigenous legal systems. However, as with the co-designations discussed above, creating new IPCA legislation that reflects both Indigenous and Western colonial legal systems may provide important and timely benefits to communities who face immense barriers to governing their territories [72].

The current UNDRIP legislation enacted by the BC and Federal Governments demonstrates a promising start to applying Indigenous rights across Crown systems. Specific IPCA legislation can offer an opportunity to ground UNDRIP in a framework of joint decision-making over lands that already exist in some, albeit imperfect, capacity. The Edézhíe and Thaidene Néné IPCAs exemplify Indigenous and Crown organizations working together, which could quell some of the tensions between the Crown and industry over joint decision-making [119]. This may assist the implementation of UNDRIP across other land use policies as well. Personality legislations in Aotearoa New Zealand act as bridges between Western law and Indigenous laws, instead of an incorporation of Indigenous perspectives within pre-existing colonial systems [101]. This is an important distinction that could inform legally pluralistic IPCA legislation and even the ways Crown governments implement UNDRIP across all Canadian laws. Widespread hybrid legal systems may not be desired or even possible in Canada with the time required and the great diversity of Indigenous Nations. Increasing the frequency of these attempts may help break down some of the policy barriers and opposition that UNDRIP currently faces.

IPCA legislation may also transcend the milieu of current protected area designations and allow Indigenous Nations a more direct avenue to assert decision-making authority over parts of their territories in ways that reflect Indigenous worldviews. The complexity of protected area designations and various levels of requirements and actual practices of consultation with Indigenous communities pose real barriers to IPCA establishment. A specified avenue (or avenues) with provisions that ensure IPCA creation is Indigenous-led could flip this consultation narrative or provide a new way of decision-making that aligns with Indigenous processes instead of colonial paternalistic norms. This would also inform more holistic and effective approaches to conservation. As demonstrated by the Whanganui River's achievement of personality status, Crown conservation policies were altered to reflect a larger, watershed-level approach that aligns with Indigenous worldviews and stewardship practices [70]. IPCA legislation may still be restricted in this regard, as current protected area models in Canada reflect siloed, patchwork systems premised on colonial capitalist extraction industries [123,134,135]. While protected area networks provide conservation to some areas, it leaves others open to development and extraction. IPCAs can inform more wholistic approaches to land use management (such as values-led or nature-based models) outside of conservation and societal changes to the prevailing capitalist human–land relationships more generally [30,70,89,124,136].

6. Conclusions

This research examines how conservation frameworks are beginning to shift to better recognize and support Indigenous rights in colonial policies. However, they do not go far enough to address centuries of colonial processes designed to dispose Indigenous Peoples of their lands. Canada can learn from other settler-colonial countries, such as

Aotearoa New Zealand, that continue to implement innovative Indigenous-led land use policies that build cross-cultural partnerships and relationships. This includes potential IPCA legislation that could support legal plurality, nation-to-nation relationships, and the diverse Indigenous approaches to land use. Federal and sub-national governments and Indigenous Peoples across Canada are in various phases of working together to reconcile colonial injustices and advance more sustainable land use systems. IPCAs are just one avenue that communities are pursuing, but it is one that has significant Crown government backing across the country. Importantly, IPCAs and legal personality are not an end goal but part of ongoing movements [28,118,137]. Our analysis did not fully examine IPCAs that are self-declared by Indigenous communities and those that exist outside of Crown-recognized systems, but these can also have significant impacts on these movements. There is a lot of debate surrounding the roles that Crown-recognized IPCAs can play in issues like reconciliation, land jurisdiction, and Indigenous self-determination. Current examples demonstrate how IPCAs offer important steps to address these issues but also emphasize the continuing and potential impacts that IPCAs can have regarding Crown–Indigenous relations [24,25,27,70,90,123,138].

Canada has a disproportionate amount of intact and high-value ecosystems to support climate change mitigation. The failures of colonial conservation and broader land use regimes to protect biodiversity and reduce the effects of climate change demand alternative approaches. Indigenous-led conservation can be an effective way to address climate change and move forward with reconciliatory steps, but Crown governments must not impede these processes. Institutional barriers, such as short-term governance cycles, and colonial-capitalist systems of power have recently impacted Indigenous-led conservation movements in Aotearoa New Zealand and remain an impending threat in Canada [139]. Both countries are amid their own evolving processes of reconciliation to address colonial policies that have disadvantaged Indigenous Peoples [21]. These countries also have long and diverse histories of Indigenous Peoples' defiance of, and resiliency to, colonial policies with ongoing stewardship practices and knowledges that can inform land uses that support sustainable economies and environments [89,90,101,140,141]. The place-based and localized approaches to Indigenous-led conservation in Canada and Aotearoa New Zealand have driven novel conservation strategies and policies in each country and must direct any future land management decision.

For Indigenous-led conservation to continue to manifest and evolve, Western colonial land use systems must transform to fully respect and support Indigenous rights, self-determination, and governance both within and outside of Crown-recognized systems. Extractive, colonial capitalist land uses are at the root of climate change and biodiversity loss that Indigenous and non-Indigenous communities continue to experience globally [70,115,118,134]. Wide-scale changes are not easy and are intricately entwined with international economic and political systems. This article describes some movement towards these goals, but importantly, only reflects the trends in a dynamic web of socio-ecological, political, and cultural relations that continue to demand critical reflection, thoughtful collaboration, and collective action.

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Appendix A

Federal conservation and reconciliation legislation:

Canada National Marine Conservation Areas Act, SC 2002, c. 18.

Canada National Parks Act, SC 2000, c. 32.

Canada Wildlife Act, RSC 1985, c. W-9.

Migratory Birds Convention Act, SC 1994, c. 22.

Migratory Bird Sanctuary Regulations, CRC, c. 1036.

Oceans Act, SC 1996, c. 31.

Parks Canada Agency Act, SC 1998, c. 31.

The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c. 11.

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c. 14.

Wildlife Area Regulations, CRC, c. 1609.

Province of British Columbia conservation and reconciliation legislation:

Declaration on the Rights of Indigenous Peoples Act, SBC 2019, c. 44.

Ecological Reserve Act, RSBC 1996, c. 103.

Environment and Land Use Act, RSBC 1996, c. 117.

Land Title Act, RSBC 1996, c. 250.

Park Act, RSBC 1996, c. 344.

Protected Areas of British Columbia Act, SBC 2000, c. 17.

Aotearoa New Zealand legal personality legislation:

Ngā Iwi o Taranaki, Te Tōpuni Ngārahu, & The Crown. (2023). *Te Ruruku Pūtakerongo*. Available online: <https://www.govt.nz/assets/Documents/OTS/Taranaki-Maunga/Taranaki-Maunga-Te-Ruruku-Putakerongo-Collective-Redress-Deed-1-September-2023.pdf> (accessed on 24 April 2024).

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Publ. 2017 No. 7. (NZ)

Te Urewera Act 2014, Publ. 2014 No. 51. (NZ)

International conservation and reconciliation documents:

Convention on Biological Diversity. (2010). *Secretary of the Convention on Biological Diversity, Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at Its Tenth Meeting. X/2. Strategic Plan for Biodiversity 2011–2020, Including Aichi Biodiversity Targets*. Available online: <https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf> (accessed on 14 February 2023).

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Notes

- ¹ We use the term “land” to broadly refer to all land, water, air, and biotic and abiotic factors of a given area. This definition varies from Indigenous perspectives of land, which are diverse but may broadly include living and non-living things above and below ground, the spiritual world, songs, practices, ceremony, and a complex web of place-based relationships [1]. It also varies from Canadian legal understandings of land.
- ² In this paper we use “Crown” to broadly refer to Canadian and Aotearoa New Zealand state governments. In Canada this includes federal, provincial, territorial, and municipal governments. In Aotearoa New Zealand, we use Crown to refer to the national-level New Zealand Government. Both Canada and Aotearoa New Zealand are settler-colonial states and constitutional monarchies under the United Kingdom. The term “Crown” reflects this British colonial history.
- ³ “Aboriginal” is legal nomenclature that refers to First Nations, Métis, and Inuit Peoples in Canada as defined in s. 35(2) of *The Constitution Act* [50]. We use Aboriginal to refer to this specific legal context and use the broader term, “Indigenous,” when speaking generally about the First Peoples of North America and Aotearoa New Zealand, and specific Peoples’ and Nation’s names when relevant.

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