

Guiding Principles for EDO's work for First Nations Clients & Communities

Introduction

Environmental Defenders Office (EDO) recognises the unceded sovereignty of First Nations peoples and their inherent rights to self-determination, including their rights to control and make decisions about their lands, waters, culture and heritage, as recognised by international law. We recognise and affirm the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as a key framework for upholding these rights.

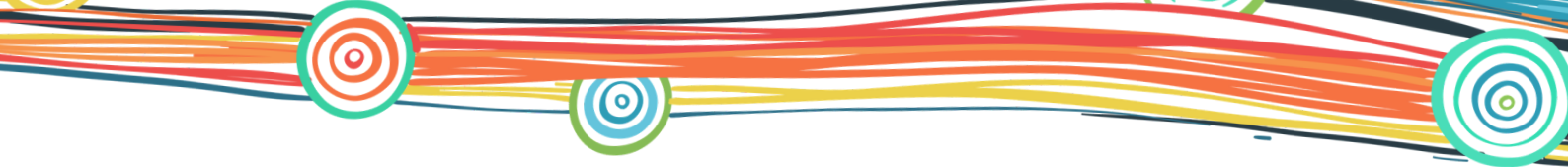
EDO is committed to supporting First Nations clients and communities to protect their Country¹ and cultural heritage, when and as they determine. As lawyers, we act in the best interests of our clients, in accordance with their instructions, our professional obligations, and EDO's public interest mandate.

EDO recognises that its work takes place in complex contexts, including at the intersection of the Western legal system and the many legal systems of First Nations communities, and between cultural knowledge and Western scientific approaches. EDO also recognises that there may be a diversity of views within and between First Nations communities, and that authority and perspectives may be context-specific, layered or contested.

EDO further recognises that there may be tension between its charitable purpose of environmental protection and First Nations peoples' exercise of self-determination. EDO approaches this work with respect, care and humility, seeking to support First Nations clients and communities while being transparent about the scope and limits of its role.

These Guiding Principles aim to provide clarity and transparency about how EDO approaches its work with First Nations clients and communities, and reflect EDO's commitment to culturally safe, ethical and accountable legal practice informed by First Nations perspectives and experience.

¹ Country includes land and waters.



EDO Guiding Principles

1. EDO recognises the collective nature of First Nations rights and interests in Country and cultural heritage:

Before EDO is engaged to provide legal services to First Nations client(s) in which collective rights are engaged, EDO will take the steps reasonably necessary, including where appropriate consulting to understand who has the communal, cultural and legal authority to speak about an area; to make valid decisions about it; and to instruct the EDO's lawyers.²

This may include, where appropriate and possible, engagement with relevant representative bodies, organisations, cultural knowledge holders, anthropologists and other experts, and community members.

Generally, communal authority refers to the authority to speak on behalf of the community a person represents or forms part of. Cultural authority refers to the authority to speak about particular matters in accordance with a group's traditional laws and customs. EDO recognises that authority in this context may be context-specific and may be exercised through different mechanisms and may be layered or contested.

2. EDO recognises the principle of Free, Prior and Informed Consent (FPIC):

EDO recognises FPIC, as articulated in UNDRIP, as grounded in First Nations peoples' right to self-determination.

EDO understands FPIC as an ongoing, relational and context-specific process, rather than a single event or procedural requirement, and will incorporate this understanding in its work for First Nations clients and communities.

EDO recognises that FPIC does not require unanimity or consensus, and that disagreement and dissent within and between First Nations communities are valid.

² In this context:

communal authority means that the person asking for legal help is a member of and has the support of the First Nations community on whose land the matter arises to instruct EDO;

cultural authority means that the person asking for help has knowledge of and a right to speak about the traditional laws and customs about the cultural heritage in issue.





3. EDO will always respect the autonomy and integrity of First Nations people's traditional laws, lore and culture:

EDO recognises the important role First Nations can play in environmental and cultural heritage protection. We respect the autonomy and integrity of our clients, witnesses and the communities and cultures they represent or form part of.

This includes recognising the role of individual cultural knowledge holders and others with specific responsibilities under First Nations law and custom, where appropriate.

4. EDO listens to and respects the power of First Nations communities:

Where requested and where it is consistent with EDO's public interest environmental objectives, EDO will give consideration to supporting First Nations in protecting their Country and cultural heritage.

EDO will take the time needed before starting work for First Nations clients to understand their objectives, recognising that these may include environmental, cultural, social or economic priorities determined by First Nations communities.

EDO will be upfront and transparent about when and how it can act, and the limits of its role.

5. EDO will prioritise supporting First Nations clients and communities to be heard on matters which affect them:

EDO will advise and support First Nations clients and communities to be heard directly by decisionmakers on issues impacting them and will not speak for First Nations or on First Nations issues unless instructed to do so.

This does not prevent EDO from undertaking law reform, advocacy or strategic litigation consistent with its mandate and informed by First Nations engagement, where it is not representing that it speaks on behalf of a particular client or community without consent.





6. EDO respects First Nations representative organisations and will build, maintain and strengthen relationships with them:

If a First Nations person who is asking for EDO's help agrees, and before it acts, EDO will take steps, where appropriate and reasonably practicable, to consult relevant representative First Nations organisation(s)³ and/or other individuals or cultural knowledge holders to understand the views of Traditional Owners about the issue and who has the communal and cultural authority to speak for the area concerned.

EDO recognises that authority and representation may be context-specific and may not be reflected solely through formal representative organisations, and that there may be differing or contested views. EDO will exercise professional judgment in determining how to engage in these circumstances and does not act as an arbiter of legitimacy or replace existing First Nations Governance and will be transparent with prospective clients about this engagement.

7. EDO considers its own capacity to make sure we provide the right service:

EDO will not take on a case unless it has appropriately skilled staff available to meet the client's needs in a culturally appropriate way.

Where EDO can't do that, it will, where possible, refer or support access to other legal or advisory services, including culturally safe and/or First Nations-led services, or provide information to assist the client to access alternative representation.

8. EDO provides culturally safe services:

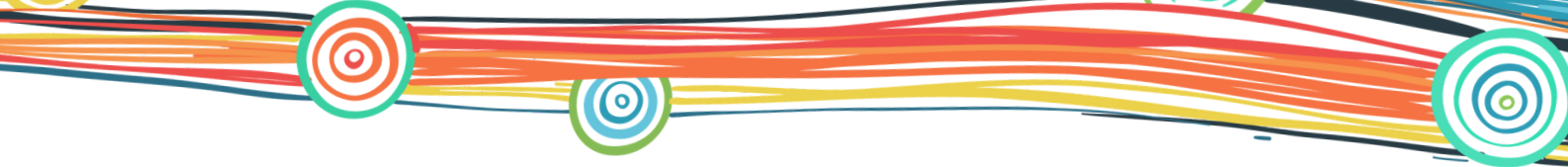
EDO is committed to providing culturally safe services to First Nations clients and communities.

EDO recognises that cultural safety is experienced through engagement, communication and behaviour, not policy alone, and will take a respectful, transparent and trauma-informed approach to its work.

This includes being clear about why information is requested, how it will be used, and the limits of EDO's role and confidentiality obligations.

³ Including Registered Native Title Bodies Corporate/Prescribed Bodies Corporate, Native Title Representative Bodies and statutory Land Councils.





Cultural safety does not prevent EDO from rigorously assessing the strengths and weaknesses of a matter or from providing frank, independent advice to clients about their prospects, in accordance with its ethical and professional obligations.

9. EDO respects Indigenous Cultural Intellectual Property (ICIP):

EDO will ask First Nations clients how their ICIP should be protected and managed. We will give them information about who will see their ICIP; how we store and secure ICIP based on their wishes and any cultural and Western legal requirements; and how we will return ICIP to the client or community at the end of our work.

EDO recognises that information shared by First Nations clients and communities constitutes ICIP and will be handled accordingly.

ICIP refers to First Nations peoples' rights to their cultural heritage, including knowledge, stories, language, art and cultural expressions, consistent with emerging legal and ethical standards.

10. EDO is accountable:

EDO's First Nations Program will oversee all EDO work for First Nations clients, working with all parts of EDO.

EDO is committed to accountability to First Nations clients and communities, including through:

- clear, safe and accessible feedback mechanisms
- governance oversight of work involving First Nations matters
- ongoing review and continuous improvement informed by First Nations feedback and experience

These commitments will be implemented having regard to EDO's organisational capacity and resources.

