

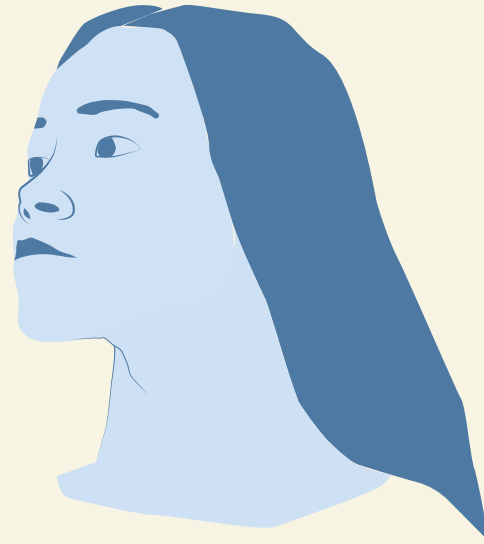


PROTECTING THE
SPIRIT OF WATER

GRANTING LEGAL RIGHTS TO WATER

WHAT IS LEGAL PERSONHOOD?

Indigenous peoples around the world have advocated for the recognition and actions needed to protect water. This series focuses on one strategy that can obtain recognition from governments to protect sacred waters like Lake Winnipeg.



THE RIGHTS OF NATURE

When we speak of the Rights of Nature, we recognize and honour that Nature has rights, just as humans have rights.

Part of this recognition is Legal Personhood, which allows non-human entities to hold legal rights and have legal responsibilities to others.

A legal person can hold property, enter into a contract, and be held liable for failing to follow the law. A legal person who is not human may also have other rights and responsibilities.

For example, a river may have the right to flow.

One or more humans can be allowed to represent a legal person's interests. This can be achieved by assigning human guardians, agents, or trustees to represent the legal person.

THE GOAL OF THE 'RIGHTS OF NATURE'

The Rights of Nature movement is not the same as guaranteeing the rights of humans to Nature. Instead, the movement recognizes and honors the rights of Nature for its own sake and its own terms.

These rights do not need to include legal personhood. The rights of Nature do not need to be the same as human rights, and they can be different for each natural feature.

The Rights of Nature movement is often consistent with Indigenous understandings of Nature as a being with spirit. However, the movement is not necessarily rooted in Indigenous worldviews or reflective of Indigenous priorities.

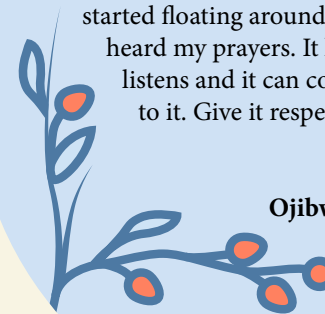
HUMANS ARE NOT THE ONLY ONES WITH LEGAL PERSONHOOD.

Today, other entities are legal persons, including:

- Nation-states
- The Crown
- Corporations
- Municipalities
- Religious, educational, and charitable institutions
- Societies
- Co-operatives
- Ships

Indigenous Laws and Legal Orders are different from settler-colonial legal systems. Indigenous Laws and Legal Orders recognize the sacredness of natural entities (e.g. lakes and rivers), and our relationships and responsibilities to them. Settler-colonial legal systems can also recognize the rights of nature.

“We’ve known for a long time that water is alive. Water can hear you. Water can sense what you are saying and what you are feeling. There’s been a place where I put tobacco in the water, where the water is so still. It was dead. I prayed for it. I put my tobacco in the water and my tobacco started floating around. So the water came alive. It heard my prayers. It heard the song. So I know it listens and it can come alive if you pay attention to it. Give it respect and it can come alive.”



**Elder Josephine Mandamin,
Ojibway, Lake Superior, Ontario**

RECOGNIZING LEGAL PERSONHOOD

The rights of nature and legal personhood are being used to fill gaps in western law. Many Indigenous legal systems already center nature in ways that do not fully translate to western law through legal personhood.

NEW ZEALAND

In 2017, New Zealand granted the Whanganui River legal personhood under the Te Awa Tupua (Whanganui River Settlement) Act.

The Act recognizes the Whanganui River and all its tributaries, streams, lakes, and wetlands, as a legal person under the name Te Awa Tupua, meaning the “river with ancestral power.”

Under the Act, Te Awa Tupua is an indivisible living whole, and has all the rights and responsibilities of a living person.

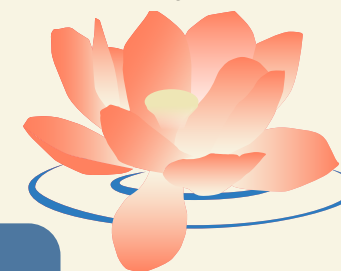
An office represents Te Awa Tupua. The office’s representatives are chosen by the Whanganui Māori and the government of New Zealand.

EXTENSION OF COMMON-LAW PRECEDENTS

In 2017, a court in India recognized the legal personhood of the Ganga and Yamuna Rivers. The rivers now have all the rights and responsibilities of a living person. The rivers are represented by three people, who promote the health and wellbeing of the rivers. Also in 2017, the court extended legal personhood to the glaciers that feed the Ganga and Yamuna.

In 2019, the Bangladeshi Supreme Court granted legal rights to all the rivers in Bangladesh. It is the first country to grant legal rights to all the rivers in its territory. A special commission represents the rivers.

In 2020, a court in India declared Lake Sukhna a legal person, and the citizens of the surrounding area are responsible for its protection



CONSTITUTIONALLY BASED RIGHTS

In 2008, Ecuador became the first country to recognize the rights of Nature in its Constitution. Based on these rights, a court found that a provincial government violated the rights of Nature by dumping waste into the Vilcabamba River.

OTHER EXAMPLES OF LEGAL PERSONHOOD INCLUDE:

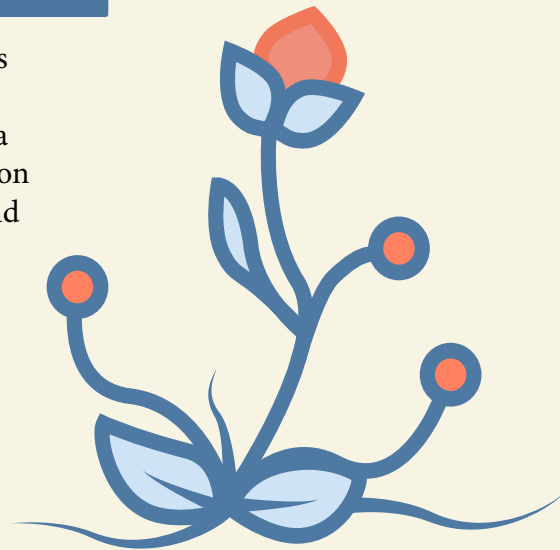
- Municipalities in Peru that recognize the rights of water
- Mutehkau Shipu (Magpie River) in Canada
- The White Earth Band of Ojibwe’s Manoomin Declaration
- The Yurok Tribe’s declaration of the Klamath River’s personhood
- The Menominee Indian Tribe of Wisconsin’s assertion of the Menominee River’s rights
- The drafted Universal Declaration of River Rights
- Legislation from Australia and Uganda protect the rights of Nature
- Governments in Argentina and Spain suggest recognizing the rights of Nature and natural entities (e.g. lakes and rivers)

LEGAL PERSONHOOD IN CANADA

Examples of legal personhood are unique and may not always be helpful in Canada. However, the lessons learned from other places can help advance the rights of natural entities (e.g. lakes and rivers) and Indigenous laws in Canada.

IS LEGAL PERSONHOOD FOR NATURAL ENTITIES APPROPRIATE IN CANADA?

Many Indigenous peoples have legal and cultural relationships with Nature. These relationships could be affected if an independent group is given authority to make decisions over a natural entity, and protect it. Also, there are various opinions on what effects granting legal personhood to natural entities could have on Aboriginal rights, Treaty rights, and Aboriginal title.



MUTEHKAU SHIPU (MAGPIE RIVER) IS THE FIRST RIVER IN CANADA TO BE DECLARED A LEGAL PERSON.

Mutehekau Shipu is an important river in Nitassinan, the homeland of the Innu of Ekuanitshit in Quebec. In 2021, the river was declared a legal person by the Innu of Ekuanitshit Council and the Regional Municipality of Comté of Minganie. The river's rights are based on the understandings shared by the Innu of Ekuanitshit Council, and include the right to exist and flow, evolve naturally, have its natural cycles respected, maintain its biodiversity and rights to regeneration, preservation, restoration and integrity, fulfill its essential functions, be protected against pollution, and bring legal action. Mutehekau Shipu will be represented by legal Guardians.

LEGAL OPTIONS IN CANADA THAT MAY HELP THE RECOGNITION OF LEGAL PERSONHOOD INCLUDE:

- The unique nature of Aboriginal and Treaty rights
- Section 35(1) of the Constitution Act
- The United Nations Declaration on the Rights of Indigenous Peoples
- Indigenous Protected and Conserved Areas
- Legal personhood as a form of reconciliation
- Honouring treaty rights and understandings of those rights



INDIGENOUS MECHANISMS AND LEGAL PERSONHOOD



TE AWA TUPUA (AOTEAROA NEW ZEALAND)

To Māori with ancestral connections to the area, Te Awa Tupua is an ancestor with its own spiritual authority and life force. The Māori relationship to the river is structured by kinship and stewardship duties. The Māori representatives of Te Awa Tupua use their connection and responsibilities to the river in their work in the office representing Te Awa Tupua.

PACHAMAMA (MOTHER EARTH)

Pachamama is a goddess whose power sustains life

Vilcabamba River (Ecuador)

The Quechua depend on nature for their survival, and their cultural identity is linked to Pachamama. Pachamama is at the heart of Indigenous worldviews in Ecuador. These worldviews teach us that human beings are an expression of nature. This means that there is no division between humans and nature. These worldviews are adopted by the Ecuadorian Constitution, which protects the rights of Nature.



Bolivia

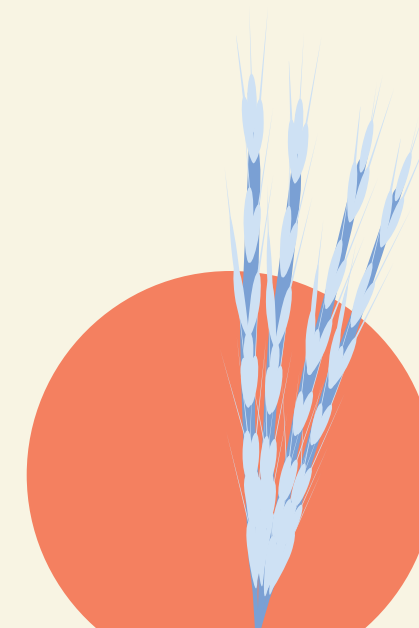
There is an important connection in Bolivia between Indigenous communities and Pachamama. Indigenous peoples in Bolivia understand the intimate relationship between humans and nature. These connections are reflected in laws passed by the Government of Bolivia in 2010 and 2012.

ATRATO RIVER (COLOMBIA)



"Rio Atrato" by Produce1895 is licensed under CC

The Atrato River is central to the cultural identities of Indigenous communities along the river. These communities rely on the river for their survival wellbeing. The river is represented by fourteen Indigenous Guardians (seven women and seven men), who apply their understandings and relationships with the river, jointly with representatives from the Government of Columbia.



- In 2016, the Ho-Chunk Nation recognized the rights of nature in its tribal constitution.
- In 2016, the Traditional Owners of Martuwarra (Fitzroy River) signed a declaration recognizing the river as a living ancestral being with the right to life.
- In 2017, the traditional owners of the Yarra River recognized their unique connection to the river as its traditional custodians.
- In 2018, the Ponca Nation recognized the rights of nature in a resolution.
- In 2019, the White Earth Band of Ojibwe passed a resolution granting personhood to manoomin (wild rice). The rights are an extension of Ojibwe Treaty rights.
- In 2019, the Yurok Tribe declared the rights of personhood for the Klamath River.
- In 2020, the Nez Perce Tribe recognized the rights of the Snake River in a resolution.
- In 2020, the Menominee Indian Tribe of Wisconsin asserted the rights of the Menominee River.
- In 2020, the T̓silhqot̓'in Nation adopted the ʔElhdaqox Dechen Ts'Edilhtan (Sturgeon River Law) recognizing the spirit and rights of the river.
- In 2021, the Innu of Ekuanitshit declared the legal personhood of Mutehkau Shipu (Magpie River).

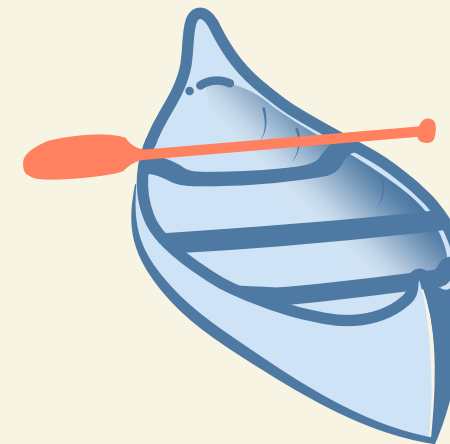
INDIGENOUS NATIONS AROUND THE WORLD HAVE USED PERSONHOOD AND RIGHTS OF NATURE TO HELP PROTECT THEIR LANDS AND WATERS.

PERSONHOOD OF LAKE WINNIPEG

The Lake Winnipeg Indigenous Collective (LWIC) recognizes the spirit of Lake Winnipeg and encourages others to do the same. As a collective, it uses Indigenous laws and legal orders that support a community-based approach to helping restore the Lake. One potential strategy is legal personhood.

KEY CONCEPTS

- Legal personhood allows non-human entities to hold legal rights, and have legal responsibilities to others.
- Rights of Nature is the recognition that Nature has rights, just as humans have rights.
- The rights and/or personhood of rivers and lakes are recognized in many places at national, regional, and community levels.

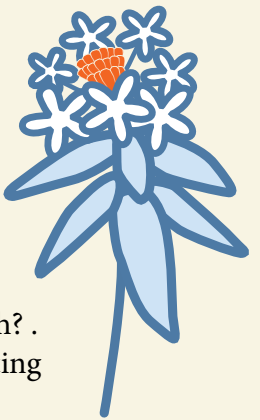


WHAT TO DO YOU THINK?

- How is your relationship and understanding of Lake Winnipeg reflected in this info?
- How would you like to see your relationship and understanding of the lake be reflected?
- What further questions do you have?

MOVING FORWARD

- How do you describe your relationship with Lake Winnipeg?
 - How should your responsibility to Lake Winnipeg be understood?
- Does personhood and the rights of nature apply?
- What kind of management would be appropriate and who would you like to work with? .
 - How might recognizing Lake Winnipeg as a legal person or rights-holder impact existing relationships and Aboriginal & Treaty rights?
 - How should the rights of water be discussed? What would you like the next steps in the conversation to look like? Who should be included?





A collaboration between
Decolonizing Water
and the Lake Winnipeg
Indigenous Collective

