



Legislative Summary

BILL C-15: AN ACT RESPECTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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(Legislative Summary)

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CONTENTS

1	BACKGROUND	1
1.1	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	2
1.2	References to the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> in Federal Legislation and Case Law	3
1.3	Similar Bills Introduced in Previous Parliaments	3
1.4	British Columbia's <i>Declaration on the Rights of Indigenous Peoples Act</i>	4
2	DESCRIPTION AND ANALYSIS.....	5
2.1	Preamble.....	5
2.2	Interpretation (Clause 2)	6
2.3	Designation of Minister (Clause 3)	6
2.4	Purposes (Clause 4)	7
2.5	Consistency, Action Plan and Report to Parliament (Clauses 5 to 7).....	7



LEGISLATIVE SUMMARY OF BILL C-15: AN ACT RESPECTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

1 BACKGROUND

Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (short title: United Nations Declaration on the Rights of Indigenous Peoples Act),¹ was introduced in the House of Commons on 3 December 2020 by the Minister of Justice.

The bill affirms that the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP or “the declaration”) has application in Canadian law and provides a framework for the federal government to ensure that its laws are consistent with it. UNDRIP was adopted as a resolution of the United Nations General Assembly on 13 September 2007.²

The House of Commons Standing Committee on Indigenous and Northern Affairs (INAN) studied the subject matter of Bill C-15 over five meetings held between 11 March and 15 April 2021. The bill received second reading in the House of Commons on 19 April 2021 and was referred to INAN the same day. INAN held two meetings on 20 and 22 April 2021, reporting the bill with six amendments to the House of Commons on 26 April 2021. The House of Commons concurred in INAN’s report on 12 May 2021. The bill was notably amended to

- refer to racism and systemic racism in the preamble and clause 6(2)(a)(i);
- identify, in the preamble, the doctrines of discovery and *terra nullius*³ as “racist, scientifically false, legally invalid, morally condemnable and socially unjust”;
- recognize, in the preamble, that “Canadian courts have stated that [Aboriginal and treaty rights] are not frozen and are capable of evolution and growth”; and
- reduce the timeframe for the completion of the action plan set out in clause 6 from three to two years.

On 20 April 2021, the Senate passed a motion authorizing the Standing Senate Committee on Aboriginal Peoples to pre-study Bill C-15.⁴

1.1 *UNITED NATIONS DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES*

The declaration contains a 24-paragraph preamble and 46 articles that establish “the minimum standards for the survival, dignity and well-being of the [I]ndigenous peoples of the world.”⁵ Since it is a declaration – as opposed to an international treaty or convention – UNDRIP is not legally binding. It does not require ratification by a state; instead, a state may simply endorse the declaration.⁶ According to article 38 of UNDRIP, “States[,] in consultation and cooperation with [I]ndigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.”⁷ Bolivia is the first country to have adopted it as a national law (2008) and into its constitution (2009).⁸

The international community saw the adoption of an Indigenous-specific human rights instruments as necessary “in part due to the failure of the general, existing human rights regimes to afford appropriate protection for Indigenous peoples’ rights.”⁹ To this day, Indigenous peoples still live with the consequences of colonialism and struggle to have some of their most basic human rights respected, including in Canada.

The declaration’s preamble recognizes that Indigenous peoples are equal to all other peoples and should be free from discrimination, that they have suffered from “historic injustices” and that there is an “urgent need” to recognize their inherent rights. It also explains that “[I]ndigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.”

The declaration’s 46 articles do not create new rights. Instead, UNDRIP “elaborated upon existing international human rights instruments and clarifies how those rights apply to Indigenous peoples given their ‘specific cultural, historical, social and economic circumstance.’”¹⁰ Among other things, its articles affirm that Indigenous peoples have the right to

- the full enjoyment of their human rights, as individuals and collectives (article 1);
- self-determination, autonomy and self-government (articles 3 and 4);
- maintain and strengthen their distinct institutions (article 5);
- not be subjected to forced assimilation or cultural destruction (article 8);
- practice and revitalize their cultures, customs and spiritual traditions (articles 11, 12 and 13);
- participate in decision-making in matters affecting their rights, and to be consulted in good faith on legislative and administrative measures that may affect them (articles 18 and 19);

- own, use, develop and control their lands, territories and resources (article 26); and
- maintain, control, protect and develop their intellectual property (article 31).

The declaration also includes several mentions of the notion of “free, prior and informed consent” (articles 10, 11(2), 19, 28(1) and 29(2)).

It should be noted, however, that article 46(1) limits the rights embedded within the declaration so that they cannot infringe upon the sovereignty of states.

After initially voting against UNDRIP at the United Nations General Assembly in 2007, Canada endorsed it in 2010 with qualification. At that time, the government said that it was “an aspirational document” and that it would “interpret the principles expressed in the declaration in a manner that is consistent with our Constitution and legal framework.”¹¹ In 2016, however, the government stated that Canada was “now a full supporter, without qualification, of the United Nations Declaration on the Rights of Indigenous Peoples” and that it would implement it “in accordance with the Canadian Constitution.”¹²

1.2 REFERENCES TO THE *UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* IN FEDERAL LEGISLATION AND CASE LAW

In recent years, UNDRIP has been referred to in federal statutes, including *An Act respecting Indigenous languages*¹³ and *An Act respecting First Nations, Inuit and Métis children, youth and families*.¹⁴ The stated purpose of these two laws includes contributing to the implementation of UNDRIP. According to the Canadian Human Rights Tribunal, references to UNDRIP in the latter Act show “Parliament’s clear intent to uphold the inherent rights of self-determination and of self-governance of First Nations, Inuit and Métis Nations in the areas of child welfare and to respect substantive equality.”¹⁵

The preambles of laws with broader objectives, such as the *Impact Assessment Act*¹⁶ and *Canadian Energy Regulator Act*,¹⁷ also refer to Canada’s commitment to implementing the declaration.

Additionally, the declaration is being cited by Canadian courts and tribunals.¹⁸ At least one Canadian decision has noted that “UNDRIP may be used to inform the interpretation of domestic law.”¹⁹

1.3 SIMILAR BILLS INTRODUCED IN PREVIOUS PARLIAMENTS

In the first session of the 42nd Parliament, 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,²⁰ was introduced by former member of Parliament

Romeo Saganash. It was adopted at third reading in the House of Commons in 2018. Bill C-262 died on the *Order Paper* in the Senate when the 42nd Parliament was dissolved on 11 September 2019. Similar private members' bills had been introduced in the 39th, 40th and 41st parliaments, but they never progressed beyond first or second reading in the House of Commons.²¹

Bill C-15 differs from Bill C-262 in several ways. For instance, the preamble to Bill C-15 includes many paragraphs that were not part of Bill C-262. Bill C-15 also defines certain terms used in the bill and sets out the bill's **purposes**, none of which were included in Bill C-262. Furthermore, while both bills require preparing an action plan to achieve the objectives of UNDRIP, Bill C-15 describes what the plan must include and **sets out a two-year timeline for completing it. It also stipulates that the plan must be tabled in each House of Parliament “as soon as practicable” thereafter.** In comparison, Bill C-262 proposed that the Minister of Indian Affairs and Northern Development report annually to Parliament on the implementation of UNDRIP for 20 years (2017–2037).

The main clauses requiring the federal government to make its laws consistent with UNDRIP are **virtually** identical in both Bill C-15 (clause 5) and Bill C-262 (clause 4).

1.4 BRITISH COLUMBIA'S *DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT*

In October 2019, the Government of British Columbia introduced Bill 41, Declaration on the Rights of Indigenous Peoples Act. The Legislative Assembly of British Columbia unanimously passed Bill 41 a month later, becoming the first Canadian legislature to adopt legislation to implement UNDRIP.²² British Columbia's *Declaration on the Rights of Indigenous Peoples Act* has a three-part objective:

- (a) to affirm the application of the Declaration to the laws of British Columbia;
- (b) to contribute to the implementation of the Declaration;
- (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.²³

Bill C-15 and British Columbia's *Declaration on the Rights of Indigenous Peoples Act* are similar. Both state that the respective governments must “take all measures necessary” to ensure that their laws are consistent with UNDRIP. Both also require the preparation of an action plan to achieve the objectives of UNDRIP and the tabling of an annual progress report.

However, unlike Bill C-15, the British Columbia law includes provisions authorizing the provincial government to enter into agreements with Indigenous governing bodies²⁴ for the purpose of establishing joint decision-making or consent with respect to the use of statutory powers.²⁵

2 DESCRIPTION AND ANALYSIS

Bill C-15 contains a 23-paragraph preamble, seven clauses and a schedule. The main purpose of the bill is to establish a framework by which the Government of Canada will implement the provisions of UNDRIP. Under the provisions of the bill, the minister responsible must prepare, **within two years of the bill being enacted** and in consultation with Indigenous peoples, an action plan to realize the goals of the declaration. The declaration is attached as the schedule to the bill.

2.1 PREAMBLE

The preamble to Bill C-15 offers some important observations that provide context for the bill, and it sets forth a number of key principles regarding the Government of Canada's intent to implement the provisions of UNDRIP. According to the preamble, UNDRIP represents the minimum standards of human rights of Indigenous peoples.

It refers to the “calls to action” of the Truth and Reconciliation Commission of Canada and “calls to justice” of the National Inquiry into Missing and Murdered Indigenous Women and Girls.²⁶ Both the commission and the inquiry recommended UNDRIP be implemented by the federal, provincial/territorial and municipal governments in Canada.

The preamble recognizes that First Nations, Inuit and Métis peoples have resided on the lands of what is now Canada and that colonization and the related dispossession of their lands, territories and resources are among historic injustices they experienced. It further outlines that the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are grounded in the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights.

On the issue of rights, the preamble recognizes an “urgent need” to respect and promote the rights of Indigenous peoples as affirmed in treaties and agreements, and to recognize that they can contribute in the implementation of the declaration. It further states that the Government of Canada must recognize and implement the inherent rights of Indigenous peoples to self-determination (UNDRIP article 3) and self-government (UNDRIP article 4).

INAN amended the preamble to indicate that the implementation of the declaration must include concrete measures to combat racism and systemic racism. A second amendment to the preamble identifies the doctrines of discovery and *terra nullius* as racist and incorrect. A third amendment to the preamble states that Aboriginal and treaty rights are not “frozen” but rather can evolve over time.

2.2 INTERPRETATION (CLAUSE 2)

Clause 2 of Bill C-15 defines the terms “Declaration,” “Indigenous peoples” and “Minister.” It also refers to the protection of the rights of Indigenous peoples as set out in the *Constitution Act, 1982*. Clause 2(2) clarifies that the United Nations Declaration on the Rights of Indigenous Peoples Act should be interpreted as upholding the rights of Indigenous peoples, in accordance with section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them. Identical language was used in the *Indigenous Languages Act* and the *Act respecting First Nations, Inuit and Métis children, youth and families*.

In Canada, the hunting and fishing activities of Indigenous peoples, especially for food, social or ceremonial purposes, are granted special legal status as Aboriginal or treaty rights. Canada is the only nation among those with common law legal systems that has recognized Aboriginal rights “unconditionally”²⁷ in its Constitution. Section 35(1) of the *Constitution Act, 1982* recognizes and affirms the Aboriginal and treaty rights of the Aboriginal peoples of Canada (defined at section 35(2) as the “Indian, Inuit and Métis peoples of Canada”) that were in existence when that Act came into force in 1982.

With respect to non-derogation in clause 2(2) of the bill, section 25 of the *Canadian Charter of Rights and Freedoms* also includes a non-derogation clause with respect to Aboriginal and treaty rights.²⁸ Section 25 has been referred to as a “shield”²⁹ affirming Aboriginal and treaty rights and enshrining its protection vis-à-vis section 52(1) of the *Constitution Act, 1982*, which sets out the Constitution’s primacy over all legislation. Section 25 has also been referred to as an “interpretive provision informing the construction of potentially conflicting Charter rights.”³⁰ The constitutional entrenchment of Aboriginal and treaty rights means they cannot be extinguished (or abrogated) by federal, provincial or territorial law.³¹

2.3 DESIGNATION OF MINISTER (CLAUSE 3)

The bill does not specify which federal minister is responsible for carrying out its listed objectives. Instead, clause 3 of the bill establishes that a minister can be designated by order of the Governor in Council. Clause 3 does not require a minister to be named by a particular date.

2.4 PURPOSES (CLAUSE 4)

The bill does not implement UNDRIP into domestic law. Instead, the bill's stated **purposes are** to affirm that the declaration has "application in Canadian law" (clause 4(a)) and to "provide a framework for the Government of Canada's implementation of the Declaration" (clause 4(b)).

INAN amended the heading and the first line of this clause in English to clarify that the bill has two purposes.

2.5 CONSISTENCY, ACTION PLAN AND REPORT TO PARLIAMENT (CLAUSES 5 TO 7)

Clauses 5 and 6 of the bill outline measures to ensure that Canadian laws are consistent with UNDRIP and require that the responsible minister develop an action plan to achieve the objectives of the declaration.

The action plan must be prepared and implemented in consultation with Indigenous peoples (clause 6(1)). Clause 6(2) of the bill establishes certain measures required to be included in the action plan. For example, measures must be included to address injustices, prejudice, violence and discrimination experienced by Indigenous peoples and specific Indigenous groups, such as Elders, women, persons with disabilities, and gender-diverse and two-spirit persons (clause 6(2)(a)(i)). **INAN amended this clause to include measures to eliminate all forms of racism and systemic racism.** The action plan must also include measures that promote good relations, such as human rights education (clause 6(2)(a)(ii)) and ways to measure and oversee the overall implementation of the declaration (clause 6(2)(b)). The action plan must include ways to monitor and oversee the implementation, review and amendment of the action plan (clause 6(3)).

INAN amended clause 6(4) of the bill to indicate that the action plan must be completed within two, rather than three, years. The action plan must be made public (clause 6(6)) after it is tabled in each House of Parliament (clauses 6(5) and 6(6)).

The government must report annually to Parliament on the action plan's implementation and on the measures taken to ensure the consistency of Canadian laws with UNDRIP (clause 7(1)), and it must make this report public (clause 7(4)).

NOTES

1. [Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples](#), 43rd Parliament, 2nd Session.

2. United Nations General Assembly, [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#), 2 October 2007.
3. The “doctrine of discovery” was defined by Chief Justice Dickson of the Supreme Court of Canada in [Guerin v. The Queen](#), [1984] 2 SCR 335. On page 378 of the decision, Chief Justice Dickson (referring to the “principle of discovery”) stated:

The principle of discovery ... gave the ultimate title in the land in a particular area to the [European] nation which had discovered and claimed it. In that respect at least the Indians’ rights in the land were obviously diminished; but their rights of occupancy and possession remained unaffected.

In [Tsilhqot’in Nation v. British Columbia](#), 2014 SCC 44, Chief Justice McLachlin held, in a unanimous judgment, that

[t]he starting point in characterizing the legal nature of Aboriginal title is Dickson J.’s concurring judgment in *Guerin*, discussed earlier. At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province. This Crown title, however, was burdened by the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival. The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the *Royal Proclamation of 1763*.

For some historical context on the doctrines of discovery and *terra nullius*, see Truth and Reconciliation Commission of Canada (TRC), [What We Have Learned: Principles of Truth and Reconciliation](#), 2015, p. 18.
4. Senate, [Journals](#), 20 April 2021.
5. United Nations General Assembly, [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#), 2 October 2007, art. 43.
6. Whereas ratification is the final approval of an international agreement, endorsement is merely an expression of support from a state. In Canada, international agreements requiring ratification, such as treaties, will often need to be implemented through domestic legislation:

Unlike some countries which operate according to a monist model ... Canada operates according to a dualist model: a treaty that has been signed and ratified by the executive branch still requires incorporation through domestic law to be enforceable at the national level. Turning international law into domestic law is not a self-executing process in Canada.

Laura Barnett, [Canada’s Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Library of Parliament, 5 August 2018.
7. United Nations General Assembly, [61/295. United Nations Declaration on the Rights of Indigenous Peoples](#), 2 October 2007, art. 38.
8. For more information, see Indigenous Bar Association, [Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook](#), 2011, p. 28.
9. Brenda L. Gunn, “Beyond *Van der Peef*: Bringing Together International, Indigenous and Constitutional Law,” in Oonagh E. Fitzgerald and Risa Schwartz, eds., [UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws](#), Special report, Centre for International Governance Innovation, 2017, p. 32.
10. Indigenous Bar Association, [Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook](#), 2011, p. 7.
11. Indigenous and Northern Affairs Canada, [Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples](#), 12 November 2010.
12. Indigenous and Northern Affairs Canada, [Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples](#), News release, 10 May 2016.
13. [Indigenous Languages Act](#), S.C. 2019, c. 23.
14. [An Act respecting First Nations, Inuit and Métis children, youth and families](#), S.C. 2019, c. 24.
15. [First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada \(representing the Minister of Indigenous and Northern Affairs Canada\)](#), 2020 CHRT 20 (CanLII), para. 164.

16. [Impact Assessment Act](#), S.C. 2019, c. 28, s. 1.
17. [Canadian Energy Regulator Act](#), S.C. 2019, c. 28, s. 10.
18. Sheryl Lightfoot, "Using Legislation to Implement the UN Declaration on the Rights of Indigenous Peoples," in Oonagh E. Fitzgerald and Larry Chartrand, eds., [UNDRIP Implementation: More Reflections on the Braiding of International, Domestic and Indigenous Laws](#), Special report, Centre for International Governance Innovation, 2018, p. 23.
19. [Nunatukavut Community Council Inc. v. Canada \(Attorney General\)](#), 2015 FC 981 (CanLII), para. 103.
20. [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](#), 42nd Parliament, 1st Session.
21. [Bill C-469, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 2nd Session; [Bill C-641, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 2nd Session; [Bill C-469, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 41st Parliament, 1st Session; [Bill C-328, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 40th Parliament, 3rd Session; [Bill C-328, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 40th Parliament, 2nd Session; and [Bill C-569, An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples](#), 39th Parliament, 2nd Session.
22. British Columbia, Legislative Assembly, [Votes and Proceedings of the Legislative Assembly of British Columbia – Nos. 103 and 104](#), 26 November 2019, p. 5.
23. British Columbia, [Declaration on the Rights of Indigenous Peoples Act](#), S.B.C. 2019, c. 44 (CanLII), s. 2.
24. Section 1 of the [Declaration on the Rights of Indigenous Peoples Act](#) defines "Indigenous governing body" as "an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*." See "[Rights of the Aboriginal Peoples of Canada](#)," Part II of the [Constitution Act, 1982](#), being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 35.
25. British Columbia, [Declaration on the Rights of Indigenous Peoples Act](#), S.B.C. 2019, c. 44 (CanLII), s. 7.
26. Following the conclusion of the *Indian Residential Schools Settlement Agreement* (a class-action lawsuit launched by former students of residential schools), the Truth and Reconciliation Commission of Canada was established in 2008. Its final report and related calls to action were published in 2015. See Government of Canada, "Indian Residential Schools Settlement Agreement," [Indian Residential Schools](#); and TRC, "[TRC final report](#)," [TRC Findings](#). In 2016, the National Inquiry into Missing and Murdered Indigenous Women and Girls was launched as a public inquiry established under Part I of the federal *Inquiries Act*. See [Inquiries Act](#), R.S.C. 1985, c. I-11. The inquiry was the Government of Canada's response to the Truth and Reconciliation Commission's call to action number 41. The final report and related calls for justice were published in 2019. See National Inquiry into Missing and Murdered Indigenous Women and Girls, [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#).
27. Jack Woodward, "The Constitution Act: Entrenchment of rights and effect of constitutional protection," *Native Law*, Carswell, 2017, 2§840.
28. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 25.
29. [R. v. Kapp](#), 2008 SCC 41.
30. *Ibid.*
31. Despite the constitutional entrenchment of Aboriginal and treaty rights, the Crown can infringe upon them provided it is justifiable in accordance with the framework outlined in the landmark *Sparrow* case. See [R. v. Sparrow](#), [1990] 1 S.C.R. 1075; see also Jack Woodward, "Aboriginal and treaty rights: Application of s. 35," *Native Law*, Carswell, 2017, 5§370. The Crown retains the powers to consult, potentially accommodate, or infringe (with justifiable reason) on Aboriginal and treaty rights through existing mechanisms in Canadian law. For further discussion on Canadian Aboriginal law mechanisms and how article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which relates to free, prior and informed consent may intersect or appear to be "more robust than contemporary doctrines created by the [Supreme Court of Canada]," see Jeremy Patzer, "[Indigenous rights and the legal politics of Canadian coloniality: what is happening to free, prior and informed consent in Canada?](#)," *The International Journal of Human Rights*, Vol. 23, Nos. 1–2, pp. 214–233, 2019 [SUBSCRIPTION REQUIRED].