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This series is intended to provide high-level and short, easy to read information about some very complex issues. It should not be used as a substitute for expert advice. Links to sources and further reading suggestions are provided for further exploration of the issues.

## ILO C. 169: An old international agreement sheds light on Indigenous land and resource rights

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The International Labour Organization<sup>1</sup>'s [Indigenous and Tribal People's Convention of 1989](#) (*ILO C. 169* or the Convention) is an international treaty that significantly informed the [United Nations Declaration on the Rights of Indigenous Peoples of 2007](#) (*UNDRIP* or the Declaration). Although *ILO C. 169* has not been adopted by Canada, its language regarding *consent*, *consultation* and *benefit-sharing* is highly relevant to Indigenous-Crown-industry relationships in resource development. This is especially true given increased pressure for, opportunities from and impacts of development. Its contribution to the standards set out in *UNDRIP* and its legally-binding status make it important for understanding the evolution of these relationships and possibilities for the future.

### Why is ILO C. 169 important?

Compared to *UNDRIP*, which was adopted by 144 member states, *ILO C. 169* is much less well-known, having been adopted by only 24 UN member states. However, its negotiation among Indigenous peoples, states and representatives of workers and private industry generated early versions of important Indigenous rights concepts such as *consent* and *benefit-sharing*. For example, the process of consent stated in Article 6 of the Convention laid the groundwork for the much stronger concept of *free, prior and informed consent* (FPIC) that now appears in *UNDRIP* (Cordonnier Segger & Garnons-Williams, 2026). But *ILO C. 169* is much more than an outdated version of *UNDRIP*. The two international conventions have different strengths and weaknesses and can be seen as complimentary tools that Indigenous governments and communities can use as they advocate for their rights and advance their interests.

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In some ways, *ILO C. 169* is more forceful than *UNDRIP*. It contains a provision for benefit-sharing from economic development activities, making it the only international treaty to do so explicitly (Morgera, 2019; Carmona Caldera, 2022). Some legal experts regard *ILO C. 169* as a reflection of

<sup>1</sup> The International Labour Organization is a specialized agency of the United Nations.

international norms for Indigenous rights, part of the global conception of Indigenous rights as a key aspect of human rights (Larsen, 2020).

For the 24 states that adopted *ILO C. 169* - mostly Latin American ones - compliance is legally binding by way of reports to an independent review body at least every six years. There is also a complaint mechanism (Larsen & Gilbert, 2020). In contrast, only voluntary compliance is required of the member states that have adopted *UNDRIP*. The governments of Canada, British Columbia and the Northwest Territories have however, passed domestic laws that seek to implement *UNDRIP*, which is forcing them - sometimes by the courts - to rethink many of their policies and practices. Slow implementation of these domestic laws has resulted in litigation that further clarifies the impact of *UNDRIP* on government decisions and action. In the 2025 *Kebaowek* decision<sup>2</sup> involving the Canadian Nuclear Safety Commission's approval of a plan to build a nuclear waste disposal site, the court said that government officials must consider their consultation policies and practices in light of *UNDRIP*, even if *UNDRIP* is not specifically referenced in their legislation or regulations (Babony, 2025). Further, in its 2025 *Gitxalla* decision<sup>3</sup> regarding the provincial government's mineral tenure system, the BC Court of Appeal ruled that *UNDRIP* has "immediate legal effect" and should be seen as the baseline for assessing all government action (Abell et al., 2025) that may affect Indigenous rights and interests.

#### Consultation, Consent and Benefit-Sharing: Relevance to Canadian law

*ILO C. 169* is a key reference point for important terminology that frequently appears in the relationships between the Crown, Indigenous governments and industry in Canada. The ways in which interpretation of *consent*, *consultation* and *benefit-sharing* have changed from *ILO C. 169* to *UNDRIP* sheds light on the ways that Indigenous governments may choose to exercise jurisdiction over infrastructure development and resource extraction on their territories and economically benefit from these activities.

The terms *consent* and *consultation* are used differently in each international agreement. Article 6 of *ILO C. 169* sets out consent as a "process of consultation and participation in decision-making processes" that charts a pathway to achieving consent rather than making it a necessary objective. This approach is like the consultation processes of some of Canada's modern treaties and the duty to consult standard set out by the Supreme Court's decision in *Haida Nation v. British Columbia (Minister of Forests)* (Cordonier Segger and Garnons-Williams, 2026). There is a notable gap between this framing of consent as an objective of consultation, and the language in *UNDRIP* that good faith consultation shall happen "in order to *obtain*" (emphasis added) Indigenous peoples' free, prior and informed consent before approval of projects (see Art. 32). This gap is reflected in ongoing tension within Canadian law and politics where many governments and industry still refer to the standard set out in *Haida*, while more recent federal legislation (and court decisions arising from Indigenous legal challenges) compels the Crown to adhere to *UNDRIP*.

Another term of interest is *benefit-sharing*. Article 15.2 of *ILO C. 169* says that when "the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands", states must evaluate how resource activities affect Indigenous peoples and ensure that benefits from these activities are appropriately shared. The term *benefits* does not appear at all in

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<sup>2</sup> *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319

<sup>3</sup> *Gitxalla v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430

*UNDRIP*, which instead discusses *redress, restitution and compensation*. This difference in language is important because Impact-Benefit Agreements (IBAs) are a key economic development tool in Canada, often construed by state governments and industry as providing “contractual consent” for a project to proceed (Craik, Gardner & McCarthy). These IBA’s fall short of the standard set out in *ILO C.169* however, because of the lack of federal or provincial involvement (Caldera 2022). How can industry and governments meet the standard of FPIC if they are failing to meet that of *ILO C. 169*? Proper timing, transparency of information and state government oversight are key to ensuring that, through benefit-sharing agreements, Indigenous peoples not only receive fair compensation but also have leverage over how the project is designed (Noble, 2020).

### Conclusion

As industry and governments increasingly pursue a new model of “economic reconciliation” by courting Indigenous peoples to take on equity-ownership of resource and infrastructure projects, the role of consent, consultation and benefits in this model remain unclear. In the meantime, the reality of Indigenous-Crown relations is still shaped by practices and standards like the *Duty to Consult* and *Impact-Benefit Agreements* which align more with *ILO C. 169* than *UNDRIP*. *UNDRIP* represents a normative framework (Morales, 2019), meaning that it shows how things should be rather than how they are at this point. If present and future Canadian governments remain fully committed to implementing *UNDRIP*, progress towards this ideal will take time (Amatulli & MacQuarrie, 2023). As Canada moves from these current norms to *FPIC* and inherent rights-based jurisdiction, *ILO C. 169* continues to shed light on the Haida decision and other tools available now to Indigenous governments who are working towards much greater goals.

### References and Further Reading

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