Court File No. 36692

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

HAMLET OF CLYDE RIVER, NAMMAUTAQ HUNTERS & TRAPPERS ORGANIZATION - CLYDE RIVER AND JERRY NATANINE

Appellants

- AND –

PETROLEUM GEO-SERVICES INC. (PGS), MULTI KLIENT INVEST AS (MKI), TGS-NOPEC GEOPHYSICAL COMPANY ASA (TGS), and ATTORNEY GENERAL OF CANADA

Respondents

MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER AMNESTY INTERNATIONAL

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The proposed intervener, Amnesty International (AI) is an international human rights organization with decades of experience and a longstanding, direct interest in ensuring that the human rights of Indigenous peoples are protected in accordance with Canada's international legal obligations and commitments.

2. This appeal raises important questions of public interest concerning the nature and scope of consultation and accommodation in the context of an administrative tribunal's regulatory review process that has the potential to adversely affect Aboriginal rights.

3. AI seeks leave to intervene in this appeal to provide this Honourable Court with an international human rights law perspective on these questions. As this Court has long recognized, these international legal principles can provide a relevant and persuasive source for interpretation, particularly when matters of human rights and/or constitutional rights are engaged. As such, this perspective will not only be useful and different from that of the other parties on appeal, it will also assist this Court in determining whether, in the circumstances, the consultation that accompanied the decision being challenged was adequate.

4. If granted leave to intervene, AI intends to argue that an understanding of the rights of Indigenous peoples under international human rights law ought to inform this Court's understanding of consultation and accommodation, and "deep consultation" in particular, in the context of s. 35(1) of the *Constitution Act.*

5. In particular, AI will make submissions on how the principles of international human rights law ought to inform an assessment of the right of Indigenous peoples to meaningfully participate in decision-making that may affect their rights. AI will submit that the state must collaborate with potentially affected Indigenous peoples, by actively consulting them according to their own customs and traditions, given that meaningful participation requires good faith efforts to reach a mutual agreement and protect the rights of Indigenous peoples. AI will further submit that international human rights law holds that, where the potential for harm from a given project is significant, it should only proceed with the free, prior, and informed consent (FPIC) of the affected Indigenous peoples.

6. AI submits that it meets the criteria for intervention in this appeal, as it has a direct interest in the case and offers a useful and different perspective. AI requests that this Court exercise its "wide discretion" in granting this motion for leave to intervene.

B. AI Canada's background, expertise and experience

7. AI is a worldwide voluntary movement founded in 1961 that works to prevent grave violations of internationally recognized human rights. It is impartial and independent of any government, political persuasion, or religious creed. AI Canada is the English Branch of the international organization's Canadian Section. AI currently has over three million members in over 162 countries, including 300,000 members and supporters across Canada. AI's vision is of a world in which the human rights enshrined in the *Universal Declaration of Human Rights* and other international instruments are enjoyed by all. In pursuit of this vision, AI's mission is to conduct research and take action to prevent and end grave abuses of all human rights. In 1977, AI was awarded the Nobel Peace Prize for its work.[1]

8. AI's research is recognized in Canada and internationally as accurate, credible, and unbiased, and its reports are widely consulted by governments, intergovernmental organizations, journalists, and scholars.[2] AI Canada has been granted intervener status on numerous occasions in judicial proceedings at different levels of court, including this Court.[3] AI Canada has also sought to advance international human rights law directly through the legislative process,[4] and through engagements with various international bodies.[5]

C. AI's experience in Indigenous human rights issues internationally and in Canada

9. AI has a significant expertise in international human rights in general, and Indigenous human rights in particular. AI regularly makes submissions to various international bodies, including Special Rapporteurs, UN working groups, treaty bodies, and the Inter-American Commission on Human Rights, in which it has raised concerns about Canada's compliance with its international obligations in respect of the human rights of Indigenous peoples.[6]

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[1] Affidavit of Alex Neve sworn July 15, 2016 at paras. 8-15 ["Neve Affidavit"].
[2] Neve Affidavit at paras. 17-19.
[3] Neve Affidavit at paras. 20-24.
[4] Neve Affidavit at para. 25.
[5] Neve Affidavit at paras. 26-28.
[6] Neve Affidavit at paras. 26-27, 35, 37-38.

10. In addition to its international activities, AI has a varied and long-standing history of working to advance and protect the human rights of Inuit, First Nations, and Métis peoples within Canada, including engagement with various judicial, legislative and political proceedings, as well as general advocacy, awareness and public education activities to help draw attention to the various violations of the rights of Indigenous peoples in Canada.[7]

11. Before the courts, AI participated in proceedings before the Federal Court, *inter alia*[8], in *Canadian Human Rights Commission v. Attorney General of Canada*, affirmed on appeal, making submissions on Canada's international human rights obligations in the context of a human rights challenge brought by the First Nations Child and Family Caring Society of Canada.[9] In the successor to this case, the Canadian Human Rights Tribunal adopted or concurred with AI's arguments with respect to the international human rights standards applicable to the domestic rights of Indigenous peoples in Canada, finding that substantive equality and Canada's international obligations require that First Nations children on-reserve be provided child and family services comparable to those provided to off-reserve Canadians.[10]

12. The Federal Court of Appeal also granted AI leave to intervene in *Canada (Attorney General) v. Pictou Landing First Nation*,[11] and in *Gitxaala Nation et al v. Canada*,[12] in which AI made submissions regarding Canada's international human rights obligations in respect of Indigenous peoples' rights in the context of a case in which several First Nations successfully challenged, by way of judicial review, the adequacy of consultation in the Governor in Council's decision to approve the Northern Gateway Pipeline Project.[13] Before this Court, AI intervened in

[7] Neve Affidavit at paras. 29-36.
[8] AI was also granted leave to intervene by the Federal Court in *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030: Neve Affidavit at para. 20c).
[9] Neve Affidavit at para 20f); *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445.
[10] Neve Affidavit at paras. 20a), 36; *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2, especially at paras. 428-455.
[11] Neve Affidavit at para. 20e); *Attorney General of Canada v. Pictou Landing Band Council and Maurina Beadle*, FCA Court File No. A-158-13 ["*Pictou Landing*"] (leave to intervene granted by the Federal Court of Appeal in 2014 FCA 21, but the government discontinued the appeal):
[12] Neve Affidavit at para. 20b)
[13] Leave to intervene granted in *Gitxaala Nation v. Canada*, 2015 FCA 73 ["*Gitxaala 2015*"]; decision on the merits in *Gitxaala Nation v. Canada*, 2016 FCA 187 ["*Gitxaala 2016*"].

Tsilhqot'in Nation v. British Columbia to provide submissions on international human rights standards surrounding Indigenous land and resource rights.[14]

D. AI's direct interest in protecting the human rights of Indigenous peoples in Canada

13. More generally, AI has a direct, active, long-standing, and demonstrated interest in protecting the human rights of Indigenous peoples in Canada. In addition to intervening in judicial proceedings as outlined above, AI's work has included, *inter alia,* researching and documenting conditions of discrimination, impoverishment, ill-health, and cultural erosion among Indigenous communities in Canada[15]; investigating complaints of systemic patterns of mistreatment[16]; working with specific communities involving land rights disputes[17]; and engaging with UN human rights bodies and mechanisms in their ongoing monitoring of human rights concerns relating to Indigenous peoples in Canada.[18]

PART II – QUESTIONS IN ISSUE

14. The sole issue to be determined in this motion is whether AI should be granted leave to intervene in this appeal.

PART III – STATEMENT OF ARGUMENT

A. The test for determining whether leave to intervene should be granted

15. This Court has a "wide discretion" to determine whether or not to allow a party to intervene in an appeal.[19] To satisfy the Court that it should be granted leave to intervene, any proposed intervener must establish that they have a direct interest in the proceedings, and that their submissions will be useful for the Court in determining the issues on appeal, and different from those raised by the other parties.[20]

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[14] Neve Affidavit at para. 20d); *Tsilhqot'in Nation v. British Columbia*, [2014] 2 SCR 257.
[15] Neve Affidavit at para. 42.
[16] Neve Affidavit at paras. 30-31.
[17] Neve Affidavit at paras. 20g), 20h), 31, 33.
[18] Neve Affidavit at paras. 27, 31.
[19] *Reference Re: Workers' Compensation Act,* 1983 (Nfld.), [1989] 2 SCR 335, at 339; see also: *Norcan Ltd. v. Lebrock,* [1969] SCR 665; aff'd [1972] SCR 26; *Rules of the Supreme Court of Canada*, SOR/2002-154, RR. 47, 55 and 56.
[20] *R. v. Finta,* [1993] 1 SCR 1138 at 1142-44 ["*Finta*"]

B. AI satisfies the criteria for being granted intervener status

1) Interest

16. The Appellants' arguments in this appeal raise important questions of public law relating to the contours and content of the Crown's duty to consult[21] and accommodate Indigenous peoples where their interests and/or rights will potentially be affected by a strategic and operational decision following an administrative tribunal's regulatory review process.

17. As the Federal Court of Appeal recognized in granting AI leave to intervene in *Pictou Landing*, and more recently in *Gitxaala Nation*, AI has a genuine interest in ensuring respect for the international human rights of Indigenous peoples in Canada, and a particular interest in protecting the land and resource rights of Indigenous peoples, which are inextricably tied to the exercise of their traditional and contemporary cultures and livelihoods.[22] AI also has a demonstrated interest in ensuring that domestic law develops and is applied in a manner that is consistent with Canada's international legal obligations in regards to Indigenous peoples.[23] AI submits that it has a deep and direct interest in the issues raised in this appeal; namely, in Canada fulfilling its international legal obligations, as regards Indigenous peoples in general and, more particularly, the Inuit of the Hamlet of Clyde River.[24]

18. AI's direct interest in the questions raised in this appeal is evident from AI's long track record of working to ensure that the human rights of Indigenous peoples in Canada are protected in accordance with international human rights law – before domestic courts, legislatures, public inquiries, and international bodies, as well as through other advocacy efforts, as outlined above.[25]

19. AI has demonstrated its interest in the human rights of the Indigenous peoples at stake in this case in particular. Specifically, AI issued public statements concerning the need for the National Energy Board, in reaching a decision on whether to approve seismic testing for oil and gas exploration off Baffin Island, to consider the rights of the Inuit of the Hamlet of Clyde River,

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[21] The Appellants' Factum refers to a "duty to consult" as a shorthand for a duty to consult and accommodate: see: Appellants' Factum, at fn 4. These submissions will do the same, while nevertheless acknowledging that the Appellants' take the position that a duty to consult *and* accommodate arose in this case.
[22] *Gitxaala 2015, supra* at para. 7; *Pictou Landing, supra* at para. 15.
[23] Neve Affidavit at paras. 20, 27, 29-37.
[24] Neve Affidavit at paras. 14, 16-42; see also: *Finta, supra* at 1142.
[25] See paras. 10-17 of this Memorandum of Argument.

and to ensure that such resource development decisions proceed only with the free, prior and informed consent of affected Indigenous peoples.[26]

2) Useful and Different Submissions

20. AI's proposed intervention will bring an important, useful, and unique perspective and approach to the issues raised in this appeal. None of the parties will address the issues raised in this judicial review from the perspective of an international, non-governmental, non-Indigenous human rights organization, without any corporate affiliation. Nor do any of the parties share AI's experience, expertise, and knowledge in matters related to international human rights law, both generally and in the particular context of Indigenous peoples.[27]

21. The Appellants argue that, in this particular case, in which the Court of Appeal found that a duty of deep consultation was owed[28], the Crown's failure to assess the adequacy of the consultation process, to participate in the process; or to ensure the Appellants' meaningful engagement in it, means that the Crown did not comply with its constitutional obligations to consult.[29] The Appellants submit that, without such procedural protections, the duty to consult is "rendered meaningless."[30]

22. The Appellants' arguments will require this Court to consider the appropriate nature and content of the Crown's duty to consult and accommodate where an administrative tribunal – here, the NEB – undertakes a regulatory process in deciding whether to authorize a project with potential adverse effects on Aboriginal rights, particularly where a duty of deep consultation exists. This Court will also be required to assess whether the consultation process in the present case was adequate.

23. If granted leave to intervene, AI intends to present submissions regarding the international human rights standards that ought to be considered by this Honourable Court when interpreting the nature and scope of deep consultation in the context of a decision made by an administrative tribunal following a regulatory review process that will likely have adverse effects

[26] Neve Affidavit at para. 41, and Exhibit A.
[27] Neve Affidavit at paras. 20-42.
[28] Reasons, *supra* at para. 74
[29] Appellants' Factum at paras. 69-70, 84-128.
[30] Appellants' Factum at para. 128.

on Aboriginal rights, and whether consultation in the present case was adequate. In particular, AI will submit that:

a) International law is a relevant and persuasive source which ought to be considered when interpreting the domestic law applicable in this case; and

b) The duty to consult in domestic law should be interpreted in a manner consistent with the protections provided in international law for Indigenous peoples' right to meaningfully participate in decision-making processes

24. These standards are set out in binding treaties, including the *UN Charter,* the *International Covenant on Civil and Political Rights* (*ICCPR*), the *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*), and the *International Convention on the Elimination of All Forms of Racial Discrimination* (*ICERD*). These obligations are also found in the principles of customary international law, which form part of the Canadian common law, and other sources of law such as the *Universal Declaration of Human Rights* and the *UN Declaration,* which establish minimum standards for the protection of human rights and consolidate and codify principles of customary international law.[31] The views of the UN treaty bodies and agencies charged with promoting and reviewing the implementation of treaties and of UN Special Rapporteurs are also persuasive, as well as the decisions of foreign and international Courts interpreting international human rights instruments.[32]

a) International law is a relevant and persuasive source which ought to be considered when interpreting the domestic law applicable in this case

25. Specifically, AI intends to argue that this Court should consider Canada's obligations under international human rights law when interpreting the nature and scope of consultation, and in particular deep consultation, and whether the consultation in the present case was adequate for a number of reasons.

[31] See, e.g. International Law Association, *The Hague Conference (2010): Rights of indigenous Peoples* (Interim Report, 2010) online: <http://www.ila-hq.org/en/committees/index.cfm/cid/1024 > ["*Hague Conference*"].
[32] *Reference Re: Public Service Employee Relations Act (Alberta),* [1987] 1 SCR 313 at 348, Dickson CJ, dissenting on other grounds ["*Reference re: Public Service*"]; *Canada (Human Rights Commission) v. Canada (Attorney General),* 2012 FC 445.at para. 15 *["Canada(Human Rights Commission)*"].

26. International norms are a relevant source for interpreting rights domestically, and any interpretation of the Crown's legal obligations towards Aboriginal peoples should be consistent with Canada's obligations under customary and conventional international law.[33]

27. In interpreting constitutional rights, this Court has long recognized international legal principles as a relevant and persuasive source of law and has drawn upon a wide variety of international law sources. In particular, this Court has sought to ensure consistency between its interpretation of the *Charter*[34] and authoritative interpretations of Canada's international obligations and other relevant principles of international law, including "soft law" sources.[35] In respect to the application of international law, there is no basis for treating s. 35(1) of the *Constitution Act*, in which the duty to consult with Aboriginal peoples is grounded, differently than *Charter* rights.[36] Like *Charter* rights, s. 35(1) Aboriginal rights are fundamental human rights that find expression and protection in a range of international human rights instruments of domestic application.[37]

28. Beyond this, AI submits that the honour of Crown,[38] requires the government to respect not only its domestic legal obligations, but also its international legal obligations towards Indigenous peoples, in effecting reconciliation between the Crown and Aboriginal peoples with respect to the interests at stake.[39]

b) International law protects Indigenous peoples' right to meaningfully participate in decision-making processes that have the potential to affect their rights and interests

29. As well, AI intends to argue that international human rights law requires rigorous and robust protection for Indigenous peoples' right to meaningfully participate in decision-making

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[33] *R v. Hape,* [2007] 2 SCR 292 at para. 53 ["*Hape*"], citing *Daniels v. White,* [1968] SCR 517, at p. 541.
[34] *Reference re: Public Service, supra* at 348; *Suresh v. Canada (Minister of Citizenship and Immigration),* [2002] 1 SCR 3 at para. 46 ["*Suresh*"]; *Hape, supra* at para. 55.
[35] See, e.g. *Saskatchewan Federation of Labour v. Saskatchewan,* 2015 SCC 4 at para. 64; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at paras. 67, 69-71, 73-74.
[36] See, e.g. *Mitchell v. M.N.R.,* [2001] 1 SCR 911 at paras. 80-83; *Canada (Human Rights Commission), supra* at paras 350-354; *Nunatukavut Community Council Inc. v. Canada (Attorney General),* 2015 FC 981 at paras. 103-05 ["*Nunatukavut*"]; *Simon v. Canada (Attorney General),* 2013 FC 1117 at para. 121.
[37] These instruments include the *United Nations Declaration on the Rights of Indigenous Peoples,* UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) ["*UN Declaration*"], the *International Covenant on Civil and Political Rights,* 16 December 1966, 999 UNTS 171, Can TS 1976 No. 47 art 14(1) ["*ICCPR*"] and the *International Covenant on Economic, Social and Cultural Rights,* 16 December 1966, GA Res 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, art. 15(1) ["*ICESCR*"].
[38] *Haida Nation v. British Columbia (Minister of Forests),* 2004 SCC 73 at para. 45 ["*Haida*"];
[39] See, e.g. *Nunatukavut, supra* at para. 103; *Taku River Tlingit First Nation* v. *Canada (Attorney General),* 2016 YKSC 7 at para. 100.

processes that have the potential to affect their rights and interests. This Court has previously recognized in *Haida Nation v. British Columbia (Minister of Forests)* that meaningful, good faith consultation may entail Indigenous participation in the decision-making process.[40] Under international human rights law, this right of meaningful participation is included in the recognition that "all peoples" have a right to self-determination.[41] Furthermore, ensuring meaningful participation is necessary to fulfill the high standard of protection required for all decisions potentially affecting Indigenous peoples' rights.[42] Only through Indigenous peoples' effective participation can the full range of potential harms be identified, the seriousness of these harms gauged and appropriate accommodations adopted.[43]

30. AI's proposed submissions will set out what is included in the right of Indigenous peoples under international human rights law to meaningfully participate in decision-making that may affect their rights, and the corollary obligations of states, which includes, *inter alia,* the following considerations:

- The state is required to engage with potentially affected Indigenous peoples according to their customs and traditions and through culturally appropriate procedures[44], and by involving Indigenous peoples from the outset in the design and implementation of the process for consultation and participation in order to ensure that it is conducted through representative institutions in a form appropriate to the circumstances.[45]

- Meaningful participation requires good faith efforts to reach a mutual agreement, in keeping with the intended purpose of protecting the human rights of Indigenous peoples.[46]

- International human rights standards explicitly identify that the obligation to ensure Indigenous peoples' meaningful participation rests with the state.[47] Key component elements of good faith consultation under international law, including the dissemination of relevant,

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[40] *Haida, supra,* at paras. 51-53.
[41] *ICCPR, supra,* art. 1; *ICESCR, supra,* art. 1; *UN Declaration, supra,* preamble, art. 3.
[42] *Hague Conference, supra* at 47.
[43] As noted by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, when large-scale economic activities are carried out on the lands of Indigenous peoples, "it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them" : United Nations Economic and Social Council, *Human Rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Rodolfo Stavenhagen, 59th Sess, UN Doc E/CN.4/2003/90 (21 January 2003) at para 7.
[44] *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* August 12, 2008, Judgment, Inter-Am Ct HR (Ser C) No 185 at paras. 15, 18 and 26-27 ["*Saramaka*"].
[45] *UN Declaration, supra,* art. 19.
[46] *Case of the Kichwa Indigenous People of Sarayaku v Ecuador*, (2012) Judgment, Inter-Am Ct HR (Ser C) No 245 at paras. 167, 186, 200 ["*Kichwa*"].
[47] *UN Declaration, supra,* at. 19.

objective information,[48] cannot reasonably be delegated to a private entity with direct interest in the project. In addition, the state has an obligation to ensure that power imbalances between Indigenous peoples and project proponents are appropriately addressed.[49]

- International human rights law holds that, where the potential for harm is significant, projects should only proceed with the free, prior, and informed consent (FPIC) of the affected Indigenous peoples.[50] Indeed, in situations where resource operations impact areas and/or resources traditionally used by Indigenous peoples, and these operations have the potential to deprive Indigenous peoples of the capacity to use and enjoy their lands and other natural resources necessary for their subsistence, livelihoods and cultural integrity, FPIC is a presumptive requirement.[51]

31. These standards in international law should inform the interpretation and application of Canadian jurisprudence, which has already recognized that there are circumstances where the consent of Indigenous peoples may be required in order to fulfill the duty to consult,[52] particularly when the Aboriginal right is of high significance to the Aboriginal peoples concerned, and the risk of non-compensable damage is high.[53]

PARTS IV AND V – COSTS AND ORDERS SOUGHT

32. AI respectfully requests an order granting it leave to intervene in this appeal, pursuant to Rules 55 to 59 of the *Rules of the Supreme Court of Canada*, SOR/2002-154, and requests permission to file a written factum of no more than 15 pages, and the right to present oral argument at the hearing of this appeal.

33. AI does not seek costs and requests that, in the event this motion is granted, no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 22, 2016

GOLDBLATT PARTNERS LLP
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[48] *Kichwa, supra* at paras. 180-84; *Saramaka, supra* at paras. 17 and 41.
[49] *Kichwa, supra* at paras. 187-89; *Saramaka, supra* at paras. 102, 129 and 131.
[50] *UN Declaration, supra,* arts. 11, 32
[51] *Kichwa, supra* at paras. 167, 186, 200; United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, 21st Sess, UN Doc A/HRC/21/47 (6 July 2012),at para. 65.
[52] *Haida Nation, supra* at para. 48; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at para. 168.
[53] *Haida Nation, supra* at para. 44.

PART VI – TABLE OF AUTHORITIES

Canadian Jurisprudence	**Paragraph**
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International Covenant on Economic, Social and Cultural Rights, 16 December 1966, GA Res 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, art. 15(1)	27, 29
International Law Association, *The Hague Conference (2010): Rights of indigenous Peoples* (Interim Report, 2010) online: <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>	24, 29
United Nations Declaration on the Rights of Indigenous Peoples, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2 October 2007)	27, 29, 30
United Nations Economic and Social Council, *Human Rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Rodolfo Stavenhagen, 59th Sess, UN Doc E/CN.4/2003/90 (21 January 2003)	29
United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, 21st Sess, UN Doc A/HRC/21/47 (6 July 2012)	30

PART VII – STATUTES

Constitution Acts, 1867 to 1982	*Lois constitutionnelles* de 1867 à 1982
Rights of the Aboriginal Peoples of Canada	**Droits des peuples autochtones du canada**
Recognition of existing aboriginal and treaty rights	**Confirmation des droits existants des peuples autochtones**
35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.	35. (1) Les droits existants — ancestraux ou issus de traités — des peuples autochtones du Canada sont reconnus et confirmés.
Definition of "aboriginal peoples of Canada"	**Définition de « peuples autochtones du Canada »**
(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.	(2) Dans la présente loi, « peuples autochtones du Canada » s'entend notamment des Indiens, des Inuit et des Métis du Canada.
Land claims agreements	**Accords sur des revendications territoriales**
(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.	(3) Il est entendu que sont compris parmi les droits issus de traités, dont il est fait mention au paragraphe (1), les droits existants issus d'accords sur des revendications territoriales ou ceux susceptibles d'être ainsi acquis.
Aboriginal and treaty rights are guaranteed equally to both sexes	**Égalité de garantie des droits pour les deux sexes**
(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. (96)	(4) Indépendamment de toute autre disposition de la présente loi, les droits — ancestraux ou issus de traités — visés au paragraphe (1) sont garantis également aux personnes des deux sexes. (96)
Commitment to participation in constitutional conference	**Engagement relatif à la participation à une conférence constitutionnelle**
35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "Constitution Act, 1867", to section 25 of this Act or to this Part,	35.1 Les gouvernements fédéral et provinciaux sont liés par l'engagement de principe selon lequel le premier ministre du Canada, avant toute modification de la catégorie 24 de l'article 91 de la « Loi constitutionnelle de 1867 », de l'article 25 de la présente loi ou de la présente partie :
(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and	a) convoquera une conférence constitutionnelle réunissant les premiers ministres provinciaux et lui-même et comportant à son ordre du jour la question du projet de modification;
(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item. (97)	b) invitera les représentants des peuples autochtones du Canada à participer aux travaux relatifs à cette question. (97)