



Competence Without Consent:

Assessing Free Prior and Informed
Consent in the Federation of Law
Societies of Canada
2023 Draft Amendments to the Model
Code of Professional Conduct Rule 3.1-1
(TRC Call to Action #27)

Andrea Menard, LLB, LLM, Doctor of Social Sciences
candidate, Royal Roads University

Law Commission of Canada – Emerging Scholars
Presentation

14 October 2025



Competence Without Consent

Central question: Can a competence rule drafted without Free, Prior, and Informed Consent (UNDRIP Article 19) be legitimate or effective?





Problem & Context

- Federation of Law Societies of Canada (FLSC) (Nov 28, 2023) proposed revising the **Model Code of Professional Conduct Rule 3.1-1** to require:
 - competence in Indigenous legal principles
 - trauma- and culturally-informed practice
- **Framed as an answer to the Truth & Reconciliation Commission of Canada's (TRC) Call to Action #27**
- Process deficit: minimal Indigenous-bar involvement; no Free, Prior, and Informed Consent (FPIC) under UNDRIP Article 19
- **Why FPIC applies here:**
 - UNDRIP Act (2021) commits institutions to align with United Nations on the Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - Law-society rule-making is an “administrative measure” affecting Indigenous Peoples and legal orders
- **What's at stake:**
 - regulatory legitimacy and acceptance across the bar
 - real-world implementation and quality of service to Indigenous clients
 - risk of reproducing colonial power dynamics and misrepresenting Indigenous laws
- **Key design challenge:** whose “representative institutions” must be engaged for pan-Canadian FPIC? (e.g., Indigenous Bar Association, regional Indigenous lawyers' forums, law-society Indigenous advisory bodies, Indigenous Nations?)

Research Questions & Analytical Frame

Primary question

- How does the absence of FPIC in the FLSC's 2023 drafting of Rule 3.1-1 affect perceived legitimacy, professional acceptance, and day-to-day implementation?

Sub-questions

- What consultation steps did the FLSC actually undertake, and where were Indigenous perspectives incorporated or ignored?
- How do Indigenous legal professionals evaluate the proposed competence rule and its practical impacts?
- Under Article 19 (UNDRIP), who are the appropriate “representative institutions” for pan-Canadian FPIC in this context?

Analytical lenses

- Legal pluralism: Treat Indigenous legal orders as co-equal sources of law.
- Decolonization theory: Surface how process design can reproduce or disrupt colonial relations.
- Social dominance theory: Explain how “neutral” rules can entrench hierarchy and shape uptake/compliance.

Working proposition

- Non-FPIC processes erode trust and interpretive clarity, weakening legitimacy and uptake; FPIC-aligned co-design strengthens both.



Methods & Data

- **Document analysis**

Corpus: FLSC 2023 Consultation Report Draft, drafts/appendices, consultation emails, external submissions

- Coding: inductive themes + deductive FPIC/TRC criteria; track where Indigenous input (if any) altered text

- **Semi-structured interviews**

- 20 Indigenous legal professionals across Canada (region, role, gender diversity)
- 60–90 minutes by Zoom/phone; honorarium; confidential; member checking
- Focus: experience of the process, practical impacts, and “representative institutions” under UNDRIP Article 19

- **Contribution analysis**

- Theory of change: consultation quality → trust/ownership + interpretive clarity → legitimacy/acceptance → day-to-day implementation
- Test links with evidence; weigh rival explanations (e.g., resource constraints, general change resistance)

Design: qualitative, multi-method; triangulation across three strands

- **Deliverables**

- FPIC indicator matrix; UNDRIP-compliant consultation template; policy brief and practitioner toolkit you can find on my website at: fpicinpractice.com



Expected Impact & Timeline



- **What this project will deliver**

- Evidence on how FPIC gaps affect legitimacy, acceptance, and implementation of Rule 3.1-1
- An FPIC-aligned consultation framework for law societies (who to engage, when, and how)
- Indicator matrix to assess consultation quality and uptake
- Practitioner tools: policy brief, toolkit, and workshop modules

- **Why it matters now**

- Aligns self-regulation with UNDRIP Act (2021) and TRC Call to Action #27
- Strengthens regulatory legitimacy and public confidence
- Shifts from symbolic reforms to co-designed, trauma- and culturally-informed practice

- **Timeline and status**

- Oct–Dec 2025: Interviews underway; preliminary findings memo
- Jan–Feb 2026: Contribution analysis; draft recommendations and policy brief for feedback
- 2026: Finalize dissertation; release toolkit; schedule briefings/workshops

Chi-miigwetch, merci, thank you

website: fpicinpractice.com
email: tansi@fpicinpractice.com

Andrea Menard (Métis) LLB, LLM, DSocSci Candidate, Royal Roads University