HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Indigenous and Northern Affairs

INAN • NUMBER 100 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, March 27, 2018

Chair

The Honourable MaryAnn Mihychuk

Standing Committee on Indigenous and Northern Affairs

Tuesday, March 27, 2018

● (1605)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): This is meeting 100 of the Standing Committee on Indigenous and Northern Affairs of the 42nd Parliament, 1st session. We're talking about UNDRIP and, pursuant to the order of reference of Wednesday, February 7, 2018, 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.

Before we get started, we recognize that we're on the unceded territory of the Algonquin people here in Ottawa. We are in a process in Canada of coming to terms with the truth and moving in reconciliation.

It's our great honour to have the Grand Chief of the Assembly of First Nations in front of us today.

We welcome you. You'll have 10 minutes to present and then we'll move into questioning.

Excuse me. Before I open the floor to you, I see that we have maybe a bit of business to conduct.

MP Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Madam Chair, given that we're starting a bit late, I wonder whether we can split the time. We have an hour and a half, more or less. We could do 45 minutes for the first panel and 45 minutes for the second.

The Chair: I see shaking of heads. The Grand Chief needs to leave at 4:30. That solves the problem even more. He'll take 25 minutes.

We shouldn't cut into your time any more. Welcome, Perry. Please go ahead.

National Chief Perry Bellegarde (National Chief, Assembly of First Nations): Thanks, Madam Chair, and thanks, Gary, for that attempt. I have another function, but I'll get right into this, Madam Chair.

[*Witness speaks in Cree*]

I'm happy to be here thanking you all.

[*Witness speaks in Cree*]

I give thanks to the Creator for this day.

Also, we acknowledge the Algonquins, the Anishinaabeg peoples, and give them thanks as well.

To the members of the committee, I do have this written text, so we'll get right into this.

Madam Chair, members of the committee, friends, and relatives, thank you for inviting me here today to share the perspectives of the Assembly of First Nations on Bill C-262, the United Nations Declaration on the Rights of Indigenous Peoples act.

First nations across the country strongly support a legislative framework to advance the implementation of the UN Declaration on the Rights of Indigenous Peoples and support Bill C-262. We have waited a long time for this. We continue to call on all parties in this House and on each and every parliamentarian to support Bill C-262.

At the end of my presentation, I will suggest a few amendments to enhance the text and to reflect the current text, but I want to start by making a few simple points.

The United Nations declaration doesn't create any new rights. Neither does Bill C-262. These rights are inherent, and they're pre-existing. The UN declaration affirms indigenous peoples' human rights. What we're talking about now is realizing those rights, implementing those rights, and enforcing those rights, and finding a better way to work together so that we don't have to spend millions of dollars and waste years fighting in courts instead of advancing reconciliation. Closing the socio-economic gap for first nations and building a stronger economy and a better Canada for us all is what this means.

This bill is about working with first nations to realize existing rights. It's about working with us to establish the laws, policies, and practices needed to respect our rights and our status as self-determining peoples, replacing the laws, policies, and practices that have denied our rights for decades and have led to the socio-economic gap we are working to overcome today. This bill is reconciliation in action—real reconciliation—and this is where the rubber meets the road and actions replace words.

The chiefs in assembly have passed numerous resolutions calling on the Assembly of First Nations to work with Canada to advance the full implementation of the declaration. They support this legislation. They support the co-development of a national action plan, as required in this bill and by call to action number 44 of the Truth and Reconciliation Commission's 94 calls to action, which Canada has pledged repeatedly to fulfill.

Prime Minister Trudeau, Minister Wilson-Raybould, and Parliamentary Secretary Yvonne Jones have all affirmed the government's support for Bill C-262.

Bill C-262 will provide momentum and a plan for implementing the UN declaration in Canada, working with first nations in an orderly and timely way. This is something that Canada has repeatedly committed itself to do under several UN resolutions, including the declaration itself.

Passing this bill will advance Canada, as well as first nations peoples, in many ways. It will implement key aspects of the TRC calls to action. It will see Canada move forward on existing international commitments regarding human rights. It will provide a framework for the federal government to work in partnership with first nations to ensure that Canada's laws, policies, and practices are revised to realize rights, recognize rights, and implement and enforce rights, rather than deny rights. Also, it will provide transparency and accountability for everyone by requiring an annual reporting to Parliament.

I want to spend a few minutes now to talk with you about free, prior, and informed consent. That seems to be a focus of concern, so I want to be very clear on that. I know that it's talked about federally and provincially and by industry, so I want to focus on that right up front.

FPIC—free, prior, and informed consent—was not created in the UN declaration. It was not created in this bill. It already exists in international law. It is an essential element of the right of all peoples, including indigenous peoples, to self-determination, which Canada has recognized for decades.

Consent is the essence of treaty-making between self-determining nations. First nations already have the right to participate in decisions that can affect our rights, property, cultures, and environment, and our capacity to exercise our right to self-determination.

We already have the right to determine our own priorities, and we cannot be denied our own means of subsistence. What's needed is a better process, one that is designed with first nations and involves our people from the start. There is no need to reinvent the wheel here. Free, prior, and informed consent exists around the world. There is already a lot of international jurisprudence to draw on.

A lot of people want to focus on that V-word, “veto”, but the word “veto” doesn't appear in the declaration. It isn't in this bill. The declaration acknowledges the interrelationships between the rights of all people and peoples. To those concerned about free, prior, and informed consent, I would say this: you simply cannot tell a people that they have no right to say no to what happens to them in their own territories.

Imagine a system where you can't say no. That's what we have had for more than a century under the Indian Act, and that's what has led us to this mess we're in today. First nations must be part of the regulatory processes and all the decision-making respecting anything that affects us.

Working with us to figure out what that looks like is not only unavoidable and not only the right thing to do, but it's the smart thing to do. It will lead to more balanced, fewer acrimonious and better decisions, fewer court battles, more timely decisions, and better outcomes for us all. If you want economic certainty and economic stability, embrace the UN Declaration on the Rights of Indigenous Peoples and embrace the support for Bill C-262 going forward.

First nations are already exercising our right to say yes and our right to say no in regard to major energy and natural resource projects. This is all part of the broader conversation that takes place every day between different governments about resource projects—federal governments, provincial governments, territorial governments, first nations governments, and municipal governments. We are already part of that national intergovernmental dialogue, but we have more work to do, and we'll continue to exercise our inherent jurisdiction, sovereignty, and treaty rights as equal partners, not as subservient or junior jurisdictions.

This committee will no doubt offer some comments to enhance Bill C-262 in light of recent developments. In closing, I'll leave behind some recommendations, and I'll touch briefly on them now.

In the preamble, the bill refers to “doctrines” of “superiority”. First, the AFN suggests specifically naming the doctrines of discovery and *terra nullius*. The text could read as follows:

> Whereas all doctrines, including discovery and terra nullius, and all policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.

We also suggest some additional paragraphs in the preamble. Canada has repeated four principles to guide the approach to working with first nations: recognition of rights, respect, co-operation, and partnership. Including those principles in this law would be a welcome addition to this bill. I also suggest that there is a value in highlighting the importance of treaties, agreements, and other constructive arrangements.

My suggestion for additional text for the preamble is already in the leave-behinds you have. It reads:

> Whereas Parliament and the government of Canada are committed to relationships with Indigenous peoples that are based on recognition of rights, respect, cooperation and partnership, which are essential elements in Canada's constitutional framework and international human rights law;
>
> Whereas the standard of Crown conduct in all actions, including government litigation strategies, must be consistent with these elements; and
>
> Whereas treaties...and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between Indigenous peoples and States.

I just note that this last proposal on treaties is already affirmed in the 15th preambular paragraph in the UN declaration.

Finally, I want to hold up and acknowledge Member of Parliament Romeo Saganash for his long-standing commitment both to the declaration and to ensuring federal legislation is brought forward.

● (1610)

I also wish to acknowledge first nations leadership and advocates over the past three decades, who have helped to bring us to this point: Grand Chief Willie Littlechild, Mr. Kenneth Deer, and Grand Chief Ed John. They're just a few of the many who have worked for decades to advance the declaration.

Passing this bill and implementing the declaration will build a stronger country for us all. It will advance reconciliation between Canada and first nations, and it will help to close the socio-economic gaps in the quality of life between first nations and the rest of Canada.

This legislation is something that every member of the House should support. I want to read something for you very quickly. In a very historic address to the 72nd session of the UN General Assembly on September 21, Prime Minister Justin Trudeau acknowledged the failure of Canada to fully respect the rights of indigenous peoples, and acknowledged that the UN declaration is not merely an aspirational document. He said:

> We now have before us an opportunity to deliver true, meaningful, and lasting reconciliation between Canada and First Nations, the Métis Nation, and Inuit peoples.
>
> And as we embark upon that process of reconciliation, we are guided by the minimum standards adopted here, in this chamber, ten years ago this month.
>
> I know that Canada has a complicated history with the United Nations Declaration on the Rights of Indigenous Peoples.
>
> We actively campaigned and voted against it, then endorsed it in the most half-hearted way possible, calling it an “aspirational document.”
>
> The Declaration is not an aspirational document. It means much more than that to the Indigenous Peoples and others who worked so hard, for so long, to bring the Declaration to life.
>
> In the words of Canada's Truth and Reconciliation Commission, the Declaration provides “the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada.”
>
> That's not an aspiration. That's a way forward.

Now I'll take your questions. Thanks.

● (1615)

The Chair: Thank you.

We'll start with MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Madam Chair. I'll be sharing my time with MP Amos.

Grand Chief and panel, welcome back to the committee.

I'd like to start with respect to an overall framework for the implementation of UNDRIP. Is Bill C-262 as a stand-alone enough? Or do we need other measures in order for us to fully implement the provisions of UNDRIP?

National Chief Perry Bellegarde: It's a good question, MP Gary. I think we've said that it's a start, a beginning. At least adopt this. Going forward, you can build upon it. That's the simplest and shortest answer I can give. It's a good start.

We know from the February 14th words of the Prime Minister that the rights and reconciliation framework is going to be worked upon, but this is something that's here now, so you can use that and build upon Bill C-262 going forward.

Mr. Gary Anandasangaree: What other elements would be important in this? You mentioned the recognition of rights framework that was introduced by the Prime Minister. Are there other elements that we need in order to be able to fully implement UNDRIP?

National Chief Perry Bellegarde: Yes, there are many things that can be worked on, but I don't have the exhaustive list in front of me. I'll have to check with my legislative drafters to make sure that I read it right. There are a lot of things that can be done.

When you start thinking about how you can implement the UN Declaration on the Rights of Indigenous Peoples, you need to have the national action plan. You can look at legislation. As well, you can look at putting in requests to the provinces and the territories to also pass legislation. There's a whole framework that can be dealt with, no question.

As well, there is building upon the UN declaration, but we also have in place section 35 of Canada's Constitution. We always that say we don't want to wait. I mean, we know that it's a full box of rights, which includes the inherent right to self-government and the inherent right to self-determination. We don't want to have to wait 25 years again—i.e., the Tsilhqot'in case—before those rights are recognized. Also, we don't want to go down that legal road unnecessarily. It's a waste of time, energy, and money. We have some things to build upon, no question.

Mr. Gary Anandasangaree: You've acknowledged the work of our colleague Romeo Saganash. Can you advise us in terms of consultation in developing this legislation? Did the AFN and your members play an integral role in developing Bill C-262?

National Chief Perry Bellegarde: Not directly, but Romeo had an extensive consultation process across Canada on his own. He's been to numerous tribal councils and PTOs, and there have been resolutions of support passed. We didn't have to do anything. He did all the work.

However, we did discuss and pass it in our AFN chiefs assembly as well, so there is a clear indication of levels of support from leadership across Canada for Bill C-262.

Mr. Gary Anandasangaree: I have a final question. You've discussed the issue of FPIC. That's come up on numerous occasions, and of course the issue of a veto has come up. You're quite clear in terms of where you stand on this.

Should Canadians be worried? Should people who for a number of years now have said that UNDRIP essentially offers a veto be worried in terms of moving forward? What do you have to say to them in order to put this to rest once and for all?

● (1620)

National Chief Perry Bellegarde: I would say to the people who have concerns over free, prior, and informed consent that there's no need to worry. Nobody is going anywhere in this country. Already, the right to self-determination has been recognized in previous covenants that have been adopted by this country and nation-state.

The two I'm referring to are the covenant on economic, social and cultural rights and the covenant on civil and political rights. All reference the right to self-determination, which has always been the right to say yes and the right to say no. I would say to people and to federal governments, provincial governments, and private industry that it's all about working together, creating that space for dialogue and making sure that before you try to build anything, you build a respectful relationship with indigenous peoples. If that can happen, you're going to create greater economic stability and economic certainty in all the provinces and territories once it happens. That's what I would say.

Mr. Gary Anandasangaree: Thank you, Grand Chief. I yield the rest of my time to MP Amos.

The Chair: You have about two and a half minutes.

Mr. William Amos (Pontiac, Lib.): Thank you, National Chief Bellegarde. It's really wonderful to have you here. Thank you for your testimony.

I have two very quick questions.

Number one, I represent a number of Algonquin constituents in the Pontiac region, as you know. Both for my indigenous constituents and for my non-indigenous constituents, what change could they expect in the years following the enactment of a bill such as the one that's being proposed? Concretely, what would they see and what could they expect as outcomes?

National Chief Perry Bellegarde: I would hope that they would see a gap being closed, the gap that exists between indigenous peoples and non-indigenous peoples in Canada, because you're going to create economic certainty and economic stability, and you're also going to create greater involvement by indigenous peoples in the economy, with a balancing of the environment and the economy with our full involvement and inclusion.

The gap that I continue to talk about and needs to be addressed and closed is the “sixth versus sixty-third” gap. According to the United Nations human development index on quality of life, Canada is rated sixth, but when you apply the same indices to indigenous peoples, first nations people, then we're sixty-third. That's sixth versus sixty-third.

For the Algonquin people and the non-indigenous people in your riding, you can say to them that once Bill C-262 is adopted, and once the UN Declaration on the Rights of Indigenous Peoples is fully embraced, endorsed, adopted, recognized, and implemented, you will see a greater involvement of indigenous peoples in the economy. You'll see greater participation by and success rates for young first nations men and women who are graduating from high school, because proper education will be in place. This gap will start to close.

That's the really meaningful outcome and output of the adoption of Bill C-262 and the UN declaration. It really truly is a road map to reconciliation. I've always said that in this country nobody is going anywhere, so we have to find ways, roll up our sleeves, do the tough work of dialogue, and find that common ground. That's what I'd say to them.

Mr. William Amos: Thank you. Do I have time for a very brief follow-up?

The Chair: No. I'm sorry. We're moving on to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you for coming here today. I'm going to do a bit of a preamble and then leave time for you to share your thoughts.

It is of course no secret that we do have a few concerns in terms of what this bill means. I do want to note that we have asked the justice department for a definition of consent. I don't believe we've received it. If we could ask the justice department again for that definition, I would appreciate it.

I'm not sure that we aren't going to end up in more court cases rather than less. I really do believe that.

For example, I think a natural resources project that's a mining project is pretty straightforward. Any company that wants to do a mine knows full well that they have to have full engagement from the very beginning with the community where they want to create this mine, whether it's for Ajax or Prosperity. I think the message is pretty clear.

As an example, I watched Kinder Morgan spend years and years.... Of course, the fact that they have 51 agreements speaks to the work done by both the federal government and those 51 communities. Mr. Saganash indicated that free, prior, and informed consent had to include everyone, so what we would have, as I see it, is a gridlock, a deadlock, that we don't have with the current framework.

For my other example, I will use the Liberals' marijuana legislation, where I would suggest that they didn't hold true to any kind of even an attempt to have good conversation and get consent around that. The law is of general application. Who do you get consent from? How do you move forward? Right now, the federal government is arguing in court that moving towards free, prior, and informed consent would fetter the ability of the federal government to make laws around general application.

In a nutshell, I think those are some of the areas that certainly we are very concerned about. To date, the testimony has not alleviated my concerns.

● (1625)

National Chief Perry Bellegarde: Those were good comments. I totally respect the comments of MP Cathy.

The comments I'll make have two or three points.

Having an impact benefit agreement doesn't necessarily mean that you support the project. You can have it signed, but that doesn't say, “Hey, we totally endorse and support it.” Some feel that it's going to happen anyway, so they say, “Let's see what we can get out of it.” But they don't really like it. To me, that's kind of a good...but it's also a misindication of support for any particular project. I think each project would have to be assessed on its own merits, looking at the facts and the law in each instance, point by point and project by project.

You mentioned Kinder Morgan. Again, you have those 50 plus first nations that have signed IBAs, and then you also have the Tsleil-Waututh Nation that says no. Why are they saying no? It's because they're impacted. Has anybody asked them why they are so steadfastly opposed to it? It's because they're going to be most affected by it. They're right at the end of the pipeline. As you can see, you have to attest and look at it case by case. Some first nations are going to be greater affected than others. That's just one example.

We support the right to self-determination for first nations people, which is the right to say yes and the right to say no. The rights and titleholders have that right, not the AFN, but the rights and titleholders. We always support those who say yes and those who say no.

I see your point, but—

Mrs. Cathy McLeod: Currently within the legal framework of Canada and the jurisprudence, I would suspect that the courts will uphold the federal government's ultimately making that final decision in what is the best balance for all Canadians.

With regard to free, prior, and informed consent, if you follow Mr. aganash's bill through to its natural end, free, prior, and informed consent should be imbedded. It should be absolutely.... The courts very conceivably will be doing different interpretations.

National Chief Perry Bellegarde: I would say.... I didn't finish my three points, Cathy.

Mrs. Cathy McLeod: I'm sorry.

National Chief Perry Bellegarde: The other point I was going to make is in regard to the IBAs. Under the Kinder Morgan one, the project was approved under the old NEB process, and that's a flawed process. First nations' concerns weren't addressed. If you have a flawed process, you're going to get poor results. That's an example. You welcome the updating of the whole regulatory review process. It has to be updated. Again, if rights had been respected initially, you wouldn't be at this point. The whole point is to get out and build those relationships sooner rather than later in order to create that economic certainty. That's on that one point.

You mentioned the marijuana legislation as well. Even on that one, 75% of the excise tax goes to the provinces now and 25% to the feds. Well, first nations governments are going to be impacted by that. Where were we in all of this dialogue and mix as well? That's another issue. That's something else.

FPIC is preceded by “duty to consult and accommodate”. That's there, so we always say that we have to go beyond the duty to consult and accommodate. It's the crowns have the obligation to make sure that those processes in the duty to consult and accommodate are in place. It's the crowns: the federal crowns, the federal government, and the provincial governments. We have to be clear on that.

Section 88 of the Indian Act is about “laws of general application”. Why do the provinces always...? Here's my push for first nations jurisdiction, and I've always said this publicly: if we don't want federal or provincial laws to apply, then we create our own laws. We occupy the field and exert our jurisdiction, whether that be child welfare, education, health, matrimonial real property, or whatever the case may be. We as first nations, if we're going to be truly recognized as having the right to self-determination, as being here, then we exercise and occupy the field. That will take care of section 88 and the laws of general application because our laws will apply. That's where we need to keep going.

I think that once that's respected we're going to create a better Canada. That's what I believe. For this point on FPIC and duty to consult and accommodate, the whole point is to get the dialogue started sooner rather than later. Don't come in after the fact. If you come in after the fact, you're going to cause fights.

● (1630)

The Chair: Chief, it's 4:30.

National Chief Perry Bellegarde: Okay.

The Chair: You have time to hear from MP Saganash or....

National Chief Perry Bellegarde: Yes, I'd like to hear from MP Saganash.

The Chair: How much time do you have? All right. There you go. It's a deal.

Voices: Oh, oh!

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): You're so generous.

[*Member speaks in Cree*]

I respect that you have a time limit here. I'll be very quick with my questions.

Subclause 2(2) and clause 3 of Bill C-262 declare that the UN Declaration on the Rights of Indigenous Peoples has application in Canadian law already. Do you agree with that?

National Chief Perry Bellegarde: Yes.

Mr. Romeo Saganash: Good. That's settled.

Are you aware of any other precedent of this type in other countries? This is going to be a legislative framework for the implementation of the UN declaration. Is there any other precedent that exists in other countries?

National Chief Perry Bellegarde: My learned colleague knows. Do you want to have Jennifer respond? There's Bolivia.

Ms. Jennifer Preston (Consultant, Assembly of First Nations): Both Bolivia and Venezuela have the UN declaration as part of their constitutions.

Mr. Romeo Saganash: Thank you.

I've listened carefully to the present government in terms of what it is trying to achieve in reconciliation and so on and so forth. The words it uses are “recognition of rights”. In my view, recognition of rights already exists.

Our rights are recognized in the Constitution. Our rights have been recognized by the courts, by the Supreme Court in particular. Our rights are recognized already by the UN Declaration on the Rights of Indigenous Peoples, because it is said that those rights are inherent, so they exist because we exist as indigenous peoples.

Should it be “respect of rights” rather than “recognition” in this particular case? That's been the problem over the years. Although the Constitution recognizes our rights and although the courts have recognized our rights, the problem has always been the respect for those decisions by the Supreme Court and respect from governments of those rights.

National Chief Perry Bellegarde: [*Witness speaks in Cree*]

That's a very good question.

To all the respectful MPs here, I'm going to totally agree with that piece about it being more than recognition of rights. Even in my speech I added three other words; I added other words to my speech. It wasn't just recognition. We talk about enforcement, about implementation of rights. Those are operative words. It's one thing to talk about recognition of rights and respect for rights, but how are they honoured, implemented, and enforced according to the spirit and intent? Section 35 states that “existing aboriginal and treaty rights are...recognized and affirmed”.

They're already recognized and affirmed in section 35. We need to operationalize that and force those rights and implement those rights, but if we don't create a mechanism to do that.... That's the challenge. We need to have something, so go beyond the recognition, the respect for rights, and move towards enforcement and implementation of rights.

Êkosi.

● (1635)

Mr. Romeo Saganash: I'll remember for the rest of my life that you've given me five minutes.

Voices: Oh, oh!

The Chair: I'll probably hear about it again, I would suspect.

National Chief Perry Bellegarde: My apologies, Romeo. I do have to leave. Thank you for the opportunity.

The Chair: Thank you for coming by. I'm sorry that we were delayed. I see that your suitcase is already leaving.

We'll suspend for a couple of minutes. I'd ask our new panel, Amnesty International Canada, the Canadian Human Rights Commission, and First Nations Summit, to come forward.

● (Pause) ●

● (1640)

The Chair: According to the agenda, we now will start with Amnesty International.

Craig, you're welcome to start.

Mr. Craig Benjamin (Campaigner, Indigenous Rights, Amnesty International Canada): Good afternoon. My name is Craig Benjamin. I am here on behalf of Amnesty International. I'd like to begin by acknowledging the Algonquin people, whose traditional territory we have the privilege of meeting on today.

I'd like to thank the committee for this opportunity to speak with you today on such an important subject, one about which I feel very strongly.

The adoption of the United Nations Declaration on the Rights of Indigenous Peoples more than 10 years ago, on September 13, 2007, was an extraordinary moment in the global history of human rights. Here is an international human rights instrument specifically dedicated to ensuring the survival, dignity, and well-being of individuals, families, communities, and nations around the world that have been the subject of extreme systematic and pervasive violation of every right imaginable, resulting in situations of impoverishment, marginalization, and dispossession that are the tragic and appalling shame of the global community.

Despite the ravages that have been inflicted, here is a progressive, inspiring human rights instrument that was developed through the expertise, advocacy, and persistence of indigenous peoples themselves. In fact, the UN declaration represents the first time in the history of the United Nations that the very people whose rights are at stake, the very people who best understand the patterns of abuse that put their lives and cultures at risk, were able to sit down with representatives of states like Canada and consider how the international human rights system could be adapted and applied to meet their most urgent needs.

I'm a member of Amnesty International's campaign staff in Canada. I'm responsible for the research, policy, and advocacy work that helps our organization and our membership across Canada and around the world stand as allies in the promotion of the human rights of first nations, Inuit, and Métis individuals and communities. My job most days is to help call out the pervasive and profound injustices that have so often characterized Canada's treatment of indigenous peoples.

However, today I want to emphasize that the adoption of the UN declaration is a story in which Canadians can take genuine pride. I had the opportunity to represent the global movement of Amnesty International in the concluding years of the development of the declaration at the United Nations. I saw for myself the crucial role played by indigenous experts from Canada: people such as Romeo Saganash, Grand Chief Edward John, Celeste McKay, and Grand Chief Wilton Littlechild, who also addressed the committee. I saw the important supportive role played by Canadian non-governmental organizations such as the Canadian Friends Service Committee and Rights and Democracy.

I also witnessed the critical role played by Canadian government officials in the final days of the negotiation, when federal government representatives at the UN working group were able to build an effective working relationship with indigenous peoples from Canada and with the global indigenous caucus to help advance the declaration.

This collaboration set a positive example for other states. It made visible the spirit of the declaration and its repeated calls for partnership and collaboration, and it allowed this spirit of cooperation to triumph over the rigid defence of the status quo that had locked many other states into unconstructive, adversarial positions.

The text that eventually emerged was the product of the consensus reached between states and indigenous peoples. This consensus, this hard-won achievement, is also part of what makes the declaration so powerful and so important today. It's only fitting, then, that with Bill C-262, Canada again has an opportunity to set a positive example for the rest of the world.

Amnesty International has endorsed Bill C-262, and we commend all those members of Parliament who have supported it so far. Bill C-262 sets out a principled framework by which the promise of the UN declaration can be brought to life in Canada. The elements of the bill, a legislated commitment to reform laws and policies, to elaborate a national plan of action for the implementation of the declaration, and to ensure regular reporting to Parliament, are exactly what international human rights bodies like the UN Committee on the Elimination of Racial Discrimination have called on Canada to do.

● (1645)

Just as important, Bill C-262 sets out a framework for collaboration between the Government of Canada and indigenous peoples in this important shared work. This is wholly consistent with the spirit in which the declaration was developed, and it now takes that work to the next logical and necessary step. Bill C-262 is about how the declaration will be implemented in Canada, the principles that will guide this implementation, and the relationships among indigenous peoples, government, and Parliament necessary to do this in the best way.

Critically, the passage of Bill C-262 is not about a choice of whether the UN declaration will be implemented in Canada. That work has already begun. Canadian courts and tribunals routinely turn to international human rights standards to help understand how the laws passed by Parliament can be best interpreted and applied. It's a well-established Canadian legal principle that courts can and should presume that Parliament intends to honour Canada's international obligations, and that domestic laws must be interpreted in a way that complies with these obligations.

These are principles that are already applied across a wide range of law in Canada. There is no reason that the United Nations Declaration on the Rights of Indigenous Peoples should be excluded. In fact, the declaration is already being used in exactly this way.

To take one example, in 2012, as part of the long legal battle in a case well known to this committee, the first nations child welfare case, the Federal Court of Canada explicitly stated that the UN declaration should be used in the interpretation of the Canadian Human Rights Act and the federal government's responsibilities under that act.

After the first nations child welfare issue went back to the Canadian Human Rights Tribunal, many of the parties to that case, including the Canadian Human Rights Commission and Amnesty International, made arguments based on the interpretation of the declaration. In its final ruling, the Human Rights Tribunal did in fact make significant use of the declaration. In its discussion of the declaration, the tribunal also made this statement, which I think is particularly relevant to today's discussion. The tribunal said, “Canada’s statements and commitments, whether expressed on the international scene or at the national level, should not be allowed to remain empty rhetoric.”

There are numerous other examples of how the declaration is already helping shape how the laws passed by Parliament are interpreted and applied. For members of Parliament interested in better understanding the declaration's provisions on free, prior, and informed consent, there is an excellent summary in a 2014 report from a federal impact assessment panel, one that reviewed the proposed New Prosperity mine in British Columbia. That panel appropriately took note of the fact that the Tsilhqot'in Nation had withheld their consent. It took that lack of consent into consideration in its finding that the mine would have serious impacts on their lives and culture.

We can anticipate that Canadian courts, tribunals, and other bodies will continue to play a role in interpreting and applying the declaration in the future, but there are obvious drawbacks if indigenous peoples have to continue to rely on such mechanisms as the primary way to give effect to rights and protections set out in international law. Chance can play a large role in deciding what issues end up before the courts. Legal and administrative hearings can be extremely slow and costly to all involved. Requiring indigenous peoples to go to court if they want their rights respected imposes an onerous and unfair burden, and such processes are inherently adversarial, something that runs contrary to the intention of reconciliation.

Bill C-262 provides an alternative: an opportunity for a collaborative process in which priorities can be mutually agreed and systematically advanced, where Parliament will remain apprised of the progress made and the government will be held accountable. This is a model that's not only needed in Canada; it's one worth promoting to the world.

Finally, on that note, Canada should not interpret and apply the UN declaration in isolation. Other countries are also grappling with its implications. International mechanisms, such as the UN Special Rapporteur on the rights of indigenous peoples, the UN Permanent Forum on Indigenous Issues, the UN Expert Mechanism on the Rights of Indigenous Peoples, and treaty bodies, all continue the work of interpreting the standards that are set out in the declaration. While Canada has the potential to set a positive example for the world, Canada also has much to learn from these processes.

Thank you.

● (1650)

The Chair: Thank you.

We now move to the Canadian Human Rights Commission, with Marie-Claude Landry and Valerie Phillips.

Ms. Marie-Claude Landry (Chief Commissioner, Canadian Human Rights Commission): Good evening.

[*Translation*]

I would like to begin by acknowledging that we are meeting on the traditional territory of the Algonquin people.

Thank you for inviting the Canadian Human Rights Commission to take part in your study into Bill C-262. I'm joined today by Valerie Phillips, the commission's general counsel.

Allow me to briefly tell you about the Canadian Human Rights Commission. Internationally, we are recognized as Canada's human rights watchdog. Domestically, we promote and protect human rights in Canada.

As part of our protection mandate, we receive and assess human rights complaints that relate to federal jurisdiction, and once we assess them, we determine if a complaint is referred to a separate body, the Canadian Human Rights Tribunal, for adjudication.

The commission embraces the declaration and supports this bill as an effort towards ensuring that human rights justice is available to all indigenous peoples in Canada. Implementation of the declaration moves us all towards greater reconciliation.

Testimony you have heard or will hear from indigenous peoples is of capital importance. The commission would like to offer a unique perspective—a perspective nourished by our experience and our work with indigenous people.

As an early adopter, the commission has integrated the declaration in all aspects of its work, such as its training of employees, its pleadings, its public statements, its publications and its work in policy development.

Integrating the declaration in our work is done in an effort to further the goals of this important human rights instrument. More specifically, it's a matter of normalizing its use in Canadian law and society.

Over the past 10 years, since the repeal of section 67 of our act, 9% of the commission's complaints have involved indigenous people or issues. The declaration deals with the principles of equality and non-discrimination that parallel the Canadian Human Rights Act.

As a result, numerous litigations have been impacted by the declaration, most notably the First Nations Child and Family Caring Society v. Attorney General of Canada (Representing the Minister of Indian Affairs and Northern Development Canada).

[*English*]

Based on this experience, we have two questions for your consideration. First, who will have access to these rights when the bill is passed? Second, how are these rights given life?

First, when this bill is passed, will it be clear who has access to these rights? At first glance, the answer may appear obvious—first nations, Métis, and Inuit peoples—yet issues surrounding indigenous identity are a source of continuous, lengthy, and costly litigation.

Over the course of the last 10 years, the commission has dealt with approximately 160 complaints that touched upon indigenous identity issues, engaging matters such as band membership, legislative benefits or rights, and status. These complaints can be lengthy and oftentimes very complex.

This is also evidenced by the numerous challenges to the Indian Act, the Daniels case, and an older Supreme Court decision about whether Inuit people fell under federal jurisdiction. What distinctions, if any, are to be made regarding first nations, Inuit, or Métis peoples? Clarification of this issue should be made a mandatory requirement in the national action plan or in the framework on the recognition and implementation of rights announced by the federal government in February 2018.

A second question we have relates to how the rights embedded in the declaration will be made available to the rights holders. If the UN declaration informs the content of section 35 of the Constitution, then rights holders will be able to assert these rights through a variety of court processes and administrative tribunals. However, our experience has been that proving these rights under section 35 has been an uphill battle for indigenous peoples.

● (1655)

We are concerned that this high onus will create a barrier for those seeking to exercise their rights as articulated in the declaration. If the goal is to ensure broad access to these rights, then clear language should be added to the legislation specifying how rights holders can access their rights.

It is our position that these rights should be made broadly and proactively available to all indigenous peoples and should be easy to access, and that there should be clarity to the scope of these rights and how they will apply in Canadian law. Greater and easier access to justice is a key component of human rights justice and, one could argue, of reconciliation as well.

These two questions—who is covered by these rights and how—may strike you as more theoretical in nature, yet our experience has clearly shown that organizations like the commission continue to struggle with them.

Article 1 of the declaration speaks of both collective and individual rights protection. From our perspective, concrete guidance is needed to relieve the tensions between collective and individual rights. This includes the universality of human rights protection as it relates to indigenous self-determination and self-government.

The clearer Parliament can make the application of rights, the more likely these rights will be accessed. We know this because easy access to justice has not always been the case.

In 2008 a significant barrier was lifted, giving indigenous people the ability to make a discrimination complaint under the Canadian Human Rights Act when it relates to the Indian Act. Up until then, there had been a 30-year ban on these kinds of complaints.

Yet since these changes to the act were made, there has been ongoing litigation about the scope of these rights as they apply both to the federal government and to indigenous governments. This past year, the commission argued the Matson and Andrews case before the Supreme Court of Canada, which touched upon all of these issues. We are awaiting this important decision, because it will address the question of Parliament's intent regarding the commission's ability to accept complaints related to a person's Indian status.

In conclusion, one thing we know after 40 years of human rights experience is that people living in vulnerable circumstances will often abandon their complaints rather than fight these lengthy legal battles. Time, cost, access, and lack of clarity all serve as barriers and may prove to be counterproductive to the ultimate goals of the bill.

The commission is eager to see the full potential of the UN declaration realized. Our experience in integrating it into the core principles of human rights justice has been positive and will continue to guide our work.

Madam Phillips and I are happy to take any questions you may have. Thank you very much.

The Chair: Very good.

We will hear from Grand Chief Edward John of the First Nations Summit.

Grand Chief Edward John (Political Executive Member, First Nations Summit): Thank you.

I acknowledge the Algonquin people on whose ancestral lands where we gather here. I also want to acknowledge your presence and the work you are doing on this particular bill.

I want to acknowledge the presentations by my colleagues. Craig Benjamin's remarks are part of the remarks I wished to cover, and I think he's done a very capable job on the history and the role of indigenous peoples in the development of that particular UN instrument, on the work of the Human Rights Commission here in Canada, on part of the work under the Paris principles, and on the role of human rights commissions, both nationally and subnationally with provincial human rights bodies.

I attended the remarkable event in the House yesterday. I heard and saw the dignity with which the Tsilhqot'in chiefs were present, but I also saw and heard the dignity of your presentations from the parties, from the representatives who spoke. How moving that was in the context of Canadian history, both now and going back in time to the history of British Columbia, to see the dignity with which the chiefs who were executed were exonerated and to see the lifting of a heavy load from the shoulders and the backs of the Tsilhqot'in peoples ourselves and indigenous peoples in British Columbia.

I heard the apology that was extended to Tsilhqot'in peoples and that helped lift them from that place of very deep grieving and sadness. To me, it is a very significant step, and it is an important act of reconciliation. I come from north of the Tsilhqot'in people. We share the same language. We're neighbours and relatives, and have been throughout our history, and we know each other well. Their pain was really something that as children we heard about, too, with the execution of those five chiefs in Quesnel. I stepped back and listened very carefully to the six presentations that were made. It showed a remarkable turning of a chapter in our country.

In that regard, I want to talk about article 43. There are 46 articles in the declaration, and everybody wants to talk about one article, or maybe two. We have to take the 23 preambulatory paragraphs and 46 articles in the declaration and look at them together. Article 43 is the purpose of the declaration.

Craig was talking about Amnesty International and many other great non-governmental organizations, indigenous peoples, and I was there during the negotiations of the declaration over many years. I was there when Louise Arbour was the high commissioner. Our former justice of the Supreme Court of Canada was the High Commissioner for Human Rights when the declaration was approved. You should call her as a witness here. She has a remarkable depth of knowledge. She was the one who really cracked the whip, in a way, to get the declaration done. The ambassador from Peru, a remarkable chair, was able to assemble all of the disparate arguments and positions in Geneva and come up with one document. There was not consensus on everything. Right to the last minute, there were disagreements, yet we came up with the one document.

There was a vote in the Human Rights Council. I was there that day. I saw the vote. It disturbed me that Canada voted no.

● (1700)

Canada actually had been a very constructive partner in the development of the declaration. I need to say that. The people from Indigenous and Northern Affairs and other federal departments who were there—plus the mission in Geneva—were able to bring to bear a long process of collaboration that made the declaration possible. They were collaborating with very disparate indigenous peoples around the world, different governments across the world, and 192 states at the UN.

It was remarkable to see the vote that day. In 2006 that declaration was sent to the General Assembly in New York. It got delayed for one year, but when the time came to vote, it was adopted at the UN General Assembly. I was there as well. Following that, I spent six years—two three-year terms—as an expert member of the UN permanent forum on indigenous issues, the body that advises the United Nations on indigenous matters globally. There are 370 million indigenous people around the world.

I chaired the permanent forum for one year. It was an honour to be involved with indigenous peoples, state parties, non-governmental organizations, and UN bodies in New York.

Now I want to come back to the story about the Tsilhqot'in chiefs, the exoneration and the apology, the dignity, and that act of reconciliation. Article 43 states, “The rights recognized herein constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world.” Survival, dignity and well-being....

Following the apology, there was a three-hour session with the Tsilhqot'in leadership and chiefs. A Tsilhqot'in woman stood up and for 45 minutes spoke about the Tsilhqot'in women. If you recall what the Tsilhqot'in chiefs said, they declared an act of war because their women were raped by those coming into their territory. A young girl.... We talked about the dignity and well-being of the Tsilhqot'in people. You take that concept and apply it to all indigenous peoples in this country. Bill C-262 should be supported by all parties, the same way you supported the Tsilhqot'in people in the House yesterday, because it's about the same issues.

This instrument is important to us. On February 14, 1859, the governor of the colony of British Columbia issued a proclamation saying that "[a]ll lands...and...Mines and Minerals therein, belong to the Crown in fee". This was an act of aggression, similar to what Russia has done with the Crimean peninsula. They took over that land, so what were the people to do? They declared war.

On February 14, 2018, Prime Minister Justin Trudeau got up in the House and spoke at length. He said that we're going to turn the page, we're going to recognize the rights of indigenous peoples, we're going to implement them. I heard the words "recognition" and "implementation". The most insidious instruments of history are the doctrines of *terra nullius* and the doctrine of discovery and the papal bulls that gave them moral authority through the European notions of international law in the late 1400s and the early 1500s.

We live with that today. The consequences of that are what is before us. This bill and this declaration can help turn the tide and level the playing field. That's what I want to propose to you. I haven't read any of the notes from my speech, but I really think that the presentation by the national chief was very good. I endorse that, as I've said, and I endorse all the answers to his questions, so I'm not taking any.

Voices: Oh, oh!

Grand Chief Edward John: I will leave it at that. I do have a written submission, which I will present to the clerk.

● (1705)

The Chair: Thank you very much. I think your comments were well received and passionate. I appreciate your history and wisdom.

The questioning will now start with seven-minute rounds, so it looks like we'll probably have three. Each party will have an opportunity.

We're going to start with MP Danny Vandal.

● (1710)

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Thank you very much, Grand Chief John, Craig, Marie-Claude, and Valerie. I appreciate your presentations. I appreciate as well all your hard work for many years on UNDRIP and getting it to this point, especially you, Grand Chief John.

I think it's been recognized by the sponsor and several people that UNDRIP does not create any new rights. The rights that we have are already in our Canadian Constitution, and they exist in this country.

Grand Chief, can you describe to me how UNDRIP provides clarity to the existing rights of indigenous peoples in Canada?

Grand Chief Edward John: Subsection 35(1), which is an important constitutional provision, has 17 words and says:

> The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

I would like to underscore the words "hereby" and "recognized and affirmed". That was April 17, 1982. I was here under the late Prime Minister Trudeau. We fought for those words, except that the word "existing" was added by British Columbia and Alberta, because then the B.C. government was able to argue that "they've been extinguished, therefore they don't exist". The courts rejected that argument.

From 1982 until recently, somehow we've had to go to the courts to prove that we exist as peoples and that our rights exist, our aboriginal rights and treaty rights. What is wrong when a nation cannot understand the word "hereby"? On April 17, 1982, the word "hereby" was there. What does it mean? It means "exist". It doesn't say anywhere in there that we have to go to court to prove that we exist, or that we have title, or that we have to define it.

It's taken us this long to get to this place where the government actually can say, after dozens and dozens of court cases in British Columbia and across the country, where the courts have honoured the words of the Constitution to say they breathe life into the instruments.... The courts have said that the treaties have been honoured in the breach. Section 35 should have been implemented from day one but wasn't. We celebrated on April 17, 1982, but then we were in the courts in countless cases.

Now I think we're at this place where we need to talk, but not just about recognition. We have to talk about how we implement, how we recognize coexistence on aboriginal title and the coexistence of crown title. That's what we need to work out, and that process is under way now under the new federal approach to recognizing title: that remarkable presentation by the Prime Minister on February 14—one hundred years after the James Douglas proclamation—that said we're going to change this, we're not going to continue down this road of denial, and now we're going to embark on recognition and implementation. It's a good place to be.

Mr. Dan Vandal: You went right to my next point. You're talking about the address the Prime Minister made in the House of Commons on February 14 whereby the government would commit to define those rights in partnership with first nations, Métis, and Inuit.

In essence, that is an essential next step to UNDRIP. Would you agree with that statement?

Grand Chief Edward John: I would take that word “define”, exchange it for another word, and say how these rights will “coexist”: how an indigenous government, an indigenous governmental authority, and the national government can work out the coexistence of their relationship.

In the process, you'll have to work out the details of the nature of that coexistence, but you're not denying indigenous lands or title to the lands. You're not denying indigenous peoples authority to govern themselves, and you're not denying crown title or crown authority. Now you're figuring out what the relationship ought to be. That's the nature of the work ahead of us.

● (1715)

Mr. Dan Vandal: You're recognizing that the rights exist: a recognition of rights framework. That's good news.

Craig, do you have anything to add?

Mr. Craig Benjamin: I'll add one thing, which picks up on the Grand Chief's point about this long history of indigenous peoples bearing the burden of having to constantly prove their rights through these long and onerous processes. The declaration not only gives us an enormous body of substance developed by some of the best minds on indigenous rights in the world, but it also does away with the isolation of indigenous rights into this unique separate category and brings that into a larger world of human rights. With that, there's a fundamental shift in perspective.

The National Chief talked about looking at the positive obligations of the declaration, looking at the operative language. When we talk about human rights internationally, we talk about the responsibility to respect, protect, and fulfill that obligation to take positive action. I think if we see this as an instrument for Canada to take up that burden that's been on indigenous people's shoulders, and accept that positive responsibility to breathe life into and fulfill these rights, we'll see enormous progress.

Mr. Dan Vandal: Thank you.

I think I have only about 30 seconds left.

The Chair: Your time is very short.

Mr. Dan Vandal: To Marie-Claude and Valerie, I saw that one of your questions was about how these rights will be given life. With the exercise we started over a month ago on recognizing and trying to define the rights in section 35, I see that as breathing life into UNDRIP, and Bill C-262, which we are talking about today, as one of the first steps we have to take.

The Chair: That is your time allocation.

We're moving over to MP Viersen.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Madam Chair, and thank you to our guests for being here today.

My questions will be mostly for the Human Rights commission folks. I'd like to thank you in particular for being here today.

In 1977 Pierre Trudeau introduced the Canadian Human Rights Act. This act intended to protect human rights of Canadians by allowing them to file complaints of discrimination if they felt their rights had been violated. The 11 prohibited grounds of discrimination were.... You probably know the list. What is interesting about that particular act is that section 67 had an exemption for the Indian Act. People who lived under the Indian Act weren't able to use the human rights tribunal. The exception was repealed in 2008 under the Conservative government, which brought first nations into a level playing field when it came to human rights violations in this country.

I was hoping that you could address some of this. We hear all the time that indigenous rights are human rights. If that is the case, do we not have the mechanisms in place already to recognize all the things that are in this little booklet on the rights of indigenous peoples?

Thank you.

Ms. Valerie Phillips (Director and General Counsel, Canadian Human Rights Commission): You're right. Section 67 was repealed in 2008.

Just as a point of clarification, the Canadian Human Rights Act is primarily an act that allows complaints in the area of employment and services, so it's actually a good example to discuss today in terms of how a complaints-based mechanism can limit access to rights, as Marie-Claude, the Chief Commissioner, mentioned. The commission was before the Supreme Court of Canada just a few months ago about an interpretation of the Canadian Human Rights Act.

The repeal of section 67 promised that indigenous people could file complaints in relation to the Indian Act, so Mr. Matson and Mr. Andrews filed complaints about historic discrimination because they had women in their family who had married outside to non-status men. What happened when it went all the way to the Supreme Court was the question of whether the determination of Indian status under the Indian Act was a service under the Canadian Human Rights Act.

It was a technical legal question, but it's a good example of what happens when we rely on a complaints-based system, so the commission is supporting, as Marie-Claude mentioned, proactive and broadly accessible rights. I think it's important to point out that this government is currently considering that in the areas of accessibility and pay equity. There are ways to give rights to people without a complaints-based process. Ideally, that's a last resort. There has been too much on the backs of indigenous governments and individuals who have had to go all the way to the Supreme Court and back again.

The Human Rights Act is an incredible instrument. It's powerful. It has changed our country. Is it enough? No, not in this circumstance. There's a lot more that needs to be discussed.

● (1720)

Mr. Arnold Viersen: When this bill passes, in the future what in particular will change on the day it passes? It's not clear to me that we are going to go away from the “I must claim my own rights” system that we have currently, even though this clarifies a whole bunch of rights that we may or may not have. What will change on the day this bill passes?

Ms. Valerie Phillips: I think the beauty of this bill as it's drafted is that it allows for a considered dialogue and review of laws in Canada that has the proper voices at the table. Some of the concerns that have been raised are important ones, and I think they can be raised through the national action plan, the legislative framework that's been discussed. How they'll work together is I think something that's to be determined, but there's a 20-year reporting relationship that's contemplated by this bill.

I think what's starting is a really important dialogue. That's what will start the day after this bill is passed.

Mr. Arnold Viersen: You would say that's different from the current discussion we're having, just the addition that there is now a reporting mechanism? I wouldn't say that we have been on the road to reconciliation for a long time; it's been an aspirational document for a long time already.

Is it only the reporting mechanism? Is it that the government must now say that the House of Commons must have a report that says how far along we are on this journey? Is that essentially the only difference?

Ms. Valerie Phillips: Well, I think the bill requires a number of things. I don't know if any of my friends want to answer, but the wording talks about Canada ensuring that the laws of Canada are in compliance with the declaration.

Grand Chief Edward John: Thank you.

That word “aspirational” is a Conservative Party word, and I've never accepted that word. It's more than aspirational.

What happens on the day this bill passes? Well, the declaration has been in place for over 10 years. It is part of the international legal construct of human rights in dealing with indigenous peoples. The earth is not going to shatter, and the world is not going to come to an end.

It's the same as with section 35 when it came in. The Conservatives in British Columbia and Alberta were opposed to section 35 and said that the world as they knew it was going to end. It didn't come to an end on April 17, 1982, and neither will the adoption of this bill end the world as we know it.

There are going to be new standards. The human rights standards and the declaration have been there for over 10 years now, and they are important human rights standards. They exist as part of international law already. You can't pick and choose which human rights standards you apply. They all apply.

Mr. Arnold Viersen: That's my point exactly. What is going to change on the day that this...? If you are saying nothing is going to change, why are we going through this whole exercise?

Grand Chief Edward John: No, no. What will change is that there will be legal underpinnings for the rights and the declaration, and Canadian law will have to be considered in harmony with the human rights standards internationally. There are international human rights standards, some of which are absolute, some of which are relative. The absolute standards are around the issue of genocide. The relative standards are other standards that need to be balanced, and this is a process that will take place over the next decades.

Mr. Arnold Viersen: Thank you.

The Chair: Thank you.

Questioning now moves to MP Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair.

Welcome to all of you.

[*Translation*]

I will first turn to you, Ms. Landry.

I really liked your presentation, as well as those made by other witnesses.

I would like to start with a simple question. Have provincial commissions, or the Canadian Human Rights Commission, referred to the declaration in their decisions, either before September 13, 2017, or after September 13, 2017?

● (1725)

Ms. Marie-Claude Landry: The commission is what is referred to as an organization tasked with screening, or performing the first step. The commission has used the declaration on a regular basis in its presentations and its pleadings, as well in its promotional, prevention and policy development work.

Mr. Romeo Saganash: Since we are talking about the Tsilhqot'in Nation, I will bring up a decision the Supreme Court of Canada rendered in June 2014.

The Supreme Court of Canada said that the Canadian Charter of Rights and Freedoms, which is contained in part I of the Constitution, and section 35, which is in part II of the Constitution, were sister provisions.

How does your commission interpret that?

[*English*]

Ms. Valerie Phillips: If you don't mind, I'll respond in English.

The United Nations declaration makes it clear that indigenous rights, equality laws, and anti-discrimination laws are complementary and coexist. In fact, it's a wonderful example of how they can exist together.

Also, just to go back to your first question, the commission has been supportive of the declaration before Canada adopted it. The federal, provincial, and territorial commissions have put out statements of support for this declaration for years and have used it in litigation.

This isn't either-or. Madam Landry mentioned in her speech that there are tensions sometimes between individual and collective rights. The declaration talks about that as well.

I'm not sure if that answers your question.

Mr. Romeo Saganash: When the Supreme Court refers to part I, which is the Charter of Rights and Freedoms, and part II, section 35, the sister provisions, how does that impact the role of the Attorney General of Canada, for instance, who is obligated under section 4.1 of the Department of Justice Act to make sure that any legislation, before it is introduced, is consistent with the Charter of Rights and Freedoms? Is there now a new obligation for the Minister of Justice to make sure that any legislation is compatible with section 35? Is that your understanding?

Ms. Valerie Phillips: Arguably, there always has been an obligation that the framework should have been applied since 1982.

Mr. Romeo Saganash: Thank you.

The Grand Chief, and perhaps Mr. Benjamin as well, could tackle this one. The Conservatives have a long-standing view that declarations in international law are aspirational and don't have the same status as international conventions or international treaties. Don't declarations have legal effect in this country? I'm reminded of what Justice Dickson said in one of the cases in 1999, which was that international instruments such as declarations are r“relevant and persuasive sources” to interpret domestic laws. Is that your view as well?

Grand Chief Edward John: The 1948 Universal Declaration of Human Rights is still a declaration. It's not a convention, but it's widely applied internationally. This declaration is the universal UN Declaration on the Rights of Indigenous Peoples and sits in a parallel place with the 1948 declaration.

Secondly, I would ask that the researchers here look at—I think—the 1965 Vienna Convention on the Law of Treaties. The declaration stands, in its interpretation or use, in a position similar to those international treaties or conventions and it's not treated in any lesser category.

As well, where a state adopts an international instrument such as the declaration or conventions, subnational governments such as provincial and territorial governments in Canada would be bound by those standards as well.

Mr. Craig Benjamin: I fully agree. Declarations do have legal effect. In my presentation I gave examples of the declaration being used in courts, tribunals, and quasi-judicial bodies.

The UN Declaration on the Rights of Indigenous Peoples already does have legal effect in Canada. All declarations do, and I would suggest that this one in particular, because of its history, has a particular moral force and a particular authority that's very significant.

The other thing to point out is that the UN Declaration on the Rights of Indigenous Peoples was built on the basis of the interpretation of those conventions. For example, a full 10 years before the adoption of the UN declaration, the right of free, prior, and informed consent was elaborated by the UN expert committee that was charged with the interpretation and application of the International Convention on the Elimination of All Forms of Racial Discrimination.

● (1730)

Mr. Romeo Saganash: How much time do I have?

The Chair: You have about 45 seconds.

Mr. Romeo Saganash: Grand Chief, you spoke about coexistence in your presentation. Is that the direction this country should take with respect to indigenous peoples and their rights and interests in this country? I'm reminded of the Supreme Court in the Haida Nation case, where it talked about reconciliation. The Supreme Court said that the objective is to reconcile the pre-existing sovereignty of indigenous peoples with the assumed sovereignty of the crown. Is that the framework we should also consider?

Grand Chief Edward John: Yes, the Supreme Court has referred that. That is a very excellent reference around the reconciliation between the assumed crown sovereignty with pre-existing aboriginal sovereignty.

Practically, what does it mean? We have the Delgamuukw and Gisday'way cases, and the Tsilhqot’in case that talks about the existence of aboriginal title as a legal interest in land: that it continues to exist and has never been extinguished, and that the indigenous people have the right to make decisions about that title, they can have economic benefits, and they can manage and occupy the territories.

Those are the rights. They've been established in the Supreme Court of Canada. How does that now coexist with crown title and crown authority? The way to sort it out is through that tables that are now developing across this country that would help resolve that through good faith agreements between the crown and indigenous peoples.

The Chair: Thank you so much. *Meegwetch*. *Merci*.

That ends our session. I appreciate your patience and your coming out to present to us. Thank you very much.

The meeting is adjourned.