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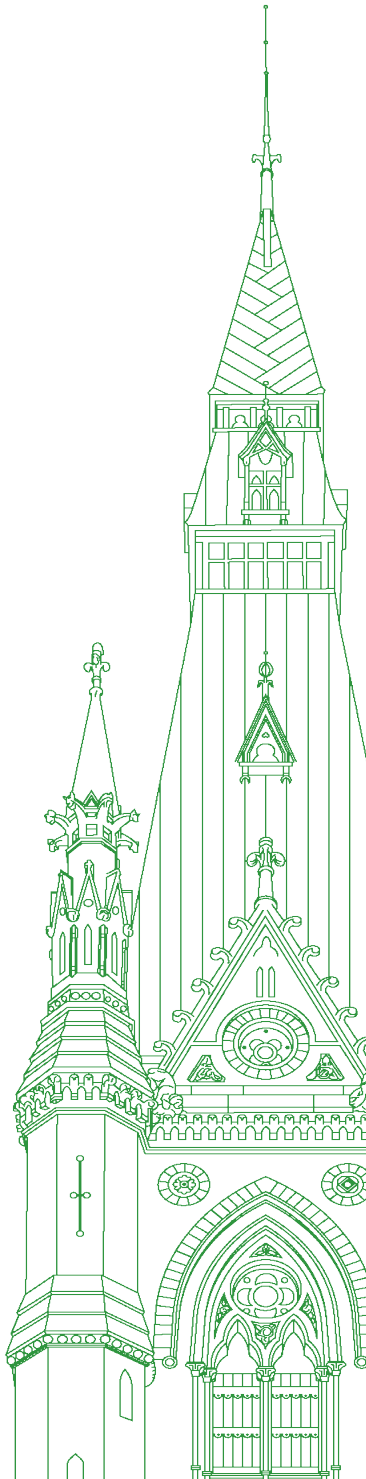

Chair: Mr. Bob Bratina

Standing Committee on Indigenous and Northern Affairs

Thursday, March 11, 2021

● (1110)

[*English*]

The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)): Having a quorum now with proper technical connection, I accordingly will call this meeting of the indigenous and northern affairs committee to order. I'll start by acknowledging that, in Ottawa, we meet on the traditional unceded territory of the Algonquin people.

Pursuant to Standing Order 108(2) and the motion adopted on February 25, 2021, the committee is continuing its study on the subject matter of Bill C-15, an act respecting the United Nations Declaration on the Rights of Indigenous Peoples.

The artwork that you see behind me is a photo of a remarkable group of sculptures located near my office at the site of the 1813 Battle of Stoney Creek, four “nine-foot-high granite eagle figures inscribed with symbols and text arranged on a circular plaza.” The artist, David General, is Oneida, a member of the Six Nations of the Grand River who works in “a distinctive style” using “interpretations of the cultural traditions of the Haudenosaunee and Anishinabek communities to address the theme of healing and reconciliation.” I am sure that it will be in that spirit that we conduct the business before us.

Members of the committee and witnesses, please speak in the language of your choice. You can select the language at the bottom centre of your screen, in the globe, where you will find “English” or “French”. When speaking, ensure that your video is turned on, and please speak slowly and clearly. When you are not speaking, your microphone should be on mute.

We have our witnesses ready. We have Professor Brenda Gunn, a professor from the Faculty of Law at the University of Manitoba. From the Indigenous Resource Network, we have Arnie Bellis, chair; and Heather Exner-Pirot, research adviser. I believe we've agreed that Thierry Rodon, as an individual, will be the third member of the opening panel.

Professor Gunn, please go ahead for six minutes.

Professor Brenda Gunn (Associate Professor, Faculty of Law, University of Manitoba, As an Individual): [*Witness spoke in Northern Michif as follows:*]

Tawnshi. Brenda Gunn niya. Winnipeg ni weekin. Ma famee Red River ouschi.

[*Witness provided the following translation:*]

Hello. My name is Brenda Gunn. I live in Winnipeg and my family is from the Red River.

[*English*]

I am Métis, and, as noted by the chair, I am an associate professor at the University of Manitoba Faculty of Law. I have worked in both international and constitutional law, including the application of international human rights law in Canada, for almost 20 years now. I've developed a handbook on implementing the UN declaration and I've done many presentations on the UN declaration and how to begin implementing it domestically.

Today, I am speaking from Treaty 1 territory and the homeland of the Métis nation, my home territory. I want to acknowledge also the Algonquin people, as the House of Commons is located on unceded Algonquin territory.

Thank you for the invitation to be here today. I am very grateful to be here and I want to acknowledge my co-panellist as well.

I will start by saying that on March 22, 2018, I sat before this committee, invited to present on Bill C-262. As I prepared for my presentation today, I was wondering what I should say, thinking about what has changed and evolved over the past three years. I kept returning to the same thought: it is devastating that we have lost these three years, three years that could have been spent developing a national action plan building on the work of the Truth and Reconciliation Commission and the national inquiry, three years where indigenous peoples have continued to have lower socio-economic and health outcomes than other Canadians. Three years is a long time. In fact, it's a lifetime to my daughter.

I support this legislation because I think it is an important step toward reconciliation, toward recognizing inherent human rights, toward a fairer and more just Canada for all.

When speaking about the UN declaration, and why I believe it to be the framework for reconciliation, I often highlight four key preambular paragraphs that I'm going to read out to all of you now.

The first is, “Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such”.

The second is the UN is “Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”.

The third is the UN is “Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith”.

Finally, the fourth is that the UN “Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect”.

What these four preambular paragraphs tell me is that in Canada we need to stop believing in mythologies that recognizing the rights of indigenous peoples is going to somehow tear Canada apart. We have to accept that we are broken, that indigenous peoples have paid too high a price for the development of Canada for too long. We have to accept that the only way to reconcile is to recognize the rights of indigenous peoples and shift from a colonial relationship to a relationship based on justice, democracy, respect for human rights, non-discrimination and good faith.

With this understanding of why we have a UN declaration, and its significance in Canada, I want to just highlight one key aspect to the substantive rights included within the UN declaration. Specifically, I want to note that the UN declaration includes economic, social and cultural rights in areas such as language rights, education, health care, housing and economic development, all of which are critical to the exercise of civil and political rights.

Under the international human rights system, there is no hierarchy of rights.

● (1115)

Under Bill C-15, a national action plan that can be developed is critical to ensure that economic, social and cultural rights receive the same level of attention and consideration as political and civil rights.

During the prolonged debate over Bill C-262 there was unfortunate fearmongering that claimed that it introduced uncertainty, highlighted concerns around indigenous peoples' right to free, prior and informed consent, and implied that indigenous peoples might try to stop all resource development projects from proceeding.

From my perspective, these so-called concerns highlight the need for a better grasp of the UN declaration in Canada and the need for a coordinated effort to implement the UN declaration into Canadian law in a way that builds upon the over 20 years of international human rights jurisprudence on which the UN declaration is based. Canada was very slow in turning its support toward the UN declaration. There is a lot of work to do. We've lost a lot of time and now is the time for action.

While Bill C-15 is not going to resolve all problem and tensions between indigenous peoples in Canada, it can be part of the solution. Bill C-15 includes some critical steps toward developing a plan to implement and realize indigenous people's inherent rights. It includes important accountability measures to ensure Parliament puts words into action. It addresses some of the misunderstandings of the application of the UN declaration in Canada.

Marsi. Thank you. I look forward to your questions.

The Chair: Thank you very much, Professor Gunn.

Next we have Chair Arnie Bellis and research adviser Heather Exner-Pirot of the Indigenous Resource Network.

You have six minutes. Please, go ahead.

Mr. Arnie Bellis (Chair, Indigenous Resource Network): Thanks for allowing us to present to the standing committee.

My name is Arnie Bellis. My Haida name is Gwaii Gwanglan. I'm a member of the Staa’stas Eagle Clan in the Haida Nation.

There's a lot to speak to. The young lady before me did a very good job of summarizing the history of Canada and its relationship with first nations.

I tend to look towards the Canadian Constitution that we fought for in the world wars. It talks about multiculturalism, rights and all those wonderful things that we live under.

I find it interesting that first nations people had to go to the Supreme Court numerous times to have those rights upheld and worked on.

I'll let the statistics of the land speak for themselves in terms of the employment and all the incarceration, and so on. They speak for themselves.

We used the resources for 10,000-plus years, and from there we developed a very sophisticated society. We found ourselves under the Indian Act, and people were working hard to move us to their line of thinking, in terms of their religion, and move us off our mythology.

In saying that, to a certain extent our intellect was stunted. Now we're back on track, and we're looking to use our resources to enhance those things, such as culture and mythology. Under the Constitution of Canada, we're allowed to do that.

As one thing, the Haida people went down to 580 people from 12,000 plus because of smallpox. Yet we're still trying to define our relationship with Canada, where all could benefit—and it works both ways.

We developed the IRN to speak for the working people of first nations. We're a non-partisan group. We're a young organization. We saw the need to participate in this discussion to try to evolve that relationship between first nations and Canada—and industry, too.

I have an extensive background working with industry and coming to some really positive situations that provide solutions for both parties.

I have been studying Bill C-15 and participated in a number of round tables and consultations and Zoom conferencing, and our members have done the same. Heather will add more detail to that.

Part of it is the economic development. That's one wedge of the pie. There are other wedges, too, that have to be addressed. I talked about the environment, the culture and things of that nature.

We also realize that other things exist in this world, and one of them is investors. In order to stand up more, and things of that nature, we have to have investors. First nations are not exempt from that. We like to attract investors but not give away the farm, so to speak. But also, we fully understand that we need that mechanism.

● (1120)

In saying that, I'll get right to it. We'd like to participate in the action plan and I think we could have a really good, clear conversation on how to make it enhance the relationship in a stronger way and to come to a place of greater understanding. There is understanding between first nations and Canada now, but that's evolving on a daily basis.

With that and talking to a friend in the Business Council of British Columbia, I know the UNDRIP situation is already starting to cost investors a bit. We need to concern ourselves with that if we want to make ourselves a reliable group to invest in.

With that, Mr. Chair, I'd like to thank you again, and I'd like to thank Romeo Saganash and the individuals who brought this to fruition so we could speak to it. I have some friends who went to the UN for a lot of years, you know, and took time out of their lives to develop this. I'd like to say *hawaa* to them and thank them very much for their sacrifice in being away from their families. I'd like to acknowledge that.

● (1125)

The Chair: Thanks, Mr. Bellis. We're over the allotted time.

Mr. Arnie Bellis: Okay, sure.

The Chair: Anything further will come up through questions, and if anything is not covered that needs to be covered, we will take written submissions for some time afterwards. If you feel that something has been missed, please take that opportunity.

We will go to Thierry Rodon for six minutes. Please go ahead.

[*Translation*]

Mr. Thierry Rodon (Associate Professor, Department of Political Science, Université Laval, As an Individual): Good morning to all.

Thank you very much for inviting me to appear before the Standing Committee on Aboriginal and Northern Affairs.

I am a professor of political science at Laval University, but I work more specifically on aboriginal issues, particularly on aboriginal politics in Canada and elsewhere. It is therefore from this perspective that I will deliver my speech. I am also working on a research project on relations between indigenous communities and mining companies in Canada, Australia, Fennoscandia and New Caledonia. It focuses on the issues of the implementation of free, prior and informed consent and the social acceptability of mining projects in indigenous communities.

So I'm not going to talk to you about the legal aspect, even though I'm familiar with its issues, but rather about the issues and the power relations that are being created in Canada. I'm going to dwell on the issue of uncertainty, because it is very poorly understood. In fact, I think that we are currently experiencing uncertainty with regard to major projects.

Unlike Canada's usual aboriginal policies, which tend to maintain the colonial relationship that has been established since 1867 through the notorious Indian Act, this is a policy that stands out because it focuses on the relationship between Canada and the first peoples. This is a change that we have seen with the new Department of Crown-Indigenous Relations. That's why I'm very supportive of this legislation, which will allow to change that relationship. In fact, it has started a little bit, but it's mostly symbolic. I think it is necessary to have legislation in this regard, even if it is imperfect—legislation is always imperfect—and it can be criticized, and rightly so.

In my view, the legislation must recognize that a relationship with indigenous people, the first peoples, must be established and that solutions must be found. In my opinion, the bill has the potential to contribute to the reconciliation process that is underway, but with many failures. We all saw the armed intervention of the RCMP against an aboriginal group, the Wet'suwet'en. These are the questions we need to ask ourselves. These are things that are happening now.

I am pleased to see that consultations are being carried out with indigenous peoples, although in my view, they should be expanded. I will come back to this, because we must ask ourselves who should be consulted on these issues. At present, the major national aboriginal organizations are being consulted, which is a good thing, but I think that we need to go a little further.

I will now return to the issue of uncertainty, because commentators who oppose this legislation often mention it. This surprises me a little bit, because, in my opinion, the uncertainty already exists. It won't be brought about by the legislation. Right now, in Canada, there is uncertainty about the development of major projects, especially linear ones, but also about mining projects. I know this subject a little better. In general, mining projects are less problematic, because fewer parties are involved. However, they can create extremely high tensions.

Here are some examples, which you all know. First, there's the Trans Mountain project, which resulted in a rare cabinet decision that was overturned by the Court of Queen's Bench of Alberta. Then there's the Coastal GasLink Project, which I mentioned briefly when I talked about the police action against a group, the Wet'suwet'en, who was opposing that pipeline. Finally, there is another case that we are less familiar with, and that is the Mary River Mine in Nunavut, operated by Baffinland, whose expansion plans are under threat, even though they had the support of Inuit organizations.

Those familiar with the Nunavut agreement will know that specific processes were put in place for consultation and approval of projects, even though approval ultimately rests with the federal government. All of these procedures were intended to lead to consent. But there was no consensus, because the Inuit communities on the ground opposed the expansion, blocked the airport, and ultimately put the expansion of this mine in jeopardy.

● (1130)

I would say that we don't yet know how to get free, prior and informed consent. Having a bill that helps define it better will help avoid all these conflicts.

Indeed, the uncertainty is in the conflicts, for now. There will always be some, because we cannot eliminate all conflicts, but there is a problem with not having a clear way to act on these issues. The failure to address the rights of indigenous peoples has created significant costs to Canadian society. If we don't want to think about it in terms of law, we can think about it in terms of economics.

In fact, in the course of my research, I observed that indigenous communities have appropriated free, prior and informed consent. They are implementing it at the moment in the only way they can, which is by establishing a power relationship. Mr. Saganash may be able to tell you about this, but the Cree have a very clear policy that no mine will open on their territory unless they give their consent. This is a way of establishing a power relationship, and they have established it. It can also be done through blockades and airport blockades, for instance.

It is therefore important that free, prior and informed consent is better integrated into the legal framework. This is what Bill C-15 will try to do and it could help to reduce this uncertainty.

I'd now like to talk about some recommendations or conclusions that have come out of my research, but which may be helpful to this committee.

First of all, defining free, prior and informed consent is not a problem. We know what consent is. However, there are two more complex questions: when is consent needed and on what project?

We have a lead with the Delgamuukw case and the issue of consent, which already exists in Canadian law. I won't go into that in detail.

Secondly, and perhaps most importantly, there is the question of who should consent. Who should consent is a problem that arises very much from the colonial relationship between Canada and aboriginal communities, with traditional governments and Canadian governments.

Thank you.

[*English*]

The Chair: Thanks, Mr. Rodon.

Let's go right to questioners now.

The round is six minutes to begin with.

Mr. Schmale, go ahead.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you very much, Chair.

Good morning to our witnesses.

There is lots of great testimony today, and I want to start off by saying that we here on this side of the aisle do support the spirit of UNDRIP. There are a lot of good parts to it that I think will take us on the path to reconciliation and to having that important and meaningful conversation.

As many of you know, the issue we have with it, as some of you have said in your testimony, is with FPIC and the “C”, the consent, and what that means.

Maybe I'll start with the IRN. I've looked at your website, and your organization knows that there are already barriers that exist to attracting investment to your lands and to your people and that Bill C-15, without a proper definition, could add yet another barrier and potentially take away that idea of investment in jobs and opportunity in some of your communities.

Do you want to comment on that?

● (1135)

Dr. Heather Exner-Pirot (Research Advisor, Indigenous Resource Network): Maybe, Arnie, I'll jump in first and you can follow up on me.

It's a pleasure to be here. My name is Heather Exner-Pirot and I serve as a research advisor for the IRN.

The answer to your question is yes. As Arnie mentioned, we've been doing our research on C-15, and we have some close relationships with some members of industry. We reached out to mining, to oil and gas, to hydroelectricity, to railroads, to some investors, to pension funds and to private funds.

We've also spoken closely with our colleagues at the Indian Resource Council, the FN LNG Alliance and the First Nations Major Projects Coalition to get a sense of the practical implications of C-15.

There is a lot of concern. You don't have to take my word for it. I encourage you to talk to investors yourselves. If our particular principle is that first nations people—indigenous people—deserve economic development and resource development is almost certainly the best opportunity to get that, then certainly we want to have an environment in Canada where resource development can happen.

In speaking to all of these people, yes, there was a sense that Canada is not a good place to invest and that there is some risk. C-15 is one more thing that adds to risk because it isn't clear what consent requires. Is it a band council resolution? Is it a referendum? Who is the representative institution? Is it hereditary chiefs? Is it the band council? Is it any member of a nation? All these things just make it riskier for capital.

We did hear that it's very difficult to invest on indigenous territory because it's very risky. I think you're all aware that indigenous peoples have been getting more involved, especially since the duty to consult decision in 2004-05. They've moved from being employees to being contractors, and to now becoming equity owners themselves. When they have been going out to try to attract equity—and that is the future—there is a risk premium for indigenous nations to attract capital, to do their own resource projects, to be their own proponents and to attract that equity.

As Arnie mentioned, talking to the B.C. Business Council to see what had been the implications of their Bill 41,they said that yes, the premium has been 1%. That's the number they said. There's a 1% risk premium attached to B.C. resource projects since that bill itself passed.

Where I'm coming from, personally and professionally, I want to see indigenous people being able to benefit fully in resource development. I understand that there's a commodities boom coming and that we're kind of coming out COVID-19. However, if we add three years of uncertainty—as we develop an action plan—to the ability of investors who want to invest in indigenous territories when indigenous people want it themselves, I think tens of billions of dollars are at stake in their development. I honestly do.

Mr. Jamie Schmale: I don't know if you want to add more, but we all heard the debate in the House of Commons. The government, in its own words, claims C-15 does not provide a veto yet they refuse to actually define what consent is.

To your comments about the concerns and uncertainty, you're right. If you add even a 1% risk factor to some investment, there are many places investors can take their money and resource projects. It doesn't necessarily have to be resource projects. I think it's almost anything. Adding that uncertainty does hurt the economic reconciliation that I think needs to happen as well.

Dr. Heather Exner-Pirot: I haven't spoken to a single indigenous person who doesn't support UNDRIP and the principles of UNDRIP. They're very cautious in coming out and saying that they don't want UNDRIP legislation, because that's not the sense.

We don't have to throw the baby out with the bathwater. I think this legislation could be amended to provide that clarity and that certainty to investors and to allow for investment in indigenous territory—without giving up all the rest of the rights and the ways they can be applied to improve many other aspects of indigenous people's well-being.

I think there are some amendments.... We're not lawyers. Our members are not lawyers. I guess your job is to figure out how to write this legislation so it doesn't deter billions of dollars in investment. If you talk to investors and industry, they will tell you that this is going to cause capital to flee and it will not make Canada an attractive place for investment.

Mr. Jamie Schmale: That's exactly our position. You said it more eloquently than I, so thank you for that.

Basically what we have been trying to say, and as you said, is not to throw the baby out with the bathwater. There are lots of good parts to this document and to the path, but there's a major part that we're having a problem with. As you said, it's our job as legislators to do our work without creating more uncertainty—so it doesn't get fought over in the courts for years and perhaps increase that 1% risk factor to 2% or 3%, which would almost dry up any opportunities.

● (1140)

Dr. Heather Exner-Pirot: Yes. There are lots of things—

The Chair: We're right at time. Thank you very much.

Could I just ask Madame Berubé and Madam Gill if the was translation okay? I was going back and forth and it was a bit confusing on the French. Are we okay with the translation?

Thank you.

Now we will move on to Mr. Battiste, for six minutes.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you, Mr. Chair.

On September 12, 2007, more than 143 countries endorsed the Human Rights Council's recommendation to extend human rights and fundamental freedoms with UNDRIP. I find it simply amazing that the most vulnerable bottom of global humanity was able to find so many allies within the United Nations.

Ms. Gunn, I know you have long experience with going to the United Nations yourself, establishing the UNDRIP handbook and creating awareness around it. Can you speak to what the significance of UNDRIP is? Have any of the issues been raised around the economic catastrophes that people continue to speak of in these 143 other countries that decided to give indigenous people the minimum human rights in the world?

Prof. Brenda Gunn: Thanks, Mr. Battiste, for your question. I will try my best to answer it.

I'm going to do it somewhat laterally and perhaps respond to the trends I see happening internationally.

I think it's really important for this committee and for our Parliament to be aware that there is growing acceptance internationally of the obligations of businesses and companies to uphold human rights. Right now, internationally, there are negotiations for a binding treaty on the obligations of businesses to respect human rights.

When we talk about implementing the UN declaration, which includes the right of indigenous peoples to free, prior and informed consent in certain circumstances, this is becoming very standard internationally. I would hope that Canada as a country that holds itself out as a leader in human rights is going to continue to positively participate in arenas where human rights are being pushed.

Even where we continue to sound these alarms at home, they are not being sounded internationally. In fact, even the World Bank, in their environmental and social framework for IPF operations, ESS7 on indigenous peoples includes free, prior and informed consent as one of the requirements for World Bank funding.

Maybe investors are saying they are concerned, but I can tell you that internationally the expectation is that industry is going to uphold fundamental human rights. The UN declaration is just one place we can turn to understand the rights of indigenous peoples.

As I alluded to in my introductory statement, the UN declaration is not the only instrument out there that's relevant. It is very clear, under other binding international human rights treaties to which Canada is a party, indigenous peoples have a right to free, prior and informed consent. This includes the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

While we all want to be aware of economic impacts, we also have to recognize that right now there are many indigenous peoples who are paying the price for development. Maybe we're talking about shifting some of the economic costs and benefits of certain developments, but I don't see Canada being offside by this consideration in the bill here. We are actually apace now with these international developments. If this doesn't happen, it's coming in elsewhere, so we might as well work now to start making sure that our domestic processes are upholding these international standards.

● (1145)

Mr. Jaime Battiste: My research of UNDRIP talks about how this was developed over 30 years by thousands of indigenous people across this globe. When you created the UNDRIP handbook, you began doing sessions all across Canada. We coordinated one together in Halifax.

Can you speak to what the consensus is that you have heard from indigenous academics and indigenous peoples on UNDRIP? What were their thoughts at these sessions you held?

Prof. Brenda Gunn: I can say, from my experience participating internationally, that many indigenous peoples turned to the international arena when there were challenges that they were facing domestically and could not find sufficient resolution.

What I have seen and heard, and even what I continue to hear today when I hear people speaking about Bill C-15, is that it's time to recognize these basic, fundamental, inherent rights of indigenous peoples. We can't keep treating indigenous peoples as lesser peoples. That's why I read out those preambular paragraphs. It's really time for Canada to recognize indigenous peoples as people. There's too much of Canadian law that is based on these racist ideas...in Johnson v. M'Intosh, back in 1823, that indigenous peoples were fierce savages whose occupation was war.

It really should be now in 2021 a time when we start rejecting those ideas and work with indigenous peoples to realize these fundamental human rights.

I think importantly that this bill has a lot of wisdom in that it's not just saying, okay, we're accepting UNDRIP, but it's actually forcing us to come to the table, sit down and come up with a plan to implement it. On these concerns that are being raised, the national action plan, this is the time and place to hash out some of these questions. It has built in the bill itself, in the legislation, a way to address these concerns and not to just say we're concerned that there might be impacts, but to study and come up with a plan that ensures that indigenous peoples and Canadians benefit from development.

The Chair: Thank you very much.

[*Translation*]

Ms. Gill, you have the floor for six minutes.

Mrs. Marilène Gill (Manicouagan, BQ): Thank you, Mr. Chair.

I would like to thank all the witnesses who are with us today.

I know Mr. Saganash is not here yet, but I would like to acknowledge the work he did in the last Parliament. I saw him fight for his bill, which, of course, is similar to Bill C-15, the legislation we are dealing with today.

I also want to salute the first nations people who, over the centuries, have made it possible for us to consider this bill today. As Mr. Rodon mentioned, this is symbolic. I believe that everything we can find in symbolism that can be made concrete is necessary. So I am happy to be with you today.

I will ask Professor Rodon a question.

Mr. Rodon, in the last issue of the journal *Recherches amérindiennes au Québec*, you wrote several articles on the issue of free, prior and informed consent.

Can you tell us more about the political uses of this notion?

Mr. Thierry Rodon: Thank you, Ms. Gill. I can certainly do that.

We published a special issue of the journal *Recherches amérindiennes au Québec* on the subject. There is little literature in French on this issue; there is a little more in English, but not much.

The idea was really to look at how it is implemented in practice rather than in legislation and declarations. That is the question we were asking ourselves. I don't know if I had time to say it during my presentation. However, when we talk to members of indigenous communities, we find that they consider this to be one of their rights. It is, in fact, because it is in the declaration.

So it is not a question of whether or not they have this right to free, prior and informed consent. They consider that they have it and, de facto, they try to implement it. You see it everywhere. With the Cree, it's very clear, even if they don't use the term in that way. In fact, one of my students conducted interviews not with the Cree, but with people in the Abitibi and Nord-du-Québec region. They said very clearly that if the Cree were opposed to a project, it would not go ahead. It's not a veto; it's just a political reality in which the Cree are a big enough player in the Nord-du-Québec region to decide whether a project is acceptable and whether it will benefit their community.

As mentioned, in other cases, there are obviously more conflicts. In these cases, the players do not have the power relationship that the Cree managed to establish over the years. I am not saying this in a negative way, on the contrary. It is to their credit that they have been able to regain control over their territory.

In other cases, players such as the Wet'suwet'en in British Columbia and the communities of Pond Inlet and Clyde River in Nunavut are taking this consent into their own hands and blocking airports and roads and so on. I think Ms. Exner-Pirot has made a good point about the investment issue. However, the uncertainty is already there; it's not going to be created by the legislation, because it's already there.

In Quebec, there is a pipeline project that would go through the North. The issue of consent is going to come up very quickly. For the time being, we don't really have the tools to deal with the situation. We will have to trust the legislators and those who look at what they do to see how we can implement this consent to increase certainty about the project.

We will have more certainty through the recognition of aboriginal rights. It is not by not recognizing them that we will have more certainty; we will just have more problems. This is a little what we saw in our different case studies, which were more focused on Quebec, but also on Colombia. One of our students wrote about this. If you're interested in this topic, you should read some of these articles.

● (1150)

Mrs. Marilène Gill: Thank you, Mr. Rodon.

At the end of your presentation, you mentioned questions about free and informed consent. You were talking about the definition, which can be a problem. I know you can't give a definition, but perhaps you could outline the problem.

You also spoke about the questions of when consent can be used and who should give it. Ms. Gunn pointed this out earlier.

Could you talk more about these multiple issues?

Mr. Thierry Rodon: On the issue of free, prior and informed consent, there is a tension between two ideas. First, there is a procedural version according to which the idea is not to obtain consent, but only to take steps that could lead to consent. It would be enough to do that. That's basically what the Canadian government has done so far. You do consultations and you make the decision at the end.

There is also the idea of more substantive consent, whereby the community must clearly give its consent. This can be done in a number of ways, including through a partnership between the community and the mining or gas company.

The most difficult part is really to determine who gives consent. In my research, I have seen that this is always the issue. In fact, it pertains to the legitimacy of governance structures. In Canada, aboriginal communities are increasingly giving themselves governance structures, but there are still many places where the situation is similar to that of the Wet'suwet'en and where the governance is that of the Indian Act and band councils. In my opinion, it's colonial governance, because it derives its legitimacy from the Indian Act and not from the people and the traditional governments still in place. It's a word—

[*English*]

The Chair: I'm sorry, we're over time. Perhaps it will reprise in later conversation.

Right now I believe Ms. Gazan is going to speak for the NDP.

Ms. Leah Gazan (Winnipeg Centre, NDP): Yes, thank you, Mr. Chair.

My first question is for Madam Exner-Pirot.

You spoke about three years of uncertainty, because that's the maximum time provided in Bill C-15. You claim that it comes with a cost for investors. I'd like you to comment on risk disclosure in international trade rules, especially in relation to land claims. In this country, areas that are still under dispute, referring specifically to land claims.... Aren't we negotiating international trade deals, then, on a lie?

● (1155)

Dr. Heather Exner-Pirot: I wish I could answer your question. I'm not an investment expert, but I will just say that I think the action plan is an excellent vehicle. Dr. Gunn mentioned this too. I think lots of people would be happy if we could focus on the action plan, make the legislation follow an action plan and—

Ms. Leah Gazan: I have a very limited amount of time. The reason I ask is that we know that risk disclosure is a warning you must provide investors, any investment, in terms of following law. I just wanted clarification on that.

My next question is for Ms. Gunn. The 1982 Constitution of Canada recognizes and affirms aboriginal and treaty rights, which is a general concept and has a level of ambiguity, and we know that. This has been a constant issue in defining the concept of aboriginal rights. Do you think that Bill C-15, which affirms the application of UNDRIP in Canada, will lessen this ambiguity?

Prof. Brenda Gunn: Thanks, Ms. Gazan, for your question. I'm going to try to answer it as quickly as I can.

There was included in the original Constitution the idea to try to negotiate additional understanding of section 35 through those constitutional round tables that were going to look at self-government, and those didn't succeed. We've had the very unfortunate situation in Canada where a broad general phrase, “aboriginal and treaty rights”, is what is protected in the Constitution, and with unsuccessful negotiations, you're right, it was left to the courts to determine. We continue to have litigation over the scope of these rights and some negotiations as well.

I do think that Bill C-15 and the UN declaration provide some useful supports, because they help flesh out that general understanding of what aboriginal treaty rights are. There's a whole list of rights that are included with the UN declaration that help us understand. I would just say, importantly, from my perspective, the inclusion of the economic, social and cultural rights as well as civil and political rights is really important, particularly when we think of indigenous women. I think the national inquiry as well as the B.C. inquiry into missing and murdered indigenous women highlight the way in which economic, social and cultural rights are particularly important for indigenous women and to ensure equality. We haven't seen as much success in litigating economic, social and cultural rights in either the Constitution or the Charter, so I do think there's a lot of clarity that can be gained through Bill C-15.

Ms. Leah Gazan: Excellent. Thank you so much.

My next question is for Mr. Rodon. Many of the concerns that are raised are around FPIC. I'm wondering if you could share with the committee your understanding of FPIC versus veto.

[*Translation*]

Mr. Thierry Rodon: This is a question worth asking.

In my opinion, when we talk about a veto, it is because we want to defuse this issue politically. I don't think aboriginal people are looking to veto. What they're looking for is a relationship. Obviously, the right to say no is part of the relationship and the discussion, but the veto is used in situations where people say yes or no.

I think that prior consent, given freely and with full knowledge of the facts, is a relationship. In this relationship, it is up to the two players to find solutions to achieve the project. In some cases, the project will not be feasible. The case of Matoush, which involved a uranium mine on the territory of the Cree community of Mistissini, was documented.

In short, it is not really a veto. If it is perceived in this way, it is because it is seen as a power relationship, which is often the case at present, since this is how it happens. By having legislation, we get out of this veto logic. It is a matter of seeing whether the parties can agree. At the end of the process, which aims to obtain this consent, we can no longer speak of a veto, even if we have the right to say no, because a veto is a refusal that has been expressed from the outset on a question.

So that's the way to look at it. Everyone has something to gain from this. Often one of the very simple ways of getting aboriginal consent is to make them partners in the projects. We're seeing that more and more, and that's one way to deal with the veto issue.

● (1200)

[*English*]

Ms. Leah Gazan: I just have one follow-up question.

The Chair: We're at time right now, Ms. Gazan. I'm sorry about that.

Ms. Leah Gazan: I have so many questions. Thank you, Chair.

The Chair: Yes, I know.

We're at time now. We could suspend and arrange the next panel, and hopefully get to Mr. Saganash as well as our other guests, or we could continue on with a second round.

Do you have any preference, Mr. Schmale and Mr. Anandasangaree? We will extend the meeting as needed on a motion to extend later on, but what's your feeling right now?

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Mr. Chair, my sense is that if we are willing to extend by, say, half an hour, then I suggest we do a second round, a shorter round of maybe three minutes each to the Conservatives and Liberals, and then maybe a minute and a half to the NDP and the Bloc. We can then switch over.

The Chair: Okay. Are you good with that, Mr. Schmale?

Mr. Jamie Schmale: That works for me.

The Chair: Madame Bérubé? Ms. Gazan? Everybody? Okay.

We will continue on now.

Mr. Vidal, you're up, and we'll have three minutes for this round.

Mr. Gary Vidal (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair.

We've heard a number of people reference the action plan today, so I want to go to Ms. Exner-Pirot and just quickly ask the following question.

My understanding is that the bill as it is now requires an action plan, as did Bill C-262, but the bill does not require the action plan to include any targets and/or deliverables. Professor Gunn, in her comments earlier, referenced a lost three years on the action plan since 2018. She also talked about that as the time and place to sort out many of the issues.

To me, it looks like maybe New Zealand has figured this out. They're doing the heavy lifting and putting their action plan in place before they implement the legislation.

Ms. Exner-Pirot, can you maybe explain, from your organization's perspective, what the value of putting the action plan before the legislation might be in addressing some of the uncertainty that you talked about in your investors?

Dr. Heather Exner-Pirot: Yes.

Not just investors, but also other indigenous organizations interested in resource development don't want that uncertainty. The general consensus from the people that we've been able to talk to is that the action plan would be a great vehicle. We have a lot of concrete ideas on things that can make it easier for indigenous people to attract capital, putting the “I” into ESG standards; procurement and things like that. I know our partners do too.

I think that the more the legislation makes clear that the action plan will fully articulate that there's a status quo until the action plan is agreed to, the better. Then you can have the consultation.

I know there's lots of concern that there hasn't been enough time, that this feels rushed, and I think that if there were an understanding that the action plan is the place where we can decide what's going to be different, what's going to change and what are going to be the practical implications of C-15, that would take care of a lot of people's concerns.

I'm sure that if you speak to other people in industry or pension plans, they might say the same thing, but certainly from the perspective of the indigenous organizations we're working with, they have lots of ideas for the action plan and prefer to see that be the vehicle.

The Chair: One minute please.

Mr. Gary Vidal: Thank you. I'll be really quick.

Professor Gunn, would you comment as well?

You made the reference to having lost three years. In all of this process would there have been anything preventing the government from starting the action plan so that by the time we got to this point three years down the road, the legislation would have a lot more certainty and clarity?

Prof. Brenda Gunn: I think practically, and you're in a better position to know how government works than perhaps I am, there was nothing. There were, of course, challenges that we see. We all put in a lot of time and effort into Bill C-262. It had made it through the House. It had made through many steps of the Senate as well. I think we had all anticipated it successfully entering into law. We all had to shift gears when it quickly died in the Senate.

I think reformulating an approach after that happened took time. I think importantly the reason why we can't just do an action plan first is that the UN declaration under rules in Canadian law does have relevance already and is being used by the courts. I think we want to as much as possible have a coordinated approach. While it's important for the UN declaration to be able to used in litigation where necessary, we don't want to rely on that.

I think I would flip the question to say, if we don't move and clarify this recognition of the application in Canadian law, we're leaving it to the courts to have that interpretation. It leads to more uncertainty and irregularities, for example, between the provincial courts and sometimes what we're seeing in the federal courts.

● (1205)

The Chair: Thank you for that. Thanks for trying to work to the time limits that we have.

Mr. van Koeverden, for three minutes.

Mr. Adam van Koeverden (Milton, Lib.): Thank you very much, Mr. Chair.

Thank you to all the witnesses. This has been extremely helpful for all of us. Thank you to many of you for your considerable work on this subject. To be totally honest, many of us are coming into this with fresh eyes. Your years of work and considerable effort on this are really helpful.

I have a question for Professor Gunn, first. It does come back to the framing of free, prior and informed consent as a veto. I think the word veto has a definition. Perhaps free, prior and informed consent might be a little bit more ambiguous. I'm really concerned with the conflation of those two. I would love a little bit more insight on that.

Since I will probably just ask one question, could you provide a little bit of insight on participation and the ability to say no. I believe that full participation includes the ability to say no.

Thank you.

Prof. Brenda Gunn: Thanks.

I think its really important to remember again that the UN declaration didn't just pop out of nowhere. This goes back to member Battiste's question.

There's actually 20 years of jurisprudence and studies that have happened at the international level that help us understand the UN declaration. While we say in Canada we don't know it, it's only because we haven't looked. I'm happy to provide this committee with various studies that have happened that have really fleshed out. I can provide decisions on how the UN is understanding free, prior and informed consent.

We focus a lot on consent. Consent is really included to ensure that indigenous peoples who have a really good understanding of their rights are involved in decision-making where their rights are specifically and especially impacted. I think you're absolutely right to connect free, prior and informed consent to the right of indigenous peoples to participate in decision-making. The idea internationally is that indigenous peoples' inclusion, including gaining their free, prior and informed consent, helps us to make better decisions, ones that are going to stand.

I think, finally, this idea of a veto or not veto suggests that we're not having a conversation. This is where it's important to remember that we also have free, prior and informed. The whole idea when you use those four concepts together is about making sure that indigenous peoples are there, are engaged in the process, and can provide the necessary information. It's making sure that there is this idea of a back and forth conversation where we can understand the concerns that might be addressed, have opportunities to try to address them, and work together to come to a resolution. That's the understanding of the package of free, prior and informed consent.

The Chair: That only leaves 30 seconds.

Thank you for that.

Mr. van Koeverden.

Mr. Adam van Koeverden: I'll give it back to the chair, considering that we're on a tight schedule.

Thank you very much.

Merci, Professor Gunn.

The Chair: Thank you.

Madame Bérubé, you have a minute and a half.

[*Translation*]

Ms. Sylvie Bérubé (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chair.

I thank all the witnesses who are here today.

I represent the riding of Abitibi—Baie-James—Nunavik—Eeyou. We talked about it earlier when we talked about the Cree.

Mr. Rodon, you mentioned some countries that have already adopted the declaration. Can you tell us what difficulties they have had with the implementation of this text?

Mr. Thierry Rodon: To my knowledge, no country has passed an implementation act. However, some countries recognize the declaration in their constitutional legislation. Columbia, for example, has chosen to implement it procedurally. That means it's simply a process. Once the process has been followed, projects can move forward, whether the community is opposed or not.

I have written a number of articles about this with Martin Papillon, both in French and English. We advocate for a more substantive vision of the term. As Ms. Gunn has just explained, consent is a relationship. Take the Cree, for example. They don't say no to a project before having heard about it. Their mining policy says that they will meet with all the interested mining companies and have discussions with them, before deciding whether they are going to move forward or not.

That is the type of relationship we need, a relationship that benefits everyone. Investors will not waste time preparing projects that will never come to fruition, which we are seeing more and more in Canada. In my opinion, the risk is there. We must have a clear process for our expectations, for who must give consent, and for how it is achieved. Communities must be part of that. Free, prior and informed consent is not just for governments, it's also for the communities affected.

● (1210)

[*English*]

The Chair: I'm sorry for the interruption.

Ms. Gazan, it's your turn for a minute and a half.

Ms. Leah Gazan: Thank you.

My last question is for Mr. Rodon. I had asked you a question about FPIC.

Do you believe that having more clarity with this bill will help keep projects out of court? I say this because we know Madam Exner-Pirot was concerned about that, but do you think the lack of clarity and the clarity this bill will provide will help improve relationships and also projects going forward?

[*Translation*]

Mr. Thierry Rodon: That is exactly what I am advocating. I feel that having a clearer process and a relationship with Indigenous people in which they fully participate will avoid a number of problems, such as with courts, with blockades or with RCMP actions.

I don't know whether you saw the foreign coverage of the RCMP operation against the Wet'suwet'en. But it did Canada and investing in Canada no favours at all. Everyone loses in that kind of situation.

Having a more inclusive process, in which Indigenous people are part of the decision-making, will help a lot. It will not solve all the problems, some will remain. However, it provides a friendlier climate for investors. In New Zealand, the fact that the Maoris are part of the decision-making poses no problems.

Thinking that having Indigenous people participate will limit investments is a narrow point of view. In my opinion, the opposite will be true; it cannot be worse than it is at the moment. I feel that action is required. Bill C-15 is one way of doing it, but it's not the only way.

[*English*]

The Chair: Thank you, Mr. Rodon.

Mr. Melillo, you have three minutes, please.

Mr. Eric Melillo (Kenora, CPC): Thank you, Mr. Chair. I wasn't sure if I was going to get some time, so I appreciate the opportunity.

Maybe I'll just sort of pick it up from some topics that have already been discussed, just to flush them out a little bit more.

Obviously, there's been a lot of discussion around consent, the importance of free, prior and informed consent, and what that means to different people.

Maybe I'll just go to Ms. Gunn first. Obviously, there are a lot of differing opinions depending on who you talk to. You mentioned the UN has done some work on trying to get some clarity on that. Could you just maybe speak more to that?

● (1215)

Prof. Brenda Gunn: Sure, I'm happy to continue the conversation.

I think that starting back in the early 2000s the United Nations Permanent Forum on Indigenous Issues had a study on free, prior and informed consent that set out a lot of the standards about what sort of information..., what “free” means, and what we are talking about with “prior” and “consent”. I think this was then followed up with the study by the Expert Mechanism on the Rights of Indigenous Peoples in 2018, when they studied a human rights-based approach to free, prior and informed consent.

On this idea of a veto, they clarify that free, prior and informed consent is really about, again, protecting the rights that we're recognizing broadly in the UN declaration, so that when we talk about consent, the expert mechanism does state that there are circumstances—and they're set out in the UN declaration—when states are obligated to get indigenous peoples' free, prior and informed consent, and that the element of consent includes the idea that indigenous peoples do have a right to say no, that they may withhold consent following an assessment and conclusion that the proposal is not in their best interest, and that withholding consent is expected to convince the other party not to take the risk of proceeding with a proposal.

The expert mechanism has also said that arguments of whether indigenous peoples have a veto in this regard appear largely to detract from and undermine the legitimacy of the “free, prior and informed” concept.

We're really about including indigenous peoples in the process to ensure that we're upholding rights or understanding how their rights may be impacted by various projects.

The Chair: Thank you very much.

Thanks, Mr. Melillo.

Ms. Zann, you'll close off our session with three minutes. Please go ahead.

Ms. Lenore Zann (Cumberland—Colchester, Lib.): Thank you so much, Chair, and thank you so much to the witnesses.

I come to you today from Nova Scotia, from the unceded territory of the Mi'kmaq.

Ms. Gunn, the Truth and Reconciliation Commission's Calls to Action report calls on governments to fully adopt and implement UNDRIP and develop an action plan to achieve its goals. It is also referenced in the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Could you please expand on why you think that the Truth and Reconciliation Commission and the national inquiry both emphasize that the declaration is such a key part of reconciliation, and offer your views as to why this international document is so essential to advancing reconciliation here in Canada, in particular with the missing and murdered women and girls?

Prof. Brenda Gunn: Thank you. I will try to do so quickly.

I was trying to allude to this in my opening statement, but I'll try to be more concrete here.

I think that the Truth and Reconciliation Commission focused on the UN declaration as the framework for reconciliation because it recognizes that where states based their laws and jurisdiction on racist ideas and laws—such as the doctrine of discovery, which is based on the idea that indigenous peoples, as I said, were fierce savages whose occupation was war—this was used as the justification to undermine fundamental rights.

The UN has said that we have to start really addressing those questions, but also, really importantly, that through the process of recognizing indigenous peoples' inherent and fundamental human rights, we begin to shift the relationship from a colonial one, where a state thinks, with the paternalistic approach that we see sometimes in Canadian law, that it has all the power over indigenous peoples.

By recognizing indigenous peoples' rights as articulated in the UN declaration, it is going to help us shift our relationship and enhance harmonious relationships. It gets us new grounds for the relationship. It talks about a relationship based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith. It's not just about colonial domination—which may have been the basis of the relationship historically—but actually trying to reset that relationship and uphold these fundamental principles.

● (1220)

The Chair: We're right out of time there. I'm sorry to interrupt.

Prof. Brenda Gunn: Can I just beg to address the indigenous women's inquiry?

The Chair: Go ahead.

Prof. Brenda Gunn: From my perspective, the importance of the UN declaration is the recognition of economic, social and cultural rights; things like housing, education and the rights to a job. Those are issues that have been recognized by the inquiry as fundamental for protecting indigenous women.

The Chair: Thank you so much.

Thank you so much, members of the panel.

We are going to suspend very briefly. We have to do some sound checks with the next panel.

● (1220)

(Pause)

● (1225)

The Chair: Ladies and gentlemen of the committee, witnesses, with quorum I accordingly call this meeting back to order.

We will continue with our second panel, including Mr. Saganash, Ms. Lightfoot and Ms. Augustine, in that order.

Mr. Saganash, I understand that you have a little bit of knowledge about this topic. I'm going to give you the honour of starting off.

Please go ahead, for six minutes.

Mr. Romeo Saganash (As an Individual): Thank you, Mr. Chair, and good morning.

Good morning to other committee members. Thank you for the invitation to appear at this committee and make some opening remarks before we go into questions.

To date, the United Nations Declaration on the Rights of Indigenous Peoples has been reaffirmed by the UN General Assembly at least 10 times by consensus. That means it was done without a vote. So we can say safely today that no state in the world presently opposes the United Nations Declaration of the Rights of Indigenous Peoples. That's what it means.

Last December the UN General Assembly highlighted that the declaration, "has positively influenced the drafting of several constitutions and statutes at the national and local levels and contributed to the progressive development of international and national legal frameworks and policies."

The UN declaration affirms, as Professor Gunn mentioned, a wide range of economic, social, cultural, political, spiritual and environmental rights. These rights are inherent, or as we say, pre-existing. So it is urgent for Canada to finally respect and implement those rights in federal legislation.

I am pleased that Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act, is based on my own private member's bill, Bill C-262, and goes further, as a matter of fact, in certain instances. In my countless meetings and conferences across Canada, Bill C-262 received widespread support from indigenous peoples and the general public. It wasn't easy tabling a private member's bill. My first bill on the UN Declaration, Bill C-641 was tabled in December 2014. It was defeated on second reading in April of 2015. In April 2016, I tabled a new and stronger Bill C-262. The House of Commons passed the bill at third reading on May 30, 2018. However, a filibuster by a few senators killed the bill in June of 2019, just a couple of days before the passing of my mom.

Therefore, I fully support Bill C-15 being tabled by the federal government in the House in early December 2020. Government bills can proceed more efficiently, I believe, before the House and the Senate. Bill C-15 confirms the declaration as the minimum standards for the survival, dignity and well-being of indigenous peoples. I would add security to that list. The bill must be implemented in Canada, as preambular paragraph 2 says.

As a survivor of Indian residential schools, I'm especially pleased that Bill C-15 acknowledges in its preamble the calls to action of the Truth and Reconciliation Commission and the calls for justice by the National Inquiry into Missing and Murdered Indigenous Women and Girls, both of which call for the implementation of the UN declaration.

In reviewing Bill C-15, we see that it is important to underline that its 17 preambular paragraphs have significant legal effects. They add important content to the seven operative positions in the bill and they must be fully considered. For example, doctrines of superiority—preambular paragraph 9—which include discovery and *terra nullius*, are condemned as racist and legally invalid. All forms of colonialism—preambular paragraph 10—are also rejected, and the Government of Canada has committed to advancing relations based on such principles as justice, equality, non-discrimination and respect for human rights.

● (1230)

In the preamble, paragraph 11 emphasizes the urgent need to respect and promote the inherent rights of indigenous peoples. The Supreme Court of Canada has also affirmed our inherent and pre-existing rights in section 35 of the Constitution Act of 1982.

In the preamble, paragraph 12 of Bill C-15 asks that the Government of Canada recognize that all relations with indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the inherent right to self-government.

As indicated in the two international human rights covenants, Canada has an affirmative obligation to recognize and respect our right to self-determination. This obligation has existed, as you know, Mr. Chair, since 1976 when Canada ratified the two international covenants.

In my introductory remarks, I would also like to emphasize two current problems with the current text of Bill C-15. First, in some instances, the English and French versions are not compatible, and this is a problem that must be immediately redressed.

A second problem is in section 4 of the act. As currently drafted, it erroneously conflates two distinct and separate purposes as a single purpose that appears to solely relate to the actual plan. This is patently incorrect and would not be consistent with C-262.

Section 4 should therefore read:

> The purposes of this Act are

Followed by (a) and (b).

I think my time is up.

I'm looking forward to the questions from the members of the committee.

Thank you, Mr. Chair.

The Chair: Thanks so much, Mr. Saganash.

Sheryl Lightfoot is a Professor at UBC appearing as an individual.

You have six minutes. Please go ahead.

Dr. Sheryl Lightfoot (Canada Research Chair in Global Indigenous Rights and Politics, University of British Columbia, As an Individual): Thank you very much, Mr. Chair.

Good morning to those on the west coast, and good afternoon to those of you further east.

I want to open by acknowledging the lands of the Algonquin people where the hearing is physically being held, then also the lands of the Musqueam people where I have the privilege to work and live and where I am currently sitting joining you virtually this morning.

I'm Anishinabe, from Lake Superior Band of Ojibwe. I am Canada research chair and professor of global indigenous rights and politics at the University of British Columbia.

I had the honour to appear before this committee three years ago, in April 2018, when Bill C-262 was being debated in Parliament. Along with many other first nations scholars, advocates and community members, I, of course, was deeply disappointed by the failure to pass that bill into law.

However, I'm very pleased to be with you here today in hopes that Parliament can soon correct this historic failure and pass Bill C-15. I want to thank you for the invitation to appear today.

International human rights instruments like the UN declaration are developed with the intention that they will be implemented in domestic contexts and in full. In legal human rights scholarship, there is often talk about rights ritualism. In short, this means that states say one thing in the international arena, the human rights arena, and then do something else at home.

In my own academic work as a political scientist, I've observed a pattern that I have referred to as “selective endorsement”. What this means is that some states have attempted to water down the rights in the UN declaration, accepting only some of them for implementation and then self-selecting out of other rights. This is simply not morally acceptable to pick and choose human rights that one will respect while others are left behind.

I want to point out that rights ritualism and selective endorsement, as phenomena, are not limited to any one government or any one political party. Governments of all political stripes have repeatedly broken their promises to indigenous peoples. Treaties have been violated and Supreme Court judgments are at times reinterpreted and occasionally ignored, all the while portraying Canada as a global model for democracy and human rights.

Of course, many out there wonder if Canada is really serious about reconciliation. I've heard some very frustrated indigenous people say, reconciliation is dead.

What are we to do? Do we give up, or do we continue to try to find better tools?

I'm strongly in favour of the implementation model that Romeo Saganash created when he first brought forward Bill C-641 and then Bill C-262 to Parliament. This model, which is the foundation for Bill C-15, has a number of elements that I think are crucial.

First of all, it requires collaboration with indigenous peoples. It also requires concrete action including legal reform and, as has been discussed, the creation of an action plan, and it requires public reporting and accountabilities.

A large part of my own scholarly work involves looking at the comparative experiences of indigenous peoples around the world. I feel that Bill C-15 is advancing the global conversation and setting a very positive example for other states.

When we look around the world, we can see that a number of states have undertaken legal and policy measures to implement the declaration. As was mentioned in the first hour, committee members have heard about the national action plan process being developed in New Zealand, for example.

In addition, several countries in Africa have also implemented national legislation and policies to operationalize their commitments to the declaration. Constitutional reforms have also been an essential step, and Latin America has been especially proactive in this area.

National courts, from Belize to Botswana, Canada, Chile, Colombia, Guatemala, Kenya, Mexico and the Russian Federation have all cited the declaration in legal decisions nationally.

● (1235)

National human rights institutions in countries like Indonesia, Malaysia, Namibia, the Russian Federation and the United States have used the declaration as a framework for monitoring the implementation of indigenous peoples' rights at the national level. The declaration is also being implemented regionally, and examples here include the European Union and the Organization of American States, the African Commission and the African Court on Human and Peoples' Rights. The Inter-American Court of Human Rights has also drawn substantially from the UN declaration.

For more than a decade now, the declaration has been used to set guidelines and standards on the international level. A number of organizations have developed policies and/or guidelines to align with it. For example, and my colleague Professor Gunn mentioned some of these as well, the UN Development Programme, the World Bank, the Inter-American and Asian development banks and UNESCO. Various UN agencies and programs have addressed indigenous peoples' rights as they relate to business practices and commercial activity as well. International treaty bodies for the conventions that were signed are also increasingly utilizing the UN declaration in their assessments of compliance, therefore making the declaration legally binding through those treaties.

Quite simply, Bill C-15 represents the best approach to human rights implementation that I have seen from around the world, bringing all of these various elements together. Passing Bill C-15 into law will set a genuinely positive example for the rest of the world community. I know that other governments and indigenous peoples in other regions of the world are watching this process very closely.

Last week my colleague, Joshua Nichols from the University of Alberta and I published an opinion piece about the unfinished business of reconciliation. The Supreme Court has recognized reconciliation as a constitutional imperative. As Professor Nichols and I wrote, the court meant something much more profound and challenging than simply trying to get along. Reconciliation is about putting inherent rights and title into meaningful practice. As we said in the article, “Up to now, federal, provincial and territorial governments have largely left this crucial work in the hands of the courts. This has been a mistake.”

● (1240)

The Chair: Ms. Lightfoot, we're well over time. We need to get in all of our questioning rounds.

Dr. Sheryl Lightfoot: I'll just close with one sentence, if that's all right.

If Canada is serious about reconciliation, we need a different approach. The declaration is the right foundation, and Bill C-15 provides a clear, sensible process to bring these commitments to life. Thank you.

The Chair: Thank you very much.

Now, to complete our panel is President and Chief Lorraine Augustine on behalf of the Congress of Aboriginal Peoples.

Ms. Augustine, please go ahead for six minutes.

Chief Lorraine Augustine (President and Chief, Native Council of Nova Scotia, Congress of Aboriginal Peoples): Thank you, Mr. Chair.

First of all, I want to tell you a little about the Congress of Aboriginal Peoples. As I'm sure some of you know, we're one of the five national organizations, and we have been around for over 50 years. We represent the off-reserve, non-status and status Métis and the southern Inuit. That's just to give you an idea of where our organization is coming from.

Although I think the UNDRIP declaration is definitely something that I support as an indigenous woman, an indigenous person and an indigenous leader, the issue I have, though, is that we are not looking at indigenous.... I'm talking about the preamble of the bill and specifically about the interpretation of indigenous people being the definition of the Constitution of Canada, which says that “aboriginal peoples” are “Indian, Inuit and Métis”.

Unfortunately, I find that Canada has adopted a distinction base, which takes in first nations, Inuit and Métis, and it's used quite often in documents and in legislation. In my view, “first nations” is not a legal term. My issue is that if Canada is going to adopt this legislation, then we need to be sure that when they talk about “Indigenous peoples” it means all indigenous peoples, because the declaration does not determine if you're indigenous on reserve, if you're indigenous off reserve, if you're status or if you're not status. It talks about “Indigenous peoples” in this country.

When we look back and I look at the convention, right at the beginning of the convention they condemn “colonialism” and all practices of segregation and discrimination associated with it, in whatever form and wherever they exist, so right off the bat, even in the convention on the elimination of all forms of racial discrimination, by not including all indigenous peoples within Canada, how can a piece of legislation be law when right off the bat they are leaving out the vast majority of indigenous peoples who do not have a status and who do not live on a reserve? How can you say you're working with all indigenous peoples?

I want to quote something from UNDRIP. Article 2 says, “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”

On reading that, my concern is that already this piece of legislation is not being practised. Canada did adopt it at the United Nations. I participated at the United Nations and, as a matter of fact, I was at the constitutional talks back in 1982. I've been around for a little while. My biggest concern.... I totally agree with the intent and what the United Nations has done. It's a very good document. However, my concern with regard to Canada and the way it's written and the current preamble is that it's leaving out 80% of the indigenous peoples in Canada.

● (1245)

When we're talking about that, that is my concern with this preamble and with this piece of legislation. If you're going to put something through and it talks about indigenous, then it needs to be all indigenous peoples within this country and not a selected few. By “selected” I'm talking about those defined in terms of the Indian Act registration.

That's where I am at, and I want to thank you for letting me speak and address the committee. I do appreciate it and I will answer any questions you may have. I look forward to the questions.

The Chair: Thanks very much, Ms. Augustine. It's much appreciated.

I'm going to ask for a motion to extend. Our first round of questioning will take us past the hour. I need a motion to extend with—

Mr. Jamie Schmale: I'll move it.

The Chair: Thank you. That's been moved by Mr. Schmale.

(Motion agreed to)

That's carried. That will allow us to get two full panels of questioning in.

The next questioner I have will be Mr. Viersen for six minutes.

Arnold, please go ahead.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Mr. Chair. I want to thank you and the witnesses for being here today.

We are dealing with a bill that's actually quite a short bill. I have it up on my screen here. It does not take very long to scroll through it. I think if you print it off it's maybe two pages long and then there is the schedule that contains the entire UN declaration.

The crux of the bill, in my opinion, is paragraph 4(a):

> 4 The purpose of this Act is to
>
> (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law.

That's probably the meat of the bill. The second part is to establish the framework for the implementation.

I will cycle through the witnesses and ask each of them if they support the bill in its current form. Maybe I could have just a yes-or-no answer on that.

Mr. Saganash.

He's giving me the thumbs-up.

Can I hear from our other witnesses as well?

Ms. Augustine.

Chief Lorraine Augustine: I do not with the way it's written at this time.

Mr. Arnold Viersen: Okay.

I'll ask our third witness as well, Ms. Lightfoot.

Dr. Sheryl Lightfoot: Yes.

Mr. Arnold Viersen: Yes.

Dr. Sheryl Lightfoot: Thank you. I do support it, although I have heard calls similar to those of Ms. Augustine for some amendments, and I think through conversations and through these discussions and these committees, those can be sorted out. I think it's important to listen. Even Mr. Saganash had a few points that needed clarification and resolution. I think that's the purpose of this committee, but generally, yes, I'm in support.

● (1250)

Mr. Arnold Viersen: Ms. Lightfoot, I'll stick with you. What would be one recommendation for an amendment that you would put forward?

Dr. Sheryl Lightfoot: I'm going to leave that to the process, because I think that's where you need to hear from the stakeholders, the rights holders, themselves, as Ms. Augustine stated, and let them bring forward their suggestions. I am not actually a rights holder in Canada—I want to point that out—and I'm not going to speak for those who are.

Mr. Arnold Viersen: I'll go to Mr. Saganash and ask him to explain how the declaration being applicable in Canadian law improves our current jurisprudence and improves upon the hard-fought and -won battles in terms of the court decisions. Do we not risk undermining some of those court decisions by now introducing an entirely new system of law into Canada?

Mr. Romeo Saganash: Let me say this from the outset: The courts have already confirmed that provision that you read to us. The courts are using the UN declaration—referencing the UN declaration—to interpret domestic law, and that's been going on for many years. Our human rights tribunals, provincial and federal, were using the UN declaration even before it was adopted by the UN General Assembly.

What Bill C-15 does is it confirms what the courts have been saying, and the interpretation in how courts have been using international human rights instruments like the UN Declaration on the Rights of Indigenous Peoples.

What this bill will add, in my view, is that.... As a member of Parliament, you know that the Minister of Justice has an obligation 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. We don't have the equivalent for aboriginal rights and treaty rights in this country. Bill C-15 will provide that.

Mr. Arnold Viersen: On that point, Mr. Saganash, if I google "Bill C-15 UNDRIP", the first thing that comes up is the APTN article on concerns around consultations on Bill C-15. That's the challenge we are going to have bringing in this as the application in Canadian law.

What's the body that governs the aboriginal opinion in this country, the indigenous opinion? That's going to be the big challenge.

Mr. Romeo Saganash: Arnold, before responding to that question, I want your interpretation of what consultation is or what it consists of. Please define that for me, because—

Mr. Arnold Viersen: I would say that the right to consultation, the need for consultation, has been clarified by the courts.

We have a brief from the electrical suppliers of the country outlining how over the last seven years, they've dramatically improved their consultation process to ensure they're abiding by the court decisions.

That's the worry around this. Does this not introduce an entirely new system?

The Chair: I'm sorry to interrupt, but hold that thought. I'm sure it will get discussed—

Mr. Arnold Viersen: Those are very short minutes, Mr. Chair.

The Chair: I'm sorry, but we have timelines to work through.

Hold that thought.

Gary Anandasangaree, you have six minutes.

Mr. Gary Anandasangaree: Thank you, Mr. Chair.

First off, let me begin by acknowledging that I am speaking to you from the unceded lands of the Algonquin people in Ottawa.

I want to thank the panel, and particularly my good friend Romeo Saganash. We dearly miss him in Parliament, but I know he's not that far away when we need to reach him.

Thank you, Romeo, for your enormous leadership.

I was able to witness your work around Bill C-262 from the time you introduced it to the time it passed the House, and the enormous work you put into it. I want to thank you for that and, of course, the work leading up to it with the development of UNDRIP.

I want to get a sense from you, Romeo, about the type of engagement you did leading up to Bill C-262. You were on this committee before, and when we travelled as a committee to many parts of Canada, people would come up and say, “Romeo, you came here this summer. You talked to us.”

You had extensive engagements throughout the process of Bill C-262. Can you maybe give us a sense of how deep that was throughout the time that you were developing this bill?

● (1255)

Mr. Romeo Saganash: First of all, Bill C-15 is pretty much similar to Bill C-262. I think the engagement we've done around Bill C-262 was pretty much thorough throughout the country. I've met with indigenous and non-indigenous communities in town halls to explain Bill C-262 and to explain what the UN declaration is all about, and I've answered the questions or concerns that people had about Bill C-262 at the time.

I can tell you that throughout my travels across the country, I did not leave one town hall, whether indigenous or non-indigenous, where people were opposed to Bill C-262 or the UN declaration. That work, I think, is a legacy in going forward with Bill C-15. We calculated that the indigenous organizations and communities that adopted resolutions of support for Bill C-262 represented approximately one million indigenous individuals in this country. That engagement has been extensive and it was comprehensive, and I think that's a legacy we can take on in moving forward with Bill C-15.

Mr. Gary Anandasangaree: Thank you, Romeo.

Ms. Lightfoot, could you comment on the implementation of UNDRIP in B.C.? Many of the concerns, I think, that are raised by some of the opposition would lead us to believe that the implementation of UNDRIP in B.C. has severely affected the movement of business there.

Can you comment on how it was implemented in B.C. and the relative success or unsuccess that you see in its implementation?

Dr. Sheryl Lightfoot: I have to point out that the bill passed in late 2019, only a few months before the pandemic began, so I would say that implementation here in British Columbia is still at a very early stage. We are still waiting on the action plan, but that has been a bit disrupted by the pandemic and the conditions in the province, especially in indigenous communities.

The province did table its first annual report, which you can google and find online. It is substantive. There are plenty of good-news stories to report out of British Columbia. Of course, there are some bad-news stories to report out of British Columbia as well. To my mind, this is a normal part of political conversation and of the political context. There will be successes, and there will be failures. It's our responsibility to sort through those.

It's important to note that those successes and those failures do coexist simultaneously. I also want to point out that it is quite normal, if we look across the country, for there to be policy successes and policy failures on any issue, and also contestation. This is a normal element of politics and any sort of political decision-making.

To address the earlier comment as well about what is the indigenous opinion on any of these issues across the country, well, it's as diverse as the non-indigenous opinion on any political topic. I just would like to bring to you that this norm and what we understand as normal in everyday politics extends to indigenous peoples as well.

Mr. Gary Anandasangaree: Thank you.

To go back to Romeo, I know that one of the conversations we had throughout Bill C-262 was the issue of veto, and the same types of concerns are raised here. Does Bill C-15 represent a veto with respect to FPIC? Maybe you can comment on your position as you outlined previously.

● (1300)

The Chair: You have just about half a minute. Go ahead.

Mr. Romeo Saganash: Thirty seconds? Okay.

I commented on that extensively. Veto and FPIC are two different legal concepts. One is absolute, and that is veto, whereas as the other one is relative. Like all human rights, the right to free, prior and informed consent is relative. We have to take into consideration a lot of other factors and facts and the law and the circumstances of a given situation. They're two very different legal concepts in terms of the FPIC that we're talking about.

Yesterday I did send to the clerk the study that the Expert Mechanism on the Rights of Indigenous Peoples did on FPIC. If I recall, paragraph 20 of that study done by the UN describes the constituent factors or "[c]onstituent elements of free, prior and informed consent". I invite all members of this committee to look into that.

The Chair: Thanks very much, Mr. Saganash.

Madam Bérubé, go ahead for six minutes, please.

[*Translation*]

Ms. Sylvie Bérubé: It is actually Mrs. Gill's turn, Mr. Chair.

[*English*]

The Chair: I'm sorry.

Madam Gill, you're next.

[*Translation*]

Mrs. Marilène Gill: Thank you, Mr. Chair. My thanks also to my colleague.

First, I would like to thank Mr. Saganash. I did so earlier but he had not yet joined us. I thank him specifically for the important work he has done over the years and in the last Parliament. He has been working since 1982, as Ms. Lightfoot and Ms. Augustine pointed out.

We are now studying Bill C-15. I know that Mr. Saganash previously worked on a similar bill and that there are differences between the two. I would like him to tell us about those differences, in a qualitative sense. I would like to hear his comments, since they could make our work clearer.

Mr. Romeo Saganash: Thank you for your question, Mrs. Gill. It is always a pleasure to see you again. Thank you for the work you are doing on behalf of the Bloc Québécois on all these matters.

I mentioned in my introduction that there are differences between the French and English versions of Bill C-15. Subsection 2(2) is a good example of that.

Here is what it says in English:

[*English*]

> This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.

[*Translation*]

But here is what it says in French:

> 2(2) La présente loi maintient les droits des peuples autochtones reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*; elle n'y porte pas atteinte.

The two versions are different. Actually, I prefer the French version; it is much clearer as to the intent of this provision of Bill C-15.

Mrs. Marilène Gill: I find that to be an excellent comment. We must work on the same bill, not on two different versions. We must work on the same bill in both French and English. I feel that we have to take that into account from now on as we think about the witnesses we will be hearing from and the people who will have to focus on the bill.

I have another question that everyone is invited to answer, including Ms. Lightfoot or Ms. Augustine. In her introduction, Ms. Lightfoot talked about rights being watered down, and that caught my attention. This bill is intended to ensure that the United Nations Declaration on the Rights of Indigenous Peoples ends up being implemented. So I am concerned that there may be some slippage towards those rights being watered down.

I don't know whether anyone is able to talk about that really broad issue.

● (1305)

[*English*]

Chief Lorraine Augustine: I will tackle that question if you don't mind. The other panellists can as well.

When it comes to the piece of legislation, again we are still left out because of the distinctions-based approach of the government. They look specifically at rights under section 35. According to the way things are now, I'm a registered Mi'kmaq; I'm status; but because of where I choose to live they're telling me and other members of my organization and the constituency of the congress that we are not rights bearers.

My concern with this piece of legislation is with what they're going to be leaving out. This legislation reaffirms that indigenous peoples have rights—treaty rights, aboriginal rights, other rights—but I'm really not for this unless this government makes it available to and talks about all indigenous peoples. Right now that is not happening.

I'm not sure if I answered your question or not.

[*Translation*]

Mrs. Marilène Gill: Yes, you have given us a lot of information and you did answer my question. As a lawmaker, I can improve my work as a result.

Does anyone else wants to add something about this? If no one does, I will ask another question.

[*English*]

The Chair: I'm sorry, we have two seconds left.

[*Translation*]

Mrs. Marilène Gill: Is my time up already?

[*English*]

The Chair: I'm sorry about that, but it's nice to see the camaraderie.

Yes, go ahead.

Dr. Sheryl Lightfoot: Very briefly, one of the differences between the British Columbia bill and this bill was the inclusion of indigenous governing bodies in British Columbia as part of the legislation. I would like to table that as something to be considered.

The Chair: Thank you for that.

Ms Blaney, go ahead, please, for six minutes.

Ms. Rachel Blaney (North Island—Powell River, NDP): Thank you, Chair.

Thank you to all the members here for your testimony.

Mr. Saganash, It's very nice to see you again.

As you are a jurist, I know you understand the difference between FPIC and a veto. I am wondering if you could explain the difference to the committee.

Mr. Romeo Saganash: As I mentioned earlier, I did send a copy of the study the UN did on the concept of free, prior and informed consent. I invite all members of the committee to review it. It's an important document for your consideration, especially when considering Bill C-15.

Free means no coercion or intimidation. For instance, I can give you the example of the Site C dam where BC Hydro intimidated the opponents of the project with lawsuits of $4.3 million per individual. That's called intimidation. You're not allowed to do that.

No coercion, no intimidation is what free stands for.

Prior means these discussions for this engagement with indigenous peoples that may be impacted by a project need to happen prior to any decision taken about a project.

Informed means that we need to have access to studies and information that is readily accessible to the people you represent. For instance, for a long time Hydro Québec provided the Cree with studies about the impacts of their projects on my people but solely in French, not in English, not in Cree, so we cannot be informed if that's how things are going to happen.

All three of these steps need to happen prior to embarking on a specific activity and that's how Thierry Rodon, who testified in the first hour, talks about this. I read his paper, and it's consistent with what the UN has been saying about free, prior and informed consent.

Like all human rights, the right to free, prior and informed consent is a relative right. You need to take other factors into consideration, whereas a veto is an absolute concept that doesn't take into consideration the law or the facts or circumstances of a given case.

● (1310)

Ms. Rachel Blaney: Thank you.

Romeo, the committee recently received a letter from the Confederacy of Treaty Six First Nations, basically cautioning that Bill C-15 will have an effect of changing the definition of “indigenous persons” as defined in international law.

Can you speak to this important matter? Has the UN ever adopted a definition of “indigenous people”?

Mr. Romeo Saganash: That's a good question and an important question, I believe.

I can say firmly that there is, to my knowledge, no UN body that has adopted a definition for “indigenous peoples”.

The only definition I am aware of is a 1972 working definition by Martinez Cobo, who did an important five-volume study that was given to the UN in 1978, I believe. The working definition back in 1972 was never adopted by the working group on indigenous populations, or by any UN body.

In fact, I can also add that the two international covenants that I spoke about, signed by Canada in 1976, the Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both in their articles 1, talk about the right of all peoples to self-determination.

In international law, the term “peoples” was never defined; there is no definition for “peoples” either.

I think it's important to be aware of that, because once you decide to define something, then you end up excluding others. I think that's the main reason behind the UN not adopting a definition for indigenous peoples.

Ms. Rachel Blaney: Another concern raised by opponents of Bill C-15 relates to the claim that Bill C-15 domesticates or Canadianizes the United Nations Declaration on the Rights of Indigenous Peoples.

Do you agree with this assertion?

Mr. Romeo Saganash: Absolutely not. It doesn't. I think that Bill C-15 just confirms that this international human rights instrument, like all other international human rights instruments, has application within law, in the sense that any court, in its impartiality, can refer to this international document to interpret domestic law.

It's the opposite. I think it's from a domestic perspective that we need to consider these other documents to interpret the rights in this country, so it serves...in that sense.

The Chair: Thanks, Mr. Saganash.

Madam Gill, do you have a point of order? I see your hand up.

[*Translation*]

Mrs. Marilène Gill: Yes, Mr. Chair.

Mr. Saganash brought up the fact that the bill is not the same in both languages. I would like the Liberal Party to tell me which of the two versions should take precedence in the study we are now doing and whether there will be a motion to ask for a bill that's identical in both languages?

● (1315)

[*English*]

The Chair: Let me ask to continue on with the round of questioning and we'll close with that point of business.

Jamie, you have five minutes in this next round of questioning.

Mr. Jamie Schmale: It's good to see so many familiar faces again. It's been a great conversation so far.

I'd like to start with Ms. Augustine, if I could.

I noticed in your opening statement that there was a brief mention about the consultation process. Some organizations were given lots of time to consult and think and come back with responses, and other organizations were not. Did you want to expand on that a bit?

Chief Lorraine Augustine: Absolutely. Again it goes back to the distinction base of first nations, Inuit and Métis, three national organizations that were given at least six months of preparation and consultation. The Congress of Aboriginal Peoples was given two days prior to going here. The Department of Justice contacted us at the 11th hour of the 11th day to give our input.

Our input was given. We weren't going to refuse because they contacted us, and obviously we're going to be there.

That's the difference in the consultation process where other routes.... Again, I'm going back to the distinction base; the interpretation is even in the bill. Canada is the only country that is interpreting its indigenous peoples, which is wrong. Indigenous peoples are indigenous peoples, and it shouldn't be distinctions-based. We were discriminated against in the consultation process too. We never got the same opportunity as other groups.

Mr. Jamie Schmale: I think that was one of the things we mentioned too, when we were discussing the work plan for this, the fact that groups are raising their hand and saying they haven't had the appropriate time to prepare and consult. That's one of the reasons I think this study is so important and your contribution to this conversation here, the ability to give testimony to the committee and hopefully we can make some recommendations.

Is there anything else you want to add, Ms. Augustine, in talking about the action plan going forward or something like that? I think you touched on that in your statement.

Chief Lorraine Augustine: I did. I think it's a great idea to have a national action plan but, again, I think it has to be inclusive. Canada has always had five national organizations. The congress has always been a part, way back when it was the Native Council of Canada, NCC. We were always at the table. We were always part of it and now we're not and since this last government, it seems to be even more. We need to have a national plan to incorporate all indigenous peoples whether it's by organization or by peoples. But we need to have a say in all of it.

I want to give you an example very quickly. The missing and murdered indigenous women have a core working group to work on a national plan. It's been nothing but trouble. You will have one organization saying this and another saying that. It's not supposed to be political. It's supposed to be everyone working together.

A national action plan getting everyone at the table is going to stall a lot of the progress in where we're going. I've seen that firsthand.

Mr. Jamie Schmale: To build on what you talked about, I want to talk about what we discussed in the first round regarding the fact that we still haven't dealt with some major issues, including the consent part. For those on this panel who may not have been listening to the first panel, we do support the spirit of the document. I think it's a document that has a meaningful path forward. But one of the parts we're having trouble with on this side of the aisle is we want to see the definition of consent. What does that mean before this goes forward? I don't know if you have any comments on that.

● (1320)

Chief Lorraine Augustine: Are you asking me?

Mr. Jamie Schmale: I can. I can move it around the room if you want.

Chief Lorraine Augustine: It doesn't matter.

Mr. Jamie Schmale: Okay, I'll start with you and then move it to....

The Chair: Go ahead very briefly.

Chief Lorraine Augustine: I think that, yes, it does need to have a little more. Consent has to be consent with everyone, all indigenous peoples—on reserve, off reserve, status and non-status.

The Chair: Thank you for that.

That brings us to another five-minute round with Mr. Battiste. Go ahead.

Mr. Jaime Battiste: Thank you. I'd like to start off by asking Romeo Saganash a question.

Romeo, I want to start off by acknowledging your work on this and getting it to where it is right now. I want to say how deeply I appreciate your work on this over the years. As you know, my father and Alex Denny, the Grand Captain of the Mi'kmaq nation, were going to the United Nations for years in trying to implement indigenous self-determination.

You noted earlier that UNDRIP and Bill C-15 are the minimum standards. Rights such as section 35 rights are talking about pre-existing inherent rights. The preamble of UNDRIP speaks to “the urgent need to respect and promote the inherent rights of indigenous peoples”.

As in your earlier comments, why is it an important point to know that these are pre-existing inherent rights?

Mr. Romeo Saganash: I think it's important to re-emphasize that point. When we say that our rights are inherent or pre-existing, it means that no one has given us those rights, that we possess them as indigenous people and indigenous peoples.

What this bill does is recognize and affirm that very essential and fundamental fact that all of these 46 rights that UNDRIP enshrines are inherent and pre-existing. That is the very reason why courts have been using the UN declaration to interpret aboriginal rights here and abroad. There are specific countries that were mentioned. In Colombia, Guatemala and Belize, courts have interpreted indigenous rights in those countries based on what the content of the UN declaration was, yet these countries do not have Bill C-15 legislation which confirms that UNDRIP has application in their national law.

I think that is the important aspect of the law in this discussion. That includes, of course, the right to self-determination and the right to free, prior and informed consent. These are human rights. We're in 2021, and I think it's grand time that all politicians, all members of Parliament, stand up, recognize and uphold those human rights of indigenous peoples, of the first peoples in this country.

Mr. Jaime Battiste: There has been a lot of questioning on whether UNDRIP creates new rights. There have been a lot of people creating fear that UNDRIP is going to create new rights.

Do you see this as reaffirming the pre-existing rights and inherent rights of human beings, indigenous people in Canada, or do you see this as creating new rights?

Mr. Romeo Saganash: I do not. For a long time, the chairperson of the working group on indigenous populations would repeat at every session of negotiations that “this declaration does not create new rights”, that it just confirms inherent rights of indigenous peoples, the pre-existing rights of indigenous peoples.

I think this question is not relevant in my mind, because both Bill C-15 and the UN declaration reaffirm that these are pre-existing and inherent rights.

● (1325)

Mr. Jaime Battiste: Thank you, Romeo.

In your earlier segment, I thought your analysis of the whole citizenship question and identity was spot-on. I want to read this off before I go to Ms. Augustine on her comments. In article 33, UNDRIP says:

> Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Ms. Augustine, you quoted section 35 of the Constitution, but are you in disagreement with article 33, which states that indigenous people should have the right themselves to determine who their membership is?

Chief Lorraine Augustine: Absolutely not. I don't disagree with that.

What I disagree with is.... I should be able to say to anyone, “I'm a Mi'kmaq woman.” It's not because of my affiliation with different organizations or a band that I'm not an indigenous woman.

Mr. Jaime Battiste: But would you agree, as clearly stated in article 33, that it's for the Mi'kmaq people to decide who's Mi'kmaq, not an outside entity?

Chief Lorraine Augustine: To a degree, yes, but—

Mr. Jaime Battiste: Which part of that do you not agree with?

Chief Lorraine Augustine: I agree with it.

What I don't agree with is that the Mi'kmaq—Jaime, you're from my same area, so you know this—are determining who a Mi'kmaq is, but they're still leaving out those who either don't live on a reserve or those who don't or cannot be registered. You have to remember that.

The Chair: I'm sorry to interrupt, there.

We'll have Madame Bérubé for two and a half minutes and then Ms. Blaney for two and a half minutes.

[*Translation*]

Ms. Sylvie Bérubé: Thank you, Mr. Chair.

My thanks also to all the witnesses who are with us today.

My question goes to Mr. Saganash.

I'm very pleased to meet you again. Could you describe the notions of self-determination and consent in the light of existing ancestral rights and the Canadian context?

Mr. Romeo Saganash: That is an important aspect that must be considered in the debate about Bill C-15.

In this whole debate, what must be understood is that various legal frameworks deal with the rights of indigenous peoples. Of course, section 35 of the Constitution is a major legal framework, a constitutional framework, no less. Treaties and international law are other major legal frameworks. There is also Indigenous law. We have our own laws.

Those four legal frameworks are distinct, but they strengthen each other and are interrelated. They are frameworks that we as Indigenous peoples can use to stand up for our inherent rights and our treaty rights.

Ms. Sylvie Bérubé: Does Bill C-15 have a precise definition of free, prior and informed consent?

Mr. Romeo Saganash: Not in my opinion. Given the way in which systems work, legal decisions or opinions from courts depend on the circumstances of the law and of the facts of specific situations.

Defining something in that way eliminates a lot of other situations. Judges from different courts have to consider different circumstances, different facts and different legislation according to specific situations.

● (1330)

[*English*]

The Chair: Thank you.

Mr. Clerk, before we get to Ms. Blaney, what is our time consideration with regard to translation and technical support?

The Clerk of the Committee (Mr. Naaman Sugrue): There is another committee scheduled in this room for 3:30 p.m., so we will have to wrap up soon. A hard stop will probably be 2 p.m.

The Chair: Okay.

Mr. Jamie Schmale: Mr. Chair, I also have an S.O. 31 I have to get to the House for, so I'll have to leave very shortly as well.

The Chair: Okay. Could I ask Ms. Blaney to complete the round of questioning, and then we'll adjourn? Are you good with that?

Ms. Rachel Blaney: That's fine with me, Mr. Chair.

Mr. Jamie Schmale: Otherwise, you can continue, and I'll have to go.

The Chair: We're going to do it that way, then.

Ms. Blaney, go ahead for two and a half minutes.

Ms. Rachel Blaney: Thank you, Mr. Chair.

Romeo, if I can come back to you, some concerns have been raised about section 2(2), the non-derogation clause, and that it would maintain the status quo in respect to the doctrine of discovery and the notion of *terra nullius* that have been used against indigenous peoples. Is that your understanding of this clause?

Mr. Romeo Saganash: Yes. I've heard concerns, but it is not my interpretation of section 2(2). It's the opposite. If you read the first phrase of 2(2) carefully, it says:

> This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35

That's pretty clear to me. That's a safeguard of the rights we have currently as indigenous peoples in this country, and not the contrary.

With respect to the other concerns with respect to *terra nullius* or the doctrine of discovery, I think those are rejected pretty firmly and pretty clearly in the preamble.

In my view, the only thing that's missing in 2(2), to clarify my point, is the fact that we need to add what the Supreme Court of Canada said with respect to aboriginal rights and treaty rights. They are not frozen in time and must continue to evolve.

I would add a section 2(4), after 2(3), that would say the rights of indigenous peoples, including treaty rights, must be interpreted flexibly to permit their evolution over time, and any approach constituting frozen rights must be rejected.

The Supreme Court of Canada in Sparrow said that the phrase “existing" aboriginal rights must be interpreted flexibly to permit their evolution over time. I think, to address the concerns of 2(2), adding a paragraph like this would clarify the situation and the intent of 2(2).

The Chair: Thank you, Mr. Saganash.

Mr. Melillo, With the time before us, is there a question you would like to bring forward now to the witnesses?

Mr. Eric Melillo: Mr. Chair, I appreciate that, but I think with the agreement we had, I'm fine to end the meeting there. I don't have anything too groundbreaking that I think wasn't touched on.

Thank you, though.

The Chair: I appreciate that.

Madame Gill, amendments will be allowed and should come forward during the clause-by-clause portion of our discussion, so there's opportunity ahead for amendments.

With that, thank you so much, panel. I think we got off in the correct spirit of what we're trying to accomplish here, and I appreciate that.

Mr. Marcus Powlowski (Thunder Bay—Rainy River, Lib.): Mr. Chair, can I interrupt?

You were going to address the question of the French versus English translation.

● (1335)

The Chair: I'm not prepared to address it right now.

Gary.

Mr. Gary Anandasangaree: I'm sorry, Mr. Chair. I thought you did address it, saying that it will be part of the amendments. If issues come up, I think we can definitely address them through the amendments. We look forward to receiving them. Romeo, Madame Gill will work with you to ensure that the spirit and the intent of the legislation is reflected in both official languages.

The Chair: I believe that was contained in my answer to Ms. Gill.

Ms. Lenore Zann: Mr. Chair.

The Chair: Yes.

Ms. Lenore Zann: Would it be possible to ask a very quick question to Mr. Saganash?

The Chair: I'm sorry. Technically we have to be out of the room.

Ms. Lenore Zann: I wanted to take Mr. Melillo's place if he didn't have a question.

The Chair: I'm sorry. As the chair, I'm going to thank our witnesses and—

Ms. Lenore Zann: Thank you, Mr. Saganash, for being here and for all your hard work.

The Chair: You can offer a motion to adjourn, Ms. Zann, if you'd like. Thank you.

Ms. Lenore Zann: Unfortunately and sadly, I will offer a motion to adjourn.

The Chair: That's carried.

The meeting is adjourned.