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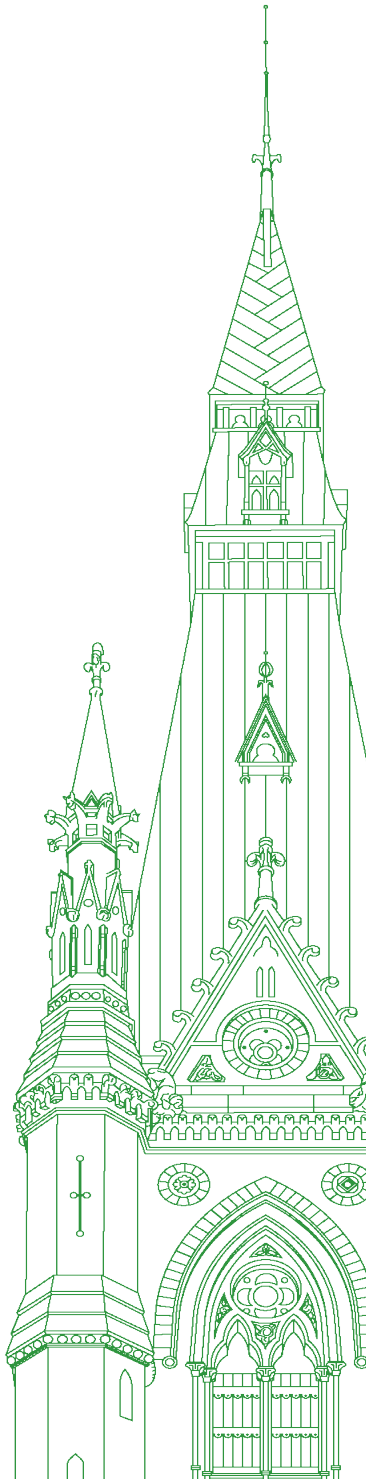

Chair: Mr. Bob Bratina

Standing Committee on Indigenous and Northern Affairs

Tuesday, March 30, 2021

● (1100)

[*English*]

The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)): In view of the fact that we have a quorum, accordingly I call this meeting to order.

I will 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 continues its study of the subject matter of Bill C-15, an act respecting the United Nations Declaration on the Rights of Indigenous Peoples, and to make related and consequential amendments to other acts.

This meeting is in place of last Thursday's meeting that was cancelled due to votes in the House. We regret that Professor Dwight Newman and Professor Ken Coates could not be with us today. I have ensured via the clerk that they have the necessary information to send in written submissions.

For an orderly meeting, participants, please speak and listen in the official language of your choice. At the bottom of your screen on the globe icon, you can select "Floor", "English" or "French". You may switch from speaking one official language to another without changing the language in Zoom. When speaking, ensure that your video is turned on, and please speak slowly and clearly. When you are not speaking, your mike should be on mute.

Pursuant to the motion adopted on March 9, 2021, I inform the committee that Mark Podlasly and Stephen Buffalo have not completed technical pretests.

With us today by video conference is Mark Podlasly, director, economic policy, First Nations Major Projects Coalition. Representing the Mining Association of Canada, we have Kara Flynn, vice-president, government and public affairs at Syncrude Canada; and Tara Shea, senior director, regulatory and indigenous affairs. Also, as I mentioned, we'll be joined in the first hour by president Steven Buffalo from the Indian Resource Council.

Thank you, all, for taking the time to appear. Each organization has up to six minutes for an opening statement, followed by questioning.

Director Podlasly, please go ahead as our first witness.

Mr. Mark Podlasly (Director, Economic Policy, First Nations Major Projects Coalition): Good morning, and thank you for this invitation.

My name is Mark Podlasly, and I am a member of the Nlaka'pamux Nation in southern British Columbia. I am speaking to you today from Coast Salish territory in southwestern British Columbia.

I am the director of economic policy at the First Nations Major Projects Coalition, a national collective of 70 indigenous nations working to ensure that first nations receive a fair share of benefits from projects in our territories through the ownership of equity in proposed pipelines, electric infrastructure, transportation routes and other revenue-producing initiatives.

I am here today to speak on behalf of our members in support of Bill C-15, an act respecting the United Nations Declaration on the Rights of Indigenous Peoples. For our members, UNDRIP already frames how we see development and our ability to direct decisions that are supportive of our interests.

The declaration focuses indigenous attention on how first nations-supported development can enable self-determination as described in UNDRIP article 3. However, it is article 4 that, in the opinion of the First Nations Major Projects Coalition, will be key to successfully implementing UNDRIP in Canada.

Article 4 states that:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

This financing or fiscal component is key to ensuring that first nations have the means to pursue UNDRIP autonomy. No government, indigenous or not, is truly self-determining if it is reliant on an external government for financial viability. It is impossible for a government to function at any level without a source of revenue to pay for its operation.

This is why our members see revenues from indigenous-held equity as providing the financial means for self-determination, and why first nations must implement this according to UNDRIP. Without it, UNDRIP implementation will be impossible.

For first nations, a multi-generational source of equity-derived revenue will allow our nations the ability to set and fund our own UNDRIP self-determination priorities.

These UNDRIP priorities include culture and language. They are, as described in article 11, to practise and revitalize our culture, traditions and customs; in article 12, to manifest, practise, develop and teach our spiritual and religious traditions, customs and ceremonies.

They include education and media. They are, in articles 14 and 16, to establish and control our educational systems and institutions, to provide education and to establish our own media in our own languages.

They include economic, social and health improvements. They are, as noted in article 21, the improvement of our economic and social conditions.

They include revenue from traditional territories. They are, as described in article 26, to own, use, develop and control the lands, territories and resources that we possess by reason of traditional ownership, occupation or use.

They include development priorities. They are, as described in article 32, to develop and present priorities and strategies for the development and use of our lands and other resources, and as described in article 34, to promote, develop and maintain our institutional structures.

Article 39 notes that we are to have access to financial and technical assistance from states regarding the rights contained in the declaration.

These UNDRIP articles are all dependent on a revenue stream to pay for their implementation. A new indigenous-controlled fiscal component offers significant benefits for first nations and Canada, including greater investment certainty and reduced opposition to projects; self-sustaining indigenous governments; stable own-source revenue streams to fund first nations government priorities; the ability of first nations to access capital sources to leverage their revenue streams to further invest in the Canadian economy; a new nation-to-nation relationship with the Crown as a true UNDRIP partner; direct first nations involvement in the wealth-generation aspects of the Canadian economy; and fulfillment of UNDRIP.

These benefits will accrue only if there is a way for first nations to acquire a revenue stream to support self-determination. At present it is very difficult to nearly impossible for first nations to raise or access substantive capital to invest in major projects.

The advice that I wish to provide to the committee today is that the key to making UNDRIP work in Canada is to start with article 4, which is about the ways and means for financing indigenous autonomous functions. How this is implemented will determine if the promise of Bill C-15 and UNDRIP will be fulfilled.

● (1105)

Thank you.

The Chair: Thank you very much to our first witness, Mr. Podlasly.

We will go next to Kara Flynn and Tara Shea of the Mining Association of Canada, for six minutes.

Please go ahead.

Ms. Tara Shea (Senior Director, Regulatory and Indigenous Affairs , Mining Association of Canada): Good morning, Mr. Chair, members of the committee and fellow panellists.

I'd like to start by acknowledging that I'm participating from Ottawa, which is traditional Algonquin territory. Kara is participating from Edmonton, which is Treaty 6 territory and the homeland of the Métis people.

Thank you very much for the invitation to be here today to share our members' views on Bill C-15.

MAC members have a strong record of establishing respectful and mutually beneficial relationships with Inuit, Métis and first nations peoples. Our members are among the largest industrial employers of indigenous peoples in Canada and a major customer of indigenous-owned businesses. Across the country, there are examples of partnerships between mining companies and communities that are advancing reconciliation and contributing to the implementation of the UN declaration.

As an association, we looked to the UN declaration and the Truth and Reconciliation Commission for guidance when we were drafting our recently updated indigenous and community relationships protocol as part of our sustainability initiative, “Towards Sustainable Mining”. We established a good practice level that includes a commitment to aim to achieve free, prior and informed consent for new projects or expansions where impacts to rights may occur. This is among many other criteria in the standard designed to facilitate strong relationships through effective engagement and decision-making processes.

We are supportive of the objective of incrementally and thoughtfully implementing the UN declaration through collaboration. We see potential for Bill C-15 to improve relations between the Crown and indigenous peoples and to help advance reconciliation, but this will require additional clarity on certain key issues, effective implementation and adequate resourcing.

Our understanding of Bill C-15 is that it is enabling legislation that will require the federal government to work with indigenous peoples to co-develop an action plan to ensure that the progress made to date continues. It acknowledges that the declaration is already used as an interpretive tool but that it is not meant to give the declaration direct, legal effect in Canada.

We raise our interpretation of the bill today because we recognize that there are differing views as to the purpose of this bill, and this growing spectrum of interpretations is creating confusion about what this bill means and what it is intended to do. We are concerned that, in the absence of a common understanding of the intent of the legislation, there will be unintended consequences, including unmet expectations, legal challenges and increased uncertainty, all of which impact the viability of natural resource projects and their associated benefits to indigenous individuals, communities and businesses.

To help avoid expectations diverging further, the federal government must be transparent with how it interprets the declaration and what obligations it sees arising from Bill C-15. This includes enhancing communications on the bill's intent in Parliament with indigenous peoples, provincial governments, other Canadians and the investment community.

Clarity on the federal government's approach to free, prior and informed consent and its relationship to existing duty to consult obligations is particularly important. There have been recent statements from the Minister of Justice and others explaining what FPIC means in principle and notably that FPIC does not grant a veto over government decision-making.

We believe there is an urgent need for further clarity on process, beyond whether FPIC equates to a veto. In particular, this includes the circumstances that give rise to the obligation to consult and, in some cases, to seek consent and the specific processes for each; the government's approach when efforts to obtain consent have been unsuccessful or when consent is provided by some affected indigenous communities but not all; and whether existing indigenous engagement processes may change and the specific changes being contemplated.

While we recognize that, to some extent, government decisions will be made on a case-by-case basis by considering issues such as strength of claim, impacts on rights and overall project benefits, the current lack of clarity does create uncertainty for investment, and these issues need to be clarified before the legislation is passed.

In our submission we recommended that guidance, policies and training be enhanced to ensure that federal officials are able to effectively engage in relationship building and consultation with indigenous communities. The current "Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult" are extremely outdated.

In addition to updating these guidelines, there are other practical steps that can be taken now to help ensure there is consistency across the federal government, including issuing a directive to federal officials informing them of the government's interpretation of FPIC and the intent of Bill C-15. This should be done now to ensure there is no confusion at the working level about what Bill C-15 means.

● (1110)

Additional steps include incorporating the government's interpretation of FPIC and the bill into guidance training and policies; implementing oversight mechanisms to ensure that guidance and policies are consistently followed; and committing resources for ongoing training initiatives to respond to high turnover in key federal roles. This cannot be deferred any further. This guidance is needed now.

In looking ahead to the action plan, it will be critical that the process to develop this plan be transparent and well defined, given the wide spectrum of expectations with respect to this bill and the range of outcomes that are possible. This includes establishing a meaningful consultation plan, determining how actions will be identified and prioritized, and ensuring that the required resources are in place.

We respect and support the intent for the action plan to be co-developed with indigenous peoples, and we have asked to be engaged in the development and implementation of the action plan on any elements that may impact our sector.

With that, Mr. Chair, thank you again for the invitation to present today.

We look forward to the committee's questions.

● (1115)

The Chair: Thank you very much, Ms. Shea.

Our third presenter in this segment is the president of the Indian Resource Council, Mr. Stephen Buffalo.

Please go ahead for six minutes.

Mr. Stephen Buffalo (President, Indian Resource Council): Thank you, Chair and committee members, for the opportunity to speak today. I am in the Treaty No. 7 territory. My name is Stephen Buffalo. I'm the president and CEO of the Indian Resource Council of Canada.

Our organization represents over 130 first nations across Canada that produce or have a direct interest in the oil and gas industry. Our mandate is to advocate for federal policies that will improve and increase economic development opportunities for our first nations. Few will be more impacted in the short term than the 130 members of the Indian Resource Council if the proposed UNDRIP legislation is not clearly drafted. Otherwise this will compromise the ability of our members to engage in resource development.

The members of the Indian Resource Council, like all first nations, obviously find a lot to like in the UNDRIP, which we support without question. I'm personally from the same nation as Dr. Willie Littlechild, one of the architects of the declaration. I've spoken to him at length about understanding the spirit and the intent behind it, but I'm very concerned about the unintended consequences of this legislation. I think, in practice, it will slow down or even reverse the economic development that we've achieved in our nations.

Within our communities, the majority of our members support involvement in the oil and gas industry—not all but most. That's because the royalties and profits we generate from this sector have been essential to the well-being of our people. They pay for things like elder services, housing, cultural programs, bereavement costs, recreation centres and other programs and services that are chronically underfunded by the federal government, or not funded at all. They provide us some autonomy in spending that we do not have with federal funding. They allow us to exercise our self-determination.

In my own community of Maskwacis, we've created a trust company, Peace Hills Trust, a scholarship fund to encourage our youth to pursue post-secondary education. The energy sector has brought many benefits to us, and we don't need any additional barriers that will impact or eliminate these benefits. Creating a competitive and stable investment environment in Canada would help bring new development projects in our territories. Having sufficient pipeline capacity, for example, would allow our members to earn full value of their products instead of having to accept a discount due to transportation and market constraints, as we see now today.

We've already seen countless jobs, procurement opportunities and equity stakes lost in the cancellation of tens of billions of dollars from energy projects across western Canada as a result of legislation such as Bill C-48 and Bill C-69. We have a lot to lose if this legislation, in its current form, further impacts our ability to attract investment.

Let me share with you the biggest concern about Bill C-15. The legislation says that indigenous people need to provide consent for a project to go forward, but it doesn't say who can provide or deny consent and how it's to be demonstrated. If you're saying consent is provided by chief and councils through band council resolution or referendum, then that's one thing. But if you're saying that a small group of indigenous activists who declare that their consent is required, and that they have the right to blockade any project they do not like, or just to get a standing in court to contest it, then that's a recipe for disaster.

It would be much better if this committee could define “free, prior and informed consent” in the legislation and determine who can represent and make decisions on behalf of indigenous peoples for the purpose of project approvals. Better yet, this committee can engage indigenous people across Canada to come to a consensus on what “consent” means before passing this legislation, because you know as well as I do that some people think it's a veto, and if the committee doesn't think it's a veto, then they should make that clear.

Putting the declaration verbatim into federal legislation without these definitions is going to allow special interest groups to weaponize the United Nations Declaration on the Rights of Indigenous Peoples as a tool to stop any extractive project they do not like. This isn't my being paranoid. This is in our communities and in our projects all the time. I even heard it from some MPs using UNDRIP as a reason to cancel TMX, for example.

● (1120)

Many of our members are actually involved in negotiating and purchasing it, but whether or not you support the oil and gas industry, it's the right of the 130 first nations in our organization to develop their resources as they see fit.

At the end of the day, if the bill remains vague, as it is in its current form, I believe some judge down the line is going to decide what FPIC means in the context of resource development. No one is going to want to invest in any major projects in this country until that day comes.

IRC members want better protection for indigenous rights, and there's obviously a lot of good that can come from using the United Nations Declaration on the Rights of Indigenous Peoples as a shield and framework for reconciliation. However, investment requires certainty, and if we're going to self-determine, reduce our dependency on government and move beyond meagre royalties, we'll need to attract investment of our own.

Thank you for the time. I'm happy to take questions.

The Chair: President Buffalo, thank you very much.

We'll now go to a six-minute round of questioning. I have, on the first panel, Mr. Melillo, Mr. van Koeverden, Ms. Normandin and Ms. Gazan.

Eric, you're up first, for six minutes.

Mr. Eric Melillo (Kenora, CPC): Thank you very much, Mr. Chair.

I thank all of our witnesses for joining us today. You have already given us a lot to think about. I'm looking forward to the questions and hearing more about what you have to say.

I would like to direct my questions to the Mining Association of Canada. Whoever wants to answer can feel free to jump in.

I represent the riding of Kenora, in northwestern Ontario. There are lots of mining developments there. The Red Lake mine, the Musselwhite mine and many others fall in my riding. They're obviously a major economic driver for our region and a major employer of first nations as well.

I'm wondering, just to start off, if you can touch on some of the mechanisms and processes that mining companies have in place currently to ensure that they work in partnership with indigenous communities and that any developing projects are working to the benefit of these communities. The question is for whoever wants to take it.

Ms. Tara Shea: I'll use this opportunity to speak about relationship agreements between mining companies and communities. We're getting close to 500 active agreements between companies and communities in Canada right now. NRCan does track this on its website.

Relationship agreements, impact benefit agreements or collaboration agreements—whatever you want to call them—set out the terms of the relationship between a company and a community. They address the unique circumstances of the mining activity, the impacts on rights and the relationship. They include provisions addressing education, training, environmental stewardship, reclamation, employment, business development and community investments. They outline the responsibilities for both parties.

Early agreements were transactional in nature. What we're seeing today is a move beyond financial payments to compensate for potential adverse impacts and toward a means to facilitate indigenous participation in our sector.

We're actually seeing some really great results. Formal agreements have increased indigenous participation in our sector. We're the largest employer of indigenous peoples on a proportional basis and a major customer of indigenous-owned businesses, with many companies spending millions annually on contracts with indigenous service providers.

There are other examples of company-community partnerships on things like environmental monitoring and reclamation activity, and they make sure that indigenous knowledge is incorporated into the way we do business.

● (1125)

Ms. Kara Flynn (Vice-President, Government and Public Affairs, Syncrude Canada, Mining Association of Canada): Perhaps, Mr. Melillo, I can expand on Ms. Shea's comments.

Mining companies and all natural resource companies really do look to our relationships, not just at the front end of a regulatory process, but through the full life cycle of the exploration, development, operation, and remediation and reclamation of our facilities.

As Tara said, that involves business contracts. It involves employment. It involves capacity building in community. However, it has also started to evolve into equity investments and initiatives that truly lead to great partnerships between a resource company and one community or several, depending on the facility. It is about the project specifically, but it is also about being good partners as we work together in development.

Mr. Eric Melillo: Thank you very much.

I appreciate both those comments.

I'll ask simply this, and I know it's not going to be a simple answer. With all the work that has been ongoing already and some of the uncertainties that you alluded to in your opening remarks around UNDRIP and around Bill C-15, do you feel that the adoption of Bill C-15 could potentially put some of these processes and agreements in jeopardy?

Mr. Mark Podlasly: Could I step in here?

Excuse me, Tara. I'll let you go first.

Ms. Tara Shea: No, go ahead, Mark.

Mr. Mark Podlasly: I'm speaking on behalf of the members of the First Nations Major Projects Coalition, and we're speaking about major projects.

In our opinion—this is the 70 first nations—UNDRIP actually increases certainty for the development of projects in the country. We take the position that the clarity that UNDRIP provides—of first nations' knowing that they will be active participants in whatever development—provides investors and proponents with certainty about their investments going forward.

Our members are not against development. We're pro-smart development, and UNDRIP, in its clauses, will provide that assurance.

Mr. Eric Melillo: Thank you.

If I could go back to Ms. Shea with the question....

I just want to get your comments on that. Then I think I might have to yield the floor.

Ms. Tara Shea: Sure.

In our submission, we pointed out that we do see some potential with additional clarity, good implementation and the right resourcing.

I'll just add that if we have to wait three years for key issues to be clarified, there's going to be this period of uncertainty. That's why we're focusing on some things that we can do now to reduce that uncertainty, to clarify these key issues, specifically around the federal process for FPIC.

Practical guidance, training and policies can help avoid that confusion at the working level. We fear that, in the absence of adequate guidance for federal officials, the federal approach to identifying indigenous groups that need to be consulted, the degree of consultation required, and when and what accommodation may be required will continue to be inconsistent.

In a way, we're using this as an opportunity to ask for something that's already needed in terms of consistency across federal departments.

Mr. Eric Melillo: Mr. Chair, how am I for time?

The Chair: We're done. I'm sorry about that.

Mr. Eric Melillo: Okay.

The Chair: Now we have Mr. van Koeverden.

Please go ahead for six minutes.

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

I thank the witnesses for all of the insight today. These are important subjects, and your insights and perspectives are really important.

I am joining you today from the traditional territory of the Haudenosaunee, the Huron-Wendat, the Anishinabe, the Attawandaron and, more recently, the Mississaugas of the Credit First Nation.

My question is for Mark Podlasly. It comes with a glimmer of envy, as you're joining us from the Coast Salish territory, which is one of the most beautiful places in Canada. I hope that there aren't too many people from Milton listening as I express envy for how beautiful your territory is. I'm a water person myself, so I love your territory. That part of the country is beautiful.

I took note of your reference to article 4 repeatedly throughout your testimony today. I looked it up, and I want to read it out for my benefit and for the benefit of anybody else who is interested in listening.

It goes like this:

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

I don't know who it's attributable to, but I have heard that more human rights are never a bad thing. I do know that it was Martin Luther King who said, “A right delayed is a right denied.”

l am a strong believer that these rights have been delayed a tremendously long time. This bill, in swift form, will take action on that and give people and persons the rights they so deserve.

We have spent a lot of time discussing the nuances and differences between a veto and free, prior and informed consent. We also recently heard from a former MP, Romeo Saganash, on his definition or distinction between the two.

I'll read that, and then following that, Mr. Podlasly, I'd ask for your reflections on the subject.

Mr. Saganash said:

> Veto and FPIC are two different legal concepts. One is absolute, and that is veto, whereas 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.

Mr. Podlasly, I'd just ask for your reflections on this, and thank you for your testimony today.

● (1130)

Mr. Mark Podlasly: Thank you.

The question of ways and means to finance our own autonomy, as you mentioned, in article 4, is the key to any other clauses within UNDRIP. Anything that provides for education, social, linguistic, it all depends on some revenue stream. First nations need a revenue stream like any government to provide those services.

That is why the First Nations Major Projects Coalition sees that as key to UNDRIP, and the implementation of UNDRIP and all its promises will not be possible without that financing.

On the question you raised around whether a veto is in place, either practically or by default, at the coalition we take the perspective that if first nations are included in smart development, up front, as equity partners, then we essentially become co-proponents. Therefore, the question of FPIC as a veto or not is moot because no interested party, or no party that has been consulted and provides consent via an equity ownership, is ever going to run into that problem.

That is why we are very keen on seeing some sort of capital access program or capital access policies that allow first nations to make investments in projects, so that will never be an issue.

Mr. Adam van Koeverden: I really appreciate that answer.

As I have been reflecting and listening, albeit I am new to this conversation as a member of this committee, I get the sense that the conversation keeps coming back to who stands to benefit from a lot of these large operations and projects.

Consistently we've talked about jobs, working-class jobs for people who are there, but it seems in this context we are talking about a form of ownership. This is actually a project that would be owned, in more cases, by first nations. This is not about earning a living. This would be about generating wealth and the long-term viability of various communities.

I ask for your reflections again on ownership and the ability to dictate and self-govern and decide for oneself, with autonomy and self-government and self-determination being the underlying theme and context of this.

Mr. Mark Podlasly: I would point out that impact benefit agreements, participation agreements, the ones now in effect across the country with proponents and first nations, are not only about revenue. They are about jobs, environmental protection and contracting opportunities. Many economic engines come into that.

As was pointed out by Ms. Shea, they include provisions for input on mine closure and reclamation of sites. They are very comprehensive. It is not just about revenue, to make that clear. However, first nations moving into an UNDRIP situation, where self-determination as part of UNDRIP is in the equation, will require some sort of funding.

I should point out as well that all the promises of UNDRIP will not be possible under the payment of one government. The federal government will not have the ability to fund everything in UNDRIP. There has to be a partnership in there in some way, because we, as first nations, want to provide many of these services, language retention, things that are important to our communities, like every other community in this country.

Mr. Adam van Koeverden: Which other levels of government or various stakeholders would you see as good or viable partners in that implementation?

Mr. Mark Podlasly: It's the Crown, but there are two Crowns in this country—the provinces and the feds. Depending on the arrangement and how the implementation goes for UNDRIP across the country, those two players will have to be a part of the discussion.

I am from British Columbia, which has already implemented an UNDRIP type of legislation and is moving toward that, but the Crown in B.C., at least in my province, will also require input from the Crown federally, and that comes back to your committee.

● (1135)

The Chair: Thank you very much.

I am sorry, Mr. van Koeverden. We are past time now.

[*Translation*]

Ms. Normandin now has the floor for six minutes.

Ms. Christine Normandin (Saint-Jean, BQ): Thank you very much, Mr. Chair.

I thank all the witnesses for their very informative presentations.

My first question is for Mr. Podlasly.

I'd like to make a little preamble. You will not be surprised to hear that as a member of the Bloc Québécois, I am particularly interested in the issue of self-determination of peoples. In the case of Quebec, there have been attempts in the past to define the self-determination of peoples after the fact. I am thinking in particular of referendum clarity.

Is this something you might be concerned about? If the criteria in Bill C-15 do not clearly establish what constitutes free, prior, and informed consent, could there be an attempt to water down the bill and make it meaningless? Are the access to funding measures that you were announcing sufficient to prevent this?

[*English*]

Mr. Mark Podlasly: Thank you for your question.

I have just a point of clarification. Access to capital is not the same as funding. We would provide that capital into our own services and the self-determination priorities of our nations, so that is separate. I hope I have not given that impression.

Do we need to define now what "consent" means so that it does not become an issue later? I think that is what the second part of your question is. That would be helpful. However, that has to be done in concert with the first nations. To have the federal government simply define it—"this is what consent means"—will cause problems. UNDRIP, by its nature, is supposed to be a collaborative agreement to allow indigenous people and their host states to build a better future together. The question of consent will take time, and it will have to be worked out between the parties.

I should point out as well that disagreement is a very Canadian concept. When we at the coalition are approached and asked why we aboriginal people or indigenous people can't have some sort of unified approach, our response is, "Just like Canada and all the provinces are unified in their approaches?"

We are building a better society, and it will take time. First nations are not in a vacuum. We understand that the consent question is important. We at the coalition, though, are focused on the economic aspects and do believe that for many situations that question will not become a key issue if it's around an equity ownership and direct participation in the projects in question.

[*Translation*]

Ms. Christine Normandin: Thank you very much, Mr. Podlasly.

I will take the liberty of clarifying my question.

You mentioned that it will take some collaborative work to define the concept of free, prior, and informed consent and that it may take some time.

Wouldn't that concept be diluted if it is not defined prior to the passage of Bill C-15? Couldn't this even undermine the purpose of the bill?

Do you instead believe that this is not a problem and that we can stick with Bill C-15 as written, without adding the definition of free, prior, and informed consent?

[*English*]

Mr. Mark Podlasly: Thank you.

I think the concept of consent will be worked out in time. I do not think it has to be worked out at this point. I would like to point out as well that UNDRIP itself is an international document, so the concept of consent will be evolving in many jurisdictions at the same time.

If there is something that comes out of that would be—as you put it—"watered down", would that stand the test of the spirit of UNDRIP, which is about building better societies together? If it is something that is not compatible, let's say, with the concepts on both sides, the federal government and indigenous peoples, it will be refined over time, and the precedent of international agreements is that everyone—other indigenous people worldwide—is watching.

One other point I'd like to raise is that at the major projects coalition, we recently put on a conference on ESG standards—environmental, social and governance investment standards. Capital will flow to those jurisdictions that provide certainty around questions like that. Canada will also have to follow that.

● (1140)

[*Translation*]

Ms. Christine Normandin: Thank you very much, Mr. Podlasly.

My next question is for Mr. Buffalo.

The concept of consent could evolve over time and move closer to a veto right. Yet you have expressed some reservations in this regard. In light of this and Mr. Podlasly's responses, do you continue to support Bill C-15 as written or do you question it?

[*English*]

Mr. Stephen Buffalo: Thank you for the question.

The way we look at it is that obviously we want to see the United Nations declaration move ahead. From a human rights standpoint, you can see that in this country the indigenous people have confronted rights to certain issues and, nine times out of 10, it hasn't fallen in our favour. When it comes down to finding the consent, it definitely is going to take some time, and you know what? I think a lot of the members are prepared to work with it as long as there's some certainty moving forward that the issues would be addressed.

Like my colleague Mark mentioned—Mr. Podlasly—it's going to take some time to make those definitions, but obviously you see the opportunities coming forward now in today's day and age. You see the ESG. You see the opportunity.

Our organizations as well, with the First Nations Major Projects Coalition, are preparing our communities to be ready for that opportunity and those investments. We want to ensure that there is certainty to attract the capital, to attract the investment and to find a partner. When we define "consent", it's really building a relationship that hasn't been there for—

The Chair: We're out of time now, Mr. Buffalo. Thanks for your answer.

Ms. Gazan, you have six minutes. Go ahead, please.

Ms. Leah Gazan (Winnipeg Centre, NDP): Thank you so much, Mr. Chair.

My first questions are for Mr. Buffalo.

Do you consider the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples to be human rights?

Mr. Stephen Buffalo: Absolutely. They're definitely human rights. That was the intent of the document from the get-go.

Ms. Leah Gazan: Do you believe that it's critical to uphold the human rights of all peoples, including indigenous peoples, at all times and without question?

Mr. Stephen Buffalo: Yes.

Ms. Leah Gazan: I ask that because we know that international trade law has requirements or rules about risk disclosure. This serves as some sort of warning to potential investors. There are many areas in this country where there are fundamental indigenous rights attached to lands and resources, yet we often negotiate trade agreements without informing our counterparts of those same lands and resources that are still in dispute. I'm sure we can cite many examples right now in British Columbia.

With that in mind, aren't we then negotiating these trade agreements on a lie?

Mr. Stephen Buffalo: Yes. You can take this as far back as our treaty. When we look at our treaty and how we defined the land when we signed Treaty 6, we were told we got this much land, but then the Natural Resources Transfer Agreement came. It think it was in 1932. Hence, we lost our position, not knowing....

Now we're in the system that has been developed as Canada, which does not work. We're stuck under the system of the Indian Act. This declaration helps us have that voice and consent, and moving—

Ms. Leah Gazan: I ask that because international trade law has requirements that include disclosure. That would include indicating to any investor in places where there is a potential risk as a result of a land dispute that hasn't been resolved. There are many examples in B.C.

I'd like to ask Mr. Podlasly the same question.

● (1145)

Mr. Mark Podlasly: I don't understand the question. The way it sounds now is that, yes, Canada should be disclosing to international treaty participants that there is a question about the land issue in Canada. In British Columbia, we are primarily unceded territories.

Is that your question? Are you asking me if Canada is negotiating on the basis of a lie?

Ms. Leah Gazan: Yes. Part of international trade law requires full disclosure of risks. I would argue that having development occur on lands that are still in dispute would be considered a risk. We often see many of these developments end up in court as a result. Is the failure to fully acknowledge the impact of land disputes in negotiations not negotiating trade agreements on a lie?

Mr. Mark Podlasly: This is a complicated question.

In British Columbia, much of the territory is unceded. That means it has not been signed into a treaty. There has not been an agreement fulfilling the Royal Proclamation of 1763. Yes, it is a risk. The title to the land is in question. First nations are aware of that and are trying to pursue that—at least in British Columbia—by having benefit agreements that reflect that reality.

Investment communities are starting to become aware of this. Environmental, social and governance—or ESG—investment standards do try to take that into account. Institutional investors are taking that into account.

From a first nations perspective, we would wholeheartedly agree that Canada and the crowns—also British Columbia—need to acknowledge that fact. If they do not acknowledge it up front in trade agreements, the courts will come along and do that eventually, as you pointed out. Court rulings have sided with indigenous rights on the question of land repeatedly over the past 10 years in this country.

Ms. Leah Gazan: Would you say that, moving forward, a better way forward—I know you indicated your support for Bill C-15—would be to ensure that any agreements adhere to, at the very least, the minimum standards articulated in the United Nations Declaration on the Rights of Indigenous Peoples as a way to support development that is rooted and framed within human rights?

Mr. Mark Podlasly: Yes, and I would emphasize that has to be done. There are still agreements between Canada and first nations directly.

Ms. Leah Gazan: Thank you very much to both of you.

The Chair: Thanks, Ms. Gazan.

Members of the committee, we're running close to time so I'm going to take each of the parties in the five-minute and the two and a half minute rounds once. That will be Mr. McLean, Mr. Podlasly, Ms. Normandin and Ms. Gazan.

Next, it's five minutes for Mr. McLean.

Mr. Greg McLean (Calgary Centre, CPC): Thank you, Mr. Chair.

I'm joining you today from downtown Calgary, which of course is the traditional territory of the Blackfoot Confederacy, including the Siksika, Piikani and Kainai nations; Stoney Nakoda, including the Chiniki, Bearspaw and Wesley nations; and the Tsuut'ina Nation, as well as home to the southern Alberta Métis nation, region 3.

Mr. Buffalo—and I have to be quick here—can you please talk to us more about the differential we receive on our resources on your land and the effect that has as far as the economics you receive from the resources?

Mr. Stephen Buffalo: Traditionally when we produce oil and gas it's controlled by the federal government, and right now it seems we have one customer and that's the United States. The pipeline capacity we see that was supposed to go to foreign markets is not there with the legislation that's been put forward in Bill C-48. Now the challenge is to build further infrastructure with Bill C-69.

With the oil and gas prices where they're at today, it's been increasingly difficult. In the past the ripple effect is that the federal government looked at some of the producing nations as rich, which isn't true. Obviously we have a lot of needs. Our populations are growing, and our demographics are growing. A lot of the social issues plaguing a lot of our communities are rampant, and we need to deal with that. The price of our resources is very important, but right now it's not getting to where it used to be.

● (1150)

Mr. Greg McLean: I'm sorry to interrupt, but could you quantify how much your nations, your organizations, have lost because of the differential we receive, artificially, because of our constraint on infrastructure?

Mr. Stephen Buffalo: We work with a special operating agency called Indian Oil and Gas Canada, and they collect the resources. Up to four years ago they were collecting over $500 million in royalties, and just this last quarter they've collected only $35 million out of all the producing nations in Canada.

Mr. Greg McLean: Thank you very much.

Is it safe to say that with the Impact Assessment Act that the likelihood of breaking the backlog and getting those resources to market more efficiently is constrained for the near future?

Mr. Stephen Buffalo: Absolutely, it's definitely making it more difficult, for sure.

Mr. Greg McLean: Thank you.

Mr. Podlasly, thank you very much.

I think the issue around economic sovereignty is fundamental to what we're talking about here with the UNDRIP legislation, because you're right: Without the ability to finance your developments, you don't have autonomy.

You spoke about the issues and how the world is watching this. You talked about how capital will flow to certainty in the ESG world. Last week Ehren Cory—he's the appointee who heads up the Canada Infrastructure Bank—talked about risk and uncertainty holding back projects in Canada.

Do you not foresee that potentially this unlevel ground created by a determination of UNDRIP that will evolve over time, as you say, won't create risk and uncertainty?

Mr. Mark Podlasly: I want to point this out. In terms of ESG standards—environmental, social and governance investment standards—capital markets are looking for certainty. They're looking for returns and knowing that they will get their returns. Right now the uncertainty of the land question in Canada causes trouble to those investors.

At the coalition we had a conference just a week ago on this question. We spoke to all of the major investment houses in Canada, the investment pension funds, and they are of the opinion that if there is clear indigenous involvement in these projects, like through equity holdings, equity investments, it sends a signal to the market that this is a safe investment. It will not be disrupted by protests or issues that are happening now. It will provide greater certainty not just for indigenous people but for investors and the Canadian economy.

Mr. Greg McLean: Agreed, but how do you move these levers without affecting a different lever? You talked about getting certainty, but at the same time, you have an evolving definition of what the actual legal framework looks like at the end of the day. I'm concerned that what you see as certainty, other people see as great uncertainty going forward, as we evolve these definitions.

There's a problem that we're going to have here. We talked about the Impact Assessment Act and no real development going forward, but you can take a look at how much has been forgone by first nations as a result of developments that haven't happened over the last 10 years because of the uncertainty in the Canadian outlook here. Getting to that point of certainty is going to be essential for the economic benefit of all parties in Canada, particularly first nations.

How do you arrive at a base level that actually provides that certainty? Right now, I'm hearing two different equations on that.

The Chair: Mr. Podlasly will have to submit that answer unless it comes up in the next question. We're well over time and rushing along in our committee day.

Mr. Powlowski, you have five minutes.

Mr. Mark Podlasly: Thank you.

I am very encouraged by this entire conversation. This is what it means to implement UNDRIP—

The Chair: I'm sorry, Mr. Podlasly.

Mr. Mark Podlasly: Did you ask me a question?

The Chair: No. We're out of time.

Mr. Mark Podlasly: I'm sorry. I thought you were referring a question to me.

The Chair: No. We're out of time on that one.

Mr. Powlowski, you're up.

Mr. Mark Podlasly: I'm sorry. There are two of us with very similar names.

Mr. Marcus Powlowski (Thunder Bay—Rainy River, Lib.): I think the computer is booting me off. It decided to reboot.

You have a great name, actually.

Mr. Mark Podlasly: Thank you. I like your name too. One day we'll have a coffee.

Mr. Marcus Powlowski: Yes.

Let me start my question. I'm not sure if it's going to reboot before I get there.

My question is a follow-up to the previous question. Is this increasing or decreasing uncertainty? It's all about aboriginal title, I guess....

I'm not sure how much Bill C-15 really changes the present legal definition of aboriginal title as established by the courts, from Sparrow to Tsilhqot'in. Those decisions in Tsilhqot'in established that it was *sui generis*. There was a beneficial interest in the land and the province has a right to regulate land use in the public interest.

Now, I don't know all the fineries of aboriginal land law, and I know that was a case in B.C. where there was no previous treaty, but I don't see UNDRIP as really changing too much of what has already been legally established as to what aboriginal title is. Furthermore, I know that the courts, in informing their decisions on legislation, look to international legal instruments like UNDRIP.

Maybe I can first direct my question to Mr. Podlasly.

How much is this really changing things? We certainly hear the allegations that this is creating uncertainty, but it seems to me that's a little hard to buy into.

● (1155)

Mr. Mark Podlasly: Thank you. I see that we even have the same initials; they're close like our names.

I agree with you. What's being proposed right now in UNDRIP is in some ways catching up to what industry is already doing with first nations in many places across this country.

There are impact benefit agreements in place on electrical infrastructure and electrical generation, and mining projects that already incorporate a lot of the elements you find in UNDRIP, because companies have realized that it provides them the certainty they're looking for, not only to continue those operations or to start them but to attract capital, which they need to do. They then flag those through their environmental, social and governance standards, which the investment community recognizes, and all the parties benefit.

The major projects coalition has put out reports on examples of these agreements in Canada and worldwide in many sectors, so you are right. UNDRIP itself is catching up to what many companies and first nations are already doing in this country.

What it does is solidify it into Canadian law, and the benefits and approaches will be spread to other nations and other communities. It sets a standard.

You are right. Canadians are already doing the clauses of UNDRIP.

Mr. Marcus Powlowski: Maybe I can ask the same question of Mr. Buffalo and Ms. Shea.

Mr. Stephen Buffalo: Thank you for the question.

I agree with Mark. Things are slowly moving to that. We're finding that the industry in the oil and gas sector definitely has the door wide open to that relationship building. We formalize it when we call it "consent", but ultimately it's something that needs to have been practised years ago. I think that when we saw the fall in our oil prices in the world markets, the industry hit the ground just as hard. They realized that, hey, there's a partner down here, and if we work together, things will get better.

From the perspective of certainty, I think we're moving towards that and finding ultimately that we just can't have uncertainty where, again, a small group can blockade a national infrastructure project when a democratically elected leadership—10 of them—has made a decision to move forward in investment ownership and in equity, and jobs are at stake and stuff like that. We have to continue to build a relationship to understand all of the issues at hand.

Mr. Marcus Powlowski: Okay.

Let me ask you this, Mark Podlasly. UNDRIP has already been implemented in British Columbia. Have you found that it's increased uncertainty in development in British Columbia?

Mr. Mark Podlasly: UNDRIP is new in British Columbia and the discussions are still going on. What has happened is that industry has come to the table and has started to have those discussions in round tables with first nations and government. It takes time, but it's well under way.

The Chair: Thank you very much.

[*Translation*]

Ms. Normandin, you have the floor for two and a half minutes.

Ms. Christine Normandin: Thank you very much, Mr. Chair.

My question is for Ms. Shea and Ms. Flynn.

When Mr. Podlasly was asked a question about the uncertainty associated with certain projects, he gave a very interesting answer. He said that first nations involvement in these projects would decrease the amount of uncertainty associated with them.

In your view, could the uncertainty not instead be caused by the possibility of oil and gas companies challenging the definition of free, prior and informed consent in court?

● (1200)

[*English*]

Ms. Kara Flynn: Perhaps I could start. I believe Mr. Podlasly was speaking specifically to land issues. I'll respond in a broader context of risk.

Investment is very much alive to risk and all of the different factors around risk. The higher the level of risk there is, the higher the level of return an investor will seek to attain. We see the legislation within this lens. We need clarity around the fact that it is enabling legislation that does not have direct effect in law and that is well implemented by public officials who are trained and have the resources to do this, and we need clarity around working together to achieve an outcome as opposed to FPIC, for example, being a veto.

Those are also risks that are alive in this conversation, as much as Mr. Podlasly is correct on the land aspects, for sure.

[*Translation*]

Ms. Christine Normandin: Mr. Chair, I don't think I have enough time left to ask another question and get an answer.

[*English*]

The Chair: No. I'm sorry about that. Thank you.

Ms. Gazan, you have the same time of two and a half minutes.

Ms. Leah Gazan: Thank you so much, Chair.

My last question is for Madam Shea or Madam Flynn. The study of the UN expert mechanism on the rights of indigenous peoples states the following in paragraph 49:

> In the private sector, free, prior and informed consent is developing into an international standard for companies operating on indigenous lands. In November 2014, First Peoples Worldwide published the "Indigenous Rights Risk Report", finding that 89 per cent of the projects assessed had a high or medium risk exposure "to indigenous community opposition or violations of indigenous peoples' rights"....

What does your organization currently do to mitigate this risk?

Ms. Tara Shea: Maybe I'll start, and then Kara can jump in.

I'll use this opportunity to talk about "Towards Sustainable Mining". For anyone who's not familiar with it, it's our sustainability initiative. It's a mandatory program for our members. It involves annual public reporting and third party external verification. We have an indigenous engagement component built into the program. Since 2004 our members have been reporting on their engagement systems.

In 2019 we updated this component of TSM. We looked to the UN declaration and the TRC for guidance. We consider a good practice level one where you would commit to striving to achieve FPIC for new projects or expansions where impacts to rights occur. Nowhere in the protocol does it say that the facility has achieved FPIC, because we really see that as an ongoing process. Instead, what we have in there is level A for good practice. It requires senior management commitments to work with indigenous communities. Facilities would demonstrate that their engagement systems reflect the local context and are developed through engagement with affected communities.

At the higher levels in TSM, what we consider excellence in leadership, that's where the criteria shift to companies and communities working together to co-develop engagement processes and establish the terms of the relationship. The—

Ms. Leah Gazan: Just because I have limits of time, I want to follow up on what you said, that in projects you've had difficulty getting FPIC and you haven't achieved FPIC.

When you haven't achieved the complete, free, prior and informed consent of people or nations you're partnering with, do you then proceed with projects without the free, prior and informed consent?

I want to understand this.

Ms. Tara Shea: Yes.

The Chair: Answer very briefly, please.

Ms. Tara Shea: I think you misunderstood.

It's a management system standard where we don't give a verified rating that a company has achieved FPIC. It's more of a process of ongoing engagement in TSM.

The Chair: Thank you for that.

I'm very sorry about the time issue, but those are the rules we have to live with.

Thank you to the panellists. We've heard very wonderful presentations from everyone, and it's very helpful to our committee.

We're going to suspend and set up our next panel.

This meeting is now briefly suspended.

● (1205)

_____(Pause)_____

● (1215)

The Chair: We're ready to call this meeting back to order.

I offer my apologies to everyone for the very late start. We have time constraints in our committee meetings, so we'll have to move along quickly.

Each of the witnesses will have six minutes. I'll be kind of a tyrant on the timing of this, so we can at least get one round of questioning in from our committee.

Mr. Joffe, would you please start for six minutes?

Mr. Paul Joffe (Lawyer, As an Individual): Good afternoon, honourable committee members.

I'm speaking from Saint-Lambert, Quebec, which is on the traditional territory of the Mohawk people.

I wish to acknowledge the crucial work of former MP Romeo Saganash. As confirmed by the federal government, Romeo's private member's bill, Bill C-262, serves as the floor, but not the ceiling, in moving forward with Bill C-15. We must now build upon the standards of Bill C-262.

Indigenous peoples in Canada continue to face human rights violations. These include, *inter alia*, racism and other forms of discrimination; dispossession of lands, territories and resources; impoverishment; lack of essential services; food insecurity; missing and murdered women and girls; and forced assimilation and destruction of cultures and languages. In too many instances, intergenerational trauma from residential schools continues to be experienced. It's time for real change.

In this context, it is worth noting that, to date, the UN declaration has been reaffirmed at least 10 times by the UN General Assembly by consensus. No state in the world formally opposes this human rights instrument. This reinforces its significance and legal effect.

I would like now to address the meaning of free, prior and informed consent—or FPIC—as affirmed in the UN declaration, particularly in the context of proposed developments in indigenous peoples' territories. With respect to FPIC, the term “free” means there must be no coercion or manipulation. “Prior” means that consent must be obtained in advance of the activity being approved. “Informed” means that information must not be withheld, misleading or inadequate. Without these three FPIC elements, there would not be valid consent in international law or Canadian law.

FPIC and other provisions in the UN declaration are relative and not absolute. Article 46(3) of the declaration includes one of the most comprehensive balancing provisions in any international human rights instrument. It states:

> The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

These are the same core principles as in the Canadian and international legal systems. These are also the same principles that have been denied to indigenous peoples throughout history.

FPIC is not the same as veto. The term “veto” is not used in the declaration. Veto implies complete and absolute power, regardless of the facts and law in any given case.

FPIC is also gaining support in the corporate sector in Canada and internationally. For example, in its 2019 guidebook, the Canadian Council for Aboriginal Business advises to “Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous Peoples before proceeding with economic development projects.”

As well, the UN Global Compact—the world's largest corporate responsibility initiative with over 12,000 companies in over 160 countries—has expressed strong support for indigenous peoples in its comprehensive business reference guide on the UN declaration. It states:

> FPIC should be obtained whenever there is an impact on indigenous peoples' substantive rights (including rights to land, territories and resources, and rights to cultural, economic and political self-determination).

● (1220)

Respecting human rights cannot reasonably be held up as an impediment to economic development. This legislation will lead to improved relationships, greater certainty and less litigation.

Currently Canada is demonstrating global leadership by implementing a federal bill on the UN declaration; however, some key revisions to Bill C-15 are still required. For example, I would urge adding racism to the eighth preamble paragraph and to the action plan in subparagraph 6(2)(a)(i).

Overall, Bill C-15 is a positive catalyst for co-operation, justice, healing and mutual respect.

Thank you.

The Chair: Thank you very much. You are exactly on time. That is much appreciated.

Madam Langlois, please go ahead for six minutes.

[*Translation*]

Ms. France-Isabelle Langlois (Executive Director, Amnistie internationale Canada francophone): Mr. Chair, vice-chairs, members of the Standing Committee on Indigenous and Northern Affairs, good morning.

I would like to begin by acknowledging that the offices of Amnistie internationale Canada francophone are located on unceded indigenous territory.

Thank you for this invitation to Amnistie internationale Canada francophone to participate in the hearings on Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, hereinafter referred to simply as “the declaration”.

The adoption of the declaration into various Canadian laws is a priority human rights issue for Amnistie internationale Canada francophone, and anglophone Amnesty International Canada. Amnistie internationale actively lobbied for the adoption of the declaration by the UN General Assembly in 2007, and both Canadian chapters lobbied for Canada's adherence to the declaration until it was achieved in 2010. We have intervened in several forums that have taken place in Canada, and each time we have reiterated the importance of the effective implementation of the declaration in Canadian law.

The various inquiries, whether it be the Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls, or the Viens Commission, to name a few, have all recommended the implementation of the declaration. This is principle number 1 of the Truth and Reconciliation Commission of Canada: “The United Nations Declaration on the Rights of Indigenous Peoples provides the framework for reconciliation at all levels and across all sectors of Canadian society. ”

We previously supported Bill C-262, sponsored by NDP MP Romeo Saganash, which had the same purpose as Bill C-15. Unfortunately, this bill could not be passed before the 2019 election was called. By the same token, we welcomed the BC government's announcement in 2019 that it would implement the declaration in its legislation.

On March 10, the Hill Times published an open letter signed by more than 200 predominantly indigenous organizations and individuals and supported by Amnistie internationale calling for the passage of Bill C-15 before the end of the current session of Parliament.

As you can see, Amnistie internationale is in favour of Bill C-15. It is long overdue and it is long past time for Canada to implement the declaration. It is no longer time for surveys and studies, but for action. Civil society has been working for 13 years to make the declaration a reality. Indigenous peoples in Canada have suffered and continue to suffer the oppression of colonization. The Parliament of Canada has an historic opportunity to advance reconciliation with indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples is a global consensus instrument on human rights. It defines the minimum standards necessary for the survival, dignity and well-being of indigenous peoples. The implementation of these standards is essential to improving the lives of indigenous peoples in Canada and around the world, and to meeting Canada's formal and pressing human rights commitments. This bill is far from perfect. But it is nonetheless of the utmost importance. We cannot afford to see such a critically important piece of legislation slip through the cracks again.

Amnistie internationale would have liked to see issues specific to indigenous women more apparent in Bill C-15. It is true that the national survey is mentioned, but that is not enough. Indigenous women in Canada face double discrimination because they are both women and indigenous. Therefore, it is important that indigenous women be included in all stages of the implementation of the bill and that the action plan pay particular attention to their inclusion. They must be given justice and redress for all forms of discrimination, abuse, injury and attempts on their lives that they continue to suffer. Moreover, they must be part of building a just and equitable Canada for all its peoples.

Amnistie internationale would also like to see the mechanisms for consulting and working with indigenous peoples made more explicit in Bill C-15. In our view, several questions remain: who will be consulted, how and when?

Finally, Amnistie internationale would like to see the bill passed, an action plan developed, and Canadian laws harmonized with the declaration according to the minimum principles of international human rights law.

● (1225)

The declaration contains over 20 provisions affirming the right of indigenous peoples to participate in decision-making, including article 3, which addresses self-determination; article 4, which addresses the right to self-government or autonomy; article 18, which addresses the right to participate in decision-making; article 23, which addresses the right to be actively involved in decision-making; article 19, which addresses the obligation of states to obtain their free, prior and informed consent; articles 32.2, 36.2, and 38, which address the obligation to consult and co-operate with indigenous peoples; articles 22.2, 27, and 31.2, which address the obligation to take measures in concert with indigenous peoples; and article 26.3, which addresses the obligation to respect the customs of indigenous peoples.

Notwithstanding the few reservations we have just expressed, Amnistie internationale calls on members of the House of Commons and members of the Senate to act diligently, in a non-partisan manner, and in accordance with Canada's commitment to indigenous peoples. We call on members of the House of Commons and members of the Senate to be guided only by the highest standards of human rights and human dignity, so that Bill C-15 is passed by the end of the parliamentary session.

Thank you.

[*English*]

The Chair: Thanks very much.

Moving now to the Canadian Association of Petroleum Producers, we have Shannon Joseph, vice-president, government relations and indigenous affairs; and Brian Schmidt, president and CEO of Tamarack Valley Energy.

Ms. Joseph, are you taking the lead?

Ms. Shannon Joseph (Vice-President, Government Relations and Indigenous Affairs, Canadian Association of Petroleum Producers): Brian will be taking the lead.

The Chair: Brian, go ahead for six minutes.

Mr. Brian Schmidt (President and Chief Executive Officer, Tamarack Valley Energy, and Board Member, Canadian Association of Petroleum Producers): Thank you to the standing committee for the opportunity to present today.

I'd like to acknowledge that I'm speaking from the traditional territories of treaty 7 and the Métis Nation of Alberta, region 3. My colleague, Ms. Shannon Joseph, is speaking from the traditional Algonquin territory.

My name is Brian Schmidt, Aakaikkitstaki. I am the CEO of Tamarack Valley Energy, and I am here today on behalf of the Canadian Association of Petroleum Producers in my capacity as chair of our indigenous affairs policy group.

I have also been in business with the Kainai people for decades as an operator of oil and gas drilling rigs on the reserve land of the Blood Tribe. I was proud to be honoured a few years ago with the title of honorary chief of the Kainai.

CAPP first publicly voiced its support for UNDRIP back in 2016 at the same time the federal government did. We continue to support UNDRIP implementation in a manner consistent with the Canadian Constitution and law. For the people of our association, creating mutually beneficial partnerships with indigenous people, communities, businesses and employees is central to how we operate and to our role in reconciliation.

Today the oil and gas industry procures more from indigenous businesses, than any other industry in Canada and—if I may say so—far more than the federal government as a whole. In 2017-19, an aggregate spend with indigenous communities was $5.9 billion. In 2019, indigenous procurement was 11% of our procurement. We are also one of the largest employers of indigenous people, indigenous men and women. They earn, in our industry, the highest wages compared to any other sector in the country.

These relationships and opportunities have been one of the strongest paths for building indigenous prosperity in Canada. There are indigenous groups that are looking to purchase the Trans Mountain expansion pipeline, and there are pretty much new equity deals being announced every month with indigenous ownership in oil and gas projects.

Finally, indigenous communities across Canada earn hundreds of millions of dollars each year from royalties and other benefits through the development of resources on reserve lands. What this means concretely for my indigenous colleagues is that resource development provides important opportunities to address poverty and advance economic self-determination, and I've seen that first-hand.

We aren't here to ask you to choose between our industry's interests and indigenous people's interests. I'm here to say firmly that I believe that we have the same interests in this matter. We want indigenous rights to be protected, and we also want to have a healthy and prosperous oil and gas resource sector so that we can all benefit from a strong, Canadian economy.

Bill C-15 as written will create more uncertainty for our industry and resource development as a whole in Canada. This will mean that we cannot attract investment from capital markets and that good projects, including one supported by the majority of indigenous communities, will not proceed. This will harm the oil and gas sector, and we want to avoid that. More importantly, it will also harm the indigenous communities who value resource development as an important means of creating jobs and revenues. Human rights equals human economic development.

The Financial Post calculated that in the last five years we've lost 150 billion dollars' worth of energy projects in Canada, abandoned or suspended because investors would not take the risk of financing them. Just last week, we heard about Chevron pulling out of Kitimat LNG, which had tremendous indigenous involvement. If you do the math, 11% of indigenous procurement on $150 billion on projects means $16.5 billion of lost income to indigenous people. The lack of clarity and uncertainty has real consequences in terms of people's livelihoods and opportunities for prosperity and self-determination.

What industry is asking is to not leave things undefined. Make it easier for us to do business with indigenous communities, not harder. CAPP has some specific amendments that would help alleviate the major concerns to our industry and investors on Bill C-15. These include, first, clarifying that Bill C-15 does not have an immediate application as domestic federal law but, rather, establishes a process for the review of existing Canadian laws; and second, defining free, prior and informed consent for the Canadian context.

In our understanding, FPIC is a process, not an outcome, and as many—including Minister Lametti—have said, it is not a veto. We have a suggested definition that reflects this and that is consistent with principle six of the federal government's 10 principles for the implementation of UNDRIP. It is also consistent with the federal and provincial governments' retaining their authority to make final decisions.

The final one is ensuring that the action plan is the main vehicle by which to make UNDRIP practicable in Canada, co-developed with indigenous people and with the intention that stakeholders, such as ourselves, would be able to engage in dialogue where appropriate to our industry. The action plan process should be adequately resourced and create clear accountabilities.

● (1230)

Thank you.

The Chair: Thanks, Mr. Schmidt.

Members of the committee, we will be doing at least one six-minute round. That will take us past the appointed hour of concluding at one o'clock. Is anyone opposed to extending the meeting past one o'clock for a brief time so that we can get in our six-minute round?

I see no one opposed. I will take it that we are in favour of carrying on. We will begin our six-minute round of questions with Mr. Vidal.

Please go ahead.

● (1235)

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

I want to thank all of our witnesses for joining us here today. We've received a lot of great testimony over the last few weeks on our study of Bill C-15.

First, Mr. Schmidt or Ms. Joseph—I'll let you both have the opportunity to respond, if you want—I read a brief that you submitted a while back in which you referred to many of the same concepts as in your testimony today. It was about the great work that people in your organization have done with regard to their work with indigenous people and first nations and the relationships and whatnot that your industry has in those communities. You talked about investment. You talked about the contributions that are made.

Last week I made a statement to one of our witnesses that those who champion poverty reduction through economic development often get labelled as lacking compassion. I would see that as the exact opposite. You might want to speak to that in the context of the work your member organizations do in these communities.

Mr. Schmidt, you talked about your own relationship specifically with your company. I'd like you to expand on that a little bit and talk about how the work your organizations do, the relationships you have and the incredible amount of procurement and job creation you initiate in these communities has...on the opportunity to end poverty, create success for many first nations and grant them the opportunity to be successful in the future, investing in things like housing and recreation and the social issues they have. In my community, in my riding, we deal with a lot of suicide crisis kinds of things. The investments made by industry are huge in those kinds of issues in the first nations communities.

I'd like you to speak to that. I would also like you to speak to how the potential uncertainty of Bill C-15 might either contribute to or hinder that in the context of the great work that you've already done.

Mr. Brian Schmidt: Certainly. Let me speak to my personal involvement and how I see this as so important.

I also said that as an adviser to the board of the Indian Resource Council of Canada—Stephen Buffalo spoke earlier and that's his association—I've seen their revenues be destroyed. It's really interesting because capital markets can move capital from one area or jurisdiction to another. First nations cannot move their reserves, so I see first-hand how this affects their communities. At the same time COVID was coming down, their revenue shortfalls were crashing down, so we ended up assisting the Kainai tribe with some COVID relief. I feel for what Stephen Buffalo and his membership have been going through.

In my particular circumstance, we help with cultural events. We do movies to connect elders with young people. A lot of the things that I've heard mentioned today we just do hand in hand. I think Canada really has the gold standard in terms of how we work with first nations. On equity partnerships, we involve them on the business side. We're doing some work with the Kainai now on abandoned wells and putting people to work. This is critical to their being. I will tell you that they are proud. They really do not want handouts. They want to drive their own economic activity, and this gives them an opportunity.

With respect to the risk, MP Gazan brought up risk disclosure. That's very important. I'm really glad you brought that up, because risk disclosure has to occur on any major projects. I visit investors in New York, Houston, Europe, all over the world, and they talk about the Canadian jurisdiction as being very difficult to invest in. In the Financial Post, as I mentioned, it says there are $150 billion in cancelled projects, because the investors wouldn't take the risk. I've seen investors choose Siberia over British Columbia, because they thought the LNG development was too difficult, and we've seen Warren Buffett pull $9 billion out of Saguenay, Quebec.

It's interesting to me that a number of speakers talked about the investment community as if they are part of it. I will tell you that in the investment community, you just need to look at the register of the number of cancelled projects and the number of new ones introduced to know that Canada is a very risky jurisdiction. The $20-billion Frontier oil sands project was cancelled. That's one that had one of the most stringent environmental, social and governance to date. We've seen pipelines.... Even with equity ownership by indigenous peoples, that is not a safety valve for getting projects through.

The only main linear projects that we see going through are ones that are financed by the federal government or ones that are financed by indigenous people themselves, not so much the private industry. Gateway was about 20% or 30% owned by first nations, and that was cancelled. Keystone XL was just cancelled, with indigenous ownership, so that is no guarantee. I think the jurisdiction is just another element.

With the clarity that we're seeking, we think we can change this, and we're willing to work in the action committee to take care of that.

Thank you.

● (1240)

The Chair: Thanks very much.

That brings us to time, Gary. Thank you.

Mr. Battiste, you have six minutes.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you, Mr. Chair. My question is for Paul Joffe.

Paul, you did a good presentation on why human rights were a key part of UNDRIP, and you really spoke to those core principles, but can you tell me a little bit about the background of why UNDRIP was necessary to establish those minimum human rights?

Were nation-states and the industries not already respecting those core human rights in the lead-up to UNDRIP?

Mr. Paul Joffe: I've worked on human rights for indigenous people since 1974. I've been involved in international processes both at the UN and also at the Organization of American States in Washington, and I can tell you that, in both forums, the UN included indigenous peoples from all countries in the world, and there are about 470 million indigenous people in up to 90 countries.

What we heard, for example, is that the duty to consult alone has not worked for indigenous peoples in any region. They came to the UN, and they came to the Organization of American States—different indigenous peoples, sometimes they were the same—and they described all the violations, the human rights violations and the poverty because of the dispossession of lands, territories and resources.

I didn't hear many people.... There are always a few, but considering the thousands who I did meet, they did not mention that they were against development. In fact, the UN declaration in articles.... Well, it's in the right of self-determination. It's in the right of self-government. It's in article 20, article 23 and 32(1) that indigenous peoples also have a right to development. Development was not something that people opposed. What people opposed were the tremendous abuses that lead to impoverishment.

This is a human rights instrument. It's recognized as a human rights instrument by the UN and everywhere else. It's about working together. That's why it says, “consultation and cooperation“. That's why the DRIPA bill in B.C. talks about consultation and cooperation. It's not to create the visions. It's to come together in a fair way based on principles and rights that are universal. I don't know if that helps, but that's a quick answer.

Mr. Jaime Battiste: It does help. In the final three minutes, I would like to say that, as an indigenous person, I've been kind of concerned with industry and corporations coming to the table and saying, “Indigenous people really want just to be part of the economic development in Canada”, whereas I'm listening to indigenous youth across Canada who are fighting systemic racism, fighting for rights and doing what they can to protect the environment in what we now know is a climate change that is real, and it's a pressing concern, especially for indigenous people.

How do we balance in this country the rights that should be given to all human beings and the certainty of investments from corporations for profits and further investments?

● (1245)

Mr. Paul Joffe: To us it's always been about co-operation. If we work together.... In order to persuade Africa, we were told we had to meet with the most hard-core countries that existed in Africa, because they always take the lowest common denominator for remaining together. We did that, and we had a very good relationship. Mainly it was about being genuine and talking about real issues, understanding the positions of the people or countries you are speaking with and then together coming to some kind of consensus.

That's what occurred over 24 years on the UN declaration. I think a lot of indigenous peoples—I can't speak for them; they can each speak for themselves—felt there's a lot of confidence worldwide to proceed on this basis. Countries each year keep reaffirming the UN declaration. They also keep reaffirming free, prior and informed consent. It's not seen as a veto. Yes, there are different entities that may see it as a veto. The UN does not consider it a veto.

Human rights are generally not absolute. They're relative, so you have to balance automatically your human rights with other people's human rights or other rights. There's a lot of potential for real co-operation where no one is left impoverished.

Mr. Jaime Battiste: Thank you.

The Chair: That leaves us 10 seconds.

Thanks, Jaime.

[*Translation*]

Ms. Gill now has the floor.

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

I thank all of the witnesses who are appearing today.

My questions are for Ms. Langlois. I would like to take this opportunity to highlight all the work that Amnistie internationale does.

In your speech, you mentioned that we need to move expeditiously to pass Bill C-15. Perhaps this implies that there may be some difficulties to iron out. We didn't have time to pass Bill C-262; we don't want that to happen again with Bill C-15.

Is it possible to foresee difficulties that might prevent us from acting diligently? What difficulties might not be addressed by the subsequent implementation of Bill C-15?

Ms. France-Isabelle Langlois: I thank you for the question, Ms. Gill.

Members of the House of Commons as well as members of the Senate must act with diligence and without partisanship, while being guided by human rights ideals. I can only agree with everything that Mr. Paul Joffe has just said. We must not get caught up in false arguments, such as the one that claims that the implementation of the declaration would necessarily give a veto to indigenous peoples. That is not what the declaration prescribes. Rather, it speaks of human rights, of negotiation and collaboration among all peoples, and of redressing the injustices that have been done and continue to be done to indigenous peoples. The purpose of the declaration is to build together a better, just and equitable present and future for all the peoples of Canada.

Mrs. Marilène Gill: Thank you, Ms. Langlois. Actually, you started to answer another question I wanted to ask you.

You talked about the veto and free, prior and informed consent. We have heard several witnesses say that economic development and the passage of Bill C-15 about the declaration are irreconcilable.

What is your interpretation of this situation?

● (1250)

Ms. France-Isabelle Langlois: There is no opposition between human rights and economic development. Indigenous peoples have a right to economic development, too, and they want to be part of it. So we need to carry out that economic development with indigenous peoples where it concerns them or their territories, for example. There is no opposition between the declaration, respect for the rights of indigenous peoples, and economic development.

Mrs. Marilène Gill: Tell me if I'm wrong, but this means that the passage of Bill C-15 and its subsequent implementation would benefit first nations.

Ms. France-Isabelle Langlois: The passage of Bill C-15 would benefit not only indigenous peoples, but all of us. When economic development projects are implemented with the consent of the people involved, they are better off and develop better, for the benefit of all.

Mrs. Marilène Gill: Thank you very much, Ms. Langlois.

I have one last question for you.

We have been hearing from witnesses for the last few weeks, but you brought up something that we had not heard before, and that is the issue of women's rights and the double discrimination that they face, first because they are women, and secondly because they are indigenous.

If I'm not mistaken, you said that there should be improvements in this area as the bill is implemented. I would like to know if there is anything we can do before we even pass the bill. For example, can we make any relevant changes to the preamble of the bill?

Ms. France-Isabelle Langlois: Of course, a consensus must be reached in order to pass this bill, but we would welcome amendments to further affirm the importance of consultation not only with indigenous peoples, but particularly with indigenous women, as well as amendments clarifying that they are stakeholders in this bill and its implementation.

Mrs. Marilène Gill: I would like to ask you one last quick question.

[*English*]

The Chair: You have 30 seconds.

[*Translation*]

Mrs. Marilène Gill: Some people told us that while they supported Bill C-15, they felt that the rights of indigenous peoples were already protected by section 35 of the Constitution.

Do you believe that the passage of Bill C-15 would do anything more? What are the distinctions between section 35 of the Constitution and Bill C-15? What makes the passage of the bill necessary for first nations? Of course, as you said, everyone would benefit from the passage of Bill C-15.

[*English*]

The Chair: Answer very briefly, please.

[*Translation*]

Ms. France-Isabelle Langlois: In fact, the declaration goes further than section 35 of the Constitution, which is a political statement. The declaration provides a societal framework that recognizes the rights of indigenous peoples more specifically and governs their implementation. In addition, the declaration provides guidelines for living together.

[*English*]

The Chair: I'm sorry. We'll have to stop there and go to our final questioner.

Ms. Gazan, you have six minutes.

Ms. Leah Gazan: Thank you so much, Chair, and thanks to all the panellists today.

My first question is for Mr. Joffe.

Could you share with this committee some of the important international developments relating to the United Nations Declaration on the Rights of Indigenous Peoples since its adoption at the UN General Assembly in 2007?

How have other jurisdictions and countries approached its implementation? How have the courts here and abroad referenced the declaration in interpreting indigenous rights?

Mr. Paul Joffe: Thank you for that question.

One thing that's progressing and always increasing is the number of states in Latin America that have included the UN declaration or certain critical provisions in their legislation and often in their constitutions. That's a huge development.

Also, this is really important in places like Africa and Asia. There are still challenges there. I'm not saying there aren't challenges, but this has been quite a big development. I'll give you an example.

Just before a vote, I asked a representative from one of the African countries why they were against the UN declaration. The person answered that the declaration forces them to make agreements with indigenous peoples and they never make agreements with indigenous peoples. In our ongoing discussions, it showed that by discussing it more, in Africa they were able to change their position enough to support the UN declaration. That's a huge change for millions of indigenous people. It's the same in Asia.

I'm not saying there aren't very serious challenges in both those continents, as there are everywhere else, but the UN declaration is like a common language of human rights. That's something people can build on because these countries have their own human rights legislation. Sometimes it's better and sometimes it's worse, but my experience has been that it has helped to rally real discussions.

The UN, for example, now has indigenous experts on key bodies in the UN to further this jurisprudence, and countries have accepted that. These are all very positive developments both now and for the future.

● (1255)

Ms. Leah Gazan: Because of the confusion the expression seems to give rise to, what is your understanding of preamble paragraph 18 and paragraph 4(a) of Bill C-15, where it is affirmed that UNDRIP is a source for the interpretation of Canadian law and has application in Canadian law?

Mr. Paul Joffe: What was the section of the bill?

Ms. Leah Gazan: It was paragraph 4(a).

Mr. Paul Joffe: Paragraph 4(a) is critical because, first of all, there is a problem with 4(a). It says “The purpose of this Act is” and it has paragraphs (a) and (b) That is not one purpose. That goes below the standard in Bill C-262 that Romeo Saganash emphasized. It should be “The purposes of this Act are” and then you have paragraphs (a) and (b).

Paragraph 4(b) leads to the action plan. Paragraph 4(a) is an independent statement. It has application in Canadian law. Different courts, provincial courts and federal courts have already applied the UN declaration without this bill. Quebec has. Ontario has in a number of cases. That's both in provincial courts and also federal courts.

This goes to the very essence of the bill. There is no doubt that the UN declaration has application, because it does in many countries, even without a law.

Some people say it could lead, as I heard today, to unintended consequences. Every bill can be interpreted and one can say there could be unintended consequences, but it's pretty clear in the jurisprudence how it's evolving. It is evolving in Australia. In New Zealand there are many cases relying on the UN declaration. Indonesia even has an important case on the UN declaration.

I see that as a core provision, but "the purpose" should be changed to "purposes are". It was never meant to have one purpose.

● (1300)

Ms. Leah Gazan: I have one final question—

The Chair: We are out of time, Ms. Gazan.

Ms. Leah Gazan: Thank you so much, Mr. Joffe.

Thank you, Chair.

The Chair: If there is anything, witnesses, that you feel has not been covered or additionally is needed to enlighten our committee and our analysts, please feel free to make further written submissions because, as much as we have some time constraints, we want to cover as much as possible. Thank you very much for a very informative, very productive committee meeting.

Unfortunately, because the meeting was moved from Thursday, some of us had to juggle our schedules to make this happen today. so we will conclude our meeting today.

Thank you very much, everyone. The meeting is now adjourned.

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