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# **Standing Committee on Indigenous and Northern Affairs**

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**EVIDENCE**

**Tuesday, February 13, 2018**

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**Chair**

**The Honourable MaryAnn Mihychuk**



## Standing Committee on Indigenous and Northern Affairs

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• (1630)

[English]

**The Chair (The Honourable MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)):** Welcome, everybody, to the public session of meeting number 95 of the Standing Committee on Indigenous and Northern Affairs, INAN, of the first session of the 42nd Parliament.

Today we are proud that one of our own is in front of us as a panellist to introduce his private member's bill, known as Bill C-262, an act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.

Before we start, we always recognize that we're in a process of truth and reconciliation, really initiated by our Prime Minister but even before that by the Conservative government, which initiated a study. As we move through that process, we always recognize the lands we are on. We are meeting in Ottawa, the unceded territory of the Algonquin people.

At this point, the committee is proceeding as normal. Our presenter will have 10 minutes and then after that we'll have a series of questions.

*Bonjour* and welcome, MP Saganash. It's over to you.

**Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP) (Interpretation):** Thank you, Chairperson. I'm very happy to be here today and that I was asked to come speak with you. I'm really happy that I'm the first one who's able to talk about this document I presented here in Ottawa. I hope you are going to ask me questions about this document, about what we're going to be doing today. I'm really thankful that you invited me to speak about my thoughts on this. I'm really thankful, again, that I'm here. I'm telling you right now that this document is really big and it's going to help us, not only aboriginal people but the whole nation in Canada. I think it's going to help us a lot in the future. I'm going to tell you why it's like that.

[English]

Thank you, Madam Chair. Those were words of greeting on my part. I was hoping to have my mother with me today, because she wanted to participate and listen in to this important discussion. She was the one who insisted that I go to law school. She is the one who insisted that I continue to defend my people, my land, my territory, and the resources on those lands and territories, and she put it this way. From the outset, she said, if you do this, go to law school, learn about the laws of the country and the world, that will allow your

brothers and sisters, those who have chosen to continue with their way of life, to be able to do so on their land, where they come from.

I think that was the balance that we searched for in our families. Some of us had to choose to go to school. Some of us preferred to stay on the land. I want to salute my brothers and sisters who did choose to stay on the land and continue with the Cree way of life. About 30% of Cree still live off the land through hunting, fishing, and trapping. That is why the Eeyou Istchee, as we call our territory, is so important to all of us.

I started the debate in the House of Commons over Bill C-262 by saying that indigenous peoples' rights are human rights. For a long time, over 30 years now, the international community and the international forums have treated indigenous rights as human rights. It's been three decades now. I think in this country whenever we speak about indigenous peoples, we should speak about their rights as human rights as well.

You perhaps may know that the Supreme Court is going in that direction. If you read the Tsilhqot'in case, the Supreme Court refers to the Charter of Rights and Freedoms that we find in part I of our Constitution and section 35 rights that we find in part II of our Constitution as sister provisions. That's the word the Supreme Court uses, sister provisions. Both parts of our Constitution serve to limit the actions of governments, both provincial and federal. I think it's important to remember that.

I think it was important for me to start off by expressing the thought that the rights of indigenous peoples in this country are human rights.

I introduced Bill C-262 because I think, and we all agree around this table, that the time for reconciliation and justice for indigenous peoples in this country has come. I don't think there's anybody around this table who disagrees with that. The idea of a legislative framework does not necessarily come from me. Article 38 of the UN Declaration on the Rights of Indigenous Peoples calls on member states to work on all measures possible to make sure that the ends of the declaration are met, including legislative measures. Article 38 of UNDRIP talks about that legislative measure.

• (1635)

As you all know as well, in the recent past, there was an important development in terms of reconciliation in this country, with the tabling of the Truth and Reconciliation Commission's report and the 94 calls to action. If you read carefully Bill C-262, you'll notice that clauses 4 and 5 are the legislative translation of calls to action 43 and 44.

In call to action 43, the commission called on us to fully adopt and implement the UN declaration as the framework for reconciliation in this country. In fact, it calls on the Government of Canada, the provinces, the territories, and the municipalities of this country to fully adopt and implement the UN declaration—they use both words “adopt” and “implement”—as the framework for reconciliation. Although all of the other calls to action are important, I think the fundamental and core call to action remains 43.

Under the heading “Reconciliation” in the calls to action, you find 43 and 44, and 44 talks about the national action plan that needs to be developed in co-operation with indigenous peoples of this country.

In fact, in the 94 calls to action, there are 16 references to the UN Declaration on the Rights of Indigenous Peoples. That's how important this document is for indigenous peoples in this country, but also for the almost 400 million indigenous individuals around the world who live in more than 70 countries on this planet. I think it was only appropriate that the first legislative step we need to take in that context of reconciliation and justice in this country will remain Bill C-262.

I also mentioned during the debate that I consider Bill C-262 as perhaps the most important legislation that this Parliament of Canada has had to consider in a long time. I want to take that opportunity to welcome the support of the government. I'm hoping that at the end of the day, at the end of the process, the official opposition, Her Majesty's loyal opposition, will also support Bill C-262 as a way forward for reconciliation and justice in this country.

I see that my time is running out, but there was one element that struck me during the debate. It came from the official opposition, whereby adopting this bill would create an uncertainty. As a matter of fact, Madam Chair, I think the opposite will happen. If there's one provision in our Constitution that has created that sort of uncertainty, it is section 35. What did we mean by “aboriginal rights”? We know a little about treaty rights and their clarity in the treaties, but what did we mean by “aboriginal rights”? Does it include the right to self-determination of indigenous peoples? Does it include my right to speak my language in the House of Commons?

Those are the kinds of uncertainties and ambiguities that the adoption of section 35 created. That's why we have ended up most of the time in the court systems, because there was no agreement over the content of aboriginal rights. I think this bill will clarify that. Indigenous peoples have a right to self-determination in this country. The human rights committee back then confirmed that, with articles of the human rights covenants that Canada had signed on to, the right to self-determination applies to indigenous peoples. That was determined as early as 1999.

• (1640)

Madam Chair, I'm looking forward to questions within the next hour, and I certainly hope that I can answer the questions that are put forth.

**The Chair:** Thank you.

We'll open with questions from MP Vandal.

[*Translation*]

**Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.):** Thank you very much, Madam Chair.

First, allow me to congratulate you, Mr. Saganash. I know you have been working passionately on this project for indigenous peoples for a long time. I commend you on your clarity of vision. You have been working on this bill for years.

[*English*]

I understand—and I've only been here two years—that a number of private members' bills very similar to your Bill C-262 have intended to enact legislation to implement UNDRIP in the past, but all have failed to pass at second reading. Can you explain to this committee why, in your view, you think the time has finally come to move past second reading and actually have this legislation pass third reading and become law?

**Mr. Romeo Saganash:** There are many things, but I first want to thank the previous MPs who attempted to have similar legislation adopted in the past. I have in mind Denise Savoie and Tina Keeper. My previous bill was defeated at second reading by 17 votes by the former Conservative government, although they had apologized to indigenous peoples and certainly to indigenous people like me who attended residential schools. When you apologize for something on the one hand, you don't continue to deny the fundamental rights of the people who you said “I'm sorry” to on the other hand. That's what happened with the previous government. That was quite unfortunate.

I think that one of the important developments in the recent past was, as I've said, the Truth and Reconciliation Commission's report, and in particular the calls to action. The present government has promised to adopt and implement the UN declaration. I remember listening to Prime Minister Trudeau's first speech to the Assembly of First Nations and the chiefs in assembly back in December 2015. It was one of the important promises he made to indigenous peoples, which he reiterated at that meeting.

I think it was time. In fact, in my cross-country tour, in different communities across the country, both indigenous and non-indigenous, everyone was struck by this, and wondered why, after having made that promise on the one hand, the Liberal government was still not supporting my bill. That was the question: why is that? I think it was a welcome announcement that the present Minister of Justice made last November to support the bill.

Like I said, it's time that we move on. Enough has been said internationally. We've all agreed with the promise that was made by this Liberal government with respect to justice and reconciliation. This bill delivers on that promise.

• (1645)

**Mr. Dan Vandal:** Good.

You've characterized this bill as a significant “first step” towards bringing the Canadian government to true reconciliation with indigenous peoples. I find the phrase “first step” very interesting, so I'm going to ask you this. In your opinion, what further policy or legislation needs to occur on the part of the federal government to achieve full implementation?

**Mr. Romeo Saganash:** I used that expression during the debate because I'm the first MP proposing something of this nature, and this is significant. I think that's one part of it.

On the other hand, if we are serious about reconciliation and justice.... I use both words because they go together. There cannot be reconciliation in the absence of justice in this country. That's why I use both expressions. There's been enough talk about reconciliation. I think it is time for us to move on and do something concrete in that regard.

The government needs to be consistent with that reality. If you're saying you believe in justice and reconciliation, then all of your actions need to show that. All of your decisions need to show that. There was no free, prior, and informed consent that was sought in the decision to go ahead with the Site C dam, for instance. That's one example off the top of my head. There was no free, prior, and informed consent from indigenous people for that project. I think the same thing is going to happen with Kinder Morgan. You need to be consistent.

If you support and believe in the UN Declaration on the Rights of Indigenous Peoples, then your policies, your laws, and your decisions need to reflect that exactly.

**Mr. Dan Vandal:** Canada already has, in the context of our Constitution, protection for aboriginal treaty rights under section 35.

How do you see the UNDRIP declaration working in harmony, we hope, with section 35? How do you see that unfolding? Are they going to complement one another? What sort of work needs to be done?

**Mr. Romeo Saganash:** That's an important question. I know have 30 seconds. That's a highly critical and important question.

There's no incompatibility between our Constitution and UN-DRIP. Don't take my word for it. There are a hundred legal academics, international law experts, who confirmed that back in 2013, I believe. They signed an open letter that confirms that nothing in the UN declaration is incompatible with the Constitution of Canada. That's the starting point. I think a lot of times, they will complement each other.

**The Chair:** Questioning now moves to MP Cathy McLeod.

**Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC):** Thank you.

Thank you to my colleague, who has really put a lot of years and passion into not only the work here in Parliament but his work previous to coming here.

We certainly recognize that the UN Declaration on the Rights of Indigenous Peoples and truth and reconciliation calls to action are an important road map for reconciliation and a lens that needs to be applied to what government does.

As you're aware, I have some concerns in terms of what your bill would do. I found it interesting when Mr. Vandal asked about whether section 35 and UNDRIP were going to work together, and he said "we hope". It certainly showed to me that he had concerns also. It was like "we hope but we really don't know". That was a very interesting statement.

This came up in the questions and answers, and it's one of these practical things that you worry about. You talk about Site C. There was no attempt to get free, prior, and informed consent. I look at something like the Kinder Morgan pipeline, which has a number of communities, indigenous communities all down the line, that have signed community benefit agreements. I would expect, if you signed a community benefit agreement, that's pretty well free, prior, and informed consent. You have a couple of bands that are reluctant.

First of all, can you talk about how you're going to, in a legislative framework, ever align that type of issue, because we're hearing not everybody...? Maybe I'll just leave it at that.

• (1650)

**Mr. Romeo Saganash:** That's an important question. If you read subclause 2(1) in my bill, it says:

For greater certainty, nothing in this Act is to be construed so as to diminish or extinguish existing aboriginal or treaty rights

Let's make that clear first. I think it was important to insert a provision like that in the bill.

Second, to your question, it's an important one, too. You confirmed that there are some first nation communities that do agree with Kinder Morgan, and some won't. We need to make sure that everybody does. That's what the free, prior, and informed consent is all about that we find in UNDRIP.

In that respect, I want to quote—

**Mrs. Cathy McLeod:** Could you make it quick, please? I did have another question.

**Mr. Romeo Saganash:** I'd like to elaborate on free, prior and informed consent, and how it is understood by experts and how it is understood as a right under international law.

**Mrs. Cathy McLeod:** But was it accurate when you said that you believe this would mean every first nation that could potentially be impacted would need to give free, prior, and informed consent?

**Mr. Romeo Saganash:** Absolutely.

**Mrs. Cathy McLeod:** That, obviously, is a concern. I think article 19 says, "consent before adopting and implementing legislative measures that may affect" indigenous peoples. Of course, it's been indicated, and the minister indicated herself, that it would be laws of general application and not the laws that exclusively impact indigenous peoples. I'll take as an example the marijuana legislation. I think it's pretty clear that there was not even "consult and accommodate" in that particular piece of legislation, never mind "free, prior and informed consent". As I understand your bill, if we are to implement article 19, first of all, that bill would have required the free, prior, and informed consent of indigenous peoples.

**Mr. Romeo Saganash:** I think we need to understand that Bill C-262 provides a legislative framework in this country for whatever we do, including in Parliament. If there is, for instance, legislation that would attempt to replace the Indian Act, the minimum standards are contained in the UN declaration. That's what this bill does. If you want to come back with first nations control of first nations education, then the minimum standards are contained in the UN declaration. That's what the bill does.

**Mrs. Cathy McLeod:** Would you see article 19...?

**Mr. Romeo Saganash:** It applies to the government decision as well.

**Mrs. Cathy McLeod:** If we implement Bill C-262, article 19 will create some requirements, just as introducing something like Bill C-45 will clearly impact every Canadian. Article 19 would apply, which would trigger the need for free, prior, and informed consent.

Would that be a reasonable assessment of this, that it would have a sort of domino effect?

• (1655)

**Mr. Romeo Saganash:** What is good in this present context is that all of the things you're talking about are already constitutional law in this country. For several years now, the Supreme Court of Canada has talked about the need for consent. In the latest *Tsilhqot'in* case in 2014, the Supreme Court of Canada refers to the concept of consent of first nations over the lands, territories, and resources. Nine paragraphs talk about control of their lands, territories, and resources. Eleven paragraphs talk about first nations having the right to freely determine land use over their territories, on two occasions in that case.

As I said, this is already constitutional law in this country. That's why I say that the UN declaration in subclause 2(2) of my bill already has application in Canadian law. That needs to be understood. Neither this bill nor the UN declaration are creating new rights. These already exist in this country, in our constitutional system, and also in our Constitution.

**The Chair:** Questioning now moves to MP Caron.

[*Translation*]

**Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP):** Thank you very much, Madam Chair.

I want to start by saying that I am thrilled to be at this committee meeting with my friend Romeo Saganash. I am happy just to be part of history in the making.

[*English*]

First of all, I hear a lot about free, prior, and informed consent. There is already some legal precedent for this in Canadian legislation. Can you draw or not draw a distinction between what's currently in Canadian legislation and what is articulated in the UN declaration?

**Mr. Romeo Saganash:** One needs to understand that when I say it already has application in Canadian law, you'll find in our constitutional jurisprudence a lot of that, the need for consent. As early as 2004, for instance, in the *Haida Nation* case, the Supreme Court talked about the need for full consent of indigenous peoples in

that spectrum of consultation—their “full consent” is the expression used in that case—over important matters that affect them.

I suggest that pipelines are an important matter for indigenous peoples because they have a direct impact on their rights and interests in this country.

Climate change is an important matter for indigenous peoples because that affects their rights and interests as distinct peoples in this country.

It also can be said that since 1975, for instance, the Cree have signed over 80 agreements in James Bay over resources, mining, forestry, hydro development, and so on—over 80 agreements since 1975, since we signed the first modern treaty in 1975. That's free, prior, and informed consent in action in this country since 1975.

I invite the committee to consider the final report of the study on indigenous peoples and the right to participate in decision-making. That was from the Human Rights Council and the expert mechanism on the rights of indigenous peoples. They did a study on free, prior, and informed consent. It would be interesting for this committee to take a look at that document. It dates back to 2011, I believe, August 17, and they outline what free, prior, and informed consent means, and how the element “free” implies no coercion, intimidation, or manipulation.

In the case of Site C, to go back to that, when B.C. Hydro sued the opponents of the Site C project for \$4.5 million, that was intimidation. We talk about it in this report. “Prior” implies that consent is obtained in advance of any activity taking place. “Informed” implies that indigenous peoples have been provided with all information related to the activity, and that the information is objective, independent, and transparent. For a long time, Hydro-Québec would submit documents to the Cree only in French, and they know that Cree have English as their second language, so that's not the kind of “informed” that this right implies.

Consent of course implies that it has to be obtained prior to any development activity happening, which, in my recollection and experience in this country, never happens. Usually governments go ahead and approve projects without that consent being obtained. Consent can be given with conditions as well, according to this study, so it's important to take a look at these kinds of studies that are done by experts around the world to help us understand what free, prior, and informed consent means in this country.

• (1700)

[*Translation*]

**Mr. Guy Caron:** Thank you very much.

With regard to free, prior, and informed consent, there is also the example of the James Bay and Northern Quebec Agreement, which I am more familiar with, since I am from Quebec. The same uncertainties and questions arose in that context. Today we are talking about pipelines and climate change, but back then, forests were also an issue. There were concerns about the impact that the agreement would have on the forestry industry. However, today the situation is relatively healthy.

What arrangements, compromises, or deals were made to attain the balance we see today?

**Mr. Romeo Saganash:** Thank you for your question.

It is important to understand that recognizing the rights of indigenous peoples in no way endangers the environment or the economy of our country, even though we are heavily dependent on the natural resources found not only in Quebec, but across the country. Most of the non-indigenous communities in my riding depend on the development of local resources.

The rights of the Cree have been recognized and respected. That is why we have been able to negotiate partnerships for more than 40 years. The preamble of my bill and the United Nations Declaration on the Rights of Indigenous Peoples state that respect, partnership, and co-operation are the basic principles of a good relationship between peoples.

In order for two peoples to make progress, the most important thing is for them to have good relations. It is vital to clarify things and to establish very clear rules. That is the purpose of my bill, to clarify the existing rights of indigenous peoples. That way, all industries and everyone will know what rights we are talking about.

That is what happened in the case of the James Bay Cree. The James Bay and Northern Quebec Agreement clarified the situation in relation to the environment and sustainable development. It clarified who had the right to develop the land and how that development could be done. That helped make everything else clear. That is what we are seeing in northern Quebec.

[English]

**The Chair:** Thank you.

Questioning now moves to a shared time between MP Bossio and MP Amos.

MP Amos is to lead.

[Translation]

**Mr. William Amos (Pontiac, Lib.):** Thank you, Madam Chair.

*Meegwetch*, Mr. Saganash. It is a pleasure to have you here with us. I know that we are not the only ones who are proud of you. All of Canada is proud of you too.

[English]

I do believe that history is going to look favourably upon all of your efforts, and I'm proud to be here asking questions.

I want to ask a question to follow on this theme around Quebec and the way that this might impact the rest of the country. As we know, the crown has provincial and federal aspects, and laws go beyond just constraining a particular government. They change

cultures. One can presume that this bill, if passed, would have repercussions across a variety of jurisdictions. I want to hear your opinions on where you see this bill impacting not only the manner of behaviour of the federal government, but also our provincial and territorial governments.

● (1705)

**Mr. Romeo Saganash:** I think it will have a positive impact on indigenous people, certainly, but for the rest of Canadians as well. I want to reiterate one point I mentioned before going more precisely to your question. At one point during the process of consultation throughout the country...but also certain of your ministers and colleagues, the Minister of Crown-Indigenous Relations, asked the following question: is there a precedent around the world for this kind of legislative framework for indigenous human rights? The answer is no.

I'm glad she posed that question, because Canada was the former human rights champion around the world. We lost that credibility for some reason over the past years. That's what other countries expect from us. That's why other countries are looking to Canada to take the lead on the recognition, and not only recognition but also respect for the fundamental human rights of indigenous peoples. Nothing less is expected from us. That's why we need to go in this direction.

Having this framework in place, because that's what the Truth and Reconciliation Commission has called on us to do, is delivering on that call to action. For a long time, given that our rights were not clarified in any document, this is what this bill and UNDRIP does. I think it was important to have that in place for the future. It will avoid a lot of legal battles in the courts. I think that's certain, but it will also provide that intention we need to bring whenever we consider legislation that will impact the rights of indigenous peoples in this country.

We already have an obligation under the Department of Justice Act, section 4.1. The Minister of Justice needs to make sure that the legislation, before it is tabled, is consistent with the Charter of Rights and Freedoms. We don't have the equivalent for aboriginal and treaty rights. This bill will do that too.

**Mr. William Amos:** Before I cede the microphone to my colleague, I want to ask a very quick question. I expect he's going to want to follow on the same theme.

I simply want to ask this, and as a witness here you know you're able to submit further written comments. I'd be interested in hearing your articulation of the distinction to be drawn between free, prior, and informed consent and a veto. I think every student in this country ought to be able to understand that and be able to distinguish between them.

**Mr. Romeo Saganash:** Absolutely. I think the distinction is an important one and we need to understand that in this country. The right to free, prior, and informed consent, like all human rights, not just the human rights of indigenous peoples, is a relative right. You need to balance that right with the rights and interests of others, which veto does not do. Veto is an absolute thing, and I don't think our court system, constitutional or otherwise, would ever take that kind of view. That's not how our Canadian legal system works and that's not how the international law system works either.

**Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.):** We'll just ask the real questions that I wanted to get to. I'd like to also reiterate, as everyone says, that it's been a real honour working with you since coming to the House. You have actually been a really strong mentor for me as well. On the odd trips that we've taken together, I've really enjoyed our conversations and a lot of it has always revolved around this right.

I remember the first time I had that first aha moment of "Oh, okay. This is really at the crux of FPIC: How do we reconcile consent and veto?"

I would really like to hear any other words you'd like to share on that. To me that answers the crux of the situation and I think it is something the Conservatives have really shown is of tremendous concern to them.

• (1710)

**Mr. Romeo Saganash:** I can tell you one thing. The right to free, prior, and informed consent is now embedded in international law, and in particular in the right to self-determination of indigenous peoples. It's already there.

Although our Supreme Court has not used the expression as it is used in the UN Declaration on Rights of Indigenous Peoples, I think there are elements in different rulings from the Supreme Court of Canada that confirm this right already exists in our constitutional law system—in many constitutional decisions by the Supreme Court of Canada.

**The Chair:** Thank you.

Questions will now go to MP Waugh.

**Mr. Kevin Waugh (Saskatoon—Grasswood, CPC):** Thank you, and congratulations. I'm sure, for you, it's been a lifelong dream to be here, and last week to get it passed.

It was interesting when you were mentioning different rulings, different elements. I think that's where the confusion is from the Supreme Court. We're getting mixed messages. It's not all what you just said. We're getting some mixed messages out of environment, out of fisheries.

Could you maybe just comment on that, if you don't mind? I don't think it's as cut and dry as you have expressed in the first 45 minutes in front of the committee here.

**Mr. Romeo Saganash:** You'll have to give me a more particular example if you want me to answer that.

I think over the years there have been many decisions. Of course, like any court, they might at times contradict themselves from a previous ruling. That's unfortunate because that's not supposed to happen, but it does happen. We're all human I think, and we need to recognize that.

The trend has been very strong over the years, on many of the aspects we're discussing and debating today, especially with respect to our rights over our lands, territories, and resources. I take the time with decisions coming down from the Supreme Court, even with decisions that have nothing to do with aboriginal treaty rights in this country, to go over them. At times, the Supreme Court clarifies previous judgments, and it elaborates on certain constitutional

principles at times in other rulings. It's important for people who are interested in constitutional law to follow those kinds of constitutional principles, which we get from the Supreme Court of Canada. I've always done that.

One of the important rulings for me was the Quebec secession reference case, whereby the Supreme Court determined in its opinion that political actors in this country, as we normally understand it, are not just the federal government and the provinces. It also must include the indigenous peoples of this country at all times in the discussions. As with my human rights, which are relative and not absolute, and the division of jurisdictions between the federal government and the provinces, we know in our system it's the provinces that have jurisdiction over natural resources. Again, the Supreme Court has clearly said that although the provinces have jurisdiction over their natural resources, that jurisdiction is not absolute because there are aboriginal rights and treaty rights over them.

I think the general strong trend has been in that direction throughout the years.

• (1715)

**Mr. Kevin Waugh:** There's confusion with free, prior, and informed consent. We saw that last week when the Liberals voted with your private member's bill—

**Mr. Romeo Saganash:** Good on them.

**Mr. Kevin Waugh:** Yes, but the next day, with Bill C-69, they didn't mention free, prior, and informed consent.

**Mr. Romeo Saganash:** I think the confusion there—

**Mr. Kevin Waugh:** It's a confusion for all of us, though.

**Mr. Romeo Saganash:** No one explained it to me, but I think it's partially because the bill has not passed third reading and does not have the royal assent yet. From thereon, as I explained, I think we'll have that legislative framework for future legislation.

**Mr. Kevin Waugh:** That's your interpretation.

**Mr. Romeo Saganash:** Let me finish.

The other aspect of all this is that if you read subclause 2(2) and clause 3 of Bill C-262, both talk about the UN declaration having application in Canadian law as we speak. Maybe you don't agree with it, and maybe they didn't realize that, but having this bill passed in third reading and through the Senate, we'll be clear on that for the future. I think that is what is needed in order to avoid that confusion.

Similar confusion was created when section 35 of the Constitution was adopted. What is the content of section 35 with respect to aboriginal rights?

Similar confusion was created when the James Bay and Northern Quebec Agreement, the first modern treaty, was signed in 1975. I remember those conversations. In these hunting and fishing associations throughout the province, people said, "Well if we're going to recognize the rights of the Cree and the Inuit to be able to hunt, fish, and trap throughout the year, without conditions, then there goes the entire moose population, there goes the entire caribou population, and there go all the fish in our lakes in Quebec." Well, guess what. It never happened.



It's a similar situation here, in my view. Those rights exist because it is said that they are inherent, which means these fundamental rights exist because we, as people, exist right now, here—I'm talking to you, right?—and those are our inherent rights.

That does not create new law in any way, and it does not create new rights in any way. They already belong to me and my peoples.

**The Chair:** We will now go to MP Anandasangaree and MP Harvey, who are splitting their time.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Madam Chair.

Mr. Saganash, I just want to reiterate, for my colleagues here, the enormous admiration we have developed for you and the great work we see you have done in bringing UNDRIP to the forefront in Canada.

Over the years—at least for the last 10 years—at every UN meeting, the lack of Canada's acceptance of UNDRIP has been pointed out, both by the UN Human Rights Council and in many other international fora.

I want to just pick up on one thing you said earlier, and then ask you a question.

One is that you indicated that indigenous rights are human rights. What I notice, as we mark the 70th anniversary of the Universal Declaration of Human Rights, is that it's somewhat curious that indigenous rights were not enshrined in the universal declaration. We see that development in Canada. We had the Canadian Charter of Rights and Freedoms and the Constitution Act of 1982.

I'm just wondering if you could give us a sense as to the evolution of indigenous rights as human rights. Going forward—whether it would be through and from the TRC or through case law—how do you see the framework you're proposing as impacting the development of policy and legislation in Canada?

**Mr. Romeo Saganash:** Thank you for your kind comments.

I think it needs to be repeated that the rights of indigenous peoples have been treated as human rights in the international fora for over three decades now. They have always been treated as human rights at the international level. I have to point out again and insist on the fact that the UN Declaration on the Rights of Indigenous Peoples had been adopted by the UN General Assembly in 2007. It's been a decade now. I think we need to move on and do what we need to do in this country.

I think the first step is to recognize that these rights are human rights. The right of indigenous children to have a roof over their head is a human right. The right of indigenous communities to have clean drinking water in their communities is a human right. The right to have a toilet in those houses is a human right and so on. That's one aspect.

The second part of it is, as a lawyer, you probably know the way our court system works in this country. Judges and tribunals in this country are impartial institutions and people, and they can decide whether to apply the rights that we find in the UN declaration in their rulings or as references. It happened as early as 1987. The Supreme Court in that case referred to international human rights documents,

and in particular, declarations, to interpret domestic law. That's why it must be said that although the UN Declaration on the Rights of Indigenous Peoples does not necessarily have the same binding effect as international treaties or international conventions—sure, that's true—but it does not mean they don't have legal effect.

• (1720)

**Mr. Gary Anandasangaree:** Do you think the proposed legislation, Bill C-262, goes far enough? Is it sufficient for the implementation of UNDRIP, or does the government need to do more to ensure the full realization of the declaration?

**Mr. Romeo Saganash:** I think it has a pretty strong basis already. We can move forward from here even with that piece of legislation but if the government wishes to change free, prior, and informed consent into a veto, that's their business. I don't think indigenous peoples will be against that. Sure, there are possibilities to strengthen Bill C-262 in many respects. I've always offered my assistance and my collaboration to continue from here on. I don't deny that Bill C-262 has a very strong basis going forward in the right direction with indigenous peoples in this country. Let's pick it up from here, but I think the bill needs to be adopted first.

**The Chair:** We've going to move the questioning to MP Viersen.

**Mr. Arnold Viersen (Peace River—Westlock, CPC):** Thank you, Madam Chair.

Thank you, Romeo, for sitting in the hot seat today.

This free, prior, and informed consent issue is a big part of the discussion, no doubt. I would say that free, prior, and informed consent is something all Canadians want and all Canadians get. Not everybody consents, but I know, for example, in my own community, there is a new power line proposal. Yes, there's a lot of consternation about where the route's going to go, whose land it's on, and what the payout is for the acres of land that get taken out of circulation, so to speak. We have a system that goes through and pays people for the land. We also all have the ability to go and vote for the government we desire. We vote for people we think will do a good job of administrating these things.

How is it that we have to have a different system? Why do we need a different system for indigenous peoples rather than having one system all Canadians participate in? Yes, there are lots of decisions made that I don't like, but we have a system where we have a vote and we choose people. When we don't like decisions that are made, we work harder, we try to convince more people, and we try to get a bigger movement going, and I understand that.

The other thing is that we live in the British system, for better or for worse. One of the beauties of the British system is that it always has taken into consideration minority groups, and typically minority groups have always had their voices within our system of government.

How do you balance the current system we have with what looks to me to be a proposal for a new system or an additional system on the side of that? I will let you run with the clock on that.

● (1725)

**Mr. Romeo Saganash:** I'm not proposing a different system. I think our system needs to take into consideration the United Nations Declaration on the Rights of Indigenous Peoples. That's what I'm saying. We need to clearly recognize that that's a fact and move forward from there.

**Mr. Arnold Viersen:** So you wouldn't say section 35 takes that into consideration.

**Mr. Romeo Saganash:** We need to clarify it. That's one of the things. Section 35 of the Constitution talks about aboriginal rights. Never in this country have we agreed, indigenous and governments, on what the concept of "aboriginal rights" is. That's the problem.

**Mr. Arnold Viersen:** Are you saying we have to go back to the Constitution?

**Mr. Romeo Saganash:** No.

**Mr. Arnold Viersen:** Has there been free, prior, and informed consent for the Constitution, right? That's what we are getting right back to.

**Mr. Romeo Saganash:** That's not what I'm saying. I think the system needs to understand that the rights contained in the UN declaration already have application in our system. That's what I'm saying.

Also, I do recognize that aboriginal peoples in our Constitution are the only distinct group we recognize in our Constitution. Why? Because they were the first peoples of this country. As the first peoples of our country, they have rights that go with that.

It's not a different system. Our Constitution in 1982 confirmed that these are different peoples. They were the first peoples of this country, so they have certain rights that other peoples don't have in this country under our Constitution. That's all I'm saying. I'm not creating anything new here. I'm helping to clarify our constitutional situation in this country.

**Mr. Arnold Viersen:** It seems to me, though, that article 19 talks about "before adopting or implementing any legislative or admin-

istrative measures that may affect" indigenous people". I would argue that any law we change in this country affects indigenous people.

How do we go about ensuring we have free, prior, and informed consent, particularly when we don't have a body that can necessarily deal with that or doesn't seem to even take up those questions?

**Mr. Romeo Saganash:** I think the problem is governments, successive Liberal and Conservative governments at the federal level. Although we've had many decisions from the Supreme Court, their tendency was never to respect those rights and to forget about them in our legislation. Although we have the duty as members of Parliament to uphold the rule of law, upholding the rule of law doesn't mean sending in the police or the army to put down a barricade that indigenous peoples have raised. No. Upholding the rule of law in our system means that we need to respect the Constitution, and in our Constitution is section 35 on aboriginal and treaty rights. We have omitted to do that, although it is our responsibility to do it.

Bill C-262 will help in that regard for the future. That's why it's important for this country. It's important for indigenous and non-indigenous people in this country, if we're true about reconciliation or justice in this country.

**The Chair:** That is a good point at which to leave the debate today. I want to thank you for your presentation.

I will just point out that tomorrow our Prime Minister will be delivering a speech in the House of Commons at 3:15 on the recognition and implementation of indigenous rights.

We are in the midst of truth and reconciliation, and as we move forward, we are right in the midst of a process and we're all honoured to be here.

Thank you so much for doing your presentation today.

● (1730)

**Mr. Romeo Saganash:** Thank you.

**The Chair:** The meeting is adjourned.







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