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Chair

The Honourable MaryAnn Mihychuk

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• (1535)

[English]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Good afternoon, everyone. Let's get the session started.

First of all, we recognize that we're on the unceded territory of the Algonquin people. We're in a process of truth and reconciliation with our indigenous people, the Métis, the first nations, and the Inuit, as part of the three major nations that are indigenous, just in case anybody forgets one of the groups.

We are still waiting for our second presenter, but the clerk has suggested that we go ahead and ask Professor Gunn to proceed, and hopefully Ms. McKay will arrive in the interim.

We are talking about the UN Declaration on the Rights of Indigenous Peoples.

Why don't we just begin?

Ms. Gunn, you can go ahead. You have 10 minutes, and then if the other presenter comes, she'll have 10 minutes to present, and then we will move into questioning.

It's all yours. Thanks.

Professor Brenda Gunn (Associate Professor, Faculty of Law, University of Manitoba, As an Individual): Good afternoon, everyone. Thank you, so much, for having me here today. I am really excited to be here, both to speak about something that I spent a lot of time thinking about, which is the role of the UN declaration in promoting reconciliation in Canada, and also, particularly today of course, the bill before this committee.

I would like to start by acknowledging the traditional territory. I thank the Algonquins for their hospitality and for allowing us to be here. I recognize that this is unceded territory.

I also want to acknowledge a couple of the committee members. I already spoke briefly with the chair. That is the riding I grew up in, so it's very nice to meet her. I would also like to acknowledge member Saganash, who has worked so hard on these issues, both internationally and domestically.

Thank you for your work and for having me here.

I would be remiss not to acknowledge Will Amos. We worked briefly together at Ecojustice, a dog's age ago. I think I was articling and you were just starting at Ottawa, so it's very nice to see you as well.

My name is Brenda Gunn. I am a Métis woman from the Red River. I am an Associate Professor at the University of Manitoba, and I work in both international and constitutional law. I have developed a handbook on implementing the UN declaration, and I've done presentations all over the country and internationally about what the UN declaration means for us in Canada.

I'd like to commend this government for the strong commitment that it has made toward indigenous peoples, including the commitment to implement the UN declaration. I thought I would start today by explaining why I see the UN declaration as being important for reconciliation in Canada and then talk about why I think this bill is so important in its implementation.

When you read the preamble, you see a very compelling story being told, particularly one that's significant in Canada. That is, in 2007, the UN finally recognized indigenous peoples to be peoples and part of the family of the world. We were no longer these "fierce savages whose occupation was war", in the words of Chief Justice Marshall in the Marshall trilogy, which continue to impact Canadian law today. We are now peoples with all the rights that come with that.

We're also indigenous, and we have a right to be indigenous. We have a recognized right to our collective identities, and there's a recognition that sometimes special measures may be necessary in order to protect our inherent rights. The UN declaration recognizes that colonization occurred and that it has a negative impact on indigenous peoples, in particular, through the dispossession of their lands, territories, and natural resources.

The UN declaration continues to state that the UN is convinced that the path forward requires resetting the relationship between indigenous peoples and Canada through recognizing and protecting indigenous peoples' inherent rights. Contrary to the opinion of some that recognizing special rights for special people would tear Canada apart, the UN declaration is clear that full and robust protection of indigenous peoples' rights will actually enhance harmonious relations between indigenous peoples and Canada.

The UN declaration explains that it is the denial of indigenous peoples' rights that is the cause of the current divisions between indigenous peoples and the rest of Canadians. If we want to reconcile in Canada, that means we have to shift the relationship, forming a new relationship based on the principles of justice, democracy, respect for human rights, non-discrimination, and good faith. Doing so shifts the relationship from a colonial one, where Canada has control over all aspects of indigenous peoples' lives, to one where indigenous peoples freely determine their own futures and are actively involved in all decisions that specifically impact their rights.

When you look through the UN declaration, the substantive rights, one of the key areas is that it recognizes that economic, social, and cultural rights in areas such as language rights, education, health care, housing, and economic development, are critical to the exercise of civil and political rights. There is no hierarchy of rights.

I think the bill before you today is an important step towards implementing the UN declaration in Canada, and it can put this government's words on reconciliation into action because of the way in which it clarifies that the UN declaration applies in Canada, requires a review of laws for consistency, and sets out the need to develop a national action plan and the expectation of periodic reporting.

In my reflection for today's comments, I was thinking about the way in which Canada really led the way on the recognition and affirmation of indigenous peoples' rights when it protected indigenous rights in the Constitution 35 years ago. But unfortunately, Canada no longer leads the world on indigenous rights protection. However, through Bill C-262, Canada can again come back to the forefront of indigenous rights protection. Implementing the UN declaration is also key to fulfilling Canada's international human rights obligations.

One of the challenges I've seen in my work on implementing the UN declaration is the general lack of understanding of how international law applies in Canada.

While the Supreme Court of Canada jurisprudence is clear that declarations such as the UN declaration can and should be used to interpret domestic laws, including our Constitution, there has been hesitance by lawyers and judges to rely on the UN declaration in interpreting domestic law, mostly, I think, due to the lack of understanding of the role of international law domestically.

• (1540)

I think this bill is critical to overcoming the reticence and ignorance of many in the legal field on the relevance of the UN declaration in interpreting Canadian laws, including the Constitution.

This process of interpreting Canadian law in line with Canada's international human rights obligations may occur through court processes, but it can also occur through general legislative and policy reviews and the taking of necessary amendments, as well as through negotiation. It's important to remember that law is not static, not international human rights law and not Canadian constitutional law.

We often say our Constitution is a living tree, with strong roots and an ability to grow and adapt to circumstances. I think the UN declaration is key to helping our Constitution grow and adapt to the

changing circumstances in the Canadian context. The presumption of conformity, where domestic laws are interpreted in line with Canada's international human rights obligations, is a well-established principle. More importantly, I think that through this bill, we can also allow Canada to implement its international human rights obligations owed to other nation-states.

Interpreting the Canadian Constitution in light of the UN declaration is also really important because of the fact that Canada, when it goes to international human rights bodies, often points to the Canadian Constitution as something in which it has implemented its international human rights obligations. By using the UN declaration to interpret the Canadian Constitution, we both advance reconciliation in Canada and can help Canada implement its international human rights obligations.

I want to thank the committee for its time this afternoon. I look forward to your questions.

The Chair: Thank you.

Welcome, Ms. McKay.

Ms. Celeste McKay (Consultant, Celeste McKay Consulting Inc., As an Individual): Thank you very much.

The Chair: We were worried about you.

Ms. Celeste McKay: I'm so sorry for being late. There is some sort of emergency going on.

The Chair: Is it a fire?

Ms. Celeste McKay: I couldn't get out of the traffic jam.

The Chair: Well, we're glad you're here.

You have 10 minutes to present your statement. After you conclude, we'll go through rounds of questioning.

We have an agreement that we're going to end at 4:15, because the bells will start ringing at 5:15. We could adjourn at a quarter after or 20 after.

Mr. Arnold Viersen (Peace River—Westlock, CPC): A quarter after is better.

The Chair: It will be at a quarter after. That's the agreement.

The shuttle bus is not running, so we're all hiking it over.

Ms. Celeste McKay: You guys decide whatever is going on—

The Chair: We have a fire, and we have 250 votes yet.

Ms. McKay, please, go ahead.

Ms. Celeste McKay: Thank you. Again, my apologies to everyone.

I'd like to start by thanking the Algonquin nation for providing an opportunity for us to speak on their traditional territory here today, and I'd like to thank you for the opportunity to speak with you.

It's nice to see a couple of familiar faces, those of my own MP, Dan Vandal, and of course Romeo—it's nice to see you—and Brenda.

I have a background in social work and law. I'm a Métis person from Manitoba. I had the honour of participating in the draft declaration on the working group for a couple of years right at the end before it was adopted by the UN Human Rights Council in 2006 and then the UN General Assembly in 2007.

I thought I might take this time to focus on the economic, social, and cultural rights contained in the declaration, as well as the specific provisions around violence and discrimination. These are important provisions, often particularly for indigenous women, who fought hard to ensure that the rights related to discrimination and violence were an explicit part of the declaration.

I'd like to start by talking about the interrelationship between the rights and other foundational rights within the declaration, such as the right to self-determination and the promotion of indigenous legal traditions and systems.

When it was adopted on September 13, 2007, it was an historic achievement for the international human rights community. It was the first time that indigenous peoples were welcomed into the world family. To me, the strength of indigenous peoples' abilities to negotiate and resolve conflicts at the table was demonstrated by the fact that we were able to come to a text that, while not perfect, we could live with, knowing that our key interests and rights would be protected for future generations. In the end, together with our allies from human rights organizations and friendly states, I think indigenous peoples were able to negotiate a declaration that addresses a wide range of concerns.

Eleven years later, here we are, looking at how we breathe life into these rights. The declaration covers an extraordinary range of rights and concerns, all of which reflect indigenous peoples' lived experience of colonization and genocide, as well as our values and our aspirations for a world in which our children and our children's children will be able to live in dignity and safety as indigenous peoples on our own traditional territories, while self-governing nations promote sustainable models of development consistent with indigenous customs and laws.

But the declaration is more than the sum of its parts. It affirms the right to self-determination. It affirms our rights to lands, territories, and resources. It affirms the right to maintain and to pass on our languages, our customs, and our traditions in a wide range of areas from sustainable development to education. It affirms the rights of indigenous women and children to live free from violence and discrimination, but it also draws a link between these rights. It says that these rights are all part of a whole that states, courts, corporations, non-government, and our own governments must respect and uphold.

It also draws a link between these rights and all the rights affirmed in all other international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, etc. The declaration guides and informs application of these standards in the context of the collective rights of our people.

As you are well aware, a basic concept of international law is that all rights are interdependent, indivisible, and inseparable.

● (1545)

When we were looking at articles in the UN declaration and we had states like France saying that human rights are individual rights by their very nature, that's the end of the story, and there's no need for collective rights, we had to say to them, "No, actually they're not, and let's take the example of women facing violence". Why are they in harm's way? Why do they experience alarmingly high rates of violence? Why do they go missing and murdered so often? It's because of all the systemic pressures on the lives of indigenous peoples, because they're alienated from their traditional territories, because they suffer low socio-economic status and don't have equal access to education and employment. All those things have to be looked at together, and the declaration does a very nice job of doing that.

At the time, as well, when we were negotiating the declaration, that wasn't very well understood. States really didn't see the interaction between collective and individual rights very well, and we had to do a lot of work to explain that.

When we look at today with the systemic nature of issues facing women, we hear about that at the inquiry on missing and murdered indigenous women, for example. We hear about how the impacts of the residential schools and colonization have affected their lives. In our communities there is growing awareness of that as a key issue, a fundamental issue.

As an advocate for indigenous women, when I participated in the draft declaration working group, it was in the early 2000s. That was a time when things really were at such a different level. Now there is so much more awareness, and sometimes that can lead us to get a bit lackadaisical. We, as Canada, have a pretty good human rights system. We have good constitutional law. We have lots of protections. But the fact that we still have all those socio-economic indicators draws out the reason why this act is necessary. We need to demonstrate that, as Canada, we're purposely going to reflect on what the rights are in the declaration and how we are going to live up to those. Part of that is recognizing that right now we don't. Right now, we do have human rights issues facing indigenous people, indigenous women, and indigenous youth.

To me, a challenge for us is to ensure that we give life to the principle of indivisibility at each step of the way. I was going to give some examples of that, but I know I'm almost out of time. If you look at articles 20, 21, and 22, which deal with economic, social, and cultural rights and the right to live free from violence and discrimination, and compare that to article 23, which looks at the right to development, and article 24, which looks at the right to health of indigenous peoples, you can see how they're all interrelated, and when you hear about the example of mining companies exploiting indigenous women in northern B.C., that's a good example of how these rights are interrelated.

I just wanted to end with a personal reflection. I was raised in the 1970s by parents who dedicated their lives to social justice. My dad was an academic. He started the native studies departments at Brandon University, at Trent University, and at the University of Manitoba. I didn't grow up on the land. I didn't grow up with a lot of those traditional practices, but I grew up with a strong sense of identity as a Métis person connected to my Métis culture. I was taught to always share and to be thankful for what I had. I think sharing is a fundamental belief of Métis people, and of course, it's shared with others, but it's a very central one in our community.

Today, four or five decades later from the time my dad was in residential school, my son is learning about reconciliation and the UN declaration in his school.

I'll end there, so we have time for some questions.

Thank you.

• (1550)

The Chair: Thank you. It's good to have Manitoba representatives here, both of you. I'll declare my bias right now. Welcome.

We're going to start our questioning. The first round is seven minutes. We're going to start with MP Dan Vandal, a Métis from Winnipeg.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Thank you. It's actually great to have Manitoba representatives here and great to have a constituent, Celeste.

We don't have a lot of time and I have two rather meaty questions. Legal experts have noted that the declaration doesn't provide any new rights or different rights for indigenous people but rather a clarification related to how those rights can be applied.

Why was it necessary to develop an international instrument that attempts to do this, rather than just use what we have in Canada?

I'll start with Brenda.

• (1555)

Prof. Brenda Gunn: Sure. I was going to defer to Celeste. I'll go first.

Mr. Dan Vandal: You can.

Ms. Celeste McKay: Go ahead, Brenda.

Prof. Brenda Gunn: That's always my cheat so that I get more time to gather my thoughts, but I'm happy to try to answer this.

I think it's fair to say that while the existing international human rights standards that Celeste referenced and that are found in the

various international human rights instruments that protect economic, social, and cultural rights, civil and political rights, women's rights, and promote the elimination of racial discrimination, there were issues both at international law and in domestic nation-states in understanding how those apply in an indigenous-specific context. I think this was due in part to the racism that existed within many nation-states. So even though legally those rights applied to indigenous peoples, they had yet to be effectively implemented to address and ensure full protection and realization of indigenous peoples' rights.

I think the second aspect of that is that when you look at the phrasing of the rights, you can see how they're grounded in general international human rights conventions, but really talk about an indigenous-specific context.

Mr. Dan Vandal: If you don't mind, we've only got seven minutes.

Prof. Brenda Gunn: Sure, yes.

Mr. Dan Vandal: Celeste, would you mind commenting?

Ms. Celeste McKay: For me, I agree with that and I also think there was no acknowledgement of indigenous peoples as peoples under the international human rights system. If you look at article 1 and article 2, they talk about indigenous peoples being recognized as collectives and as individuals. I think that was an important advancement under the UN declaration.

Mr. Dan Vandal: As unbelievable as that sounds, there was no recognition.

Ms. Celeste McKay: Right. There was no recognition. Basically indigenous peoples were more or less invisible, and what did their rights mean? If you look at article 31, the right to health, it doesn't just talk about medical supplies. It talks about traditional sports and games. It talks about connection to traditional knowledge around medicines. It's also a reflection of the history of colonization and discrimination, and getting at that. This instrument gets at that.

Mr. Dan Vandal: Thank you, and here's my second question. I want to offer you both a chance to respond.

I'm reading a paper that was sent to me from another MP by Thomas Isaac, who did some work for the Métis Nation of Manitoba. He says:

UNDRIP is a blunt instrument, developed in an international setting, that is not reflective of Canada's world-leading legal protections for Indigenous rights; Canada is the only nation with an established system for limiting unilateral state action against Indigenous peoples. By simply adopting UNDRIP in its entirety into the Canadian context, Bill C-262 misconstrues Canada's existing and sophisticated Indigenous rights regime and, by adding new uncertainties, risks hindering the pursuit of reconciliation.

This is Thomas Isaac, somebody I'm sure we all respect. Could you comment on this perspective?

Prof. Brenda Gunn: Sure, and I'll try to do so in a minute and a half. How's that?

It's an interesting position because Canada was there. Let's not forget the people who were there from the beginning. I was only there in the last couple of meetings, but Canada was there, and one of the years I was there Canada was leading the small working group on self-determination. So this idea that somehow this international instrument is completely separated from Canadian law is a weird way to think about it. No international law specifically reflects the precise situation in Canada. That's why you have the general framework of rights that then gets implemented in a context-specific way in a state. That's what we do with all international human rights.

The Canadian state was there participating and influenced the text. Indigenous peoples from across Canada were there from the beginning, influencing, including member Saganash, so we had an opportunity to influence the text and I think successfully did so. The job now is to think about how that framework can work specifically in Canada.

• (1600)

Mr. Dan Vandal: Obviously you don't share this perspective.

Prof. Brenda Gunn: Correct, in case that wasn't clear.

Ms. Celeste McKay: I don't share it either. I don't think it is a blunt instrument. I think it's a very specific instrument. Yes, Canada has protections, but has Canada—because it has section 15 and section 35—achieved equality? No, it hasn't. That was actually one of the main points I was trying to make. We can benefit, in terms of our defending human rights, by having this UN declaration guide our work. I don't know if that gets at what you're saying.

Mr. Dan Vandal: Those are excellent answers.

I'm intrigued by your handbook on UNDRIP. What was your thought behind that? We have about 50 seconds left, just to break it down.

Prof. Brenda Gunn: When I started that project years ago, it was about the recognition that there was a really important instrument that not a lot of people knew about. I tried to develop it in such a way that my dad—with his...we'll say grade 6 education—could get some understanding, while also having enough meat and references in there for legal professionals and judges, for example, to understand the context.

Mr. Dan Vandal: Would you be able to submit it to the clerk, so that it can be distributed to everybody?

Prof. Brenda Gunn: Yes, I am happy to do that.

Mr. Dan Vandal: Celeste, what was your father's name?

Ms. Celeste McKay: Raoul McKay.

Mr. Dan Vandal: Of course. I worked with him at Ma Mawi.

Ms. Celeste McKay: Did you? Wow. Yes, he was on the board there.

There is also a parliamentary handbook on the UN declaration. I don't know if you have that.

The Chair: We do.

Ms. Celeste McKay: Awesome. Thank you.

The Chair: That's enough of Manitoba. We're moving to another prairie person. Well, he's in transition, but he's definitely a prairie person.

Go ahead, MP Viersen.

Mr. Arnold Viersen: I have High Prairie right in my riding.

Welcome to the committee and thank you for being here.

Brenda, you talk about Canada lagging behind. You said we're falling behind on the international stage. What country should we look to as an example of how indigenous rights are played out? What kinds of similarities does that country share with Canada? Each country has its own history. It would be awesome to flip a switch and be where we want to be, but that isn't how the world works.

Prof. Brenda Gunn: A really recent example would be New Zealand and the way in which their recent trade agreements respect Maori rights and are in line with the UN declaration. Canada is coming up there, but New Zealand has actually led the way on that one.

Bolivia also has recognition of the UN declaration in its constitution, and has recognized “mother earth” rights. Sorry, that was a bad translation from the Spanish.

There's also a fair number of Nordic countries that have taken significant steps in working with.... There's the Act on Greenland Self-Government, which I think would be quite relevant as a potential model—at least for northern Canada—but I leave it to my Inuit colleagues to speak to that, if they're so inclined.

My point was also that we were a first mover and then we didn't do much, and the rest of the world kept moving. Maybe we're in the middle of the pack, but I get the sense that we're lagging behind. There are a lot of examples, but those are the few that come to the top of my mind.

Mr. Arnold Viersen: To both of you, we're discussing a specific act. We're talking about the implementation of the UNDRIP, but we're discussing the particular act. Let's say this act makes it through the House of Commons and the Senate, and becomes law. On the day this act becomes law, what changes in Canadian society? What switch gets flipped?

• (1605)

Ms. Celeste McKay: I would hope that whatever your work is, it's influenced by the UN declaration. If you're doing a policy review of child welfare, you would look at what the relevant provisions are in the UN declaration dealing with child welfare. Have you turned your mind to it? I imagine that this would be done in a more principled way as well; that you'd do a policy and legislative review. At the Assembly of First Nations' general assemblies, whatever motion they pass, they have the relevant articles of the UN declaration because they've purposely developed that practice.

Mr. Arnold Viersen: It would be a reference.

Ms. Celeste McKay: Yes, a check-in piece to see if you've considered these issues, these rights.

Mr. Arnold Viersen: Brenda, do you have anything?

Prof. Brenda Gunn: I have a couple of hopes for what might change. If we're still required to use the courts to assert our rights and gain that recognition, the UN declaration can assist in articulating and understanding the scope of protected rights without a judge. For example, an Ontario Court of Appeal judge found early on that it had no relevance. The judge, unfortunately, made three errors of international law in an Ontario Court of Appeal decision.

To me it feels like we would start a little further ahead. I feel like sometimes we always have to start at the basics, and this could help us move ahead.

I also hope that Canada would pass this and then the next day start working on a national action plan, something that has been called for from at least the World Conference on Indigenous Peoples, the UN committee on the elimination of all forms of racial discrimination. Canada needs to develop a plan, so this would be part of that impetus to take those steps. It also puts the words into action and shows the real commitment of this government.

Mr. Arnold Viersen: One of the things that we're trying to tease out as to the whole point of free, prior, and informed consent—and I'm going to be running out of time soon, but I'm sure my colleague will take it up, as well—is this: who consents, and does no mean no in this case as well?

I'll let Brenda start on that, and I'm sure Celeste will get some more time on that with my colleague.

Prof. Brenda Gunn: In that answer, I think it's important to go back to what I said at the beginning, that implementing the UN declaration is about resetting the relationship and shifting from a colonial one where Canada is making all decisions for indigenous peoples to where indigenous peoples are actively engaged in the process. It's really unfortunate to me that we emphasize and get stuck on consent and this yes and no, because it sounds like the government is still envisioning doing all of the work, running it by indigenous peoples, and only giving them the opportunity to say yes.

What I hope would come forward from an approach of implementing the UN declaration is having a more robust engagement with indigenous peoples. We talk about consultation, but I hope it could also involve collaboration, joint decision-making, and the idea of consent being that indigenous peoples have had their voices heard and concerns addressed. In my head, it's more of a consensus-building process where you work towards the yes. I don't think anyone should just be given an opportunity to say yes or no. I think they should be at the table and engaged in a far more robust fashion.

The Chair: You've run out of time.

We're going to move on to MP Romeo Saganash.

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): Thank you, Madam Chair.

Thank you to both of you for your presence today. It's very well appreciated. Your comments are extremely important for our work on this proposed legislation. I wholeheartedly agree that this Bill

C-262 is important for reconciliation, as you said, Brenda, and critical as well.

I believe that, because there is no precedent around the world for this kind of legislation, it is a framework legislation. There is no precedent. In that sense, it will allow Canada to, as you said, come back to the forefront in the protection of and respect for indigenous peoples' fundamental rights. Thank you to both of you for your comments.

I want to start with you, Brenda. You spoke about this bill and its provision on periodic reporting. That provision comes from previous federal legislation that was adopted back in 1976, I believe. For the implementation act of the James Bay and Northern Quebec Agreement, we had a similar provision. For the next 25 years, the minister had to report to Parliament.

Do you see a difference between this periodic reporting that's provided for in Bill C-262 and the kind of periodic reporting that Canada has to do with respect to its international obligations?

• (1610)

Prof. Brenda Gunn: Wow. Thank you for that question. Although I haven't fully turned my mind to that, I can say, as someone who has participated through the NGO process at Canada's review before several international bodies, that it has been frustrating. It seems that Canada lacks the mechanism to take the information from that review and implement it in Canada. It seems to sit with Canadian Heritage, who then can't implement it.

I think it would be different, but I hope it would be complementary. It could also perhaps be one of the mechanisms Canada uses to address the recommendations coming from those international bodies. I see that work as being sort of complementary.

But this would also be specific, right? Looking at the UN declaration and Canada taking the actions, I also think that Canada reporting internationally doesn't always get a lot of attention. Bringing it home, having that periodic review happen here, at home, brings greater attention to the issues. I think that is really critical, so that people are turning their minds to it regularly and our parliamentarians are thinking about these issues.

I do see them as being somewhat different but complementary.

Mr. Romeo Saganash: Different in what way?

Prof. Brenda Gunn: The instruments are different, for example. When Canada is up for review before CERD, they're looking at all of their protections on the elimination of racial discrimination. At those reviews, Canada sends the Department of Canadian Heritage, which leads the reviews with support. Sometimes the Department of Justice is there, and sometimes provincial bodies. Those reviews include so many issues. Racial discrimination, for example, includes a lot of issues—migrant workers, immigration detention, the policing of African Canadians—so as indigenous peoples, we're fighting for our time. The committee does often respond, but we're fighting for space when we're looking at very broad issues.

This periodic review would be specific on indigenous peoples. It would be looking at the UN declaration. It wouldn't be international people who sometimes are viewed as separate from Canada, but it would be our members of Parliament, who are elected to represent Canada's interests. It would have that greater Canadian context and focus.

Mr. Romeo Saganash: Thank you.

Celeste, it's good to see you again. We saw each other a lot at the UN. I'm glad to see you here, I as a member of Parliament and you in front of me.

Ms. Celeste McKay: Thank you.

Mr. Romeo Saganash: I'm glad you raised the issues that we debated a lot at the UN with respect to individual rights and collective rights. Not many members, in fact none at the beginning, recognized that collective rights existed under international law, in spite of the fact that the right to self-determination has been in international law for a long time. That seems to be pretty collective as a right.

Ms. Celeste McKay: As collective as they come, right?

Mr. Romeo Saganash: I want you to comment on something. I think you clearly understand the purpose of Bill C-262 as a vehicle or as a framework for the future development of policies and legislation. I'm glad you raised that. Can you imagine or give us an example of how it would work, once this bill is in place, with regard to the future development of any legislation or any policy that you have in mind?

•(1615)

The Chair: You have less than a minute.

Ms. Celeste McKay: Sure.

Let's look at environmental assessment, which kind of relates to "does no mean no". If you were developing environmental assessment acts, as you are right now, what would that mean in terms of indigenous peoples' rights? If it means seeking consent instead of consultation through section 35, does it make that much of a difference? Not really, in the sense that hopefully the right to consultation is aimed at getting agreement in negotiating, although, at the end of the day, if a right holder has a right under section 35, they have a right. It's just like free, prior, and informed consent. If you have a right to give the consent, it has to mean something.

I think it would be easy to do an annual review over time. I think once people within the bureaucracy have gone through the exercise of looking at their respective mandates and at how they address the rights of indigenous peoples within those mandates, every year it

would just be a matter of looking at what was new and how that related to, let's say, the right to live free from violence and discrimination.

The Chair: Thank you.

I don't see our next panel here, so why don't we continue with our next questioner in our lineup, MP Mike Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): That's good news, because I didn't think I was going to have an opportunity to ask any questions, and I was hoping I would.

Thank you both for being here. It was very informative. You both have tremendous backgrounds that are beneficial to the work we're trying to accomplish here today. I'm trying to better understand UNDRIP, and the perceived and non-perceived impact it will have on Canadian law, policy, or program implementation.

This area has been communicated by a number of individuals, that FPIC is a yes or no proposition and that's it. It's black and white. To me, that's a very simplistic expression of what FPIC means. As my honourable colleague Romeo has said on numerous occasions, one set of rights does not abrogate another set of rights.

Maybe you could give us your view on what that means and any examples you can think of in negotiations where it is viewed in a much more complex manner.

Ms. Celeste McKay: Let's say you're setting up a mine in Nunavut, and the mining company is from outside and wants to come in. You're the regulator, as the Government of Canada. Do you just go ahead with it or do you consult with the people in Nunavut, form an agreement, build partnerships, and develop ways to ensure that a certain percentage of the workers for the mine are indigenous and from that territory?

I think that in the negotiation process leading into development or whatever area you're looking at, partnerships, relationships, are formed, and if there's goodwill and a sense that these rights have meaning—

Mr. Mike Bossio: In that negotiation or that partnership, do you find you have to agree on absolutely everything or the deal is off?

You're always going to have differences of opinion on certain issues. That doesn't mean that the whole deal blows up. In any negotiation, you try to get to a place where you can agree on most things and reach that consensus, but you know going in that you're not going to get everything in a negotiation.

Ms. Celeste McKay: Right, and so maybe it ends up that only 75% of workers are from that area instead of 90%, or whatever. Naturally, when you have developed a relationship and a partnership and approach it that way, you can overcome the hard issues and make progress in the negotiations.

Mr. Mike Bossio: Ms. Gunn, could you give us your thoughts from a constitutional or law policy standpoint? I know that is your background.

• (1620)

Prof. Brenda Gunn: I agree with what Celeste was saying, and I'll try to add one or two points quickly.

One is that consent really is the foundation of the Canadian Constitution. It's part of our democracy. Democracy is about the will of the people being expressed. I'm hoping everyone in this room is representing their constituents through this engagement in the process.

It's also for me not such a foreign or large leap to think about how, when the Canadian state is working at developing our relationships with indigenous peoples, we take time to ensure that the appropriate mechanisms exist for indigenous peoples to consent to any activity that's going to particularly impact their rights and interests.

I think that part of what the UN declaration is getting at, and these other international human rights instruments that recognize this right to participate in decision-making on the basis of free, prior, and informed consent, is that it's about ensuring that indigenous peoples are involved early on in the process. Sometimes I think the challenge is that the plan has evolved too far, and then the company says it's fully baked. Getting involved at an earlier point makes sure the processes that are set up allow the parties to hear one another.

Mr. Mike Bossio: Do you not find that in the process you actually establish far greater clarity and certainty, and reduce the time required to achieve that successful negotiation?

Prof. Brenda Gunn: I actually think that implementing the UN declaration and the standards will lead to greater certainty in Canadian law than what we have now. I think we will make better decisions, faster, and subject to less review than the current state of affairs, because parties are not feeling that they are being heard, or they may not fully understand the decision because their contact point has been limited, and so they are using the judicial system.

My final point is just to say that the right of indigenous peoples to participate in decision-making on free, prior, and informed consent doesn't exist in isolation. We have administrative law principles that also will play into how government makes appropriate decisions. We know it is a reasonableness standard. We have all of these principles, so this one aspect that needs to be further developed—indigenous peoples participation—isn't going to, I don't think, throw everything off kilter. It's just going to build on what we have.

Mr. Mike Bossio: That's a great answer. Thank you.

The Chair: That's just about your time.

Mr. Mike Bossio: Yes. Thank you.

The Chair: We still don't have our next guest, so let's move on to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you, Chair.

Thank you both for coming.

With this bill, there are legislative concerns. You both agree with that, do you, that we do have some legislative concerns?

Ms. Celeste McKay: No, but please say more.

Mr. Kevin Waugh: Okay. We need to iron this out so that we don't spend time down the road in the Supreme Court dealing with these decisions. Would we agree there?

Ms. Celeste McKay: That's kind of the point of the legislation. That's what Brenda was just saying about certainty. If you're clear on how you act, you spend less time in court.

Mr. Kevin Waugh: We're hoping.

Ms. Celeste McKay: Yes.

Mr. Kevin Waugh: Ideally, it would work that way, but there is no consensus. How do we proceed then?

Ms. Celeste McKay: What do you mean by “there's no consensus”?

Mr. Kevin Waugh: Consensus means.... We aren't always willing to be collaborative. That's idealistic thinking, but our job, as you can see around this table, is to get this legislation right. I think we all agree with that, to have success, so we need to get this legislation right. By asking these questions, it should not be interpreted as our not supporting human rights.

Ms. Celeste McKay: Right.

Mr. Kevin Waugh: I think we're all on the same...and that's why we're asking about this consent business, because it's a huge issue.

• (1625)

Ms. Celeste McKay: Maybe this does seem too idealistic or whatever, but when the question comes up, “Does no mean no?”, I think about it in a sexual assault context, and I think, yes, no means no. What do you tell your sons and your daughters? No means no. Here, in this context of aboriginal rights, it means the same thing. Does that mean that indigenous people have the right to everything here, and because this is unceded Algonquin territory we're going to have to give up the parliamentary buildings and move out? No, it doesn't mean that, because at a pragmatic level there are negotiations. There are ways to work out rights and we have those systems in place. We've always had those systems in place.

We understand that we don't have full equality. We understand that women still make 76¢ on the dollar a man makes. Does that mean we believe in full equality? Yes, we do. Does that mean that the whole reality of the country changes overnight because an act is put into place? No. It means we agree that's where we want to be. It means we want to give up our colonial history and we want to be living in a place where rights have life.

Mr. Kevin Waugh: Thank you.

Prof. Brenda Gunn: Thank you for your question.

I'm still not quite sure I understand or can agree that there are legislative concerns, but I do understand that there are concerns on this, so maybe I just took too early a flight and my brain is getting mushy.

I think the role of this body and this legislation is whether it takes us to the next step. It's hard to predict the future, and from my analysis, from everything I've done, this legislation is the next critical step that this government needs to take to implement its international human rights obligations and put action to words. I am confident in that.

In 20 years I may be back before a similar committee and we might have learned a lot. I can't say that, but I am quite confident that this is the appropriate next step and that it will take the relationship between indigenous peoples and the Canadian state to the next level and will move it further along in a positive direction.

I understand the concerns about consent. We want to make sure we understand what this declaration is about and what this legislation is setting out to do. What I would hope would happen is that we would be having more conversations. If a group of indigenous people are failing to give their consent, if they're saying no, the government or the regulator or the industry needs to ask why they are saying no. Why isn't it consulting? What is there still an issue? What interest is still not being addressed? What is the concern? The conversations should continue. They may also need to ask themselves what has failed or what has gone wrong such that this process has not successfully led to an agreement.

Then I think there would be enough checks and balances in place that if the government has honestly taken every step, has listened to indigenous peoples, and has addressed their concerns, you still have the power to make decisions. Where the consent isn't sought, I don't know if it will always land in court, but I do think this will improve those processes.

Mr. Kevin Waugh: Mr. Obed has arrived. He's here late, so thank you.

The Chair: Thank you so much for coming out. I appreciate your taking the time. *Meegwetch*. Have a good flight back home.

Ms. Celeste McKay: Thank you. We'll see you in Winnipeg sometime.

The Chair: Yes. Good.

- _____ (Pause) _____
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- (1630)

The Chair: I want to welcome you here to the committee once again. It's good to see you, Natan, and other guests.

We are a committee that is now looking at the UN declaration, the UNDRIP, and how it's going to impact Canada and our indigenous peoples.

We're glad you have come. I know there is a bit of confusion outside, and we have bells at 5:15, so your time will be somewhat reduced. Therefore, I open it up. You have ten minutes to present and then we'll go into the question periods.

Natan.

Mr. Natan Obed (President, Inuit Tapiriit Kanatami): *Nakurmiik*.

Thank you very much. It's good to see all of you. I've become a bit of a regular, and it's always nice to be able to have conversations about important indigenous issues such as Bill C-262.

I grew up in an indigenous rights or Inuit rights household. My father went away to work on the repatriation of the Constitution and worked on land claims negotiations for a number of years. The idea of the United Nations declaration and the time that it has taken not only for it to go through the UN processes but then also for Canada to adopt it, still falls generally within my lifetime of a little over 40 years.

I want to start with that, the idea that it has taken over 30 years to develop the declaration. It represented the first time that indigenous peoples worked with states to develop an international instrument. After the declaration was passed by the General Assembly, it took almost 10 more years for Canada to offer an unqualified endorsement of the declaration. Even then, we could interpret this endorsement as including the qualification that the declaration should be interpreted through the lens of Canada's Constitution.

The declaration represents an international consensus regarding the minimum standards of treatment of indigenous peoples as human beings. It's an articulation of the existing minimum standards of treatment of indigenous peoples under international human rights law. The purpose of international human rights law is to ensure that all persons and all peoples do not experience atrocities, are treated with dignity, and may live in societies free of discrimination.

One of the reasons for the declaration is that international human rights law did not adequately protect the rights of indigenous peoples due to our close connections to our homelands, a global legacy of colonialism and genocide, and the collective nature of many of our rights. The point is, the declaration is not a gold standard or a ceiling; rather, it's a minimum standard to avoid genocide and to ensure our dignity as human beings.

International human rights instruments such as the declaration are meant to ensure the protection of indigenous peoples from state conduct that might violate their rights. Failing to address economic, social, and cultural rights as rights means that the socio-economic gap between Inuit and non-Inuit will continue to grow.

The declaration is not a policy instrument. The UN declaration is an articulation of international law standards, which are binding on Canada under international law and which apply to indigenous peoples. It's not aspirational in its list of objectives linked to reconciliation. It actually has the force of law.

Compliance with Canada's international obligations means more than changing program criteria or operational practices in one or two federal departments. Canada's Constitution must be interpreted consistent with the declaration, and not vice versa. This includes section 35 of the Constitution, as well as the constitutional division of powers. They're not valid limits in the implementation of the declaration.

This government talked about section 35 and a “full box of rights” concept when the Canadian government adopted the United Nations Declaration on the Rights of Indigenous Peoples. From a very practical, logical standpoint, Inuit would understand, then, that the Constitution would have to be opened up, that we would actually have to place the declaration inside of the Canadian Constitution in order to have the recourse and the restitution that usually accompanies rights.

In the absence of restitution or recourse for violations of our indigenous rights, we still would have to depend upon the courts and upon Supreme Court rulings in order to continue the slow path towards fully understanding how to assert our rights in Canada, rights that the Canadian government does not create and that exist in international law and for indigenous peoples. It would be inconsistent with the nature and character of the declaration or any other human rights to suppress and deny them whenever a country deems compliance to be inconvenient.

• (1635)

The enforcement of human rights involves restraining the conduct of a state. Through this lens, it doesn't make sense to propose requesting the state report to itself on compliance with its own international human rights obligations. Independent oversight is essentially important to the success of Bill C-262. For example, statutory human rights mechanisms across this country are responsible for promoting and enforcing human rights rather than government departments.

Last year we produced two discussion papers on the implementation of the UN declaration. Among other things, these two papers called for a comprehensive legislative approach for implementation and outlined what we consider to be comprehensive.

First, when it comes to understanding an instrument such as the declaration, it's critical to recognize that the rights contained in the declaration are interrelated, interdependent, indivisible, and interconnected. It's not helpful to attempt to approach implementation of the declaration by examining individual articles as specific obligations. In our experience, such an approach leads to very narrow interpretations of the obligations and serves to hinder implementation rather than facilitate it.

Second, many of the standards articulated in the declaration implicate the constitutional division of powers. The federal government has several policy levers that it can use in order to encourage implementation of the declaration sub-nationally, ranging from reporting on implementation in provinces and territories to using the federal spending power to link implementation of the declaration to transfers to provinces and territories. The mere existence of a constitutional division of powers is no excuse to ignore the fundamental human rights of indigenous peoples.

Third, a comprehensive scheme for implementation requires a means of seeking redress for alleged violations to the declaration. If the declaration articulates the fundamental rights of indigenous peoples, then we ask, what is a right without a remedy? ITK has proposed the development of a national indigenous human rights institution operating consistent with the Paris principles to accomplish this. The 1993 Paris principles provide the international benchmarks against which national human rights institutions can be

accredited by the the Global Alliance of National Human Rights Institutions.

Finally, reporting on implementation must be done by an independent party. Those who are tasked with implementing the declaration should not also evaluate their own success.

We note that you have already heard from many who recognize that Bill C-262 alone will not accomplish the full implementation of the United Nations declaration. Others have referred to the need for additional reforms, policies, and operational practices. For ITK, full implementation of the declaration requires a comprehensive approach. We would seek to improve Bill C-262 in order to ensure that the legislation fills gaps that cannot easily be accomplished through changes to policies, programs, or operational practices.

I think of language rights in this country and how they have evolved over time. I especially think of the francophone language rights, and I think of francophone language rights being articulated in a complex, overarching, rights-based framework in this country. Even minority francophone populations have the right to go to school and to have school boards within those specific spaces. They have the right to government services in the French language. These are very practical things.

For indigenous peoples, especially in relation to Inuktitut, our language, we have rights that are articulated through the United Nations declaration. We now have a government that has pledged to implement those rights, but you cannot compare the implementation of the rights for indigenous languages in this country to the implementation of francophone rights for language in this country.

We want to get to that same space, and the mechanisms and the legislation that we create and the way in which we use the Constitution, federal legislation, and then mechanisms within the provinces and territories will hopefully one day get us to that space where we have the same ability to exercise our rights as other ethnicities do in this country to exercise theirs.

I give that as an example because I think it is a practical one and one that completely overlaps with the way that you can think about Bill C-262 versus the way that you might think about your own place in this country and the rights that you hold.

• (1640)

Nakurmiik.

The Chair: Thank you. We will be moving, for the first questions, to MP Will Amos.

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

Thank you to our witnesses, Mr. Obed in particular. Mr. David and I are familiar with each other as well. I've never met Mr. Argetsinger, but it is really a pleasure to have you here.

As someone who has spent the better part of a decade using the law in defence of Canadians' rights, particularly on the environmental side, I often look at legislation from the viewpoint of how it's going to be played out in the courts, what some of the eventualities would be. Of course, there are going to be some aspects around governmental behavioural change that are really probably most important, and one would hope, I think, that cultural change would be the first thing that's sought.

I want to ask your respective opinions as to where legislation like this may go in terms of test cases and what could occur. I don't suggest this in any negative sense, because I think test cases and pushing Canadian values and understanding through test cases is really important. It's a really important part of the dialogue. I think you three are well positioned to explore that with us, so I put that to you now.

Mr. William David (Senior Political Advisor, Inuit Tapiriit Kanatami): As a threshold matter, it's important to note that the declaration is not just some statement that somebody promulgated at the United Nations in a GA resolution. It actually is a clean articulation of several standards of customary international law. Through the Canadian Constitution, standards of customary international law already find application in courts. There has already been a pretty good number of test cases on the declaration, absent the legislative base.

The challenge with the legislation is that it is hard to see where a cause of action comes from within the legislation itself. That actually is one of the reasons why we're calling for the development of remedial mechanisms to be placed within the legislation itself in order to enable those test cases to come forward.

•(1645)

Mr. William Amos: To explore the theme further, what specific types of cases do you think would be helpful to bring? Where is that judicial safety net most necessary, in your estimation, given the current constitutional framework and legislative framework that is.... You know, it is what it is.

Mr. Natan Obed: I think it would overlap with a number of the issues we have been advocating for in relation to social inequity in this country, especially in relation to housing, education, health care delivery, or language. There are a number of different areas where we have exhausted almost all other mechanisms to bring resolution to what are our rights are into the implementation of those rights.

While this government has worked with us in partnership on priorities that are specific to our shared priorities, there are still many things that will probably take resolution in courts because of the pace of the work that we're doing together. I give an example of human rights violations. We have worked very closely with this government on a number of outstanding human rights violations for Inuit over time that are currently in litigation, currently in the courts, or currently being discussed with the Government of Canada. Now we are over two years into this new mandate and there's still no end in sight for a number of them.

We would hope that we could resolve them out of court, but this may be a mechanism to resolve some of the outstanding human rights violations that Inuit are still trying to resolve and redress with the Canadian government.

Mr. William Amos: As you're fully aware, as I'm sure most of our colleagues are well aware, there was significant implementation-related litigation that was resolved near the end of the previous administration for a significant sum of money. Could that have been avoided, in your estimation, with the legislative tools that this bill might offer, or would it still require enhanced remedial measures only?

Mr. William David: I think it would require more remedial measures than are currently found in the bill. I only say that because there really wasn't very much of an implementation policy at the time that particular case was brought forward. One was developed as a result of it, but in order to avoid situations like that from essentially blowing up in civil litigation, it's extremely helpful to provide early redress mechanisms that are easily achieved and lead to resolution, rather than actually blowing them out through civil litigation.

Mr. William Amos: Thank you.

The Chair: We'll move the questioning over to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you. It's good to see you and your team again.

I guess it was a little over a year ago when the minister went to the UN and unreservedly endorsed...and made a commitment. Of course, we do have legislation before us today that is to put some structure around that commitment. But I found it quite strange that we had Bill C-68 and Bill C-69, which were introduced in the House, and certainly there was language around indigenous process, but it was lacking really what I would say they committed to with the UN declaration.

Would you agree in terms of the free, prior, and informed consent? That language was not used in Bill C-68 or Bill C-69, so did they live up to the standards that they had stated they would live up to at the UN over a year ago?

•(1650)

Mr. Natan Obed: We've been working as closely as we can with the Government of Canada to understand the ramifications or the next steps after the very positive and welcome remarks in the United Nations around the adoption, without reservation, of the UN Declaration on the Rights of Indigenous Peoples. That being said, there has not been a formal structural working group that has been created to create an implementation plan within this country. We as representatives of Canadian Inuit don't know of mechanisms or structures that are in place to allow for Inuit self-determination within the implementation of the UN declaration in this country. This, then, would extend to all laws and policies that the government has put forward since its endorsement, and today.

We hope and look forward to an Inuit-crown relationship in relation to the implementation of the declaration so that we do have a shared understanding of the necessary mechanisms that this government must put in place.

Mrs. Cathy McLeod: I know my colleague here was visiting a number of communities in the north last week and had a considerable discussion around, for example, the marijuana legislation. Certainly, again, the government stood up at the UN and made commitments; and they made commitments of Canada and have introduced legislation. I think it's clear that something like Bill C-45, the marijuana legislation, will impact communities across this country, including yours. Not only did I not hear any discussion around the legislation, which, I think, article 19 would suggest should have happened, the general application, but I also didn't hear anything around even excise cost-sharing. It was all conversations with the provinces.

We know that in Bill C-68 and Bill C-69 it certainly appears they haven't lived up to their commitment. Would you suggest that Bill C-45 is another example where a commitment that was made on the international stage has not been lived up to in Canada?

Mr. Natan Obed: The reason we are here today and talking about Bill C-262, the importance of linking international law and its effect, and the obligation of the government of Canada to implement, I believe, goes beyond one government. It is a behaviour that needs to be unlearned, in that there is a call and response—a cause and effect, if you will—for the obligations that Canada has under international law and the way in which it must act within this country.

As you're categorizing it as a broader issue, I would say we are working with this government to ensure that we give them the specific steps they need to take to satisfy the partnership or the respect for indigenous people by allowing for self-determination within the decisions that are made. Whether it's legislation regarding marijuana or whether it's the implementation of the United Nations declaration, there is a road map. Our position paper, especially for Bill C-262, gives very clear direction, and it would be great to follow that road together.

Mrs. Cathy McLeod: We had two witnesses prior, and they were looking at this legislation very optimistically in terms of reducing court cases.

We have significant jurisprudence now, and any mining company knows that they have to be very early in terms of working with communities that are impacted. I don't think there's a mining company in Canada that doesn't know that. If they don't, they learn it pretty quickly.

It's clear that we have some concerns on our side, and some of our concerns relate to the issue of the commitment that the government's making. For example, I'll use Kinder Morgan, because it's very prevalent right now. Who do you get consent from? You have the 51 communities who have signed agreements. Clearly, as the earlier witnesses said, no means no. When you have a community or two whose rights need to be respected with their no.... I've asked this question a lot of times, and I still haven't had anyone that's really made me comfortable with what the answer is.

Should there be a reference question to the Supreme Court beforehand, so that we really understand some of these concepts?

• (1655)

Mr. Natan Obed: We Inuit are fortunate in some ways that our agreements with the crown were forged in the modern treaty era, post-1971. For the 36% of Canada that is co-managed between Inuit,

the crown, and four provinces and territories, there is certainty around process for natural resource extraction. There is still the question of offshore and adjacency to Inuit Nunangat.

Luckily, we don't live in little postage stamps of land and have very little rights or co-management over our large settlement regions. We are very sympathetic to other indigenous peoples in this country who live in those realities, and I can only imagine the complexity of a Kinder Morgan. I hope that all sides can be resolved, but the Inuit have a very specific way of working with the natural resource sector and complying with free, prior, and informed consent. Maybe that's an example for all Canadians to follow.

The Chair: We have to move the questioning to MP Romeo Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair, and welcome to our guests today. Thank you for that thorough and very principled presentation. It was a pretty good overall view of Canada's international obligations, UNDRIP, and so on and so forth.

I want to ask a very simple question. Clause 2(2) of Bill C-262 says that the bill should not be interpreted as delaying the application of the UN declaration in Canadian law. Clause 3 talks about the UN declaration being an international human rights law instrument that already has application in Canadian law.

Do you agree with that?

Mr. Natan Obed: Yes, I do. I also worry sometimes about non-derogation clauses within federal legislation, since I don't think it is within the power of Canada to go against international law.

Mr. Romeo Saganash: You mentioned in your presentation that international law is already binding on Canada and that the Canadian Constitution should be interpreted according to UNDRIP, rather than the contrary. When I heard Minister Bennett at the UN, that's precisely what she said. She said we fully accept the UN declaration without qualification in accordance with the Constitution. That is contrary to what she said today.

I think that should be strongly reiterated everywhere we go, because even before the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN in 2007, as early as 1999, the human rights committee declared that article 1 of both international human rights covenants applied to indigenous peoples in Canada. That's pretty strong, so I think we can safely assume that international law has application in Canadian law.

You spoke about the improvements this bill requires, and I totally agree with what you mentioned in improvements in committee, and the remedial measures that should be required, one of them being that this bill addresses only the laws that should be consistent with the UN declaration. Do you think that this should be amended to include policies and operational practices, as you suggested?

• (1700)

Mr. William David: Yes, and to draw an example that's out of the context of Inuit, it even extends into ensuring funding equities, so there are not necessarily disparities between how Inuit are funded and how other Canadians are funded. I would think this is the case and I think you get that out of a remedial mechanism, as well as through a law reform mechanism.

Mr. Romeo Saganash: The bill was drafted purposely to be the minimum legislative framework in this country, and you talked a lot about the other issues that could improve this bill and other improvements.

Does this bill in any way hinder your own processes that you have established with the crown? Should the improvements that you talk about be incorporated in Bill C-262, or in another framework that the Prime Minister has talked about recently, the reconciliation framework? I'm not sure if it's going to take the form of legislation or policy. I haven't been told, but where should these other improvements that you talk about—and I totally agree with them—be incorporated?

Mr. Natan Obed: We draw on our rights in different ways, and the United Nations declaration is but one of a number of different ways in which we create our rights-based standing within this country, and it is a welcome conversation for Canada to be a leader within the declaration implementation in a global setting.

You can't go to another country and see a road map of successful implementation of this declaration, especially thinking of and wrangling with constitutional and legislative structures. The worry that we have as Inuit is if Bill C-262 is more symbolic than structural, then it allows for the Government of Canada to restructure its obligations to the Inuit into a different stream.

If an action plan is created and compliance with the action plan is developed by the government, there is no obligation for indigenous people to play a role in that, and the definition of success then changes.

Mr. Romeo Saganash: The bill talks about it being developed in co-operation and collaboration with indigenous peoples, so it's not going to be developed by the government but in collaboration with you.

Mr. Natan Obed: Our Inuit to crown relationship, then, is the place where I hope we will further develop over time with this government and successive governments. It does make us a bit concerned when we are put into processes that historically have not been adequate to address some of the concerns that we have as Inuit, as an indigenous people.

• (1705)

The Chair: Questioning now moves to MP Anandasangaree.

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

Thank you and welcome back to the committee, Natan. Why don't I start with your sense of Bill C-262?

I know that it's part of a broader framework implementation of UNDRIP. Can you advise us as to what type of involvement you've had in drafting Bill C-262—not you personally but in terms of ITK—and if you were consulted? Second, what other measures do you anticipate or expect to be part of the broader framework?

Mr. Natan Obed: I want to thank member of Parliament Saganash for his leadership in the development of Bill C-262. Inuit were approached and have been consulted over time by the member of Parliament. We didn't develop this in partnership. There was no formal structure in the way in which the bill was drafted. At the same time, there was no discussion and consultation with this current government when the justice minister decided to endorse Bill C-262 as well.

Over time, we have reserved comment and have been generally supportive of legislation within this country for the implementation of the declaration in Canada, but now is the time when we are asserting ourselves. It started with our position paper in 2017. We continue to try to shepherd through any positive mechanism that helps with the implementation of our rights in this country.

I apologize; what was the second part of your question?

Mr. Gary Anandasangaree: We can just go into the other components of what you expect the framework to look like. This part is the legislative part. There's the recognition of rights component that was announced by the Prime Minister several weeks ago. What other measures would you require in order for UNDRIP to be successfully implemented?

Mr. Natan Obed: Within the provisions of the United Nations declaration, there is so much hope and promise for social equity for our people in the provisions where they're talking about our rights for governance, democratic processes, our health and our education, and our language. We still live in a country where we're trying to get back to self-determination and also trying to create social equity in our communities across a number of those fronts.

We would imagine that full implementation of the declaration would demand that we work systematically to allow for our rights to be fully exercised in this country. That's a very large undertaking and is one that I've characterized as the final step in building Canada because of the vast social inequity that exists in Inuit Nunangat and within the Inuit Nunangat Inuit-specific population, which has a life expectancy of 10 years less than Canadians. Our median income is \$70,000 less than those who work in Inuit Nunangat and are not Inuit. In terms of our educational attainment and our lack of Inuktitut, the language of instruction in the K-to-12 system, which ends at grade 4 at the very best.

These are all things that we hope to work on with this government to show the rest of the world that Canada is serious about the implementation of the declaration in this country.

Mr. Gary Anandasangaree: Thank you.

You indicated earlier that the relationship right now primarily is based on modern treaties. Can you advise us as to whether this legislation and the broader framework will require amendments to those treaties and renegotiations? If so.... You started by saying that in the last 40 years or so you watched this whole process through your dad, and now it's you. Do you see this happening in your lifetime?

We've had quite a bit of discussion in this committee about modern treaties, and one of the concerns is the length of time they take. With this, do you see the process being expedited in order to be able to start on the full contents of the rights that are available?

• (1710)

Mr. Natan Obed: I hope my children have long and successful careers in whatever path they choose to take. I hope it isn't in the minutiae of implementing our rights in this country, especially our basic rights. There will always be conversations about our rights and their implementation in this country, but we're still at the basic level of implementation of land claims, of the respect for our rights as human beings. I do hope this will be a springboard into a better place for all indigenous peoples in this country, but especially for the generations to come, who perhaps can spend their time and energy making their communities a better place and being loving, caring parts of the Inuit community, rather than being mechanisms of our rights movement.

Really, if you think about this in terms of a human effect, we have small communities. There are only 65,000 Inuit in this country. The time and energy that our leaders, our top minds, have spent on trying to exert just a basic sense of our rights, of our self-determination, is time that we don't spend in making our own society, our own language, our own communities better places. It will take a new way of thinking of the world and a new respect for indigenous peoples' rights in this country.

We are not a threat. Our rights are not a threat to this country and the success of Canada. In fact, it's the exact opposite. The UN declaration allows a path that we all can take to build a better Canada; a more prosperous Canada; a Canada that is free of the human rights abuses toward our first peoples, the indigenous peoples of this country; and a Canada that we all want to see now, in 2018.

The Chair: The questioning goes to the Conservative Party, if they want to take a couple of minutes.

MP Viersen.

Mr. Arnold Viersen: Thank you, Madam Chair.

Thank you to our guests for being here today.

Madam Chair, you probably don't need to set the time. I'll probably run the clock out anyway.

The Chair: Yes.

Mr. Arnold Viersen: Natan, thanks for being here. To go back to your comments, you talked a little bit about where human rights exist and where they come from. Can you just go through that again? I would like to talk through that a little bit with you.

Mr. Natan Obed: I'll ask Will to start.

Mr. Arnold Viersen: Okay.

Mr. William David: Where do human rights come from?

Mr. Arnold Viersen: Yes. I think Natan in his opening comments talked about how they're not held by the Canadian government but they're overseen by an international body. I found that a very interesting comment.

Mr. William David: I don't want to belabour you with a lecture on international human rights law, but just very quickly, most of the modern conceptions of human rights come from the post-World War II era. The idea was that the atrocities from the war, from previous actions even, culminated in a global need to actually have an idea that people, and peoples, have certain fundamental rights that should insulate them from the atrocities of that particular war and others. That, in turn, founded the drive to develop more specific standards to govern and regulate the conduct of states vis-à-vis individuals within the state, and in more modern times, peoples within the state, including indigenous peoples themselves.

Mr. Arnold Viersen: It's fascinating to me that we use the United Nations to demand the right to self-determination. There's a great irony in that. Does Canada not have the right to self-determination? Self-determination has to come from the self, right? The UN can recognize the right to self-determination, but you cannot use the UN to demand the right to self-determination. Do you get that irony there?

Mr. William David: One thing I'd really like to clarify is that self-determination is a right that's held by peoples. The Canadian people hold the right to self-determination. Canada, as a state, is the manifestation of that. With indigenous peoples, you might say that indigenous peoples have very different and distinct ways of manifesting their self-determination vis-à-vis states.

The Chair: That's just about it, Arnold.

Mr. Arnold Viersen: All right. Thanks.

The Chair: I see you're right on the edge of something so profound, but we'll have to carry it over.

Mr. Arnold Viersen: Yes. I'll have to digest that one a little bit yet.

• (1715)

[Translation]

The Chair: Thank you very much. *Meegwetch.*

[English]

Thank you for coming. I don't know how to say thank you in Inuktitut. One day, you'll have to teach me.

Mr. Natan Obed: It's *nakurmik*.

The Chair: Thank you so much for coming.

The meeting is adjourned.

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