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The Honourable MaryAnn Mihychuk

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● (1535)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): MPs, welcome. We are here at the indigenous and northern affairs committee, on the unceded lands of the Algonquin people, at a time when Canada is finally starting to move, with significant steps, on understanding the truth and moving toward reconciliation.

We look at UNDRIP as another piece of this movement and advancement. We are hearing the views of guests from across the country on the declaration and its impacts on Canada, indigenous people in general, and anything else they wish to bring up.

As presenters, you'll have 10 minutes. I'll give you some indication of where you are when you have two minutes left, or that you should wrap up. After the presentations, we'll go to rounds of questioning. Welcome.

I have Ms. Phare first. Welcome to the committee.

Ms. Merrell-Ann Phare (Centre for Indigenous Environmental Resources and the Phare Law Corporation, As an Individual): Thank you, Madam Chair, for the invitation to present to the committee.

My name is Merrell-Ann Phare. I'm based out of Winnipeg, Manitoba. I'm the founding executive director of the Centre for Indigenous Environmental Resources, which is a national first nation charitable environmental organization. Working together in 1994 with 10 chiefs from across Canada, including Phil Fontaine, Matthew Coon Come, and Manny Jules, whose names some of you will know, we built CIER. Since that time we've implemented across Canada more than 400 environmental capacity-building projects in as many first nations.

I'm a lawyer. I work and write on environmental indigenous law, water and water governance, and treaty land entitlement issues. In 2016, on behalf of the Government of the Northwest Territories, I negotiated two transboundary water agreements in the Mackenzie River basin, between the governments of NWT and Alberta and between the governments of the Northwest Territories and British Columbia.

I want to applaud both Mr. Saganash for his tireless work and the current government for their commitments to the United Nations declaration and on building nation-to-nation relationships. No government in Canadian history has made such important statements. However, to be more than aspirational goals, they must be enforced in law.

I've read the transcripts of evidence given to the committee to date. I'm going to assist you by trying to focus on just one thing—namely, the free, prior, and informed consent piece. I want to start by saying that it does not, in my view, mean a veto, but it does mean some very important process and substance elements, which I will explain.

Here's the issue as I see it. Indigenous nations were original partners in Confederation and should have been recognized as such. We should have, from the beginning, worked together as collaborating nations to build Canada. But we didn't. For example, we made treaties and then ignored them. This is the problem.

The solution, the one that would greatly prevent or reduce project-based disputes—think of pipelines when I say that—and the one that would also result in real reconciliation, lies in a government-to-government approach to consent. This is mutual consent between governments in Canada—federal, provincial, territorial, and indigenous. My colleagues and I call this “collaborative consent”. We believe it's a nation-to-nation mechanism to achieving the United Nations declaration.

Full reconciliation will happen when indigenous nations are recognized as partners in Confederation and Canada's system of governance is structured accordingly. Yes, this sounds high-minded, abstract, and theoretical, but it isn't. It's happening already. We have not only proof of possibility; I will share with you some examples. We just need to provide more oxygen to these examples. Bill C-262 can make that happen.

Collaborative consent is how you get to the United Nations declaration. It's simple to understand and hard to do, because it means a different attitude and a real change in practice, and also in institutions and governance. We first wrote about the collaborative consent concept in 2016. It was the approach we'd been using in the Northwest Territories since 2005 and more recently in negotiating the water agreements I spoke to you about.

You have an executive summary in front of you setting out the details of our seven hallmarks of collaborative consent. It's written in the context of a B.C. water application, but it applies to all situations.

A nation-to-nation approach to consent, to what we call collaborative consent, already operates on a daily basis in our own country, and it has worked well. Today federal, provincial, and territorial governments co-operate, collaborate, negotiate, and plan many things that are of common, overlapping, or even conflicting interest through a process called “co-operative federalism”. This process is ongoing, is not time-bound, is rarely ever perfect, and is necessary to make a complex society like Canada work. There's no real other way to do it. It's the way we do democracy in Canada.

Over the last 151 years, this approach has been tested well. We have grown and evolved as a country. We know how disputes occur and how they're resolved. We also know that they are very rare. Health care is a prime example of where conflicts can arise, as is anything to do with oil and gas, as we see from our headlines daily. But extreme conflict, such as intergovernmental litigation, is actually very rare. If you think about this, at co-operative federalism tables, jurisdictions are actually achieving each other's free, prior, and informed consent to proposals on the table. Collaborative consent is co-operative federalism as if indigenous nations had been participants from the beginning as part of the governance of Canada. We're partway there. We just need to go a bit further.

The day after this bill is passed into law, federal and indigenous governments should start formal transition to collaborative governance arrangements, as per co-operative federalism. I'll give you an example of an immediate change that could occur. In the 2016-17 fiscal year, there were 141 FPT—federal-provincial-territorial—intergovernmental meetings. Five of them were between premiers, 44 of them were between ministers, and 85 of them were between deputy ministers. This is where all of the work is done to set or partner on the policy and program directions for Canada about almost every aspect of Canadian society, regardless of who holds jurisdiction. This is where the real work of governing this country happens. Levels of governments bring their jurisdictional authorities to the table, and then they negotiate how they're going to work together on any given issue.

None of these meetings involved indigenous governments, and only one of them had anything to do with indigenous issues. These FPT meetings should include indigenous nations. They should be FPTI tables. It is clear that indigenous nations would have to self-organize in a way that is conducive to permanent participation. Many are in governance transition, it's true, but that's a solvable problem. The most important thing is that these tables of co-operative federalism must include permanent chairs for indigenous nations.

We need to achieve consensus at FPTI tables about broad directions, policies, and agreements that drive Canada. Think water and energy policy, climate change, and conservation targets. These are the upstream discussions necessary to preclude end-of-process or project-based disputes. Under co-operative federalism, agreement isn't always reached, and governments must or do flex when diplomacy and negotiations fail. This is unlikely to change. Governments will always have the things that they can resort to if other jurisdictions don't agree, such as legal action. Collaborative consent doesn't mean that indigenous governments won't sue other governments over specific disagreements. I just believe that it's less likely to occur.

I'll give you three examples of where collaborative consent is already happening in Canada. One example is in Manitoba. We are developing a collaborative governance table in southern Manitoba, involving 17 mayors, 10 first nations chiefs and, hopefully, the Métis. This is a collaborative consent process resulting in a permanent governance table. It covers 70% of the population of Manitoba and 68% of the GDP. Collaborative decisions can have a huge impact at this scale.

The NWT is another example. It has a territorial resource revenue-sharing agreement with all indigenous governments. What this means is that, regardless of where resource development happens anywhere in the Northwest Territories, 25% of all the revenues that the Government of the Northwest Territories receives from resource development is shared among all indigenous governments according to a sharing formula that the indigenous governments themselves developed. This is in addition to whatever local impact benefit agreement might be negotiated with the directly impacted community. This is the kind of solution needed to deal with linear projects like pipelines.

The NWT also created two laws, the Wildlife Act and the Species at Risk (NWT) Act, through a co-drafting process where all hands were on the pen, rather than a co-development process where, at the end of the day, justice holds the pen over the text.

To conclude, we are in the middle of rebuilding our nation, starting with nation-to-nation relationships. There are 150 years of work that should have been started long ago, yet the opportunity sits before us. We all will, by necessity, need to change.

I want to leave you with an image. Think of our FPTI governments as beams. We all need governments to bend towards the space where we can work co-operatively together at a fully occupied table of Confederation. We have had three of the four beams work, bend, and build for 151 years, but we need the final beam to be in place in order to achieve reconciliation of all Confederation. Bill C-262 gives us the focus and fortitude to bend all the beams and be more explicit about the necessity, not the luxury, of indigenous participation. The collaborative consent examples that I've shared show that it is happening in small places.

● (1540)

Bill C-262 will mandate that this thinking be mainstream, and will require everyone, no matter what their place in the system, to look at their role through the lens of compliance with the UN declaration. This committee needs to think about how we accelerate this whole thing so that it will happen everywhere, from top to bottom to top. This path we're on may seem very difficult. It's certainly complex.

However, as the Maori say, we have worked too hard not to work harder; we have come too far not to go further.

Thank you.

The Chair: Thank you.

Welcome. It's not your first time before us, and it's good to have you back.

You have 10 minutes for your presentation, sir.

Mr. Thomas Isaac (Partner, Cassels Brock & Blackwell LLP, As an Individual): Thank you, Madam Chair.

First of all, thank you to the committee for inviting me here today to give you some comments on Bill C-262.

My name is Tom Isaac. I'm a partner with Cassels, Brock & Blackwell. I'm here in my personal capacity. I practice exclusively in the area of aboriginal law across Canada.

My comments today are focused on why incorporating UNDRIP within Canada's already highly developed and world-leading legal regime. Protecting indigenous rights against unilateral and unjustified state action requires a prudent and thoughtful approach. This approach needs to be sensitive to existing Canadian law and the tremendous efforts undertaken by our courts, indigenous peoples, and some public governments over the last 25 years. Bill C-262, as currently drafted, does not reflect the necessary prudence or thoughtfulness required, in my respectful view.

UNDRIP and the embrace of the principles therein mark a critical step forward by some parts of the international community to recognize and protect the rights of indigenous peoples globally. This is a significant international human rights achievement. UNDRIP provides an important benchmark in a world that has too often harmed, mistreated, and exploited indigenous peoples.

You will note that I said “some parts of the international community”. Not all states with indigenous peoples are on the right path, and the process itself relating to UNDRIP has been divided. During the 2007 UN General Assembly vote regarding UNDRIP, only 42 states—that's out of 88, according to the United Nations at that time—voted in favour of UNDRIP. In fact, most of them put the same caveats on their vote in favour of UNDRIP that Canada ultimately did, in terms of its being subject to domestic law. So 42 out of 88 voted in favour of UNDRIP, while 4, including Canada at the time, took principled reasons to vote against it. As for the other 42, they either abstained, of which 100% of those abstaining that day were states with indigenous peoples, or they didn't bother to show up at the UN for the vote. Of those states, 93% had indigenous peoples.

My point here is that it's important to recognize that UNDRIP was drafted in the context of this division. By necessity, UNDRIP needed to be blunt and as easy to understand as possible, given that it was intended to apply globally to address those states that act without constraint against the rights of indigenous peoples.

This is not to suggest that UNDRIP has nothing to offer Canada. I want to be very clear that many elements of UNDRIP can be extremely relevant to Canada. In particular, I would focus on the ones relating to education, health, equality under the law, the development and maintenance of political systems and institutions, social and economic security, and gender equality. While these and other elements of UNDRIP are relevant to Canada, any effort to adopt UNDRIP must reflect the distance that Canada has travelled to date to prioritize reconciliation with indigenous peoples, the lessons we have learned over the past decades, and the significance—I would say the unique significance at law globally—of section 35, a uniquely Canadian creation.

Since the 1990 Supreme Court of Canada decision in Sparrow, the court has developed a framework for protecting indigenous rights and reconciling those rights with other indigenous and non-indigenous Canadians through nearly 70 decisions. The progress made so far has been the product of substantial and purposeful efforts and dialogue between indigenous and non-indigenous Canadians. Today, after decades of effort and investment by all parties, we have a constitutional regime that, for example, recognizes and protects Tsilhqot’in aboriginal title rights to land, and identifies the degree of consultation required when reversing the flow of a pipeline.

We also have a federal government that has expressly stated that Canada's most important relationship is with its indigenous peoples. As each year passes, Canadians, indigenous and non-indigenous, gain increased certainty and confidence in how indigenous and non-indigenous peoples can respectfully and productively live together.

In introducing Bill C-262 at second reading, the bill's sponsor said that the bill promises to “at least provide the basis or framework for reconciliation in our country”, with respect, suggesting that a new approach to indigenous rights is needed, one focused on reconciliation. Again, with respect, reconciliation has been the primary goal of the Supreme Court of Canada for nearly three decades. Again, I'm not here to suggest that we're done, but reconciliation is at the core of our case law to date.

● (1545)

Progress in defining and advancing reconciliation has resulted in increasing clarity and has allowed us to have more meaningful discussions, better protect aboriginal and treaty rights, and promote reconciliation through practice. Bill C-262, as it is presently drafted, risks disrupting the increased clarity within Canada's legal regime for protecting indigenous rights and as a result, risks becoming an obstacle to the pursuit of reconciliation.

UNDRIP itself cannot be meaningfully incorporated into Canadian law unless it is understood in relation to the existing Canadian legal framework, importantly, including section 35. For example, UNDRIP uses such terms as “indigenous”, “the lands and territories of indigenous peoples”, and “free, prior and informed consent”, each of which will need to be interpreted within the context of Canada's existing legal regime for the protection of indigenous rights.

It is presently unclear in Canadian law who “indigenous” refers to. In Daniels, the Supreme Court stated that the term included those individuals who do not possess section 35 rights. Additional instruction is needed to clarify the intended beneficiaries of the rights set out in UNDRIP. Is it intended to apply to all indigenous peoples throughout this great country, including those who self-identify as being indigenous?

Likewise, Canada has developed a highly sophisticated understanding of indigenous interests in land, including traditional territories, aboriginal title, a right to the land itself, and treaty lands. These terms aren't used in UNDRIP, which lacks specificity, including any relation to overlapping and competing indigenous interests, which is a very live issue in Canadian law.

Finally, much has already been said about free, prior, and informed consent. I'd be delighted to talk more about this concept. It means a veto, or a duty to consult that is consistent with what already exists in Canadian law, or something different. This phrase is clear on its face upon plain reading of UNDRIP, and I think credit ought to be given to the drafters. Any attempt at redefining the phrase in a less than forthright manner, in terms of its application to Canada, risks undermining the needed and necessary transparency in the reconciliation process. I say this with respect. Say what you mean and mean what you say.

Nowhere does UNDRIP refer to reconciliation or give specific consideration to how indigenous and non-indigenous Canadians can respectfully coexist. Such considerations are irrelevant for most countries, where indigenous rights are fully subject to the acts of a government. In Canada, reconciliation and principles, like the honour of the crown, are at the core of the relationship between indigenous peoples and all Canadians and work to direct and constrain how governments interact with indigenous rights.

In the preamble of Bill C-262, it suggests that the Parliament of Canada recognizes the principles set out in UNDRIP. There are many principles enunciated in UNDRIP, which are all relating to things like democracy, the rule of law, and the charter, none of which are novel to Canada. However, section 5 of Bill C-262 refers to the objectives of UNDRIP, although UNDRIP makes no reference to its objectives, its goals, its aims, or its intentions.

With respect, the sponsor has said that Bill C-262 can advance “justice” and “reconciliation” and clarify “the existing rights of indigenous peoples” and establish “very clear rules”. As presently drafted—and again, with respect—the bill provides no clear or even vague direction on any of those matters, does not explain how it will advance justice or reconciliation, and does nothing to clarify the existing rights of indigenous peoples in Canada.

Finally, the bill is missing an element that should be essential for any legislation that proposes to alter Canada's legal regime, which would be a clear explanation of how the outcome of adopting the bill will differ from the current law existing in Canada.

Canada's legal regime relating to the protection of indigenous rights is evolving and can benefit from being examined critically against the clear, if bluntly stated, articles of UNDRIP. However, simply adopting UNDRIP, without clear direction of how it should interact with Canada's existing legal regime risks disrupting the increasing clarity that has been gained through unprecedented efforts and decades of decisions by the Supreme Court of Canada.

● (1550)

To conclude, to move forward, Canada requires a thoughtful and purposeful approach, consistent with the honour of the crown, and I suggest to the committee that this is what reconciliation deserves. To the extent that the bill can contribute to that dialogue, it should be revised to provide the context and substance required for promoting and enhancing reconciliation and protecting indigenous rights in Canada. As I wrote in my 2016 report as the minister’s special representative on reconciliation with Métis, “Reconciliation is more than platitudes and recognition. Reconciliation flows from the constitutionally protected rights...protected by Section 35 and...must be grounded in practical actions.”

Those are my submissions.

Thank you.

The Chair: Thank you.

Our questioning begins with MP Dan Vandal.

● (1555)

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Thank you very much to both of you for your thoughtful presentations.

I want to begin with Thomas Isaac. The Truth and Reconciliation Commission's calls to action 43 and 44 recommend a full implementation of UNDRIP, as well as a national action plan, strategies to accompany the plan, and other measures to achieve the goals of the UN declaration. Do you agree or disagree with these recommendations?

Mr. Thomas Isaac: My point would be that UNDRIP can play a helpful role in Canada's development of reconciliation with indigenous peoples. What concerns me is any suggestion that a blunt international instrument that has.... If you look globally at states that have actually tried to adopt it in any meaningful way to prevent unilateral action against indigenous rights, you cannot fill a hand with those states.

My point is that we should be proud of where we've gotten this country. We're not done yet by any means, but there's been a lot of work put forward in Canada's unique legal regime. The notion that we can simply adopt an international instrument, to me, doesn't do justice to where we're going as a country given that we have had 70 decisions on section 35 by the highest court in this country in 25 years.

What I'm calling for is a thoughtful, prudent discussion. I think the country has the maturity to be able to have a nuanced discussion, in my respectful view, as opposed to saying that UNDRIP is good and we must adopt it, or that UNDRIP is bad and we must reject it. I don't think it's that simple. That's what concerns me about the bill as it's presently drafted: I think it oversimplifies what this means. This isn't to water down UNDRIP, but it's to make it actually meaningful in Canada. The examples in my submission were on the social and economic side, where I think that as a country we probably have a little bit more room to go.

Mr. Dan Vandal: If I cut you off, it's only because my time is short—

Mr. Thomas Isaac: Sorry.

Mr. Dan Vandal: —and this is a long conversation.

One of the things we announced about six weeks ago is a "recognition of rights" exercise, in which were we are going to try to define section 35 rights in full consultation with indigenous nations. I'm not speaking for anybody but myself when I say that I see this as the logical next step to UNDRIP, if it is adopted, which I think it will be.

Do you have any thoughts on that? Is it something that you, as a lawyer, would think is a good thing we're embarking upon?

Mr. Thomas Isaac: Certainly, one of my recommendations in the Métis report I did with the government as an independent adviser was to develop a rights and recognition framework around Métis section 35 rights. The fact that it's being applied more broadly to indigenous people makes a lot of sense. From my point of view, I think it's a very good initiative.

Mr. Dan Vandal: How do you think UNDRIP would affect the Métis nation of Canada?

Mr. Thomas Isaac: At law, there's a huge question mark. In terms of some of the social and economic, health-related, and education-related aspects of UNDRIP, I suspect there's a lot more to be learned in our country. Otherwise, we will have to take another look at the 30-plus-year legal regime we've developed, which does not fit easily with the blunt, generalized language of UNDRIP. Something is going to have to give.

Mr. Dan Vandal: What suggestions would you have for this committee in terms of amendments to Bill C-262 if we were to move forward on this?

Mr. Thomas Isaac: Well, I think part of this is a policy issue. But from a strictly legal point of view, I think it's proudly acknowledging the legal history that a lot of first nations, Inuit, and Métis people have had a lot to do with. We should ensure that whatever UNDRIP does it's going to be consistent with our case law to date. More on the policy side, maybe we should talk a bit more about the things where as a country we probably have a lot more road to go down, where we don't have 70-plus decisions, and that's on economic well-being, health, education, all Canadians having a basic level of services. Those would be the kinds of things.... I'm not a policy-maker, but that's what I would focus on.

● (1600)

Mr. Dan Vandal: Merrell-Ann, I'm wondering if you could comment on something we began a couple of months ago. The Prime Minister made a passionate speech in the House to embark on an exercise to recognize the rights of indigenous nations in Canada.

Can you comment its relation to UNDRIP, or whether this is the right way to be going?

Ms. Merrell-Ann Phare: I know that announcement was met with some.... Different folks felt differently about it. Not all aboriginal governments support that particular initiative.

However, it works with the non-derogation clause in Bill C-262, which basically says that this bill is not intended to diminish the rights as affirmed in section 35 of the charter. Actually working on a process with indigenous governments to help define what those are.... Right now, we're leaving it up to the courts to define.

Mr. Dan Vandal: It would be, and I'm not sure if those words were used, an acknowledgement that it is a full box of rights as opposed to an empty box.

Ms. Merrell-Ann Phare: Yes. The only concern I would have with that is that things evolve over time, and you would need to ensure that it is not a defined box of rights that stay locked in the year 2018, or whenever it's completed, right?

Mr. Dan Vandal: Right.

Ms. Merrell-Ann Phare: The principle in law of rights, the expression of rights evolving over time, is an important one, and it changes circumstances, so that would be the only real concern I would have.

Negotiating together is the whole idea behind collaborative consent. It's a consent-based mechanism between governments to define the rights you have, and how you're going to work on them together, how they're going to action out. That's the whole point.

The Chair: Mrs. McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Madam Chair, and thank you to both witnesses who clearly have brought two different perspectives on this particular piece of legislation.

I do not think that anyone at this table is saying that UNDRIP is good or UNDRIP is bad. We all agree that the UN declaration is an important instrument, an important tool, but we're talking about Bill C-262 in the context of Canada.

I listened to Ms. Phare's definition of consent. We also had someone who talked about three different definitions of consent that could apply within Bill C-262, or within how the courts might ultimately interpret consent.

I was on an APTN panel with a New Democrat member just last week. With regard to the Kinder Morgan pipeline, he said that every single first nation impacted by it had to give free, prior, and informed consent from his perspective. That is very different from how Ms. Phare talked about consent. We have first nation witnesses, like Pam Palmater, who have a definition.

Should Parliament determine and have that conversation about free, prior, and informed consent before we actually make a legislative commitment to implementation?

Mr. Isaac.

Mr. Thomas Isaac: As you heard very briefly in my comments, I believe that these clauses—there are a number of clauses in UNDRIP—that refer to free, prior, and informed consent are very clear on their face. As I've said publicly, consent means consent. The drafters who drafted UNDRIP knew what they were drafting.

I have heard all sorts of commentators say, “Well, it's not a veto.” That's technically true. A veto is somebody making the decision, and then you get to say yes or no to the decision, whereas consent means we've got to be part of the decision-making process.

The key question is, what does it mean if you don't get consent? In my respectful view, UNDRIP's very clear on its face. If you read the business reference guide—I don't know if the committee's had access to this; it's a UN document that's meant to interpret UNDRIP—there are three or four pages on the words “free, prior, and informed consent”. It talks about consent meaning consent. It's exactly what we would all expect the word to mean when you open up a dictionary and look at it, and I say that with respect.

Let's have an honest discussion about that. If we want to define it differently, and we do for the purposes of Canadian law, that's okay. Let's have an expressed discussion about it.

Bolivia's population is 91% indigenous, and that country adopted UNDRIP into its constitution, which I might add can be amended a little bit differently from Canada's, but it stripped out the consent provisions. It raises fundamental questions of governance if it means what it says.

My point to the committee would be that it's okay if we redefine it, but let's have an honest dialogue about what it means.

● (1605)

Mrs. Cathy McLeod: Certainly, from my perspective, having a common understanding of what FPIC means in the context of this legislation is absolutely essential. We don't want courts defining it. We don't want to move ahead with Bill C-262 and then....

I appreciate that Ms. Phare has a perspective, and I certainly think hers is an ideal way of how we should be moving forward together as a country. However, I have to say that I'm watching Kinder Morgan right now and the British Columbia government, the Alberta government, and the federal government, and first nation communities, and I'm not seeing that there isn't a time when sometimes decisions have to be made and that co-operative consent is pretty difficult to achieve.

I wonder if we are setting ourselves up. I remember that the minister said this piece of legislation, perhaps, is a “distraction” from the important work we have to do around breathing life into section 35. She's since backtracked, but she clearly had some reservations at the time. I'll open that up for comments.

Mr. Thomas Isaac: Look, from my point of view, with regard to the other witness and collaborative decision-making, I have my own views about that. I think those are the kinds of ideas that might be very fruitful, but that's different from obtaining free, prior, and informed consent before getting a decision. Again, I would just repeat what I guess I've already said.

Remember, again, Desmond Tutu talks about this in South Africa. Core to reconciliation is truth. It doesn't mean that we're against UNDRIP by saying let's have an honest dialogue about what FPIC means in Canada, given that no other state on the planet has a constitutional regime to protect indigenous rights against unilateral state action. I think it's a fair question.

I think I agree with you that, if I were to focus on one element of UNDRIP that's probably worthy of further discussion, it's FPIC in the context of Canada, but I don't want to make it sound like Canada's the odd one out in the world. In fact, we're the odd one in, in protecting indigenous rights against unilateral state action.

Mrs. Cathy McLeod: I think you raise an important point in the context of the Daniels decision. I look at the article around laws of general application, and I still struggle. I'm a practical person, and I believe that if you have legislation, you should follow through on your commitments. Canada needs to follow through. We've done a lot of things where we have not followed through on our commitments. I think we need to be following through on our commitments if we have legislation.

I struggle. If you have a commitment to consultation, or free, prior, and informed consent around laws of general application, where do you go for that in a country like Canada? How do you even manage that particular piece of the issue?

The Chair: You only have 10 seconds left.

Ms. Merrell-Ann Phare: I just want to point out that the Tsilhqot’in decision defined consent. It said that it's required regarding titled lands, point blank, and then, if you don't get it, you have to do the justification test. Consent is already defined in law.

UNDRIP just says, “States shall consult and cooperate in good faith with the indigenous peoples concerned...in order to achieve their consent.”

It's framed within Canadian law already, and Canadian law's been clear about what consent is.

The Chair: Thank you.

Questioning now moves to MP Romeo Saganash.

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

Thank you to both witnesses this afternoon. I'm the sponsor of this bill. I've also participated in the 23 years this process lasted, in terms of negotiations and drafting of the UN declaration. I can attest to a lot of the comments you've made or questions you've raised today.

I want to start with you, Thomas. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights talk about, in their first articles, the right to self-determination of peoples. Do you consider that right a human right?

● (1610)

Mr. Thomas Isaac: Absolutely, and both of those covenants are legally adopted in Canada, and so is the declaration.

Mr. Romeo Saganash: So the right under article 3 of the UN Declaration on the Rights of Indigenous Peoples is also a human right?

Mr. Thomas Isaac: As it's framed, as a lawyer I have to comment on the fact that the declaration at international law is not similar to the covenants. The covenants—

Mr. Romeo Saganash: I agree.

Mr. Thomas Isaac: Yes. It's framed in a similar way, but it's a material difference, I would say, at law. Yes, it's framed similarly.

Mr. Romeo Saganash: But the right of self-determination—

Mr. Thomas Isaac: Absolutely.

Mr. Romeo Saganash: —is a human right.

Mr. Thomas Isaac: Yes, I would agree.

Mr. Romeo Saganash: In that sense, I'm puzzled or troubled by the fact that this is a human right that belongs to indigenous peoples, the right of self-determination, and you're suggesting to this committee that we should be careful about enshrining that human right, which already applies, in my view. That's what Bill C-262 confirms. It already applies to Canada.

In fact, the human rights committee back in 1999 confirmed that the right to self-determination under both covenants applies to indigenous peoples in Canada. That was in 1999, way before the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly.

Why should we—us, as indigenous people—wait and be careful about how this right is going to be applied in this country?

Mr. Thomas Isaac: Thank you, Member. I would agree about your framing of the right. My comments today were on Bill C-262 in their entirety. If it was simply about the right of self-determination, I'm looking at UNDRIP as a whole and having it apply holus-bolus to Canadian law without any particular guidance. That's the level of my concerns.

In no way whatsoever am I picking on any particular indigenous right—in fact, quite the contrary. I would argue that this in fact would be a good thing to look at, but to just sort of bluntly bring in UNDRIP without understanding how it's going to affect Canadian law—

Mr. Romeo Saganash: You have used that word on a couple of occasions now, at least six times since you started, and I totally disagree with that characterization, because it's not a blunt international human rights instrument. I think it's the international human rights instrument that took the longest to negotiate and draft. In fact, it took us over 23 years to negotiate and draft this instrument, so it's not just a blunt instrument that came about. I totally disagree with that.

In fact, yes, there are covenants, conventions, and international treaties that don't necessarily have the same status as declarations. I agree with you on that, but that does not mean that declarations have legal effect in law in this country. Already, back in 1989, the Supreme Court confirmed a decision on a human rights case that declarations in international law are relevant and persuasive sources to interpret domestic human rights law. In Tsilhqot'in again, in their decision, it was even confirmed that the Charter of Rights and Freedoms that we find in part I of our Constitution and the section 35 rights that we find in part II of our Constitution are sister provisions.

That's the law as we speak today. I think it would be an error for this country to delay the application. It's an error for this country to even debate the human rights of indigenous peoples in this country.

Ms. Phare, I think I have two minutes. You specifically focused on FPIC. You talked about the collaborative consent your group has worked on, which is very important. I think Bill C-262 is a collaborative proposition that I'm making. I know that in law, even if the jurisdictions between federal and the provinces are there in our Constitution, the Supreme Court has confirmed they're not absolute, because there are aboriginal rights involved every time. Do you see a relation between FPIC, a veto, and a right to self-determination?

● (1615)

Ms. Merrell-Ann Phare: This is why we came up and framed things as collaborative consent, which is consent between governments. I think the right to self-determination is the right of indigenous nations to define their governments and to participate in setting the direction of Canada as governments. It shouldn't be federal and provincial governments doing that for indigenous nations. However, indigenous nations need to participate in the structures that we have here also. That's the “bending the beams” idea.

I think we get really hung up on project-level type decisions, such as on pipelines, when the real problem is that indigenous nations haven't been involved in setting the whole “what are we doing with energy” policy in this country. Which direction do we want to go with that? What is our broad perspective? What are the directions, as leaders, that we want to take on climate change? These are questions of the self-determination of our nation. If indigenous people were at that table setting that, our direction might shift, but it might be a fairer direction that indigenous nations.... At the end of the day, on the project-based decisions, you may still have consent discussions. First nations may say no. Other indigenous nations may say no. There will be a process clearly defined in section 35 law about what happens in that case. The upstream discussion, I think, is where the real magic is, and it's what UNDRIP is intended to create the tables for.

The Chair: We've run out of time.

We're going to move to the next set of questions, which come from MP Gary Anandasangaree.

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

Thank you to the panel for being here.

As this is my first occasion to speak after the incident in Toronto, I want to express my deepest sympathies to the victims at Yonge and Finch. It's an area that I'm very familiar with, as I spend a lot of time there.

With regard to the question of reconciliation, Mr. Isaac, you appear to have a fairly different view of reconciliation from, say, the Truth and Reconciliation Commission. I know that in calls to action 43 and 44, the TRC itself called for full implementation of UNDRIP. You say that Bill C-262 doesn't in fact talk about reconciliation, and I would say that the fact that Bill C-262 is coming in is what this is about.

You also referred to Desmond Tutu as saying that the core element of reconciliation is truth. I think perhaps there are different viewpoints on this, but I really want to get to the key point of what you think reconciliation means in your words. Surely it's not the status quo. Surely it's not being one of four countries to abstain in Geneva, or denying that we even need to implement UNDRIP. Surely reconciliation means more than what we've had in the last 10 years. In your mind, what does that mean to you?

Mr. Thomas Isaac: We have guidance from the court to date. I guess, more generally, reconciliation in part for me means indigenous peoples having valiant protection of their rights, having access to services like all other Canadians, being respected for being indigenous, and being able to exercise their rights, culture, and traditions freely in pursuit of their self-determination in Canada.

I have a very broad view of reconciliation. My point about reconciliation in Bill C-262 is that we, in my view, are at a point in our country where we can have a nuanced conversation to ensure that we continue moving forward. My comments were not against UNDRIP generally, but quite the contrary.

My comments were that Bill C-262 as presently drafted, for example, refers to the objectives of UNDRIP. As a lawyer, I want to know what the objectives are. I think reconciliation deserves that, quite frankly. I think indigenous peoples deserve to know exactly what objectives government, the Parliament of Canada, is signing on to, and I mean that very genuinely. We're at that stage in our development and I worry that rhetoric gets in the way of reconciliation. I'm not at all against the recommendations of from the Truth and Reconciliation Commission. My issue is with how you implement them in a thoughtful, prudent way.

● (1620)

Mr. Gary Anandasangaree: Ms. Phare, when the Constitution Act came in in 1981, what was the prevalent thinking with respect to section 35 rights? Did we have the same arguments that Mr. Isaac is talking about to us today, that these are scary, undefined, or ambiguous?

Mr. Thomas Isaac: No.

Mr. Gary Anandasangaree: Did we have that kind of viewpoint at that point in 1981?

Ms. Merrell-Ann Phare: Well, I was about 16 years old then. At the beginning, for a very long time, nobody knew what section 35 meant. There weren't any cases that described what was actually included in the 1982 amendments. Since then, we have spent a lot of time in court, as my colleague pointed out, trying to define what it means. I think reconciliation is actually about not continuing to wait for court decisions to tell you how indigenous governments—not just indigenous people, but indigenous governments—can be part of the Canadian governance structure to prevent those kinds of fights. That's the whole point. Yes, you start from a place of ambiguity, and you work together. I interpret Bill C-262, the action plan, the laws and compliance provision, for example, as saying that we need to have a conversation. I know that a number of commentators have said this is about the start of a conversation. We have to figure it out together. That's the whole point.

Mr. Gary Anandasangaree: If you were to amend Bill C-262, what would you suggest? Are there areas we need to amend, or are you satisfied with the bill as is?

Ms. Merrell-Ann Phare: What I care about is that it must be acted on. That's what I care the most about. I see the minister having to report back every year as being focused on that. It's almost the public shaming part of making a law enforceable: the minister has to show up and show what's happened every year. I would like to see more teeth in that section, and the action plan has to have specific targets and deliverable elements to it. That's my concern about it. I would like to make sure there's a high degree of accountability in ensuring it's implemented.

Mr. Gary Anandasangaree: Mr. Isaac, I know you're suggesting we don't adopt Bill C-262 as is, right?

Mr. Thomas Isaac: As is, as currently drafted.

Mr. Gary Anandasangaree: Okay. I know this question was posed to you before, but, is it amendable? Or is it something that we don't implement altogether?

Mr. Thomas Isaac: I think it's completely amendable. When you think back to 1982, everybody saw that it was an empty box, and our courts filled in the box. Equally, I would think with some good DOJ drafting, with some good guidance from this committee, how we're going to actualize this, how we're going to implement UNDRIP in practical terms—not the complete work plan, but what it means in Canadian law—is quite achievable.

The Chair: The questioning concludes with MP Arnold Viersen.

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

Thank you to our witnesses for being here today as well.

One of the things I was very taken with, Ms. Phare, was your explanation of the particular implementation or bringing in of the decision-making to first nations people. What you were laying out there sounded amazing. I just don't see that in this bill. Could you explain how you would get from this bill to a conversation? I would rather see a bill about the conversation, on how we bring that in. That would be much more to the point, right?

● (1625)

Ms. Merrell-Ann Phare: In my comments, I think I said that collaborative consent is a nation-to-nation approach to getting to the UN declaration. You have a couple of sets of commitments that are all around this, including this government's commitment to building nation-to-nation relationships. I think looking at them independently is one of the problems. You want to look at the specific requirements that are being set out in Bill C-262, which are about making laws and ensuring that they don't conflict. It's about an action plan of working together. My suggestion to you is that that's not as hard a job as it looks if you have the other structures, the governance reform that I talked about and consent-based governance relationships. If you have them in place, I think—

Mr. Arnold Viersen: Wouldn't we be better off with a bill that talked about those governance structures?

Ms. Merrell-Ann Phare: You don't normally put governance structures like that in a bill. What this means is that indigenous governments have to work together with non-indigenous governments to create these tables. We don't have FPT tables in our legislation. That's the way governments work together to solve problems. That's what's needed here too. You're not going to be able to write everything out or solve everything in the bill. What you need is the bill to enable the smart decisions of governance, how we make decisions together as nations that made this country.

Mr. Arnold Viersen: Mr. Isaac, my colleague put some words in your mouth saying that this is scary legislation. Do you have any comments on that?

Mr. Thomas Isaac: Look, the legislation is not scary. We shouldn't be scared of reconciliation. I think we should aggressively pursue reconciliation. We should aggressively pursue looking at UNDRIP, but my point is that we have to do it in a way that is thoughtful and prudent. For example, we talk about making sure that laws don't conflict with section 35. What about a debate on consistency with section 35? I'd suggest that those are two different things. I think that would be a healthy debate.

In no way am I suggesting, and I don't want it inferred or anyone reading between the lines, that this is against reconciliation. It's about doing it in a way that respects the three-plus decades that indigenous and non-indigenous peoples have worked to build up the single-most robust protection in any state on the globe to protect indigenous rights, and we're not done yet. I didn't say we're done, but that is a reality. If we're going to start fiddling around with that, we need to be very thoughtful with it, out of respect for the very objective or goal we're trying to achieve. I don't think that's offensive at all to the truth and reconciliation question. If anything, I would say that it's very respectful of it because we want to do it right.

The Chair: We're going to conclude this panel. We'll take a short recess and then reconvene with our second panel.

● (1625)

(Pause)

● (1630)

The Chair: Welcome, everybody. Let's get started. I appreciate that you're all here.

I have the first presenter as Sheryl Lightfoot. Are you ready to go? It's for up to 10 minutes.

I'll give each of you some signals, and then we'll go into questioning.

Welcome.

Dr. Sheryl Lightfoot (Canada Research Chair in Global Indigenous Rights and Politics, University of British Columbia, As an Individual): Good afternoon.

I want to open this afternoon by acknowledging the lands of the Algonquin people, where we are meeting today.

My name is Sheryl Lightfoot. I'm an Anishinabe from the Lake Superior band of Ojibwa. I'm the Canada research chair of global indigenous rights and politics at the University of British Columbia, where I hold a joint appointment as associate professor in both the first nations and indigenous studies program and the Department of Political Science. I hold a Ph.D. in political science with a specialty in human rights and international relations. I've studied and written specifically on the UN declaration for more than a decade, looking at its genesis, development, and implementation in both global and comparative perspective, in numerous articles, in book chapters, and in a 2016 book I published with Routledge press titled *Global Indigenous Politics*.

I am very honoured to be called before this committee to share a global human rights perspective on the proposed legislation. I view this legislation as a necessary first step toward implementing the UN declaration in Canada.

In the decade since its passage in the UN General Assembly, the UN declaration has gained universal consensus as an international human rights instrument and has been reaffirmed by consensus eight times in the UN General Assembly. A report by the UN Expert Mechanism on the Rights of Indigenous Peoples on the 10-year progress of the declaration noted that it now informs the work of many global actors, has influenced the drafting of multiple new state constitutions and statutes, and has contributed to the development of laws and policies pertaining to indigenous peoples worldwide.

A similar 10-year anniversary report by the UN Permanent Forum on Indigenous Issues recounted progress in the areas of increased constitutional recognition of indigenous peoples and a growing body of jurisprudence, including important legal victories for indigenous rights in Belize, Indonesia, the African commission, Bangladesh, and the Caribbean Court of Justice.

Even with these positive steps, however, implementation of the UN declaration remains elusive around the world, as well as in Canada. Even in countries with strong legal frameworks, like Canada, severe implementation gaps remain between legal recognition and concrete action steps on the ground, and therefore actual implementation of the rights of indigenous peoples has been limited.

As a consensus international human rights instrument, the UN declaration reflects legal commitments that are related to the UN charter, other international treaty commitments, and customary international law. Implementation of indigenous rights in domestic settings is expected to be comprehensive and systematic. It has always been thought to include judicial, policy reform, and legislative avenues, the synergy of which will lead to full implementation.

The United Nations Expert Mechanism on the Rights of Indigenous Peoples, or EMRIP, wrote a 10-year report on the UN declaration and implementation, and it reads:

> As States have the principal responsibility for adopting legislative measures and public policies to implement the rights recognized in the Declaration..., they should adopt measures to achieve this aim, including through the implementation of recommendations and decisions of all human rights bodies....

The United Nations special rapporteur on the rights of indigenous peoples noted in her 2017 report to the UN General Assembly:

> The effective implementation of the rights of indigenous peoples requires States to develop an ambitious programme of reforms at all levels to remedy past and current injustices. This should involve all the branches of the State, including the executive, legislative and judiciary, and implies a combination of political will, legal reform, technical capacity and financial commitment.

A UN handbook for parliamentarians on implementing the UN declaration, published by the Inter-Parliamentary Union and several UN agencies, cites the law-making role of parliaments as of particular importance in the implementation of the declaration. This handbook suggests that legislative review and reform are essential first steps in implementation efforts and that all future national legislation should be evaluated for compliance with the UN declaration as an ordinary part of the legislative process. The handbook provides existing examples of national implementation legislation already adopted by Bolivia in 2007 and Republic of the Congo in 2011.

● (1635)

A similar manual for national human rights institutions states that national legislation is an important first step toward domestic implementation, but that "legislation alone is generally not sufficient", so a national action plan should also be developed that includes legislation, a review of existing laws and policies, a complaints mechanism, stakeholder education, and active involvement of indigenous peoples in the development and implementation of the action plan.

The World Conference on Indigenous Peoples, hosted by the UN in New York in September 2014, was held specifically to share best practices on indigenous rights and their implementation. The outcome document of the world conference clearly stated that the necessary elements for national implementation and the collective commitment of UN member states participating would include national legislative frameworks, law and policy reviews, and national action plans.

Calls for concrete national legal and political reform measures in Canada began as early as 2011, at the UN Permanent Forum on Indigenous Issues. Then, by June 2015, the Truth and Reconciliation Commission of Canada announced the release of its summary report. This report included 94 sweeping calls to action. These 94 calls, which were intended to form the blueprint for reconciliation into the future, call upon all layers of government to make fundamental changes in policies and programs in order to both repair the harm caused by residential schools and improve the relationship between government and indigenous peoples into the future.

Call to action 43 specifically states:

> We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

Call to action 44 states:

> We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

In all, 16 of the 94 calls to action make reference to the UN declaration. Because implementation of the UN declaration provides the necessary framework for reconciliation, it is therefore impossible, according to the TRC, for one to support the TRC and not support full implementation of the UN declaration. Rejecting implementation of the UN declaration equates to rejection of the TRC report.

In September 2017 the UN Committee on the Elimination of Racial Discrimination—or CERD, the monitoring body for the International Convention on the Elimination of All Forms of Racial Discrimination, which Canada signed in 1966 and ratified in 1970—conducted its periodic review of Canada. The CERD report applauded the current government's commitment to implement all of the TRC's 94 calls to action, but mentioned that the CERD is "concerned at the lack of an action plan and of full implementation". The CERD made a recommendation that Canada develop, in consultation with indigenous peoples, a concrete action plan to implement the TRC's 94 calls to action and to implement the UN declaration and adopt a legislative framework to do so, along with a national action plan, annual public report, and a full legal, policy, and regulation review to ensure that all laws and policies are consistent with the UN declaration.

As all of these statements note, a legislative framework in Canada is a crucial initial step in implementing the declaration. Follow-up actions must then also include a national action plan, annual reporting, and a full policy and regulation review. The legislation currently under study would require the government to engage in all of these steps, and therefore better align Canadian law and practice with its international human rights obligations.

Thank you.

● (1640)

The Chair: Very good.

The second presenter is Sharon Stinson Henry.

Chief Sharon Stinson Henry (Member, National Indigenous Economic Development Board): Thank you, Madam Chair.

Aaniin kina weya. Good afternoon, everyone. Thank you for the invitation to speak with you today.

I would like to start by acknowledging that we are on the unceded traditional territory of the Algonquin and Anishinabe people.

My name is Sharon Stinson Henry. I'm a former chief of the Chippewas of Rama First Nation in Ontario. I'm here on behalf of the National Indigenous Economic Development Board.

Our board is made up of first nations, Inuit, and Métis business and community leaders from across Canada, whose mandate is to advise the whole of the federal government on indigenous economic development issues. On behalf of the board, I'm pleased to offer information that may assist the committee in your study of Bill C-262.

The board supports the principle set out in the United Nations Declaration on the Rights of Indigenous Peoples, and believes it should be enshrined in the laws of Canada. As such, the board supports Bill C-262 and its recommendation for the full adoption of the declaration into Canadian law. The board commends Mr. Saganash's initiative for introducing this important bill.

The declaration describes 46 articles by which the international community and Canada, as a signatory, can work to achieve socio-economic equality and end the systemic racism which has limited the development of indigenous peoples for far too long. In January 2017, our board released a statement welcoming Canada's decision to fully support the declaration without qualification. In this statement, we noted that "by taking actions that are meaningful, measurable, and concrete, Canada can demonstrate its commitment to the [declaration] and improve economic outcomes for all Canadians."

The board has also commended the TRC's recommendation that Canada adopt and implement the declaration as the framework for reconciliation, including the development of a national action plan, as well as strategies and concrete measures to achieve the declaration's goals.

To date, your government has made bold and inspirational statements describing the Government of Canada's commitment to renewing the relationship between Canada and its indigenous peoples, and to moving forward with reconciliation based on recognition of rights, respect, and partnership. In fact, Prime Minister Trudeau has stated that "No relationship is more important to Canada than the relationship with Indigenous Peoples."

Furthermore, in their mandate letters, Minister Bennett and Minister Philpott were directed to be part of the working group of ministers on the review of laws and policies related to indigenous peoples. The working group was tasked, among other things, with ensuring that the crown is fully executing its legal, constitutional, and international human rights obligations and commitments. Minister Bennett was specifically directed to work with the Minister of Justice to implement the declaration in full partnership with indigenous peoples.

Although we acknowledge recent steps taken by the government to implement the declaration, recent and upcoming reports released by our board show that there are still significant gaps between indigenous and non-indigenous Canadians in terms of completion of high school, university completion, labour force participation, employment, average annual income, and overall quality of life. Therefore, our board strongly believes that Bill C-262 would allow Canada to take concrete action towards achieving true reconciliation with indigenous peoples.

Implementing Bill C-262 would enshrine the declaration in law today and for future generations, require the review of federal laws to ensure consistency with the standards set out in the declaration, require the federal government to work with indigenous peoples to develop a national action plan to implement the declaration, and require annual reporting to Parliament on progress made toward the implementation of the declaration. Our board believes that these requirements would promote and strengthen the spirit of partnership and mutual respect that marks Canada's stated commitment to reconciliation.

Among the declaration's articles, and of particular interest to our board, is article 3, which states that, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 4 states, “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”

● (1645)

Indigenous self-determination is foundational to the board's vision of vibrant indigenous economies, characterized by economic self-sufficiency and socio-economic equality with the rest of Canada. To achieve self-determination, however, the right conditions for success are essential. In this sense, article 21 of the declaration states:

> Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions....
>
> States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

The board also believes that implementing the declaration would ensure the protection of reserve lands and traditional territories, and would allow for reserve sizes to go back to what they originally were. In this sense, article 8 calls upon states to “provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources.”

Article 10 further underlines this protection by stating:

> Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 26 is also relevant in this regard, as it calls upon states to give legal recognition and protection to the lands, territories, and resources which indigenous peoples have traditionally owned, occupied, or otherwise used or acquired.

In the past, our board has recommended that the Government of Canada take necessary steps to ensure that the standards set out in the declaration are met, and that it report annually on its progress toward these goals.

Specifically, we recommend that Canada ensure that indigenous peoples have equal economic opportunities in community development, education, employment, and access to capital; that indigenous communities have equal access to health care, clean water, safe and reliable housing, and healthy affordable food; and that Canada work in mutual partnership with indigenous people to develop legislative and policy alternatives to the Indian Act that would give further expression to the governance powers of indigenous peoples, and how they co-exist with the powers of the federal, provincial, and territorial governments.

Our board was, therefore, pleased to see that Bill C-262 aligns with our recommendations. We strongly believe that Bill C-262 will actively contribute to the reconciliation process in our country.

In closing, we believe that moving forward in the spirit of reconciliation, and rewriting laws and policies requires that we always work together to make sure that policies are not punitive or regressive, but that they are modern, innovative, progressive and, above all, fair.

As indicated in the declaration, “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.”

Meegwetch. Thank you, Madam chair.

● (1650)

The Chair: Thank you.

Our next presenter, another woman, which I'm glad to see because it's unusual, is Jessica Bolduc. Welcome.

Ms. Jessica Bolduc (Executive Director, 4Rs Youth Movement): [*Witness speaks in Ojibwe*]

My name is Jessica Bolduc, and I am Anishinabe, from the Bear Clan of the Batchewana First Nation. I'm grateful to be here as a guest on unceded Algonquin territory, and I want to begin by giving thanks to the Algonquin people for their continued presence and stewardship of this land.

Madam Chair, members of the committee, *meegwetch* for inviting me to be here today to share on behalf of the 4Rs Youth Movement. I send my gratitude to Mr. Saganash for his leadership, alongside many others, in putting this bill forward. I had the pleasure of meeting Maïtée, who is doing work around indigenous youth voices. She has a beautiful fierceness that I'm sure she gets from you.

The 4Rs Youth Movement has evolved over the past four years as a youth-led collaborative seeking to change the country now known as Canada by changing the relationships between indigenous and non-indigenous youth. 4Rs started with honest conversation about Canadian identity. It shaped our vision and our mission, and was followed by a reflection of the values that were necessary to do this change-making work with integrity, via respect, reciprocity, reconciliation, and relevance—the 4Rs. We believe that a relationship-based approach to social change will enable youth to formulate strategies for reconciliation that rebuilds Canada for both present and future generations. Thinking about reconciliation broadly, this means confronting an incredibly difficult history, one that continues to be lived daily and impacts our individual and collective experiences as indigenous peoples.

For 4Rs, adopting UNDRIP is about putting in motion the Canadian framework for reconciliation that must centre the needs, voices, and perspectives of indigenous peoples, communities, and nations in the process of talking about and working toward reconciliation.

As young people in this moment of our history, I understand that we'll be the generation leading the implementation of the TRC calls to action. I, and the young people I work with, are taking this responsibility seriously. Reconciliation to 4Rs is first about developing deep, authentic relationships across individuals, cultures, and geographies as a foundation from which systems change and new paradigms and actions will emerge.

Truthfully, though, these past few months have eroded my belief in Canada's reconciliation process. I'm not alone in this sentiment. Indigenous young people are speaking out about the reconciliation rhetoric that lulls us into a false sense of progress, but does little to enact real change. How is reconciliation possible when indigenous youth like Colten Boushie are treated without human dignity and decisions are made that tell our people that justice in Canada is not for us?

Last week, Jade Tootoosis, Colten's cousin, spoke powerfully at the international table calling for the United Nations to undertake a study of systemic racism against indigenous people in Canada's judicial and legal systems. She said:

> The Canadian justice system has failed Colten, our community, and indigenous people in ways that impede our human rights. We deserve better. My brother Colten deserves better.

We do deserve better.

4Rs is led by indigenous young people, young people who are not unlike Colten, from our staff to our governance. We are supported by a network of settler youth and adult allies, because change requires working across cultures and across generations. When it comes to reconciliation, investments are needed in indigenous youth and communities so we can enter reconciliation processes in wholeness and on our own terms. This involves investing in indigenous youth to find strength and pride and identity. It requires centring and restoring indigenous languages and knowledge before, and at the same time as, we seed reconciliation. It requires that we look to break the cycle of systemic racism that Canada's social, political, and legal systems uphold. When lands and waters are under threat from development and pollution, we don't have a healthy environment for our shared work. Any consideration of reconciliation must also take into account the well-being of the earth.

Where Bill C-262 has the potential to impact 4Rs' work the most is in the interconnected pieces of UNDRIP that relate to the reclamation of indigenous identity through language, culture, and connection to land—articles 13, 24, and 31—helping to transform intergenerational trauma into intergenerational resilience and healing.

On January 21 and January 22, 2018, 70 first nations, Métis, and Inuit youth between the ages of 13 and 26 from every province and territory across the country gathered in Ottawa for the Hope Forum, a national gathering of indigenous youth leaders on healing and life promotion hosted by the organization We Matter.

● (1655)

I attended day two of the forum, a national round table discussion organized in response to the current mental health and suicide realities of indigenous youth in communities. The live broadcast of the round table was seen by 16,000 people, and the recorded video by 58,000 people. From there, a number of calls to action were put forward calling on all sectors of government and key influencers in the community to take action. All of the calls these young people put forward fit within the guidelines of the United Nations Declaration on the Rights of Indigenous Peoples, specifically relating to article 24, implementation of which is very important for indigenous youth.

Bill C-262 will make the recommendations of these indigenous youth undeniable. Recognizing on-the-land and cultural activities is a key aspect of indigenous mental health, wellness, and suicide prevention. Bill C-262, to me, is about furthering healing. It is about equity and restoration, as well as the preservation and survival of indigeneity, which is unique to the experiences and diversity of first nations, Métis, and Inuit youth.

Interpreting Canada's constitution, consistent with the declaration as proposed through Bill C-262, is a crucial step in implementing this reconciliation framework. It restores my hope that we can return to a process of reconciliation with integrity and mutual accountability. But in order to have integrity and be accountable, Bill C-262 requires Canada to build readiness, to do your work first to understand your role and responsibilities, and to work with respect, care, and collaboration with indigenous people, and then to set in motion a national plan of action.

This means that we all have a part to play, as individuals, families, leaders, organizations, institutions, communities, and all levels of government. I once heard an Anishinabe elder, Jim Dumont, say that language is the voice of the culture and culture is the strength of the language. This resonates with me because it demonstrates that the rights contained in UNDRIP are interconnected and interrelated, and therefore must be interpreted with the same holistic understanding and not be impacted by the constitutional division of powers between levels of federal and provincial governments, which tempt us to look at implementation in isolation.

However, implementation is not going to be easy, not because of the complexity of what is ahead of us, but because of fear. It's fear of the unknown; of getting things wrong; of having to share power, privilege, and resources; of hurting more people; and fears that limit Canada's ability to imagine a future with UNDRIP fully implemented. If we lead with fear, it will no doubt become embedded in the implementation of UNDRIP, eroding what is possible; destroying what is being borne; seeing history, yet again, repeat itself when it comes to upholding indigenous rights. Canada has to believe that UNDRIP is possible and embrace the discomfort and uncertainty that goes along with being in a relationship with indigenous peoples that is fundamentally different. It's not what we do that matters, but how we do it that will create the most change.

In that spirit I will begin to wrap up with some recommendations on the “how” for those of you who will be taking the next steps on Bill C-262.

Share a meal together. Get to know each other's stories, your hopes and dreams, but do it in the company of food.

Impart a relationship-based approach to implementation, not a top-down, isolated process that is removed from purpose and community.

Make this personal, if it isn't already.

Lead from a place of respect and caring and name your fears so that they can be worked on together and not left to fester.

Don't build fear and limiting beliefs into your implementation plan, making this inherently adversarial. Instead, lead with intention, hope, and possibility.

Acknowledge what you don't know. Reconciliation is a process of learning and unlearning. Ensure that all public servants working on Bill C-262 are educated in indigenous issues and policy, have undergone cultural competency training, and better yet, have lived experience—meaning, hire indigenous people.

Nothing about us, without us. Co-create with indigenous youth. Hire them as researchers, policy developers, negotiators, or lawyers. A whole mass of visionaries is waiting to be invited to be a part of the process and hold the solutions to the challenges that await you.

Be intentional about the inclusion of two-spirited, LGBTQ+ indigenous people. Explicitly state this in Bill C-262 and ensure that resources are allocated toward ensuring that their voices are heard and acted on.

Think and work in systems.

I have two more.

● (1700)

Take an ecosystem approach to implementing the national action plan. Bring systems change leaders into the conversation to help break down silos. Make your process transparent, inclusive, and accessible.

If my grandma, as an individual rights holder, cannot activate UNDRIP, then Bill C-262 is not adequate.

Take careful steps, but don't waste time. Individual rights holders must feel the impacts of implementation alongside the systemic and legal changes that are required. We cannot afford to lose any more indigenous lives.

Meegwetch.

The Chair: Thank you.

We move to the questioning round and will open with MP Mike Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you, Chair.

Thank you so much for being here today to provide this witness testimony.

Through this whole process I'm trying to wrap my head around how we can.... Some individuals are saying that we have these three different ways we can deal with FPIC. Until we define that, we can't go ahead with Bill C-262 in a sense, or we can't go ahead with UNDRIP, because it's going to blow up the legal framework that we've developed in filling the box around section 35. It will have a direct impact on that. We have to have the black letter of the law first before we can have the nation-to-nation relationship. My whole view is why do they have to be mutually exclusive? Why can't they happen concurrently?

Of the three definitions that we've had around FPIC—acting in good faith without really obtaining it; or the type of process required through a consensus-oriented product, which the previous speaker called “collaborative consent”; or as a veto—how would you interpret this?

The Chair: Please direct your question.

● (1705)

Mr. Mike Bossio: I'd like any one of them to have the opportunity to answer it.

Sheryl, do you want to start?

Dr. Sheryl Lightfoot: I think FPIC is probably one of the most formidable challenges of this entire piece of direction and legislation. I think the central feature to remember is that consent is a critical foundational piece of self-determination for all peoples, not just indigenous peoples. The entire system and framework of democratic institutions lies on the issue of consent of the governed. I think to deny that to indigenous peoples is unconscionable in this country that we call Canada, which we consider to be a democracy.

The question is how to get there and what sort of systems need to be designed so that we know when we have consent and when we don't, because that is one of the most contested issues in all sectors and all areas of this issue.

Mr. Mike Bossio: Do you think it's necessary to have that defined in the black letter of the law within Bill C-262 before you even move forward with it?

Dr. Sheryl Lightfoot: I don't think so. I agree with you that they are not mutually exclusive. I think this legislation tells us that we need to establish systems and institutions that will do that. That means working together with indigenous peoples to discuss and to find out how we know when we have consent.

Mr. Mike Bossio: And the black letter of the law will evolve with it at the same time you evolve this nation-to-nation relationship.

Dr. Sheryl Lightfoot: It will evolve with it, just as every democratic institution in this country has evolved.

Mr. Mike Bossio: It was mentioned earlier that the FPT tables need to be developed. So too do they in the nation-to-nation relationship.

Dr. Sheryl Lightfoot: That's correct.

Mr. Mike Bossio: I apologize. I kind of led that in a different direction, but if you'd like to comment on that as well, it would be greatly appreciated, Sharon and then Jessica.

Chief Sharon Stinson Henry: Okay, thank you.

The board feels there is already a lot of jurisprudence in Canada—and I'm not a lawyer, so if I say something that I ought not to, please forgive me—and internationally with regard to FPIC. Quite frankly, as a former chief, I found that the worst thing any leader could do was not to consult with their constituents, and in our case, our membership, our citizens.

I feel that you have to start somewhere with this bill. With all due respect to the former speakers, we can debate this ad nauseam and not get anywhere. I think we have to keep it simple. Just listening to Jessica here, why do we have to make things so formal and complicated? I also lead my community in a land claim process. My goodness, it's unbelievable. The government tends to get so nervous, with all due respect. You have to respond to your taxpayers, too, and I may be off topic a little bit, but I'm just saying there are rules and there are laws, but we need to talk with each other. That's all the board is saying: let's talk with each other, get this moving, and don't put up roadblocks or move the goal posts, or we'll never get it done.

Mr. Mike Bossio: Thank you.

I don't want to run out of time. Jessica, could you please comment if you have anything different to add. Also I put it out there that, if you have any amendments, you could recommend them as well.

Ms. Jessica Bolduc: To me, your question makes me think about the intention behind naming that as a challenge or wanting to dig deep into FPIC at this stage of the bill. If the intention were to move things forward in a collaborative process that is outlined in UNDRIP, then we would be having a different kind of conversation. To me, it feels like that's something that's being used to stall the process, and that's important.

I think the other piece to acknowledge is that, when working with "emergents" or our youth, as we absolutely are doing right now, we venture a little bit into the unknown—although, as Sharon said, there are precedents that are set with how FPIC can be worked in a good way. To try to create something so rigid in the beginning of something that's being developed can collapse the entire process in my opinion. That's what I offer. I don't have any suggestions for an amendment.

● (1710)

Mr. Mike Bossio: Okay.

Sheryl, do you want to respond too?

The Chair: You have 15 seconds.

Dr. Sheryl Lightfoot: I recommend no amendments. I think the beauty of this legislation is its very simplicity. It sets direction, it sets a tone, and it sets an intention. It provides a specific mechanism so that the human rights obligations of Canada can be met, which they are not right now, if I can emphasize it again. It sets out a review process, saying that all future laws need to be compliant with the UN declaration; it sets up a reporting mechanism; and it necessitates national action plans. This immediately sets out a framework to align Canada's behaviour with international expectations.

The Chair: Thank you.

Questioning now moves to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you to all three for coming here this afternoon.

You're right, it's framework, but legislation needs clarity. We haven't provided advice on how consent is defined. We have asked for it to be clearly defined in this legislation for clarity. We've asked the Department of Justice to give us a definition. We are still waiting for that. This is to keep FPIC out of court. We need to get this piece of legislation, this law. It will be law when we pass this, so we need to clarify it. The purpose of our clarifying it is to streamline this process, not to stall it. To ensure that everyone is clear on this process, legislation has to be clear. We're waiting for that from the Department of Justice, and I just remind the clerk of that.

We have spent enough money at the Supreme Court over the years on clarification, so when we bring a bill like this forward, it is our duty as members of Parliament to see that it is done right. It is my belief that this is one of many committees that should study this bill. I just mentioned Justice. You're talking economic development. Well, I think we should have a study of that. In my opinion, all these discussions have to come forward before we go forward with this legislation.

Anyway, we'll start with your thoughts on what I just said, Sheryl, because you did make a number of statements here that I want to clarify.

Dr. Sheryl Lightfoot: If you or the Department of Justice need some guidance on what free, prior, and informed consent means, I think we can appeal to the United Nations, which has done some work on this and has a two-pager exactly on what that means.

How that is to be worked out within the Canadian domestic framework is a subject that should be done in collaboration between indigenous communities and the government. I encourage that next step. It's also suggested by the United Nations.

In terms of getting absolute clarity on each piece of legislation, I dare say even section 35 wasn't completely clear in 1982 when it was adopted. Law and policy are an ongoing process of communication, collaboration, negotiation, and sometimes court cases. That's a natural and a given.

Mr. Kevin Waugh: We're trying to avoid that, right?

Dr. Sheryl Lightfoot: This legislation will probably end up avoiding a number of court cases and conflicts, I would expect, because once you develop a framework, then you give a legislative avenue or regulatory avenue, which will actually reduce conflict in the long run.

Mr. Kevin Waugh: Sharon, whom do you speak for? You say it's the National Indigenous Economic Development Board. Give us some insight about that board. How many are on it? You say you have representation from all the territories and provinces. Maybe fill us in, because you've made some statements here that I'm going to ask you about after you tell us. Are you a national spokes—

Chief Sharon Stinson Henry: We're a national board—

Mr. Kevin Waugh: But who do you speak for, everybody?

Chief Sharon Stinson Henry: No. We are an advisory board to the federal government, and we are appointed through an Order in Council. There are currently 10 members on the board. Some are being replaced now as we speak. It's a rolling board, so people come and go. In fact, I'm finishing up my term shortly. We do have research done. We've done a lot of work.

To look at one of our reports, you simply have to go online. We have a website. All of the reports are there and easily accessible. One is "Reconciliation: Moving Canada's economy by $27.7 billion". We've recommended to the Government of Canada that it must close the gaps that exist for indigenous peoples. We are underfunded for education.

Mr. Kevin Waugh: I totally agree.

Chief Sharon Stinson Henry: If we have those gaps filled, the economic outcomes would be beneficial, not just to indigenous peoples but to all Canadians.

Mr. Kevin Waugh: I think we all agree around here.

Chief Sharon Stinson Henry: The money spent on social programs, prisons, everything else—

Mr. Kevin Waugh: We all totally agree.

Chief Sharon Stinson Henry: —some $27 billion. Take a look at that report.

You were saying, sir, that something was not clear.

● (1715)

Mr. Kevin Waugh: I wanted a clarification. The board also believes that implementing the declaration would ensure the protection of reserve lands and traditional territories—and here's where I need clarification—and would allow for reserve sizes to go back to what they originally were.

What were they originally? How far back are you going here?

This is the first time this committee has seen this piece. I'm sure everyone around here is saying, "back to where they originally were?" Please clarify.

Chief Sharon Stinson Henry: If you look back at our history, you see that we are the first peoples. It's a simple answer. You look at land claims today. Quite frankly, it's simple. In fact, our board chair, Chief Clarence Louie of Osoyoos—I'm sure you've heard of him—is the one who asked that we raise this issue of lands. He said we don't want anything done with the lands; just give them back to us. We're first peoples here.

Mr. Kevin Waugh: This is the first time it's been brought to this committee. I think it shocked a lot of us. It shocked me. I just wanted that clarification on record.

Chief Sharon Stinson Henry: Does that clarify it for you?

Mr. Kevin Waugh: Yes. That's a big piece. I see it's article 21.

Chief Sharon Stinson Henry: It's a big piece.

Mr. Kevin Waugh: Yes.

Chief Sharon Stinson Henry: I just mentioned in my remarks, in answer to an earlier question about going through the land claim process, that we'll never get the land back. I can say that. Chief Clarence can say that.

Mr. Kevin Waugh: If you want it back....

Chief Sharon Stinson Henry: Yes, but it was taken.

The Chair: Thank you.

The questioning now moves to MP Romeo Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair, and to our guests this afternoon.

I'm sorry, Kevin, that we shocked you. It wasn't intended, really.

Thank you for those presentations. I think all three testimonies were incredibly well expressed. I think it will help this committee in understanding what they're trying to do through this study and through Bill C-262.

First of all, I want to start by asking you a question, Sheryl.

In the Edwards case at the Supreme Court of Canada, in I believe 1984, I think it was one of the first occasions when the Supreme Court talked about the Constitution as "a living tree". One of the reasons they said that back then was that for the framers of the Constitution, in particular with respect to section 35, not everything could have been predicted at that time. Not everything could have been imagined by the framers of the Constitution at that time. We have seen over the years with the rulings from the Supreme Court that our Constitution has grown, developed, and evolved, in particular with respect to the recognition and respect of indigenous peoples' rights.

Do you think the living tree doctrine applies also to the UN Declaration on the Rights of Indigenous Peoples?

● (1720)

Dr. Sheryl Lightfoot: Thank you, Mr. Saganash.

Yes, I do, completely. I think the living tree doctrine is a perfectly appropriate framework when you're talking about development of democratic institutions in Canada from the 1982 Constitution forward. I now see that the UN declaration, especially in light of the human rights framework internationally and the expectations and the calls on Canada to align itself with those expectations, is the next logical step in that evolution.

Mr. Romeo Saganash: Now, all of you expressed the idea that Bill C-262 is the first step in the right direction. I'd like to hear from all three of you on what you think the next steps are after Bill C-262 is adopted. You talked about sharing a meal, and I like that idea, but beyond that, what are some of the things you would like to see after this bill is adopted?

Maybe I'll start with you, Jessica.

Ms. Jessica Bolduc: That's a good question.

For me, I think that once this bill is adopted, an important process of informing the communities needs to happen. As young people, that's an important piece to us: to be informed about what's happening so that we can understand and engage with it in a way that's meeting young people where they're at.

I think the different levels of government naturally need to have conversations about what their role is in relationship to the communities that they need work together with on this and to start to identify the different laws and legal systems that we need to change. I think of the Indian Act, of course, as a big one, and a good challenge for us to all work on together.

To me, those are some of the pieces that would be the next steps for implementation. I imagine that Sharon and Sheryl would have some very specific concrete ideas on that too.

Meegwetch.

Mr. Romeo Saganash: Sharon.

Chief Sharon Stinson Henry: Thank you, Mr. Saganash.

As I understand it, the bill is not creating new laws but perhaps strengthening existing laws. With regard to the working group of ministers the Prime Minister has formed, headed up by the Minister of Justice, the work they will do will examine all of the federal implications, laws, policies and operational practices, and that will help the crown establish a proper framework moving forward.

It's important, in our view, that Bill C-262 get the support, be passed, and allow that working group to do its work. It's about time. We've had enough indigenous people going to courts all the time, and all we do is spend money. The lawyers, with all due respect to lawyers—I know you're one yourself, Mr. Saganash—just continue to get rich, and the first nations, Inuit, and Métis people just wait. I think the group has to do their work.

Mr. Romeo Saganash: Even after a positive affirmation by the courts, sometimes those confirmed rights are not respected anyway.

Sheryl.

Dr. Sheryl Lightfoot: The goal here is to get to a nation-to-nation relationship that is based in mutual respect and principles of justice and equality—essentially democracy. The bill itself sets out the next steps.

First again is a review of existing law and policy. That's already underway—check.

Second is making sure that future law and policy is consistent with the declaration. That needs to be a next step.

Third, a reporting mechanism is called for by the international system and this bill. That needs to come. With respect to the national action plan, we hear that it's under way, but I have no evidence of that personally, so I think we are behind the ball there.

I just need to mention that the constitutions of Ecuador and Bolivia, passed in 2008 and 2009 respectively, both adopted the declaration into national law, and Ecuador actually enshrined it into law completely at that time. I don't recommend this step. It creates an immediate implementation gap between law and practice, and as I understand it, this is not at all what this bill is doing. This bill merely sets out a framework, a set of directions for “must” steps for all future governments.

In terms of a national action plan, I also have to point out that Canada is behind. So far, Bolivia, Mexico, Paraguay, and Peru all have national action plans, and when I was at the United Nations last week, El Salvador announced that it had completed its draft of a national action plan.

How long can Canada afford to stay behind some of these other countries in moving towards implementation?

● (1725)

The Chair: Thank you.

The question goes to MP T.J. Harvey.

Mr. T.J. Harvey (Tobique—Mactaquac, Lib.): Thank you, Madam Chair.

I just have one question for all three, and if I have any remaining time, I'm going to turn it over to MP Amos.

I just want to build on some earlier comments by member Saganash. At the beginning of this, when you first spoke, you talked about it being a foundational building block to the future of the country, to a collective approach of how we move forward collaboratively, with a positive energy, for a general outcome that's beneficial to all Canadians.

Building on Ms. Bolduc's earlier remarks and recognizing Mr. Saganash's intention in bringing this bill forward, I'm wondering if each of the three of you could identify what you believe the three most important next achievable outcomes from this would be, while also recognizing what Ms. Bolduc said earlier about how we should look at things in a very simple manner and just focus on deliverables.

Dr. Sheryl Lightfoot: At the risk of repeating myself again, I think the most concrete deliverables to come next could be a national action plan, a reporting mechanism, and a review of future laws and policies.

Chief Sharon Stinson Henry: Ditto. That's exactly right.

Ms. Jessica Bolduc: I agree, but I would also challenge committee members to think about what the implementation of UNDRIP would actually look like to this committee. I think about this work in terms of fractals, and if we can't change ourselves, then how are we possibly going to change a country? That might be something to sit with as a committee, to think about how you can implement UNDRIP in what you're doing and in how you do this work.

Mr. T.J. Harvey: Thank you.

The Chair: MP Amos.

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

Thank you to member Harvey for the time.

Thank you to your witnesses. I know it really takes a lot of work to prepare for these sessions and that it's a bit of pressure, so it's very much appreciated. Thank you for all of the work you've done on this issue and for the many years of advocacy and academic work. This is foundational. I hope you feel as though your work is really being validated, because, at the end of the day, Parliament is responding to the leadership of member Saganash.

To get to my question, I do appreciate the reticence and the preoccupations that some witnesses have articulated because there's significant uncertainty, but what does this really mean? On another committee that both member Bossio and I sit on, we're working through Bill C-69, which will have significant repercussions for all of Canada, including indigenous peoples. It's important that our government get this bill right, and it's important that UNDRIP be reflected.

What in your estimation would this bill do to inform the development and legislative passage of a bill like Bill C-69, beyond just incorporating into its the preamble, for example, the point that the bill fully respects and demonstrates a commitment to UNDRIP? The rubber does have to hit the road at a certain point. What is the actual impact?

I'll put that one to Ms. Lightfoot first, and then to Ms. Stinson Henry, and Ms. Bolduc if there's time.

Dr. Sheryl Lightfoot: For the witnesses, could you just refresh us on Bill C-69?

Mr. William Amos: Bill C-69 is the legislation proposed to enact a new Canadian impact assessment act, and to create a Canada energy regulator.

● (1730)

Dr. Sheryl Lightfoot: The impact assessment topic is related to free, prior, and informed consent, of course. When looking at any sort of new impact assessment act, the framework of free, prior, and informed consent as we understand it—and again, the UN can provide some guidance on this—is a good framework to begin putting into all the legislation a collaborative design and consultation process to get consent as much as possible.

Chief Sharon Stinson Henry: Bill C-262 does provide the legislative framework to implement the declaration, and it sets out the principles. UNDRIP is such a great document, and the bill supports it. Our board supports both, of course.

I don't know if that answers your question, but the framework is there and the work has to be done. In my view, if you try to mix two bills—Bill C-69, and I think there's a Bill C-332 out there, speaking to the finance side of things and amending the corporations act—and start to mix these things up, we'll just be spinning our wheels and won't get Bill C-262 through.

The Chair: Thank you. We've run out of time. I've given a couple more minutes, so we could have a wholesome discussion.

I'm sorry to cut your time short, Will, but we've come to the end of the session.

Thank you very much for travelling here to Ottawa. *Meegwetch*, and safe travels home.

The meeting is adjourned.