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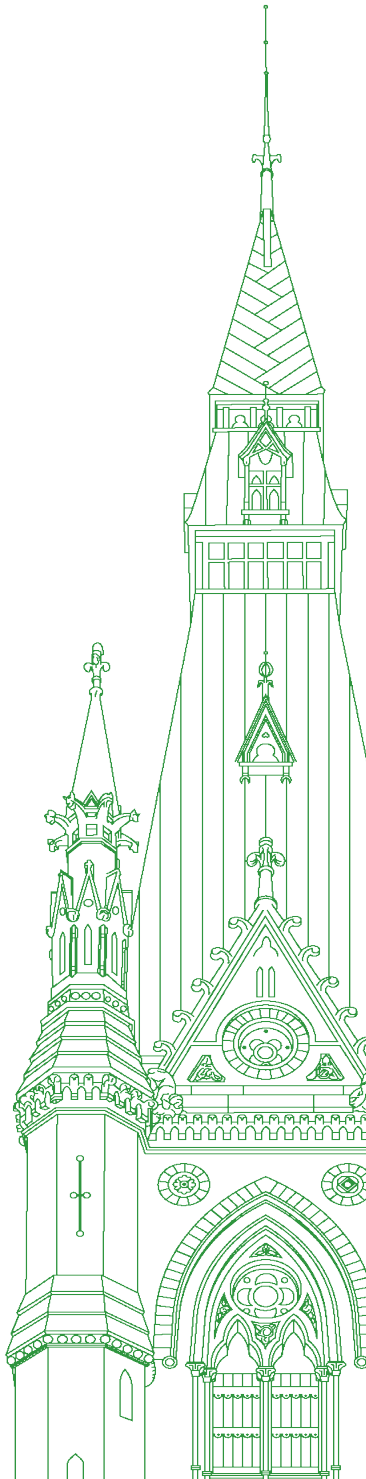

Chair: Mr. Bob Bratina

Standing Committee on Indigenous and Northern Affairs

Tuesday, March 23, 2021

● (1110)

[*English*]

The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)): I call this meeting to order, acknowledging first of all that in Ottawa we meet on the traditional unceded territory of the Algonquin people.

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

Before I continue, I see that Ms. Gill has her hand up.

[*Translation*]

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

I would like to raise a point of order, Mr. Chair, simply to ask for the unanimous consent of committee members to have access to the digital binder for the duration of the study of Bill C-15. I was not given access.

I would like to get unanimous consent from committee members.

[*English*]

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

Let me put it to the committee that access to the binders typically would not be in order. However, we could agree, on unanimous consent of the committee, notwithstanding the routine motion governing the distribution of documents, that Ms. Gill and Ms. Gazan be granted access to the committee's digital binders for the duration of this study on the matter of Bill C-15.

Do we have any objections from anyone on our committee to allowing the digital binders to be shared?

Seeing none, I will ask for unanimous consent, by a show of hands, to allow the binders to be shared.

Some hon. members: Agreed.

The Chair: So by unanimous consent, we agree to share the digital binders with Ms. Gill and Ms. Gazan, granting them access to the binders for the duration of the study and any study pursuant to the order of reference thereof. Thank you very much.

Ladies and gentlemen, to ensure an orderly meeting, participants may speak and listen in the official language of their choice. The issue with microphones is very important. We cannot properly conduct our meeting unless it is fully and clearly translated in our two official languages. You may switch from speaking one language to another, no problem. Ensure your video is turned on while you are speaking. Please speak slowly and clearly. When not speaking, have your mike on mute.

Mr. Clerk, I understand everyone has been pre-tested. Thank you.

Moving on, members of the committee, we have with us today, by video conference, the following witnesses: Dale Swampy, president, National Coalition of Chiefs; regional chief Terry Teegee, representing the BC First Nations Leadership Council, accompanied by general counsel Merle Alexander; and executive chair Harold Calla and CEO Geordie Hungerford, representing the First Nations Financial Management Board.

Thank you, all, for taking the time to appear. We will open with six-minute statements from each, followed by our questioning.

President Swampy, please go ahead for six minutes.

Mr. Dale Swampy (President, National Coalition of Chiefs): Thank you, Mr. Chair.

Good morning. Thank you for the opportunity to speak with you today as you study Bill C-15.

I am presenting to you today from the traditional territory of the Tsuut'ina Nation near Calgary, Alberta, and the traditional territory of the Treaty 7 first nations in southern Alberta.

My name is Dale Swampy. I am the president of the National Coalition of Chiefs, a coalition of industry-supportive chiefs. Our mandate is to defeat poverty on first nations reserves. We work to establish mutually beneficial agreements between first nations and industry partners in an effort to enhance the economic prosperity of reserve communities.

I am also a member of the Samson Cree Nation.

I think UNDRIP is important and significant in many ways, and I obviously support indigenous rights. However, I am skeptical about Bill C-15 itself. I think it needs to be written much more carefully, because as it is drafted today, it is obvious to me that it will deter investment in Canadian resource development, and that hurts the indigenous communities that rely on resources as much it hurts anyone.

Most of us want to attract investment to our territories. We want economic development and jobs and own-source revenues. In fact, UNDRIP affirms that very right to determine and develop priorities and strategies and to develop use of our lands, territories and other resources. This right is meaningless if we can't attract financing or business partners to develop our resources because the law is unclear.

I've spent my professional life in first nations and the oil and gas industry. I know first-hand what happens when federal bureaucracy gets in the way of development.

However well intentioned Bill C-15 is, my discussions with legal experts, industry representatives and investment bankers have persuaded me that it is introducing another layer of uncertainty and risk to development in indigenous territories. That is because it adds to the confusion about who has the authority to provide or deny consent on behalf of indigenous people, be they chiefs and councils, hereditary chiefs or small groups of activists. It also implies that a single nation can then deny consent—a veto in practice, if not in name—for projects that cross dozens of territories, be they pipelines, railroads or electricity transmission lines.

I think the uncertainty in the legislation makes it likely that it will be used to delay resource development projects by groups that oppose extractive and other resource projects under any circumstances, even those of which indigenous nations are overwhelmingly in favour and have equity ownership. I've seen first-hand how environmental groups can push their own agendas and use indigenous rights against our own interests.

Federal government structures have often worked to deter investment in indigenous lands and territories and to reduce our business competitiveness. Bill C-15 has the potential to add one more barrier between indigenous peoples and industry, on top of the Indian Act and other legislation.

The added uncertainty, hurdles and risk to development on indigenous territory make it difficult for our nations and businesses to attract investment and make it more expensive to do so when they can, due to risk premiums.

Undermining our own economy is not a recipe for prosperity and self-determination. The simple fact is that most of our communities need resource development in order to prosper. We don't need legislation that will make that harder.

I want to touch on one last thing before I close, and that is standards of consultation and consent. The federal government has imposed very high standards of consultation on industry, even to the point where projects that first nations want to see happen can't attract investment because the process is too burdensome, expensive or unclear. Now, with Bill C-15, I don't see you applying those standards to yourselves.

COVID-19 is restricting the ability of our chiefs to travel to Ottawa to speak directly with representatives of Parliament and share our thoughts and concerns regarding the bill. Our leaders are busy dealing with public health issues. They need the time to understand, before legislation is passed, how it will affect indigenous peoples in practice, what it will mean to the approval of processes for projects on our territories, and how the proposed action plan will be developed.

● (1115)

Article 19 of UNDRIP specifically says that you need the informed consent of first nations and all indigenous peoples before you pass legislation that affects them. I know you don't have universal consent for Bill C-15. I know many chiefs who are concerned and want, at the very least, some more time to better engage with and understand the implications of Bill C-15 and want to have input into how it's written. What is your understanding of how you need to obtain and demonstrate indigenous people's consent to pass this legislation? How you define it to pass this bill and what you think is a reasonable standard should not be different from how you expect industry to obtain consent on other projects. In fact, I would think you'd hold yourselves to a higher standard, especially on this piece of legislation.

Thank you for your time. I look forward to your questions.

The Chair: Thank you very much, President Swampy.

Next we have Regional Chief Terry Teegee, representing the B.C. First Nations Leadership Council, accompanied by general counsel Merle Alexander.

Please go ahead, for six minutes.

Regional Chief Terry Teegee (Regional Chief of Assembly of First Nations (British Columbia), BC First Nations Leadership Council): *Mahsi cho*.

[*Witness spoke in Dene*]

[*English*]

Members of Parliament, first of all, I want to acknowledge the territory that I am on, the Lheidli T'enneh Dene people of the Dakelh territory near Prince George, British Columbia. I want to also acknowledge the territories that you are broadcasting or attending this meeting from: that they are indigenous lands and have always been indigenous lands since time immemorial.

I want to thank the committee for the invitation to offer some remarks. I am honoured to speak on the topic of federal legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples. This marks a significant turning point in the history of this country and follows a historic occasion in the province of British Columbia. On November 28, 2019, the Declaration on the Rights of Indigenous Peoples Act, DRIPA, passed unanimously in the B.C. legislature with support from all parties in British Columbia.

DRIPA was widely supported by first nations in British Columbia. It represents a sea change from the provincial government's tradition of denying and opposing our titles, rights and existence as distinct peoples and an acceptance of the Truth and Reconciliation Commission call to action 43 “to adopt and implement the...Declaration...as the framework for reconciliation”.

This was a turning point in B.C. While much hard work lies ahead, we are starting to see a shift toward the human rights-based approach required by the declaration.

As an example, last fall the B.C. government commissioned a comprehensive review of anti-indigenous racism in the provincial health care system, promoting article 24 of the declaration and affirming indigenous peoples' rights to access to health care without discrimination.

Historic and recent events demonstrate the imperative for concrete measures to address racism in our society and the responsibility of the public governments to act. The United Nations declaration is a global human rights instrument, and human rights cannot be fully enjoyed where there is racism and discrimination.

The anti-indigenous racism and discrimination that continue today underscore the appropriateness of the human rights-based approach to reconciliation. Reconciliation cannot be based on denial of rights or racism. This is inherently contradictory and incompatible with upholding human rights.

Bill C-15, with the improvements, is an important next step in Canada's implementation of the declaration. It is a long overdue pathway for change, predicated on respect for human and inherent rights and the repudiation and eradication of racist and colonial constructs and doctrines that have no place in this country or our relationships.

The preamble is important, as it speaks to our collective history in Canada and the legacy of colonialism that has had tragic and profound impacts on first nations across the country, underscoring the need for the United Nations declaration to apply in Canada.

The bill must be clear that Canada is repudiating the doctrines of advocating superiority, like the doctrine of discovery and *terra nullius*. All interpretations of indigenous rights from an era based on colonial denial cannot continue. It must also be clear that implementation of the United Nations declaration is a responsibility of all in government to take actions and ensure consistency of laws as required under article 5.

Further, it is imperative that the co-operation and consultation carried out under the bill reflect the constitutional relationship between the Crown and indigenous peoples and key standards of the declaration, such as free, prior and informed consent. The bill must clarify and specify mechanisms and a plan needed for achieving consistency of laws. The new pathway will see laws of Canada shift to be more inclusive and respectful of the rights and our unique relationship and see new actions and approaches of partnership and participation.

Bill C-15 will complement the B.C. declaration act and contribute to the strengthened foundation of Crown-indigenous relations and reconciliation in B.C. where treaties were not concluded throughout the province and the land question remains largely outstanding, as does the implementation of pre-Confederation Douglas treaties.

● (1120)

The implementation of the declaration through laws and action by both Canada and the Province of B.C. will be a strong foundation for innovation and principled negotiations, improving and expediting the negotiation and conclusion of robust, enduring rights-based treaties, agreements and other constructive arrangements in British Columbia.

The work of upholding and protecting indigenous human rights is urgent, particularly during a global health pandemic, when human rights are vulnerable and unordinarily impacted. The urgent need to respect and promote the inherent rights of indigenous peoples is stated in the preamble. There are many actions that can and must be taken immediately and not delayed. This should be reflected in the time frames in the bill.

Chiefs in British Columbia have indicated that they believe this legislation meets the floor of the former Bill C-262, although they have identified areas where improvements are needed to address some drafting issues that may cause confusion and to reinforce issues of importance, such as those I have referred to here. We have provided you with a written table of our recommended improvements. We are happy to make ourselves and our technical staff available to further brief you, should you wish for more information regarding our position.

I thank you for the time today to speak in support of Bill C-15.

Mahsi cho.

● (1125)

The Chair: Thank you very much, Chief.

Next we have Harold Calla, executive chair of the First Nations Financial Management Board.

Please go ahead for six minutes.

Mr. Harold Calla (Executive Chair, First Nations Financial Management Board): Thank you, Mr. Chair.

Thank you for the invitation to be here today. It came to us only yesterday, so while we do have some opening comments, we will be preparing a fuller written brief that will be sent to you.

I want to thank our regional chief for his comments and Dale for his comments, most of which I agree with.

I am a member of the Squamish First Nation, part of the Coast Salish community here in British Columbia, and have been involved in my community since 1987, dealing with many of the issues that existed in the colonial relationship between us and the Government of Canada that have resulted in litigation, poverty and social dysfunction in our communities.

We have to ask ourselves how we can change things. First and foremost, we have to recognize that things have to change. Then we have to start discussing and engaging with one another on how that change will take place.

Change will not occur and be successful unless we recognize that there needs to be a place in the Canadian economy for indigenous communities and that their rights and title do attract a duty on the part of Canada to accommodate first nations and to engage with first nations around the decisions that are involved in resource extraction kinds of activities.

The Financial Management Board was founded as a result of all-party support in the House of Commons in 2005. It was developed as a result of first nations wanting to come together to advance their economic interests in ways that could not be done under the existing Indian Act.

The result is that we now have over 300 first nations scheduled to the act; we have over 200 with financial administration laws and about 190 with financial performance certificates. Through the First Nations Finance Authority, we have been able to raise, on behalf of first nations, about $1.3 billion in resources, which they've been able to invest in their economies. Most notably, as you are all probably familiar with, there has been the Clearwater transaction in Atlantic Canada. This comes about as a result of capacity being developed in first nations communities to understand the kinds of opportunities that exist before them.

I would suggest to you that we need clarity around aboriginal rights and title, and I don't accept the notion that this doesn't begin that process of providing some clarity. You need to understand that the lack of clarity today is what has strangled resource development in this country for the last 10 years. We need to change that dialogue. We need to be in a position where “free, prior and informed consent” is not just a term but is something that's practised.

In order for that to be the case, the passage of this bill will trigger the required massive investment in Indian communities so they can engage with the private sector and the Government of Canada on an equal footing to create the means by which aggregation can occur so that information can be supported and decisions can be made.

I think there's a mistaken notion that everyone must agree. Not everyone is going to agree on anything. That agreement doesn't happen in your communities, and it's not going to happen in ours. The question is how we deal with those differences. I'm suggesting to you that it's better if we are allowed to try to deal with them ourselves.

The success of the First Nations Major Project Coalition over the past six years has taught me that communities can come together and support one another on some of these projects. They have actually have done so and have developed environmental stewardship frameworks and advanced some really important projects within their traditional territories. The coalition has offered a place for first nations communities to seek the advice and support they need so they can take their aboriginal rights and title and do the due diligence required to see how they can actually implement projects instead of talking about them in theory.

Access to capital is going to be absolutely critical in this process for first nations to engage in the development of their economies. Through the Fiscal Management Act, we have proven that pooled borrowing, with the support of Canada, can be a great success.

I think we have to not be afraid of UNDRIP. We have to embrace it as an opportunity that has come about that will allow us to undo what the past has brought upon us. I think that's going to be important for us in the future.

● (1130)

I know that some will argue that this will create undue hardship for the private sector and the Canadian economy. I suggest to you that this is the exact opposite of what will occur with this kind of clarification. I think we have seen that occur in British Columbia with the work of the Major Project Coalition and the support of Coastal GasLink. My own community issued its own certificate to develop the Woodfibre LNG project. We engaged in our own process.

I think by this engagement process, by developing capacity and by providing the resources that allow for the due diligence to be done, you'll get to free, prior and informed consent in a way that everyone can have some confidence in it. You need to create the framework for first nations that may not be that large and that may not have the resources to be able to have access to the capacities that they need to deal with the matters that come before them. It doesn't matter whether you're the Squamish Nation with 4,000 people and a significant budget or you're a smaller community in the north—the decisions that are required are the same. The capacity gap between the two circumstances can be quite different unless we create a model that allows for this aggregation and support for the knowledge that's required to make these decisions.

With that, Mr. Chair, I thank you for this opportunity. I will remind you that we will be providing you with a brief on this matter sometime in the near future.

The Chair: I appreciate that.

To all of our witnesses today, if anything perhaps doesn't come up and you wish to point it out following the meeting, you can certainly submit a further written submission to our panel [*Technical difficulty—Editor*] to consider. Thank you.

Now we will go to our six-minute round of questioning.

Eric Melillo, you are up first. Go ahead for six minutes.

Mr. Gary Vidal (Desnethé—Missinippi—Churchill River, CPC): Actually, Mr. Chair, I think I am up first this morning, if that's all right with you.

The Chair: My apologies. Okay. Go ahead, Gary.

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

I want to first of all thank all of our witnesses for taking the time to be here with us. I realize that some of this is happening at the last minute, as Mr. Calla spoke of, so we appreciate your accommodating us and being here on short notice in some cases. That was excellent testimony by all.

I want to start with President Swampy and then get to the others, if the chair will grant me enough time to do that. We seem to run into issues with that sometimes.

Mr. Swampy, you spoke in your opening comments about many of the benefits and some of the very good elements of this legislation. I think we would all agree that there are very good components to this. You also spoke of some concerns around the legislation. I did a little research yesterday, and I looked at the mandate of your organization. It states very clearly that the National Coalition of Chiefs is committed to defeating “on-reserve poverty”. That's the reason your organization exists.

It seems in our political world that those who champion poverty reduction through economic development often get labelled as not having compassion for the people. I would argue that it's exactly the opposite of that. We do have that compassion. I would like you to speak for a couple of minutes about how in that spirit of compassion, in that spirit of wanting to reduce on-reserve poverty or defeat on-reserve poverty, responsible participation in economic development is key to that, in your experience.

● (1135)

Mr. Dale Swampy: We believe the natural resource industry is the strongest industy in Canada. We have focused our means to our goal to partner with natural resource industries in order to bring us out of poverty. We believe poverty is the cause of all our social ills. Teenage suicide, domestic violence, lack of education—everything you can think of that we have been struggling with for the last 150 years has come because we do not participate fully in this economy. In order to participate fully in this economy, we need to grasp the natural resource industry as an ally. We need to work with the natural resource industry fully and to participate in, and in some cases lead, the natural resource industry. We've seen that happen in northern British Columbia with TMX, and the desire for first nations to go out there and become part of this natural resource industry.

We believe the government has the duty and the right to recognize this problem that exists and that continues to fester within our communities. If we cannot excel in our ability to participate in natural resource industries—through legislation that will stifle investments—then we will be subject to abject poverty for many generations to come.

Mr. Gary Vidal: Thank you. I really appreciate your answer.

I'm going to come back to you, President Swampy, and then, Mr. Calla, could you answer this question as well? I have about two and a half minutes left, so I'm going to try get my question in quickly and give you both an opportunity here before the chair cuts me off.

We have heard over and over again from people how the action plan that is proposed in this legislation has the opportunity to bring clarity and to remove some of the uncertainty here. My question is really simple. On the action plan and its three-year window going out, we're hearing that maybe there is some uncertainty that is created.

Would there have been some benefit in doing the action plan in the lead-up to the actual legislation, like, for example, New Zealand has done? Would it have brought about a reduction in some of the uncertainty, from your perspective, in the investment climate and that element in all of this?

Mr. Harold Calla: Well, I think it may well have. We are always finding ourselves in a position where we have to take what's being presented and then implement it and improve upon it. I don't think that I look at this as a failure of this initiative. I look at this as an opportunity to understand that this is going to become a living process. It will never be finalized. We will always continue to improve upon it as we move forward.

That doesn't mean that we can't begin to do the work and to be in a position where we can admit that we need to make some changes in the future. You've got to start somewhere. In my 35 years in this field, this is the best place that I see to start.

Mr. Gary Vidal: Thank you.

President Swampy, would you like to respond to that as well?

Mr. Dale Swampy: Yes. We are having a hard time understanding exactly the process and whether or not it's going to provide any real benefits to first nations communities. Canada itself is a premier leader in human rights. Canada is a premier leader in the duty of industry and government to consult with first nations.

I believe UNDRIP legislation is good for third world countries that do not have the kind of human rights record that we have and for third world countries and developing countries that do not have the legal requirement for industry to consult with indigenous peoples. When Peru first incorporated its UNDRIP legislation, it was one of the first in the world to do such a thing, and that meant a lot for the indigenous peoples in that country—

● (1140)

The Chair: I'm sorry. Can you just conclude?

Mr. Dale Swampy: Yes.

I believe what you say is true. The action plan should have been done before the legislation was passed.

The Chair: Thanks very much.

Mr. Powlowski, you have six minutes.

Mr. Marcus Powlowski (Thunder Bay—Rainy River, Lib.): I'm interested in how and if Bill C-15 will change the current law, especially with respect to aboriginal title. President Swampy says that Bill C-15 will create more uncertainty. On the other hand, Mr. Calla says that this is the start of a way forward to create clarity.

I'm wondering if there is anything in UNDRIP that changes the modern notion of aboriginal legal title as most recently established by the Tsilhqot'in decision. I'm no expert on aboriginal land title, but it seems to me that case decided that title was *sui generis*, but it was a beneficial interest in the land. There was some limitation, and the limitation was that the land couldn't be used in a way that would deprive future generations of the benefits of the land.

To me, in looking at UNDRIP, I'm not sure how much it really changes anything, but I'm interested in what the panellists have to say about that. Is there any substantial change from the law as it currently is?

Maybe I can start with President Swampy, because I think he probably has an opinion on this.

Mr. Dale Swampy: Yes. I don't believe that the legislation, in our discussions with legal experts.... Unless FPIC has some real value and actually does give veto power to the first nations, I don't think any rights that are incorporated within the UNDRIP legislation actually enhance any rights that we already have.

Mr. Marcus Powlowski: What is the opinion of the First Nations Leadership Council of B.C.?

Regional Chief Terry Teegee: I think you know that UNDRIP is a recognition of the human rights of indigenous peoples, but ultimately what the Tsilhqot'in identified was that title exists. First and foremost, in terms of free, prior and informed consent, it really demonstrates that no government has a veto. This is what I stated when I spoke in the legislature of British Columbia in Victoria when we passed the bill, that within the declaration there would be a space created where all governments would come together and we would make the decision together in terms of identifying the best way forward, whether it's yes, no or whatever, for any development project. Really, I think it's a recognition that our authority is there. It equalizes everything in terms of our sovereignty and our self-determination as indigenous peoples.

Mr. Marcus Powlowski: My understanding from the Tsilhqot'in decision is that the province has a right to regulate land use in the public interest. This is, however, federal legislation. How do you envision that federal legislation being compatible with the provincial right to regulate with respect to land use in the public interest? Is there going to be a clash of jurisdictions in implementing this?

Maybe we can have President Swampy to begin and then the B.C. Council. I'm not sure if Mr. Calla has some comment on that.

Mr. Dale Swampy: In my opinion—and this comes from a lot of evaluation as to what UNDRIP's potential can become—the legislation is ambiguous at best. It's going to create a lot of legal conflict between provinces, first nations and the federal government. We're worried that this legislation is not being developed to enhance our ability to participate in the economy and in Canadian society as it should. We believe that it's a front for passing legislation, passing motions, and passing policy to incorporate environmental restrictions on our natural resource industry. I think this is very detrimental to both our natural resource industry and our first nations that want to become part of the society and part of the economic structure within Canada. We are worried. Because the legislation doesn't enhance our first nations rights, what is its use? Is it really going to enhance our ability to stop racism? We think racism is a social ill associated with poverty. We believe that a lot of the social ills that exist within our communities come from the fact that we live in abject poverty. We are out to defeat that, but we cannot defeat that if there's another barrier to investments in the natural resource industry in Canada, which UNDRIP does provide.

● (1145)

Mr. Marcus Powlowski: Chief Teegee or Mr. Calla—

The Chair: Be very brief. You have 10 seconds.

Regional Chief Terry Teegee: This would complement Bill 41, which is already law here in British Columbia, and all we've seen is benefits from passing the law here in British Columbia with certainty and predictability within the industry. The B.C. Business Council and the Federation of Labour amongst many other federations out there already support Bill 41.

The Chair: Thank you very much.

Madam Bérubé, please go ahead for six minutes.

[*Translation*]

Mrs. Marilène Gill: Ms. Gill will be speaking, Mr. Chair.

[*English*]

The Chair: Sorry, Madam Gill. Please go ahead.

[*Translation*]

Mrs. Marilène Gill: I understand completely. We will get used to it. I assumed it was my turn.

I thank all the witnesses who are with us. I find it very interesting to hear the nuances expressed by everyone about Bill C-15.

My question is for all of the witnesses.

It was pointed out a few times that the bill would not expand the scope of first nations rights. On the other hand, it is said that passing it would be harmful. Excuse the candour of my question, but if nothing changes, how could it be worse?

I would like Mr. Swampy, Teegee or Calla to explain it to me in a concrete way. I thank you.

[*English*]

Regional Chief Terry Teegee: I can go first, I suppose.

I suppose what the declaration does is that it changes the relationship with all levels of government. Really, we have already been through many court cases. We have been through social disruption. We have been through the Royal Commission on Aboriginal Peoples. We know what the problem is. It's the fact that governments deny our rights.

For the most part, in terms of what UNDRIP does, I really believe it doesn't give us more rights or do anything special. Really, it aligns the laws to recognize the indigenous rights of indigenous peoples to self-govern and their sovereignty and self-determination. Changing that relationship between governments will allow our people to flourish not only with economic development but also with changing laws for taking care of our children and for health care and policing. We have just seen all the issues with policing. We need to take jurisdiction. This is an overarching bill that can do that. We can have alignment of many laws out there.

I'm the chair of the chiefs committee on economic development. Certainly, this allows for industry to have more predictability and more certainty in terms of projects. This is where we need to come together and not end up in court or have some other mechanism to realize that certainty.

Thank you.

Mr. Dale Swampy: I just want to say that the government's commitment to reconciliation, to working with first nations to resolve the kinds of problems that exist right now, is unprecedented. I think they are doing a great job in trying to work with first nations communities and leaders to enhance our ability to be able to become part of Canada. I think that's very important.

We would like to see the enhancement of our natural resource industry and our participation in the natural resource industry. I think the only way to do that is to empower the people who protect the environment and who have a direct tie to the environment so deeply. That's the indigenous people. Empower them to be able to control natural resource industry development. Give them ownership of natural resource development. Give them participation or the duty to consult or the requirement to be on page with local developments within their area. Have them lead it. The 13 bills in Congress in the Alaska territory that enhanced the tribal nations' ability to be able to own natural resources proved to be very advantageous for the tribes in Alaska.

We can do that in Canada. We can give our people ownership of the natural resources. We can protect the natural resources because we are tied to the natural resources. We have been for thousands and thousands of years. I think that's one of the goals I would like to see happen with the action plan, to develop a process to allow us to be able to get ownership of our natural resources.

● (1150)

The Chair: You have one minute left.

[*Translation*]

Mrs. Marilène Gill: This will be very brief.

[*English*]

Mr. Harold Calla: If I might, to answer the question, it starts with recognition, as Chief Teegee has said. We spend a lot of time talking about the resource industry. I think we all have to become aware of the emergence of ESG as a principle that will impact resource development around the world, and [*Technical difficulty—Editor*] in that process will be fundamental. I think bringing clarity, and starting to bring clarity through this piece of legislation, will help in that process.

[*Translation*]

Mrs. Marilène Gill: I'm glad to see that there is agreement that the bill is positive, despite all of the demands that have been made.

Mr. Chair, I guess my time is up. So I thank the witnesses.

[*English*]

The Chair: Thank you very much.

Now we go to Ms. Gazan for six minutes.

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

Regional Chief Teegee, your province of B.C. has passed UNDRIPA, but due to the failure of the B.C. government to uphold the human rights contained within the declaration in regard to obtaining the free, prior and informed consent of indigenous people with current resource projects, many concerns have been raised about whether the implementation of UNDRIPA will result in a renewed relationship with indigenous peoples that is grounded in human rights.

You have spoken a little bit about this. Why do you still have faith, considering what's currently going on in B.C.? Do you believe the implementation of UNDRIPA is still a valid step forward, given the current climate in the province?

Regional Chief Terry Teegee: Well, I think what you're speaking of are some of the projects that existed pre Bill 41. Sadly, it isn't retroactive in terms of the decisions that were made many years ago. Rather, it's forward looking.

This being a bill that was born out of Bill C-262—and certainly we appreciate Romeo Saganash's work on this private member's bill—I really believe that this is a place where we can change that relationship in terms of recognizing human rights, indigenous rights and our ability for our sovereignty and self-determination. I believe that. Here in British Columbia, we have been and are right now working on the alignment of laws and the action plan. It has been well over 15 months.

With this bill and our experience here in British Columbia, if it does pass, we need to start the action plan as soon as we can—within 18 months, not three years—and we need the resourcing for this to make sure that it's fully implemented the way it is meant to be, as when this was first passed many years ago, in September 2007. I think that is what we're trying to do here in British Columbia.

The point I'm trying to make is that here in British Columbia there was no real instruction or manual on how to implement this. We've developed a process, and now it's working.

● (1155)

Ms. Leah Gazan: On that, I know that there have been many questions around Bill C-15 and the action plan. Certainly, concerns were raised. I know that with Bill 41 there was no specific timeline mentioned. In the development of the action plan, what are some of the challenges you're experiencing right now and just the lessons learned as we move forward, hopefully, with Bill C-15?

Regional Chief Terry Teegee: Well, on the development of the action plan, we started as soon as the bill was passed; however, the pandemic didn't help matters in the past year. We've nearly completed the action plan. The alignment of laws is really what we're working on right now, especially on child welfare.

One of the bills we worked on—that I worked on and was a lead on—was the environmental assessment bill, where the amendments were made that allowed for first nations to implement their own environmental assessment process. We need that law to align with UNDRIP, where we can get to free, prior and informed consent and make decisions together.

My background is forestry. I'm a former registered professional forester. We've been working on the Forest and Range Practices Act and a number of acts out there that currently are in development for amendments with regard to the province's acts, such as the Police Act, where we fully well know that indigenous people need to be a part of that discussion.

Perhaps moving forward we need to look at the health act here in this province. This pandemic showed us the shortfalls of society and how governments really treat indigenous peoples in this country and in this province.

Ms. Leah Gazan: My last question to you goes back to what you were talking about on decision-making agreements. Section 7 of Bill 41 affirms the process for decision-making agreements. Can you share with us why this is important?

I'm going to give you an example, one that certainly I've talked about a lot. In Wet'suwet'en territory, there's an ongoing division between hereditary and band council chiefs in regard to the LNG project. What does this specific provision allow in this circumstance?

Regional Chief Terry Teegee: Well, I think those issues need to be worked out by themselves. A year ago we had a meeting that was to look at overlap in shared territories but was cut short because everybody was in lockdown right in the middle of that meeting.

Our people have to address these issues on our own. It was well stated there. I think the Wet'suwet'en.... As a result of the court case that my family was a part of, the Delgamuukw-Gisday'wa court case, it was really demonstrated that aboriginal rights exist. It comes back to our indigenous peoples to work those issues out in terms of band councils versus hereditary chiefs and how decisions are made.

Now, UNDRIP would allow that in terms of what really I think always existed, which was that hereditary chiefs' right to make the decisions in our own traditional governments is recognized, so I think it really comes back upon us to work out those issues. I think UNDRIP allows us the recognition that hereditary chiefs and our traditional governments have decision-making authority.

Ms. Leah Gazan: Yes. I had the privilege of working with the national Centre for First Nations Governance for a number of years. Would you say the issue is more related to indigenous peoples making decisions on their own internal governance, in terms of a clearer way to proceed forward, rather than arguments around FPIC?

The Chair: Be brief, please.

Regional Chief Terry Teegee: Yes.

I think self-determination, our own sovereignty, is our ability to make our own decisions. I think that's really what is recognized within the United Nations declaration— our human rights and our indigenous rights to govern ourselves. Whether it's the colonial construct of chief and council versus our own, I think at some point we're going to have to reconcile those ourselves.

Ms. Leah Gazan: Thank you.

The Chair: Thank you, all. That brings to a close this portion of our committee meeting today. We will suspend briefly while we set up our next panel.

If there is anything that you feel needs to be emphasized or that wasn't brought up, please feel free to make a written submission to our committee.

We'll suspend now for just a few minutes.

● (1200)

_____(Pause)_____

● (1210)

The Chair: With quorum, I call this meeting back to order.

From the Grand Council of the Crees, we have Chief Abel Bosum and Tina Petawabano, director of federal and indigenous relations.

Please go ahead, Chief Bosum. You have six minutes.

Grand Chief Abel Bosum (Grand Council of the Crees (Eeyou Istchee)): *Wachiya*. Good afternoon. Thank you for the opportunity to speak to you about the importance of Bill C-15 and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

I've been following very carefully the dialogue that has taken place during these hearings with the witnesses who have thus far appeared before you. I'd like to focus my remarks today on what I believe has been one of the most critical issues of concern by members of this committee—namely, free, prior and informed consent and its relationship to the notion of veto.

I address this issue from the perspective of an indigenous nation that has real and on-the-ground experience in dealing with the critical intersection between resource development projects and indigenous rights. The experience that we offer demonstrates very clearly that not only is the affirmation of indigenous rights not incompatible with the certainty that is required to promote favourable investment climates; rather, we have demonstrated that the affirmation of our rights is a necessary condition for investment certainty and for orderly and sustainable development.

We've developed in northern Quebec a framework that provides space for rights holders, space for stakeholders and space for the public at large to be involved so as to repeatedly produce a win-win-win situation. This is not just rhetoric. It's not wishful thinking. This is the result of our rolling up our sleeves and doing the hard work of hammering out agreements that reflect the diverse interests that are at play in these circumstances.

Please let me state clearly that the notion of veto is not something that is in our vocabulary when we deal with resource development projects. Similarly, the concept of veto is not something that appears in either Bill C-15 or the United Nations Declaration on the Rights of Indigenous Peoples. When resource development projects within our traditional territory are proposed, we address them through our treaty, the James Bay and Northern Quebec Agreement, and in particular section 22, which provides for the environmental and social impact assessment for such projects.

This process takes into account our peoples' environmental and social concerns. The process results in our involvement in such projects, including environmental monitoring, employment [*Technical difficulty—Editor*] and financial benefits. This environmental and social impact assessment process is a forum that provides for deep engagement. Our engagement has included non-indigenous communities in the region, various levels of government, Hydro-Québec, mining, forestry and other industries. We actually work with project proponents to make their projects more sound environmentally and also more sound from a business perspective.

Has this process of engagement resulted in our ever saying “no” to a project? Yes—most recently in the context of a proposed uranium project. After much dialogue and public hearings, we determined that the project did not meet our standard for social acceptability. But that conclusion was not an absolute declaration. It was the result of an intensive process of engagement. It was a conclusion arrived at through the legitimate process of considering diverse perspectives, diverse interests and diverse opinions. It is how we in northern Quebec express the notion of free, prior and informed consent as it should be, as so much more than only being able to say “yes” to a project.

We're no longer in an era of resource development in Canada where projects are undertaken out of sight or out of mind. The world has become a smaller place. It's no longer possible anywhere in the world to pretend that development can supersede all other interests. This is a reality that has required that we all find the path that works for our territory. We have done so in an honourable way.

Bill C-15 and the UN declaration are not about enabling unilateral declarations. They are about precisely the opposite. They are about transitioning from the past, when such declarations were the norm, to a reality in which everyone has a voice. The UN declaration is about inclusiveness through honourable engagement. We have worked hard over the last 45 years to find the right balance of indigenous rights, development and governance. If it can be done in northern Quebec in a way that diverse voices find beneficial, then it can be done across the country.

● (1215)

The UN declaration will set the standard for the necessary conversations and the necessary engagement, which must freely take place wherever there is an intersection between resource development and indigenous lands. Anything less would entail a perpetuation of paternalism and colonialism and, as we all surely know by now, those are dead ends that serve no one in the long run.

Meegwetch.

● (1220)

The Chair: Thank you very much for your testimony.

Next we go to Mr. Johnson.

You have six minutes, along with Ms. Inutiq. Go ahead, please.

Mr. Dillon Johnson (Member, Executive Council, Land Claims Agreements Coalition): [*Witness spoke in Sliammon and provided the following text:*]

ʔaǰečepʔot. toqʷanən kʷəṯ^{θ} nan. tawač ɬaʔəmɛn. čɛčɛhatanapɛč.

[*Witness provided the following translation:*]

How are you all doing? My name is toqʷanən. I am from Tla'amin Nation. I thank you all.

[*English*]

Honourable members of Parliament, thank you for the invitation to provide some remarks on Bill C-15 from a modern treaty perspective.

My name is Dillon Johnson. My Tla'amin name is toqʷanən and I'm a member of the Tla'amin Nation executive council. As mentioned in my sound check, the Tla'amin Nation territory is located in the area now more commonly known as the Sunshine Coast of B.C. We are a Northern Coast Salish nation that negotiated a modern treaty that took effect in 2016.

Tla'amin Nation is a member of the Land Claims Agreements Coalition, or LCAC, which was formed in 2003 by modern treaty holders to collectively address modern treaty implementation issues that are of a federal nature. Modern treaties are comprehensive land claims agreements. The first was the James Bay and Northern Quebec Agreement, entered into in 1975. Twenty-six modern treaties now exist in B.C., Yukon, NWT, Nunavut, Quebec and Newfoundland and Labrador and cover more than 40% of Canada's land mass.

Tla'amin Nation is also a member of the Alliance of BC Modern Treaty Nations, which was formed in 2018 to collectively address modern treaty implementation issues that are of a provincial nature. All eight modern treaty nations in B.C. are members of the alliance, and we are currently actively engaged with the province on developing an action plan to implement B.C.'s UN declaration legislation, which is quite similar to Bill C-15, and came into force in November 2019.

Our messages in that work are similar to the messages that I am pleased to be able to share with the committee today. I'll focus primarily on what many consider, from a modern treaty perspective, to be the most significant provision of the declaration, namely, article 37, and then I'll close with a few points on the action plan required under clause 6 of the bill.

Article 37 states, in items one and two, that "Indigenous peoples have the right to the recognition, observance and enforcement of treaties..." and that "Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties...".

The effect of article 37 is clear: Every other article set out in the declaration must be read in the light of the primacy of the right of modern treaty holders in Canada to have their treaties recognized, observed and enforced.

I must say that this is not to minimize or detract from the importance of the other articles set out in the declaration, each of which must be implemented to enable the full recognition, promotion and protection of the rights of indigenous peoples. Treaty rights are already recognized in section 35 of the Constitution, but those rights have too often not been observed by politicians in their legislative initiatives, nor by officials in their administrative actions or when exercising statutory authority.

The requirement under clause 5 of the bill that government "must...take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" means ensuring treaty rights will not be diminished or eliminated by legislation or any administrative action contemplated by legislation.

This is what article 37 requires, so when enacting legislation, entering agreements, adopting policies or contemplating administrative action, government must determine whether doing so would diminish or eliminate a right under a modern treaty, and when exercising statutory authority, every statutory decision-maker must ensure that their decision is consistent with the recognition, observation and enforcement of modern treaty rights.

The declaration recognizes the distinct standing of indigenous peoples with treaties. In light of this, it seems appropriate that the action plan contemplated by clause 6 of the bill should have a separate chapter for modern treaty partners. In my view as a representative of a modern treaty partner, an effective action plan should include an upfront commitment to the timely, effective and fully resourced implementation of modern treaties and detailed actions to support this commitment.

Unfortunately, the timely, effective and fully resourced implementation of treaties has not been a priority for the Government of Canada. When we entered into our treaties, the government repeatedly avowed that modern treaties are the ultimate expression of reconciliation. However, time and time again, we have encountered challenges in advancing our government-to-government relationship and our shared commitment to treaty implementation.

This act and the development and implementation of the action plan provide the Government of Canada and its modern treaty partners a unique opportunity to transform our government-to-government relationship and align it with the requirements of the declaration. We are committed to working collaboratively, efficiently and productively with the government to build the kind of treaty partnership that all sides envisioned when we entered into our treaties.

Thank you for the time today. I look forward to the question period.

● (1225)

The Chair: Thank you very much for your submissions.

Now we'll go to a six-minute round of questioning.

Go ahead, Mr. Viersen.

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

I want to thank our witnesses for being here today.

The bill is fairly straightforward. There's a long preamble and a long appendix at the end, but the actual meat and potatoes of the bill really comes down to clause 4, proposed paragraphs (a) and (b).

Paragraph (a) is to “affirm the Declaration”—UNDRIP—“as a universal international human rights instrument with application in Canadian law”. So that's the first part of the bill. The second paragraph is to “provide a framework for the Government of Canada's implementation of the Declaration”.

Conservatives don't have any issue with the proposed paragraph 4 (b), as to the implementation of the framework. What we are concerned about is just basically Canadian sovereignly and the mandating of a UN document to be Canadian law.

I'll start with Mr. Johnson. You referenced section 35 of the Constitution. Maybe I was mistaken, but I thought you referenced that. Is that not where we want to start with, rather than the UN declaration?

Mr. Dillon Johnson: Modern treaties need to mean something. We negotiated these agreements and they have the strength of the Constitution protecting them.

Our view on UNDRIP—or at least my view on UNDRIP, and what I've heard other members of the LCAC and the alliance say as well—is that this provides an opportunity for modern treaty nations to elevate the focus of treaties within Canada. Although we've entered into these agreements that are constitutionally protected under section 35, they're often treated as an afterthought. The attitude is that we've met the agreement or we've reached the agreement and we go our separate ways, whereas, we want what we were promised, which was an evolving, living relationship—more of a marriage than a divorce.

With UNDRIP, this legislation, the action plan and the resulting reform of bringing legislation in line, we see this as an opportunity to bring the whole of government focused—

Mr. Arnold Viersen: To clarify, what does the term “application in Canadian law” mean in relation to UNDRIP that you don't have under section 35?

Mr. Dillon Johnson: The application of Canadian law under UNDRIP?

Mr. Arnold Viersen: Paragraph 4 (a) just says that UNDRIP will now have “application in Canadian law”. I'm just trying to understand what that means and how does that change what we currently have, where under section 35 we already have....

What changes with UNDRIP having “application in Canadian law”?

Mr. Dillon Johnson: Isn't that an exercise that needs to be sorted out within bringing the legislation in line? Isn't there a commitment to make sure to consecrate the laws?

Mr. Arnold Viersen: That's the second part of the bill. The bill does two things.

The first part is just declaring that UNDRIP has “application in Canadian law”. The second part is providing a framework to engage the Government of Canada in the “implementation of the Declaration”, and nobody has a problem with that.

It's the weird statement about making UNDRIP have “application in Canadian law”. What does that mean? Does that mean that the court decisions that have been hard won and fought for over the past are now moot if UNDRIP says something different? What does that mean?

● (1230)

Mr. Dillon Johnson: I don't think so.

That's why article 37 is a focus of many of the members of the LCAC. It's because they see potentially exactly what you're getting at, where there will be groups without section 35 protected or established rights, or rights taking precedence over section 35 rights. That's a concern, but that's why we're saying that article 37 needs to have primacy I suppose over the other articles, making sure that those section 35 rights that have been established are not infringed upon.

Mr. Arnold Viersen: Mr. Bosum, in the same vein around a UN document having application in Canadian law versus the Canadian Constitution and our jurisprudence over the last number of generations, is there any concern that there will be a conflict between those two?

Ms. Tina Petawabano (Director of Federal and Indigenous Relations, Grand Council of the Crees (Eeyou Istchee)): Good afternoon.

Grand Chief Bosum is having some technical issues, so he's trying to come back on.

Mr. Arnold Viersen: Did you want to speak on his behalf?

Ms. Tina Petawabano: I will wait, because he's just getting back on.

Mr. Arnold Viersen: Okay. Mr. Picard, do you want to talk to that a little bit?

The Chair: I don't believe we have him connected.

Mr. Arnold Viersen: How is this going to work, Mr. Chair?

The Chair: Mr. Viersen, let me offer you some time.

Mr. Arnold Viersen: Okay.

The Chair: After the next round of questioning I'll keep a couple of minutes open for you so you can follow up with that.

Mr. Arnold Viersen: Okay.

The Chair: We'll go now to Lenore Zann for six minutes.

Ms. Lenore Zann (Cumberland—Colchester, Lib.): Thank you very much, Chair.

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

I wanted to say, first of all, thank you very much for your presentations. I certainly agree with everything that has been said here. It is time to change and it is time for governments on all levels to listen to and respect first nations across the country and work with them in consultation to create a better future for all children.

I'd like to just focus now on the free, prior and informed consent. It seems that it is increasingly central to public discourse and policy debate regarding indigenous reconciliation. At the same time, however, the meaning, nature and roots of FPIC are poorly understood, including how it's understood in domestic and international law, its foundations in indigenous legal orders, the relationship of FPIC to indigenous sovereignty and jurisdiction, and how the [*Technical difficulty—Editor*] governments is connected to the implementation of FPIC.

Could you speak to me, please, Chief Bosum? Is he there, or has he gone?

The Chair: Technically, we're not connected.

Ms. Lenore Zann: Okay. Would Mr. Johnson like to speak to that?

Mr. Dillon Johnson: On the topic of FPIC, I'm not the most qualified to speak to this whole matter, so I'd defer to—

Ms. Lenore Zann: No worries. Would one of the other witnesses like to speak to this—free, prior and informed consent?

The Chair: Let me ask Mr. Picard, who's joined us.

Mr. Picard, can you open your mike and give us a brief sample so that we can ensure the translation works?

[*Translation*]

Chief Ghislain Picard (Assembly of First Nations Quebec-Labrador): Hello, can you hear me?

Ms. Lenore Zann: Yes, it's fine. Thank you.

[*English*]

The Chair: Mr. Clerk, are we good to go with Mr. Picard?

● (1235)

The Clerk of the Committee (Mr. Naaman Sugrue): It's difficult to say. Perhaps we'll try to get his answer to the question, and then I'll be able to give an indication.

The Chair: Lenore, could you repeat the question? We'll ask Mr. Picard to try to respond and that should solve our technical issue.

Ms. Lenore Zann: Perhaps I'll put it in another way.

It seems that the most contentious article in UNDRIP for some people is about the right, whether "free, prior and informed consent" means that first nations will have a veto over resource development on their traditional territories, and that the bill would create another avenue for legal challenges for development projects.

The people who oppose this bill seem to feel that this will stop development and resource development under any circumstance, and weaponize UNDRIP against first nations and other rural communities that favour such development. Can you explain to us what "free, prior and informed consent" actually means?

[*Translation*]

Chief Ghislain Picard: Thank you very much.

I will answer in French if you allow me.

First, I want to apologize.

Ms. Lenore Zann: Thank you.

Chief Ghislain Picard: As a matter of fact, I just dealt with thirty minutes of technical difficulties, which prevented me from being with you in time.

If this is an opportune time, we will most certainly share with you the views of the Assembly of First Nations Quebec-Labrador on the bill as a whole and the amendments that we would like to see adopted. However, we are aware that the Cree regional government has also provided its comments. We believe that these comments deserve our full respect, even if in some cases we do not necessarily agree with their premise. I think it is worth making that clear.

Free, prior and informed consent is an element of the declaration that raises enormous concerns. You have just confirmed that. Still, I think it's worth reiterating that the declaration in its entirety is the responsibility of all parties involved. This applies to industry as well as governments, and first nations governments as well. It is more from this perspective that the principle of free, prior and informed consent should be considered.

That being said, we are extremely vulnerable to various interpretations [*Technical difficulty*] of what I would call an uncertain climate politically, first of all, as well as in terms of development. I give you as an example some of the interpretations of the current Quebec government. It anticipates that there would really be episodes of darkness if Bill C-15 were passed and the principles of the declaration were recognized in full.

I think we have to be extremely careful, because we are all a little bit vulnerable to what I would call a [*Technical difficulty*]. So the point is that the future is uncertain in terms of the relationship between first nations governments and Canadian governments, or even between first nations governments and industry.

[*English*]

The Chair: Mr. Picard, thank you.

I'm allowing some extra time because of the issues.

Ms. Zann, I have a hand up from one of our witnesses. Ms. Inutiq, did you want to comment on Ms. Zann's question?

Ms. Kunuk Inutiq (Director of Self-Government, Nunavut Tunngavik Inc., Land Claims Agreements Coalition): It was my understanding that I was appearing as a witness, and that I had six minutes, so I wanted clarification on that.

The Chair: Mr. Johnson and you were part of one particular group of witnesses, so typically that would be six minutes shared, however, in view of the calamities befalling us technically, would you like to add something to the commentary now?

I can't give you six minutes right now, but I could offer you a couple of minutes.

Ms. Lenore Zann: Or I could ask a question.

The Chair: Okay, I'll let Lenore Zann go ahead.

● (1240)

Ms. Lenore Zann: Thank you so much.

The Truth and Reconciliation Commission calls to action not only call on governments to fully adopt and implement the declaration, but number 44 specifically calls for the development of an action plan to achieve the UN declaration's goals.

Could you please comment on the importance of the development of an action plan being part of this legislation and what you believe would be essential to a well-designed process to develop and implement that action plan.

Ms. Kunuk Inutiq: I'm part of the action planning process for the missing and murdered indigenous women calls to justice. The learning from that process and how it could work is really interesting. The action plan is a critical piece of this process, because we don't know how the UNDRIP bill will impact our communities. That piece, in terms of how it will impact our communities, is that action plan.

A lot us who have modern treaties—in our case, we even have a public government that was a product of our modern treaty—are still facing severe poverty and housing crises. Our language is declining. Three quarters of our children go hungry each day. It's obvious that systemic discrimination and racism are still very endemic in our systems, and the bill has the potential to create that conversation and work towards dealing with that systemic discrimination and racism, and that's in that action plan.

Ms. Lenore Zann: Thank you so much.

The Chair: Ms. Gill, please go ahead.

[*Translation*]

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

I was wondering if, given the technical difficulties, it would be possible to give Chief Picard time to make his usual presentation, even if it meant seeking unanimous consent to continue the meeting beyond the usual time limit. Technical difficulties, unfortunate in COVID-19 times, should not deprive witnesses of their right to speak.

[*English*]

The Chair: Okay, we'll work that out.

Ms. Petawabano, do you have a question or a comment?

Ms. Tina Petawabano: I wanted to comment on two of the first questions that were put forth, since my grand chief is still trying to get on board. May I?

The Chair: Please go ahead.

Ms. Tina Petawabano: For the first question that was put forth, it should be understood that the preamble is an important part of Bill C-15. It lays out the principles by which the operative sections of the bill must be interpreted. They are not peripheral; they are essential and critical.

In its totality, Bill C-15 provides the robust framework for levelling the playing field and provides for genuine inclusiveness of indigenous peoples in the economic life of government. The application of the Canadian law clause provides the basis for ensuring that all laws of Canada must be consistent with the provisions of UNDRIP. This was our first comment to the first question.

● (1245)

The Chair: Thank you very much.

Committee, I'm going to ask for consent to go past our time in order to pick up some of the lost testimony and so on. Could I see a show of hands that we're all okay with going past the appointed time?

Some hon. members: Agreed.

The Chair: In order to accommodate what has been missed, before we get to Ms. Gill, who is the next questioner, I believe you wanted Monsieur Picard to make his statement.

Mr. Picard, I don't see your picture on the screen, but I assume you can hear me. Were there points of your testimony that you weren't able to make that you would like to make now?

[*Translation*]

Chief Ghislain Picard: Thank you very much.

[*English*]

I certainly could quickly go over what we had prepared. Obviously technical issues have sort of taken over for many of us, making it difficult to provide a full statement. I could certainly, depending on the time you would allow me, provide my comments. It probably would require roughly five minutes. Is that possible, or do you want me to shorten that?

The Chair: Five minutes is all right. Go ahead, please.

Chief Ghislain Picard: I'll do it in the two official languages, starting with French.

[*Translation*]

Thank you all very much.

[*Witness spoke in an indigenous language*]

[*French*]

The Assembly of First Nations Quebec-Labrador, or AFNQL, wishes to thank the standing committee for the opportunity to present its brief, as part of the study of Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples. The AFNQL is a forum for the chiefs of 43 first nations communities in Quebec and Labrador. At the heart of its mission and objectives are the affirmation of and respect for first nations laws, the recognition of first nations governments, the coordination of first nations' positions and the representation of their positions and interests before various forums.

Please note that the AFNQL is tabling a brief that will detail its views on Bill C-15. With all due respect, I want to make it clear that the brief reflects the positions of a majority of first nations in our region. You have heard or will hear the position of the Cree nation. That nation's way of thinking deserves our respect, even though our brief will confirm that we do not necessarily share the same views.

By tabling its brief, the AFNQL is requesting that amendments be made to clarify and strengthen certain parts of Bill C-15, a bill of the utmost importance. To this end, the AFNQL chiefs unanimously adopted a motion that "amendments to Bill C-15 are a minimum condition in order for the AFNQL to even consider supporting the bill."

In fact, the implementation of the rights and principles from the Declaration for the Survival and Welfare of Indigenous Peoples Located in Canada requires that Bill C-15 take a greater step to move beyond the status quo.

To be clear, the chiefs support the principle of a bill that proposes the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. However, they cannot support Bill C-15 in its current form. The bill must go much further. The political context in Quebec, which conditions the relationship between first nations and the provincial government, deserves particular attention. We have to deal with a provincial government that refuses any discussion on the implementation of the declaration in Quebec, despite a resolution from its national assembly, which commits it to negotiate the terms of its implementation.

Next, the constitutional validity of the Act respecting First Nations, Inuit and Métis children, youth and families, Bill C-92, passed in 2019, is being challenged by the Quebec government in the Court of Appeal. With the federal government considering the introduction of additional federal legislation, including in the areas of first nations health and policing, it is essential that the legislative context be conducive to ensuring that all future federal legislation is consistent with the rights and principles of the declaration.

The implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Canada must be done in true partnership, nation-to-nation, that is, with indigenous peoples, and must generate concrete results for the members of our communities. The Prime Minister's commitments to reconciliation are clear, but they are somewhat less clear about results. It is important to note that reconciliation in the Canadian political framework involves a clear commitment from the provinces as an essential condition for any progress in relations with first nations.

In closing, this measure cannot be treated as a form of relinquishment by first nations governments of their areas of jurisdiction, over which first nations will continue to fully exercise their right to self-determination.

● (1250)

[*English*]

Indeed, our region has carried out a vigorous examination of the bill, and we conclude that essential amendments are required so that it meets the minimum standard of legal and political acceptability. Several provisions of the bill must be amended to move beyond the status quo, including achieving certainty that the provisions of the UN declaration will be applied to interpret section 35 of the Constitution Act, 1982, and to enable the effective implementation of UNDRIP in Canadian law.

The following amendments of Bill C-15 have been identified for the bill to meet the minimum standard.

One, during a discussion with the AFNQL on March 12, Mr. Lametti indicated that his understanding was that UNDRIP should serve to interpret section 35. The statement has also been made by Minister Bennett and the AFN. Unfortunately, section 2.2 of the bill fails to clearly state this and meet this standard.

Therefore, section 2.2 should be amended to expressly state that the laws of Canada, including section 35, must be interpreted in accordance with the rights and principles derived from UNDRIP; and that the law does not operate to abrogate or limit the aboriginal treaty rights of indigenous peoples recognized in the current section 35.

Two, the wording in this same section concerning non-derogation should therefore be removed from this provision.

Three, we are also concerned about overreliance on an expansive preamble that fails to reflect the substantive provisions of the bill. In numerous preamble provisions, the body of the bill most importantly, our region has identified that the bill must include a substantive provision in the body of the bill devoted to the remediation of the doctrine portion of discovery in Canadian law.

Four, finally the bill must include a provision requiring that all courts consider the rights and principles of UNDRIP when ruling on matters, issues or subjects directly or indirectly affecting aboriginal and treaty rights of indigenous peoples.

These amendments are what is minimally required for this bill to obtain support from the Assembly of First Nations Quebec-Labrador, and our written brief also proposes additional amendments that should be considered.

The FNQL deplores the fact that the emergency regarding the adoption of the bill to implement the declaration has lasted far too long, and that we are now being asked to support this bill under duress. A bill of such great importance cannot be subject to instrumentalization with urgency as its sole argument.

The FNQL fully supports the principles of UNDRIP, however, the FNQL opposes Bill C-15 in its current form and has clearly indicated which amendments could be made to make it more acceptable. This is not necessarily a missed opportunity, and Canada can still do what it takes.

[*Translation*]

Thank you very much.

[*Witness spoke in an indigenous language*]

[*English*]

Thank you very much.

The Chair: Thank you, Mr. Picard.

We'll continue now with the six-minute round of questioning with Madame Gill, followed by Ms. Gazan. I offered Mr. Viersen a couple more minutes after his session.

We'll go now to Madame Gill.

[*Translation*]

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

I thank all the witnesses for being with us. What you are telling us is valuable and helpful to our work.

My question, which is for Chief Picard, is about the presentation he just delivered.

You talked in particular about the preamble and the substantive provisions, in terms of repudiation. For our benefit and, of course, for your own, could you elaborate on what you have against the current bill?

Chief Ghislain Picard: I think the brief details the amendments we are proposing to really strengthen the body of the bill. A lot of people agree that important elements of the preamble, including the issue of repudiation, should be incorporated into the core of the bill. In fact, they talk about the doctrines of superiority, which include this important aspect of discovery. In my view, the proof is in the pudding, and I don't see why Canada is so reluctant to strengthen the very core of the bill in this way.

● (1255)

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

I would have liked to hear from Chief Bosum, but he is not here either. I know we can approach the bill from a number of angles.

Mr. Picard, you said it would take more time to get it right. On the one hand, there is an urgency, but on the other hand, we need more time to amend the bill.

What do you think the timeline should be for completing this work and how could we, as much as possible, get there quickly?

Chief Ghislain Picard: I don't know if it's possible. In my opinion, it is very difficult to set a specific deadline for the process that we all need to pursue. The most important principle, which I would like to emphasize, is that of finding the right balance between the urgency to act and the obligation to do it right. This is the way we should look at our concern. We have to find the right balance between these two elements. I think we all live that reality.

We understand the importance of the legislative process, which you can have some control over, but right now, the aspect that we take the liberty of emphasizing is the great opportunity that we feel we have. I may repeat myself. We fully support the principle of a bill proposing the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, but we still need to make sure we get it right.

One element is not to be overlooked, though not to be criticized, and that is the geopolitical context, which is quite diverse across the country. We are well aware that provinces are asking for additional time before the passage of Bill C-15, as introduced last December. For our part, we are making much the same arguments, but for different reasons. This is also important. I have given the example of Quebec, and it is up to the other Canadian provinces and territories to make their position known. In Quebec, the government is in absolutely no hurry to sit down and consider the implementation of the declaration based on what Bill C-15 proposes.

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

The question of geopolitics is very interesting, but you have to understand that there are over 600 nations in the first nations territories. I imagine that there are disparities as well from one community to another and perhaps also within the first nations themselves.

You represent communities that are located in Quebec and Labrador. Do you also observe a great disparity across Canada?

Chief Ghislain Picard: No. You have just to some extent described the political reality as it is expressed within our various nations. I say that very respectfully. There are parties that have to take into account what I would call our consideration of the political landscape and its environment. There are indeed nations that have not only achievements, but a balance of power that is not that of some other nations. This is fully demonstrated and supported. I have spoken about the situation in Quebec because that is the reality that I have to deal with on a regular basis.

Last Friday, we had a second meeting with Mr. Legault's government, at which he was present. It was our second meeting since he took office. Mr. Legault took the liberty of reiterating to the chiefs we represent and who sit at our table the same argument he made last November. He said that he did not want to implement the UN Declaration on the Rights of Indigenous Peoples at all, based on arguments that were made earlier on the issue of a possible veto power and also based on principles that were considered perhaps a bit too coercive, such as free, prior and informed consent.

I am therefore of the opinion that we are very far from a climate conducive to open, frank and comprehensive discussions on the implementation of the declaration in a provincial context. Obviously, Quebec has not been alone—

● (1300)

Mrs. Marilène Gill: [*The member spoke in Innu, as follows:*]

Tshinashkumitin.

[*Translation*]

Thank you.

[*English*]

The Chair: Thank you.

Ms. Gazan, you have six minutes. Please go ahead.

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

My first question is for Regional Chief Picard.

I thought that your comments that the Quebec government is not ready to implement the United Nations Declaration on the Rights of Indigenous Peoples were peculiar, particularly because the JBNQA uses the United Nations Declaration on the Rights of Indigenous Peoples as a framework for negotiations. It's something that is currently being used by the local government.

I'm wondering why this has shifted, knowing that certainly we've seen, with the Crees of Eeyou Istchee, that they have signed several agreements over the past 45 years by utilizing the framework.

Why would you come out so strongly against the minimum human rights that have clearly afforded strong relationships in the province?

Chief Ghislain Picard: Let me just rectify that. We're not going against any of the minimal standards that are promoted by the UN declaration; we support the declaration in its entirety. The means by which to implement it is where we have some difficulty. Understanding and knowing the lay of the ground in Quebec from a political and geopolitical perspective I think will certainly indicate, with all due respect—and this is not a criticism—that the kind of leverage some nations have is not the leverage that other nations have.

Ms. Leah Gazan: I agree with you; that's certainly the reality.

However, would you not agree with me that the JBNQA specifically, since it was enacted 45 years ago, has modelled positive relationships based on the minimum rights afforded by the United Nations Declaration on the Rights of Indigenous Peoples? All indigenous peoples and nations throughout the country should be afforded the same level of respect, which is something that is not happening. Would you agree with me?

Chief Ghislain Picard: I totally agree with you. That's exactly what we're seeking.

There again, at the risk of repeating myself, this is a reality that's faced throughout Canada. How can I put it? There are three treaties in Quebec, including the Naskapi and the Inuit. To me, they have the kind of relationship that other nations in Quebec would hope for. It is supported through legislation as well, so those rights, those new rights, are implemented through legislation. I'm not the one to speak about that in detail; I'm just referring to that situation to say that this is the kind of leverage we're hoping to achieve for other nations

● (1305)

Ms. Leah Gazan: I say that because I know that, with Bill C-262, the AFNQL adopted a unanimous resolution in support of it. We now have on the table—and I'm a New Democrat talking about a Liberal bill here—Bill C-262, now called Bill C-15, yet there are now all these alarm bells being raised even though we know both bills are similar. I find that concerning, particularly with the fact that you commented on the preamble.

I know there has been criticism of the preamble of Bill C-15 as not being legally binding and a means to confuse and mislead indigenous peoples and nations. That's one of the things that have been quoted. We know this is a totally inaccurate understanding of the role preambles play in legislation, especially in light of how the federal Interpretation Act, article 13, defines the legal effect of a preamble. It states:

> The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

That's the federal Interpretation Act with respect to legislation. I am wondering where the concerns are coming from about the preamble not having legal effect with respect to Bill C-15.

Chief Ghislain Picard: I would be of the opinion that we certainly have the right to review our position, reassess our position, in light of the current political context. Since BillC-262, what have we experienced? This is where I go back to the position of provinces. We all know that at least six jurisdictions have expressed concern, going back to last fall, and before that, as the federal government was getting ready to introduce Bill C-15 in December.

At the time, what we also had in that evolving political context, if you will, was the Province of Quebec challenging a bill that was co-developed with first nations, which is Bill C-92. It's the same for Bill C-91. This is where we expressed, in my view, very legitimate concerns in terms of making sure that Bill C-15.... And, again, I want to restate the fact the UN declaration poses no concerns when it comes to our first nations. It's how we—

Ms. Leah Gazan: If you could just—

Chief Ghislain Picard: —ensure to give it the proper strength to be properly implemented, considering the geopolitics across the country.

The Chair: We're at time there.

Ms. Leah Gazan: Thank you so much.

The Chair: We're going to conclude with two things: one, I'm going to ask you, Monsieur Picard, to submit to the clerk the amendments that you discussed; and, two, I have allowed Mr. Viersen another question because of the interruption that occurred earlier.

Arnold, you have the concluding point.

Mr. Arnold Viersen: Thank you, Mr. Chair.

I want to welcome Mr. Picard back to the meeting here.

I just had a question for him, and I'm not sure if he heard it the first time. Mr. Johnson and I engaged in a bit of a conversation around the terminology about UNDRIP having application in Canadian law.

I'm just wondering if he's concerned at all about the terminology that is laid out in UNDRIP and the terminology that has come over generations of legislation and jurisprudence in this country, for example, FPIC versus the duty to consult. The duty to consult was a hard-won battle in the courts of Canada. Is he not concerned that if we introduce a new concept of FPIC into Canadian law we will be muddying the waters around what is the duty to consult and what is FPIC, and essentially start a whole new round of court battles?

Chief Ghislain Picard: Certainly, I'll try to respond, given how I understand your question, in the best way possible.

Obviously, the duty to consult has been framed by different courts nationally, and then we went a step further within the language of the declaration in referring to FPIC. Some would interpret it as a new condition, others would see it as a right to veto. This is where some parties would see it as advantageous to create that fear among Canadians in general, but more specifically with industry, that we're really putting our collective future in the hands of indigenous peoples. This is not so.

To me, this is where it's important to remind ourselves that the declaration is an international instrument that calls for input by all parties. First nations people, indigenous peoples, have as much of an obligation deriving from the principles of the declaration as Canadian companies, the federal government, and the provinces and territories.

● (1310)

The Chair: Thank you very much.

That will bring us to the conclusion of our meeting today. Apologies to all of those in attendance for the issues that delayed us.

I want to remind everyone that written submissions bear the same weight as live testimony in our council. If there's anything that was overlooked, please make sure the clerk gets a copy of the remarks that you wish to have made or answers to questions that may not have been asked.

Once again thank you to all. We'll see you on Thursday.

Mr. Anandasangaree, you have a hand up.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): I have a procedural question, Mr. Chair. I'm wondering if there's any way, between you and the clerk, we can work out the process of witnesses a bit more smoothly. Today was very disruptive for the witnesses, and I'm sure it was difficult for members as well.

I am wondering if there is a mechanism. For example, the clerk could give us a list of people in attendance who are going to be speaking. This could be sent ahead of time so that if an organization is bringing more than one witness, we can ensure there is ample time for them or there is some understanding of the division of time. This would hopefully make things smoother. There is also the possibility of having the witnesses join for the full two hours to avoid the transition. Given the limited time we have, we want to ensure that the process goes as smoothly as possible and that members have adequate time to ask questions.

The Chair: These are all valuable points. The clerk and I will discuss that after we leave the meeting, and hopefully at our next meeting on Thursday we'll have smoothed over some of the rough spots.

I'll ask Mr. Powlowski to offer a motion to adjourn.

All in favour? It is carried.

The meeting is adjourned.