UNDRIP

Declaration on the Rights of Indigenous Peoples Act

BILL 41

2019-2020
BILL 41

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Honourable Scott Fraser
Minister of Indigenous Relations and Reconciliation
Explanatory Note

This Bill requires the government to take all measures necessary to ensure the laws of British Columbia are consistent with the United Nations Declaration on the Rights of Indigenous Peoples and to prepare and implement an action plan to achieve the objectives of the Declaration. The minister must report annually on the progress that has been made towards implementing the necessary measures and achieving the goals in the action plan. The Bill also provides for agreements to be entered into with Indigenous governing bodies, including agreements relating to the exercise of a statutory power of decision.
HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1 (1) In this Act:

"Declaration" means the United Nations Declaration on the Rights of Indigenous Peoples set out in the Schedule;

"Indigenous governing body" means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982;

"Indigenous peoples" has the same meaning as aboriginal peoples in section 35 of the Constitution Act, 1982;

"statutory power of decision" has the same meaning as in the Judicial Review Procedure Act.

(2) For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.
(3) For certainty, nothing in this Act, nor anything done under this Act, abrogates or derogates from the rights recognized and affirmed by section 35 of the Constitution Act, 1982.

(4) Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.

Purposes of Act

2 The purposes of this Act are as follows:

(a) to affirm the application of the Declaration to the laws of British Columbia;
(b) to contribute to the implementation of the Declaration;
(c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

Measures to align laws with Declaration

3 In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

Action plan

4 (1) The government must prepare and implement an action plan to achieve the objectives of the Declaration.
(2) The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia.
(3) The action plan must contain the date on or before which the government must initiate a review of the action plan.
(4) After the action plan is prepared, the minister must, as soon as practicable,
   (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or
   (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting.
(5) The government may prepare a new action plan in accordance with this section.

Annual report

5 (1) Each year the minister must prepare a report for the 12-month period ending on March 31.
(2) The report must be prepared in consultation and cooperation with the Indigenous peoples in British Columbia.
(3) In the report under subsection (1), the minister must report on the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan.

(4) On or before June 30 in each year, the minister must

(a) lay the report prepared for the 12-month period ending on March 31 in that year before the Legislative Assembly, if the Legislative Assembly is then sitting, or

(b) file the report prepared for the 12-month period ending on March 31 in that year with the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting.

Agreements

6 (1) For the purposes of this Act, a member of the Executive Council, on behalf of the government, may enter into an agreement with an Indigenous governing body.

(2) Subsection (1)

(a) is subject to section 7, and

(b) does not limit a power of the member to enter into an agreement under any other enactment.

Decision-making agreements

7 (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to one or both of the following:

(a) the exercise of a statutory power of decision jointly by

(i) the Indigenous governing body, and

(ii) the government or another decision-maker;

(b) the consent of the Indigenous governing body before the exercise of a statutory power of decision.

(2) A member authorized under subsection (1) to negotiate an agreement may enter into the agreement without further authorization from the Lieutenant Governor in Council unless the Lieutenant Governor in Council restricts the initial authorization to only the negotiation of the agreement.

(3) Within 15 days after the Lieutenant Governor in Council authorizes the member to negotiate an agreement under subsection (1), the member must make public a summary of the local governments and other persons the member intends to consult before or during the negotiation.
(4) An agreement entered into under subsection (1)
   (a) must be published in the Gazette, and
   (b) is not effective until the agreement is published in the Gazette or a later
date specified in the agreement.

(5) For certainty, subsection (4) applies to an agreement that amends an
agreement entered into under subsection (1).

Offence Act
8 Section 5 of the Offence Act does not apply to this Act.

Power to make regulations
9 The Lieutenant Governor in Council may make regulations referred to in
section 41 of the Interpretation Act.

Commencement
10 This Act comes into force on the date of Royal Assent.

SCHEDULE
(Section 1)

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly
[without reference to a Main Committee (A/61/L.67 and Add.1)]


The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2
of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on
the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration
of and action on the Declaration to allow time for further consultations thereon, and also decided
to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the
annex to the present resolution.

107th plenary meeting
13 September 2007

chap. II, sect. A.
Annex
United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,
Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights\(^2\) and the International Covenant on Civil and Political Rights,\(^2\) as well as the Vienna Declaration and Programme of Action,\(^3\) affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

\(^2\) See resolution 2200 A (XXI), annex.
\(^3\) A/CONF.157/24 (Part I), chap. III.

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,
Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3
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
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.

Article 5
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
Article 6
Every indigenous individual has the right to a nationality.

Article 7
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
   (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
   (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
   (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
   (d) Any form of forced assimilation or integration;
   (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10
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 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.
Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.
Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.
Article 34
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35
Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36
1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37
1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38
States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39
Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.
Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.
I, too, would like to acknowledge all the committee members, who put a lot of work into travelling around and listening and learning from many people — especially the Chair and I, who spent much time working with the Committee Clerk, Jennifer Arril; the Hansard staff, of course, Amanda and Simon; our researchers and report writers, Karan and Katey. They’ve done a fantastic job, and I do believe this is a great collaboration and dedication with this special project.

Mr. Speaker: The question is the adoption of the report.

Motion approved.

Tabling Documents

Hon. G. Heyman: I have the honour to present the Environmental Emergency Program 2017-19 Report to Legislature.

On October 30, 2017, the Environmental Management Act was brought into force and set a foundation for strengthening spill response in British Columbia. One of the new requirements is that the minister provide a report to the Legislative Assembly that outlines the administration, operation and effectiveness of this new section of the Environmental Management Act, 2.1. This first report summarizes and highlights the achievement of the environmental emergency program for this two-year period and includes an overview of the program, including spill statistics and responses throughout the province.

Orders of the Day


[R. Chouhan in the chair.]

Second Reading of Bills

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Hon. S. Fraser: I would like to acknowledge the territory of the L̓ak̓̓w̓el̓ł̓ Welł̓s-speaking people and thank the Esquimalt and Songhees Nations for allowing us to do our business here today.

I move that Bill 41 be now read a second time.

Bill 41 will align B.C.’s laws with the 2007 United Nations declaration on the rights of Indigenous peoples and the constitutional rights of Indigenous peoples in Canada. It sets the UN declaration as the framework for reconciliation in British Columbia, as called for by the Truth and Reconciliation Commission’s call to action No. 43.

Before I go further, I would like to read from the preamble to the UN declaration itself, which is included within the bill. I think it sets the stage well.

“Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

“Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

“Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

“Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

“Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,
"Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

"Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

"Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

[2:45 p.m.]

"Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

"Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

"Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

"Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

"Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

"Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

"Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

"Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

"Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

"Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

"Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

"Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

"Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

"Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

"Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect."

That is our aim here with this legislation — legislation that was developed in partnership with the First Nations Leadership Council, legislation that provides a collaborative framework for reconciliation between the provincial government and Indigenous peoples in British Columbia.

I have spent some time reflecting on this point: developed in partnership with Indigenous peoples. When you think about the history of this province and the laws that have been created, how often could any of us truly say that?

[2:50 p.m.]

With this legislation, we are affirming the human rights of Indigenous peoples in law in this province, in British Columbia, instead of omitting them. We are setting a path that affirms our
commitment to working with Indigenous governments instead of denying their role as governments. And we are taking a further step towards finally working together for important reasons like an economy that we all can participate in equitably, instead of investing in conflict, court cases and concessions. It is time not just to contemplate a new path but to forge one together.

This legislation is about ending discrimination, upholding human rights and ensuring more justice and fairness. Instead of uncertainty and lawsuits, we can build a robust and sustainable economy by working together. We can create opportunities for Indigenous peoples, families and communities so we all prosper.

A future shaped through sustained connections and relationships — that’s how we approach this legislation. We worked as partners with the First Nations Leadership Council, the leadership council that represents the shared interests of nations across the province, through the B.C. Assembly of First Nations, the First Nations Summit and the Union of B.C. Indian Chiefs. It is historic to have this kind of collaboration with Indigenous peoples. We are truly building a new relationship, government-to-government, based on respect and recognition of inherent rights. It’s a relationship that will be strengthened as we move forward together.

That theme of collaboration applies within the provincial government as well. I’m standing here today in this place as the B.C. Minister of Indigenous Relations and Reconciliation, but I’m only one member of the provincial cabinet. We don’t work alone. We don’t work in silos. The work of each ministry crosses into other ministries. We work as a team. Nowhere is this more evident than in Indigenous Relations, which touches the work of every other ministry across government.

Pursuing reconciliation with Indigenous peoples is a cross-government responsibility. To truly demonstrate our collective resolve, reconciliation has to be a continuous thread that runs through every government policy and program. That is why the Premier mandated every minister in our government with the responsibility to implement the UN declaration on the rights of Indigenous peoples and the Truth and Reconciliation Commission’s calls to action.

Now, the TRC called on governments to implement the UN declaration as the framework for reconciliation. The UN declaration has 46 articles. They emphasize the Indigenous rights to live in dignity; to maintain and strengthen Indigenous institutions, cultures and traditions; and to pursue development based on Indigenous needs and aspirations. The UN declaration is a statement of basic human rights of Indigenous peoples. It does not create new rights at the expense of other people’s rights. It expresses long-established human rights as they apply to Indigenous peoples — rights like self-government, to be free from discrimination, access to education, health care, and equitable social and economic outcomes.

These are the kinds of rights we all expect to have in the course of our daily lives, accepted and valued human rights that Canadians have helped define and fight for, human rights that are the foundation of our Charter of Rights and Freedoms, human rights that are reflected in the Aboriginal rights that are recognized and affirmed in section 35 of our constitution, rights that the courts have consistently and repeatedly upheld. That includes the Supreme Court decision on the Tsilhqot’in Nation, which recognized Aboriginal title for the first time in Canadian history. This historic decision set a new and higher standard for the recognition of rights of Indigenous peoples.

The UN declaration is a widely respected international human rights instrument, both here in Canada and around the world. It has been endorsed by 148 countries, including Canada.

Adopting and implementing the UN declaration was one of our platform commitments, and that’s what we’re doing. The province has made significant progress in implementing the UN declaration since 2017. We’re modernizing the environmental assessment process through new legislation and implementing Grand Chief Ed John’s recommendations to help to keep Indigenous children out of care and with their families and communities.

We’re committing $550 million over ten years to support the construction of 1,750 affordable housing units off reserve and, for the first time, on reserve and dedicating $50 million towards the work of the First Peoples Cultural Council and First Nations communities to revitalize Indigenous languages.

We’re implementing a new K-to-12 curriculum that makes sure children in B.C. are taught about Indigenous culture and history, making sure that Indigenous children can see their cultures and
histories accurately reflected in that curriculum.

We're contributing more than $70 million to enhancing mental health and addictions supports for Indigenous peoples, shaped and delivered by Indigenous peoples, including two new urban treatment centres and six others to be renovated and rebuilt across this province.

We're establishing the first-ever Indigenous program at the University of Victoria — not the first in the province, not the first in the country, but the first in the world; and making fundamental changes to the way that we make treaties to guide a long-term relationship instead of extinguishing rights and freezing our treaty relationships in time. And we're sharing a stable, long-term source of revenue from one level of government to another so First Nations can invest in self-determination, cultural renewal and services that make life better for families.

This legislation will help us build on this progress and make a real difference in the lives of Indigenous families and everyone across British Columbia.

I want to acknowledge, also, the progress made by governments over the past 25 years. There are many lessons learned about what has worked and what hasn’t worked. An important lesson for all of us is that to truly make progress, we need to recognize the human rights of Indigenous peoples. That is the core of this bill, Bill 41.

Let’s talk about the bill itself for a few moments, please. I will draw your attention first to the interpretation section. That section would typically be called the definitions section. But for this bill, we didn’t want to take that kind of colonial approach, so we have called it interpretation instead of definition.

The bill acknowledges the aspects of the UN declaration that already reflect international conventions or international customary law and that already apply to the laws of British Columbia. While this bill does not, in and of itself, give the UN declaration legal force and effect, it does not delay or affect that current application of the UN declaration.

The purpose of the bill is to affirm the application of the UN declaration to the laws of British Columbia. The declaration will be a foundational framework for the work that needs to be done in relation to our laws in British Columbia. I will add that within our commitment to implement the UN declaration throughout government, its application also extends to policies and operating practices. Over time as laws are built or modified, they will be aligned with the UN declaration.

The bill requires government to develop an action plan. We will do that in partnership and cooperation with Indigenous peoples. The legislation will require annual reporting to monitor progress on the action plan, all in collaboration and consultation with Indigenous peoples. The action plan and reporting will provide transparency and accountability for the work ahead.

The bill, and indeed the UN declaration, recognizes the importance of self-determination and self-government. It will allow us the flexibility to recognize more forms of Indigenous governments than we have been able to do in agreement-making.

This bill provides room for Indigenous peoples to make decisions about their governing structures as they attempt to move out from under the Indian Act. That could exclude, for example, governing bodies such as traditional cultural entities, multiple nations working together as a collective, hereditary governments or a combination of elected and hereditary governments. The important part is that it is based on what the nation chooses, and that supports a key element of the declaration around self-determination. That also provides clarity for government. I believe it will also provide more clarity for businesses and communities about who they should engage when working with Indigenous partners.

The final key aspect of the bill is to provide for a new and additional type of agreement. It’s providing a tool for the province and Indigenous governments to develop true joint decision-making agreements. This legislation creates the framework around how these partnerships will be built. It will provide structure and add clear processes for how joint decision-making would happen, while ensuring administrative fairness and transparency. Such agreements can support predictability for good projects to move ahead and a mechanism for Indigenous peoples to fully participate in decisions that affect them.

This legislation is enabling, so we won’t see the world change overnight once it is passed. It is a measured step on the shared path to reconciliation. A question often raised when we talk about the
UN declaration is around free, prior and informed consent and whether that amounts to a veto. Countless officials, as well as leading experts, have explained in detail and with clarity how consent and veto are different, fundamentally different.

For example, James Anaya, the former special rapporteur for the rights of Indigenous peoples, has explained that free, prior and informed consent — that standard — is meant to ensure that all parties work together in good faith, that they make every effort to achieve mutually acceptable arrangements and that a focus should be on building consensus. This is quite different than veto. In fact, the UN declaration does not contain the word “veto,” nor does this legislation contemplate or create a veto.

This legislation does not limit the right of government to make decisions in the public interest, but there are many decisions where we need to make those decisions with Indigenous peoples. This legislation gives us the tools to get an orderly, structured, transparent process for that.

The province is expected to consult and cooperate in good faith, as called for in the UN declaration, when considering decisions that may affect Indigenous peoples. If government has met this condition, there may be occasions when a disputed project goes forward, and there may be occasions where a project does not go forward. Every project is unique, with many factors that go into the decision-making for approvals. But when you create and follow due process, that is not a veto.

What the legislation will ensure is that there is transparency and clarity in the process so that businesses will know from the get-go what is expected as they move through it. There is a better chance of agreement by working together, by involving Indigenous communities and listening to their knowledge and concerns. That way a project plan can address them.

Our government wants sustainable economic growth because it benefits people and communities all over this province. We are committed to growing our economy so that we can provide the services that British Columbians — all British Columbians — depend on. Indigenous governments are telling us they want the same thing. Too often we have found ourselves in ongoing cycles of conflict and court challenges. Litigation and conflict have been major sources of uncertainty for all of us. This new approach moves us towards respectful partnerships that foster predictability, good jobs and opportunities, while respecting the rights of Indigenous peoples. This bill will contribute to B.C. achieving its fullest economic and social capacity.

[3:05 p.m.]

I want, also, to point out that in many ways, the business community is ahead of government on this. Many companies have recognized the opportunities in moving forward in a collaborative way with First Nations, and they’re seeing the investment certainty that comes from that. We are proposing, with this bill, a consistency with many companies’ efforts. There’s a better chance of an agreement by working together. Outcomes will be better. Not working together and ignoring Indigenous rights almost guarantee disagreement. Bringing Indigenous people into the conversation from the beginning helps create certainty for industry and creates space for Indigenous peoples to benefit economically, socially, culturally.

Collaboration is already happening, and it’s working. This legislation codifies what is happening in many cases already on the ground. Because of the focus on the right to free, prior and informed consent, we don’t always see the conversation include the social benefits that I believe will come from this legislation.

This is about human rights — the right to things like self-determination, to education, to freedom of expression, to economic and social opportunity, and to enjoy those rights free of discrimination. They are the basis of our society. The UN declaration is a statement of the human rights of Indigenous peoples. Implementing it is about ending discrimination, upholding human rights and ensuring more economic justice and fairness.

I believe most citizens now understand that those rights have not been honoured for Indigenous peoples by Crown governments, but despite countless injustices faced as a result of colonization, it is important to recognize the strengths and resilience and perseverance of Indigenous peoples. I have seen this in every community that I have visited as Minister of Indigenous Relations and Reconciliation, as have the ministers before me.
Upholding and recognizing the rights of Indigenous peoples will foster harmonious and cooperative relations among British Columbians and Indigenous peoples going forward. So we want to keep building and strengthening our relationships together, based on the principles of justice, peace, democracy, respect for human rights, non-discrimination and good faith. That is how we are approaching reconciliation.

Child protection, language revitalization, revenue-sharing, affordable housing, mental health and addictions, economic development and land use planning. By continuing the work we are doing in so many of these areas of government to advance reconciliation, I believe that implementing the UN declaration can help us achieve even greater things together — accomplishments that will make a difference to families and communities all across this province.

Together we can end the epidemic of Indigenous children in government care, see Indigenous students graduating from high school and attending post-secondary in record numbers, raise the standard of living so Indigenous families don’t have to experience poverty through generations. It’s going to take all of us — businesses, government, all members of this House and communities — in partnership with Indigenous peoples to get this right. This will be a lasting legacy that enables us to turn a corner in British Columbia.

Throughout this process, we are committed to being transparent and bringing all British Columbians along. We’ve been transparent getting to this point. Our commitment to implement the UN declaration is clearly stated in all ministers’ mandate letters. We announced the intention to introduce such legislation a year ago. We reiterated that commitment in the budget and throne speeches this year.

We’ve engaged with First Nations, local governments, business, other stakeholders. That will continue as we move forward with aligning laws and developing the action plan. This work will be done in collaboration with Indigenous peoples, with opportunities for engagement with local governments, with industry, with business, other stakeholders and the public.

The legislation is a framework to ensure the laws of British Columbia uphold the rights of Indigenous peoples. It will give us a plan for how to do that. It is a tool for bringing rules, transparency and accountability when the government works with Indigenous governments on decisions affecting their rights. It is another step forward that reflects our commitment to working with Indigenous peoples and all British Columbians towards a more just and prosperous future for all.

It is not a switch that will change every statute and process in the government the day after this act is proclaimed, nor is it a veto over development. It is a measured next step in our journey together towards reconciliation in British Columbia.

Again, I want to recognize the efforts of previous governments, the efforts that they have made. These conversations and efforts have been going on for a long time, led by many in this House on all sides. I’ve used this quote before, from former Attorney General Geoff Plant, and it seems quite fitting to use it here today. He put it very eloquently: “The question that arises is not whether Indigenous people should have special protection, but rather whether we are finally ready to admit they are entitled to the same basic rights that most of the rest of us take for granted.”

We have a chance to show, not just our country but the world, what true leadership looks like. Let’s be the province that everyone points to as an example. Let’s commit to doing this together. People are going to ask why: “Why do we need legislation if things are already changing? The work is being done; partnerships are being built.”

Well, I’ve been an MLA for almost 15 years. I’ve had the honour to spend a good deal of my time with the Indigenous Relations and Reconciliation portfolio, both as minister and as critic. I’ve had the opportunity to meet people whose stories helped give rise to this legislation. I’ve met Indigenous people in communities all around the province — thriving, vibrant communities, in spite of the shameful colonial history and the intergenerational impacts that has created.

The atrocities of the past were created by the laws of the past. Ask those who are impacted how significant words on paper were in their lives. Ask yourselves: which side of history do you want to be on? I’m going to choose the right side of history, and I am confident that all members of this House are dedicated to reconciliation.
J. Rustad: I’m pleased to stand and take my place in this debate on Bill 41, the Declaration on the Rights of Indigenous Peoples Act.

I want to thank the minister for his words in introduction. I know that many of those comments were very heartfelt, in terms of his desire for improving reconciliation.

It is a great honour, in the time that I’ve been here and in the time that I may still yet have in front of me to be here, to be able to stand and speak on behalf of the people of Nechako Lakes and, in particular, for the 13 First Nations that are part of Nechako Lakes. There are others, of course, with overlapping boundaries.

I’ve had an opportunity to work very closely with many First Nations in my riding — as well as, of course, through previous roles right across the province. I can tell you that it’s interesting to hear the stories from First Nations and their experiences, and an opportunity to share some of those experiences. I think back to many of the meetings, in some of the first meetings I had, where First Nation leaders and people in their ridings told me about their history and provided me with books and information. Believe me, I’ve got quite a library now of books on First Nations.

When you look at the history before contact, before Europeans came into the area, it’s quite interesting looking at how First Nations developed and how they worked together — quite extensively, in terms of their culture, in terms of their governance structure and in terms of trade. In fact, I think, when one of the first European boats showed up on the shore, the first thing that happened is that people went out in canoes wanting to trade, wanting to be able to engage in trade. That’s, of course, the basis of economic development. That’s the basis of our economy and activities.

This trade and this engagement carried on until a point in time where more and more Europeans and others came to these lands, came to these areas. Then we started running into some challenges and issues. There were conflicts that started up. There were particular actions, I guess, that governments took.

As British Columbia entered into Confederation, there were approaches around trying to do some treaties and other types of things, but it was always from a very — as it has been put — colonial perspective.

It’s not much different than what has happened in other places around the world. When you look at the history, for example, in places like Chile or Venezuela or other types of places, or Colombia, where Europeans came in, they basically took over and wiped out culture and wiped out the sense of belonging. Matter of fact, I had an opportunity, as minister, to meet with a delegation from Chile that was trying to figure out: how do they rebuild that First Nation identity? It had been 400 years, and there wasn’t a sense of nations. There wasn’t a sense of leadership. There was just an understanding that there was something missing.

They came to British Columbia, and they talked to us about what we were doing, because we were leaders in many aspects in terms of what we did and how we worked with First Nations. So I think back on Canada’s approach, through the Indian Act, and... Quite frankly — I’ll just say this bluntly — I’m actually kind of ashamed that Canada still has an Indian Act. I think it should go, and the federal government needs to figure out how to do that. Unfortunately, that hasn’t happened.

The Indian Act has a long history and a painful history for many First Nations. In that experience and those engagements I had with First Nations around the province, they talked about, you know, how their right to potlatch was taken away, to form a government, the ability to bring together people to be able to work on and talk about issues; how regalia was seized; how people were put in prison if they tried to practise their way of government.

I think one of the more startling things for me, even though I had read and knew about residential schools and the impacts of that on First Nations people. I had an opportunity to go and visit with the Sto:lo people out in Chilliwack. They have a little bit of a museum of artifacts and stuff. One of the sections they have in there is a section about residential schools. I know that at the time, when the nation put that in there, people were like: “Why are you putting that in here? My god, such a horrible part of our history.” The leadership at the time said: “But it is our history. It’s important that people learn and understand about our history.” So they had this.

One of the things that I saw there, which was shocking and surprising, was a list of the penalties, the punishments, that were to be dealt out. You know, we’ve all been through school.
We’ve all seen the rules in a school. But to imagine that there would be severe punishment if you spoke your own language.... I mean, that’s just crazy to think about in today’s society, yet that is what was there. That was what the list was, amongst many other things that I won’t go into here today.

We often wonder, then, you know.... I mean, so reconciliation.... We’re advancing in our relationships. It’s important to think about where we have come from, and what has built to these moments today, whether it’s through agreements or through this legislation or other types of actions that are going on.

From the Indian Act, you know, advance.... Residential schools came to an end, and I think that was good. The one question that really was out there, whether it’s the white paper or whether it goes to the constitution in 1982 that recognized the inclusion of title as part of Indigenous rights, through various court cases.... But in the early 1990s, there was a decision in British Columbia to try to advance treaties, to try to advance this recognition and this methodology for dealing with the land question.

There has been some success — I would say limited success — for the nations that have gone through and actually succeeded in being in treaty. They’re seeing, you know, advancement of their culture, of their people, of their economy. I honour them and recognize the strength in what they’ve done. But for a majority of nations, it hasn’t been able to achieve what it was originally hoped to be. That’s really, you know, a key piece, which was around the land question. But I’ll come back to that in a bit. But that’s a piece that is still sort of hanging out there, very significantly, that governments.... Whether it is federal or provincial or Indigenous nations, we need to figure out how we come together and address that question.

I look at, you know.... So we advanced from the treaty process and how developed and how relationships started to advance slowly. But they did start to advance in terms of engagement.

Then along came a different government in the early 2000s, and there were some rocky starts. But there was a decision, a deliberate decision, to work towards reconciliation. As a matter of fact, we were the first jurisdiction in the country — I think maybe even still the only jurisdiction in the country — that actually had the word “reconciliation” in the ministry’s title. We used to be the Ministry for Aboriginal Relations and Reconciliation, and that has since been changed to Indigenous. But it was about relations and reconciliation.

I think about where we came from through that period of time. I’ve been part of the government since 2005 through, and I had the chance and the honour of being minister for just over four years. That advancement in our relations and reconciliation was quite remarkable.

You look at the rest of Canada and approaches, and we are a decade or two ahead of where other governments are in their thinking and in their work with First Nations. Many governments are starting to catch up and do things, but it was a dramatic change in terms of how things advanced in British Columbia.

The first time there was ever revenue-sharing was here in British Columbia. That was something that we decided to do and we’re proud of, because there are activities and things that are happening on the land base that, for far too long, First Nations were excluded from.

They needed an opportunity to be able to engage economically, to be able to help build and support their people for jobs and for prosperity, quite frankly. That continued to advance, and it started off slow.

I remember when I was first appointed in 2013, we had what was called 18 non-treaty agreements or whatever. They ended up being renamed several times — reconciliation agreements and other types of things. But there were 18 of them. I was appointed, and the Premier gave me a mandate and said: “Your mandate is to get ten more of these agreements signed.” That was my mandate when I was first appointed in 2013.

Well, I’m pretty proud of the fact that by the time 2017 came around and I was in there for just over four years, we had signed 435 of those agreements, over and above what was done before — not ten.

As a matter of fact, after we achieved the first year and we had signed about 60 in the first year, the Premier’s staff had come in and said: “Well, you know you’re an overachiever, I suppose.” I kind
of chuckled a little bit, and they said: “Well, what target do you want to set next year?” I said: “What target do you want?” How many of these do you want me to sign? There was so much opportunity to advance reconciliation in the work that we were doing.

As a matter of fact, quite frankly, the only thing that held us back from doing significantly even more of those was we just didn’t have the resources. We didn’t have the people to be able to advance more of those types of agreements. There were so many more that we were working on.

The First Nations were coming and saying: “We want to achieve this; we want to do various things.” We were open. How do we do that? How do we work together? How do we try to achieve these things?

As a matter of fact, we started working on agreements to start actually addressing land. We had three pilot projects to go outside of treaty to figure out: how can we start a process of transferring land and coming to that ultimate resolution, that ultimate issue that has been so sticky for governments for so long? And that was to deal with land.

Some of those pilot projects have advanced in other forums. Some of them haven’t gone forward, but it was a start and a process. I think back to my riding, and I think back to these agreements and the kinds of changes that have happened.

One of the nations that I’m particularly proud to work with.... I’m proud to work with all of the nations in the riding, but I want to highlight the Cheslatta Carrier Nation just for a moment.

When I was first elected, and then my riding changed to include the Burns Lake area and where the Cheslatta people were, I had an opportunity to meet, and I did that shortly after my re-election, which was in 2009. We talked about their priorities and issues, and they told me their story. They told me about what happened. I had no idea what that history was until I had the chance to have that meeting.

When the dam was put in on the Nechako River at the time, there was the standard protocol that was followed, which was in the 1950s. We think back now, and it’s just crazy to think that was the way things were done, but there was a process.

You can go back and look at the articles in the newspaper from the time, and it says: “Well, this is going to impact anybody. There are just a few natives living in the area.” That’s what the articles said at the time. It’s amazing how dismissive.... The fact that this was traditional territory and there were people living in this territory was just dismissed because it was deemed to be just natives living there. I was shocked when I read those articles.

I talked to the Cheslatta people about it. They said: “Yeah, when the dam was being built, there were people who came around to our communities. There were a number of reserves in the area, and there were homes and stuff that were built there. Somebody came and knocked on the door and said: ‘You’ve got two weeks to move. The flood’s coming.’”

That was the level of engagement. That was the level of respect back in the 1950s with First Nations. That’s our history. It’s important to remember that history.

So they did. They packed up their things, and they were moved off of their traditional territory. They were moved onto the traditional territory of other nations in my riding and set up a reserve there and set up their office and their life there. After they left, they burned the homes. They destroyed the homes.

Then, of course, the dam came, and the area was flooded. The area known as the Murray-Cheslatta system, with Cheslatta Lake, has not been usable for the Cheslatta people in the way that they used to use it. That was the impact back then. There was no engagement. There was no discussion. There were no agreements. There was no compensation.

The Cheslatta people, rather than fighting it through the courts and rather than going after that confrontational approach, decided: “We’ll work this thing through.” It took them more than 60 years to work this thing through, and I worked closely with them on this for a long time. I’m very proud of an agreement that was finalized by the current government — that we had just about finished before the last election — to reach a reconciliation moment with them in recognition of that impact.

This was an important step because it helps them now be able to move forward. Instead of working on their past and dealing with their past, they’re now in a place where they can go forward with their economic developments, with their hopes, with the things they want to do for the people.
There’s still more to be done, but it was an important step. I was pleased to be able to be part of that kind of work. These are the kinds of agreements that we entered into with First Nations.

We took First Nation graduation rates and almost doubled them. They’re still well below where the non-Indigenous graduation rates are, but there was significant progress that was made in working with First Nations and recognizing and bringing First Nations in as part of the education system and trying to solve those kinds of issues, because education is very important to the First Nations people, the Indigenous people.

Matter of fact, we had some of the first on-reserve housing projects that started under our government, as well, of course, as projects off-reserve. That was a breakthrough back then, when we started to do that. I’m glad the current government is expanding and doing some more of those. But that was a breakthrough because of the conflicting jurisdictions with the federal government.

When the Truth and Reconciliation Commission came along with its recommendations, we immediately went.... Matter of fact, even before the report came out, when the rally was here in Vancouver — I think we had 100,000 people do a reconciliation walk, and I was proud to be part of that walk — we started right then, two years before the report came out, to change our curriculum.

We did that, so when the recommendations came out we had already changed and adopted our curriculum to have First Nations history and culture and values recognized within the K-to-12 education system. This is part of how reconciliation advanced.

I want to take a moment, actually, just to talk a little bit about Reconciliation Canada. The reason why I want to talk a little bit about Reconciliation Canada is that I worked with them, and we provided some resources and support in terms of their work. But they weren’t so much about advancing Indigenous rights and title. That was being done already. It was about how we bring together Indigenous and non-Indigenous people to understand one another, to understand our history and how to advance reconciliation.

I really want to thank Chief Bobby Joe, as he’s affectionately known; Karen, his daughter; and the work that Reconciliation Canada has done. It’s been quite remarkable in terms of that work, really, across Canada — not just in British Columbia. But of course, in this province, it’s quite amazing in terms of how that has made a difference.

We talk about UNDRIP as a document advancing reconciliation and human rights, and I think those are important values. But I really celebrate the work that’s on the ground that really has made a difference, I think, within many communities.

There are frictions. There are things that are showing up today between Indigenous and non-Indigenous, and I don’t think those are healthy. We’ve got to find a way to be able to bridge some of those differences. But that is what it is. That was the approach that Reconciliation Canada took. They recognized where things were and tried to come in and find a path to be able to bring people together to talk.

These agreements and approaches that we took within government were primarily focused within economic and social agreements. The idea was to have First Nations be able to lift themselves up — support them, work with them — have people being able to start moving from managing poverty to managing other issues, such as prosperity and expansion. I think, quite frankly, that’s a goal that all of us have here.

I think it was the Hereditary Chief of the Nisga’a who was down in the Legislature when we were celebrating the agreement — one of the Hereditary Chiefs — and he said: “You know, it’s long past time that Indigenous people not only caught up but, if possible, surpassed non-Indigenous people economically.” And I agree. Land is an important piece of that. Agreements are an important piece of that. Reconciliation is critical — understanding those rights, being able to work together and being able to advance to a common cause.

[3:30 p.m.]
When I look at the legislation that has been brought in, Canada is quite unique, when you look at our constitution. I don’t know if there is any other country — certainly, not many other countries, if there are — that has Indigenous rights, including title, enshrined in the constitution. It has a long history now of court rulings and proceedings that have provided definitions and really in-depth knowledge of what that does mean.

I think that’s an important piece, because in the briefings and in the talk about this bill, it is within the context of the Canadian constitution. That is the floor. That is the basis of the bill. It has the potential to go beyond that. Certainly, it has the potential to reflect court cases and additional decisions that may come down.

For example, under this government right now, I think there’s a case from Haida, a title case. I’m very interested in seeing how that case advances through the courts. I’m sure that will have a further impact that will potentially change or adapt or adjust in terms of how things go.

It’s an important piece to recognize that Canada has this difference with that constitution, because that sort of right is not recognized in places like Chile or in Colombia, where they’re struggling to find a path forward in terms of reconciliation with their Indigenous people.

Supporting those rights and title, I think, supporting the advancement of reconciliation, is something that governments need to be doing. It’s just the right thing to do. Certainly, it’s what we were doing with all of our efforts. Did we agree with First Nations on everything? Of course not. That would be unimaginable. Just like there will be First Nations that don’t agree with the current government. These things happen, but that doesn’t mean that there shouldn’t be a goal to advance reconciliation and to advance those kinds of opportunities.

Some of the things that I’m going to be very interested in talking about in the committee stage of this bill with the minister are going to be issues around land, issues such as overlap — how those are going to be addressed, how Bill 41 and the UNDRJP lens will be able to work through those kinds of issues.

I’'ll just give you an example. In my riding, we currently have... One of the nations is Yekooche. Yekooche came out of one of the other nations and has kind of being settled in the middle of a number of nations. Well, they have overlaps in every direction. As a matter of fact, the Nadleh Whut’en want to be able to sign the pipeline benefits agreement and be able to advance their work with the Coastal Gaslink. They’re waiting for government to help resolve an overlap issue they have with Yekooche.

We started that work. Unfortunately, the work hasn't been done yet. But I’m hopeful that it will, because I know that nation is very much looking forward to seeing those benefits. They’re still working with Coastal Gaslink as if it is resolved. But it needs to be resolved, and it should be a priority, quite frankly, for government to work through that issue.

When you look at these overlaps and challenges, they’re significant. They can’t be taken lightly. When you look through, you know, the joint decision-making and the path and process that needs to be done, those are big questions. How will those issues be resolved? Those are the kinds of questions that we’re going to need to talk about. And maybe there aren’t answers. But they’re important to have on and have a conversation about what type of approach will be taken towards thinking about and working through these kinds of things.

There’s a concern that has been raised, and I know some of my colleagues may talk about this. How does this impact potential court cases or other issues? I mean, I think it’s great to say that we want to stay out of the court, and that was our approach. We tried to do everything we could to stay out of court. But eventually, there were court cases and things that go forward. How does this work, in terms of influencing approaches through that?

There is a statement in UNDRIP, the UN declaration on the rights of Indigenous peoples, that says: “Convinced that control by Indigenous people over development affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions and to promote their development in accordance with their aspirations and needs.” I like that statement. But what does it mean in practice? How is that going to be implemented on the ground?
These are the kinds of things that we'll be interested in exploring as we go through committee stage on this bill. Committee stage will be very important. I'm sure there'll be a rather lengthy period of time, in terms of questions and process and engagement that we will do with the government on this.

Similarly, with this new potential opportunity to engage with types of agreements with new Indigenous bodies — or, as it's called, Indigenous governing body — there'll be some questions that we have around that. We entered into some agreements with Hereditary Chiefs through process, as well as elected Chiefs. We entered into agreements, actually, with a tribal council, once band council resolutions moved up towards being able to enter a collective agreement.

I'm curious in terms of how this new type of recognition will work on the ground and how it works, particularly, where there may be some conflict or individuals or bands that may want to leave — how would that work? — or structure. I'd like sort of an understanding in terms of how these types of things lie.

As well, of course, there's this new tool that's being created, this new type of agreement that's being contemplated for joint decision-making, which also will likely include liabilities as well as responsibilities, jointly shared as they go through. There'll be updates that'll come to the various statutes within government, I'm sure, as that advances through. How does that work in terms of those structures and processes? Those will be some interesting types of things that we'll want to proceed with and look at.

There's one thing I just want to stress here and think about. The minister had mentioned and talked about going out, meeting with stakeholders and various groups, working with Indigenous nations and trying to work through what this is and what isn't and process. But there's one piece I think that was missing from that. I hope the minister, through some of the other speeches, might be able to clarify. And that is the general public.

It was one thing that we learned, particularly through processes in the Peace country — not just with this government, but with our government in the past — as well as with the Stó:lō, with treaty and with other things. The general public isn't necessarily kept up to date or engaged just because a local government or regional district is engaged, or because other entities may be engaged. The general public needs to have a sense of what this is.

At the end of the day, I think back to that work that Reconciliation Canada is doing trying to bring together Indigenous and non-Indigenous people to understand one another and be able to move forward together to build that reconciliation, bringing the public along as part of this conversation is going to be important.

The question to the minister is: is there contemplation in terms of taking this out and having some public engagement in various areas around the province to allow for the discussion and the comfort level so that reconciliation can advance and we don't end up with more friction points, like we've seen in a few issues that are arising today? That's an important piece of advice I'd like to offer to the minister — to develop a plan to go out and have this kind of engagement, because it's going to be an important conversation that government is going to need to explain.

Lots of people have lots of comments and fear. I've received emails and calls and these types of things already because of the fears of what free, prior and informed consent may be or what this is or what it's not. Government needs to do some work there, so I recommend taking some time to go out and make that effort for the people in the province of British Columbia.

With this, once again, I'm very honoured to have a chance to stand up and talk about Indigenous people and the work we've done in the past — the opportunity, I think, to advance reconciliation, the opportunity to see First Nations engage.

I just want to reflect again to a former chief who, unfortunately, passed away, a while ago now. He had attended six attempted suicides in his community. Tragically, one of them had.... One of them, unfortunately, he wasn't able to save. He said he was tired of his people not having hope. He was tired of saying no. He wants to figure out how to engage in economic activity, how to build and pride hope and opportunity for the people in his riding, particularly for the youth and the children.

Through this discussion, through discussions with the public, through advancing economic opportunities, if we can change that statistic, even a little bit, that would be a huge, huge gain.
types of agreements, the approaches we took were all about that.

Madam Speaker, it's important. Thank you for my time here to talk about this. It's an important piece, because at the end of the day, reconciliation is critical to make sure that everybody in this province has an opportunity to prosper.

**A. Olsen:** My name is TSUNUP. I'm the son of TSAYWESUT and Sylvia Olsen, the grandson of ZICOT and TELQUILUM. We're from WJOILEP, which is a Tsartlip village, in WSANEĆ territory, just north of here, on the Salish Sea. I want to acknowledge today our Lakqaniłq relatives, on whose territory we do this work in and day out. Normally, we do acknowledge this as traditional territory, but today I just want to say that we live and work here in the Lakqaniłq territory. They are still here. So while they have traditionally been here, they also are still here.

It's with mixed emotions that I stand in this chamber today. It's 2019, and there have not been many days like this one in the history of this territory that was formerly the colony and that now we know as the province of British Columbia.

This day is the result of a lot of work, and those workers who have brought us this day should be uplifted and wrapped in a blanket, like we do so often in ceremony — in potlatch or in other ceremony. However, I also have a deep sadness within me that for the past 200 years, this territory that we know as British Columbia and the people in this House of governance have created some of the most grotesque and despicable racist policy.

It's an oft occurrence that I walk the halls of this building with a sense of awe, as the history represented in the echoes of the footsteps bounces off the walls. My name is one of very few among those in the history of this province signed into that register of representatives elected to this House of governance. It's in that context that I'm honoured to be able to stand in this place, humbled to be able to stand in this place and take my place in the debate.

Like I said, there have been very few days like this one in the Legislative Assembly of British Columbia, or anywhere in Canada for that matter. Few are the days in which legislation has been introduced that upholds the basic human rights of Indigenous peoples. It is a sad reality of a colonial story of our province and our country that, in fact, the opposite is true.

What has been debated and passed into law in Legislative Assemblies in our country is the oppression of basic human rights of Indigenous peoples. The laws created by institutions such as this one have been designed to structure and impose a colonial reality on Indigenous peoples. They are designs that break up complex Indigenous systems of governance, like the potlatch. It is evil systems that have been established to steal Indigenous children from their families and send them to residential schools or to non-Indigenous families, an era that we've colloquialized as the Sixties Scoop.

The result of these policies has desecrated our grandmothers, our mothers, our aunties, our sisters, our nieces and our daughters. These rules have created a society that needs a commission to study missing and murdered Indigenous women, a society that deliberately stole their dignity, their identity, and undermined every aspect of our sacred relationships with our powerful matriarchs.

The rules kept Indigenous people from voting, stopped us from hiring lawyers and protecting ourselves, and restricted our ability to apply for timber harvesting rights because they changed the rules to only allow eligible voters to hold them.

It's an act in legislation that institutionalized segregation, apartheid, through the reserve system that still exists today. Even as these relationships change, we still use these boundaries of reserves and fight in our communities between elected and hereditary leaders through the lens of these colonial impositions. These rules remain on the books. The Indian Act is still alive and well in this country.

One of the common demands for people today is that I or we do not hold them accountable for what their grandparents did. Well, I don't. We are all accountable for what we know and how we act on that knowledge. The legacies of those laws are everywhere in our society. They are the crisis in our child care, the crippling poverty, desperation, moulding houses, poisonous water, suicide.

At the same time as we acknowledge these atrocities — atrocities that are genocidal — until this moment today, we can almost find no laws that undo the colonial legacy. We see almost no laws that
replace those laws with respect to Indigenous self-determination and the inherent right of self-government.

But today we are changing that. Today is a day that generations of Indigenous people in this province have fought to see happen. The work that I have the honour of doing today is the work of many hundreds of our ancestors, our S'ELÈLWÀÁLN, who fought through the inhumane treatment to lay the groundwork for this moment.

I feel today that even though this moment is a monumental step forward, it's only one step. I must acknowledge all our community leaders whose sweat and tears and whose blood was spilled so that I can be here now. It’s the Tsilhqot’in Chiefs who were unjustly killed 154 years ago. It’s the Chiefs of the Interior tribes who petitioned Prime Minister Laurier in 1910 with a true message of reconciliation: “These people wish to be partners with us in our country. We must, therefore, be the same as brothers to them and live as one family. We will share equally in everything — half and half — in land, water and timber. What is ours will be theirs. What is theirs will be ours. We will help each other be great and good.”

It’s the peoples on Vancouver Island, my ancestors, who, at the very beginning of settlement by Europeans, signed treaties with Governor Douglas, the Douglas treaties, to ensure that our rights were respected. It’s the waves of leaders who journeyed to Ottawa and to Victoria and made the case and fought for change. It’s the knitters who sat in Victoria and Vancouver airports making toques and socks and vests and sweaters to pay for their leaders to go and endlessly lobby government.

I raise my hands to our matriarchs and our Elders, the young and the old, who have kept our cultures vibrant, powerful, alive and beautiful. I raise my hands to our knowledge-keepers and our linguists who have preserved our language so our generations might know who they are as diverse peoples in these lands and on these waters. This is a day that’s in honour of you, a testament to your resilience, your patience, your wisdom, your courage, your ÇAx — your work.

There will be some who fear this legislation. I understand, because with change comes fear. There will be others that fearmonger, some who take no time to understand the legislation but rally around ignorance inspired by vested interests. Some may even stand in this place and make ridiculous statements. They’ll ask absurd questions like “what is free, prior and informed consent?” pretending that they’re actually seeking truth and reconciliation.

The only thing we should fear is the failure of making these critical changes. It’s the failure to face and address the colonial legacy that challenges our society today — these laws, policies and practices that have caused the uncertainty over land and resources that has immobilized us in this province for decades. It is the failure to address the colonial legacy in our social structures and institutions that is causing the intergenerational harms to countless children, families and communities. It’s the failure to address the colonial legacy that ends up in court battles costing us billions of dollars, lost time, incredible waste — a culture of conflict that has stymied economic growth and investment in our province. Worse yet, it has cost us our dignity, our integrity, our decency and our self-respect.

It is for this reason that in 2015, the truth and reconciliation call to action No. 43 said that governments, including the provinces, must adopt and implement the United Nations declaration on the rights of Indigenous peoples as a “framework for reconciliation.” This framework is a critical guide to help us forward and move us out of the dysfunctional patterns, the cycles of despair, and accelerate the work, the acts, of reconciliation.

Some voices in this House would have us believe the UNDRIP is imposed on us by the United Nations. They undermine it. They’re ignorant of it. I believe it’s intentional. It’s important that this debate be based on truthfulness, on fact. The UNDRIP is a product of decades of deliberation, a feat of deliberative democracy undertaken by states including Canada, including some of our very own Indigenous leaders in this province and also Indigenous peoples from around the world.

This document is a statement of long-established human rights norms, including those in the Universal Declaration of Human Rights, in the context of Indigenous peoples. These norms are not new. Despite what some of the voices in this place would like British Columbians to believe, these are norms that we have long upheld and defended as Canadians. These are central to who we are, and upholding them now is to honour the highest ideals and values.
The opposite is also true. To diminish them now, to undermine them now, is to stoop to the lowest places. Those who are inspiring the opposition to the implementation of the UNDRJP are not looking out for the best interests of British Columbians or Canadians. Instead, they’re looking out for and defending the interests of multinational corporations that wish to continue to liquidate our natural resources, hollow out our rural and remote communities and leave us nothing.

There is nothing to fear in this legislation. It is the embrace of the best about British Columbia and Canada. It is the embrace of each other — friends, family, neighbours. The adoption of this legislation does not result in greater justice and peace overnight. This legislation is just the beginning.

There are some common myths, urban legends, whispers and rumours spread that have developed out of a lack of understanding of the UNDRIP or just pure malintent. I’ll devote a few minutes to debunking these myths.

First, let’s look at the biggest of them: consent. I find it really interesting that in 2019, when obtaining and maintaining consent is so important in every aspect of our society, there still is a question as to whether achieving free, prior and informed consent is not necessary when it’s an Indigenous person or government that we are dealing with. There are some in this place that have argued that.

Probably the most egregious aspect of this is that people who know better still stand in this place and in prominent offices in our society and act as if consent is not part of Canadian law — part of the legal debate that has evolved over the past 60 years on Indigenous issues in our country. It is discussed in numerous ways in our Supreme Court, in many cases, including Haida and Tsilhqot’in.

It seems completely lost, again, on people who should know better that this is, at the very centre, a founding principle of the common-law understanding of the relationship between the Crown and Indigenous people. Going back to the Royal Proclamation of 1763, the Crown had to gain the consent of Indigenous people, and it disallowed the settlement of lands without treaties.

Another myth which has been designed to wedge British Columbians against one another is the confusion created by the deliberate defining of consent as veto. Again, these flames have been fanned by members of this assembly who have irresponsibly stood and stared into the camera and acted like they sincerely don’t understand.

Let me speak clearly. Consent is not a veto over resource development. No rights are absolute. It’s the case for our Charter, it’s the case for section 35 of our constitution, and it’s the case for the UNDRIP. Article 46(2) in the UNDRIP says as much. Of course, it benefits the fearmongers and the special interests that they represent to ignore the facts and just make up their own.

Consent is a commitment to working together and acting in good faith from the very beginning of a process. Again, let’s remember that it’s 2019, and it’s important that we begin any process with an understanding that it is consensual and that we check in regularly to make sure that we are maintaining consent. A consensus approach is one in which the focus is on ensuring that every effort is made — as the UN special rapporteur on the rights of Indigenous people, James Anaya, says — to achieve mutually acceptable arrangements.

A third myth to be busted is that, all of a sudden, a bunch of new rights will be created. This is one of the most interesting for those who oppose this to try to rationalize. For the first time in the history of this province and in the history of Canada, this legislation is going to affirm human rights — norms that have been long established, but in an Indigenous context. They are human rights that Canadians have been supporting and advocating for decades. They are the rights that are established in our very own Charter.

Finally, I must address the myth that this legislation is going to create uncertainty. I find this one to be truly mind-boggling. What has industry been complaining about? It’s the uncertainty of the current situation. The current relationship creates uncertainty. This legislation lays out the framework for government to chart a path through the uncertainty, creating certainty. Indeed, the challenge uncertainty is created not by respecting Indigenous rights, but by denying them, against the advice of our own Supreme Court.

We have seen a very expensive, in terms of direct cost and loss to potential investment, culture of conflict grow out of a lack of recognition of Indigenous rights. This is the result of forcing these
arguments to the courts for Indigenous people to, again and again and again and again, prove their humanity. The current situation has not created clarity. It has created a murky, costly, frustrating and deeply unfair situation that, as I referenced above, should be clear, going back to the 18th century.

As the former Minister of Justice and Attorney General Jody Wilson-Raybould stated in a speech to the B.C. Business Council back in 2018: “The uncertainty that we all experience today — Indigenous peoples, industry, governments and the Crown,” whether in relation to pipelines or any number of other projects, “has its roots directly in the history of denial and division.” It is clearly time for us to move beyond the resource colony mentality, the desperate attempt to liquidate the resources from these lands and waters that were enabled by the convenient doctrine of discovery and terra nullius for the benefit of multinational corporations, starting with the Hudson’s Bay Company.

I must raise my hands to the Minister of Indigenous Relations and Reconciliation. I raise my hands to his team, Jessica Wood and her team and Don Bain in the Premier’s office, who have helped negotiate these often-turbulent waters, navigating us to this critical moment.

The adoption of the United Nations declaration on the rights of Indigenous peoples was a key plank in the B.C. Green 2017 platform. It’s an issue we shared with our colleagues in the B.C. NDP as a key principle in redefining the relationships in our province. As a result, this legislation became a central feature in our confidence and supply agreement with government.

The minister recognized and acknowledged that this was an important piece of policy work for me personally and understood and respected that from day one. I really deeply appreciate that. This is an important example of how this House should work. It’s an excellent example of how all elected people from all parts of this House can work together productively. Even, perhaps, when I was impatient, hoping for the legislation in previous sessions, the minister and his team continued to persist, acknowledging the numerous stakeholders that needed to be addressed if this legislation were to make it to this stage and eventually be successful in this place.

From the minister and his deputy minister through all the people working in the ministry, the work that is being realized here today is just the beginning. There is a legal and moral need for government to dig in and do the difficult work of recognizing Indigenous rights in this province. Today we begin surveying the terrain upon which we blaze a new trail. Today we mark the beginning of a new journey.

We raise our hands to an inclusive process that has been done hand in hand with Indigenous leaders in British Columbia. It’s a process that’s included industry and labour. This legislation is never intended to answer all the questions — rather, provide us a way forward together. It’s a step toward meaningful reconciliation. It begins an important alignment of all the other laws and embraces the challenge rather than excuses inaction.

This legislation puts us on the right path, and it gives us the right heading. It’s pointed to a good destination, building on a good foundation. The next step is to use this framework to transform our relationships with each other. It starts with putting together an action plan that meets the objectives of the declaration on the rights of Indigenous peoples. It’s work that we must all do together. It’s work that all members of this Legislature, all political parties and of all backgrounds must do together.

HISWKE SLÁM.

Hon. K. Conroy: I’d like to recognize the territories of the Lək̓ʷəŋən-speaking people, the Songhees and Esquimalt First Nations, that we meet on every day in this Legislature.

I’d also like to recognize the Premier and the Minister of Indigenous Relations and Reconciliation and their staff for the incredible work that they’ve done on this bill.

They managed to accomplish this in just over two years. They worked collaboratively with the First Nations Leadership Council, which includes the B.C. Assembly of First Nations, the First Nations Summit and the Union of B.C. Indian Chiefs, who have been directed by First Nations Chiefs of B.C. to develop the legislation.

I have to say the Minister of Indigenous Relations and Reconciliation was tenacious in his work to ensure that we managed to get this bill tabled and that we managed to have it before us today. So
I’m really honoured to speak in favour of Bill 41, the Declaration on the Rights of Indigenous Peoples Act. With this new bill, B.C. will be the first province in Canada to put the principles of the United Nations declaration on the rights of Indigenous peoples into action, recognizing the human rights of Indigenous peoples. The legislation will mandate government to bring provincial laws into harmony with the declaration. It will require development of an action plan to achieve this alignment over time, providing transparency and accountability. It will also require regular reporting to the Legislature to monitor progress.

It will allow for flexibility for the province to enter into agreements with a broad range of Indigenous governments, and it will provide a framework for decision-making between Indigenous governments and the province on matters that impact their citizens. It is another step forward that reflects our commitment to working with Indigenous peoples and all British Columbians toward a more just and prosperous future for all.

I was so honoured to be here on October 24, when this bill was tabled — actually, October 24 is United Nations Day, recognized worldwide as United Nations Day, so I couldn’t think of a more fitting day when that bill was tabled — but to also hear the Indigenous leaders speak of their commitment and how they felt about this, how this bill was finally being introduced. I found it a really emotional and deeply moving day and one that I don’t think we will forget for many years in this Legislature.

This new historic legislation, which supports self-determination and self-government of nations, complements the work my ministry has been doing already to improve the lives of Indigenous children, youth and families. Reducing the overrepresentation of Indigenous children in the child welfare system by working with communities is a priority for this government as we move towards meaningful and lasting reconciliation.

It’s a key action in my mandate letter from the Premier. The letter was clear. Things need to change in the child welfare system for Indigenous people. We all know the system has failed them. We know that the trauma suffered by generations of Indigenous children and families has had devastating effects. We need to remember the children and families impacted by the damaging legacy of residential schools.

It is also important that we recognize the ongoing impact of current colonial systems and practices. We’re working collaboratively and respectfully with Indigenous communities to make a difference for families and to give social workers the tools that they need to do child welfare differently.

By focusing on prevention, collaboration and jurisdiction, my ministry is working on all levels to shift our approach to child welfare, from taking children into care to working to keep children safe within their families. We know children do better in life when they are connected to their families, their communities and their cultures.

We made changes to the Child, Family and Community Service Act to give Indigenous communities greater involvement in child welfare decisions, to help keep their children out of care. We have nearly doubled the monthly rate paid to family members caring for young family members under the extended family program. Now a granny caring for her grandchild is receiving the same amount of monthly financial assistance as a foster parent.

I recently met with grandparents. They were overcome with emotion, as was I. I still get emotional when I think about it, because they tell me about the difference this has meant to their lives. One grandmother said to me: “We don’t do this for the money, but now that we have additional funding, we can actually raise our grandchild. We can actually raise them in the way they should be raised.” They can keep them in the family, connected to the community, learning their culture. It was such an emotional experience for myself as well as for the grandparents when they shared it with me.

We’re also changing the way we work with and support expectant parents and have ended the practice of birth alerts. No longer will health care providers and social workers share personal information about expectant parents without their consent. Instead, we’re providing voluntary early supports and preventative services to help them plan and safely care for their babies.

This change to practice allows for a more trusting, collaborative relationship with service providers right from the beginning, and it empowers women, their families and their communities to
work together to care for their children. We have to ensure that we have the supports in place to ensure a healthy baby is born to a healthy mom in a loving family. I know that this bill will help us to continue that practice in the coming months.

Through the Tripartite First Nations Children and Families Working Group, we have been working with the First Nations Leadership Council and the government of Canada to explore systemic changes to the child welfare system, including governance and jurisdiction. Additionally, we have all committed to ensure the new federal-Indigenous child welfare legislation aligns with the work that we are doing in B.C. We have also started meeting quarterly with the First Nations Leadership Council executive, an important opportunity to hear from the leadership what’s working and what’s not.

Our work includes partnering with individual First Nations and the federal government to sign agreements that will ultimately see the nations exercise their jurisdiction over child and family services. I can’t tell you how often I’m told by First Nations that they never gave up their jurisdiction. It was taken away from them.

We have entered into separate agreements with the Cowichan Tribes, the Wet’suwet’en Nation and the Secwépemc Nation. I have to tell you, when we met with the Wet’suwet’en Nation up in their nation.... There was myself, Minister Bennett from the federal government and the Minister of Forests, Lands, Natural Resource Operations and Rural Development. We met and talked about what this meant to them, that we were actually going to be signing this agreement. We met with Hereditary Chiefs who said to me that they thought this would never happen. They thought that, in all the years they had been negotiating with governments, never would they see the start to jurisdiction become a reality for their nation and for their children.

After the ceremony and the signing, we had a huge feast. We had a group of children singing in their language. To watch the pride in the faces of the Hereditary Chief to hear these children singing in their language.... They explained to me how the language was being taught to the children in their school and how important it was for them. It made me realize that when.... Some people said: “Why would we spend $50 million on language for Indigenous nations?” I just had to hear those children singing in their own language to know how incredibly important it was and how happy the Wet’suwet’en were, not only to sign the agreement but just to see what was happening with their children.

Every time I meet with a different nation, I’m always struck by their commitment to their children, their belief that what happened in the past can’t be forgotten but that they must ensure that children are raised in happy, healthy communities, in their communities, learning their culture.

We know we need to continue to work in partnership to have long-lasting, sustainable change to the child welfare system. Like implementing the UN declaration on the rights of Indigenous peoples actions, this change will take concerted efforts and meaningful collaboration by all levels of government. It will take some time, but we are committed to this work to ensure that children and youth are living in strong, healthy families where they are connected to their cultures and traditions.

Bill 41 opens new doors for us, as we continue to walk together towards jurisdiction, recognizing each nation’s inherent authority to care for their children and families in their own way.

E. Ross: On behalf of my constituents of Skeena, I’m pleased to be here to speak to Bill 41, declaration on the rights of Indigenous people.

I’ve lived this for 15 years from the inside out, on the ground as a councillor and then as chief councillor later on. I remember every single agreement, announcement, initiative that was announced with great fanfare over the last 15 years, and every one of those announcements provided hope only to kind of wind up as a political discussion for decades. B.C. treaty process was one. The commitment declaration was another one. The recognition and reconciliation protocol was another one. There were just too many to mention.

What upset me most about it was a political discussion that didn’t provide immediate relief for my band members. This goes for Aboriginals all across Canada, who are suffering — from the high rates of suicide, the amount of Aboriginals going to prison, the missing and murdered women,
poverty. So I might be cynical, I might have been around too long, but I've seen what happens when we make political announcements like this.

To be honest, once I started to realize the turnaround for my people under economic development — specifically, the modernization of the smelter in Kitimat, the forest and range agreement that we signed with the previous government and LNG — and when I saw the results of that, I've got to be honest: I got selfish because I wanted more. When you hear these stories of people, regular people, that are just happy that they have a future — that they're going to be independent, that they don't need council, that they don't need government and that they're well on their way — you get greedy for more of that.

I am really hoping that this declaration actually adds to the equation that we've already developed here in B.C. and Canada. I'm hoping it adds and builds on section 35 of the Constitution and the pursuant jurisprudence, the case law principles. We actually owe the success of LNG to section 35 and the case law. It's all rooted in there.

The forest and range agreements that provided peace in the forest over the last ten years — we owe that to the Aboriginals that went to court to establish court and case law principles. We're talking about Mikisew Cree, Gladstone. We're talking about Haida. These are the people that did the real work to actually get First Nations out of poverty and get First Nations to the point where they could address their own issues on their own terms. Those are the real heroes.

I used those case law principles to establish a relationship with the provincial and federal governments. It's why LNG is existing in B.C. as an export facility. That's why Chevron is next on the docket. That's why Cedar LNG for the Haisla is next. The results are measurable when you go talk to band members. The results are going to astound you when you hear them.

A single mom complained that she'd been working seven days a week and then they cut her back to five days a week: "Why did they take those extra two days away?" I was shocked. I hadn't met anybody that wanted to work seven days a week, 12-hour days. It's because she felt so prideful of what she was doing in providing for the family, buying a van.

This was my experience, and I did try everything. I'm hearing a lot of stories about what really happened to First Nations on first contact. I'm well aware of it. I researched it for two years in my own band office, through our archives. I'm well aware of it, of what happened to my band as well as what happened across Canada to Aboriginal nations. I'm no stranger to it.

I actually put together a pamphlet, a booklet, to describe to our people what reconciliation means in terms of what happened to our people historically — not with the idea to put anybody down, not to be political about it but to encourage the people of today and tomorrow to say: "It's up to you to go out and fix your own future so that our people of the past didn't have to suffer for nothing."

I always had a perception that we should be moving forward, always moving forward. Acknowledge the past, but move forward. The social issues that we talk about in terms of statistics — that's crazy. We all know that Aboriginal issues in Canada are a multi-billion-dollar industry. Just on Indian Act programming money alone, it's a multi-billion-dollar industry. Then you include the legal bills, the consultants and on and on and on.

With all these billions of dollars for the last 30, 40 years, why have we not made a dent in the statistics of the social issues facing First Nations? It's because we're not focused on the individual. We're not focused on concrete results. We're not thinking about that guy that's going to prison or who's going back to prison. We're not thinking about that.

Maybe I've been around too long. I will be watching this closely, over the next two years, to see what the results are. But I've already seen results in our band, based on the existing case law and based on a working relationship with the provincial government — provides tremendous results.

By the time I became a councillor, I'd realized that, going through the archives and listening to my band members and listening to our people, it seemed like, for decades, generations of Aboriginals had gone through life with no hope. So the status quo was okay. Everyone was accepting of it. It wasn't until a band council came along, in 2001, and said: "No, we're going to go against the narrative. We're going to go against the politics, and we're going to engage. And the results have got
to be measurable in terms of individual band members getting their own future on their own terms.”

It worked.

Prior to that, as my first two years in council, I did try everything. I mean, I have heard this before: education is key. Yeah, if there is a good economy and there’s lots of jobs, education is the key. But if there’s no economy, training for the sake of training doesn’t lead anywhere. I had a lot of band members that we actually forced through training to get some education, and then when they found out that they didn’t have a job at the end of it, they got angry at us.

All this rhetoric about what’s best for the Aboriginals — I agree with all of it. But only if it affects the individual Aboriginal on the ground who’s suffering with these social issues and is looking for a way out.

I went to Ottawa. I came to B.C., Victoria, to lobby the government for programs and money. When I realized that all I’m doing is asking for more dependency, I refused to go on any more lobbying trips for more money. I refused.

It was actually a band member that wrote a book that convinced me that what I was doing was the wrong approach — going out and asking for more money so I could renovate my rec centre. He wrote a book, and it was called Beggars in Our Own House. That’s what cemented the idea that what I was doing up to then was wrong. It was the wrong approach. I was just taking the same old path that previous leaders had done, and it wasn’t really leading to any progress.

Now my band just got through buying an apartment complex for $11 million with their own cash. They don’t need government funding. They’re addressing their own issues on their own terms. They are truly on the pathway to independence. And it got them away from asking for money from industry, from government, from organizations. It got them away from that.

The first time that this really happened when I was the chief councillor, we were sitting at the table. We made a decision, and we decided to fully fund the project on our own. You can’t imagine the amount of pride I had. I pointed it out: “Do you guys realize that we’re not going to have to fill out funding applications? We’re not going to have to fill out reports. No one’s going to have to come in and audit us. We’re just going to build something, and our people are going to love it. They’re going to absolutely love it. Then we’re going to subsidize all the government projects that are in the territory already. We’re going to make them even better.”

Our government-owned dock that the federal government decided to come in and renovate because it was their dock.... They committed $3 million. Well, our band looked at the plan and said: “Well, we’ll dump in a few million of our own, and we’ll fix the breakwater while we’re at it.” That is independence. That is equal opportunity. That is actually being on the same level as government and saying: “Yeah, we know you’ve got money, but we’d like to match it with our own. Let’s have a partnership on some of these projects that we’re doing.”

Just recently the provincial government partnered up with my band for an apartment on reserve — $14 million. That was a project, actually, that I proposed under my leadership as chief councillor, and I wanted us to pay cash, but the conversation was: “No, we should amortize it over 20 years.” Okay, great, but as long as we don’t have to ask for government money. My band didn’t ask, the government just provided it, which is great. It’s another partnership. But it all comes from a theme of independence.

In saying all that and looking at all these programs, looking at all these announcements, looking at all the politics, what I realize most: our people need opportunity — economic opportunity, to be precise. The forestry and LNG story in B.C. is a huge story for my band. It did provide my people the pathway to independence that we have never seen before in our lifetime. But it also triggered other opportunities.

I’m not sure if you’re aware of this, but my band got into land-ownership. We didn’t battle the idea of who owned the land, if it was private land or Crown land. We didn’t battle that. When we got control of the land, we didn’t battle with the idea that it’s got to be added to reserve. If anybody’s familiar with the Indian Act, you know what I’m talking about. We didn’t battle with that.

In a way, when we talked about land, we reconciled with the society of B.C. We acknowledged that there is a system here of private, fee simple land-ownership that actually contributes to the tax base. We didn’t argue that. We just said: “Let’s buy the land, and let’s let the business that’s actually
proposed to be located on that land pay the taxes. But let’s not beat up on the system that’s around us. Let’s reconcile. Let’s meet in the middle.”

In response, the previous B.C. government actually closed off a 60-year-old file on land that was neighbouring my village. It was called lots 305 and 306. Every successive government had refused to deal with this land, even though it was right beside my village. They refused to deal with it. It had no value because nobody can build on it except our band.

So imagine my surprise when.... Because to be honest, I didn’t trust government. I don’t care who you were. I didn’t trust government — if you were the NDP, Liberals. I didn’t trust anybody. So if they said that they were going to transfer me two lots of land that my band spent 60 years trying to acquire, I didn’t trust them.

My colleague from Nechako Lakes, who was the Indigenous Minister at the time.... To my surprise, at an all leaders gathering — one of the last ones I went to — we had a good discussion on all the issues. I completely forgot how hard we had lobbied the previous government on these two chunks of land. By the end of our conversation, my colleague from Nechako Lakes said: “Oh, by the way, I made a promise to you that I would get this land into your hands.” So he initialled a document, and he passed it over to me for my initial. I initialled it. Then we shook hands, and I got up and left. I didn’t know what I initialled. I just knew it was land. It was actually the commitment from the B.C. Liberal government to say: “Yes, this land is going to be transferred to you, and now we have an initial agreement.”

When I left the room with my councillor beside me and I saw really what it was, I was so excited that I told my councillor, “Let’s go back to the hotel. Let’s make some calls. Let’s start arranging the next steps to formalize this, and let’s get our village prepared for a huge celebration,” which we did have. We had meetings planned for the rest of the all leaders conference, and we just walked away from all of it. We didn’t want to meet with anybody else.

We jumped on a plane, headed home, had a huge celebration. We had a celebration in our village. We actually brought in all the seafood, all our traditions. We brought in our Chiefs, and everybody was happy. The member for Nechako Lakes gorged himself on crabs. It was such a momentous occasion.

[S. Chandra Herbert in the chair.]

Once we had established the relationship, the agreements just kept piling on. The land started coming in. And it was done without treaty. It was acknowledged that there were two types of systems in B.C. that actually looked at land in different ways, but there’s got to be reconciliation. There’s got to be some middle ground, and we found it, and nobody got hurt.

The hospital lands in Kitamaat Village, in the heart of downtown Kitimat, are another good example. We have now a condominium on that land that’s owned by the Haisla, but it’s in fee simple status. We agreed to abide by municipality bylaws, and taxation was set by B.C. All of this contributes to the well-being of band members.

Where did this success come from? It certainly didn’t come from me. I can’t take credit for this. I just picked up where my previous council left off, and I picked up where previous leaders from past generations went to court to establish the case law that breathed life into section 35 of the constitution.

The Calder court case in 1973, brought by Nisga’a First Nation leader Frank Calder and his tribal council, marked the first time the Supreme Court held that Aboriginal land rights survived European settlement.

Sparrow, in 1990. A Musqueam fisherman named Ronald Sparrow put his name into the textbooks of law schools by fishing with a net longer than was permitted and defined a right. The case was crucial because it was the first to delve into the issue of an Aboriginal right since the passage of the 1982 Constitution Act.
Delgamuukw — probably one of the biggest court cases that Aboriginals celebrated. The case confirmed Aboriginal land rights and Crown’s obligations to respect Aboriginal people’s lands — rights that predate British Columbia’s assertion of sovereignty.

The most effective case law principle that I utilized at every chance I could with the provincial government and the federal government and got the most results was Haida. The case defined how the honour of the Crown requires the provincial government to consult and accommodate, in good faith, on resource development areas where Aboriginal title and rights are asserted but not established.

This led to LNG development in B.C. This led to forest and range agreement acts being signed in B.C. with a lot of First Nations. It led to peace in the forest.

Underneath that, our people got jobs — meaningful jobs. It wasn’t make-work under government programs, like we had previously seen. Now our members could actually chart out their career paths. They could decide whether or not they wanted to be a faller, a bucker, a pipefitter or welder because they could see an immediate job for them, waiting for them.

Now, I’ve heard some discussion about how this House has got to work together on this — openness and transparency. But at the same time, I’ve also heard that members are saying that people who want to question this act are actually fearmongering when we’re talking about the word “veto.” That’s irresponsible.

Our job is to hold government accountable. Our job is to make B.C. a better place for everybody. So if you see people in this House questioning a decision by government and then you characterize that as fearmongering, that is irresponsible. What am I doing here if I’m not questioning a decision by government? That’s our job.

I’ve got to go back and report back to my Skeena constituents on what this actually means. For the most part, I know what it means. I just don’t understand one term, and I never have. When the declaration first came out — what, ten or 12 years ago? — I didn’t understand it. And for the most part, what I did understand, most of that declaration were rights that we already had. It went without saying that we had the right to self-determination. I knew that. We didn’t need case law to say that. We didn’t need a declaration. I knew that.

We have the right to preserve our own language. I knew it. Nobody ever came in to me and said: “You don’t have the right to preserve your own language and culture.” Nobody ever said that. A lot of that was empty promises in this declaration.

What we do know is that everybody in this House, including the Aboriginal leaders that joined us last week in the celebration, confirmed that the declaration does not represent a veto. Consent does not equal veto. I can agree with that. In fact, the Aboriginal rights and title case law actually says that — the case law that supports section 35.

What I don’t understand when it comes to the word “consent” are the different opinions of what that means. I don’t have an opinion. I didn’t have an opinion ten years ago. I don’t have one today. To be honest, I put my whole focus on Aboriginal rights and title case law on section 35. I didn’t really want to get into a vague debate about what consent meant because I understood what it meant in terms of case law. The one definition I heard or read recently was one that talked about agreement. Consent is agreement, which is great. The case law actually says that as well. The case law says that you should pursue agreement; you should pursue consent.

[4:35 p.m.]

One of the definitions I heard of consent, in terms of agreement, said that if the two parties don’t agree, then in absence of alignment, there is no agreement. So therefore, there is no decision. I don’t know if I’m reading that right, but isn’t that a form of veto? No decision from the Crown will be made unless agreement was made by both parties. We’re already seeing that right now in terms of permits and authorizations for forestry.

I’m sure the government is going to work this out somehow. But if it means inaction in terms of decision-making coming from the Crown, this is going to affect a lot of people that depend on the decisions so they can go mining, so they can go with their forestry careers, so they can continue with LNG operations. And I’m talking about First Nations, as well, who are going to be affected. There are a lot of people that depend on these permits so they can continue work or go back to work. So this matters.
But to say that I’m here trying to fearmonger or undermine this? No, I’m not. I’m trying to get clarity. That’s what I’m trying to do. There’s a lot riding on this. We definitely do not want to undo the 15 years of success that B.C. has seen in terms of relations with Aboriginal people. In that example, I’m using the First Nations along the pipeline route for LNG. I’m using the example of First Nations who signed on to forest and range agreements ten years ago.

Probably the most significant court case to come up recently was Tsilhqot’in. I was following Tsilhqot’in when it was still a forestry dispute. Then I watched it actually transform into a title case, because I had researched case law. I tried to read it, and that’s probably one of the hardest jobs in the world — to understand something so abstract like case law for Aboriginal rights and title. But having a basic understanding, I knew Tsilhqot’in was going to win. Based on the principles of previous case law, I knew Tsilhqot’in was going to win.

My question, and I conferred with my lawyers, was: what is this going to mean to my band, who is on a solid path? We’ve got goals and objectives. It all came down to what the political motive was going to be behind the band council. So when the decision came down, there was a huge rush that, somehow, we were going to take over B.C.

I was actually hiding out in Vancouver Island. I was hiding out. I was on a holiday at my auntie’s place down in Duncan when I checked out a news story that said Tsilhqot’in had won. I wasn’t surprised. But then I was surprised at the outcry of my people. I said: “Okay. Everything’s changed now. It’s a brand-new day.” Well, in that respect, it was. But it didn’t mean that we had to throw out all our plans and our success. We didn’t have to do that.

In the light of Tsilhqot’in, all I read into it and how it affected me was going to be that the duty to consult and accommodate was going to be heightened. It was going to reach a new level, because there are a lot of bands that can actually achieve the same thing that Tsilhqot’in did. But a lot of bands don’t see the need if they’re already seeing the success of land acquisition, revenues coming in, employment and training. That’s what treaty was supposed to achieve. For bands like mine, we achieved all that without Tsilhqot’in.

I convinced my council. I convinced my community. “It’s great. I don’t think we need it, but we’ll use it if we have to. But let’s stick to our goals. Let’s stick to our path. We’ve got a good plan.” Fortunately, my council agreed. My community agreed. And now we’re reaping the benefits of sticking to our plan, being focused on the relationship with the B.C. government, on the relationship with industry.

It’s paying off today in terms of the future of individual band members — not of my council, not of any affiliated organizations. The success of my people is guaranteed. I’m hoping in 20 years my people are not talking about suicides, not talking about residential schools. I’m hoping the next generation, two or three decades down the line, are talking about completely different issues than I am talking about today or talked about ten years ago. If they’re still talking about the issues that I talked about ten years ago or 20 years ago, I failed as a leader.

[4:40 p.m.]

I’ve been trying to get an understanding of how this relates to section 35 and the accompanying case law. I’ve heard a number of comments made about statement of claim. I agree with some of the comments that were made here.

When a band, through case law, is told, “You have to prove your existence before we consult and accommodate you,” that is offensive. I agree with that, and that’s what statement of claim does. Statement of claim says: “Well, you’ve got to provide your evidence to prove that you have a right to be consulted and accommodated.” I agree: that’s offensive. It always has been offensive.

But statement of claim has a purpose, as well, other than proving that you are the one that owns the territory, because, believe it or not, there’s a tremendous amount of overlapped territories in B.C.

Now, there’s a level of fairness we’ve got to talk about here when we’re talking about statement of claim. There’s a purpose behind it that actually benefits First Nations themselves. I don’t see the reason why a band in the northeastern corner of B.C. who has a project on the books that can affect their future for the positive... I don’t see why they have to contend with a band from the southern corner of B.C. coming in to assert their right to be part of an environmental assessment or part of a project in their territory. Statement of claim actually provides protection for that.

https://www.leg.bc.ca/documents-data/debate-transcripts/41st-parliament/4th-session/20191030pm-Hansard-n286#286B: 1440 41/65
We’re talking about reconciliation in this House, but First Nations haven’t reconciled with each other yet either. Overlap is evidence of that. We haven’t reconciled with our neighbours, let alone the people on the coast, let alone the people on the far west coast.

Our people still vividly remember atrocities that took place between First Nations that happened long before white contact. It wasn’t love and peace back before white contact. There wasn’t love and peace. It wasn’t like that. It was very warring. There were a lot of raids. Our people today still remember that, and they hold a grudge against those other First Nations that actually did that to us. I’m pretty sure my band did it to other First Nations as well.

It’s starting to disappear, but the older generation still remembers it, and there’s still a vendetta. That keeps First Nations from reconciling with each other. If people think that we were out there preaching love and happiness before white contact, they’re mistakenly wrong. We have clubs in the museum that were actually designated to be slave-killers. To prove how wealthy you are in our culture, I could afford to kill a slave. This actually speaks to all of the Indigenous cultures around the world. I’m even assuming that the English culture had something similar. We’ve moved beyond that, but First Nations haven’t reconciled that with each other yet either.

So statement of claim matters, not in respect of telling the government that we’ve been here since time immemorial but in terms of who has the right to be engaged in a project in a certain territory or region of the province. It’s only fair.

My band was actually consulted on some rocks outside Vancouver Island. This happened about ten years ago. It was some rocks that they wanted to turn into a conservation area outside Vancouver Island — on the southern tip, mind you. So we got this letter in the mail from Canada. “We want to turn this into a conservancy, and we want to know what your rights and title interests are.”

We talked and talked about it. I talked with my lawyer, and finally I said: “This is crazy. This is nonsense. There is no way that I can assert rights and title on a rock on the southern tip of Vancouver Island.”

My letter, what I wanted to write, was: “What the heck are you guys thinking? That’s not my territory. Why don’t you do some research?” But my lawyer convinced me to write something more sensible.

It came out exactly like that. “This is not our territory. We don’t know whose territory it is. We have no interest in this. Please excuse us from this process.” That’s only fair, and that’s what statement of claim provides.

I can tell you, by experience, nothing has advanced Aboriginal issues more in Canada than the case law and section 35. Nothing. I can’t think of anything that actually overshadows that. We’re a living example up in Kitimat in terms of LNG and forestry. That’s why I’m hoping that this declaration, this bill, actually builds on the success of what Canada has done, started 39 years ago. That’s when reconciliation started — 39 years ago, section 35 of the Constitution. When a lot of countries around the world ignored and rolled over their Indigenous populations, Canada at least said, “Let’s recognize it,” and then the case law underneath that started to really enact it.

We can pass all the legislation we want, but we should be thinking about and enacting laws that stand the test of time. We should acknowledge the work that Canada and B.C. have done, not only in the last 15 years but in the last 39 years. Good leaders have done their best to recognize and affirm Aboriginal rights and title. There have been good leaders on all sides — First Nations leaders, federal leaders, provincial leaders — and they’ve done their best.

I don’t think for a minute that somebody in the federal or provincial government had enough animosity to say: “Yeah, we’re going to deny Aboriginal people their future.” I don’t believe that for a minute. Yet we failed to remember that nothing counts more than when Aboriginal rights are tested in court.

I’ve said this before — not only in this House, but I’ve said it at different conferences for the last ten years: UNDRIP is a remarkable document. But in terms of what happened to my territory, it’s 39 years too late. We could have used this 40 years ago when we were having trouble getting recognized by the federal government and the provincial government. But now that it’s here, let’s embrace it. Let’s figure it out. Let’s define it. Let’s define the terms like “consent.” Let’s define the terms of “joint decision-making.” Let’s define it.
Let's not think that this is a point of arrival in terms of reconciliation. Reconciliation is alive and well and has been steadily progressing over the last 15 years. If anything, this bill will represent a new point of departure and one that may or may not be challenged in court. It will definitely be tested. It will be tested in terms of the authorization of permits and environmental assessments. It will be tested by First Nations who have overlap issues, and this is going to get complicated.

For those treaty nations who have overlap issues with their neighbouring bands who are not treaty, this will be tested, and rightly so, because the principles underlying section 35 have already addressed what to do in these situations. That's what's going to matter most: the legal precedents that are set in court and will be set in court in the future, not by legislation — if challenged or when it is challenged.

Aboriginal rights and title is a very complex topic. I still don't understand all of it. But what is UNDRIP? In my opinion, you can’t understand what UNDRIP is unless you understand what rights and title is, unless you understand section 35. But for the sake of this discussion, UNDRIP was passed as a resolution of the United Nations General Assembly 12 years ago and comprised of 23 preambular clauses and 46 articles.

When it was passed by the UN in 2007, only four countries voted against UNDRIP — Australia, New Zealand, United States and Canada. All four countries were British colonies at one time or another, yet all four, arguably, were far more developed in the field of Aboriginal rights than dozens of other countries that were either unwilling or incapable of advancing the social well-being and economic well-being of their own First Nations. In saying that, I'll argue that Canada is actually even better than United States, our neighbours to the south, in terms of addressing Aboriginal issues.

This is what I thought when I first read UNDRIP. My fear was that if we went down this vague, undefined declaration road, it would actually distract from my band’s path of independence. Independence was my sole goal, for my band members’ sake, for my kids’ sake. That was my goal: independence, self-determination. I didn’t want anything taking away from that because my ancestors fought so hard to get to this place.

Back in 2007 Canada’s Minister of Aboriginal Affairs said the reason it voted against UNDRIP was that it was not balanced and conflicted with Canada’s Charter of Rights. I don’t know if that’s true or not. I just thought about my own band’s path.

Almost ten years later this is what another federal minister said about UNDRIP. This was at a 2016 address to the annual general meeting of the Assembly of First Nations. Approximately 2,500 delegates were in attendance, representing First Nations from coast to coast.

This is what the federal minister had to say: “As much as I would like to cast the Indian Act into the fire of history so that the nations can be reborn in its ashes, this is not a practical option, which is why simplistic approaches such as adopting the UNDRIP as being Canadian law are unworkable and, respectfully, a political distraction to undertaking the hard work required to actually implement it.”

This was a quote from a federal minister. This quote came from the Attorney General of Canada, federal Justice Minister Jody Wilson-Raybould. She said that. She said it was “a political distraction to undertaking the hard work required to actually implement it.”

She was here during the ceremony. She was sitting right up there. She was acknowledged by everybody. And I must say that I’ve always respected Jody Wilson-Raybould. Knowing her background, knowing where she came from, I’ve always respected her. When she made that quote to the Assembly of First Nations, my respect level went even higher, because what she said took courage — to honestly speak about UNDRIP. That took courage, because the narrative was going a different way.

Before politics, Jody Wilson-Raybould was both a treaty commissioner and Regional Chief of the B.C. Assembly of First Nations. I believe that, like me, she understood Aboriginal issues inside and out. She understood the politics. She understood all the mechanisms. She understood treaty. She understood all of it. I also believe that she knows the same struggles that I knew and that every other band councillor and chief councillor in Canada faces in the fight to improve the lives of our people.

[4:55 p.m.]
Any attempt to improve the lives of Aboriginal people living on and off reserve is worth considering, as long as it is an immediate goal and is the ultimate goal. But if it needs 20 years of definition through the courts, I don’t support it. First Nations have spent enough time in the courts. They’ve spent enough money on lawyers, consultants, advisers. They’ve spent enough time. There’s a tremendous amount of literature out there put together by lawyers and judges and courts, but it didn’t provide a future for Aboriginal people themselves.

I know I’m going to sound like a broken record, but my priority has always been people. It’s never going to change.

Interjection.

E. Ross: Thank you, Minister. I’m not going to keep this short, by the way.

My main concern has always been people — all people. So if we’re talking about an initiative that improves the lives of all people, whether you’re Aboriginal or not, I support it — definitely, I support it. But I can’t support something that’s going to end up being defined by the courts, especially when we spent so much time already with the case law principles in Canada that actually help Aboriginal people on the ground.

Because actions, in my mind, actually speak louder than words. That’s what’s most important. One of the chiefs that were here last week said the same thing. They’re just words. I agree with Terry Teegee, the chief of the AFN.

Now, when I talked about Aboriginal business being a multi-billion-dollar business in Canada, those weren’t my words. Those were actually past Aboriginal leaders that spoke about it and actually proved it. Those Aboriginal leaders, like Jody Wilson-Raybould, who had the courage to speak in political realities and legislative realities, deserve the utmost respect — to speak against narratives. Because we’ve come a long way in Canada. We’ve come a long way in B.C.

I’m hoping that this UNDRIP bill is not an exercise or experiment, because we’ve made tremendous progress. Even if we do debate here forever about the word consent or veto or shared decision-making, ultimately, at the end of the day, if push comes to shove, the courts will determine those questions. All of the significant cases I outlined earlier lend a real voice to legal rights in Canada.

The Premier said that UNDRIP would not contravene section 35 of the constitution. I thank him for that. Nor can UNDRIP supersede or override all the case law that has led to the most progress for Aboriginal people. I agree with that fully, and I think I made that clearer today.

After all, UNDRIP is really just a statement of principles. UNDRIP actually doesn’t acknowledge or recognize the progress of a country like Canada when we’re talking about case law principles or the constitution. Only section 35 and the legal precedents established by case law are binding. Like I said already, most of what I read in an UNDRIP document ten years ago already existed in Canada, thanks to existing case law.

Plus, nobody is going to stop a First Nation from pursuing self-determination. No one’s going to stop them. No one’s going to stop their dream of being self-governing. There’s no law to stop them. Even the Indian Act can’t stop them.

It’s a different world today. That’s what case law did for First Nations. Where it really matters in today’s context and the last ten years is on the ground, when bilateral and multilateral agreements are signed between First Nations, industry and government. That’s where it matters. That’s on the back of section 35 in the case law.

What I’m trying to understand is what the UNDRIP bill means in terms of going forward in B.C. There were comments about how we’re going to move away from transactional agreements, and we’re going to move more towards relationship building. That’s going to be a curious episode to watch unfold, because all the progress we’ve seen in B.C. right now is all based on transactional agreements. That’s a foundation of case law. The Premier says himself that it’s not going to contravene section 35 of the constitution or the case law.

Well, the case law says that if you’re going to infringe Aboriginal rights and title, then you’ve got to accommodate it. You’ve got to give something in return to justify that infringement. That’s a
By the way, accommodation is not just money. Accommodation could be a technical change to the project description. It could be a routing change. It could be a number of things to accommodate a First Nations interest. I don’t understand how forming a relationship is going to keep B.C. moving forward in terms of forestry operations, LNG operations, mining operations or anything else that is proposed for B.C.

You have to have a contractual agreement someplace. I don’t think any First Nation is going to allow a major development on their property just because they signed a relationship document. Those days are over. First Nations now are moving more towards contractually binding agreements that lay out the terms for revenue-sharing, employment, training, contracts. That’s the reality of today. That is a transactional agreement. If you do find some First Nation that allows development based on a relationship, introduce me to them. I’ll change their mind.

I mean, for this, all you’ve got to look at....

E. Ross: What’s this?

An Hon. Member: He’s just heckling.

E. Ross: Why are you heckling, speaker?

Interjection.

E. Ross: No, you’re not.

Deputy Speaker: Members will come to order. The member for Skeena has the floor.

E. Ross: We stayed quiet during your guys’ speeches.

Interjection.

E. Ross: No, you’re not.

I mean, we only have to look at the 345 revenue-sharing agreements that were negotiated by the previous government. That is a transactional agreement, in many different areas — environmental stewardship initiative, forest and range agreement, mining agreements, the power line that actually went by Nisga’a territory. That was a transactional agreement, and it’s based on section 35 and the case law.

LNG Canada — transactional agreement. Chevron, Kitimat LNG, Cedar LNG — they’re all contractual agreements. Forestry — it’s a contractual agreement, transactional. It’s not based on a relationship.

To be honest, when I was a chief councillor, I didn’t want a relationship with anybody. I didn’t want a relationship with government. I didn’t want a relationship with industry. Give me something on paper that allows my people to dig themselves out of poverty. Give them a future. That’s what I wanted, and the only way that I could see that.... We need a transactional agreement.

Everything that we’ve done and accomplished in B.C. in the last 15 years was done without these principles, without UNDRIP principles. So I want to believe the government is saying that this is a way forward and it’s going to build on past successes. I truly hope that’s what happens, because if it does work out the way I’m hearing it, B.C. is going to be a really strong province economic-wise — really strong. We’re going to have peace in the woods on pipelines, forestry, mining, across the board. You name it.

First Nations will be less dependent on government funding, because they’ll have their own revenue streams, and their people will not be stuck on welfare. They will not be stuck in poverty and all the social issues that get attached along with that.
I still want clarity on agreement versus veto. Those Aboriginal leaders that were here before were my colleagues. I used to work with them at tables — separate tables and common tables. But I never remember having this talk about agreement versus veto. What I heard in the House last week was agreement is consent, consent is agreement, which is good. That's what the case law says too.

My question is: what happens in the case of non-agreement? That is my question. If there are two parties at the table, First Nations and the Crown, and the First Nation doesn't agree, what happens? Does the Crown still go ahead and make their decision based on the interests of B.C. as a whole? Or do they just withhold their decision, which is what we're seeing now in terms of the forestry sector.

Making no decision is still a decision. When you talk about that, if you have no decision for a certain amount of time that goes beyond the time we're talking about in here, isn't that a form of veto? I don't know where to get clarity on this. Section 35 in the case law does say that the Crown has a duty to the province as a whole. You've got to consult and accommodate the best you can, but at some point, you've got to make a decision. So if there's no agreement at this table, what happens? There are a lot of permits and authorizations, environmental assessments, that depend on the government making a decision.

Now, if you can answer that, can somebody tell me what happens when the Crown is at the table with three or four different First Nations, and three First Nations agree but one doesn't? Does the Crown withhold its decision? If that's not a veto, I'd like some explanation on what that is, if the Crown doesn't make a decision until they get that final agreement. In some cases, this could take months, if not years. So just a little bit of clarity.

I've seen a number of different definitions of what "consent" means. That's just one of them. When we're talking about authorizations coming from the Crown — forestry, pipeline permits, mining permits, ...

You know, there's this idea that somehow the colonialists want their permits so they can rape and pillage the land and make lots of money. Well, there are a lot of First Nations that are depending on those permits too. First Nations want to be loggers. The forest and range agreement enabled that ten years ago. They're waiting on those permits. There are First Nations that are actually leading environmental assessments for their own purposes, for their own projects. They're waiting for that Crown decision. They're respecting the Crown's authority, and they want it.

I think the first thing that I'd like to work together on with that side of the House is: what does it all mean — consent, agreement, veto — in respect of the Crown's authority to make a decision that benefits all of British Columbia? I've heard the comment that we've got to work together on this. I would love to work on that. Include me in your discussions. Invite me to your meetings. I'd love to be a fly on the wall, because I just want some clarity. Like everybody else, I want certainty. I don't want the certainty that we have achieved in the last 15 years in B.C. to go away.

For the most part, I understand the bill. I understand UNDRIP. I understand all of it. But the more opinions I read on this coming from leaders and legal expertise and advisers and consultants, the more confused this issue is becoming.

I just tried to read an 87-page document on consent. The title is "Consent." It's 87 pages on one word, but it didn't define "consent." It was written by a lawyer. Now I'm going to have to get another lawyer to review this and kind of explain to me what this means if I want to understand the principle behind that.

You know, in listening to the conversation over aboriginal issues in B.C. for the last couple of years, you'd think that B.C. is the worst place in the world when it comes to reconciliation. I have a different opinion. In fact, I have the opposite opinion.

I mean, 39 years of reconciliation. To be honest, though, to be fair, there are a lot of First Nations that are not in the shoes of my band. They don't have the same opportunity because of location or resources. They don't have that — the remoteness. They don't have the same opportunity. But the reconciliation between First Nation and First Nation can help resolve that. We can reach out, and we can help them. We can give them lessons learned.
But we can’t tell British Columbians: “You’re the worst people on earth, and you don’t respect Aboriginals.” Not up in my neck of the woods. I mean, it’s been a rough, rocky road for sure — no doubt. It hasn’t been pretty, but it’s not like 100 years ago. It’s definitely not like that. In fact, when I was explaining this to my parents…. I was trying to explain every step of the way what we’re doing, as well as explain to our community. My mother’s comment was: “I wish I was 40 years younger, because we never had this opportunity.” So we can’t go on convincing British Columbians that this is the worst place in Canada when we talk about reconciliation. That is not a good road to start on. We should acknowledge the progress that B.C. has had in the last 15 years, which started in 1982.

You know, the biggest significant advancement in terms of reconciliation that affected my band, as well as all the bands from Kitimat to Prince George, as well as down the channel, was LNG. Now, back in 2004, nobody knew what LNG was. I didn’t know what it was — no idea. But the first project proposed for Kitimat was actually an import facility, and it was proposed, like, $600 million. We fought hard to get those guys off of Crown land and onto our reserve where there was less environmental impact. We fought for two years, but when they finally agreed, we could see that by changing it to an export facility, we could reap the rewards of working with this company and working with the province.

When we talk about the LNG final investment decision that was made by LNG Canada, we can’t think that this just happened lately in the last two years. It didn’t. This story started in 2004. It took a lot of successful councils to actually hammer that agreement down. You go back even further. My band started looking at import facilities back in the ’80s under Pac-Rim.

There was always this willingness to bring in industry, bring in economic development, but we just couldn’t get it over some hurdles. Ten years to reconcile all of these agreements, and it was tough. Our council was always changing over. We’d have a sea change of government, change of staff, but we were focused. It wasn’t funny. It wasn’t pretty. It wasn’t amicable. I think I mentioned once before that the biggest fights I had weren’t with the government. They were with my colleagues. It wasn’t fun beating up on somebody like that. It wasn’t fun looking at a government decision that actually affected us in a negative manner.

It’s my opinion that when we were doing this in the initial days, our actions on both sides were actually based on ignorance. We didn’t know much about the provincial government and the minister’s duties, and in turn, the provincial government didn’t understand what we were going through in terms of an Indian Act band and in terms of what we thought about our interpretation of Aboriginal rights and title case law.

Eventually we came to a common ground, and then things went smoothly. In fact, if anything, the previous provincial government and the Haisla actually walked side by side, and industry had no choice but to get in line. They had to come to the table. Industry couldn’t play off government against our First Nation. They couldn’t do it because the government, according to case law, had a fundamental duty to acknowledge and address Aboriginal rights and title.

The previous government took it to a different level, of course, but now we had industry…. The first step was to get government to understand — a mutual understanding. The second step: get industry to understand that actually, the provincial government and our First Nation are on the same page. All the First Nations from Prince George to Kitimat benefited from that. That’s why you have all the agreements from all the elected band councils from Prince George to Kitimat. It came through dialogue.

You know, the reconciliation I’m talking about wasn’t just us sitting at a table creating relationships. We signed a protocol agreement with the provincial government that actually still exists today. We had reviewed other protocols that had been signed by other First Nations, and the one thing we noted was that it was too complicated. It was too bureaucratic. If we had to call in a lawyer or a university student to explain to us the agreement that we had developed ourselves, it wasn’t going to work.

Our band actually put together a simplified protocol that just basically said: if we have general agreement on a project, then all we have to do is develop a way for our staff to phone the provincial staff if an issue comes up. That’s all it should take: just a phone call. The council should not have to
get involved. We shouldn’t have to call the ministers or elected leaders of the provincial government. The staff from our respective parties should be able to hammer it out.

It worked; it’s still working today. That’s why you don’t see political leaders jumping in to have a tussle with provincial governments at every single issue. It’s because the staff have been mandated, on both sides, to deal with the issue. That was a form of reconciliation.

By the time industry got on board, the problems that we’d had to hammer out became less and less. Industry understood that the provincial government was not going to allow any permits to go ahead unless our rights and title had been fully satisfied. So the industry came to us and said, “Okay, we want to get your interests into the application before we submit it,” and it worked wonders.

When the provincial government phoned us up and said, “Hey, we just got this application for a permit. What do you think about it? What do you think about your rights and title? What do you think about consultation and accommodation?” we’d just say: “Don’t worry about it; just process it. They’ve already talked to us, and we’ve seen it. It’s in the application. They’ve already addressed it.” It made things move a lot quicker. That is reconciliation. That is meeting on common ground. That is a process that should be built upon. It should be duplicated.

Now, shared decision-making is an old idea — I came across this idea when I became treaty chairman, back in 2003, for my band — but we abandoned it a long time ago. We did all the research within treaty, and it kind of died on the vine quietly. At first we championed it, and we loved it. But then we realized that actually, it doesn’t really accomplish what we’re trying to achieve.

In my opinion, as treaty chairman, there was just too much bureaucracy, too much negotiation, too much legalese, too much responsibility and definitely too much liability. I really felt that my band was not ready for liability. I felt that for the long term, we weren’t ready for responsibility. We had no continuity as a band council. Our elections were every two years, and we had no corporate memory. I tried to fix both of those — corporate memory and continuity. I tried to fix it, but I couldn’t do it.

One of the reasons I gave to my band members and my council was that if we have shared liability on this shared decision-making — we both sign that decision, both minister and chief and council, and we share in the liability — things might go great, but then, 50 years down the line, something might go terribly wrong. The chief and council, 50 years down the line, who’d have no idea that we had actually signed this agreement on shared decision-making are going to be confronted with a Mount Polley disaster, and they’re going to have no idea of how to deal with it.

That’s what continuity means. That’s what lack of corporate memory means, and I couldn’t do this without a good governance structure. So I abandoned it. I didn’t talk about it anymore. Plus, by then the Crown and the industry were already incorporating all our interests into the permits and applications and into the environmental assessments.

The ignorance of First Nations towards the Crown and the Crown’s ignorance of First Nations’ issues got resolved just by education. That’s how it got resolved. We pulled in a lobbyist in 2010 that was supposed to help us come down here to Victoria and actually lobby the provincial government. Well, before he did that, he gave us a lesson on what government was. That’s where we understood finally, for the first time, that government, the B.C. government, has a duty to all British Columbians. They have statutory decision-making authorities. They have a responsibility to be accountable and transparent not only to us but to all British Columbians.

We softened our approach to the government. We had their support. We had their backing, but that was the first time that I ever heard the word “fettering.” It was actually a deputy minister that told me this: that what we were actually asking, in the early days, was for a minister to fetter his decision-making powers. So I pulled out my electric dictionary and looked up the word “fettering.” And then I understood. We abandoned the idea of shared decision-making.

The other thing that I also realized back in those days was that some of the decisions we were making, some of the agreements we were signing, were putting non-First Nations in a very distrustful atmosphere. It was always complaints from the local governments that what the government was doing with us was actually secret negotiations with my band, and it was going to affect, somehow, the municipality, the regional district or somebody along the pipeline route. I understood this.
I understood when government would come down and say: “Well, we have to disclose this to your neighbours. We have to disclose this to your neighbouring First Nations. You can redact. You can edit. You can leave out the business information, the sensitive information, but we’ve got to tell them the nature of what we’re doing here.”

We understood this, and we actually agreed with it because we didn’t want the negative backlash to come back on our people. We didn’t want our people to go shopping and be confronted with somebody that said that somehow we took away their future, their job. We didn’t want that. So we understood why government had to do this on behalf of all British Columbians. It puts First Nations in a bad spot if it’s done in a bilateral fashion and in secret, and it’s only disclosed after you sign the agreement.

We were still trying to formulate this process on how to interact with our neighbours by the time I left. It came down to relationship-building — trust. Unfortunately, I never did establish that, but it was always in the back of my mind because we don’t want B.C. to be divided simply on the basis that we want to uplift Aboriginals in B.C. We don’t want that. We don’t want animosity from First Nations to non-First Nations or likewise. We don’t want that. That does not benefit anybody.

You know, the lines are starting to blur between the Indian Act world and the province of B.C. in terms of Crown authority and Crown lands. First Nations themselves are private land owners now. My band owns private land. We pay taxes on it. Our band members own land in the municipality of Kitimat, Terrace, Rupert and Vancouver. They own property. It’s not reserve land. So when we’re talking about people that are having a fear of what that means to private property owners, in terms of UNDRIP, well, we’re talking about First Nations too.

I personally, myself, don’t think that any government is going to say: “Okay, we’re going to subject private land owners to some type of third-party authority.” I don’t think the B.C. government intends to do that, but it’s a concern. Somehow we’re going to have to go back to all our ridings, all 87 ridings, and say: “No, that’s not an issue. Your house on your property that you purchased in fee simple status — it’s okay.”

Now the rights and title case law does speak about private land, but it hasn’t been defined yet in terms of what it means.

You know, everything that I read in the declaration, UNDRIP, were things that I thought were already in place in B.C. and Canada. It took me a week to go back and read all the case law, as well as read up on UNDRIP again to kind of get acquainted with it, because I haven’t read anything regarding this in the last five years. Didn’t have to. Things were going too good for us to go back and retouch on those case law principles or UNDRIP.

I’ve already said that a lot of the stuff in the UNDRIP declaration was already there, like self-determination. It was already there. The right to preserve your own language and culture — it’s already there. Nobody’s going to stop us. But free, prior and informed consent — that is a principle of UNDRIP. But in practice....

Interjections.

**Deputy Speaker:** Sorry, Member.

Members, if you could please reduce the volume of your conversation or take it outside if you need to have this conversation. You’re interrupting my ability to hear the speaker.

**E. Ross:** Thank you, Mr. Speaker. Where was I? That was humorous, by the way.

**Deputy Speaker:** You’ve got time.

**E. Ross:** Free, prior and informed consent under UNDRIP. Now, when I first looked at this, I thought: “Well, the case law already provides for that.” It’s a part of case law that you have to meaningfully consult First Nations on a project that’s going to infringe rights and title. You have to be informed.

What it didn’t talk about, what UNDRIP didn’t talk about, is that consultation, in terms of free, prior and informed consent, has got to be a two-way street. That’s what case law in Canada says.
refused to consult on a Crown authorization or permit, then I did so at my own detriment, because if the Crown was meaningfully and honourably trying to consult and accommodate our rights and title, then I had a duty to respond. If I didn’t respond, I had to find a different avenue to present my interests.

That’s why I didn’t put much thought into free, prior and informed consent. Consent is part of case law, in terms of: that’s what the Crown should be pursuing. It’s always an aspiration that all parties should have consent. So it’s not a new word. It has already been in practice for many, many years. That’s why we have LNG. That’s why we have peace in the woods.

I have a conclusion here. But I’m going to try and condense the conclusion, because I think a lot of this stuff I already said before.

In conclusion, I’m looking forward to the next two years to see what the results are of this bill. I don’t understand it fully. I’ve never understood UNDRIP fully, based on what I’ve already said.

I think if there is one thing that I take away from this, it’s to think about last week when we had the ceremony in the House. We had the Aboriginal leaders sitting there. We had Jody Wilson-Raybould sitting in the audience, as well as the architect of that motion that was made federally, and we had the leaders of our respective parties stand up and make comment. Well, the one thing that jumped out at me was a number of leaders in this House, including the Aboriginal leaders, said: “We are all in this together.”

Now, I’ve got a billboard in between Kitimat and Terrace with my picture on it, sadly to say. It says that exactly. It says: “We are all in this together.” That’s what it says. That is not my saying. That is actually.... That came from a judge when he was describing the judgment of a case law principle that came out. Basically, what he said was that we’ve got to learn to reconcile.

Interjection.

E. Ross: Who was it? Was it Delgamuukw? Yeah, to my colleague from Stikine. Yeah, that’s right, Delgamuukw.

[5:30 p.m.]

Basically, what he said was that we better find a way to reconcile, because let’s face it, none of us are going anywhere. The Leader of the Official Opposition said the same thing. The Aboriginal leaders said the same thing. And I echo that statement.

[J. Isaacs in the chair.]

It was actually the judge that made me first think about that, over ten years ago. I’ve always spoken to it. I spoke to it while I was on council. It really went back to what we’ve already established under section 35 in the case law. These are all principles that Canada, and B.C. in particular, has been trying hard to achieve.

At the end of the day, I have non-native family. I have cousins, uncles and aunties. I don’t want to alienate them. I don’t want anything in terms of trying to address the First Nations issues in B.C. to be the cause of division of the society we have in B.C. I don’t want to divide our communities. I don’t want to divide our families. Most certainly, I don’t want to create animosity between First Nations and non-First Nations. I don’t want that.

I was really glad that a lot of leaders spoke about reconciliation in terms of we’re all in this together. If you looked at the definition of “reconciliation,” it actually means: “Let’s bring it back together.” So if you read that definition alone, then it somehow implies that at one point in history, we were together. Somehow, we separated, and now we’ve got to reconcile. I believe in that fully.

I do hope that this bill and the declaration achieves us coming together, even more so than what we’ve done in the last ten years, which was incredible progress. And I hope that this doesn’t end up in the courts or in legal hands for the next ten or 20 years, because we don’t want to go back 20 years in time. We want to build on our successes to date, and we definitely want to build a strong future for all British Columbians.
S. Malcolmson: I’m honoured to represent Snuneymuxw territory and to represent Nanaimo in this Legislature and so honoured, at this historic time, to be one of the people that gets to speak to Bill 41, the act to implement the declaration on the rights of Indigenous peoples; to bring this United Nations legislation, enacted in 2007, into law so that from this point on, every provincial legislation — as did our environmental assessment revamp last year — embeds the UN declaration immediately in it; to get these fights out of the courts and to start working together — incorporated with full recognition of the Indigenous rights, human rights, that do exist, moving forward in a way that incorporates them into everything we do.

I’m thinking of my friend Bob Chamberlin. He was, a year ago today, working hard with a big team and with our provincial government to work using the principles of the UN declaration on the rights of Indigenous peoples to hit one of British Columbia’s most intractable problems. For 30 years, people on the coast have been fighting to protect wild salmon, to protect jobs, to protect our coast. We could not get past the logjam of conflict over fish farms.

Just a year ago, although it was very quiet in the background, our government was working with three First Nations in what we call the Broughton Archipelago on a consensus — not a negotiation but a conversation — where two governments sitting down together found a way through. Their work was so compelling that at the last minute, industry, which had been fighting, understandably, for their jobs, for their economy.... This came out of the courts and moved to a big circular table, which ended up being able to achieve the breakthrough that we’ve been waiting decades to get.

It was a great announcement that the Premier made, along with a number of the ministers here who I’m now honoured to serve with, to say that there had been an agreement reached on moving 17 fish farms out of the wild salmon migration routes.

In the year following, these are the results that we’ve had from that work already: four fish farms already out. In 2020, another two fish farms. In 2021, another fish farm. And then, in 2022, another six. These are all done on a timeline that works with jobs, that works with keeping salmon farming going, but not in a way that is placed in the wild salmon migration routes. In 2023, there will be a final seven that are covered by this agreement, which may remain if there is consent of the affected Broughton First Nations and if the DFO licence is given.

Again, a way to use the principles of UNDRIP to change the outcome of legislation. This was the first decision-making in Canada that was based on UNDRIP. With the passage of this legislation, we can see that there can be so much more.

I’m very grateful to my friend Bob Chamberlin. They used traditional ecological knowledge. They used shared decision-making and accessed the independent science for testing viruses, building on the work that Alexandra Morton fought for, for so long. Now we have this embedded in agreements.

I’m also thinking of my friend Romeo Saganash, who joined us. He’s a Cree leader from northern Quebec. That he was here sitting in the gallery on this momentous day last Thursday says a lot. Romeo is a New Democrat Member of Parliament that I served with in the previous parliament. He is a residential school survivor. So was his family before him. He was the deputy Grand Chief, Council of the Cree. He was also the first Cree lawyer in Quebec.

He went to the United Nations to build the United Nations declaration on the rights of Indigenous peoples. It was his life’s work. Then, when he was elected as a Member of Parliament, he turned it into legislation that we weren’t sure that the Liberal government would support. They did in the end. Then, at the final minute, it was blocked by Conservatives in the Senate — a great disappointment.

His bill, C-262, was supported by KAIROS, by the Mennonite community. People from the faith community, in particular, marched across parts of the country to Ottawa to urge that this bill, the UNDRIP legislation, federally be enacted.

Following the ceremony here last week, it was so good to be out with our old friend Murray Rankin, with Romeo Saganash and Leah Gazan, his partner and newly elected Member of Parliament, and to have Romeo say to us: “You know, I hoped it would pass in parliament, but I always thought it would come to British Columbia.” And now here it is, another person’s life’s work bundled in and reflected in this legislation.
There is so much hope and optimism. I'm so proud of the work of Snuneymuxw chief and council. Chief Wyse is following in the powerful footsteps of his mother, who made agreements with all the local partners. And just now, in just these past couple of weeks, Chief Wyse is signing agreements with the Port of Nanaimo, with the city of Nanaimo. I think it's coming with the regional district. It's all about relationships and not fighting in the courts but working hand to hand. We know we will not protect our coast, our jobs, our people without all governments at all levels partnering.

I echo the words of Terry Teegee and Ed John in this chamber. We do hope that there will be unanimous support in this House for this groundbreaking legislation and that we will be moving forward together in a good way when Bill 41 is passed and that we will show the rest of Canada what reconciliation in action looks like — the certainty, the economy that can be freed up by this and the great optimism it expresses.

I thank the minister and his team for making this happen.

My great thanks to the voters of Nanaimo for allowing me to be part of this government, to be part of this historic work.

D. Ashton: As elected officials, we are all committed to building a future that's full of opportunity and prosperity for everyone in British Columbia. Every British Columbian deserves that opportunity to meet their full potential. We owe this much to all of us and, in particular, our children and the next generations, who will be the stewards of this great province.

We all know that opportunity is something that we must create, and it does not just happen. That is why every government, regardless of political stripe, has always invested so heavily in education and other services and supports that help our children and families prosper and succeed.

We also know that our natural environment must be protected for future generations. It is part and parcel of our mutual responsibility for the success of our communities. British Columbians are especially connected to their natural environment and intuitively have a deep appreciation and connection to it. We all know and can all agree that for far too many years, not all of us have shared fully the opportunity that is available to so many British Columbians within this province. Fortunately, we took the first steps in significantly turning this around over ten years ago in forestry and in LNG industries, for an example.

In particular, too many Indigenous people have struggled to achieve the same level of prosperity that has been attainable for others, which is not acceptable. Many Indigenous communities have faced a disproportionate level of child poverty, suicide and impoverishment to other populations. It has been a challenge, recognized many years ago, and something government has wrestled with to help change this course, working closely with Indigenous leaders across this wonderful province.

The UN declaration on the rights of Indigenous peoples is built on the concept of supporting rights, freedoms, dignity and a quality of life for Indigenous peoples. Those same ideas apply right here in British Columbia. Furthermore, this government has stated it will be based on section 35 in jurisprudence, which can only build on the successes of the last ten years. These principles are something that all British Columbians can support.

The B.C. Liberals have always committed to working together towards true reconciliation for all Indigenous people in every part of this province. We have demonstrated this with meaningful actions towards reconciliation over several years, many of which focus on the closing of serious gaps that existed in education, employment and public health. While gaps still remain, much of this work started more than 50 years ago and still continues to this day. It is work that we all support and work that we are all committed to taking further action on together.

We know that partnerships are essential to reconciliation. Economic partnerships that build opportunity for all British Columbians will be critical to all of our futures. Section 35 of the 1982 Constitution Act protects and respects Indigenous and treaty rights and has led to the establishment of duty to consult and accommodate Indigenous communities.

Meaningful engagement with Indigenous peoples is what B.C. Liberals have done for the past 15 years. In fact, by 2017, we had signed more than 500 agreements with First Nations across this wonderful, great province, 345 of which were revenue-sharing agreements with 242 different First Nations.
British Columbia was the first province in the country to share revenue from mining, from forestry and other resources with First Nations. The agreements mentioned were signed with nearly all of more than 200 First Nations in British Columbia. They were designed to ensure understanding and to recognize the needs and the values of each community, because foundational to each of these agreements are the principles of dignity and mutual respect.

As part of the B.C. jobs plan, the B.C. Liberal government created a new Aboriginal Business and Investment Council to work more closely with First Nations to foster wealth-creating partnerships. Between 2001 and 2015, the First Nations fund provided nearly $51 million for 1,737 business loans to Aboriginal businesses.

In 2015, our government launched the Aboriginal skills training development program to invest up to $30 million over three years to fill training gaps for First Nations who wanted to participate in the emerging LNG sector. From 2008 to March 2016, the Aboriginal trades training initiatives program helped cover over 3,000 Aboriginal peoples to receive skills training.

Through the Canada job fund, $6.7 million in 2014-2015 and 2015-2016 was directed to support over 753 Aboriginal clients to access trades training.

In May of 2016, we hosted a children and families gathering with the First Nations Leadership Council. That gathering was the result of the Premier’s commitment at the 2015 B.C. Cabinet and First Nations Leaders Gathering to host a meeting in 2016 to bring together child-serving agencies, individuals and communities to talk about ensuring Aboriginal approaches for children in care and who need support. At the time of government transitions, at least 40 of Grand Chief Ed John’s recommendations from his report Indigenous Resilience, Connectedness and Reunification: From Root Causes to Root Solutions were already underway, and the province was reviewing others to see how they might be incorporated.

When it comes to education, our government increased the six-year high school completion rate for First Nations students from 39 percent to 63 percent. The number of credentials awarded to Aboriginal students in the post-secondary education system increased from 27 percent — to 3,440 in 2014-2015, and from 2,634 in 2009-2010 — under the B.C. Aboriginal post-secondary education training framework and action plan. And 93 percent of school districts in British Columbia had Aboriginal enhancement agreements that established partnerships between Aboriginal communities and school districts to meet the educational needs of Aboriginal students.

In health, B.C.’s First Nations Health Authority was the first provincewide health authority of its kind in Canada. It worked with First Nations, Health Canada, the B.C. government and the provincial health system to improve health programs and services and foster a health and wellness approach that reflects First Nations culture. In 2015, the provincial government, regional health authorities, the Provincial Health Services Authority and First Nations Health Authority signed the Declaration of Commitment: Cultural Safety and Humility in Health Services for First Nations and the Aboriginal People of British Columbia.

When it comes to public safety, our government co-hosted the B.C. family gathering event for over 350 family members of missing and murdered Indigenous women and girls. The province has shared the feedback with the federal government and participants in the Roundtable on Missing and Murdered Indigenous Women and Girls. And in September of 2016, the province provided $2,500 to support the work of the Moose Hide Campaign, a growing movement of Aboriginal and non-Aboriginal men dedicated to ending the violence against women and children.

All of these things and more have been steps on the path to reconciliation and demonstrate our party’s commitments, our beliefs, our dedication to ensuring that we can continue to work with First Nations as they work towards self-determination and independence.

With this bill now before us in the House, it is important to carefully review and consider the intent and implications. We owe that to every single Indigenous person in this province and every other citizen. We know at any time there are significant processes of change, reconciliation and perceived change in the approach to engagement with First Nations and Indigenous peoples, and it will generate many questions. Those questions will include: what about grazing rights for cattle on Crown leases? How do we manage our parks and the use of B.C.’s massive back country? Will the
forest industry need to make adaptations, and what will they be? How will mining activity and other resources be affected? Will there be any impacts to private land and homeowners?

These questions will be posed to the government of the day as each election cycle comes and goes. They will also be asked here in the House and also in the public by media and by all the people that we represent, our constituents. As a society, we will need to address them, and all the while, we will need to respect the needs, the hopes and the dreams of everyone involved, most especially the people in each and every one of our communities.

This is now the responsibility of government as it is the expectation of all British Columbians. If we can build on the two decades of progress and the efforts to help support Indigenous communities improve their prosperity, the reward will be true and lasting opportunity for everybody in British Columbia to get ahead. We need to be transparent. We need to be open. We don’t want to see a repeat of the mountain caribou process, where First Nations were put in a bad spot. This will mean we can all realize our dreams right here in British Columbia.

As we move forward reviewing this bill, we must do so in the spirit of unity, and we must do so guided by the principles that everyone in this great province must feel a sense of belonging, that British Columbia is our home, that we will be respected here, that we will have a full sense of citizenship, that we will be treated with respect and dignity on each and every day. This is the standard that we owe every single British Columbian.

That is why I’m proud to stand here in this Legislature and welcome an opportunity for real and substantive discussions on how we can achieve a higher level of reconciliation with the Indigenous people of this province of British Columbia.

Hon. D. Donaldson: It’s hard to describe the joy, the pleasure, the happiness and how grateful I am to be able to rise in the second reading of Bill 41 to express my support for the Declaration on the Rights of Indigenous Peoples Act. It’s a historic moment. It’s a moment where B.C. becomes the first province in Canada to put the UN declaration into action, to enshrine the UN declaration in legislation, recognizing in law the human rights of Indigenous peoples.

I want to take just a couple of moments here to describe why, through personal experience, I find this so important. Before I became an MLA, I was working and living — I still am — for 30 years in Gitxsan territory, working in community economic development. What struck me is the opportunities in the Hazeltons, on Gitxsan territories and around the province, the opportunities that the land provides, yet how few First Nations people were able to take advantage of those opportunities — not just to see the opportunities but to act on them.

It begged the question and became a question in my mind and many other peoples’ minds: what is it that allows a person to see that opportunity and then act on that opportunity? That’s a complex question, and it has many facets to it. But what we do know is what stifles that ability to see that opportunity and to act on it. What has stifled it in many areas, and where I live as well, is the continual unrelenting abuse of basic human rights that is part of colonization. Many have been able to overcome that continual and unrelenting abuse of human rights, but many, many more have not been able to.

I think of the young people — I categorize people from 18 to 28 as young people — that we used to work with, before I became an MLA, in community economic development. There was this core of young people who could not see a future for themselves and could not see a future for their community. They had no ability to imagine that they could impact that future, their own or of their community.

We know that that’s complex and multifaceted, but it’s also why the introduction of this bill and the introduction of it in first reading and today is such a joyous, joyous occasion, because the Declaration on the Rights of Indigenous Peoples Act is about recognizing the human rights of Indigenous peoples in law.

We know there are myths around the word “consent” being part of the UN declaration on the rights of Indigenous peoples and that meaning of “veto” that was dispelled by none other than the
B.C. Assembly of First Nations representative Terry Teegee, who spoke to that during first reading and made it clear that consent does not mean veto.

We know about the myth that this act will increase uncertainty for business on the land base, because we have the Business Council of B.C. supporting this initiative. We have the Association for Mineral Exploration B.C. associating this approach that we’re taking. We have LNG Canada supporting this approach. We know that the myth that this will create more uncertainty is exactly that.

Why it has such relevancy when it comes to the economic aspect is that human rights and economic self-sufficiency are linked, that human rights and becoming a master of one’s own economic destiny — whether that’s an individual destiny, whether that’s the destiny of a community or a nation — are linked.

That’s why this bill is so important, because this bill fundamentally is about a transformational approach, not a transactional approach. Many people wonder what that means — transformational versus transactional. Transactional approach has been the approach that was taken in the past with First Nations in B.C. from the provincial government. That’s a project-by-project approach. In other words: “If government does this, will you agree to do that so a project can proceed?” Yes, that is important, but it’s fraught with all sorts of risk and challenges if we only do that on a project-by-project basis.

Everybody knows, especially people in First Nations communities, how much energy and capacity that takes and the time involved to always proceed on a transactional approach. In fact, a transactional approach is what the courts have directed must occur. This bill is not about consultation. That’s something that has to occur. That’s been clear in successive court cases — and then accommodation, if infringement is found. That’s a transactional approach.

Yet instead, what we’re talking about here with this bill is a transformational approach, where we make a bigger framework. We as government with First Nations make a bigger framework, based on shared principles, shared ethics, shared values and shared morals. The projects will fall under that. That overall transformational framework that is embodied in Bill 41, the Declaration on the Rights (••

Indigenous Peoples Act, has been missing in the past. That transformational approach gets us out of the boom-and-bust cycle that many First Nations communities in rural areas face, because it’s been based on single projects. This is truly a new relationship, as embodied by the declaration.

I want to read a quote into the record from a good friend of mine, Gitanyow Hereditary Chief Glen Williams, in reference to this declaration and this act. He says: “My grandfather, a Gitxsan High Chief, said to me in the 1980s: ‘You watch. One day our Gitxsan way of life; our traditional laws; our lax’iyip, the territories, will be enshrined in the white man’s laws, non-Indigenous laws. It will be a small, faint light. Then it will begin to glow, and then it will glitter in their supreme law.’”

Glen goes on to say: “With B.C. legislating the UN declaration, it will signal and provide opportunities for meaningful coexistence, true redress, to be recognized as the proper rights holders, partnerships on the lax’iyip to jointly manage, plan and share the economic fruits.” That is what Glen Williams said, and that’s what his grandfather, this High Chief, said about what we’re doing here today.

I just want to finish off on these brief comments in such joy and happiness when I think about what it really means in the end. What it means to me in the end is going back to those youth that I described that couldn’t imagine a future, couldn’t imagine themselves in a future in their community and couldn’t imagine them having an impact to change that future of the community. Well, after this legislation, my hope is that into the future, when I do drop by and visit these young people, they will be able to imagine a future. They will be able to know that they will be able to shape the future that they are part of.

That’s what we’re all working towards in this honourable province. Hon. Speaker, I want to thank you very much and express my strong and grateful support for Bill 41.

R. Sultan: I’m pleased to join the debate on Bill 41, the Declaration on the Rights of Indigenous Peoples Act. Although I’ve been counselled by my good friend, the member for Skeena, that we should look forward, not look back, I think in terms of the non-Indigenous persons of this province — indeed, of this Legislature — to understand how we got where we are, it’s worthwhile to
just briefly summarize three reasons that I think we are facing this bill today. My reasons are, if my rather mangled translation is partially accurate, Secwépemc, Squamish and Haisla.

Let's start with Secwépemc. About 10,000 years ago, the ice sheet covering British Columbia, about a mile thick straight up... If you started chipping away the roof of the Legislature a mile higher, you'd emerge in the clear air. Well, that ice sheet had melted sufficiently to allow our original British Columbians to populate a few bare spots, living off the land.

About 5,000 years ago, the Secwépemc people emerged, populating the lands stretching roughly north-south from Kamloops to Barkerville and roughly in an east-west direction from about Pavilion, say, to Golden — present-day names, of course. With a peak population estimated at possibly 7,000, they were reduced to not much more than 2,000 after the introduction of European diseases.

I rely upon a remarkable book authored by Secwépemc Chief Ron Ignace and his wife, Marianne Ignace — both PhDs, by the way — published by the McGill-Queen’s University Press. I commend that volume to you if you want a true understanding of the history of Aboriginals in this part of the world.

Here's a synopsis of what this peoples' contact, the Secwépemc contact, with our forebears added up to. In the late 1850s, a gold rush on the Fraser and Thompson rivers not only brought about the establishment of the colony of British Columbia but also precipitated a smallpox epidemic which killed about two-thirds of their population.

Then the Ignaces, in their book, relate:

“Settlers trampled over our land, supported by ordinances from 1866 to 1870 and onward that disallowed us from being granted or to own fee simple title to the lands we had occupied for thousands of years” — ordinances prevented that — “instead giving away our lands to settlers.

“After reducing, rescinding and denying the reserves which had initially been set out in 1860s, British Columbia joined the Confederation,” of Canada, “leading the federal government to enact the Indian Act applying to our lands, which established small reserves, comprising about 1 percent of the original traditional territory and dismantled the ways we ran our affairs over the objections of Elders and ancestors.”

That, fellow MLAs, is our legacy in dealing with one of the better-documented, large-scale real estate transactions in British Columbia's history. I was unaware of it until our member for Fraser-Nicola arranged for the B.C. Liberal steelhead caucus to have lunch with the Ignaces and other band council members recently. It was a memorable experience.

Next, second example, the Squamish history. Earlier this year Angela Sterritt of CBC News described the little-known history of the Squamish in Vancouver. Synopsis: they were forced off the reserve, which had been allocated to them in what is now trendy Kitsilano, put on a barge to North Vancouver with two-days' notice, and their homes were burned down.

Did this happen about the time of Christopher Columbus or maybe Samuel de Champlain? Well no, actually. It happened a few years after my father arrived from Sweden to live in Vancouver, not that long ago, although he never talked about it.

Some history. In 1877, under the Indian Act, the federal government gave about 34 hectares of the land along Kitsilano Beach to the Squamish Nation, naming it the Kitsilano Indian Reserve. Khatsahlano, by the way, was the name of one of their Chiefs. But living on the beach, in what would in a few years become known as the Kitsilano neighbourhood, didn’t last for long, and 36 years later, the B.C. government forced them out so that the city of Vancouver could expand.

How did they do that? Well, the federal government amended the Indian Act, making it legal to remove Indigenous people, without their consent, from reserves within an incorporated city or town. Simply, Vancouver was expanding, so they had to go. As I’ve already said, they were given two days to pack up, were offered a small amount of money to get on a barge, and they were towed across English Bay to West Vancouver and North Vancouver. Their descendants are in fact, many of them, living in my constituency. As soon as the Squamish were gone, the government burned down their homes and their sheds.

In 1977, the Squamish Nation accused the federal government of having failed to protect their reserve lands, and they regained a small portion of their earlier reserve, plus a cash settlement which would add up to about the purchase of, maybe, 100 houses today, if you drove a sharp deal — not much. Do current members of the Squamish Nation, whom I bump into and talk to regularly, remember this history? They sure do.
A third story, the Haisla story. Let’s talk about what happened to the Haisla, up in Kitimat. I’m indebted to our member for Skeena and the chief councillor of the Haisla Nation for much of this information.

In Haisla territory, the first recorded contact with Europeans took place in 1792. One of Captain Vancouver’s smaller boats travelled into part of their coastline. These British mariners were met by eight Haisla in two canoes, the first Indigenous people the sailors had ever seen during their expedition.

They reported that the Haisla behaved in a very civil and friendly manner and presented them with two 70-pound chinook salmon, the finest ever seen during Vancouver’s voyage. The gift-givers were compensated with a small piece of iron and — as Vancouver reported in his journal, at least — left well pleased with the exchange. This was the first encounter with Europeans, and it was marked by cordiality and generosity.

The consequences of European settlement, however, had already been felt and lasted long after the mariners went home. Wave after wave of infectious disease, introduced in North America from Europe, had already killed most of the Indigenous population. I think that applies to most of North America.

Then the missionaries arrived. Their impact on cultural property in the Haisla was immediate. One Elder said: “When Christianity came, my great-great-grand-uncle went down to the beach and burned everything. He’d been told: ‘The Lord would not receive you if you looked to your treasures.’” Masks, spoons, whistles, regalia, headdress — everything went up in smoke, a cultural calamity which could never be remedied.

The Haisla occupied a territory spanning over 5,000 square miles. However, the reserve base ultimately set aside for the Haisla was measured in hectares. The commissioner described the reserve land he had allotted with some pride, it appears, as “low sandy ground, subject in many places to overflow” and “very worthless, being a steep hillside” and, thirdly, “a fishing station valueless for any other purpose.” Obviously, he felt that it was his job to give them the least valuable land that he could find.

There were other fringe benefits. In 1884, Canada amended the Indian Act, banning potlatches and dances known as tamanawas. Participants engaging in such behavior could be imprisoned for two to six months.

A quarantine centre for influenza and tuberculosis was transformed into a residential school at Kitamaat. Children living at the school were permitted to stay with their parents only on the weekends, even though their homes were only a short walk away from the school. They were forbidden to speak the Xa”islakala language, even amongst themselves, and they were prohibited from hiring lawyers to help with land issues.

I didn’t realize this. They didn’t have the right to vote in provincial elections until 1949 or in federal elections until 1961. My goodness. I think it is healthy for us non-Indigenous folks in this chamber to understand a little bit better how our forbearers behaved. This is our history. A wonderful legacy. Supreme Court Justice Beverley McLachlin says Canada attempted to commit “cultural genocide” against Aboriginal peoples in what she calls the worst stain on Canada’s human rights record. I can’t really disagree with her. This lady calls it the way she sees it.

What can we do now? Well, we certainly, in the immediate past, did not ignore that history. Today, we have, as our member for Skeena has reminded us repetitively in his scholarly discourse on Aboriginal law and relationships, section 35 of our constitution, and we have treaties with First Nations, and we have Aboriginal rights and title embodied in case law, another prominent feature of the remarks of the member for Skeena. We have, most importantly, well-educated and determined citizens living in Indigenous communities, well aware of their heritage, well aware of what the non-Indigenous population submitted them to, and now we have a host of new legislative tools, shall we say, including UNDRIP.

These are the cumulative protections against what has happened before and will help us ensure that it doesn’t happen again: section 35; the case law; the treaties; the agreements with individual First Nations in British Columbia. The list goes on.
We, on the B.C. Liberal side of this House, can be very proud of the past 16 years, referred to so often by our friends opposite. On our previous watch, we, the representatives of the party on this side of the House, negotiated over 500 agreements with nearly all of the 200-plus First Nations in this province — 500 agreements. We negotiated with them on the basis of dignity and respect and reconciliation.

We were instructed to begin every speech.... I notice this practice has been picked up by both sides of this House and others. Civic officials, when I hear them talk of, for example, dedicating a totem pole in front of the RCMP division E memorial to the missing and murdered women just last weekend in North Vancouver, say, “We are on the traditional territory of” — what? — “the Coast Salish people,” or the Squamish or the Tsleil-Waututh, and so it goes. These were the proclamations of understanding of our status on these lands that we were taught, as B.C. Liberals, to open all our speeches with, and we did. It’s gratifying to see that the folks on the other side are fast learners, and they picked up on it and do it as well.

We negotiated with them and established this basis of dignity and respect. We signed five full-fledged treaties. No small undertaking. We also signed eight agreements-in-principle — the forerunners of treaties. We also entered into 50 clean energy agreements with 27 First Nations. We also entered into individual mining agreements with 32 First Nations. We also entered into 262 forestry agreements with 156 First Nations. We also entered into 62 pipeline benefit agreements with 29 First Nations. That’s only a partial list. It goes on and on.

Let me conclude by asking a question. The government opposite has been in office for two and a half years. What does their list look like? Can they point to any agreements at all?

I just ask the question with you. I look and I look, but what I find is mostly speeches, statements, reports and plans — not action plans but just plans. However, they are very good at giving us speeches, reports and not action plans, I must admit.

D. Routley: First, I’ll answer the question the member poses opposite.

We have the first First Nations cabinet minister, a woman, in the cabinet of British Columbia — the first First Nations woman cabinet minister in the history of this province. The first Métis woman elected, and Finance Minister.

We have had First Nations leadership in this House, drumming their approval and partnership of this agreement. It’s really unfortunate. I really love the member opposite who made those remarks, but I think it’s unfortunate, and it doesn’t need to be that way. I’m not going to contribute to that right now, other than to answer that question.

I’m very proud to stand here as the provincial representative in the B.C. Legislature for the lands, or part thereof, of the Snuneymuxw First Nation, Cowichan First Nation, Penelakut, Halalt, Stz’uminus and Lyackson. So I’m very fortunate. I have six distinct First Nations in my constituency, and they all have varied and sometimes competing interests.

As we, on Vancouver Island, look at the difficult task of settling claims where there is essentially no Crown land to be traded because of the Dunsmuir grant of the 1890s, we are faced with a terrible and a vexing problem of untangling a lot of knots that have been created by the history between newcomers and First Nations and the many promises that were made and not fulfilled. That was the task that was given to my colleague in front of me here, the Minister of Indigenous Relations and Reconciliation. The Premier has tasked this entire government with that task primary in all of their mandate letters.

This is important. Gestures are important. Speeches are important, as long as they’re followed through with action. For so many generations, First Nations have listened to words that promised action and promised reconciliation — only standing at their shores, waiting for a partner with integrity and with promise, those hopes dashed against the rocks of despair when cynicism takes over because of unfulfilled promises.

This is a very difficult problem for any government to grapple with, so I hope that the members opposite, as we did when we were in opposition, will recognize the principle that these are nation-to-nation negotiations. Certainly, no independent member in this House, I believe, should have a modifying voice to any agreement that’s signed by one or any of those nations.
Much has been said here about transaction versus principled agreements. To me, listening to the Elders from those communities I mentioned, the difference is permanence. What they want to see, I’m told by them, is permanence. You can only have that through agreements and through this recognition of rights. I’m very happy to stand here and support that. In supporting it, I want to tell you the stories of a few people from my past and people I represent now.

The first would be the White family of Snuneymuxw. Doug White I, Tiqwup, was named in the Regina v. White and Bob case. In that case, they were charged with fishing out of season within Douglas treaty lands. The Douglas treaty was a treaty signed by some Vancouver Island nations and some others, but it has never been adequately recognized.

In that case, in the 1960s, Mr. White and Mr. Bob won the right to fish. Thomas Berger, the judge at the time, said that provincial laws could not interfere with the terms of any treaty. This was an important milestone for First Nations rights and title, although it didn’t address title. It only addressed their right to fish in the spot they stood and made no reference to territory.

Mr. White’s contribution is something that the people of Snuneymuxw are so proud of. His family have continued their service to the community and to the province. Doug White II, Kwul’a’sul’tun, was Chief of Snuneymuxw. He was a very successful lacrosse player, part of the Native Sons Lacrosse Club. He won the Tom Longboat Award, and he is in the Nanaimo Hall of Fame for lacrosse. He has served the community diligently and selflessly for his whole life. He still serves his community on local council and other interests.

Ellen White, his wife — Order of Canada and Order of British Columbia in 2011. Her name is Kwulasulwut. That means “many stars.” She is an amazing woman who was trained as a midwife, assisted her first birth at nine years old and delivered her first baby at 16. She spent 30 years as a lecturer and storyteller at UBC. She established the First Nations studies program at Vancouver Island University. She won the B.C. Community Achievement Award in 2007.

Finally, the grandson of Doug White I, son of Doug and Ellen White, Doug White III, Kwulasultun. He is a treaty lawyer from Snuneymuxw who has lectured to the Organization of American States and to the United Nations. He has worked on treaties throughout this province. He’s a spectacular individual. He has served as Chief and as councillor of the Snuneymuxw council.

These people, to me, epitomize the achievements of a family through the generations of obstacles that they’ve faced. Now, in this liberating time, a time of realizing opportunity and potential, they are still at the front, serving their communities. I want to pay tribute to them. I know how important this bill is to them.

I want to tell you about Richard Thomas, Chief of Lyackson. Richard Thomas is, I believe, 84 now. In my service, 14 years in the Legislature…. He was 70 when I started. He’s still Chief. He and his band are homeless. They are from Valdes Island. There is no infrastructure on Valdes. The band is scattered in the other nations adjacent and neighbouring, with family. Mr. Thomas and his wife lost their home and were living, for a time, in their son’s home, without a home of their own.

I thought, when this happened…. Mr. Richard Thomas, to me, is one of the most noble people, one of the most honest and generous people that I have ever met, yet he was the homeless Chief of a homeless nation. How could that exist in this province in these days? The Snuneymuxw — without adequate drinking water, until this past year, on one of their reserves. How these things could continue is a tragedy. But these are the tools we need to bring reparation to that.

So transaction versus principled agreements. Transactional agreements are important insofar as transactions go. But when it comes to the rights, the title, the recognition throughout the legislative efforts of this province, it is important and it is essential to have the tools that this legislation will give us.

Now, as the Hul’qumi’num Treaty Group, five of the nations that I represent, reach stage 5, Mr. Richard Thomas is, he says, “overwhelmed by how long it has taken to get here.” He was tasked by his grandmother — and remember that he’s 84 — with bringing the band home. It’s a deep determination of mine that I will also live to see that happen and be serving in this Legislature when it does, I hope.
The White family is a story of achievement and excellence. Mr. Richard Thomas is a story of a noble struggle for justice. The next person that I want to tell you about is a dear friend named Dano Thorne.

I went to school with Dano. I grew up in the Cowichan Valley. The Cowichan Nation is the largest nation by population in the province, so sometimes half my class were First Nations. Dano and I played a lot of sports together, organized sports as well as road hockey — lots of road hockey.

Dano was an angry guy, right? He was disconnected from the teachings, as they would say. He responded with anger, and it was exhibited in his life. He ran into a lot of trouble. Then Dano found those teachings, reconnected with his heritage, and he became a fantastic, devoted servant to his community. He was a member of the Canadian national soccer team. Now he spends his life taking kids and First Nations soccer clubs around the world to compete in tournaments and to compete against other Indigenous communities around the world.

Dano is a story of the wreckage that could have occurred in his life. It could all go back to the residential school experience. But he's also an example of how when respect and connection is made, something really lovely happens, something so restorative. I have such a love and respect for Dano. I'm so proud to be able to mention his name in this House.

I will end, but I will say that reconciliation takes many different forms. I didn't realize, in my own life, that I had witnessed a really touching moment of that, in that my grandfather was a golfer. He golfed often with two men, Ernie and Ed Elliott. Ernie and Ed Elliott have both served on Cowichan council. Ernie was band manager for a long time.

When they finished golfing, they would sit down with a notebook, and my grandfather translated hundreds of Hul’qumi’num words, in whatever phonetic achievement he could bring to it. I found those books when I was going through some things when my mom passed away. I was so touched. I think it speaks to me that gesture is important. Speeches are important. Recognizing language is important. Respecting culture is important. Answering the call of those who have been suppressed and oppressed by the ravages of colonialism, answering the call and being there for them and investing and doing the things we need to fix this relationship are the things that we need to do.

Now, finally, with this legislation and many of the other efforts that have been made by this government and, I will acknowledge, by the previous government under Premier Gordon Campbell and going back to the 1990s with the first modern-day treaty, the Nisga’a treaty…. Now, with these efforts, we are finally building the tools required for us all to build a new house together, for us all to come together and create the kind of province that will liberate people and allow them to thrive.

I'm proud to support this legislation. I hope every member in the House will. Let's get on with the task of real reconciliation. [6:30 p.m.]

P. Milobar: It gives me a great honour to rise and be able to speak to Bill 41 around the Declaration on the Rights of Indigenous Peoples Act.

I think it goes without saying that all of us in this House are concerned with the welfare of all British Columbians, Indigenous and non-Indigenous, and securing a future for ourselves and all of our children. I think, certainly, the comments and the debates that we have heard so far today would be very indicative of that on both sides of the House.

In my two-plus years in the House, I think this is the smallest amount of back and forth during speeches and debates I have heard. I think that speaks volumes to how seriously everyone does take Bill 41 in front of us.

However, this does involve, as any good democracy does, debating legislation and expressing the concerns of our constituents from different regions of the province. Debating and questioning does not necessarily need to translate…. Too often in our society, I think it translates to an automatic opposition piece.

But it is important, I think, that all Indigenous and non-Indigenous people fully do understand how the government sees this bill in practice and in action. People need to have a full understanding of all its ramifications moving forward. That's how I see both today and as we move into committee stage doing just that — a good public policy debate to make sure that all out there know that the government has well thought out all possible permutations of this bill being enacted.
There are 198 distinct First Nations in B.C., each with their own unique traditions and history as well. There are more than 30 different languages spoken by First Nations. This includes close to 60 different dialects. We also know that First Nation populations are some of the most vulnerable and poverty stricken populations in the country.

We, as a country, and we, as citizens of British Columbia, all owe an equal opportunity and a fair share of wealth that this country provides from our natural resources..... We know that opportunity is something we must create, and it does not just happen.

That is why every government, regardless of political stripe, has a responsibility to uphold our laws and advance the interests of all people, especially our Indigenous people. That’s why under the previous government, as we’ve heard before today, close to 500 economic and reconciliation agreements with First Nations were concluded between 2001 and 2017, during those 16 years. Nearly 400 of those agreements were reached from 2012 to 2017.

To be more precise, under the previous government, B.C. signed no less than 345 revenue-sharing agreements of various types with 242 First Nations. That means something. It reveals the pace of progress is being determined by a commitment to make a difference in the lives of the current generation. Rather than wait an estimated 300 years for the land claim process to resolve itself, the previous government acted.

It’s one thing to adopt aspirations in legislation. It’s quite another, however, to raise literacy rates to record levels; to make the hiring of First Nations a priority in any new resource project, including LNG, as we’ve seen the hope and prosperity that that project is bringing to northern British Columbia; and also to provide the hope and prosperity where helplessness and poverty once reigned when a project, such as an LNG project, may not be in that area.

None of this happened without action. Under the B.C. jobs plan, the previous government created a new Aboriginal Business and Investment Council to work more closely with First Nations and to foster wealth-creating partnerships. To kick-start grassroots initiatives, the first citizens fund, created under the previous government, provided nearly $51 million for 1,737 business loans to Aboriginal businesses.

While it’s important to invest in organizations on the ground, we also have to invest in people. In 2015, the previous B.C. Liberal government launched the Aboriginal skills-training development program. This represented up to $30 million invested over three years to fill training gaps for First Nations who want to participate in the emerging LNG sector. This investment paid off.

A little more than a year ago the final investment decision was made for LNG Canada. This project represents the largest private sector investment in Canadian history, and it will benefit all Canadians. I’m pleased to see the current government under the NDP and the members opposite express support for the LNG industry.

As I referenced, with this being so far north within the geography of British Columbia, and certainly farther away from the major population centres, this project includes all 670 kilometres of the Coastal GasLink Pipeline to safely deliver natural gas from the Dawson Creek area to the LNG Canada facility near Kitimat, B.C. By supporting this project, we are also supporting signed agreements with 20 First Nations who will benefit from the Coastal GasLink Pipeline project.

Signed agreements with First Nations have also resulted in announcements like today’s that Top Speed Energy intends to build a processing facility near Terrace. We’re talking about a facility that could process 150,000 tonnes of LNG per year. All of this will, of course, benefit the environment by converting overseas users of coal and other dirty fossil fuels to using the cleanest-burning fuel on the planet. Ultimately, this will contribute to the conversion of the global economy to cleaner and more sustainable industries based on renewable sources of energy.

It is also welcome news that the current NDP government recognizes the increased need for liquefied natural gas in the maritime sector. Specifically, the B.C. government is joining the
Vancouver-Fraser Port Authority and FortisBC to establish the first ship-to-ship LNG marine refuelling, or bunkering, service on the west coast of North America. This will prove to be an important development in environmental protection if future cargo ships and cruise ships will be powered by natural gas instead of heavy bunker fuel or diesel.

The previous B.C. Liberal government also placed a premium on social development, as well as economic development. For example, in November 2016, Grand Chief Ed John of the First Nations Leadership Council released his report entitled Indigenous Resilience, Connectedness and Reunification: From Root Causes to Root Solutions. The Grand Chief was appointed in 2014 as a special adviser to provide a detailed analysis on Indigenous child welfare in British Columbia. At the time of government transition in late 2017, at least 40 of Chief John’s recommendations were underway, and the province was reviewing others to see how they might be incorporated.

I’m pleased, once again, to see that the current government is continuing the support and commitment to the children of British Columbia. This kind of work does and is producing results. Since 2000, the six-year high school completion rate for Indigenous students has increased from 39 percent to 63 percent. I also understand that the rate has now increased to 70 percent among students of Indigenous background. While still more needs to be done, this remains a common goal regardless of political stripe.

I should also mention here that the number of credentials awarded to Indigenous students in the post-secondary education system increased from 27 percent in 2014-15 under B.C.’s Aboriginal post-secondary education and training framework and action plan. I understand that number continues to climb, according to recent statistics.

Naturally, proper learning cannot take place without proper health and those services in place. That’s why the previous B.C. Liberal government established the B.C. First Nations Health Authority. It was the first provincewide health authority of its kind in Canada. It works with First Nations, Health Canada, the British Columbia government and the provincial health system to improve health programs and services for First Nations. It also fosters a health and wellness approach that reflects First Nations cultures.

On UNDRIP, we all know and can all agree that not all of us have shared fully in the opportunity that is available to so many British Columbians in this province. In particular, too many Indigenous peoples have struggled to achieve the same level of prosperity that has been attained for others, which is simply not acceptable.

Some First Nations communities have reached unemployment levels of 65 percent or higher. Indigenous youth in particular suffer a heartbreaking rate of suicide. The population overall suffers a higher-than-normal incarceration rate compared to all other populations in Canada. This indicates something. The B.C. Liberals have always been committed to working together towards true reconciliation for all Indigenous people in every part of the province. As I indicated earlier in my speech, we demonstrated this with meaningful actions towards reconciliation over several years. We focused on closing the serious gaps that exist in education, employment and public health, yet gaps still remain, despite a concerted effort over the 16 years of active government.

We know partnerships are essential to reconciliation. Economic partnerships that build opportunity for all British Columbians will be critical for our future. Many of my colleagues have been discussing the importance of section 35 of the Canadian constitution. Section 35 affirms that Aboriginal rights exist in Canada and cannot be extinguished by any means. This means existing Aboriginal land rights can no longer be extinguished without the consent of those Aboriginal peoples holding land interest. It also means Aboriginal consent would be required for legislation purporting to extinguish Aboriginal land titles, even if compensation is paid.

Finally, meaningful consultation must be undertaken with the affected Aboriginal communities if questions arise with respect to government regulation of land rights. So we need to be cognizant of the rights when discussing UNDRIP. All of the questions raised in this debate need to be carefully considered.

The Premier has also said UNDRIP would not contravene section 35 of the constitution, nor can UNDRIP supersede or override all the case law that has led to the most progress for Indigenous people. Ultimately, we can’t ignore section 35 of the constitution and associated case law. To date,
they have provided us with forest and range management agreements, mining agreements and LNG agreements.

During the ceremonies that preceded the introduction of the bill, it was stated that we were all in this together. I couldn’t agree more. We should remember this at all stages of this debate and keep in mind that we have here a unique opportunity in our generation to make a difference to an entire generation of First Nations that did not have hope in the past.

Adopting a vision is one thing, but as we all know, actions speak louder than words. That’s a critical piece, when you think of all of the historical documents that have been referenced here today, all of the attempts across political spectrums, across provincial and federal jurisdictions to try to advance reconciliation, to try to advance things on a way forward. Actions speak louder than those words and those documents. Ultimately, that’s what our communities need to see, what our First Nations need to see and what everyone in the province of British Columbia needs to see — action.

We intend to make sure that we fully query Bill 41 to make sure everyone understands just how Bill 41 will result in action, what the impact of those actions will be, so that all Indigenous and non-Indigenous people can move forward with some certainty of what a piece of legislation being brought forward from the government will mean to their everyday lives.

With that, Mr. Speaker, I thank you for this time on Bill 41, and I look forward to others’ debate.

Hon. M. Farnworth: I ask leave to make an introduction.

Leave granted.

Introductions by Members

Hon. M. Farnworth: It’s my pleasure, because it doesn’t happen very often.... In the almost 24 years I have been a member of this House, the number of family members who have been here to see me I can count on two fingers. One of those is here in the precinct today, and I’m going to take her for dinner after the House adjourns. That is my niece Cameron Farnworth, the daughter of my brother Peter. She is a student at the University of Victoria, and this is her first visit to the Legislature. I would ask the House to please make her most welcome.

[6:45 p.m.]

Debate Continued

R. Singh: It is with great pride that I stand today to talk about Bill 41. I know that I was very emotional last Thursday, October 24, and so were a lot of my colleagues, when the Minister of Indigenous Relations and Reconciliation introduced this bill for the first time in the B.C. Legislature.

By introducing the Declaration on the Rights of Indigenous Peoples Act, our government has made history. Not only has B.C. become the first Canadian province to bring on such important legislation. This initiative is a step towards truth and reconciliation that calls for dignity and respect for the original inhabitants of this land. Bill 41 proves that our government respects the rights of Indigenous peoples as enshrined in the international bodies. The bill ensures that the history and culture of the First Nations are permanently embedded in the collective memory.

I can say that being a South Asian woman, I feel much more deeply connected with the Indigenous peoples, as we both share a history of resistance against racism and colonialism. Today while I am standing here, I know that this is because of the efforts of our pioneers, our elders who made it feasible for us.... The right to vote — they got us that right. Because of that, people like me and many thousands can vote and also run for office.

Unfortunately, many of our Indigenous people got this right much later than even the South Asian people, in the late ‘60s. We share that history together, and it is such an honour and such pride to stand and talk about this history and the work of our pioneers. It goes for Indigenous peoples as well. What we have been able to achieve today and what we have been able to bring to the Legislature by creating this history did not happen overnight. A lot of people have made sacrifices. They have struggled to be able to come to this point.
This is not something that we will be able to achieve overnight. We will have to continue working towards it. I know that we are making progress, but we have to keep on working together to make a much stronger B.C. and bring provincial laws into alignment with the UN declaration. We are committed to a concrete plan, developed with Indigenous peoples and regular reporting on the progress. We are making progress, and we will continue to work together with Indigenous peoples to build an ever-stronger, more inclusive and more just B.C. that will create a better future for everyone.

I can say that that is a better future for our future generations, our children, who will look back and look at this legislation and see that what their pioneers did, what the members here did, made a better world, a better province. I think that globally, we are doing better for them.

Thank you so much, Mr. Speaker, for giving me the opportunity to speak on this.

T. Stone: It gives me a great deal of pleasure to rise and speak in second reading to Bill 41, the Declaration on the Rights of Indigenous Peoples Act. I’m very proud to stand here today in this chamber to speak to what is, I believe, one of the most significant pieces of legislation that has ever been brought before us here in this Legislature.

I’m proud to stand on behalf of my constituents back in Kamloops–South Thompson. I’m proud of the fact that many of my constituents are Indigenous peoples, that there are a number of different First Nations that are located up in Kamloops–South Thompson. The Tk’emlúps te Secwépemc peoples, right in Kamloops; the Neskonlith Indian Band; the Adams Lake Indian Band; the Little Shuswap Lake Indian Band; the Skeetchestn Indian Band; Whispering Pines — these are all First Nations and a part of the Shuswap Nation in our part of our great province.

I approach this second reading debate with a great deal of hope and optimism — cautiously so, but nevertheless an underlying sense of purpose here. We are to deal with a piece of legislation that speaks so strongly to the values that I think all British Columbians hold near and dear to their hearts, and that is the partnership that exists between all of us. That is recognition of the fact that urban British Columbia is better when rural British Columbia has its back and vice versa. Indigenous peoples are stronger when non-Indigenous peoples understand better and are more fully aware of their situations and vice versa. Indeed, when we enter into a discussion and debate with one another to better understand one another, we’re going to end up with better results for all of the people of British Columbia.

I think that every member of this House supports reconciliation. Every member of this House supports the notion of wanting to replace walls with bridges, replace placards and protests and the anxiety and concern with handshakes and agreements. All British Columbians want there to be the opportunity for every single citizen of this province to realize their full potential, whether that individual lives in Kamloops or on the Neskonlith reserve lands, whether that person lives in Lake Cowichan, whether that person be in Dease Lake.

But every single British Columbia wants to put food on the table for their kids. Every single British Columbian out there wants a good job. We all want to be able to look after our kids and our grandkids. We want to know that the decisions we’re making today have the best interests of our kids and our grandkids and our great-grandkids — that their interests are first and foremost in our minds. To make this happen, it requires tremendous commitment, lots of hard work. The results are not always seen as quickly as all British Columbians would like to see. But they do happen when you’re committed. They do happen when you put your shoulder into it.

There’s no question that Indigenous peoples have had a tough road, a disproportionate level of poverty, suicide, impoverishment, higher unemployment levels than the rest of the British Columbia population. We addressed that through meaningful engagement with Indigenous peoples. Our former government... For almost 16 years that was the approach that we took — to strive for meaningful engagement, strive for reconciliation, to work on those partnerships. I believe that that’s the current overriding objective of the current government, and that is a good thing.
By 2017, our former government had signed over 500 agreements with First Nations across British Columbia, and 345 of those were revenue-sharing agreements with 242 different First Nations. British Columbia was the first province in the country to share revenue from mining, forestry and other resources. These were revenues that were shared with First Nations. The agreements mentioned were signed with nearly all of the over-200 First Nations in our great province.

They were designed to ensure understanding and to recognize the needs and values of each community. Every community is different. Just as Port Coquitlam is different from Coquitlam, so are two First Nations different from one another. But that uniqueness and that diversity and that difference is really what makes this province so truly great — so truly great when it’s harnessed — because foundational to each of the agreements are the principles of dignity and mutual respect.

As part of our former government’s relentless focus on jobs through our B.C. jobs plan, I’m very proud of the fact that we created a new Aboriginal Business and Investment Council to work more closely with First Nations to foster wealth-creating partnerships. Between 2001 and 2015, the first citizens fund provided nearly $51 million for 1,737 business loans to Aboriginal businesses.

I have a lot more to say in second reading on Bill 41, but I would like to take this opportunity to note the hour and reserve my right to continue my remarks at a later date.

T. Stone moved adjournment of debate.

Motion approved.

Hon. S. Simpson moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 10 a.m. tomorrow morning.

The House adjourned at 6:55 p.m.
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The House met at 10:07 a.m.

[Mr. Speaker in the chair.]

Mr. Speaker: Hon. Members, I ask you to rise as I invite Elder Shirley Alphonse of the T'Sou-ke Nation to offer a blessing, followed by Elder Butch Dick of the Songhees Nation to offer a land acknowledgment, followed by drumming by the Lekwungen Traditional Dancers.

S. Alphonse: Good morning, everyone.
First of all, I want to say good morning to the Premier, Speaker and all members. It’s truly an honour for me today to offer a prayer for our people.
[T’Sou-ke was spoken.]
Creator, Great Spirit, we thank you for this new day as we gather this morning with our leader, our elected members of British Columbia. Thank you for each one here.
Thank you for this land we stand on, the air we breathe, the water we drink, the blessing of Mother Earth providing for us.
Thank you for the mountains with forests.
Thank you for the oceans, the rivers, the lakes.
Thank you for the water dwellers, the winged ones, the four-leggeds we share our lands with.
Thank you for the sun, the moon, the stars; the rain and the wind. Thank you for all these blessings.
Thank you for all nations of the world, of the black, red, yellow, white.
Creator, Great Spirit, thank you for each one who walks with us, we who are the First Peoples of the lands around the world.
Thank you for each one who supports us in preserving our rights, preserving our language, preserving our culture, preserving our teachings of our ancestors — teachings that keep in mind the lives of generations to come, teachings of kindness from the heart, teaching of care and compassion toward one another and toward Mother Earth.
Creator, Great Spirit, may we all make our journey a happy one, because we are all here to walk each other home.
[T’Sou-ke was spoken.]

Butch Dick: [LakwaJinaJ was spoken.]
Good morning, my friends and family. Thank you for the invitation to be here this morning to help with this occasion.
I'm here representing not only my family, which is partially here, but also the Songhees Nation and Chief Ron Sam and the council. I thank them for this honour to be here.
I want to start off by acknowledging our Hereditary Chiefs that are in this House today and also the elected Chiefs that are in this House today. We thank them for all that they give to our nations always.
I would be remiss if I didn’t mention the ancestors and the Elders who have gone to the other side. If it wasn’t for them being champions, we wouldn’t be here today. We acknowledge that readily — that they have given us not only a language to carry us on but also the teaching attached to the language and the land that’s attached to that teaching.
We thank the ancestors for that — for their sustainability and their resilience. We always lift up our hands and acknowledge those who are on the other side and help and guide us through our daily lives, in how we walk in two worlds.
Thank you for this honour. I’d like to do a paddle welcome song.
First, I must acknowledge my late uncle, Ray Peters, who passed this song along to us. He also said that we should sing it in a good way, with a good heart and a good mind.
We hope, Uncle Ray, that I’m doing exactly that.
So *Hay'xw'qa si'em* for being here this morning.

[Lak'wən̓]ən [was sung.]

Mr. Speaker: Members, please be seated.

Beth Dick: Good morning. My name is Beth. I’m from the Lekwungen Traditional Dancers from the Songhees reserve, and we are blessed to have this opportunity to be here with you this morning. I’m very excited and somewhat nervous, I will admit.

We have Mikey with us. He is from the Esquimalt Nation.

We’re just going to do a quick song for you right now. It’s our prayer song. This is a song that was given to us, also, by the late Ray Peters from Duncan.

This is our prayer.

[Lak'wən̓]ən [was sung.]

Routine Business

Mr. Speaker: On behalf of all Members of the Legislative Assembly, I wish to extend a very, very warm welcome to all of you who are joining us in the House today.

Introduction and First Reading of Bills

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Hon. S. Fraser presented a message from Her Honour the Lieutenant-Governor: a bill intituled *Declaration on the Rights of Indigenous Peoples Act*.

Hon. S. Fraser: I move that the bill be introduced and read a first time now.

Today I am proud to introduce Bill 41, the Declaration on the Rights of Indigenous Peoples Act. It’s like a dream.

Our government is firmly committed to advancing reconciliation with Indigenous peoples in this province. Every B.C. minister is mandated with the implementation of the United Nations declaration on the rights of Indigenous peoples and the Truth and Reconciliation Commission’s calls to action.

The Truth and Reconciliation Commission called on all levels of government to adopt the UN declaration on the rights of Indigenous peoples as the framework for reconciliation. That is what this legislation does. It is a commitment to respect, promote and advance the rights of Indigenous peoples.

Indigenous peoples have suffered historic injustices as a result of colonization and dispossession of their lands, their territories and their resources. Meaningful reconciliation calls upon all of us to act to address these wrongs so that we can build a brighter, more inclusive and equitable future for everyone.

Through this legislation, we are recognizing the human rights of Indigenous peoples in law. The legislation sees us bring provincial laws into harmony with the UN declaration over time. It will see us develop an action plan for how to meet the objectives of the UN declaration. Developed in consultation and collaboration with Indigenous peoples, with regular reporting on progress, this will provide transparency and accountability for all the work ahead.

The legislation also creates room for decision-making opportunities for Indigenous governments on matters that impact their citizens. It creates flexibility for the province to make agreements with more types of Indigenous governments, supporting self-determination and self-government. The legislation will give us a path forward, creating clarity and predictability for all people in British Columbia.
By working together, we get better outcomes. That is how we create opportunities for Indigenous peoples, for B.C. businesses, for communities and for families everywhere.

I also want to talk briefly about the drafting of this bill. It involved what may be an unprecedented process in British Columbia, perhaps in all of Canada. The legislation was developed in collaboration with Indigenous partners — the First Nations Leadership Council that’s representing the B.C. Assembly of First Nations, the First Nations Summit and the Union of B.C. Indian Chiefs.

I acknowledge them here in the Legislature with us today for this momentous occasion: Regional Chief Terry Teegee, Grand Chief Stewart Phillip, Cheryl Casimer, Chief Don Tom, Kúkwpi7 Judy Wilson, Robert Phillips, Lydia Hwitsum. I thank them for their support in bringing this important legislation to where we are today.

Many others who have worked to help bring this moment to us are in the gallery and on the floor to bear witness. I’m proud that we have all done this together. This is truly reconciliation in action.

I also want to acknowledge Grand Chief Ed John, who worked on the development of the UN declaration itself. Ed is the Hereditary Chief of the Tl’azt’en Nation in northern British Columbia. Ed, it took more than 20 years in the making, but look where it’s got us today.

I know that my speaking is a little longer than it’s supposed to be, but this is no ordinary bill, and our proceedings today are certainly extraordinary. I hope you’ll indulge me just a few moments longer.

I want to finish off by saying that we believe that implementing the UN declaration on the rights of Indigenous peoples will help us continue to build a stronger British Columbia that includes everyone. This is about ending discrimination, upholding human rights and ensuring more economic justice and fairness.

We are at an important moment in history. This new law is a critical step towards true and lasting reconciliation. If the declaration on the rights of Indigenous peoples is passed, British Columbia will be the first province to bring these internationally recognized standards into provincial law.

I am proud that B.C. is a leader in Canada in advancing reconciliation together with Indigenous peoples.

Let’s make history. [Applause.]

Mr. Speaker: Members, the question is first reading of the bill.

Motion approved.

Hon. S. Fraser: I move that the bill be placed on the orders of the day for second reading at the next sitting of the House after today.

Bill 41, Declaration on the Rights of Indigenous Peoples Act, introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

[10:30 a.m.]

Motions Without Notice

ADRESSES TO HOUSE BY FIRST NATIONS LEADERS AND DEFERRAL OF ROUTINE BUSINESS

Hon. M. Farnworth: By leave, I move:

[That the House suspend proceedings in order that Grand Chief Ed John, Cheryl Casimer, Regional Chief Terry Teegee, and Grand Chief Stewart Phillip may address the Legislative Assembly, and that the addresses and statements by the Premier, the Leader of the Official Opposition, and the Leader of the Third Party, or their designates, be printed as an appendix to the Official Report of Debates of the Legislative Assembly of today.]
And further, that all remaining items of Routine Business, including Statements by Members and Oral Question Period be deferred to the start of the next sitting of the House.

Leave granted.

Motion approved.

Mr. Speaker: This House stands recessed.
[See appendix.]

The House recessed from 10:31 a.m. to 11:44 a.m.

Mr. Speaker in the chair.

Hon. M. Farnworth: I would remind all members that there is now a reception in the Hall of Honour, to which everyone is invited.

Hon. M. Farnworth moved adjournment of the House.
Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 this afternoon.

The House adjourned at 11:44 a.m.

APPENDIX

Mr. Speaker: Members, I invite Grand Chief Ed John, Cheryl Casimer, Regional Chief Terry Teegee, and Grand Chief Stewart Phillip to take the distinguished seats in the centre aisle.

Ceremony Regarding the Introduction of Bill 41 — Declaration on the Rights of Indigenous Peoples Act

Hon. J. Horgan: I want to thank Elder Shirley Alphonse, for getting us started in a good way, and Elder Butch Dick, for his welcoming to the territory of the Songhees and Esquimalt First Nations. To the Songhees dancers, thank you so much; and to Christina and, most importantly, little Skye, to be here to remind us of exactly why we’re doing this.

It is truly a great honour to stand in this chamber alongside Indigenous leaders, Elders and peoples as we introduce a bill together. For those on the floor, for those in the chamber witnessing this historic moment, it comes with enormous emotions for everyone in this chamber.

I’m grateful to work in the territory of the Ḻàkw̓èḻèḻèw̓ speaking peoples, the Songhees and the Esquimalt nations, and to represent in this Legislature the T’Souke and Pacheedaht First Nations.

I’m humbled to be part of a government that is working in partnership with Indigenous peoples, and I’m determined to walk a path of reconciliation and find a way forward together.

10:35 a.m.

B.C. is the first province to put in place the declaration on the rights of Indigenous peoples, to bring the UN declaration into law.

This bill is critically important because Indigenous rights are human rights. We all want to live in a province where the standard of living for Indigenous peoples is the same as for every other community in the province. We all want to live in a province where no Indigenous children are in the care of government. Instead, we want to live where there are record numbers of Indigenous students graduating from high school and participating in post-secondary training.
This legislation is a real catalyst for significant change. It’s a forward-looking and collaborative document, and it will help us end discrimination and create opportunities for Indigenous peoples, families, communities and businesses. I want to acknowledge the partnerships that got us here. This legislation would not have happened were it not for the leadership of the Union of B.C. Indian Chiefs, the First Nations Summit and the Assembly of First Nations, B.C. branch.

We have taken a great step forward today. The patience and advocacy of Indigenous leaders, whether it be the First Nations Leadership Council or those represented in the House today and, indeed, across British Columbia... Their patience, their tolerance and their perseverance and advocacy is not for more than anyone else has but for the same as everyone else has, not to take rights away from people but to share in the abundance and bounty of the lands that they have populated for time immemorial.

I want to give special thanks to Grand Chief Ed John, who was instrumental in developing the declaration. He’s in the chamber with us today, and I am so proud of the work that he has done. He invited me to visit Tl’azt’en, and I did so. I saw the hope in that community, the hope in Nak’azdli, the hope in Takla and in the territories of the Indigenous peoples in the interior of British Columbia. There was no animosity. There were no recriminations, just a hand out and an offer of friendship and guidance going forward.

Today, as an institution, this parliament is saying to British Columbians, to Canadians and indeed to the world that we live here together. We can have a better future than our past. Only going forward, looking at the advantages of collective decision-making and collaboration will we be able to realize our full potential as individuals, as a community and as a province.

I’d like to also acknowledge the support of the Green Party caucus and recognize that we put together a confidence and supply agreement that focused on this very issue. I want to pay tribute to those successive ministers and successive governments here in this chamber who have tried to make progress — sometimes positive, sometimes negative, but all with a focus on trying to find genuine reconciliation.

Whether it was in the 1970s, the 1980s, the 1990s, at the turn of the century or here today, none of us are perfect. None of us know the way forward. But I believe we’ve made progress today because we did not say to Indigenous communities: “How can we help you?” Indigenous communities said to us: “This is how we can move forward together.” I’m eternally grateful to the leadership council and to all of those — all of those — who have participated in the creation of this law and in the creation of a positive future for our children and their grandchildren.

The road travelled to get here has been filled with confrontation, litigation and negotiation. History is littered with words that were not followed up with actions. Our future, as I said, must be better than our past. The only way that that will happen is if we work forward in harmony and collaboration, with a focus on lifting all British Columbians, wherever they live, whatever their background.

I want to acknowledge the Minister of Advanced Education, who I have, on many occasions, acknowledged as the first Nations woman to take a cabinet seat in the province of British Columbia, and also for creating Canada’s first Indigenous law program at the University of Victoria — again, fulfilling one of the calls to action of the Truth and Reconciliation Commission.

I want to also say that this legislation follows on work we have already done with respect to child welfare legislation, allowing us to work together with the Cowichan, the Wet’suwet’en and the Secwépemc in harmony and in consultation with what’s best for the children and their communities, what’s best for their communities and their region and, indeed, at the end of the day, what’s best for our province and our future.

We worked with Indigenous groups to revitalize our environmental assessment process, ensuring that Indigenous rights, interests and ecological knowledge is respected, and we are working with Indigenous communities to help build affordable housing on and off reserve. It’s our view, and I believe it’s the view of all British Columbians, that although we have jurisdictional differences in this country, it’s the strength of our federation. It is also sometimes our greatest weakness. We believe, on this side of the House — and I know we’re supported by all members of this House — that we need to lift all British Columbians.
Although jurisdictional divides are important — and I don’t want to pay any disrespect to the Attorney General, who holds the Great Seal — I believe that in working together in common sense and in harmony, we will achieve what we all want to see right across this great province.

I also want to finally acknowledge Grand Chief Stewart Phillip, who taught me very early on that although I held fast to old practices and old ways — which, at the time, were groundbreaking and, at the time, I felt were in the best interests of British Columbia.... He reminded me that time goes on and the river of public policy has ebbs and flows. As he said so famously, and I have to quote this: “Reconciliation is not for wimps.”

You, sir, are not a wimp.

This is a process of shared responsibility, and each and every person carries that responsibility forward. Reconciliation does not end today with a single event; it begins yet another journey. But we need to take that journey together. We need to sustain this extraordinary place that we are all proud to call home, the best part of a spectacular country.

I am so proud to be here today, with every single member of this House, acknowledging rights and title have always existed and working together. The province of British Columbia will be stronger tomorrow than it is today, and our future is as bright as it can possibly be.

Hay sxw qa. [Applause.]

A. Wilkinson: As we stand here today on the traditional territory of the Esquimalt and Songhees First Nations, we’re all on the journey. Some people have travelled here a long way for this momentous day, and we thank them for making that trip, because this is very much a journey we’re all doing together.

As elected officials, we commit ourselves to building a future full of opportunity and prosperity for everyone in British Columbia. Every British Columbian deserves the opportunity to meet their full potential. We know that education enables opportunity, and that’s why every government in this province invests heavily in higher education. We know that our natural environment must be protected for future generations and is part and parcel of our mutual responsibility for the success of our communities.

British Columbia has been blessed with the people and the resources to build and maintain our strong and sustainable natural resource sector. We all know that sustainable resource development is essential to our prosperity.

The United Nations declaration on the rights of Indigenous peoples is built on the concept of supporting rights, freedoms, dignity and quality of life for Indigenous peoples. Those same ideas apply right here in British Columbia. We are all committed to working together towards true reconciliation for all Indigenous peoples in every part of this great province.

Meaningful reconciliation includes continuing to close the gaps that remain — in education, in employment and in health. This work started more than 20 years and continues to this day. It is work that we are all committed to, that we all support and that we will all take action upon.

Partnerships are essential to reconciliation. Economic partnerships, revenue-sharing and building opportunity for all British Columbians will be critical to our future. We all know that section 35 of the 1982 federal Constitution Act protects and respects Indigenous and treaty rights and has led to the well-established duty to consult and accommodate Indigenous communities.

Meaningful engagement with Indigenous communities is what our party has been very committed to for the past 20 years. By 2017, we had signed more than 500 agreements with First Nations across this great province.

[10:45 a.m.]

Those agreements were signed with nearly all of the more than 200 First Nations in British Columbia, ensuring understanding and recognition of the needs and values of each community. They’re built upon mutual respect, because they’re based on the foundation of dignity that is owed to everyone in this great province.

Questions will arise. This process of change, reconciliation and a modern approach to engaging with Indigenous peoples will generate many questions, as everyone involved needs certainty. Those questions will include such things as: what about grazing rights for cattle on Crown land? How do we manage parks and the use of B.C.’s massive back country? Will the forest industry need to make
adaptations and accommodations, and what will they be? How will mining activity be affected? These questions will be posed to the government of the day as each election cycle comes and goes.

As a society, we’ll need to address them, respecting the needs, hopes and dreams of everyone involved — most especially, the peoples in all of our communities, because that is respectful engagement, and that is the foundation of reconciliation. The reward will be opportunity for everyone in British Columbia, a chance to get ahead, to realize their dreams right here in British Columbia. Everyone in this province must feel that sense of belonging, that British Columbia is our home, that we’ll be respected here, that we’ll all have a full sense of citizenship and that we’ll be treated with respect and dignity each and every day.

That’s why I’m proud to stand here in this chamber and welcome an opportunity for real, substantive reconciliation amongst all the people of British Columbia. We have a long journey still to go, and we must continue that journey in good faith together.

Hay’sxw’qa. [Applause.]

A. Olsen: HÍSW KE SIÁM.
[SENČOFEN was spoken.]

Thank you to the leaders who have spoken before me — the Elders, Mr. Premier, the Leader of the Official Opposition; relatives from Songhees and Esquimalt, our Lákw’isiyál relatives; our S,ÉLELWAÁN, who are curious about what’s going on in this building today, who have joined us and are witnessing this. The little voice that’s sitting behind me, the little baby, is going to only know a different world because of this.

My name is TSUNUP. I’m a proud WSÁNÉC from the WJOELEP village. I’m the son of TSAYWESUT and Sylvia Olsen, the grandson of ZÍCOT and TELQUILUM, and Don and Phyllis Snobelen.

I’m honoured to rise and add my voice to this beautiful day. Indeed, there have not been many days like this in the B.C. Legislature, or any Legislature in this country, because few are the days when legislation has been introduced to uphold the basic human rights of Indigenous people. Our history is full of the opposite, full of examples of legislative institutions passing laws to structure and impose colonial reality on Indigenous peoples — laws that broke up Indigenous governments, took away our children, prevented us from voting, stopped us from hiring lawyers and protecting ourselves, imposed segregation upon us and implemented the reserve system.

Today we are taking concrete steps to undo that legacy. The implementation of the declaration on the rights of Indigenous peoples was a priority of the B.C. Greens in the 2017 election. It’s a priority articulated in the confidence and supply agreement with the B.C. NDP government and a foundational piece of our relationship.

Today is a day that generations upon generations of First Nations people in this province have fought to see happen, from the Chiefs of the Interior tribes who petitioned the provincial and federal leaders in the early 20th century with a true message of reconciliation to the peoples on Vancouver Island — my S,ÉLELWAÁN, my ancestors — who, when the Europeans began settling these lands in the 19th century, signed treaties with James Douglas to ensure that our rights were respected.

[10:50 a.m.]

From the Chiefs of the Interior tribes who petitioned the provincial and federal leaders in the early 20th century with a true message of reconciliation to the peoples on Vancouver Island, my S,ÉLELWAÁN, my ancestors, who, when the Europeans began settling these lands in the 19th century, signed treaties with James Douglas to ensure that our rights were respected, to the waves of leaders who journeyed to Ottawa and Victoria and made the case and fought for change, and to the matriarchs and the Elders, the young and the old, who’ve kept our cultures vibrant and beautiful and our languages alive, this is a day in honour of all of you, a testament to your resilience, your wisdom, your ČÁ, your work.

As a kid of mixed heritage growing up on an Indian reserve, I’ve lived the dysfunction of the relationships between my parts. For many years, I wore this dysfunction on my face and on my body. It was always on my mind, and it broke my spirit. This dysfunction brought on confusion and depression.
The dysfunction of this place was my dysfunction — that is, until my late grandmother, Laura Olsen, saved my life when she instilled in me a duty and a sense of responsibility. She told me: “Grandson, you have a job to do.” She empowered me to build relationships. She inspired me to build bridges across my diverse heritage. Shortly after that, I began my life in public service.

So it is an honour, a deep honour, a humbling honour, to be standing here in this place at this spot today, to be right here right now, at this moment, this momentous occasion. However, like the many steps on this path to reconciliation, this legislation does not result in greater justice overnight. This is the hard work ahead of us. But this bill puts us on a good heading, and the tides are in our favour.

In order for us to get to our destination in a good way, we have to pay deep respect to the water and to the wind. We have to take our seat in that grand canoe and commit to paddling together, commit to pulling in the same direction. That is the work of every one of us in this place.

I thank everyone who has made this day happen, and I look forward to working with all the members of this place and the Indigenous leaders and their communities to ensure we get to our good destination.

HISWOKE SIAM. [Applause.]

E. John: [Dakelh was spoken.]

What an amazing day today is. I’d like to thank you for inviting us to this House and to share a few words with you. Thank you to our Speaker here, or maybe yours. Well, he is our Speaker, all of us.

I would like to thank our Elder for the prayer, our drummers for their beautiful prayer song and the dancers who helped clean this floor, to sweep it so that we can stand here with dignity, to stand on the floor that they blessed, knowing that we are standing here with the dignity of our people intact to speak with you who are government and those of you who are in the opposition.

I want to acknowledge our Chiefs who are here, our young people who are here, coming from many different parts of the province. Thank you for being here, and thank you for inviting them to be here to witness this.

I want to acknowledge our dear sister Jody Wilson-Raybould, who was recently re-elected, for the tremendous work that you’ve done on our behalf.

I want to acknowledge the author of Bill C-262, the federal bill on the UN declaration, Romeo Saganash, and a new woman MP from Winnipeg Centre, Leah Gazan.

[10:55 a.m.]

[Dakelh was spoken.]

In my language, in Dakelh teachings, we’re reminded that in autumn, when the leaves are dying on the branches which gave them life and they brighten up our world, we remember our ancestors. We remember the difficulties which lie ahead as we prepare for the harsh winter days, and we acknowledge and thank them. We remember, also, that we are connected as one to our lands and everything on them — that which feeds us, clothes us and warms us.

We recall our love for and our responsibilities to our children and to the many generations who will come behind us. We are reminded to live our lives with joy and gratitude in our hearts each day. This is the teaching that comes to us at this time of the year as we look at the beautiful trees outside.

Once I shared time with you in this big House as the minister responsible for all of our children, our families and communities. We acknowledge the important work each of you do in this House and for your responsibilities to all people. We thank you.

However, in the past, this House, while it provided hope for many newcomers to this land, also created terrible injustices for our people — the original peoples, the many Indigenous nations on this incredible land, Indigenous peoples with many diverse languages, cultures, traditions and ways of life.

The traditionally held lands and owned lands and territories and resources of the respective Indigenous peoples and nations were taken, on behalf of the Crown, without our ancestors' knowledge or agreement. This started with the assertion of Crown sovereignty in 1846. James Douglas, the first governor of the colony of B.C., issued a proclamation on February 15, 1859,
declaring all Indigenous lands were now Crown lands. That became a continuing source of injustice for our peoples.

Our traditional ways and spiritual practices were criminalized. Our children were removed from our homes, families, communities, foods, cultures, spirituality and lands and brought to Indian residential schools to be civilized and Christianized. I, along with both of my parents and several of my siblings, am among the thousands of children who were removed.

Canada’s Truth and Reconciliation Commission, in its amazing report released in 2015, concluded that these actions amounted to cultural genocide. The colonial doctrine of discovery and the notions of superiority of the early settlers were the rationale for discriminatory Crown policies. These are now thoroughly discredited and rejected in the UN declaration on the rights of Indigenous peoples. Every day we continue to live with the Crown’s legacies of its colonial past.

We have no voice in this House. Today, as we have many times, we come here as your guests. Perhaps the province can take a look at how the Maori voice is recognized and included in New Zealand’s democratic structure.

Starting in the 1920s, Indigenous peoples have been going to the League of Nations and then to the United Nations after 1948 to tell our stories of marginalization, dispossession and injustice.

On September 13, 2007, after a long period of some 25 years, the critically important human rights standards contained in the United Nations declaration on the rights of Indigenous peoples were adopted by the General Assembly. The United Nations declared that the rights in the declaration are minimum standards for the survival, dignity and well-being of Indigenous peoples around the world, including here in Canada, in British Columbia.

This year, 2019, is the International Year of Indigenous Languages. In this province, every one of our languages is endangered. We’re in the process of rebuilding and revitalizing, and we ask for your help in this regard.

Amidst the challenges we face, Indigenous resilience — our Indigenous resilience — brings us to this House today. We are here with our dignity intact. We continue to seek justice in our time. We stand with you in the anteroom of justice. No one should fear justice. Rather, we should embrace it, cherish it and nurture it, because now we share this land, as the Leader of the Opposition so eloquently stated, and we’ll live together as neighbours and families, as the Premier acknowledged.

In this big House, this one here, we have responsibilities for our collective futures, and we should stand together for our respective and collective dignity and well-being. No one should have any fear of Indigenous peoples because we’ve been on that dark side. We know what it’s like, that uncertainty that we faced over the course of this province’s entire history.

The legislation to be introduced today recognizes and adopts the declaration as an important foundation for a balanced human rights–based framework for recognition, restitution, redress, revitalization and reconciliation. In this regard, we recall the reconciliation ring placed on this House’s Black Rod by Prince William. Because it has significance for us, we expect it will have significance for you. It cannot be simply symbolic. It is an important symbol of our relationship.

We’re truly hopeful. After your discussion and answers to the many questions that you raise — which is the correct way to deal with these issues, to ask the questions and to provide the answers so that there’s comfort in this province that what is going on and what is happening here is the right thing to do to bring justice to these issues — at the end of the day, we hope that you will adopt this bill unanimously.

Where you require our assistance, we will be here. I’ve worked with all of you on both sides of this House on many different occasions, whether it was in government.... We’ve been down this road on reconciliation and recognition. Efforts in the past with a previous Premier did not materialize. But here we have this momentous occasion.

In this regard, I honestly want to say, from the bottom of my heart, to the government and to the Premier, for taking this initiative and bringing it forward through your minister, Scott Fraser: what an important development it is.
I want to acknowledge and call on our Indigenous parliamentarians who are here — Minister Melanie Mark; Mr. Olsen; our Finance Minister, Carole James; our Liberal MLA from the Kitimat area, Ellis Ross — to help lead this effort, to answer the questions that are needed so importantly, because it is in our collective interest.

This jurisdiction will be the first one across this country to adopt legislation like this and one of the few jurisdictions around the world which will have legislation such as this. I call on you to be brave. Change does require courage.

[Dakelh was spoken.]
Thank you very much. [Applause.]

C. Casimer: [Ktunaxa was spoken.] I’m very happy to be here.

I’d like to start off by acknowledging the Esquimalt and Songhees First Nations on whose unceded traditional territory we are today.

Premier, Ministers, Members of the Legislative Assembly, Chiefs, Hereditary Chiefs, leaders, friends, thank you for being here with us on this very important day. I’d also like to acknowledge Elder Shirley Alphonse for the prayer and to Elder Dick for the wonderful song and to the dancers who helped us get started off and grounded in culture.

Today is an important day for British Columbia. Regardless of any party status, it’s an important day for all citizens and, in particular, for the First Peoples of this land — the Indigenous Nations who have been here since before European contact and Confederation. I’m honoured to be here to speak to you on this historic day.

The relationship between the Crown in Right of British Columbia and First Nations is one that has been mired in racism, denial and, therefore, conflict and adversity. The provincial government has a long history of denying the very existence of Indigenous peoples of this land and of our rights. This denial is reflected and deeply embedded in laws enacted by the government and the corresponding policies and practices in its daily business of the province. As a result, our relationship has developed primarily in the courts, where First Nations have sought to be recognized and protect their rights by challenging these denial-based laws and policies.

Today, however, the province of British Columbia is working with us in turning the page of our collective history and embarking down a new era and a path for building a respectful and modern government-to-government relationship, a relationship built on recognition, respect, cooperation and partnership.

This work didn’t just start today. We have been doing this work for many, many decades. As I turn to the party of the opposition and I see John Rustad, I remember the days of us sitting at the table, working on this very work through the commitment document. The commitment document we have today has action item 1 as what we’re doing here today, in terms of implementing the United Nations declaration on the rights of Indigenous peoples. Although we weren’t able to get far back in 2015, we are now doing what we set out to do with the existing government.

Today the province of British Columbia has taken an important step to enact a law recognizing the human rights of Indigenous peoples. And it’s about time. The province of British Columbia is finally recognizing that we do, indeed, exist as peoples — peoples with long and unique histories, peoples with deep connections to our territories, peoples with inherent jurisdiction and governing authority, peoples with the right to determine for ourselves what is best for our respective communities and territories.

The United Nations declaration on the rights of Indigenous peoples is an international instrument that was developed over a decade ago by nation-states and Indigenous peoples from around the world. It was a response to the effects of colonization and developments being experienced around the world by Indigenous peoples whose basic rights were being impacted without their consent.

The UN declaration, adopted by the General Assembly of the United Nations on September 13, 2007, was endorsed by Canada without qualification in 2016. The declaration very simply sets out the minimum standards for the survival, dignity and well-being of Indigenous peoples. They are the
minimum requirements to ensure that Indigenous peoples’ basic human rights are respected and upheld.

These are the same kinds of human rights that Canadians uphold and deeply value. In an Indigenous context, reflective of our unique cultures, histories and experiences, they include foundational rights of self-determination, self-government and land and resource rights.

The Truth and Reconciliation Commission of Canada, which shone a light on the legacy of colonialism in this country, stated very clearly that the UN declaration is our “framework for reconciliation.” The commission called on all governments to take active measures to implement it, and I’d like to take the opportunity to recognize Romeo, who introduced the private member’s bill, 262, and worked hard to try to get it passed not too long ago.

This represents a very special moment in our shared history in British Columbia. The province is formally recognizing that Indigenous peoples were here first and renouncing the doctrines of discovery and *terra nullius*.

Our shared commitment to implement the UN declaration calls for a transformative change in the government’s relationship with Indigenous peoples. This law is a key step to that transformation. The shift to a human rights foundation and approach to reconciliation will foster greater understanding and more harmonious relations among Indigenous peoples and other British Columbians.

It will support a new modernized relationship between our governments and allow for innovative agreements and decision-making that bring together the strengths of our respective systems and laws. It will allow us to take a partnership approach to building a robust economy around the province that benefits everyone and will support our Indigenous institutions to do their important day-to-day work, improving the daily conditions and the quality of life of our families and communities.

In 2018, we committed to jointly design, construct and implement a principled, pragmatic and organized approach to reconciliation in British Columbia. Today we are pleased to attend here in the Legislature to bear witness to the province of British Columbia acting on its commitment to implement legislation bringing the UN declaration into provincial law. Do you hear it? The sky did not fall.

This legislation is a critically important platform from which we can and will work together through a focused action plan to improve the lives of our citizens, foster a range of partnerships and bring reconciliation to the forefront of our society.

In closing, I bring your attention to this medallion that I’m wearing. It is decades old, and it belongs to an Elder from my nation who is no longer with us. She was a very strong warrior woman. In all the years that I’d known her, right up until the day she passed, she was always fighting for our rights.

Any time a member of government would come to our community to talk to us, despite the fact whether they had any decision-making authority or whatsoever — it didn’t matter to her — her question to them was, “Where is my salmon?” first and foremost, because we no longer have salmon in the Ktunaxa territory. Secondly: “Where is my bill of sale?”

Sadly, she’s not here with us, but she’s here with me in spirit, along with all of the other ancestors and Elders who have passed on, breathing their last breath and making sure that we find our rightful place here in this province and here in this country.

[11:15 a.m.]

What we are doing today may not necessarily be for the Elders that have moved on but for that child that was here with us and all the young people that are here and in this province so that our children, our grandchildren and our great-grandchildren can grow up in a peaceful, harmonious province, and we can all flourish and all prosper together. [Applause.]

T. Teegee: [Dakelh was spoken.]

First of all, I just want to acknowledge the territory of the Songhees and Esquimalt people and say thank you to Shirley Alphonse for the prayer, and to the songs this morning. [Dakelh was spoken].
I also want to acknowledge Premier Horgan, Minister Fraser and this Green Party–NDP coalition government for their leadership, vision and honouring their word to further reconciliation with First Nations of British Columbia. I also want to acknowledge the Leader of the Opposition for the good words. We are all in this together.

I just want to reflect on the significance of the United Nations declaration on the rights of Indigenous peoples. Today we make history. We are the only common-law jurisdiction in the world to develop legally binding legislation committing to making the United Nations declaration for Indigenous people as applicable law.

This law will silence the debate that the United Nations declaration is about not merely aspirational international principles. Rather, it will be applicable. Today and from this day forward, all articles of the United Nations declaration will be applicable. Dead will be the concepts such as *terra nullius*, doctrine of discovery and Crown paramountcy. Rather, we come to this table and to this House as equals.

To make history is not for the faint of heart. It takes courage. And I know this government and our peoples in this place we call British Columbia have that courage to deliver.

I just want to reflect on the debate of consent versus veto. To bring this to a hard point, some people will oppose this law because of their fears of what an era of mutual consent means. There is fear in the idea of sharing power and jurisdiction. I want to say strongly and clearly here that this declaration law is not about providing any government with veto rights.

Let’s be clear. Consent is about agreement. Consent is a process to achieving and maintaining agreement. Consent is about sharing and respecting our laws as equals and as partners. Consent is the trend of our court cases. Consent is the future, and most simply put, it’s about coming together as governments, as people seeking to find common ground.

Although consultation law has empowered many First Nations in B.C., it has done little to create legal certainty. Too often the Crown still does not engage in good-faith consultation and negotiation, and First Nations are still turning to the courts to resolve these issues.

The greatest uncertainty for project development that hinders the B.C. economy is not knowing if approval has consent of the affected First Nations. Laws that are co-developed where consent is the aim of all First Nations–Crown engagement, where there are realistic and constructive mechanisms for consent being achieved, will deliver economic and legal certainty and predictability in this province. Best practices in B.C. are championed by First Nations, governments and industry achieving consent.

The goal of any party that sits down at a government-to-government table, at an impact-and-benefits agreement negotiation, is to find common ground and agreement. It is not uncommon for business norms to precede and lead the law. It’s the codification of the consent business norm into law that will ensure economic and legal certainty and predictability as a legacy of this government and our peoples in this time.

I also want to acknowledge some of you in this room that have sat across the table in our negotiations.

Mr. Coleman, we’ve sat and debated.

Premier Horgan, the many years ago — 15 years, 14 years — when you were just elected as an MLA.

Shane, Doug, Minister Fraser, when we were fighting for a lake that had been proposed to be converted into a tailings pond. We’ve come a long way since 2007, when we really realized that the lake would be saved.

It’s not without the work of those that are gone now, those that have passed on. We need to acknowledge, as First Nations, that the reason we are here is because of them.

It’s also those that continue to fight in our territory, my territory, the Tl’azt’en and Saik’uz, who are in the Supreme Court of British Columbia right now. And it’s those that ran for office in our recent election for Members of Parliament, some who have won and will continue to fight. It’s those that have fought in the past and those that have put their names forward, whether it’s Members of Parliament or Members of the Legislative Assembly.
As Indigenous people, in my culture, we go to the big house, the potlatch house — and here, on the Island, the big House — and we discuss and debate law, very similar to our Indigenous people. We talk about law in our territories. This is the significance of this day: to acknowledge that law of the potlatch house, of the big house, that when we come here as Indigenous people, we respect each other and debate and talk. It’s not merely for us of today. As I look up to some of the youth that are here, it is for them, and it’s for those that are unborn.

I also want to acknowledge the brave, bold step to move to this law and to this legislation. It’s incumbent on everybody in this room, regardless of political stripes, to enact this law to its fullest extent.

To all those in the gallery, Indigenous brothers and sisters, it’s our responsibility to breathe life into this law. In my speech, I say: “Reconciliation, sovereignty, self-determination.” They’re merely words on a piece of paper. However, now that there is legislation passed, we will breathe life into this declaration. It’s all our responsibility.

I want to thank you all for bearing witness today — bearing witness to this significant time in our history.

Thank you. Musi cho. [Applause.]

S. Phillip: [Nsyilxcan was spoken.]

I would like to begin, as usual, by acknowledging the Songhees and the Esquimalt peoples.

I would like to offer greetings to our dear Premier Horgan, Mr. Wilkinson and Mr. Olsen. I would like to thank the House for this incredible opportunity to bear witness to the passing of this law.

The last several days, the last few hours, the sleepless night I had last night.... You know, I still can’t wrap my mind around this — that this is actually taking place. Even up to the Regional Chief’s remarks, I’m sitting there thinking: “The next leadership council meeting I go to, I’m going to say that I had the most incredible dream last night. I dreamt we were all in the Legislature.” It’s absolutely incredible. It’s beyond words.

I want to acknowledge my beautiful wife, Joan Phillip, up there. As many of you know, Joan ran for the Central Okanagan-Similkameen-Nicola. Mr. Albas had a projected 98 percent chance of winning the riding. Needless to say, he did, but I just want to commend Joan for getting in the ring.

Of course, I want to acknowledge J.W.R., Jody Wilson-Raybould, up there. She’s very much part of this story and has dedicated her life’s work to reconciliation and to changing the laws of this country at the federal level. Let me pause and say we all know that story — about what took place.

I want to acknowledge Romeo and Leah up there.

I want to thank my colleagues for their well-considered remarks. I know that they probably stayed up all night rewriting and rewriting their remarks. That’s not what I do. I just simply ask Joan in the morning: “What should I say?”

There’s not really a lot left to say. I would like to acknowledge all of those wonderful souls that were part of this story for the last 160 years. I want to thank Grand Chief Ed John for reminding us of our history and what took place in terms of the early beginnings of British Columbia as a colony and later as the province, and all of the evolution of the laws and legislation in this province and the impact it had on all of us.

I believe that we are at a point in our history that we begin to realize that as our Regional Chief said, we are indeed in this together, in every sense of the word. What we have relied on for so many decades, in terms of governing, just is not working. I think the last federal election was a prime example. I think archaic institutions and practices need to change. That’s what we’re witnessing.

More and more of our people are beginning to engage in the political process and allowing their names to stand provincially or federally. That was unthinkable 20 years ago. Yet now our people are beginning to realize we are in this together. We need to be part of the institutions that determine the well-being of our families and our communities. I think that’s very positive, a very positive development.
Among other things, I’m a marriage commissioner. I’ve done dozens of marriages. The marriage ceremony is very sacred. All the families get together to bear witness. In reality, what a marriage is, is a statement of good intentions. It’s a vow. It’s a commitment to both parties on how they are going to build a life together. There are no guarantees, but it’s because they understand that that choice is the absolute best choice for them and their partner. They commit day by day to do their utmost to build that life, to lift both of the parties up. I stand in front of the couples, and I say those words. That’s what’s happening here. I think that that’s what we need to do day by day.

In the beginning, Joan and I... We’ve been together 43 years. We’ve been married for 35. I can tell you that in the beginning, it was rough. It was really rough. Those of you that know Joan... She’s got her own mind. I found out the hard way. But nonetheless, we managed to work through our issues, and we have the most incredibly beautiful life one could imagine. I’m so blessed to have somebody like Joan. I wouldn’t be standing here if it wasn’t for her.

The same applies to the parties in this House. We have to walk away from old ways, some old attitudes, and so on and so forth. It’s not easy to do, because we’re so deeply steeped in those attitudes and notions of each other.

Whether it’s across the floor or whether it’s an issue of race, we have to simply just turn our backs on that and walk away. We need to begin to know and understand our responsibilities to the land and to our constituents as a collective responsibility. It’s not on one side of the House or the other. It’s collective. What you see behind us is the leadership council, which was a phenomenal, amazing development, because we were so deeply divided 14 years ago, 15 years ago, yet we knew we had to come together. We knew we had to leave behind our petty differences and our ideological differences, and so on and so forth.

We have committed to work together, a very simple agreement. Three provisions: respect our unique mandates; work on issues of mutual and common concern; and in the event we have irreconcilable differences, that we agree to walk away from each other. I’m so proud to say that after 14 years, we’re still together, which has provided the space for what’s going on here today. It never would have been possible if we had not got off our high horses and decided we need to walk together.

I pray that this House understands the gravity of what we’re doing here today and knows that the future of our grandchildren and of that little child that’s here depends on how well we do that.

We’re all veterans in this House. We’ve been in the trenches most of our lives. Now we have to look at each other differently.

You know, there are so many challenges with the climate crisis, the opioid crisis, homelessness, missing and murdered Indigenous women and girls, economic marginalization. The list goes on and on and on. It’s time for us to put our gifts together and to begin to work together as true partners, to be able to look after the land and the people. That’s what we all stood for office to do. We can’t do it divided. I’m so proud of Premier Horgan taking that bold leadership step here in British Columbia.

I want to remind everybody in the House that there was a very serious federal initiative that was moving forward under Prime Minister Trudeau in terms of the recognition and implementation framework. Prime Minister Trudeau made a commitment in the early days of the election. He said he would pick that up after the election, in the event they got re-elected, and they would sponsor it as a government bill — what was C-262.

It’s inevitable, what we’re doing here today, and we just simply need to get on with it. We need to be genuine. We need to be sincere and walk away from those wonderful, cynical personalities we’ve developed over the space of time.

You know, Joan and I have 15 grandchildren. The future of our grandchildren and your grandchildren depends on British Columbia, here represented in the House, coming together in a very real way, not just words, as the Regional Chief has stated. So I’m praying.

I’m so grateful I’m still here to witness what’s going on here today, because I’ve had health issues over the last number of years, right? I’m deeply touched by what’s happening here. There are going to be all kinds of challenges, but I know in my heart of hearts that with good hearts, we’ll be able to overcome those challenges and lift each other up.
Mr. Speaker: On behalf of all members of the Legislative Assembly, please accept our very sincere appreciation for your addressing this House today. We have been profoundly honoured to welcome you here.

I invite the drummers to join in leading the procession.
their collective agreements, removing and eliminating the benefits for the injured worker and eroding the employment standards branch by cutting half the staff and half of the offices.

Interjections.

Mr. Speaker: Members. Members.

Hon. H. Bains: Workers matter to this government and to me. We value their work. We respect those workers. Their health and safety is important to us, unlike that government.

CONSULTATION ON CARIBOU PROTECTION

M. Bernier: We all know that the Minister of Forests has completely mishandled the mountain caribou file. It was so bad that the Premier actually had to come in and try to rescue him, but that seems to have not worked either.

The Premier said he would do better. He said that he would listen. He said that local governments and people in the Peace region would have a voice and that voice would be heard. But now he’s broken that promise as well.

The regional district has recently written to the Premier to complain about this very issue, about the fact that he’s broken his promise. But here’s the thing. The Premier actually went as far as bringing in Blair Lekstrom to try to fix his mistakes and his minister’s mistakes.

The local government and the regional district have written to the Premier, and this is what they’ve said in a recent email: “We write to you to express our extreme disappointment that our board did not even receive an invitation to participate.” After the Premier came up and promised that would happen.

The Forests Minister has ignored all of rural British Columbia. Now the Premier seems to be doing exactly the same thing and breaking his exact promises of what he would do for the people in my region.

What is the Premier going to do to fix this problem and make sure there’s an opportunity for all of the people in the Peace region to participate?

Hon. J. Horgan: If I could recap the last half an hour, there seems to be a theme here. Opposition party....

Interjections.

Mr. Speaker: Members.

Hon. J. Horgan: Opposition party takes issue with something they did nothing about for a long period of time and then somehow blames the government of the day. When it comes to ride-hailing, in 2012....

Interjections.

Mr. Speaker: Members.

Hon. J. Horgan: In 2012, the government of the day had an opportunity to do something, and they ragged the puck for five years. Now they have the audacity to blame someone else for their incompetence.

When it comes to housing, they were quite all right...
Hon. J. Horgan: ...to have dirty money in hockey bags pay for high-end real estate, while they let tent cities proliferate all over the province.

Now the member for Peace River South has the audacity to stand up and say: “We just found out there aren’t any caribou. Why aren’t you doing something about it?”

[11:10 a.m.]

The species was declared at risk in 2003. By my math, that’s 16 years, 14 of which they were on watch, and they didn’t do anything about it.

For those watching at home: ride-hailing, B.C. Liberals fail; housing, B.C. Liberals fail; and mountain caribou, B.C. Liberals fail. You want something done, you need to have people like us on this side of the House.

[End of question period.]

Tabling Documents

Hon. D. Eby: I have the honour to present the annual report of the B.C. ferries commissioner for the fiscal year ending March 31, 2019.

Orders of the Day


[11:15 a.m.]

[J. Isaacs in the chair.]

Second Reading of Bills

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT
(continued)

T. Stone: It does give me a great deal of pleasure to continue my remarks, which I adjourned last evening. I am very pleased to stand and speak here in second reading to Bill 41, Declaration on the Rights of Indigenous Peoples Act. As I said in my very brief remarks yesterday, this is a tremendous opportunity to have a discussion in this chamber, but I hope more broadly with British Columbians, about what more we can do as a province and as a people to facilitate and foster reconciliation with our Indigenous peoples in this province.

I had talked about, I believe, the incredible commitment and very good track record of the former government that I was part of — the commitment that we had through everything that we did to facilitate reconciliation and to work with First Nations and Indigenous peoples in this province — to create employment opportunities for them and their families; to help raise more Indigenous peoples out of poverty; to ensure that more and more Indigenous children are receiving the education and graduating at rates much more in line with, if not exactly the same or even better than, the broader population in our province, to name just a few areas.

In fact, by 2017, I believe I mentioned last night, our former government had signed over 500 agreements with First Nations across this great province of ours, 345 of which were revenue-sharing deals with, I believe, 242 different First Nations. When you actually think about that — 242 different First Nations — and you think of all of the languages that that represents, the very different cultures and traditions, it’s quite a remarkable reality of British Columbia and something that, I think, really enhances the richness of this province.

These agreements were designed to ensure understanding and to recognize the needs that are very unique and very different in each of the First Nations communities around British Columbia, because foundational to each of these agreements are the principles of dignity and mutual respect.
Now, as part of the jobs plan that we had in our former government, we created a new Aboriginal Business and Investment Council to work more closely with First Nations to foster wealth-creating partnerships. Between 2001 and 2015, the first citizens fund provided nearly $51 million for over 1,700 business loans to Aboriginal businesses.

In 2015, our government launched the Aboriginal skills training development program to invest up to $30 million over three years to fill training gaps for First Nations who want to participate in the emerging LNG sector. From 2008 to March 2016, the Industry Training Authority's Aboriginals in trades training initiatives program helped over 3,000 Aboriginal peoples to receive skills training. Through the Canada job fund, a further $6.7 million in 2014-15 and 2015-16 was directed to support over 753 Aboriginal clients to access trades training.

In May of 2016, we hosted a children and family gathering with the First Nations Leadership Council. That gathering was the result of Premier Christy Clark’s commitment at the 2015 B.C. Cabinet and First Nations Leaders Gathering to host a meeting in 2016 to bring together child-serving agencies, individuals and communities to talk about ensuring Aboriginal approaches for children who need support.

At the time of government transition, at least 40 of Grand Chief Ed John’s recommendations from his report Indigenous Resilience, Connectedness and Reunification: From Root Causes to Root Solutions were already underway, and the province was reviewing others to see how they might be incorporated.

When it comes to education, our former government increased the six-year high school completion rate for First Nations students from 39 percent to 63 percent. Still more progress to make, but that was a tremendous improvement over those years.

The number of credentials awarded to Aboriginal students in the post-secondary education system increased 27 percent to 3,340 in 2014-15 from 2,634 in 2009-10 under B.C.’s Aboriginal post-secondary education and training policy framework and action plan. And 93 percent of school districts in B.C. had Aboriginal enhancement agreements that established partnerships between Aboriginal communities and school districts to meet the education needs of Aboriginal students.

In health, B.C.’s First Nations Health Authority was the first provincewide health authority of its kind anywhere in Canada. It works with First Nations, Health Canada, the B.C. government and provincial health systems to improve health programs and services and foster a health and wellness approach that best reflects First Nations cultures. In 2015, the provincial government and regional health authorities, the Provincial Health Services Authority and the First Nations Health Authority signed the declaration of commitment to cultural safety and humility in health services for First Nations and Aboriginal people in B.C.

When it comes to public safety, our government co-hosted the B.C. family-gathering event for over 350 family members of missing and murdered Indigenous women and girls. The province shared their feedback with the federal government and participants of the National Roundtable on Missing and Murdered Indigenous Women and Girls.

I would also mention, at this juncture, that as the former Minister of Transportation, one of my proudest accomplishments, when I look back at everything that we were able to accomplish in the Ministry of Transportation in the four years that I was so honoured to serve in the capacity as minister....

One of those actions that really delivered results was our Highway 16 transportation plan. That was all about making sure that there are safe, reliable transportation connections between communities up and down Highway 16, from Prince George all the way west, but also making sure that for First Nations communities, which are often more remote and off of Highway 16, there were vehicle programs to be able to purchase these community vans, again, with the safety of their family members and their loved ones first and foremost in mind.

That program, that transportation plan, is not only still in place today, but it’s been renewed. The partnerships have been renewed. The services have been extended further. This was a true example of collaboration and commitment of multiple parties to true reconciliation with First Nations. This involved all of the local governments through that corridor. It involved many First Nations. It involved the First Nations Health Authority, B.C. Transit and a range of other agencies. So
something, I think, to be very proud of. It’s something that’s made a real difference in the safety of the lives of Indigenous and non-Indigenous people who live along the Highway 16 corridor.

Now, it would be remiss of me not to acknowledge that once we get to committee stage, we’ll have lots of questions, and rightfully so. There are lots of very valid, good questions that need to be asked to make sure we truly all understand what this new framework really represents. What are the consequences of this, intended and otherwise? So we’re going to be asking questions, a lot of which will be very practical questions.

How does this legislation impact grazing rights for cattle on Crown leases? How do we manage B.C.’s parks and the use of B.C.’s massive backcountry? Will the forest industry need to make adaptations because of this legislation? How will mining activity and other resource development be impacted? Will there be any impacts to private landowners?

These questions will be posed to the government of the day, as each election cycle comes and goes. They will be asked here in this House. Many of us will get up and ask very focused questions on behalf of not just our constituents, Indigenous and otherwise, but all British Columbians so that there’s maximum transparency on exactly what the impacts of this legislation will really, really be for British Columbians.

We need to address these issues. We need to address these concerns and, all the while, do so in a very respectful manner and in a manner that, I think, is underpinned with a great deal of respect and goodwill — goodwill at being open, being transparent, being respectful, and all wanting to try to get to the same place. That is reconciliation.

I wanted to touch briefly on some lessons that I have been taught by some of my dear Indigenous friends back in Kamloops.

[11:25 a.m.]

The people of the Tk’emlúps te Secwépemc and all of the other surrounding Shuswap nations have a deep, deep, deep history in extending their hands of reconciliation towards settlers, towards the rest of us who came in subsequent years. I’ve learned a lot about what reconciliation really means to them.

One of, I think, the greatest examples of reconciliation, which former Chief of the Tk’emlúps Indian Band, Manny Jules, who is no stranger to most members of this House, I believe.... He was the very first person who drew my attention to what’s known as the Laurier Memorial.

The Laurier Memorial is a document. It’s a document that was drafted in 1910. It was drafted by the Chiefs of the Shuswap, Okanagan and Couteau tribes of British Columbia. But most interestingly, it was drafted, and it was hand-delivered to the Prime Minister of Canada, Sir Wilfred Laurier, who, in 1910, was travelling through British Columbia by train. He stopped in Kamloops, and he was met by these Chiefs.

The letter that was presented to the Prime Minister, I think, is very, very instructive. It is as instructive today, in 2019, as it was in 1910, insofar as what true reconciliation really means to them.

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The letter that was presented to the Prime Minister, I think, is very, very instructive. It is as instructive today, in 2019, as it was in 1910, insofar as what true reconciliation really means. The general gist of the letter... It’s a lengthy letter. I encourage folks watching to pull this letter up on line and read it. It’s very touching. It walks through, from the perspective of these Chiefs, on behalf of their peoples in 1910, what they believed to be the history of the events of their peoples before there was any contact from European settlers through to 1910.

The document also speaks in a very hopeful tone about what the future could be like if we worked together, what the future could be like for Indigenous children but also the children of non-Indigenous peoples, what life could be like if we shared, if we worked together. There are some very moving passages in this letter that basically reflect a desire, an intention, a willingness of these Chiefs in 1910 to say to everyone who they viewed as guests: “What is ours is yours; what is yours is ours. Let’s share. Let’s share the bounty of what we have on the land and in our rivers and streams. Let’s work together for the betterment of all of our peoples.”

I want to read one particular passage. I think this passage resonates incredibly — certainly, it does with me — as to what reconciliation is really all about. Again, this is the Chiefs that are talking. The Chiefs wrote this in 1910.

“With us, when a person enters our house, he becomes our guest. We must treat him hospitably as long as he shows no hostile intentions. At the same time, we expect him to return to us equal treatment for what he receives.
“Some of our Chiefs said: ‘These people wish to be partners with us in our country. We must, therefore, be the same as brothers to them and live as one family. We will share equally in everything — half-and-half in land, water and timber. What is ours will be theirs, and what is theirs will be ours. We will help each other to be great and good.’”

Now, that last line, I think, really strikes at the heart of what reconciliation is all about. “We will help each other to be great and good.”

That was a reflection of Chiefs in 1910, in a letter hand-delivered to Wilfrid Laurier. As I said earlier, I do believe that it embodies the spirit and the intent of what true reconciliation is all about.

With that, I want to say that while we will have a thorough, thoughtful discussion in committee stage on this bill and while there will be a lot of valid questions that will be directed at the government of the day that has brought this bill forward.... As we ask those questions, it will be coming from a place of respect. It will be coming from a place of best intentions and goodwill. It will be coming from a place of hope and optimism that we can truly, through this framework that’s being presented, advance reconciliation in British Columbia like never before.

With that, I conclude my remarks here in second reading. I certainly look forward to engaging in a thoughtful, thorough, respectful discussion in committee stage.

Hon. M. Mark: I want to acknowledge the traditional territory that we’re gathering on today. I want to acknowledge all of the speakers and their truth and their advocacy, representing the 87 constituencies across British Columbia. I want to recognize that the lens for which we look through is different. I want to emphasize the lens for which I’ve seen in my life.

My Nisga’a name is Hli Haykwii Wii Xsgaak. I come from the Eagle clan. My village is Laxgalts’ap. My people are from the Nass Valley. I am very proud to be Nisga’a. I’m very proud to be Gitxsan. I’m very proud to be Cree and Ojibwa.

I don’t have enough time in these chambers to talk about the colonial efforts and policies that had a long-lasting impact on my family: my grandfather, who hid in the bushes from Indian agents so he wouldn’t go to residential school, and my other three grandparents that did go to residential school in St. Michael’s, Elkhorn and Brandon.

It is a historic moment in time. It is October 2019. One day people are going to look back on this debate in these chambers. They are going to look back on the opportunity that we have before us to come together in unity, all 87 members, to vote and support a historic bill, Bill 41, the Declaration on the Rights of Indigenous Peoples Act.

Now, in my time.... I grew up in East Van. I was seven years old when the Charter of Rights and Freedoms came into play. It wasn’t until later on in life that I studied political science and I learned about the impacts of section 35 and the rights of Indigenous people. It also wasn’t until my 20s that I learned about residential school. I went 20 years without knowing the impact on my grandparents.

We know about the impact of the residential school through the truth and reconciliation calls to action, a human rights framework that.... Canadians, across the country, believe they are calling on government at all levels to turn things around, to acknowledge the truth of what happened to children that went to residential school and to make things better.

I believe that the people that voted for us have called on us to make things better in our communities. When I got elected in 2016, I became the first Nations person to ever hold a seat in these chambers. The reason why I’m so proud of that is because it is a testament to the warrior spirit of Indigenous people, the briefcase warriors who have fought for their rights for hundreds of years. It doesn’t matter which canoe they were in or where they were going. They’ve always stood firm that it is about rights. It is about our land. It is about our children. It’s about our prosperity.

All people want that. All people want prosperity. All people want to be able to live free and have freedom.

Let’s not forget that it wasn’t too long ago that we had to fight for rights. I’m not talking me as just a native person. Me as a woman. People have been fighting for rights for a very, very long time. The fight for rights is, hopefully, going to come to an end with this act. This act, this declaration, is
about affirming the rights of Indigenous people, recognizing their rights and recognizing that, as the members talk about, we can do things differently.

I often talk about paddling together. Most people accept that notion. It is not a canoe full of Indians. It's not a canoe full of First Nations or Métis or natives. That is divide-and-conquer language. It is a canoe for anyone who wants to fight for change — the change that was identified in the calls to action to address child welfare and to address the conditions of people that are overrepresented in jail and the poverty that hits our communities.

When I say our communities, all of our communities. Most members in these chambers have their constituencies on some traditional land. So when I say all, we’re talking about equity for all. We’re talking about rights for all.

I want to pause for a moment, because this is a historic moment in our history. I want to remind people about the lens which I’ve looked through over my 44 years in my life. In my life, I’ve seen that our rights were recognized in the Charter. In my life, I’ve seen royal commissions go across the country to highlight the injustices to Indigenous people. Not too long ago we had an inquiry highlighting the conditions for missing, murdered and Indigenous women, whose rights were obviously ignored.

We have a lot of work to do. We have a lot of work to do for kids in care. Before I got into politics…. Lots and lots and lots of reports highlighting the conditions for kids in care. People are calling on us to turn things around and make things better.

I’m not going to spend the few moments that I have in here to speak to a historic bill…. There is lots to say, but I will say that in my life, I will see the light. That climb that Frank Calder had as one of the first Indigenous people to ever get elected. What did he see in his time, and what do I get to see in my lifetime?

My grandparents aren’t alive, but I wear my grandmother’s pendant close to my heart. I’m very sorry about the things that she had to see in her life. We need to turn things around, and we are. I am so optimistic that things can get better if people work together.

The member opposite, not too long ago, talked about education. I’m the Minister of Advanced Education, Skills and Training. I’m the first Nations person to serve in cabinet.

I believe that we can turn things around. What I’ve been able to do in my life and in my time as minister…. I’ve been able to implement the United Nations declaration on the rights of Indigenous peoples. I know I’m not allowed to use props. I’m sorry. I hope I don’t get kicked out. But those articles emphasize the importance of training.

My ministry has invested in Indigenous teachers, because they should be in the front of the classroom across our province. My ministry has invested in the first Indigenous law program — not just in B.C., not just in Canada but in the world. That was article 50. It was a call to action, and we implemented it. The framework was based on the human rights framework of the United Nations declaration on the rights of Indigenous peoples.

We should embrace this historic opportunity to implement the rights of Indigenous people. It will be good for our families, our communities, our economies, our children and our future.

I’m going to close with my eagle feather.

[11:40 a.m.]

My name is Hli Haykw̓el Wii Xsgaak. I’m the proud member for Vancouver–Mount Pleasant. I want to thank every person that exercised their right to vote. They voted for me and gave me a chance to be in these chambers for this historic moment.

J. Rice: I’m really happy that I get to speak today on Bill 41, implementing the rights of Indigenous people in British Columbia. I would love to speak for a long time, but I’m going to keep my remarks very short. A lot of my colleagues have covered a lot of what I would say.

I do want to just acknowledge this special time as an MLA, a representative of 11 distinct nations within the North Coast, also including a large population of Nisga’a members. More Nisga’a live in Prince Rupert than in their traditional territories in the Nass Valley. So I do have the honour of representing really diverse and interesting people.

It’s an important day for my constituents as well as myself. This is a historic first. We’re going to be the first province in Canada to implement the UN declaration into action, recognizing the rights
of Indigenous people. We’re moving in a clear path forward that will create good jobs and opportunities for everyone. At the same time, we’ll be protecting the rights of Indigenous people and the environment.

Together, we’re creating a clear and transparent process for ensuring Indigenous peoples are included in the decisions that affect them directly, that affect their rights within their own territories. These are inherent rights that are protected in Canada’s constitution and recognized in court decision after court decision but somehow, subsequently, colonial governments — such as ourselves, the government that I represent — have time and time again ignored.

Some of B.C.’s biggest employers are already doing things differently with Indigenous peoples. I wanted to just recognize, in my own hometown, the Port of Prince Rupert. They have already adopted the principles of UNDRIP, whether they intended to or not. In Prince Rupert, we have successful Indigenous businesses that are thriving and numerous Indigenous people that are employed with good-paying jobs, family-supporting jobs. In part, that is due to the work, the progressive forward-thinking work, that the Port of Prince Rupert has already conducted and how they relate with Indigenous peoples where their port operations operate in their territories.

What I really wanted to do — and I have a couple of minutes — was I just wanted to share a letter that every MLA received on both sides of the House. I’m not going to identify the person. But actually, the questions, I think, are some of the questions that a lot of people are thinking, that people are concerned about. The subject line reads: “Opposition to UNDRIP legislation.” The first question was: “Why not just have a declaration for all people instead of just Indigenous people? The United Nations doesn’t always get it right.” That is true.

What I wanted to just point out is the irony of some of these questions. That is that all people. We do all have, in theory, equal rights in British Columbia. But time and time again Indigenous rights have been ignored. Not only have Indigenous people been ignored; they’ve been mistreated and abused.

“Why should one group of people be singled out for what really amounts to special treatment?” I just wanted to point out the irony of that, in that we’re all supposed to be treated equally, but for 160 years, white people and non-Indigenous people have been singled out and treated differently. They’ve been treated special as the superior race. So what we want to do is uphold the rights of Indigenous people that already are there and that already exist.

An example would be that in education, per-pupil funding for people on reserve is significantly less than off reserve. We still have Indigenous communities without drinking water, a disproportionate number of Indigenous people incarcerated, the child poverty rate. ....

What we’re doing is trying to make this legislation, essentially, uphold what’s already there and make what’s right. We don’t need to have a conversation about who has rights. They already exist. We’ve been ignoring Indigenous ones. We’ve been trampling on them. This legislation sets the path right.

N. Simons: I’m really very pleased to have the opportunity to speak, if I can.

The work that’s been done has been so important. I want to recognize everyone in cabinet who has pushed this, the caucus and everyone in British Columbia who has seen the importance of fulfilling not just our promise but the promise that we made to bring in legislation so that we are in accordance and we act in accordance to the United Nations declaration. I thank my colleagues for their hard work.

I think about the hard work that was done in the communities to get here. I wrote down a list of people I’m thinking about, from the shishálh Nation, the first Nation in Canada with self-government, the proud signatories to a foundation agreement that sets a new course of economic and social cooperation and partnership on the Sunshine Coast. They’re leading the way. They’re leading the way with the Chiefs and councils that I’ve worked with. Years and years ago, hearing stories of Premiers dropping in at the house of Clarence Joe. His family strongly, fiercely protecting their rights and ensuring that they’re entrenched — in 1986.

The people that were involved in that deserve so much credit. It was against stiff headwinds, against the incoming tide. Yet they persevered, and they gave strength to the leadership of today, to
I think of the matriarchs, those who kept the communities strong and resilient. They deserve this credit. They did the real work. They lived through the real experience. This is a result of that.

We are proud to be legislators at this time.

I think of the leadership of today in the shíshálh Nation. I think of Chief Warren Paull. I think of his sisters — strong, community-minded people who kept the communities together. The Craigan family — Stuart Craigan, the Chief. Gary Feschuk, the Chief who worked so tirelessly and continues to work on reconciliation at a grassroots level. Stan Dixon and his wife, Lori — community members that have been embraced throughout our communities.

They’re the ones with their briefcases, with their well-thought-out arguments and with their knowledge that their fights were for justice — with the knowledge that they were doing this not just for the people that came before them but for the little ones who come next.

This isn’t the end of everything. We haven’t reached a place where we can say that the work doesn’t need to continue. The work needs to continue. I think the partnership that we’ve formed will allow that work to go forward. When we get along well and agree on everything, and when we have disagreements, we have a pathway forward.

I’m pleased to be here at this time. I pay tribute to those who come before us, and I thank members for this opportunity.

Deputy Speaker: Seeing no further speakers, the minister shall close debate.

Hon. S. Fraser: I thank all the speakers that have come before on this powerful second reading on Bill 41, Declaration on the Rights of Indigenous Peoples Act.

I just want to remind of the work that the Truth and Reconciliation Commission did and the calls to action that that led to in 2015. Anyone who attended those hearings across the country, across the province.... I attended a number of them — tear-wrenching horrors of the residential school system that so many had to endure.

The calls to action. I have never met anyone that did not support those calls to action from the commission. The key call to action is for governments to adopt and implement the UN declaration on the rights of Indigenous peoples. That is what this is all about. You cannot support the work of the Truth and Reconciliation Commission without supporting what we’re doing here in this House.

I want to read into the record, before I close, a quote. “Taken together, this bill gives us hope, and not only for a more certain path towards necessary reconciliation. It gives us hope that British Columbia can differentiate itself globally, setting the course for Canada to create an economic climate that supports sustainable development and advances the self-determination of Indigenous peoples. If successful, we foresee a more certain, respectful and prosperous society for all who live, work and invest in our province.”

That quote is from Greg D’Avignon. He’s the president and CEO of the B.C. Business Council, and it’s co-written by Laird Cronk, who is the president of the B.C. Federation of Labour. This powerful statement has brought great organizations together in support of this bill.

This is about recognizing the human rights of Indigenous peoples in law in British Columbia. That’s the first time in history in this country. Again, I’m going to repeat myself from my first reading opening. Let’s collectively make history.

With that, I move second reading of Bill 41.

Second reading of Bill 41 approved unanimously on a division. [See Votes and Proceedings.]

Hon. S. Fraser: I move that the bill be referred to a Committee of the Whole House to be considered at the next sitting of the House after today.

Bill 41, Declaration on the Rights of Indigenous Peoples Act, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.
Hon. M. Farnworth moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 this afternoon.

The House adjourned at 11:59 a.m.
powerful forms of greenhouse gases than carbon dioxide. CleanBC actually provides a blended rate in terms of the carbon reduction. That’s 40 percent by 2030, 60 percent by 2040 and 80 percent by 2050. Again, those are blended rates — carbon dioxide as well as methane, black carbon and all the other GHGs.

Having said that, there are some people who have said that the IPCC report’s emission reduction targets are quite conservative and that we actually need to be much more aggressive than that. Now, whatever the targets are or should be, none of it matters if we can’t actually reach them. That’s why accountability is so incredibly important. Accountability is desperately needed, and I’m really pleased to see that we are introducing more accountability to our climate action strategy through this bill.

Ian Bruce, the director of science and policy from the David Suzuki Foundation, said: “We welcome B.C.’s climate accountability law as one of the strongest in North America. These new measures to strengthen transparency and responsibility from every sector of our society, from the largest industrial polluters to government to citizens, will help make everyone part of the solution to the climate crisis.” I think that is so incredibly important.

What I really find important about CleanBC is that it’s not just about emissions reductions. It’s not just about electrifying our transportation or improving the emissions efficiency of our buildings but also transitioning our economy. The transition of our economy is absolutely the most important part of this plan.

[Mr. Speaker in the chair.]}

Now, given that I see the committee Chair in the room and I see that the Speaker has entered, I will reserve my place, my right to speak at the next available opportunity.

B. Ma moved adjournment of debate.

Motion approved.

Committee of the Whole (Section A), having reported progress, was granted leave to sit again.

Hon. M. Farnworth moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 this afternoon.

The House adjourned at 11:51 a.m.
The Chair: I would like to call this committee into session here in section A, the Douglas Fir Committee Room. We're here with the Committee of the Whole. Bill 41 is, I believe, what we will be talking about today. I'd like to acknowledge the minister and, of course, that we are on the territories of the Lk'wałla1Jma1J-speaking peoples, the Esquimalt and Songhees.

Hon. S. Fraser: I, too, want to recognize the Lk'wałla1Jma1J-speaking people and thank the Songhees and Esquimalt Nations for allowing us to do our business here today.

As we begin the committee stage of Bill 41, I would also like to introduce who I’ve got with me. My deputy minister, Doug Caul, is with me. Assistant Deputy Minister Jessica Wood is with me also. We’ve got Debbie Chan, from the AG — that’s the Attorney General’s office — joining us, and Richard Grieve is also with me today and a host of other people here too.

I'm looking forward to the discussion and bringing clarification at committee stage, which is appropriate. Bill 41 is history-making legislation, the first time in Canada that we will be, as a government, bringing in legislation that recognizes the human rights of Indigenous people in law in this province. I look forward to the discussions with my colleagues opposite.

M. de Jong: Thanks, Mr. Chair, and to the minister, and greetings to the able staff that are here from various departments of government. We’re a couple weeks now removed from the ceremony and celebration, and to this body falls the less glamourous task of exploring in more detail the implications of the legislation, the details of the legislation, before us.

I thought it might be appropriate, to kick things off, to give the minister an opportunity to explain to the committee, in perhaps broader terms, specifically what the government is seeking to accomplish with Bill 41.

Hon. S. Fraser: I thank the member for his question. I guess, in its simplest form, we… I mentioned this already. What we’re accomplishing here is recognizing the human rights of Indigenous peoples into law in this province. The legislation will give us a path forward as government. I think it will be creating clarity and predictability for all British Columbians. Again, by working together, we will get better outcomes. Recognizing the rights of Indigenous peoples that have been, of course, recognized in the constitution, section 35, and reaffirmed by multiple court decisions, it is wise for government to move forward with this. There’s been an urging from the courts for governments to get on with the business of reconciliation, and that is exactly what we’re doing with Bill 41.

M. de Jong: The minister began by restating the objective around the recognition of human rights. I note that in his remarks at the time, on that special day when Bill 41 was presented to the House, he said the same thing: “...we are” — I’m quoting from those introductory remarks — “recognizing the human rights of Indigenous peoples in law.” Later in his second reading remarks, he said: “With this legislation, we are affirming the human rights of Indigenous peoples in law.”

Is there a difference between recognizing and affirming?

Hon. S. Fraser: The purpose of the act — it states in the purpose section — is to affirm the human rights of Indigenous peoples. So I’m using the terms in the same meaning.

M. de Jong: I wonder if the minister might, for the purpose of the committee, expand upon the nature of the human rights that we are discussing here that are either being affirmed or recognized.

Hon. S. Fraser: The act is affirming the collective rights of Indigenous peoples as laid out in the 46 articles of the UN declaration on the rights of Indigenous peoples. They are laid out quite clearly there.
I don’t know if the member is asking for something more specific than that. The rights to live without discrimination, that sort of thing.... It’s intrinsic within the articles of the UN declaration.

M. de Jong: One of the themes I’m hoping we can explore during the initial stages of the discussion in the committee is the degree to which the impact of the legislation is to import new legal concepts, new recognitions into British Columbia law.

I noted, a few moments ago, that the minister repeated or, I believe, made reference to something he again said in second reading, where he said: “These are the kinds of rights we all expect to have in the course of our daily lives, accepted and valued human rights that Canadians have helped define and fight for, human rights that are the foundation of our Charter of Rights and Freedoms, human rights that are reflected in the Aboriginal rights that are recognized and affirmed in section 35 of our constitution, rights that the courts have consistently and repeatedly upheld.”

I think what I’m asking the minister.... On the one hand, he has made, I think, a very compelling case for the human rights that have found expression and protection in existing instruments of Canadian law. But he’s also, through the legislation and his comments around the legislation, referred to affirming or recognizing something that impliedly, therefore, doesn’t exist.

I’m trying to reconcile the two statements. Maybe the minister can help.

Hon. S. Fraser: The bill before us, Bill 41, is not bestowing any new laws. It’s articulating the UN declaration within the framework of the constitution and of British Columbia law.

M. de Jong: I think that’s helpful, but I may ask the minister to clarify that response a little bit. When he said we’re not bestowing any new laws, was he perhaps meaning to say not bestowing any new rights? We are clearly bestowing a new law. That is the essence of the exercise. I’ll let the minister clarify that for the record.

That was the essence of my question, probably expressed clumsily. Are we recognizing...? I am relying, as the minister can tell, very carefully on the words that he and the Premier and others have used in describing this. Are we recognizing something that is already recognized in Canadian law, or are we recognizing rights that go beyond what is presently recognized? I think the minister has just indicated the former — that what is being recognized here are rights that already exist and are already recognized in Canadian law.

Hon. S. Fraser: The member is right. It’s recognizing rights within Canadian law and within the constitution.

M. de Jong: Right. Again, that is helpful. I think the part of the response that I want to be clear upon, because I think much does turn on it — that will become apparent as we move through some of the subsequent discussion — is that the minister’s original response was that the intention is not to bestow any new laws. I took that to mean that the intention is not to bestow any new rights.

Perhaps the minister, rather than me put words in his mouth, could make that clear — that the intention is not to bestow any new rights.

Hon. S. Fraser: The member is correct. If I misspoke, let me correct it for the record here. The legislation does not create any new rights.

M. de Jong: Maybe moving now to some of the descriptives that have been used. “Historic” has been a word that has been applied, and I think for a variety of reasons that it may be an appropriate adjective. It leads me to ask this question: has this ever been done before?

[11:25 a.m.]

When I ask that.... Here’s, in fairness to the minister and his team, what I mean by that question. Canada has done this internally. Not this specifically. Give me a moment, and I’ll try to explain. The best example is, of course, the Charter, which is a legal instrument that applies across the breadth of Canadian laws. All statutes must be read to be consistent. It applies to all laws. There are judicial interpretations that take place to assess whether individual statutes at the federal or
provincial level comply with that overarching document. There are rulings. At times, legislation is struck down.

In this province or in this country, have we ever taken an external document — declaration, in this case — and created a statutory requirement to interpret every other statute in accordance with that declaration, which will then take precedence?

**Hon. S. Fraser:** As the member knows.... The obvious example that I thought of when he was asking the question is the Canadian Parliament did.... Actually, it was Bill C-262, Romeo Saganash’s private member’s bill, that made it through the parliamentary system in Ottawa. That would be one example. Of course, it hit the Senate, and then the writ dropped, and we all know what happens then. Bills fall off the order paper. But it did make it through the Canadian Parliament. A specific example that has actually made it all the way through would be the Kyoto Protocol Implementation Act.

**M. de Jong:** The reference by the minister to Bill C-262 is, I think, very helpful and very appropriate. I will take it as a sign that the minister will welcome an opportunity to discuss some of the parallels between the two pieces of legislation.

I’ll take issue with just the one comment he made with respect to that. The federal parliament, of course, is a bicameral system. As much as Canadians may not assign the same level of import to the Senate as they do to the House of Commons, if that is so, the bill technically did not make it through parliament, insofar as it didn’t receive the passage required in the Senate and make its way back to the House of Commons.

[M. Dean in the chair.]

Having said that, I think the minister is quite correct in pointing to that attempt, which — I agree with him — represents an attempt to do what we’re doing here, a very similar attempt, I think. We can come back to that in a few moments.

I’m interested in the minister’s reference to the Kyoto Implementation Act and will confess that on the break, perhaps, I’ll quickly endeavour to examine that. But maybe the minister, with his staff, can help. Now, my recollection is that the Kyoto Implementation Act sought to establish some targets within domestic law consistent with those to which Canada was a signatory in the Kyoto accord.

[11:30 a.m.]

If I’m mistaken, and the minister is able to say to the committee, “No, actually, that act did something similar to what we’re doing here, took the Kyoto accord and determined that it would influence every statute, every law, in Canada,” as this bill and Bill C-262 purported to do.... The minister understands the distinction I’m trying to make between a piece of legislation that references commitments the country has made versus a statute that says this international accord is the lens through which every single law and piece of legislation must be read in the jurisdiction.

**Hon. S. Fraser:** Maybe a little out of protocol here, but before I seek to answer the question, can the member educate me on what “bicameral” means? He used the term before, and I’ve just never heard the term before.

**M. de Jong:** The federal parliament, of course, is a parliament of two Houses: a House of Commons and a Senate. It is bicameral, meaning the two Houses together comprise the federal parliament. Therefore, Bill C-262 did not successfully move through parliament, insofar as it required passage in both Houses and didn’t receive it.

**Hon. S. Fraser:** I thank the member for that. I learned something. I mean, I understood the concept as he described it, but I just had never heard the term “bicameral” before. Thank you.

I’m going to read directly from the Kyoto Protocol Implementation Act. This legislation included a section that requires a plan that included “a description of the measures to be taken to
ensure that Canada meets its obligations under...the Kyoto Protoco...” That’s the only clarification I’ve got here. We didn’t come prepared to discuss in depth the Kyoto Protocol Implementation Act.

M. de Jong: I won’t belabour the point. I think the distinction would be the presence of a section comparable to subsection 2(a) of the bill before us, which, of course, affirms the application of the declaration — in that case, the accord — to the laws of British Columbia. That’s something the minister or the members of his team can verify over the course of the break.

Are there any other examples that the minister can refer to — he mentioned Bill C-262, which I’d like to discuss with him and the committee in a few moments — any other examples that he can think of where either the province or Canada has taken an international instrument, an international declaration, and said: “This, in its entirety, now applies to the laws of the land”?

Hon. S. Fraser: We’re having to do research on the fly here. I appreciate that the member is helping to get us learning more about....

I certainly was aware. But this is a partial example. Again, I wasn’t really prepared to speak about other laws throughout the country, but section 80 of the Family Law Act provides the force of law in British Columbia to the convention on the civil aspects of international child abduction signed at the Hague on October 25, 1980, with definitions incorporated and express limitations on any government obligation to provide funding. So it’s only a partial. It’s not as sweeping as what we’re talking about here.

Just for the member’s.... If he will allow me, if I see where he’s going with this line of questioning, I believe that in many ways, we’re leading the country and other parts of the world in this legislation such as we are doing it, so I think it would be difficult to find a specific comparable directly. At least, it might take some time for us to find something, but I’m not aware of anything. I think we’re leading the country, certainly the country and other parts of the world, in bringing in Bill 41.

M. de Jong: Well, that’s my sense as well. The minister has provided an example, and I think the term that is frequently used is “subnational government” — not necessarily the most flattering of terms but, I think, the accurate legal term.
Can the minister advise the committee: have any other subnational governments endeavoured to embed the declaration? When I say "the declaration," I, of course, am referring to the UN declaration on the rights of Indigenous peoples. Is he aware of any other subnational governments that have endeavoured to embed the declaration into their domestic laws in as fulsome a way as Bill 41 is purporting to do?

Hon. S. Fraser: There may be something we’ve missed, but I do believe the only other example that we can find right now is NDP private member’s bill 76 in Ontario. It calls for laws in Ontario to be harmonized with the UN declaration, and it’s currently with the Standing Committee on General Government in Ontario. But that obviously hasn’t completed…. It’s a private member’s bill.

Romeo Saganash’s private member’s bill in Ottawa was quite unusual in the fact that it actually did make it through the parliamentary system. But there’s no way to know, in Ontario, whether this will have that effect.

That being said, what we’re doing with Bill 41…. It does not give the UN declaration on the rights of Indigenous peoples legal force and effect. It does not do that.

M. de Jong: All helpful information from the minister.

He again mentioned Bill C-262, the private member’s bill that very nearly made its way successfully through the federal parliamentary system. Does the minister have access to that bill? If he does not, I have brought an extra copy, because I am going to ask some questions about the parallelism in the drafting. I’m happy to provide a copy to the…. Maybe to begin this segment of the questioning, if I were to suggest to the committee and to the minister that the construct of Bill 41, recognizing that the jurisdictions are different, closely follows the construct of Bill C-262, would he be inclined to agree with me when I make that statement?

Hon. S. Fraser: Comparing C-262 to Bill 41, there are similarities, and there are differences.

I have been handed a note here from the Chair that I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:47 a.m.
Motion approved.
The committee rose at 6:26 p.m.
The House resumed; Mr. Speaker in the chair.
Committee of the Whole (Section B), having reported progress, was granted leave to sit again.
Committee of the Whole (Section A), having reported progress, was granted leave to sit again.
Hon. M. Farnworth moved adjournment of the House.
Motion approved.
Mr. Speaker: This House stands adjourned until 1:30 tomorrow afternoon.
The House adjourned at 6:27 p.m.

PROCEEDINGS IN THE DOUGLAS FIR ROOM

Committee of the Whole House

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT (continued)

The House in Committee of the Whole (Section A) on Bill 41; S. Chandra Herbert in the chair.
The committee met at 1:38 p.m.

The Chair: We’re here looking at Bill 41, the Declaration on the Rights of Indigenous Peoples Act.
I acknowledge that we’re on the traditional territories of the Esquimalt and Songhees peoples and thank them for having us here on their traditional territories.

On section 1 (continued).

M. de Jong: We were discussing, at the break, the similarities and differences between the federal Bill C-262 and Bill 41. I’d like to come back to that in a moment.
There was just one other follow-up matter that I wanted to canvass with the minister, which derived from a comment he made, an answer he gave prior to the break. He was, I think, pretty clear about this, in saying that Bill 41 doesn’t give the UN declaration legal force and effect.

[1:40 p.m.]

I do want to be accurate. I think that was the phrase he used. If I’m incorrect, I’m sure he will correct me.
I wanted to compare that to something the Premier said on that special day when the minister introduced Bill 41. I do so only because in the years ahead, when people are asking themselves what the intention of the bill was and what the government’s intent was in introducing it, all they will have are the words — the minister’s words and, in this case, the Premier’s words.
The Premier said this in the House. These are from his comments on the day, on the morning that Bill 41 was introduced. He said: “B.C. is the first province to put in place the declaration on the rights of Indigenous peoples, to bring the UN declaration into law.”
The minister has said that Bill 41 doesn’t give the declaration legal force and effect, and the Premier indicated it was his and government’s intention to bring the UN declaration into law. On the surface, at least, I’m having difficulty reconciling those two statements. The minister may be able to help me do so.

Hon. S. Fraser: I just want to be clear. Bill 41 does not bring UNDRIP into legal force and effect.

When it comes to the purpose of the act, that is laid out in the next section. I don’t think we’ve got to… Are we still on section 1? It’s been a pretty free-flowing conversation.

But section 2…. I’ll jump to section 2, but I’m assuming the Chair will wait until we get to section 2 to go into....

The Chair: We are still on section 1.

Hon. S. Fraser: Okay. But I’ll just touch on it in the interests of the question here. The purposes of this act are as follows: “(a) to affirm the application of the Declaration to the laws of British Columbia.” So that’s laid out clearly in the next section.

M. de Jong: I suppose what I’m trying to do is ascertain whether there is a consistency or inconsistency between the words that the minister has just repeated again, which is that the bill does not give the declaration legal force and effect, and the statement that it is intended to put in place the declaration — to bring the UN declaration into law. It may be that the minister is able to explain the difference. On the surface, I’m not.

The minister has, again, said that the bill does not give the declaration legal force and effect. But the Premier has said the intention is to bring the declaration into law. There is, perhaps, a distinction there that eludes me and others. I think I’m asking the minister to help us in distinguishing, if he can, those that seem, on the surface at least, to be inconsistent statements.

Hon. S. Fraser: The UNDRIP is appended to Bill 41, so I guess you could say that it is being brought into law. It’s being cited specifically in Bill 41, which is a piece of legislation. I mean, you could say it in that sense, I suppose.

But Bill 41 actually creates a process to move forward using the UN declaration as a guide. I mean, maybe I’m splitting hairs on it. It is actually appended to this piece of legislation. It doesn’t trump other laws, that sort of thing.

M. de Jong: I’ll say now that I think it was appropriate and wise for the minister and the government to append the declaration to the bill. It certainly affords the committee an opportunity to examine the declaration, and we’ll have an opportunity to do that later in these proceedings.

My intention is not to be argumentative. But much turns…. We use the word “historic” for a reason, and the implications of how the declaration applies are presumably significant.

Is the minister endorsing the following statement — that the bill brings the UN declaration into law?

Hon. S. Fraser: I’m not sure how much leeway we’re going to get on this. We’re delving into section 3 now, and I think we’re still on section 1. I’m not sure…. I haven’t done one of these before. I’ve seen them a few times but I don’t recall if we jump over and over. Section 3 explains, I think, the answer to that question.

I guess I’ll ask for guidance from the Chair. Shall I go to section 3 while we’re still on section 1? I just want to be....

The Chair: We’re still on section 1, just for the clarity of everyone in the room. That’s the interpretation section, around the meanings of terms in the legislation. So it would be appropriate, if
we have questions still on section 1, that we deal with those. If there are questions on later sections, we deal with those at the time.

To the member, on section 1, the interpretation section.

**M. de Jong:** Thanks, hon. Chair. I’m not meaning to be mischievous or argumentative or actually, to prolong anything.

The section we’re dealing with includes a specific reference to the declaration as the United Nations declaration on the rights of Indigenous people, and a couple of other terms. It also, in sub (4), as the Chair will note, speaks specifically to the question of applying the declaration to the laws of British Columbia.

**The Chair:** Thank you, Member.

**M. de Jong:** I think these are appropriate and relevant questions in that regard.

People will have an interest in how the government intends and regards the declaration as applying. That’s the word: “the application.” The minister, to be fair, has been pretty clear in saying that the declaration is of no legal force and effect. I think I understand what that means.

The Premier said something that, on the surface at least, seems different. It may not be, and I won’t ask the minister to account for what may have been in the Premier’s mind. He can’t do that. But on the surface, he seems to have said something different, which is that the intention is to bring the UN declaration into law.

Insofar as section 1 speaks to the question of the application of the declaration to the laws of British Columbia, I’m asking the minister to help the committee and others who may be interested in this to account for or reconcile those two statements — that there is, on the one hand, an intention to bring the declaration into law but that, on the other hand, the declaration is of no legal force and effect.

**Hon. S. Fraser:** This is enabling legislation. It provides direction to government to address existing laws and future legislation, as it’s being contemplated, to bring those in to align over time with the principles of the UN declaration. So you could argue, I suppose — it’s semantics, maybe — that that is bringing the UNDRIP into law, into the laws of British Columbia. It’s a process for doing that, to make sure that laws that are on the books that maybe didn’t contemplate that the human rights of Indigenous peoples even exist.... Those sorts of things need to be addressed.

Then, of course, there’s a process that we’ll deal with later on, an action plan that will lead to how we do that over time.

**M. de Jong:** This is a question. Is the minister urging upon me and the committee, then, to accept the statement that the intention...? And I’m not endeavouring to put words into his mouth, but I am trying to properly understand what the government’s objective and what the government minister’s intention here is. Is the minister saying that the intention is to bring the UN declaration into law but ensure that it is of no legal force and effect?

**Hon. S. Fraser:** To the member opposite, I thank him for this line of questioning. It’s an interesting one.

He cited section 1(4), saying: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.” Just for clarification, the idea of this is that it won’t prevent courts from using UNDRIP, the UN declaration on the rights of Indigenous peoples, as an interpretive aid. That is the intent of section 1(4), just for clarification on that.

The purpose of Bill 41 is to bring the laws into alignment with the UN declaration. Section 1(4) is more specific. It’s dealing with the idea that the courts could still.... There’s nothing in this act that would prevent the courts from using the UN declaration, as they can already, as an interpretive tool.

**M. de Jong:** I don’t want to get sidetracked on that aspect of the discussion just yet, but I appreciate the minister’s remarks because we’ll come back to it. I will leave this for the minister to consider and perhaps comment upon briefly in the knowledge that we’ll come back to it a bit later.
That is my sense is that the purpose of the bill goes beyond inviting or providing an option to the courts to consider the implications of the declaration. It requires them to do so. That is, in fact, one of the purposes for the bill in the first place.

**Hon. S. Fraser:** The bill is about a process to align our laws in British Columbia with the UN declaration on the rights of Indigenous peoples.

**M. de Jong:** Well, let’s come back to that. I’m not sure, in fairness, for all the parts of this conversation that the minister has been helpful with, in resolving the apparent difference between his comments and those of the Premier, that he has been helpful in reconciling what appears to be a difference on a relatively significant matter. Be that as it may, let’s return to the discussion we were having before the break about a comparison between Bill C-262 and Bill 41.

The last thing the minister said before we broke was that there are similarities and differences. I’m interested to know, in the minister’s mind, what he would characterize as the similarities and what he would characterize as the differences.

**Hon. S. Fraser:** In our bill, the provincial bill, 41, sections 2(a), 3, 4 and 5 are all similar to C-262, the federal private member’s bill.

**M. de Jong:** Right. Just to expand upon that, as I read through.... Neither are particularly lengthy bills. The federal legislation.... Federal parliament has a tradition of including preambles, which we tend not to do here in British Columbia.

Subsection 2(1) of the federal bill seems to replicate sub 1(3) of Bill 41. Section 2 of the federal bill seems to replicate sub 1(4) of Bill 41, those being the sections that we’re on here.

Before I ask about the manner in which that has come about — that parallel drafting or that consistency — the second part of my question is, to the minister: where would he describe the biggest differences, if any, between the two bills?

**Hon. S. Fraser:** I know the member opposite probably noticed there are places throughout Bills C-262 and 41 that have.... There are wording changes throughout. But I’m assuming that the member is looking for things where there are different constructs here. The most significant — the member actually mentioned it already. The federal bill has a preamble. I would note, also, it’s bilingual. It also has a French portion. Everything is in both official languages. But sections 6 and 7 are the ones that have the most significant differences.

**M. de Jong:** By that, I am assuming the minister meant sections 6 and 7 of Bill 41.

**Hon. S. Fraser:** Correct, yes.

**M. de Jong:** He’s indicating that is so. If I were, then, to make this proposition, which will be helpful in terms of going forward.... With the notable exception of sections 6 and 7 of Bill 41 dealing with agreements and decision-making agreements, with respect to the provisions dealing with the application of the UN declaration to either the laws of Canada in the case of C-262 or the laws of British Columbia in the case of Bill 41, the approach is similar.

In some cases, the language is virtually identical. And in both instances, the federal parliament and the Legislative Assembly, in the case of Bill 41 — or the bills, at least — contemplate a public reporting of progress. With respect to the declarations, they both contemplate annual reports. In that sense, the construct is very similar. In some cases, the wording is virtually identical.

**Hon. S. Fraser:** That’s correct.

**M. de Jong:** I’m assuming that that didn’t happen by accident. Either there was some coordination or work between the government of British Columbia and the other place, the federal
parliament, or perhaps not. Perhaps the minister and the government of British Columbia simply took a document that I think was first tabled by the private member in 2016 or 2017 and worked from it.

I'm curious to know to what degree there was, through the drafting phase of this, interaction between the government of British Columbia, the minister or the ministry, the Ministry of the Attorney General and federal officials.

**Hon. S. Fraser:** Of course, we made it public as a government that we were embarking down this road. That was in last year's throne speech, I think, and maybe the budget speech also. So it wasn't a surprise to the federal government that we were also heading in this direction, and I did pass that on to my federal counterpart while she was still the minister and before the writ dropped.

But we made use of their bill, C-262, essentially. That was the main interaction that we had, the fact that we just used the bill that they had. That's why you'll see some of the same wording there. I wouldn't say we were plagiarizing, but they were aware that we were doing something similar, and C-262 still forms, pretty much, the cornerstone of this legislation.

**M. de Jong:** Thanks. That's most helpful. I'm not sure you can plagiarize laws, but interesting notion.

C-262 is an interesting statutory instrument for reasons the minister has already alluded to. It was not the product of the government of Canada's policy work and apparatus. It was actually tabled by a private member. It eventually attracted a measure of engagement from the federal government.

In a few moments, in light of what the minister has just said about it representing.... I think "cornerstone" is the word he used. I'm going to make the proposition that, for the purpose of our analysis, it's helpful to look at some of the issues that were raised with respect to C-262, particularly in cases where identical language appears in Bill 41 as in Bill C-262.

**Hon. S. Fraser:** We saw C-262 as a good vehicle that we could work with as a basis. I would note the concrete actions to contemplate such a thing through the commitments document that preceded us as government too, but there was no interaction with officials beyond that, federally and provincially.

**M. de Jong:** Through the drafting process, the minister is saying the officials here in British Columbia didn't have any contact with the Department of Justice officials in Canada around choices in styles of drafting. It was merely a case, it sounds like, of the government of British Columbia seizing upon this private member's bill and deciding to proceed largely on that basis, with the notable exception of the two sections that the minister has referred to, 6 and 7. Would that be a fair comment for me to make?

**Hon. S. Fraser:** On the statement made by the member opposite, just that the.... He mentioned, I think, seizing upon the private member's bill. I would say we seized upon, at the time, the federal government bill, which was Romeo Saganash's private member's bill. That's true, so I'm splitting hairs there. But there was no.... On the drafting of the bill, we were not working with our federal counterparts. That's not what was happening.

**M. de Jong:** The minister, at one point or at several points through the process of introduction and in commenting in the House and outside of the House, spoke with, I think, a measure of pride about what he described as.... I think that the term might have been the "unique" drafting exercise. I think he was referring to the involvement of Aboriginal representatives, First Nations leadership groups. I am interested to hear a little bit more about that unique drafting experience.
We know from the minister’s comments thus far that it did not involve engagement with federal officials. We also know that it involved, apparently, extensive involvement with Aboriginal, Indigenous representatives here in British Columbia. Maybe the minister could provide the committee with additional information and dates — approximate timelines from which point the exercise of drafting began and how that was structured to provide for the kind of input that the minister has alluded to.

**Hon. S. Fraser:** It was last November, 2018, that the Premier and I announced publicly the concrete actions. Action No. 1 was the development of this bill, Bill 41. It hadn’t been named, of course, at that point in time or had a number associated with it. But that’s what it would become, Bill 41. That unique process that the member.... The co-collaboration process — when that began, we worked throughout with the leadership council and their counsel to develop their request for legislation. As far as the dates and the contents and the details, I would not be permitted to go into those.

**M. de Jong:** The minister has referred to co-collaborators that were engaged in the process of creating Bill 41. I wonder if he could indicate to the committee who those co-collaborators are or were.

**Hon. S. Fraser:** The collaboration was done with representatives from the First Nations Leadership Council.

**M. de Jong:** And from that, may I assume or would the minister confirm, except for representatives of the First Nations Leadership Council, there was no other outside involvement or consultation involved in the creation of Bill 41?

**Hon. S. Fraser:** In 2018, we were very transparent about our intentions, and of course, we reiterated that through the throne speech and the budget speech. Lots of organizations, players, local governments, stakeholders were all aware — and First Nations themselves were aware — of what we were doing. So there were, no doubt, some discussions that happened back and forth when we met or whatever. The actual collaboration on the development of the bill was done with the First Nations Leadership Council.

**M. de Jong:** I am assuming that legislative counsel, that branch of the Attorney General’s ministry charged with the task of drafting legislation, was engaged in this exercise, but I’ll ask the minister to confirm that.

**Hon. S. Fraser:** Yes.

**M. de Jong:** Was the bill red-tagged?

**Hon. S. Fraser:** I cannot tell you that based on solicitor-client privilege.

**M. de Jong:** Was the bill yellow-tagged?

**Hon. S. Fraser:** Again, solicitor-client privilege prevents me from being able to answer the question.

**M. de Jong:** Okay. Having, I think, established that....

Oh, one last question. Again, this is an assumption, but this is the moment to test assumptions. My sense is that the co-collaborators, the representatives of the First Nations Leadership Council, were enthusiastic about the construct and structure of Bill C-262. Am I correct in assuming that they transmitted that to the minister and the governmental team that were responsible for creating Bill 41?
Hon. S. Fraser: I wouldn’t want to be responsible for putting words in anyone’s mouth, but we were enthusiastic to be embarking on this history-making piece of legislation.

M. de Jong: I’m not asking.... And happily, he doesn’t really have to put words into anyone’s mouth, because some members of the leadership council actually appeared in some of their deliberations in Ottawa that we will be considering here momentarily.

My sense from reading those remarks is that those individuals were enthusiastic about the approach taken in Bill C-262.

[2:35 p.m.]

I’m simply asking the minister to confirm that that enthusiasm and support for Bill C-262, which I think we saw on display a few weeks ago in the Legislative Assembly, revealed itself during the drafting process that members of the leadership council were involved in.

Hon. S. Fraser: The member has already stated some of the things that were said publicly in support of Bill C-262 from Indigenous leaders. But again, I’d reiterate that we were very enthusiastic as a government to bring this forward.

M. de Jong: Well, it doesn’t happen often, but I bring gifts for the minister. I wonder if I can provide that via the Chair to you.

We’ve, I think, established with a measure of certainty that there is a degree of alignment between Bill C-262 and Bill 41, and the minister very candidly acknowledged that the government was attracted to the approach taken in C-262. I think, at one point, he called it the cornerstone of what we see in Bill 41. I am inclined to agree with him with respect to.... On the surface, the evidence certainly bears that out.

I think it’s appropriate, therefore, that in exploring our Bill 41, we might draw on some of the experiences and some of the commentary and some of the analysis that took place in, particularly, the Senate. What I’ve handed to the minister and his team are transcripts of the Hansard from the Senate, because in referring to it, I don’t think it’s fair for me to simply quote material and the minister is left wondering if I’m taking things out of context.

I’d like to spend a few moments exploring this notion, this issue, relating to the effect of the legislation. Bill C-262 generated a pretty healthy debate. We’ve touched on that a little bit in our discussion thus far about what the effect of the legislation is. And I’d like to start by referring the minister to the debates from the Senate, page 55:41.

The Chair: Could the member help the committee understand the relation, exactly — where he’s going with this line of questioning — just in terms of the interpretation and ensuring that we’re speaking to clarity on this specific bill, Bill 41, as opposed to legislation elsewhere?

M. de Jong: We’ve established that the government of British Columbia took sections.... Portions of what appears in Bill 41 derive directly from Bill C-262 — are verbatim, in fact. Experts have rendered opinions on the effect of that legislative language, and I’d like to put some of their observations to the minister to determine whether he agrees, disagrees or has a different interpretation about the language that has been deployed in Bill 41.

The Chair: Okay, thank you, Member. I guess I was just curious, as we do have a number of sections, and I just wanted to ensure that if there are questions specific to certain sections or certain language that’s verbatim, it appear in the appropriate section. Thank you for clarifying that, Member.

M. de Jong: I can assure the Chair and the committee that for reasons that I think we’ve already established, the commentary is directly relevant to the legislation before this committee, or I wouldn’t waste the committee’s time in bringing it forward.

[2:40 p.m.]

I don’t know if the minister has the binder or one of his team members does. The page I’ll begin referring to is page 55:41.

https://www.leg.bc.ca/documents-data/debate-transcripts/41st-parliament/4th-session/20191119pm-Hansard-n292#292A:1335
The commentary is from Laurie Sargent. She is the assistant deputy minister, Aboriginal affairs portfolio, the Department of Justice. In response to questioning about the effect and the impact of Bill C-262 and particularly those sections that touch on the application to the laws — in that case, the laws of Canada; in this case, of course, we’re talking about the laws of British Columbia — here is what she had to say:

"...that it basically just declares the existing state of the law, which is that courts and governments can take the declaration into account in interpreting domestic law. That is a very well-known principle of statutory interpretation in Canadian law. I can offer to provide some cases that would speak to that point, if that would be of interest.

"In decisions such as the Supreme Court in Hape and other decisions, they clearly talk about the interrelationship between international instruments and domestic law and the fact that even if Canada hasn’t ratified or domestically incorporated the legislation through a statute, it can inform the interpretation of federal legislation where relevant."

My question is: does the minister agree with that statement?

Hon. S. Fraser: I guess the simple answer is yes, as it relates to section 2(a). So I’ll answer that now, although I don’t.... Have we finished with section 1? I’d appreciate the large binder of Senate Hansard that the member opposite has provided us just now. If he’s able to provide us.... If he’s taking us down a lengthy road on a document I haven’t seen and I wasn’t part of, perhaps he could steer us to the appropriate section of our bill as it relates.

This is a section 2(a) question, and I said: “Yes, I agree with that.” But I guess the question I have is: have we passed section 1, the interpretation section of this bill? We’re moving to other sections, so I’m just curious to keep it in some kind of order. I don’t think I can jump around, if that’s where we’re going to go, from section to section without the member informing me of what we’re dealing with as it relates to our bill.

M. de Jong: Let me try to lay the minister’s concerns to rest a little bit. In the time we have available, there are questions that relate to the government’s intention with respect to both the definitions and the declaration that are referred to in section 1. Section 1 also includes a specific provision that speaks to the question of the application of the declaration to the laws of British Columbia.

That is a fairly significant statutory statement, and my questions at this point relate to the impact and the intended impact of that. I am trying to draw on the expertise of others who have spoken to this in a statutory instrument that we have already established is, in certain instances, virtually identical and that the minister has acknowledged formed the cornerstone for the bill before this committee.

I’m not trying to trick anyone. Bill C-262 formed the cornerstone of the government’s efforts leading to Bill 41. I am presuming, in those circumstances, that the public debate that took place around Bill C-262 is not a mystery to the minister or the government. It is public in the grandest sense, in the same sense that our debates here are public.

In trying to facilitate this conversation, I’ve provided the minister with the provisions or the passages that I think are of interest and relevant to our discussion here so that where I do put a question to him about what others have said about the language contained in this bill, he is able to assure himself that I am not taking those passages out of context.

I’m not sure what else I can do to demonstrate my desire to have a fulsome and reasonable conversation with the minister about provisions that he, himself, has described as being historic. So I’m going to press on because, as always, our time is limited.

I think I heard the minister say a moment ago.... But I’ll ask again. The comment from the assistant deputy minister in the federal Department of Justice was that the language contained in that bill and the approach taken in that bill were intended to declare the existing state of the law.

I’ve asked the minister, with reference to what the federal assistant deputy minister said, to indicate whether he agrees or disagrees with that statement as it relates to Bill 41. I am genuinely interested to know his answer. We canvassed this a little bit earlier with respect to my questions
about the comments of the minister and the Premier. The minister, to be fair, has offered his views on
that.

If the minister disagrees with the proposition that the language in the bill basically just declares
the existing state of the law, I'm happy to hear why he disagrees with that. I'm simply interested in
his views on the matter.

**Hon. S. Fraser:** The original statement that the member referred to in the federal transcript
from the Senate.... The original statement — the member somewhat paraphrased it the second time
around and tried to get me to agree.

I agree on the first statement as it relates to section 1(4) and section 2(a). But, again, I would
hope this would be related to Bill 41 and that the member would be able to provide me with the
section that he is referring to in Bill 41 that we are addressing.

[The bells were rung.]

**The Chair:** Thank you, Minister. I'm going to have to call a recess as a vote has been called in
the big House.

The committee recessed from 2:54 p.m. to 3:06 p.m.

[S. Malcolmson in the chair.]

**The Chair:** We are still on section 1 of Bill 41, Declaration on the Rights of Indigenous
Peoples.

**M. de Jong:** The passage that we were referring to included comments from the federal deputy
minister from the Department of Justice. The observation is made that the existing state of the law in
Canada, including British Columbia, is that the courts and governments can take the UN declaratior
into account in interpreting domestic law. Does the minister agree with that proposition?

**Hon. S. Fraser:** Yes, we agree that UNDRIP can serve as an interpretive aid.

**M. de Jong:** The question, then, that flows is: following the passage of Bill 41, in the case of
British Columbia laws, and given the provisions — including the provisions of section 1 coupled
with other provisions — that exist in the bill, is it the intention on the part of the government to
change that such that it is no longer an option but that governments and the courts must take the UN
declaration into account?

[3:10 p.m.]

**Hon. S. Fraser:** If you go to subsection 1(4), it indicates that it serves as an interpretive aid.
How that will happen is for a later section, in section 3, I believe.

**M. de Jong:** I'm sorry. I will restate what I think the minister said and, in so doing, make the
point, or try to make the point, that clarity on this is really essential. I believe most people would
accept what the minister confirmed a few moments ago — that the federal assistant deputy minister
stated that today, prior to the passage of C-262, or prior to the passage of Bill 41 in British Columbia,
the law allows for the courts to take the UN declaration into account in interpreting domestic law. I
think most people would accept that proposition as accurate.

My question is pretty fundamental, and that is: is the government's intention, in presenting and
seeking passage of this bill, to move one step further and ensure that courts and governments must
take the UN declaration into account by virtue of including language like what we see in sub 1(4),
nothing can be construed “as delaying the application of the Declaration to the laws of British
Columbia”?

I hope the minister understands the importance of the distinction between a state of law where
courts have the option and a situation where, by virtue of the statutory law of the land, they are
required to. That's my question.
Hon. S. Fraser: Section 1(4) says: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.” You can’t tell the courts what to do specifically. We’re looking at... It will be in section 3 that we explain how we will be utilizing the UN declaration to change laws to bring them in line with the UN declaration.

M. de Jong: The relatively short bill before us — it’s ten sections, seven particularly substantive ones — speaks to the government’s intention to do something with respect to the UN declaration on the rights of Indigenous people. It speaks in section 1 to the application and the timing — particularly, it speaks to the timing — and says that there shall be no delay.

The minister seems to be troubled that some of the questions that I am asking are impacted by other sections. I want to assure him that these are not matters that I intend to return to. I think it makes sense in this conversation to establish a foundation on what the government’s intention is with respect to the overall impact of the bill.

My purpose is not to try and pre-emptively provoke conversation about other sections. The bill operates as a whole. There are at least three sections that speak to the application of the bill. One is contained within section 1. I can break this down any way the minister wants. If that’s necessary, I’m happy to do so.

Section 1(4) speaks to the application, without delay, of the Declaration to the laws of British Columbia. What does that mean?

Hon. S. Fraser: Section 1(4) says: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.” I would just ask the member.... I know he’s given me assurances earlier, but the member used.... He did an interpretation of what was said here. He did not quote it. So it takes us down a road. It’s hard to respond to a question that doesn’t accurately quote the section of the bill.

Paraphrasing is not helpful. It’s in the previous question regarding the Senate. The second time around, he did paraphrase what was said first. Again, asking for my interpretation of that is, I don’t think, too helpful. So if we can keep it to the accurate statements that are laid out as part of the document that we’re discussing today, it would be much more helpful for me. I don’t want to have to second-guess every time I’m going to get up and say something.

M. de Jong: Well, part of the function of this committee is to ascertain what the minister’s and the government’s intentions are. That’s what I am seeking to establish. The minister has said that he agrees with the proposition that the current state of the law allows for the courts, for example, to be guided, to the extent that they wish, by the declaration. There is before us a bill that seeks to apply the declaration to the laws of British Columbia. That language is used in at least three sections.

If the minister wants to compartmentalize that.... My question, with respect to the general proposition that the declaration will apply to the laws of British Columbia: is it the minister’s and the government’s intention that we move from a state of law where the option exists to consider the provisions of the declaration to a legal circumstance where, because of Bill 41 in its entirety, the courts are obliged to apply the provisions?

Hon. S. Fraser: The government’s intention is that the courts may continue to use the UN declaration as an interpretive aid. That’s the intention of government here, but section 3 explains our intention of how to bring laws into alignment with the UN declaration. The first part of my answer, I think, directly reflects section 1(4). I know we’re on section 1.

I suspect that if there are further questions on the how, that’s section 3 that I’m referring to, the intention of how we’re going to do that. I’ll be happy to address that when we get to section 3, once we’ve passed sections 1 and 2.

M. de Jong: We’re still trying to establish the what, and we’re just a little bit better off as a result of the minister’s last answer. We will come to the how, but we are still trying to establish the what: what is the effect of the legislation, if passed — as I expect it will be — before us?
The minister has said something very significant. He began a few moments ago by agreeing with the proposition that the declaration today exists as an interpretive guide for the courts in Canada. I think he just said it is the government’s intention — and it has drafted this bill with the view to continuing that legal state — that, following the passage of Bill 41, the courts will not be obliged to apply the provisions of the UN declaration and that they will have, as an option, the ability to be guided by the provisions.

That’s what I think the minister just said. I will accept that answer, but I want to give the minister an opportunity to confirm that that is the answer.

Hon. S. Fraser: The answer, I guess, is yes. I mean, government’s intention is that the courts may, but they’re not obliged to, use the UN declaration in their role in the courts. Bill 41 does not give legal force and effect, but it does enable government, as we get to section 3 — and it shows how — to be able to align British Columbia laws to come in to alignment with the UN declaration.

M. de Jong: Romeo Saganash. Did the minister have an opportunity to meet and discuss with Member of Parliament Saganash his work on Bill C-262? Was Mr. Saganash involved in any appreciable way in the development of Bill 41?

I think he might have been present a couple of weeks ago. I didn’t have a chance to meet him. Was there some measure of engagement between Mr. Saganash and officials and the minister himself in the preparation of Bill 41?

Hon. S. Fraser: Our collaboration was with, as I mentioned before, the First Nations Leadership Council in developing this bill, not with Mr. Saganash, although the member is correct. He was present in the House on the 24th of October, up in the gallery, to witness what I knew he was hoping to witness in Ottawa previously but was unable to.

M. de Jong: Mr. Saganash, Romeo Saganash, Member of Parliament for Abitibi–Baie-James–Nunavik–Eeyou, was the original sponsor of Bill C-262. I think the minister has properly paid tribute to him for managing to shepherd a private member’s bill further along in the exercise than most private members’ bills tend to get. He came very close to seeing the legislation that he had worked on ultimately be passed.

It would seem to me — given what we’ve talked about and established around the linkage between C-262, of which he was the author and the sponsor, and Bill 41 — that in a couple of instances his views on the effect and the impact of the provisions, collectively and individually within the sections, are relevant. Again, in the material I’ve given to the minister, at page 55:53 — which, again, is part of the Senate hearings — in the final paragraph on the English side of that page, Mr. Saganash provided some observations about how he would characterize the state of the law and his intentions as the author and sponsor of Bill C-262.

I’ll present, for the record, what Mr. Saganash said. Then my question to the minister will be whether he, with respect to Bill 41, would agree with the proposition set forth around the laws and the existing interrelationship between the laws of British Columbia and the declaration, the UN declaration.

Mr. Saganash told the committee the following in his presentation there:

“One element that I wish to add to what Senator Sinclair just said is that there is a presumption in our system that all of our legislation is consistent with our international human rights law obligations. That’s the presumption that already exists, so what Bill C-262 is simply doing is the fact that we’re making sure that all of our laws for the coming years stemming out of the Parliament of Canada are consistent with the UN declaration on the rights of Indigenous peoples.”

So the proposition there, from the sponsor of Bill C-262, seems to be that there is a presumption that the body of law in Canada and, if we apply that notion to British Columbia, the body of B.C. statutes are consistent. There is a presumption in favour of consistency with instruments like the UN declaration, and the legislation — C-262 in the federal case; Bill 41 would be the equivalent here — is intended to look forward and inform the drafting and the choices that government makes and the interpretation of those legal instruments to ensure that they are consistent with the UN declaration.
Does the minister agree with the proposition that there is a presumption in favour of existing B.C. laws being consistent with the UN declaration?

Hon. S. Fraser: I don’t want to get drawn into commenting on what Romeo Saganash said in a forum that I wasn’t involved in — the context of it as such. I’m not saying what he said is wrong. I just say that I don’t want to make comment on that.

Our intention is that the courts may use the UN declaration as an interpretive aid. They may. The forward-looking piece — I would suggest that the question is directly related to section 3, which is exactly what we do in Bill 41. The forward piece is addressed in section 3, as far as related to what Romeo Saganash said.

M. de Jong: To assure the minister, I’m not asking him to critique anyone’s commentary. I’m drawing on some conversations that took place around a very similar piece of legislation as a way of assuring the minister that I’m not manufacturing issues. The question about whether or not there is a presumption in favour of consistency between existing domestic law and the declaration is, I think, a relevant one, whether Mr. Saganash said it or not.

I merely wish to point out that I’m not pulling this stuff out of thin air. The author and sponsor of the federal bill that our legislation is modelled after had something to say about this. Others have had something to say about it. I can disconnect this conversation entirely and simply ask the minister: is it the position of him and the government that the existing body of B.C. law is presumed to be consistent with the UN declaration?

Hon. S. Fraser: The courts can and have been using UNDRIP already as an interpretive aid, and we recognize that, as government. But we also recognize, and it’s captured in section 3, that we need to bring laws.... In B.C., there is a necessity to bring laws into alignment with the UN declaration. Again, the process for doing that will be what follows in section 3.

M. de Jong: Would it follow logically, then, from what the minister has said, that he and the government believe there are laws on the books, statutes on the books, in B.C. today that are inconsistent with the UN declaration?

Hon. S. Fraser: Bill 41 — the provincial bill, for those that are watching — does not make an interpretation as to whether our laws are consistent or not with the UN declaration. That’s not specifically laid out within Bill 41. But section 3 is designed to help us analyze and determine what we may need to do in consultation with First Nations and Indigenous people in the province.

M. de Jong: Well, there are two parts that I will pursue. The legal principle that I referred to that I think is reasonably well established — but I am curious to know whether the government and the minister accept it — is that the existing body of law for the jurisdiction of the province of British Columbia is consistent with international declarations and obligations. So that’s the first thing. The minister is free to disabuse me of that notion. If he wishes to say that is not his or the government’s view, then I’m all ears.

He has also described, and in the bill there are, provisions designed to address components, statutes that are presently on the books and to inform decisions going forward with respect to the passage of bills.

Again, it strikes me as fairly straightforward that if the minister believes there are statutes that require being updated and changed.... Some of that work has already begun. The minister has pointed, in his second reading remarks, to some of that work taking place — that the purpose is to bring those statutes into conformity or into alignment with the UN declaration.

I would have thought it was a relatively straightforward question for the minister to say: “Yes, it is my view and the view of the government that, notwithstanding the presumption, there are statutes that we, the government, feel need to be altered and amended to bring them into alignment with the
Hon. S. Fraser: Again, we’re dealing with section 3 here. Section 3 acknowledges that we may need to bring existing laws into alignment with the UN declaration. We need to do the analysis and ascertain as to if and what we need to change. But we would not do that unilaterally. We would work together, again, to make sure, in this spirit of cooperation and collaboration, we assess that.

M. de Jong: I’m not sure a lot turns on this. But to use the minister’s own terminology, which I actually find a bit helpful in this instance, he is, it seems to me, anxious to talk about the how, which I can assure him we will get to, whereas, for the moment, I am exploring the what — what the intended effect is; what the intended impact is — and even when that takes place.

The minister keeps pointing to a section of the bill that refers to some of the things of how the government intends to accomplish certain things, which is a very valid thing for us to explore, and we will certainly do that. But I am first trying to establish the what — what the intention is, and what the impact will be.

Maybe I can turn our attention now and add another “w,” the when. We’ve been talking about ....

The Chair: Member, may I just suggest .... The purpose is described in section 2, and the action plan is described in section 4. So both the what and the when may well be coming up in future areas.

M. de Jong: Thank you, as always, for your guidance, Madam Chair. We had this conversation with your predecessor in the chair. I drew his attention, as I will draw yours, to the provisions of section 1 that speak directly to the application of the declaration to the laws of British Columbia.

The Chair: I’ll simply suggest .... You can use your time as you wish, but I think the minister has indicated that he has answered as he can on section 1. We’ve got a lot of pieces to go through here. I hope by the end of it, the intention and the future of the legislation will be clear. I’ll leave that in your and the minister’s hands.

M. de Jong: Thank you. I share that hope.

There has been some conversation and discussion about the provisions that speak to delay in section 1(4). We’ve already discussed the provisions that speak to ensuring there is no delay in the application of the declaration to the laws of British Columbia. In the next section, there is reference to the application of the declaration to the laws of British Columbia.

I wanted to pose a few questions to the minister. Again, lest he think I am conjuring up some of these issues, at the Senate hearings, with respect to C-262, which heard from a number of, I guess, experts .... That committee heard from Dwight Newman, the Canada Research Chair in Indigenous Rights in Constitutional and International Law at the University of Saskatchewan.

To members of his team who have the material I provided to the minister, at page 56:15, near the top of the left-hand column, he began to address the question around application and impacts and effects and observed that there are differing statements as to whether the bill in its entirety — in that case, C-262 — has immediate effects. His observation was that he thought the bill did. There were strong arguments in favour of the proposition that upon passage and proclamation, that bill would have immediate effects on the state of the law.

I suppose my question to the minister is: with respect to Bill 41, what is his position and the position of the government of British Columbia following passage and proclamation of Bill 41? Are there immediate changes in the state of the law in British Columbia? If so, what are they?

Hon. S. Fraser: Upon passage of the bill, there will be no immediate effects on laws, other than as an interpretive aid. As I’ve mentioned before, an interpretive aid.... That’s still up to the courts, I guess. To be clear, it doesn’t give legal force and effect. Then sections 3, 4 and 5.... That starts the
process for a transparent and accountable process towards changes that can be made to bring laws into alignment and address new legislation, make sure they’re in alignment, with the UN declaration.

M. de Jong: The minister began by making the point that the use of the declaration by the courts as an interpretive aid doesn’t change following passage and enactment. He has referred to some elements, contained further on in the bill, around the preparation of an action plan, which we’ll hear about later.

Does it have any other immediate effect on the substantive law around Aboriginal rights following passage and proclamation?

Hon. S. Fraser: Just to be clear. I know it’s going to sound like I’m reiterating, but I think I’m going to be clear here. Upon passage, there is no immediate effect other than as an interpretive aid on laws. It does not give legal force and effect. This bill provides a process, a framework, for government to move forward, which will be covered in sections 3, 4 and 5.

M. de Jong: That’s helpful.

In his presentation to the Senate committee, Professor Newman — at page 56:21, halfway down the page — observed that the language, which appears twice in this bill, once in subsection 1(4): “...the application of the Declaration to the laws of British Columbia.” In C-262, it was the laws of Canada. In this case, obviously, it is appropriately the laws of British Columbia. He described that in his presentation — or testimony or whatever the appropriate term is — as unprecedented and observed that he had not been able to find language in any statute that made use of that phrase in the way that this does: “...the application of the Declaration to the laws of British Columbia.”

I will confess to not having performed an exhaustive search of the statutes of British Columbia, but is that equally unprecedented in the context of statutory construction in British Columbia?

Hon. S. Fraser: I just don’t know the answer to that, but our intention is that this is an interpretive tool. Section (4) is: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.” That is our intention here, and how we proceed will be in sections 3, 4 and 5, following.

M. de Jong: If we can ask this: if it, meaning the declaration, is an interpretive tool today, as I think the minister fairly pointed out, and the purpose of the bill is for the declaration to remain an interpretive tool in the future, what is the purpose of the phrase relating to “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia”? If the declaration is an interpretive tool today, and it is intended, following, that it remain an interpretive tool and that there be no change in that regard, no change in its substantive application to the laws of British Columbia, I’m not sure I understand what that section means. Maybe the minister can help.

Hon. S. Fraser: Section (4), actually the provision, prevents any argument that the only means by which the declaration may have application in the law is through the provisions of this act.

M. de Jong: I don’t understand what the minister means.

Hon. S. Fraser: I’ll just repeat here. Section (4) provides that nothing in the act or actions done under the act can delay the application of the declaration to the laws of British Columbia. This provision prevents an argument that the only means by which the declaration may have application in the law is through the provisions of this act.

M. Lee: I just wanted to further understand this provision, because certainly the understanding is that under Canadian law, Canadian courts have ruled on how the principles of UNDRIP will be utilized by the courts. There are Canadian decisions of various courts of the land that have said, very similar to what the minister is saying here.... That is that UNDRIP may be used to inform the interpretation of domestic law.
That is something that is there that the courts have determined. So is the challenge, then, which the minister is suggesting, that in the face of numerous court decisions of this land, there would still be an argument that could be made of this delay? Is that the concern that the minister is stating?

Hon. S. Fraser: I think we all agree that this is an interpretive tool for the courts to utilize—and are utilizing now. This is to make it clear to the courts that this is an interpretive tool and that there’s nothing to hamper the courts in their interpretation of the UNDRIP as an aid, as a tool for them.

M. Lee: I guess what I’m trying to understand, though, is.... The courts already know that. That’s already been a very clear line of decisions by the courts. So for anyone who chooses to make that argument in front of the courts, presumably, that argument would not be successful.

I’m still struggling to understand the intention of the government when it puts in this language about delay. Now, is it possible that there’s a different reason or intention for this language? Let me ask the minister. What is the expectation from the First Nations leadership in terms of timing around delay? Is there a concern around this language that is meeting their concern?

Hon. S. Fraser: I am answering the question, I believe. We want to make sure that there’s nothing in this bill that would be interpreted as hampering the courts from currently using the interpretation that they have now on the UNDRIP as a tool. Our intention as government for this bill is captured in sections 3, 4 and 5. This section 1(4) is providing assurances to the court—relating to the member’s question—that this bill will in no way hamper the courts in their current use of the UNDRIP as an interpretive tool.

M. Lee: Just to focus.... The words, of course, of this bill are very important given the nature of it. This is the juncture in which we can have the opportunity to gain a very full understanding behind the intention of the government when it brings forward this bill and the language that is utilized.

The courts, as the minister is concerned about, will need to interpret this. So this is still a challenging interpretation in the sense that, if what I’m saying is correct.... I heard the minister also say something very similar— the understanding that courts currently, today, use UNDRIP as an interpretive tool. So if they’re doing that today, before this bill passes, then where is the delay?

They’re actually using it. They’ve been using it in this country and in this province. So again, I struggle to understand the purpose for the inclusion of the word “delay” in this bill. Perhaps I can ask the minister one more time. Why choose the word “delay” here?

Hon. S. Fraser: I just don’t know how to be any clearer. This is a new piece of legislation, and it has not happened in Canada before—and the interpretations of the court to use the UNDRIP as a tool now. We are ensuring that that will be the case, that that’s not going to be hindered and that that will not change because of this new legislation.

The action plan, sections 3, 4 and 5 that we’ll describe further in the legislation, of what government will do to bring laws into alignment with the UN declaration should in no way be used as a delay in the application of the declaration in law in British Columbia.

I think it’s laid out really clearly. The purpose, I think, for that I’ve addressed again and again. This is important that we have this in the legislation so it’s clear to everyone what this legislation is and what it is not.

I would submit that if section 1(4) was not in here, we might well have a question saying: “Well, why aren’t you making it clear about the interpretation for the courts?”

I mean, we can do this all day, I guess all week. I’m quite happy to. This is an important bill. I want to get this clear. But I do not know how to be any clearer in an answer here.

The Chair: After this question, I’m going to call a five-minute break.

M. de Jong: Very good, Madam Chair. I’m trying to think if there’s a logical way to sequence this. If that’s your intention, this might be a good time to break right now.
The Chair: We'll have a break for five minutes.

The committee recessed from 4:18 p.m. to 4:26 p.m.

[S. Malcolmson in the chair.]

The Chair: I believe we were with the member for Abbotsford West. Would you like to carry on?

M. de Jong: We've had a bit of an exchange now where we've tried to establish or elicit from the minister his views on what the effect of the bill and what the effect of the application of the declaration will be on the laws of British Columbia. I think we're making some progress there.

What follows for the next few minutes, I think, will be an opportunity for the minister to confirm what it isn't. There have been some statements made, questions raised, opinions expressed — particularly, again, within the context of Bill C-262, upon which Bill 41 is modelled. I thought it might be helpful to raise a few of those questions and propositions to the minister.

Based on what I've heard thus far, I think I can anticipate what his answers will be, but it's best to have them on the record. Who knows. He may surprise me somewhere along the way.

One of the experts — I think that would be the appropriate title — to speak about the effects of Bill C-262 was John Borrows, the Canada Research Chair in Indigenous Law at the University of Victoria. Mr. Borrows, like some of the other folks I've referred to, appeared before the Senate standing committee and offered some views on that piece of legislation — which, again, I believe are relevant, given what the minister had said about the similarities and the apparent similarities in drafting and in the approach that the government has chosen to make.

At page 55:67 of the material I've provided to the minister, in the left-hand column, in the English-language column, there is, starting in the second paragraph, observations from Professor Borrows about his views on the impact of the legislation — in that case, federal legislation. I'll ask the minister to consider what he said — in the context of Bill 41, obviously — and whether or not he agrees or disagrees with the analysis of the effect.

Professor Borrows said this — again, with respect to Bill C-262. Well, he was asked this question, and this is quoting from Senator Tannas: "From your point of view, what does this law provide that isn't already provided by Canada agreeing to associate itself with the United Nations Declaration on the Rights of Indigenous Peoples, like other countries have done?"

He responded with three points. I'm only particularly interested in putting the first point to the minister. He, Professor Borrows, said this:

"There are three points I would like to make in that regard. The first one is that it's — this is the key part — "as if each and every piece of legislation that already exists in Parliament has Bill C-262 appended to it, meaning that you would look at each and every other piece of legislation and ask the question whether or not it is consistent with the United Nations Declaration on the Rights of Indigenous Peoples. It's like making an amendment to each and every bill that already has flown through Parliament."

I take that question and that answer and adjust it to fit into the context of Bill 41. Would the minister agree with this proposition that in the case of the laws of British Columbia, it's as if each and every piece of B.C. legislation that already exists has Bill 41 appended to it, meaning that you would look at each and every other piece of legislation and ask the question whether or not it is consistent with the UN declaration?

My sense is that the minister disagrees with that proposition, but I'm interested to hear that from the minister.
declaration as an interpretive tool, and our intention is to bring our laws into alignment with the UN declaration, and doing that in partnership and working with Indigenous peoples.

M. de Jong: Right. So as part of that exercise.... Again, I don’t wish to detract from the exchange by my references to other parties except to buttress my proposition that these are important questions that others have turned their minds to. In the case of Professor Borrows, I think he is a supporter of Bill C-262 and — I don’t know this, but I expect — a supporter of Bill 41. So we’ll leave them aside, then, if that makes the minister more comfortable.

The proposition that has been advanced and I will advance now for the minister to comment upon is the one that says that Bill 41 operates in a way that attaches it, appends it, to all of the legislation that is on the books of British Columbia presently — the entire body of law — and that the question that can legitimately then be asked is whether or not that statute is consistent with the UN declaration.

Now, the minister again has reverted to process about how the government intends to address inconsistencies. We’ll have time to discuss that. But the legal construct being advanced here is that through passage of Bill 41, it will, in effect, attach itself to all of the existing laws in British Columbia, and there will become an obligation to ensure that those laws are consistent with the UN declaration.

Does the minister agree with that proposition or not, and if not, why not?

Hon. S. Fraser: With the passage of this bill, this will be, still, an interpretive tool. Bill 41 brings no legal force and effect to the UN declaration. What our intention is and our commitment is, clearly and publicly, is to work with Indigenous peoples in this province to bring our laws — if they’re existing ones, future ones — into alignment over time with the UN declaration.

M. de Jong: It sounds to me, therefore, like the minister’s and the government’s view is that what we have here is that, as it relates to the application of the declaration and the alignment of laws, this represents an enabling instrument, and there is no positive legal obligation created on the part of the government to undertake that exercise of review and alignment.

Although I understand it is very much this minister’s and this government’s intention to do so, there is no legal obligation to do so. Is that correct?

R. Kahlon: Can I get leave to make an introduction?

The Chair: Is there any objection? Go ahead, please.

Introductions by Members

R. Kahlon: I want to recognize a guest that we have here, Doug White of the Snuneymuxw council — former Chief, also, with the B.C. Aboriginal Justice Council. He’s here today to see the proceedings. I want that on the record.

The Chair: Welcome, Doug White, Kwul’a’sul’ tun. It’s good you’re here.

Debate Continued

Hon. S. Fraser: It’s great to have an audience of one. Thanks, Doug, for being here. This is good.

The member opposite is correct. This is enabling legislation that will allow us to create the obligation in section 3 to bring our legislation or laws into alignment with the UN declaration.

M. de Jong: In the material that I pointed the minister to regarding the exchange between Professor Borrows and one of the senators earlier this year, the question is.... I will alert the minister to its presence in the material, but won’t direct him there, since that seems to trouble him.
There is an argument that says that what follows from the passage of Bill 41 is the attachment of its provisions to every standing piece of legislation in the province — a recognition of what the minister has said about the government’s intention to move through a review process of standing legislation, the body of law that exists in British Columbia, and begin the process of aligning that.

I expect we’ll hear more about that when we get to the discussion about the work plan coming forward. The question that flows from that, however, derives from a First Nation that finds itself in circumstances where it is confronted by legislation in a meaningful or significant way that it believes is inconsistent with the provisions of the UN declaration and which has not yet been the subject of that review and alignment process by government.

Do the provisions of Bill 41, including those of section 1 and subsection 1(4) and, ultimately, section 2 combine to create a circumstance in which the First Nation that finds itself in that circumstance is in a position to challenge that legislation before the courts and successfully argue that the government has not discharged its responsibilities that exist, that have been created under Bill 41, to align the statute with the declaration and the provisions of the declaration?

Hon. S. Fraser: I don’t want to get into speculating about what a nation may do if they choose to go to court, how they handle that. I mean, there are just so many variables there. I don’t think that’s wise.

Our intention, as government, is quite clear in the bill. UNDRIP is an interpretive tool within this bill. The courts will do what they will do. But our commitment and intention — and the commitment will be made within the bill — is to bring our laws into alignment with the UN declaration over time.

M. de Jong: Well, maybe I’ll be more direct.

Is it possible that an existing law, statute in British Columbia that is found to be inconsistent or to contain provisions that are inconsistent with the UN declaration would be struck down on the basis of the provisions of Bill 41?

Hon. S. Fraser: I don’t want to sound like a broken record, but this bill does not give legal force and effect to UNDRIP.

M. de Jong: Again, that’s helpful. Is it fair and accurate to say, therefore, that the government drafted this bill explicitly and purposely wishing to preclude the possibility of it being used to strike down provisions of existing statutes that are not yet consistent with the articles of the UN declaration?

Hon. S. Fraser: We’re not creating a bill here that is designed to have our laws struck down. What we’re doing is providing a plan, a framework, for government to work in cooperation with First Nations, including to address…. We need to address laws and bring them into alignment with the UN declaration.
Hon. S. Fraser: I can’t speculate on what arguments another party might make, court arguments or whatever, but our intention is exactly as I had described.

The Chair: I’ll say again that the intention would be described in section 2, “Purposes of act.” We’re still on section 1.

M. de Jong: Presumably, it is still appropriate here to seek to learn the government’s intention with respect to every section of the bill, which is what we are embarking upon. I trust that hasn’t changed.

In some of the material that has tracked and considered the provisions of the federal equivalent legislation, questions were raised — and I will raise one now — about something the minister just alluded to. That is the possibility of the bill being used, once it is proclaimed, as an instrument by which existing legislation is struck down.

The scenario — and we’ll get to this later in the discussion — is not difficult to fathom. What we’ve learned from the minister and through the provisions of the bill is that the government is intending to create a mechanism by which an international declaration that is today being used as an interpretive tool will continue to be used as an interpretive tool by the courts and by government — so no change there, the minister says — and that the government, in concert with Indigenous peoples, will embark upon a process for harmonizing existing statutes with the articles of the declaration. It suggests to me — though I think the minister was reluctant to say this — that the government believes there are statutory provisions on the books now that are inconsistent with the articles of the declaration.

The question, though, that I return to becomes relevant if we consider the obvious limitations that exist for government to complete that process of review and harmonization. I think I’ve heard the minister or someone in the government speak about a multi-decade exercise, and I don’t say that to be critical. It will be an onerous task.

The question that one is obliged to ask, however, is: what happens in the meantime in circumstances where legislation that a group believes is inconsistent with the declaration negatively impacting upon them?

The minister, I think, has said that none of the provisions, including those contained within section 1, are intended to be used, or he believes could be used, to strike down existing legislation or portions of existing legislation pending that review and harmonization with the declaration exercise. If I have misstated that, I hope the minister will correct me.

Hon. S. Fraser: I can’t tell another party what they can and cannot do in court, but what you’ve described, I believe, captures our intention.

M. de Jong: Does it follow, therefore, that the minister and the government reject the proposition that passage of Bill 41 would have the effect of making every area of B.C. law subject to a layer of international law and subject to measurement against that international declaration?

Hon. S. Fraser: As I mentioned before, the bill before us, Bill 41, does not bring into force and effect the UNDRIP.

[R. Leonard in the chair.]

It’s an interpretive tool, and it’ll remain such. We’ve stated our intention to amend laws and create new laws, ensuring that they’re in alignment with the UN declaration on the rights of Indigenous peoples.

M. de Jong: I guess, to be fair to the minister, what I am endeavouring to do is alert him, if he’s not already alive to this, to the fact that there are other opinions out there about what the effect of the
bill will be and how it will be interpreted and how it will operate.

In presenting those positions and arguments and observations to him, it is helpful to have him indicate his disagreement, if he disagrees, and what the government's intentions are. But these are the views of learned people. Therefore, I don’t dismiss them easily, and I feel obliged, in this setting and in this forum, to seek the minister’s comment and, in some cases, assurances and the basis for his rejecting those views.

With respect to the federal bill, Professor Newman provided written submissions to both the House of Commons and the Senate committee, and he had this to say. I’ve given copies of those to the minister, and I think his able staff have them.

In the submission that he made around Bill C-262 on April 17, 2018, he said this about Bill C-262. “Four different things happen in Bill C-262 that are not necessarily consistent.” He refers to section 3, which, in our case, is subsection 1(4) and section 2 of Bill 41. That section “tries to further the position that UNDRIP has immediate application in Canadian law.” And it is apparent on the face of it that that terminology is used in our bill. “UNDRIP has immediate application in Canadian law.”

A subsequent section “puts in place a requirement that Canadian federal legislation be made consistent with UNDRIP, with no obvious period of delay on that” — again, similar to what we have before us in Bill 41. Further sections “of the proposed act set out the requirements for a national action plan that seeks to ‘achieve the objectives of’ UNDRIP, with the requirement of an annual report on progress each year from 2017 to 2037,” in the case of the federal bill.

An additional section, subsection 1(4) again, says that nothing in the act should be construed as delaying the application of UNDRIP. His description of what was before the federal parliament, I would submit, is equally valid with respect to, as we’ve established here, what is before this committee in the guise of Bill 41.

Then he says this:

“Frankly, it is not clear how construal not permitting delay is to sit beside a 20-year implementation plan. It is not clear how a 20-year implementation plan on ‘objectives’ sits beside a seemingly immediate requirement of consistency of statutes with UNDRIP. There are tensions between different parts of this bill that have to raise concerns in relation to what statutory effect it is supposed to have.”

Maybe I should have started with that, because maybe that’s the essence of the concern one is hearing from various quarters. It’s how do those two things...? How do you reconcile application without delay to the laws of British Columbia with an implementation plan that could take decades, and understandably so?

Does the minister share that concern, at least? Or does he believe that is an incorrect assessment of the risks and tensions that would characterize Bill 41?

Hon. S. Fraser: The bill doesn’t in any way.... I mean, we’ve touched on the delay part. It does not delay in any way the ability of the courts to use the UNDRIP as an interpretive tool. I think that’s the context. Again, it’s hard to get these quotes out of the ether.

The further sections of the bill that we keep touching on but not quite going to, I think, will help develop.... It is laid out clearly in the bill that we will develop an action plan. Of course, we’ve developed this bill with a leadership council, in collaboration with the leadership council. So there’s a plan that is built into the bill, which is in further sections, that talks about how, over time, we will be addressing legislation and bringing it in to align with the UN declaration.

The member knows well — he’s been in this chair before — that reconciliation is not.... There’s not an end date to it. It’s about us changing the relationship, basing it on respect and recognition with Indigenous peoples.

While there are quotes being thrown out, I would throw one back:

“The Declaration on the Rights of Indigenous Peoples Act is a profoundly important step on the road to reconciliation in British Columbia. It’s both a strong affirmation of Indigenous rights and a framework for ensuring that the work of making these rights meaningful ‘on the ground’ is done collaboratively, responsibly and transparently. I congratulate the government and everyone else who helped bring this initiative to fruition.”
That’s from Geoff Plant, the former B.C. Attorney General and Minister Responsible for Treaty Negotiations from 2001 to 2005 — another individual who understands, I’m sure, from his words, that reconciliation is not a finite thing. It’s a journey we’re all on together.

M. de Jong: To the minister, it’s kind of him to read the words of a former colleague with whom I served for a number of years in this chamber into the record. I think each person that I have sought out and relied upon in our discourse so far has been supportive of the basic proposition of adopting the declaration. The fact that some of those people, who have dedicated their lives, are interested in ensuring that it is done correctly and doesn’t create more difficulty should not be interpreted as obstinance or opposition. It is merely, in the case, I think....

I’ve not met any of these people — I’ve read their biographies and the work they have done in support of the cause of reconciliation — but I find the issues that they raise sufficiently serious and sufficiently valid to at least put them to the minister to seek out his views.

The one I have just related to from Professor Newman says this. If you create a legal instrument that says, on the one hand, something “needs to take place without delay” — meaning needs to happen immediately upon passage and proclamation — and elsewhere, in the same statute, contemplate a process to address issues and deficiencies that could take upwards of several decades, and certainly a number of years, are you at risk of creating a gap and the challenges that are associated with that legal gap?

If I understand the minister correctly — and I’m always loathe to put words in anyone’s mouth, especially a minister’s — his argument is that because Bill 41 does not give the declaration any legal force and effect, there can be no gap. And if that is the argument, then perhaps he would say so. But I do find the argument of Professor Newman, who is, I think, very supportive of the principle and the concept but is concerned about the drafting and the construct, to at least be worthy of this exchange here today.

Hon. S. Fraser: I appreciate the importance of this debate, this session we have here at third reading in committee, to be able to get clarification on this. I note that....

I don’t have the quote in front of me at this point in time from the gentleman that the member was referring to, but his references, I think, were to C-262, if I’m not mistaken. It is a problem with trying to compare the two. While there are similarities, it’s a federal bill. In his reference to delay, I would note that as far as I know, the delay section, in our interpretation here in section 1, is 1(4). It says: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.”

We’re not comparing delay.... There should be no delay. We have a process that’s built further into this bill that talks about exactly how we will develop an action plan to implement the spirit and intent of the UN declaration as it’s reflected in legislation in British Columbia, over time.

I want to make it clear: that is the intent of this bill. It is the intent of government. The suggestion that a quote that uses the word “delay” somehow connotes the same thing as what it does in 1(4) here in Bill 41: “Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia....”

That’s still to allow and affirm to the courts that that’s still an interpretation tool that they will continue to be able to use throughout the time that we will be developing an action plan and the timeline and the accountability — all of those things that we have not yet really substantively got to. The interpretations of another person’s comments taken, I think, somewhat out of context for Bill 41, I don’t think is quite getting us where we need to be in this discussion.

M. de Jong: I very pointedly provided the material to the minister that I am referring to at the outset. The suggestion that I have, in any way, tried to take the comments out of context.... We have laboured through this afternoon to establish, with respect to the provisions we’re dealing with, the absolute similarity between the two statutes. The construct is the same. The principles at stake are the same.
I'm disappointed that the minister would take the view that I'm somehow trying to take these comments out of context. I don't know where the material is that I gave to him. I would hope that he'd have it available to him. I would hope that he would accept the proposition that the observations on this point made with respect to Bill C-262 are directly relevant and directly on point and raise issues that I would think he, as minister, would want to be alive to.

He may have different views, and the government's intentions may be very different, and that's fine. But surely he accepts the proposition that these issues are relevant and raised in a proper context. Professor Newman, where he seems to arrive with respect to the concern he's expressed, relates to the inclusion of that phrase: "...application of the Declaration to the laws of British Columbia."

The minister has gone to great pains to point out that that phrase is of no consequence. It was an interpretive guide, and it remains an interpretive guide, according to the minister — that is, the declaration. It is of no legal force and effect.

I'm still struggling to know, then, what the phrase "application of the Declaration to the laws of British Columbia..." What is the consequence or significance of that phrase?

It causes Professor Newman great difficulty for the reasons I've alluded to. He says this in the submission he made on May 26, 2019, to the Senate committee. Again, I have provided this material. Actually, the minister doesn't appear interested to look at it, but I hope he won't stand up and suggest that I'm taking the comments out of context if he chooses not to look at it. I can assure him that I am not.

Professor Newman says: "First, in respect of whether the bill supports only a gradual process of implementation work through further discussions or causes UNDRIP to have immediate effects in Canada, it is important to note" the section of the bill "which states explicitly that parliament is affirming that UNDRIP 'has application in Canadian law.'" The equivalent in Bill 41: "...application in B.C. law."

"While that phrasing is unprecedented in an operative section of a statute, its linguistic construction is in the present tense and, on an ordinary reading of the text, affirms some kind of immediate effect on Canadian law."

All right — big words from a learned person. The bill seems to want to convey that it takes effect on Canadian law immediately. The only response we have heard from the minister is that there is no substantive effect to be had, and therefore, the provision can coexist with the procedural requirement to update laws in the years ahead.

Again, I'll ask the minister to address the concern that has been articulated, not just by Professor Newman but by others, that in this bill, Bill 41 — because in this regard, the bill is precisely the same — the drafting could be problematic. If the minister wants to stand up and say, "No, I disagree; I think the drafting is fine," that's fine. But surely he is prepared to accept that there is a legitimate course of argument and concern that derives from the choices he and the government have made about how they've drafted this instrument.

Hon. S. Fraser: This process, the third reading, I think is an important process, and what's the most important thing in the process is to be able to get government's intentions clearly laid out, and what our legislation is and what it isn't. The value of the process is for us to be that clear. I've been clear, I think, over and over again. There may be other opinions out there about interpretations and such. That's fair enough.

But I've been very clear that the intention of this bill, and government's intention from the very beginning and during the collaborative process that we led in getting to this bill, is about having government respect the rights of Indigenous peoples and ensuring that that's enshrined in law.

That will be done by us developing an action plan, which is laid out in the bill, collaboratively to prioritize and look at laws and make sure they are aligned with the UN declaration over time. The process for doing that is also clearly laid out within this bill. That's as clear as I can be about government intentions here. I look forward to more questions.
M. de Jong: Well, that's good to know and helpful. Presumably, the purpose of the exercise here at the committee stage is twofold. One is to know and learn about the government's intentions, and the second is to seek to ensure or explore whether the drafting before us gives effect to those intentions, because the intentions are one thing; giving them effect through a properly drafted legal instrument is another. It is presumably both of those functions that the minister is as interested as we are in seeing through.

During the discussion at the Senate on the federal bill, one of the senators, who I think was on or chair of the truth and reconciliation....

Hon. S. Fraser: Justice Sinclair.

M. de Jong: That's right. Sen. Murray Sinclair had the following to say, which I am going to read, because it strikes me that it approximates with what I think the minister has been saying is his intention and the government's intention, so if the minister will bear with me. Of course, Senator Sinclair was speaking about the federal bill.

He said this: “This bill does not seek to implement the declaration itself. The bill itself does not raise the implementation of the declaration as its objective. The bill talks about calling upon Canada to do an analysis of existing legislation to see which laws are currently inconsistent with the declaration. That's primarily what this bill about,” and: “I suspect it will be unlikely that the government of Canada will ever simply pass a law declaring the UN declaration as the law of Canada.”

If we take that statement and apply it to the bill before us, and the province of British Columbia in the provincial laws, does that capture, in a reasonably accurate way, the government of British Columbia’s intention with respect to Bill 41?

Again, I provided the minister with the hard copy of the document with those comments.

Hon. S. Fraser: I believe that what you read to me adequately reflects our intention a government.

M. de Jong: Then I think my final or maybe penultimate follow-up on this line of questioning would be to return to the observation that has been made by others, including Professor Newman, that says, essentially, this. If the two provisions of the bill — and I'll now talk about Bill 41 — about the application of the declaration to the laws of B.C. without delay and the application of the declaration to the laws of British Columbia were not in the bill, all of the statements that I just quoted from and that the minister seems to accept as being reflective of the government of B.C.'s intention with respect to Bill 41 would describe what is going to take place or what takes place within a natural reading of the bill.

The point that is made, or the argument that is advanced, is that by including that language, that will not be the effect. Those provisions will have a significantly different effect and, to use the language of Professor Newman, “significantly overshoot the intentions of even such a supporter of the bill as Senator Sinclair.”

I think the minister gets the essence of the concern that I have brought to him and the committee — that by including those provisions, the intention of the government may be frustrated and may be compromised. Based on our exchange thus far today, I suspect that he disagrees, but I'll give him one last opportunity to put the nature of his disagreement on the record.

[5:35 p.m.]

Hon. S. Fraser: I don’t believe that the opinion, as described by the member opposite, of Professor Newman.... I don’t agree with that. I believe that Bill 41 as drafted reflects the government's intention, as we've been discussing during this session.

M. Lee: I would like to just turn our focus to the definition in section 1, which is “Indigenous governing body.” I'd ask the minister, first of all, if he could just provide to the committee the intention behind this definition.
Hon. S. Fraser: Thanks to the member for the question. The definition of “Indigenous governing body” is for the provisions of the act dealing with agreements between government and Indigenous governing bodies. Again, we have to refer to sections 6 and 7 further on. But the definition will allow the government to recognize the entity that the Indigenous peoples assert represents their section 35 rights for the purpose of entering into an agreement with the entity, instead of relying on an Indian band or corporation or society as the entity to contract with.

M. Lee: I appreciate that the use of the term is in section 7 of this bill, and certainly, we will come to that later in this committee stage. But given that we’re on this section and this is our opportunity to have a better understanding as to what this is....

I understand from the briefing that we had.... We had two briefings that the minister’s office arranged for us, and I appreciate that. I just wanted to get at the understanding as to the intention for including this definition, which suggests that there will be entities authorized to be acting on behalf of Indigenous peoples.

Again, is there some consideration that there will be different representative bodies that will be structured or be designated to act on behalf of Indigenous peoples for the purposes of section 7?

Hon. S. Fraser: The quick answer is yes. I’ll add to that, though. It allows for a nation to self-determine how to be representative. That’s in keeping with the UN declaration on the rights of Indigenous peoples and the articles. But also, the definition is modelled on the definition of the same name in federal Bills C-92 and C-91, passed in 2019, allowing the province to utilize tools the federal government may develop in recognizing Indigenous governments and capture federal government learnings.

It’s also to bring some consistency there, since that is the definition that is cited through both those federal bills that have gone through just prior to the election.

[5:40 p.m.]

M. Lee: That’s helpful, to hear that. Is there a circumstance where...? The minister has used one example, which is a First Nation that might come to designate who the representative body ought to be. We will get into questions around hereditary versus elected band structures. But just on the federal jurisdiction side of it, are there circumstances where there will be separate or different designations?

Hon. S. Fraser: This is specifically for the purpose of the province entering into agreements with a nation.

M. Lee: Recognizing that we still need to have an understanding as to the scope of section 7 and what that section will pertain to, is there any concern the minister has — in terms of dealing with whichever way this Indigenous governing body comes about — that this will structure a slightly different body from how the federal government might see it vis-à-vis reserve or Indian Act-type obligations? Will there be a separate structure that we’re dealing with here?

Hon. S. Fraser: This definition actually creates room for nations to determine the appropriate governance body, specifically, for the purpose of agreements with that body and the province, as contemplated in the act.

M. Lee: All I’m raising is the potential conflict in terms of how that might occur. Perhaps what we can do is reserve that discussion, again, when we come back to section 7, in terms of what areas of jurisdiction we’re speaking to and how it will overlap with federal jurisdiction as well.

Let me just come back to the word “authorized” that’s used in this definition. What will denote the level of authorization required to determine what the Indigenous governing body would be that’s acting on behalf of the Indigenous peoples?

[5:45 p.m.]

Hon. S. Fraser: Thanks again for the question from the member opposite. This is for the nation or nations to determine. It would be case-specific, also, and it does leave room for the self-determination that is clearly laid out in the articles of the UN declaration.
M. Lee: So in saying that — case-specific — I guess it depends on what the arrangement might be and what that nation of Indigenous peoples might see to be their representation. So how will different forms of representation and governance be worked through? For example, reconciliation resolving whether it’s a hereditary type of leadership or an elected band type of leadership on a First Nation.

Hon. S. Fraser: This is happening already. This is happening all the time, where nations self-determine on the best governance body that will work for them. So it’s already occurring.

M. Lee: I guess when we say that, I guess it is something that is occurring, as the minister describes it. When it comes to the exercise of statutory power of decision, though — given the level of responsibility, liability, and given the nature of what is going to be provided by way of agreement with government under section 7 — presumably government will want to ensure that the body with whom government is entering into an agreement will have been duly authorized. When the minister looks at this definition and sees how it might be deployed in section 7 of this bill, is the minister concerned about disputes within First Nations about who is being given the authority to negotiate with government — in the first place, to come to this agreement and then, secondly, to carry out the responsibilities; receive the benefits under the agreement, so to speak; and then to, obviously, bear the liabilities as well?

Hon. S. Fraser: Again, I would just reiterate that this is happening already. It’s happening all the time. Nations are self-determining and that’s. When it comes to section 7 — which is further down the road here, but I’ll touch on it — the member is correct. The government would want to make sure that this is a representative body, but we do that now.

M. Lee: I appreciate that response. When the minister says we do that now — again, through the review of section 7 to come. What level of authorization, what proof documentation, what method of authorization will the minister be looking for in order to determine that this is the authorized Indigenous governing body?

Hon. S. Fraser: As I mentioned, this would be case-specific. I’ll give, maybe, a few examples of how this could happen. As an example, a decision could be made by a band council resolution. That could be one way. Perhaps the hereditary and elected approaching us together. Perhaps a group of nations coming together as a group in a region. There are any number of ways that this might occur.

M. Lee: I appreciate the list of examples. Those were the ones that I was contemplating. Again, for the purpose of section 7, recognizing we’re talking about the definition, how will the government determine which method to utilize?

Hon. S. Fraser: Again, thanks to the member for the question. I’ll repeat that. I mean, this is case-specific. We, as in government in general, not in a partisan way, have been signing agreements with nations and nation groups for decades. It varies, of course. We’d want to have confidence in the unity, that it is a representative body. We have been doing that already as government, as the previous government had to. This has happened already.

M. Lee: On this same definition. From the briefing discussion that we were having, I just wanted to get on the record, if the minister could share, what expectation a government may have for…. I understand, in terms of self-determination, the ongoing work that’s occurring. Is there an expectation here that First Nations themselves will utilize this framework in order to regroup themselves, in order to find the best alignment?

Hon. S. Fraser: Again, as the minister said, it’s possible that a group of nations may come together in a region. That was one of the possible alternatives that might occur here, under section 7 in this bill. Is there an expectation that that will occur in certain regions of this province?
Hon. S. Fraser: I guess, in answer, we’re trying to leave room for nations to potentially come together, as the example the member mentioned. Absolutely, we’re trying to create that space to be able to allow that to happen. If it’s in the best interests of the nations involved to negotiate with government sometimes on a regional basis, that may be deemed as the best approach. We’re not being prescriptive. We’re just trying to allow the room so that a nation will have the opportunity, if they so wish, to embark down that road.

M. Lee: I wanted to also ask the minister.... The reference in sub (2) of this section is that “the government must consider the diversity of the Indigenous peoples in British Columbia.” That is for the purposes of implementing this act.

As the member for Abbotsford West just went through, in terms of what this bill will mean, is it intended that...? When government looks at the implementation of this act, what’s the intention in terms of how government must consider the diversity?

Hon. S. Fraser: Thanks to the member for the question. It’s a good question.

Subsection (2) ensures that government will consider the diversity of Indigenous peoples in implementing the act. The member probably knows this: 204, actually now, Indian Act bands within the province and 30-plus linguistic groups.

By doing this, it clearly signals government’s understanding that Indigenous peoples are not homogenous and acknowledges that their diversity will be key to the successful implementation, certainly, of this act.

M. Lee: Again, because we’re in this section, I think it’s important to see how that will be utilized, in terms of this principle, in a mandatory way. Presumably, when government comes to determining its action plan, it will need to consider how it’s going to consider the diversity of Indigenous peoples in British Columbia.

As the minister just indicated, with 204 Indian Act bands and over 30-plus linguistic groups of Indigenous peoples in our province.... We certainly respect and understand that we would not want to see them all treated in the same way. There are certainly differences, for sure.

Does that mean, when government is reviewing legislation, the laws of British Columbia, to ensure that it is consistent with the declaration, that government, when it’s looking at a particular statute, will need to look at that statute not only within the 46 principles in the declaration and the 23 paragraphs of the preamble but now also through the lens of the 204 Indian Act bands and the 30 linguistic groups?

Hon. S. Fraser: In answer, I mean, we do this already. We recognize the diversity and the differences with different nations, and so did the previous government. But just to be clear, this is actually captured within the 46 articles of the UN declaration.

M. Lee: Maybe I can ask the minister just to clarify. When he says it’s captured already in the 46 articles, if he could just clarify that what that means.

Hon. S. Fraser: I was about to go through this little.... The font is really, really small, so somebody save me here. This is in the preamble of the UN declaration on the rights of Indigenous peoples: “Recognizing that the situation of Indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.” That is part of the preamble of the United Nations declaration.

M. Lee: Well, I appreciate that there are, of course, many principles, including principles of interpretation, as we were discussing earlier, for which UNDRIP is being utilized. But I would just say, coming back to this particular section, that if it’s already in UNDRIP itself, then why is there a section separate in this bill?

[6:05 p.m.]
Hon. S. Fraser: I think it's safe to say that we recognize the importance, for the purpose of this act, for the purpose of the interpretation of this act, to recognize what amounts to a very rich diversity of First Nations in the province. That would be, I think, the simplest answer to the question.

M. Lee: Certainly, I understand the response, in terms of the recognition of the rich diversity of Indigenous peoples in our province.

When I look at this and compare the language that's utilized in the preamble, which is the second-to-last preamble paragraph before article 1, as the minister points out, it is worded differently, of course.

I appreciate that the time that we spend today in the first day of committee here is to get a better understanding, as the member for Abbotsford West indicated, not only of the intention of the government but also as to the clarity of language use in the bill itself. So where there is unclear usage, I think it's important at the committee stage that we try and attempt to clarify. I appreciate the minister's time today and the team around him being patient as we walk through the language that's utilized in this bill.

Having said that, the question that I believe this language in section 2 raises is: is there a separate intention here? That is, a separate obligation when we say that "the government must consider the diversity of the Indigenous peoples in British Columbia"? The leading language for that is: "For the purposes of implementing this Act...."

Is this a separate obligation that government is putting on itself, a separate requirement, a separate condition, over and above what's in the declaration itself? I would suggest that that is a possible consideration, one that can be raised by the courts or parties in front of a court, because the preamble paragraph itself goes so far as to recognize that the situation of Indigenous peoples varies from region to region and that the significance of regional particularities and various historical and cultural backgrounds should be taken into consideration.

To the extent that we see that legal traditions, institutions, governance structures and knowledge systems of Indigenous people in British Columbia.... I'm just picking out specific words in this section 2, which I think, arguably, are slightly...

The Chair: You mean subsection (2)?

M. Lee: Yeah, in subsection (2), thank you. Subsection 1(2).

...different from what's in the preamble. So I think this is going beyond what's in the scope of that preamble paragraph. In so doing, is it a separate obligation on government to have to review? We're talking about the review of ensuring that the laws of British Columbia are consistent with the declaration, over and above what we've talked about earlier in terms of the application of the declaration to the laws of British Columbia.

When government is going through this exercise to ensure that the laws of British Columbia are consistent with the declaration, is there a separate obligation of government to consider the diversity of Indigenous peoples, and if so, what does that mean?

[6:10 p.m.]

Hon. S. Fraser: For the purpose of this act, it clearly signals government's understanding that Indigenous peoples are not homogenous, and I mentioned that already. It acknowledges the diversity. It's something we are doing already. And the idea that government must consider the diversity of Indigenous peoples in British Columbia — that is something that must be considered, because the nations are diverse. Every government in this province would ignore that to their peril, so we're doing it already, and it's being codified here.

M. Lee: Well, I think that, again, this is a topic that we can come back to as we look at subsection 2(a) and possibly, obviously, section 3 and in the action plan in section 4. But let me, in the time that we have left in this particular day, just touch on a topic which was a conversation that we had, again, in the second technical briefing on this bill. It was a discussion around subsection 1(3) of the bill. Can I ask the minister the purpose of including this section in this bill?
Hon. S. Fraser: The inclusion of the non-derogation clause within the act — it affirms everything done under this act will support section 35 of the Constitution of Canada.

M. Lee: It’s been said by previous governments in Canada, when they look at UNDRIP, that the principles expressed in the declaration can be interpreted in a manner which is consistent with the Canadian Constitution and legal framework. Would the minister agree with that statement?

Hon. S. Fraser: Yes.

M. Lee: I think that that response from the minister is consistent with the earlier discussion that he had at length with the member for Abbotsford West.

Just coming back to this non-derogation clause. I had the opportunity in estimates with the Attorney General back in May of 2018.... I was joined by the member for Skeena, as well, in this discussion. We were talking about the implementation of UNDRIP. At the time, the Attorney General confirmed, and the Premier also said on the next day in response to the Leader of the Official Opposition, that the view of the government is that UNDRIP is to be interpreted and applied through the lens of section 35 jurisprudence. Would this minister agree with that statement?

Hon. S. Fraser: Thanks for the question from the member. I guess it’s a qualified yes. But I just would note the qualification is that section 35 jurisprudence has been evolving and will continue to evolve.

M. Lee: Yes, and certainly, as we’ve seen, particularly over the last 15 years, there has been a strong evolution of section 35 jurisprudence. As has been said, it’s the desire of Indigenous peoples in this province and the government and others involved that we don’t have to continue to resort to the courts to work out and resolve areas, including around rights and title. But it’s been said, of course, that section 35 jurisprudence and the case law that stems from it has brought more certainty and rigour to how those types of claims ought to be at least viewed and interpreted and dealt with to get to a better place.

Now, having said all of that, when I come back to this particular subsection 1(3), the minister, a few responses ago, indicated that the purpose was to support. I think that word “support” is consistent with the discussion we were having about the purpose of this section in the technical briefings.

I just wanted to have the minister consider the statement that was made. It was that the purpose of the section, which we understood in response to a question that we asked in the briefing, is that it, effectively, would establish both a floor and a ceiling under which UNDRIP and this bill would operate, meaning a recognition that section 35 jurisprudence continues to evolve, as the minister just said.

However the UNDRIP declaration is implemented under this bill, it would still be done within the recognition that it’s consistent with that section 35 jurisprudence. That certainly wouldn’t take away from any rights established for Indigenous people stemming from section 35. But it would also not extend beyond what is available to Indigenous peoples under the jurisprudence as it currently stands and as it will evolve in the future. Is that correct?

Hon. S. Fraser: Yes, this has to happen within the framework of the constitution and section 35 but recognizing — as the member has already cited too — that, jurisprudence-wise, that will evolve. Case law has changed significantly too. I think I agree with the sentiment of member opposite.

I have been handed a note here, so I will go and move that the committee rise and report progress and ask leave to sit again.

Motion approved.

The committee rose at 6:19 p.m.
If any recommendations contained in the report are rejected, then the assembly must set the remuneration, allowances or benefits that are to be substituted for the commission’s recommendations.

I thank the members for leave. Today was the last day for us to table this report.

Hon. M. Farnworth moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 10 a.m. tomorrow morning.

The House adjourned at 7 p.m.

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PROCEEDINGS IN THE DOUGLAS FIR ROOM

Committee of the Whole House

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

(continued)

The House in Committee of the Whole (Section A) on Bill 41; R. Kahlon in the chair.

The committee met at 2:53 p.m.

On section 1 (continued).

M. Lee: I just wanted to continue our discussion on section 1 by furthering the exchange we were having yesterday between my colleague the member for Abbotsford West and myself with the minister.

One of the clarifications, certainly, in our discussion today on this section has been that the application of UNDRIP, meaning the words that are utilized in this bill, is understood by government in the use of those terms. The intention is that the courts would continue to use UNDRIP, as it’s attached to this bill, merely as an interpretive tool. As that tool of interpretation, that certainly is consistent with other decisions of the courts, which is something I’d just like to spend a few minutes talking to the minister about.

[2:55 p.m.]

For example, the decision by the federal court in the Nunatukavut Community Council Inc. v. Canada, a decision of 2015. In paragraph 103, the court held that UNDRIP “may be used to inform the interpretation of domestic law.” Then further: “While the court will favour interpretations of the law embodying UNDRIP’s values, the instrument does not create substantive rights.”

This is very similar to what the minister confirmed yesterday. The view of the government is that it is there to be utilized as a tool for interpretation by the courts. It doesn’t create new substantive rights, and that’s the intention of the government in this bill.

Having said that, I’d like to ask the minister.... I’m familiar with decisions that have said, generally, the approach that the courts will be utilizing, which is the use of this as an interpretation tool. Can the minister, from the government’s point of view, understanding it is an interpretation tool, share with the committee other instances of decisions of the court where it has been actually applied as an interpretation tool?

Hon. S. Fraser: Thank you to the member for the question. The Nunatukavut Community Council Inc. v. Canada — that’s the first I’d heard of that case. I thank the member for edification on
that. Besides that, we have found two others: the *Inglis v. British Columbia 2013* case and the Taku River Tlingit v. Yukon; 2016 is the date of that. That’s not an exhaustive list, but that’s what we’ve been able to come up with on short notice here.

**M. Lee:** I appreciate that response — on short notice, as you say. It will be useful because so much of this depends upon the current understanding of the government as to how UNDRIP will be viewed by the courts. So I think it’s important. Perhaps I would ask, as we go through the rest of the committee stage here, that this may be a point that we can come back to as the minister’s team has an opportunity to consider, through the course of today and the days that follow, what other decisions the government is aware of.

[3:00 p.m.] Again, I do think it’s important that we have a clear understanding of how the courts have applied UNDRIP. Certainly, these decisions are helpful, but as we look at it, it is still new. That’s something that the minister took an opportunity to, again, share with this committee — that this has not been done before. Even though Bolivia is a jurisdiction in which they’ve gone through a similar but different process, in terms of actually appending UNDRIP to a legal document and enacting it in a bill of this nature in totality.... That, as I understand, is not what Bolivia has done. There are certain portions that they may not have brought into their legislative framework.

I think it’s important that we understand, with this bill, how the courts will be looking at UNDRIP. We are in a collective understanding, based on these decisions to date, that directionally it is to be a tool for interpretation. I just wanted to ensure that, for the record, we have a clear understanding of what that is. Again, if the minister would be agreeable to that, as your team is able to identify those other decisions, if there are any others, perhaps we can circle back and have that further discussion, regardless of when that might be, during this committee proceeding.

**Hon. S. Fraser:** We’ll endeavour to comply with that. It sounds reasonable to me.

Section 1 approved.

On section 2.

**M. de Jong:** With respect to this section, which, again, focuses on the application of the declaration to the laws of British Columbia and speaks to the implementation in 2(b), the implementation of the declaration.... I wanted to just take a few moments, along with my colleague, to explore that aspect of it. I’m talking about sub (b) and the implementation, the work ahead and the work that has taken place.

The minister, in his earlier remarks in this committee and, I believe, at second reading, spoke to the mandate letter that guides his work. I wonder if he might relay to the committee, and the people watching, the nature of the mandate he has been handed by the Premier when he took office.

[3:05 p.m.]

**Hon. S. Fraser:** I’ll read directly from the mandate letter that I received from the Premier over two years ago now. This is the first part. I think it was universal to all ministers. I’ll start with that, and then I’ll move into the specifics.

**M. de Jong:** To help the minister, I have a copy. I am grateful that the minister will read into the record the part that he can choose to reference, whatever part of the letter he wishes. My sense is that the relevant part for our discussion here today is on page 2 of the letter, about four or five paragraphs down. It speaks to: “As part of our commitment to lasting reconciliation....”

**Hon. S. Fraser:** Thank you to the member opposite. I will read that in. It’s a paragraph that was part of, I believe, all my colleagues in all ministries. All ministries received this as part of a universal mandate letter that went out. I had some more specifics, of course, and other ministers would have too.

It reads:
“As part of our commitment to true, lasting reconciliation with First Nations in British Columbia, our government will be fully adopting and implementing the UN declaration on the rights of Indigenous peoples, or UNDRIP, and the calls to action of the Truth and Reconciliation Commission. As minister, you are responsible for moving forward on the calls to action and reviewing policies, programs and legislation to determine how to bring the principles of the declaration into action in British Columbia.”

I guess I could elaborate on that, but that is the specific wording that I did receive, as did other ministers of the Crown.

M. de Jong: As the minister has pointed out, in his particular mandate letter, there are at least two additional bullet points that refer specifically to the United Nation’s declaration. I wonder if he might care to provide those for the record as well.

Hon. S. Fraser: I’d be happy to. “Work collaboratively and respectfully with First Nations to establish a clear cross-government vision of reconciliation to guide the adoption of the UN declaration on the rights of Indigenous peoples, the Truth and Reconciliation Commission calls to action and the Tsilhqot’in Supreme Court decision.” Next is: “In partnership with First Nations, transform the treaty process so it respects case law and the United Nations declaration on the rights of Indigenous peoples.”

There are three more bullets. They’re not very long, so I’m just going to put them into the record too. “Support Indigenous communities seeking to revitalize connections to their languages.” Next is: “Provide reliable, dedicated funding and support for friendship centres.” Lastly: “With the Minister of Finance, negotiate with First Nations leadership and communities around expanding opportunities for their share of B.C.’s gaming industry.”

M. de Jong: As the minister has indicated, the first part of that, the first paragraph, references the government’s commitment to lasting reconciliation and speaks to implementation of the United Nation’s declaration. That paragraph, as I understand it, was included in the mandate letters of each member of the executive council.

I’ve looked at a few. I have the Forest Minister’s mandate letter, the Finance Minister’s and the Attorney General’s. That paragraph appears to be embedded in all of the mandate letters. The minister can, I think, confirm that it formed the basis of the instructions that the Premier provided to each member of the executive council at the time they were sworn in.

Hon. S. Fraser: I apologize in advance. I was reading my mandate letter off of an iPad, and I realize that’s not appropriate. I don’t think I have a paper copy here. If I have to refer to it again, I may have to get a paper copy.

That being said, that paragraph, specifically.... My understanding is every one of my colleagues in executive council received that exact same paragraph as part of their mandate letter. Of course, they would have received, along with that, specifics to their ministry in their mandate letters that I would not have received. I, too, received.... The portions that I read in there, below that paragraph, were specific to my ministry.

M. de Jong: How’s it going?

Hon. S. Fraser: Pretty good, I think. The question is somewhat subjective, and I’m probably somewhat biased. Thank you for the softball on that one. To the member opposite, I appreciate the humour of it too.

I have been in the position for 28 months now. I thought I knew everything about the ministry, as I was a shadow cabinet critic for many years with many ministers, including the member opposite as minister. I thought I had a pretty good handle on how things worked, but I did not. I learned a lot in the first couple of months.

The mandate letter was quite clear to me on all of those key issues that were highlighted by the Premier in my mandate letter. This last piece, bringing in the legislation to recognize the UN declaration, was a key part. The other mandates that I was given, specifically, are all well underway.
M. de Jong: Yes. It was an uncharacteristically general question, but I think the minister caught the essence.

In his second reading remarks, he actually took a moment to point out some of the progress that he feels the government has made departmentally and across government with respect to implementing the UN declaration since taking office in 2017. I thought I might ask him here, since we are talking about a section that deals with implementation, what he sees as the achievements, the highlights that relate to, specifically, the implementation of the United Nations declaration, whether anything of substance has been accomplished.

In his second reading remarks, he pointed to some things that he feels fall into that category. I’m interested to know what, given the opportunity, he would point to, what the government would point to, as demonstrating progress with respect to the specific task of implementing the United Nations declaration.

Hon. S. Fraser: I know, at one point, myself and my colleagues in executive council tried to quantify the pieces of what we’re doing together across government. We are breaking down, I think, silos within government. I think in this particular.... The identical mandates that were given to all the ministers are reflected in each ministry. It’s interesting, as we work together in government, to try to implement the spirit and intent and words of the UN declaration.

With that in mind, in my particular ministry, the Ministry of Indigenous Relations and Reconciliation — the language portion — we invested $50 million over three years towards protecting and revitalizing Indigenous languages through the First Peoples Cultural Council. So that’s underway, of course. We’re in the second year of that.

Core funding for friendship centres was another key specific mandate in my letter from the Premier. We’ve invested, I think, just over $6 million in three years. That’s ongoing also.

Treaty transformation work has also undertaken some major changes in a tripartite agreement. Just before the writ dropped for the federal election, we were able to sign off with our partners — the First Nations Summit and the federal government, our federal counterparts — on some major work on treaty transformation, bringing the treaty process in alignment with the UN declaration.

Gaming. Specifically, the largest revenue-sharing agreement in the history of the province — $3 billion over 25 years, about $100 million a year, coming out of the provincial portion of gaming. Just for the record, it’s not affecting gaming grants that go to local governments or NGOs. That money is already flowing. Then, of course, there’s the UNDRIP legislation.

Besides that, my colleagues in other ministries.... This will not be exhaustive either. For example, in Housing, we’ve got $550 million specifically earmarked for Indigenous housing, off and on reserve, also, which is a new thing. That’s over ten years.

Implementing a new K-to-12 curriculum that makes sure all children in British Columbia are taught about Indigenous culture and history. Again, this is just a list. I’d have to sit down with all of my colleagues. I know that they’d be able to bring out numerous other examples of where government has, I think, taken the mandate letter seriously.

M. de Jong: To be fair to the minister, you’re not often confronted by questions from the opposition to outline all the great things you’ve done. The minister has provided a list, admittedly not an exhaustive list. He referred to most of these things in his second reading remarks as well.

I take it that there has also been some work done around statutory harmonization or statutory updating. The reason I can say that with a measure of authority is that the House dealt last year, for example, with Bill 51, the Environmental Assessment Act, which included provisions that specifically referred to the United Nations declaration.

Section 2, I think, in that act, specifically referred to the purposes to support reconciliation by, in sub (A): “supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.” I think I recall that correctly. That is an example of a statutory change that has taken place. There may well be others where there has been specific reference to the declaration built into the legislation.
So (a), will the minister confirm for the committee that my recollection of that particular amendment is correct? And (b), if he can cite any other similar examples where legislation has been amended to include a specific reference to the declaration, I’d be obliged to hear about them.

Hon. S. Fraser: To the member opposite, his memory was correct. In the Environment Assessment Act, subsection (2)(ii): “support reconciliation with Indigenous peoples in British Columbia by (A) supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.” The member was spot on.

Besides that, there’s also the Professional Governance Act, subsection 7(2), and off the top, that’s what we’ve come up with. Again, that may not be exhaustive, but those are the two that come to mind at this point.

M. de Jong: I think, for the purpose of the conversation I wish to have with the minister, that’s sufficient, and I acknowledge that there may be other examples.

My question relating to that is this. I don’t recall this being an issue at the time those provisions made their way through the parliament here. But in the course of developing them, drafting those — I know the minister would have been involved in advancing the mandate that he’s been handed by the Premier in his role as minister — did he, the government, legislative counsel, encounter any statutory impediments or other impediments that threatened to frustrate the desire to include the amendments and the references to the declaration that we have just identified in at least two statutes and possibly more? Well, that’s my question.

Hon. S. Fraser: Just a reminder that any advice received is subject to solicitor-client privilege. So I cannot speak to the question.

M. de Jong: Right. I may have asked the question incorrectly. I wasn’t seeking the minister to reveal anything that might be covered by solicitor-client privilege.

I’ll try again. Is Bill 41 — this section or any of the provisions that we have or will deal with — designed to address or overcome any obstacles that the government has encountered in advancing the kinds of provisions that we have just talked about in the Professional Governance Act or the Environmental Assessment Act that allow for specific reference to the UN declaration?

Hon. S. Fraser: The answer will be a simple one. It would be no.

M. de Jong: Thanks to the minister. I will say it one different way, and it’s a question. The passage of Bill 41, obviously, then, was not a prerequisite to being able to successfully amend the two statutes that we have referred to — the Environmental Assessment Act and the Professional Governance Act. It was possible to do that absent the passage of Bill 41.

Hon. S. Fraser: That’s correct.

M. de Jong: Going forward on the assumption that Bill 41 passes and is enacted, as I expect it will be, can the minister advise: will it be necessary to advance the kinds of amendments and embed the kinds of provisions that we now see in the Environmental Assessment Act and the Professional Governance Act? I hope the minister understands my question. Will it be necessary, post passage and proclamation of Bill 41...? If the government wishes to create that linkage, will it be necessary to do so on individual statutes?

Hon. S. Fraser: As we move forward, there’s no one answer. This will be case by case, depending on the objectives of government and our work with Indigenous peoples. As you’ll see in section 3 coming up, the process for doing that will be there. There’s no one answer. It’ll be a case by case.

M. de Jong: Maybe the fairer question, then, to the minister at this stage of the game is to ask him to confirm that the legal authority to make the kinds of changes that have already been made to
Hon. S. Fraser: That would be an accurate statement, yes.

M. de Jong: My colleague is going to pose a few more questions, a couple more questions, in a moment. Then — so that the minister and his team can, perhaps, begin to prepare — what I’m proposing we do, as part of the discussion in section 2, is to move to the actual declaration and, as best we can, move through some of the questions that have arisen with respect to the articles.

The minister, happily, has chosen to append the declaration. Since it is ultimately about the declaration, a more detailed and, to the extent we can keep it organized, orderly examination of the articles of the declaration is what I propose to move to momentarily.

Before we do that, though, I want to... I was thinking last night about summarizing what we’ve learned so far. If it’s the kind of thing that I am going to say, I’m interested to know whether or not the minister, on behalf of the government, agrees with this proposition.

I think it is fair to say that the government of B.C. and the minister are seeking to accomplish certain things. We see that revealed in the mandate letters that we have had referred to us. We have heard it from the minister during the course of this discussion, in his introductory comments, in second reading comments — a desire on his and the government’s part to align B.C. more closely with the principles of the UN declaration, for our laws to be more consistent than they are presently with the UN declaration, that those are specific objectives that reveal themselves and that the minister is trying to advance.

I understand that. I think if I’ve misstated that, the minister can correct me. There are clearly other aspirations for the government, more broadly, but with respect to the UN declaration, I hope that is a fair and accurate summary.

What we have learned thus far is that the passage of Bill 41 won’t create or bestow any new rights for Aboriginal peoples or Aboriginal communities in B.C. We have learned that following the passage and proclamation of Bill 41, the UN declaration will, according to the minister, have no legal force and effect in B.C.

We know — again, thanks to the minister — that today the UN declaration is available to the courts in B.C. for use as a guide if the courts wish to use it as such. We have learned further from the minister that following passage and proclamation of Bill 41, the UN declaration will continue to be available to the courts as a guide, but the minister made the point that there will be no mandatory or legal requirement for the courts to consider or apply its contents. We have learned, thanks to the minister, that section 35 of the constitution remains determinative on the question of Aboriginal rights in Canada.

We have learned this afternoon that steps by the government to implement the declaration have been underway since 2017. We’ve seen, and discussed briefly, the mandate letters. We’ve ascertained that legislation is being amended to include references and incorporate elements of the UN declaration — the Environmental Assessment Act, the Professional Governance Act.

All of this has been happening in advance of the introduction and ultimate passage of Bill 41. We’ve heard just a few moments ago that the government has all of the legal authority required to continue its United Nations declaration implementation work and that Bill 41 is not a prerequisite to advancing that work.

If all of that is true, if all of what I’ve just said is true, then in fairness, Bill 41 strikes me as being somewhat less historic than, perhaps, many of us have been describing it to be. But in fairness to the minister, I should provide him with an opportunity to consider what I’ve said, in summarizing what we have learned today, about what the government’s position is with respect to Bill 41 and these matters. Maybe I’ll be obliged to change my mind.

Hon. S. Fraser: The member gave his characterization of the state of affairs with Bill 41. I will respond by giving mine.
I don’t know if any of the members opposite attended any of the Truth and Reconciliation Commission’s hearings that happened with, at the time, Justice Murray Sinclair, Senator Sinclair now — powerful events. I had friends and Elders and Chiefs — proud Indigenous people and leaders in the province — come forward in a way that I’ve never seen before. They broke down; we all broke down.

It was, as we all know, the horrors of the residential schools legacy — the dark legacy of the residential school system — that led to the Truth and Reconciliation Commission’s work and their Calls to Action that came from that. I think it’s incumbent on all of us, certainly in leadership roles, to take those calls to action very, very seriously.

Article 43, call to action 43, for the record: “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.”

This is part of the impetus — it’s about justice — for government going down this road. The legislation, as it says in the Calls to Action, provides a framework for government. They’re calling for governments of all stripes to take this on. I know our federal counterparts made a valiant attempt at that the last time around. Hopefully, they will come back for that.

It provides a path forward, a different way where we recognize the rights and title of Indigenous people in this province, as opposed to a rights-denial approach. The best tools for that, I think, are the articles within the UN declaration. They will help provide government the pathway forward to provide more stability in the province. More fairness and more justice are key here, but also more predictability on the land base and more certainty.

We’ve heard that message also, loud and clear this summer, when we travelled around to industry groups, businesses, local governments and a whole number of groups, too. They urged us, as the courts have told us time and again over the decades, to move on with reconciliation, for all the reasons I’ve just stated. I believe that Bill 41 provides us a very measured, predictable way, a transparent way for us to accomplish that as government.

M. Lee: At this juncture — just prior to diving further into this particular section, section 2 — by way of understanding where the government has made progress in the last 2½ years, the member for Abbotsford West has taken the minister back through the operative paragraphs, which, from what we understand, the Premier had put in every mandate letter for the members of cabinet.

I had the opportunity, as I mentioned in the previous section at committee stage, to discuss with the Attorney General his similar mandate and the progress that has been made to bring in place the principles of UNDRIP.

In response, 18 months ago the Attorney General had a similar list of various initiatives, including the implementation of some of the additional funding requirements to meet the expansion of Parents Legal Centres, some of the recommendations that came out of Grand Chief Ed John’s report, for example. He also referred to the ten principles that the provincial government had come about to guide public servants in their approach in relationship with Indigenous people. These ten principles were very much in line with the similar principles that the federal government had put in place as well.

I just would like to ask the minister... In terms of the operation of those principles, many of them at a higher level, let’s say, don’t have necessarily the same level of detail of the 46 articles of UNDRIP, but they’re similar in nature, in terms of the broad themes around self-determination, reconciliation, even the recognition of free, prior and informed consent. In the context of these principles, first, to the minister: what level of consultation was utilized for the development of these principles?

Hon. S. Fraser: Thanks to the member for the question.

Concrete actions aren’t within the context of the bill, just for reference. The ten are draft principles. They are very similar to what the federal government did. They were within the concrete actions, the document that we have with the.... They actually began with the previous government, with the leadership council. They are drafted in the sense that they are adaptable. We will take input
on them. They’re essentially a guide for the public service, as we were embarking on this journey of reconciliation in a different way. So for the public service, this will help provide them with some of the guidance.

Hopefully, we’re not going get into detail on the ten draft principles, because that’s another discussion.

**M. Lee:** I appreciate the response. I was really wanting to ask what the learnings might be from the implementation of these draft principles across the public service. How has that been tested in terms of what the response has been like in applying these draft principles?

**Hon. S. Fraser:** I’m hopeful that we will not be going down a discussion about the draft principles. They were put in place as a prelude to what government is doing, as far as the mandate letter goes. But this is not really germane to section 2 of our discussions here today on Bill 41.

**M. Lee:** I’m only just trying to establish the progress that the government has been making against its mandate letters. It just appears that with these draft principles, they do outline a framework for reconciliation and how government and the public service have been working through that.

Let me just ask.... In the discussion I was having with the Attorney General, there was reference to the cross-committee of ADMs, across ministries, chaired by the ADM with the minister here today, which would work closely with statutory decision-makers in applying and looking at the practical applications of these principles and makes reference to action plans around diversity and inclusion.

When the ministries are looking at action plans, how does that take shape, and what various forms are they in, in terms of measures, of milestones? What’s being looked at to be accomplished against these principles?

**The Chair:** Member, those questions are probably more appropriate for estimates than related to this bill. So perhaps you want to re-ask the question.

**M. Lee:** Thank you, Mr. Chair. The reference to reconciliation and the purpose that the minister, in response to the member for Abbotsford West, spoke very passionately about is the signal to all British Columbians, including First Nations in our province, about the importance of adopting UNDRIP. We’ll get into what that means, of course, as we are doing in committee.

I’m only suggesting that when we look at the mandate letters of the various ministers, in recognizing the mandate that comes from the Premier of this province to implement the principles on UNDRIP, that the ten principles that were set out in draft that the Attorney General had referred to previously, 18 months ago, presumably in response to my question as to what the status is of the government’s progress to implement the principles of UNDRIP, pursuant to those mandate letters.....

The response I got back was: “Well, we’re doing these ten draft principles, and we have not taken the time to walk through exactly what those ten draft principles are.” But I think the minister agrees with me that they’re directly relevant and similar to many of the overarching principles in the articles of UNDRIP.

I’m only just trying to establish the kind of progress, the action plan reference, because of course, the term “action plan” is utilized in this bill. So only at this juncture, because we are talking about what progress has been made by this government over the last 2½ years to meet their mandates, which is really the area of coverage my colleague the member for Abbotsford West has invited discussion of....

I just wanted to take that opportunity to ask, in this context in particular, with respect to these ten draft principles, when the Attorney General refers to action plans, what that learning might be, recognizing that already the government has been in progress to implement principles around UNDRIP.

**[3:55 p.m.]**
The Chair: I appreciate that, Member, and thank you for rephrasing it. But we would like to keep the conversation regarding this bill, as opposed to questions that might arise at estimates.

M. Lee: Well, I appreciate your response, Mr. Chair. I think that there are opportunities that we, as Members of the Legislative Assembly, have to ask questions and to gain information from government as to understanding things. I think, with respect, that response really talks about the forum in which I’m obtaining that information. I think we should just consider the subject matter at hand and the relevance of the subject matter. I would expect that that is the actual concern about my question.

I would, again, respectfully submit that my question is actually relevant to the progress that this government is making. If you like, I can rephrase my question, which is: what action plans, if any, to date have the government had to implement the principles of UNDRIP?

The Chair: Member, I would refer you back to questions that relate to Bill 41. If you would like to ask those questions, perhaps it would be better under section 4 under action plan.

M. Lee: Sure. I will reserve my right, then, to ask those questions relating to action plans on section 4.

M. de Jong: As always, we are appreciative of the guidance from the Chair. I will say this, though, and hopefully, it will be received in a constructive way.

We are endeavouring, I hope in a constructive way, to work our way through the legislation. The intention here is not to try and complicate this unnecessarily. We’re going to head into the declaration. We’ll try to go article by article. I can’t guarantee that, at some point, we might not have to come back to an article if something is triggered by the response from the minister, but we are endeavouring to assist the committee in its work in as constructive a way as possible and not obstruct that work.

I had this question, just before we get to the actual UN declaration provisions. Earlier this year, I was referring last day to some of the submissions that the standing senate committee heard. In the course of one of those submissions from the assistant deputy minister from the Department of Justice, she made reference to a meeting that took place in December of 2017 involving all of the federal-provincial-territorial ministers involved in the implementation of the UN declaration.

Here’s what she said about the meeting. “At that time, they committed to continue to take steps and to discuss the measures that would be needed to progressively implement the declaration over time.”

I’m not sure if the minister was one of the ministers referred to, if he was present at the meeting. If he wasn’t, it’s going to be a short discussion. My interest is whether or not, as B.C. embarks via other channels in Bill 41 and this section on the implementation of the UN declaration, there is any protocol in place linking us with other provinces and the work they are doing or not doing, I suppose, around the implementation of the UN declaration.

[4:00 p.m.]

Does the minister have any recollection of the December 2017 meeting? Was he present? If so, were there any agreements set in place? Are there any protocols that link British Columbia with other provinces in the work of implementing the UN declaration?

Hon. S. Fraser: I was not at that meeting. It’s not ringing a bell at all. We currently have no protocols with other provinces on the UN declaration. So just if that helps.

M. de Jong: Are there any agreements, memorandums of understanding, linking the province with the federal government in that regard?

Hon. S. Fraser: No.

M. de Jong: Finally, on this point. In our discussions last day, the minister referred to the existence of a private member’s bill in Queen’s Park, in the provincial legislature in Ontario. Aside
from that, is he aware of any other legislative statutory attempts at implementation of the UN declaration in Canada?

Hon. S. Fraser: The Ontario model cited yesterday is the only one that I’m aware of.

M. de Jong: Then maybe what we can do as part of our discussion around section 2 — it is, of course, a section that affirms the application of the declaration to the laws of British Columbia — is take a look at the declaration itself and solicit the minister’s views and opinions on behalf of the government as to what it actually says and what it represents. As I’ve said a few times, we’re obliged to the fact that the declaration is actually appended to the bill as an annex. I think that was an appropriate thing to do, and helpful.

I’ll have a couple of questions about the recitals, if that’s the appropriate term for a declaration of this sort, before we get to the actual articles. I think my first question, though, is: can the minister confirm, for the purposes of Bill 41, where the word “state” is used in the declaration, does this, in our context, refer to the Crown in the right of British Columbia? Do we need to read the word “state” as intending to impose obligations on the government of B.C., as opposed to the government of Canada?

[4:05 p.m.]

Hon. S. Fraser: I think the member’s question was whether the term “state” represents the government of British Columbia or Canada. In some cases, it’s British Columbia; in some cases, it’s Canada. There are different jurisdictions there. Canada has embraced the UN declaration, so the term “state” could apply to Canada in some instances. But we’ve built Bill 41 with a focus on British Columbia.

M. de Jong: That, actually, somewhat surprisingly, strikes me as a bit ambiguous. British Columbia has chosen to move forward with a piece of legislation. It has attached a declaration that includes the word “state.”

Now, I am not aware of any other subnational entities that have taken the step. We had that conversation yesterday. I’m not certain — nor, I expect, is the minister — whether the United Nations, in creating the declaration, contemplated legislative adoption by a subnational jurisdiction. But even as an interpretive instrument, which the minister says this is and will be, following passage of this Bill 41, it is, I think, an appropriate question for which we will need a clear answer.

Does the government take the position that where the word “state” appears in the declaration, the Crown in the Right of British Columbia is being referred to?

[4:10 p.m.]

Hon. S. Fraser: The UN declaration follows a very broad range of subject matter, as the members opposite know, I know. Some of those are of provincial concern and/or jurisdiction, and some are of federal. I mean, some deal with military. That’s federal, right? So our intent is to focus on the matters that are within the jurisdiction of British Columbia.

M. de Jong: That was not suggesting that we should read the declaration or the passage of Bill 41 as altering the constitutional division of powers in Canada. I was asking what I thought was a pretty simple and straightforward question.

In the text of the declaration, where the word “state,” which I take to mean “governing entities” where the subject matter of the article relates to areas that constitutionally within Canada fall within the jurisdiction of the province of British Columbia.... In those circumstances, “state” refers to the Crown in the Right of British Columbia, the government of British Columbia. If the minister is unable to provide clarity around that, then we’re not off to a very roaring good start on this one.

Hon. S. Fraser: As a government, we are committed to implementing the UN declaration on the rights of Indigenous peoples. I will try to keep this clear and simple. I thought I did. When it’s within the jurisdiction of British Columbia, the “state” would apply to the term “British Columbia.”

We’re not usurping the state-ness of Canada. Canada has embraced the UN declaration, and they’ve tried to bring it into law. But they formally embraced the UN declaration. They’ve done so at the United Nations. I believe that’s where the courts have their interpretation of the UN as a tool
within their range. I believe it’s because the government of Canada has embraced this. But the term “state” as it applies to us in British Columbia is where it’s our jurisdiction.

M. Lee: I just wanted to follow on that response, just to ask a couple of questions here. One, if what I’m hearing from the minister is of concern, is really around expectation.

There’s an expectation, of course, that with the way the bill is framed, it’s the application of the declaration as appended to this bill, as opposed to the application of the declaration insofar as it relates to the jurisdiction of British Columbia. Now, I agree that ought to be the case, because the bill can’t overstep the jurisdiction of this province. Perhaps that’s an implied understanding that ought to be made more explicit.

In terms of the first concern, it would be: what expectations do First Nations in this province have around the entirety of the declaration? Is this government saying to British Columbians, including First Nations, that there are parts of the declaration which this government will not be able to implement? Is that the message that the government is relaying here?

Hon. S. Fraser: Within the declaration itself, there are articles that apply directly to the province, and we intend to take action on those. It’s actually laid out in the act in section 2(b), and we’re on section 2: “The purposes of this Act are as follows... (b) to contribute to the implementation of the Declaration.” That’s exactly what we’re planning on doing as a province.

M. Lee: Well, I appreciate that. In terms of the actual contribution to the implementation of the declaration, presumably, as this bill moves forward, the effort of the government of British Columbia will be to ensure that it coordinates with the federal government in terms of how they may continue to consider the implementation of a similar bill.

I wonder, with the minister, when he refers to certain articles that are not within the jurisdiction of the province.... Apart from the one relating to military activity on the lands of Indigenous people — which, certainly, we can understand the concern about — can I ask the minister to identify the other articles which, in his view, are not within the jurisdiction of the province?

Hon. S. Fraser: The act itself contemplates us, as the province, the government, working in consultation and cooperation with Indigenous peoples to implement the declaration within provincial jurisdiction, of course. Our government will work with — like all governments, I’m sure — their federal counterparts.

I note those ministers have been announced today at the federal level. If I’m not mistaken, too, all parties, when questioned prior to the election, said they would support federally bringing in legislation similar to what we’re doing here provincially, except for one party. So I’m anticipating a good and healthy conversation with my federal counterparts.

M. Lee: I suppose this does invite the question.... I think the member for Abbotsford West and I were intending to start to walk through the articles, but it does draw us back — the minister’s last response — to section 2(b) of the bill.

This was one question I intended to raise, which the minister has already started to address, which is: what is the meaning of the word “contribute”? Whose responsibility is it to implement the declaration? When we say “contribute,” what do we mean in the context of this government?

Hon. S. Fraser: With respect to paragraph 2(b), the act contributes to the implementation of the declaration by requiring government to align its laws with the declaration — you’ll see that in section 3, as we move forward — also to prepare and implement an action plan, which you’ll find in section 4, which we will get to, I’m sure, and report annually on progress made. That’s the intent of subsection 2(b).

M. Lee: I appreciate that response. That’s something we’ve canvassed at length, even having covered where we are in the bill to date. But I think what I’m hearing from the minister is that there is, in his view, on behalf of the government, a certain level of joint cooperation that may well be
necessary with the federal government. He gave a specific response about the current understanding of where federal parties in this federal government might be.

Recognizing that, of course, over the course of the lengthy and what might be a very involved implementation plan or action plan, this may cover successive governments at the federal level. So I think it’s important for British Columbians, including First Nations, to understand that when the minister says the definition of “states,” as that term is utilized in the articles of UNDRIP, in some cases it refers to the federal government and in some cases refers to the provincial government, based on jurisdictional responsibility.

When I look back at the articles, certainly the one that we have identified to date at this committee stage is article 30, which, I think members would agree with the minister, does relate to federal jurisdiction in respect of military activities not taking place on the lands or territories of Indigenous peoples.

Again, I think it’s important to clarify and to understand for everyone involved what other articles in the declaration do not fall within provincial jurisdiction.

Hon. S. Fraser: I think it’s important that the legislation be read recognizing that it’s within the constitutional framework of Canada — section 35 and such. So the jurisdictional issues, I think, would be clear there. The province has a role, as does the federal government. I’m sure the member has the ability to go through the articles and determine that. We’ll work with Indigenous peoples as we develop our action plan, and we have committed to implementing, within our provincial jurisdiction, the UN declaration.

M. Lee: Well, I appreciate that response. It just brings me back to the earlier response that the minister gave the first time I asked a similar question, which is comfort around where the federal government stands in its process to similarly implement UNDRIP.

As I understand from the minister in his response, there is an expectation by this government that the jurisdictional considerations around how to implement or what the application is of specific articles in the declaration of the B.C. law. That will be determined through the course of the action plan. It’s what I believe was the response I just heard from the minister.

In doing so, is there any concern of this government, in terms of getting the necessary cooperation from the federal government to fully implement UNDRIP?

Hon. S. Fraser: Again, the announcements for our federal counterparts…. It was just today. So I haven’t spoken with anyone at the federal government and the current configuration with their current cabinet. They haven’t been sworn in yet. I can’t speak on behalf of or even refer to what the federal government may or may not do, except for what I mentioned before, with the commitments that were made pre-election.

It doesn’t really matter what other governments are doing. Our action plan, what we will be dealing with here…. We’ll deal with what B.C. can do to implement the UN declaration.

M. Lee: I want to take this opportunity to summarize what the response from the minister is, then, in response to the question as to what “states” means in the course of this declaration. The minister has said that for certain articles, areas which are not provincial jurisdiction, it means the federal government. To date, for the purpose of this discussion, we’ve only been able to identify one clearly, and that is article 30.

Is the minister agreeable that article 30, on its face, at this juncture — before the effort that’s needed to be made on the action plan, as we look to adopt this bill and pass it in this Legislative Assembly — is the one article that this government can identify that does not fall within its jurisdiction? Therefore, when we look at the effort that’s going to be made under Bill 41, that it would not include the implementation, the review of B.C. laws against an article that clearly is not within the jurisdiction of this province, is that the one article that this government can identify?

[4:35 p.m.]
Hon. S. Fraser: I want to make it clear that we’re committed. If it’s within provincial jurisdiction, we will work with our Indigenous partners throughout this process. If it’s within the provincial jurisdiction, we are committed to taking action over time to implement the UN declaration.

M. Lee: I take that to mean that at this time the only article that government can identify clearly on its face that doesn’t fit within provincial jurisdiction is article 30 and that there are no other articles that the government can identify at this time without taking further steps to analyze, which is something we’ll get into later in this committee stage.

I just wanted to restate one other point that the minister did make in the exchange we were just having, which is that, again, this is another example where it is the government’s clear intention and view that the bill, Bill 41, including the articles appended to Bill 41, ought to be read and applied, insofar as it applies to B.C. laws, within the Canadian constitution and legal framework. In this instance, the minister refers to the clear separation of powers between the federal and provincial jurisdictions. So I would just ask that he reconfirm that that is the case.

Hon. S. Fraser: Just to be clear, this law must be read within the constitutional framework of Canada. I want to get that on the record.

M. de Jong: I won’t ask the minister to respond, but having opened up the can of worms in the first place.... Again, the objective was not to try and trick anyone here. My colleague from Langara was....

The government is pledging to implement this document, this declaration. It’s doing something that no other jurisdiction has done. There are, as a subnational government, constitutional issues within Canada that are relevant. And the essence of the question was, in making that pledge to people, that there is at least one part of this 46-article document that the government of British Columbia constitutionally cannot be held accountable for.

Article 30 deals with a subject matter entirely outside of the government’s constitutional authority. The question was merely to ask the minister, on behalf of the government, to identify whether there are any others. My sense is that in every other article there are areas that fall within.... It touches on subject matters and areas, a portion of which fall within the jurisdiction of the province, but it was an opportunity for the minister, on behalf of the government, to say: “Look, we have no authority to deal with article 30 and to identify any other articles that fall into that category.”

He has chosen not to do that in anything approaching explicit terms. I guess we’ll move on.

[4:40 p.m.]

We’re still on the preamble. And there is on.... They don’t number these things. There are some colourful verbs used at the beginning of each preamble. The one I’m referring to is 11, from the end of the preamble, and reads: “Considering that the rights affirmed in treaties, agreements and other constructive arrangements between states and Indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character....”

What does that mean? Or what does the minister and the government take that to mean?

Hon. S. Fraser: The articles themselves within the UN declaration.... The declaration itself is a holistic document, and the document must be contextualized for each circumstance, read in its entirety and not teased apart. We’re committing to working with First Nations in British Columbia to reach agreement on how we will actually implement the declaration based on that. Teasing apart each article contextually takes it out of the reason for it being.

M. de Jong: Well, that’s a bit odd. I think I just heard the minister say that he really didn’t want to discuss individual articles. Well, the document, the declaration is the sum of its parts. It makes.... Surely that is not the case. Surely, in commending via Bill 41 in the way he has in the assembly and in speaking about the historic nature of the document and the declaration, he would want British Columbians, all British Columbians, to have a clear understanding of the provisions.
We are, as he has pointed out, doing this for the first time. We are the first in the country — arguably, the first in the world. Surely he wants British Columbians to share in his understanding of the terms and articles of the document that are being presented to them to apply to the laws of British Columbia.

I’m sure that the minister, upon reflection, will choose to articulate whatever he was trying to articulate a bit differently, because I’m in a discussion that I really enjoyed and that I think has been very helpful. It’s certainly been helpful for me and, I think, others. What I just heard is a bit astounding.

What does the phrase, contained in the preamble...? To look ahead, the minister should expect this question with respect to other articles as well. What do these articles mean to the government of British Columbia? If the minister’s view is that those are inappropriate questions, we’ve got a problem, because that is the essence of what we are doing here. We are saying to British Columbians: “This is a declaration. This is a historic moment. This declaration speaks to fundamental rights.”

It is the minister’s task, I would submit, to explain to all of us — the committee and to British Columbians — what those rights, as articulated in the declaration, mean and what they mean to the government of British Columbia. I’ve gone on too long. I’m sure, upon reflection, the minister will realize that that is not an unreasonable request to make of him and the government.

I’ll try again. In most of what’s in the declaration, although we have some questions about how they might apply in the context of British Columbia, what the UN is trying to say is reasonably apparent on the face of the article or in the text. I just don’t know what this means.

The government is advancing the document and saying that it needs to be and should be enshrined in B.C. law, in whatever way we propose to do that and that we’ve been discussing. I’ve just asked the minister, he and the government of British Columbia.... I’m not asking him to try to conjure up what might have been in the minds of the member states of the United Nations. He can’t do that, and I’m not asking him to do that. What does this mean? I don’t know what it means.

“Considering that the rights affirmed in treaties” — we have treaties — “agreements” — we have those — “and other constructive arrangements between States” — B.C. being a state — “and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character.” I don’t know what that means, and I’m asking the minister what it means to him and the government.

Hon. S. Fraser: I want to reinforce that this is a holistic document, and it was written generally, within the context of all the UN nations in the world. Again, that’s why pulling it apart individually is problematic. We recognize that there are international treaties that exist that may need to be considered, but again, that’s part of the work ahead.

M. de Jong: Be that as it may, I should place on the record that I believe that British Columbians, into whose law this is going to apply in the way contemplated by Bill 41, deserve to know what is in the declaration and deserve an analysis of it article by article, as troubled as the minister seems to be by that prospect. I do wish him to know that is the approach we intend to take — to explore how these articles are relevant to British Columbia and to the British Columbia laws to which they would apply.

We do that not to be meddlesome or mischievous. It strikes me as not just logical but necessary and that the minister would want to welcome that.

All right. I have theories on what this section of the declaration could mean, but my theories are not relevant. I’m not the government of British Columbia. I take it the minister either does not wish to share those views or does not have any on what this language means.

It’s clear that we have treaties. It’s clear that we have agreements. I don’t know in what case, if at all, those might be matters of international concern, interest or responsibility. I’ll try one more time, and then I think we had agreed to take a break for a few moments.

Is it the minister’s and the government’s position...? Let me ask that differently. Can the minister, on behalf of the government, advise the committee: does British Columbia have any
treaties, agreements or other constructive arrangements between British Columbia and Indigenous peoples that are matters of international responsibility? I’ll try that.

Hon. S. Fraser: The answer is no.

The Chair: Thank you, Members. We’re taking a short five-minute recess.

The committee recessed from 5:03 p.m. to 5:13 p.m.

[S. Malcolmson in the chair.]

M. de Jong: I’m still in the preambles, the recitals. The second-last recital prior to article 1 in the declaration reads as follows: “Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.”

My question is a similar one. In the context of embedding or applying the declaration to British Columbia law, what is the minister’s view on what that clause means?

Hon. S. Fraser: Just before, again, a point of clarification. The bill does not apply the declaration to B.C. law as legal force and effect, as we have established earlier. I think yesterday we established that. I just want to make sure that’s in context also for the member opposite.

In the response to this specific question around the second last preamble piece, I think we harken back to yesterday. We’ve got some 35 Indigenous linguistic groups within the province and 204 Indian Act bands. The diversity there is, obviously, very high. I think it’s just recognizing that.

I will refer to — and we touched on this yesterday — section 1, Interpretation, subsection (2):

“For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.”

M. de Jong: To the minister, he has pre-empted me, happily. I wondered if he might draw the linkage between that particular recital and subsection 1(2). That was going to be my next question.

Hon. S. Fraser: I think it goes to the point that the UN declaration, in general, must be contextualized for each jurisdiction. Some 150 nations sign on to the UN declaration. That’s what I believe the preambular statement was getting at. For B.C.’s context, we’ve identified in subsection 1(2) a sort of B.C. context for that. I think that covers that.

There may be more, of course, but what Bill 41 does is it provides a framework for us to start working on this with Indigenous partners. That’s what we’ll see as we go further through Bill 41. That’s part of the job ahead of us now.
M. Lee: I think it’s important. This is the one opportunity that we have as an assembly to talk to government about how it is approaching the implementation of UNDRIP through this bill and how it will apply to B.C. law.

I think it’s very important that we have this discussion. With all of the other sections that will follow in this discussion, there is no opportunity for this discussion. There will be the tabling of the action plan and an annual report about the action plan, but there is no opportunity to understand for British Columbians what the intention and the approach and the understanding of this government is at this juncture, prior to putting in place mechanisms to implement UNDRIP in British Columbia.

[5:25 p.m.]

The discussion that the minister is having with the member for Abbotsford West is, I believe, an example of consideration around this declaration itself. The minister referred to this being an holistic document obviously put together with nations over many, many years, reaching that historical time in 2007 where various nations signed on to this.

It’s been said that this is a document which is a principles-type document. It is not a convention of the United Nations. And the discussion that was being had, the recital around section 14 and one that I will come to.... Sorry. When I say section 14, I mean that despite the fact that the recitals are not numbered, if one numbers the recitals, the recital that was being discussed, by my count, in terms of considering that “the rights affirmed in treaties, agreements and other constructive arrangements between states and Indigenous peoples are, in some situations, matters of international concern, interests, responsibility and character,” is actually number recital 14.

The other one that I would like to speak to in a moment to the minister is recital 20, which is at the bottom of Bill 41 on page 6, which is: “Emphasizing the United Nations has an important and continuing role to play in promoting and protecting the rights of Indigenous peoples.”

Before I go there, I just wanted to ask the minister.... The nature of the drafting of this document is such that it is one that is a principles-type document. It’s not carefully drafted in an overly legal way in terms of legal terminology, by virtue of the fact that it is being adopted by many nations, and nations need to apply it to its own jurisdictions or states, as we had further discussion on a moment ago.

What considerations does this government have and challenges does it see in terms of the interpretation, the actual application, of the language of this document as it moves forward in its process?

[5:30 p.m.]

Hon. S. Fraser: It’s a really good question. Of course, there are challenges with any legislation, and this one is new. This concept is new for any government.

An important aspect of the bill itself is that we will work together collaboratively with Indigenous peoples in this province to implement the UN declaration. By working together, sure, there may be challenges. There may be disagreements. But the outcomes by working together will be better. I think we’ve developed a good process to embark on that, highlighted in the bill, as we move forward.

M. Lee: I appreciate the response. It’s a worthwhile challenge, for sure.

I would say that we will be spending time here on the articles of the declaration, but as the minister just referred to, there is understanding that we’re gaining here at the committee stage about certain sections that are still upcoming in the bill. So here is that example. The minister referred to the front end of section 3, which is “consultation and cooperation.” I believe we’ll have more discussion about those terms and what’s intended there.

I will only say, at this particular juncture, that it’s important for this committee to understand what the government’s understanding and approach is going into that exercise. Unless, of course, which was embedded in my previous questions, there’s been progress made to gain a better understanding with First Nations as to how they interpret these principles. But we’ll come back to that later, in section 4 of the bill.

We need to know today, in the context of this discussion, what the understanding of government is. I would suggest that there will be a great deal of challenges for this government and their staff,
ministry staff as well, as to the application of various articles and the recitals themselves in the context of British Columbia.

Let me just turn to an element which I think is indicative of that but just raises another potential consideration. The minister, in response to the member for Abbotsford West a few minutes ago, before the break, mentioned international treaty in response to recital 14 and getting an understanding of that. I think that that’s a recognition that there are international treaties that might be relevant, let’s say, to the understanding of this declaration.

If that is the case, when we look at the recital which is two recitals down from that — that is, No. 16 — which starts with the words: “Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights ....” After that, they have a footnote to that recital saying: “See resolution 2200 A (XXI), annex.” Similarly, what follows is a reference to the International Covenant on Civil and Political Rights.

Sorry, I guess there’s actually a typo in the bill. Or is there not? I guess there are two references there. International Covenant on Civil and Political Rights is used twice, and the Vienna Declaration and Programme of Action is referred to as another reference — so no typo, just referred to twice.

Are those documents being incorporated by reference in this declaration?

[5:35 p.m.]

Hon. S. Fraser: I would note — again, another good question — that this recital, the preambular recital that he’s referring to, begins by acknowledging. It’s an acknowledgment. It’s a contextual statement.

On the specific question, we’re not incorporating the attachment in Bill 41. But the important part, I think, of this acknowledging, this recital, is the term “self-determination” and the right to self-determination. I think that’s, again, the key concept that we are agreeing with here, but we’re not incorporating the attachment that the member was asking about.

M. Lee: I just wanted to go forward, then, to recital 20. I would just say to the minister, by way of reference…. I see that the next recital, which is at the top of page 7, recital 21, is also directly connected to my question. It ends with “in the development of relevant activities of the United Nations system in this field.”

My question to the minister is: what consideration, if any, has the government done or had at this juncture about the so-called extraterritorial reach of the United Nations into British Columbia, as far as it might be perceived to govern the rights of Indigenous peoples in British Columbia?

When I look at these two recitals, arguably, when it uses the words “continuing role to play in promoting and protecting the rights of indigenous peoples” and it suggests that there is development, which one could imply is ongoing development, of relevant activities of the United Nations system in this field, are we adopting, by virtue...? Are we, as a jurisdiction, inviting further intervention, let’s say, of the United Nations in how we continue down the path of reconciliation with Indigenous peoples in this province?

[5:40 p.m.]

Hon. S. Fraser: As the member probably knows — I think he alluded to it — the UN had been working on this for a long time. And actually, Canada was at it from the very beginning. Canada certainly signed on, and the UN did do good work with this document.

I’ve said this before, but the bill does not give UNDRIP full force and effect. This is a declaration. It is not legally binding in and of itself. As a declaration, it is not.

M. Lee: I appreciate that response and the additional clarification from the minister, which is very helpful in respect of the overall approach of this bill.

I have heard from others in our various communities in this province some consideration as to why it is necessary for our province to adopt a United Nations instrument. We know, of course, that in the spirit of reconciliation, for all of the good reasons that were spoken to on first reading, this is an important step forward. But I think the consideration of ensuring the clarity around the bill is important, as we’ve discussed, and that’s what we’re doing here.

The only aspect that I’m really trying to get at here is.... We had earlier a discussion regarding certain articles not being within the jurisdiction of this province and identifying article 30 as being
Potentially the only one. Just looking at the international component, I think it’s important, as we’re looking at adopting a UN declaration, that it doesn’t bring other abilities or opportunities for international bodies to have some greater line of sight into our province.

Perhaps I can just ask the question one other way, which is: has there been any consideration by this government — and, in fact, even any conversation it might have had with the correct body within the UN — as to how the adoption of this declaration will work in British Columbia?

Has there been any consideration of that? Is there any expectation that the United Nations, vis-à-vis a couple of the recitals that we’ve been referring to, expects to have any ongoing oversight or role in reviewing the treatment of the rights of Indigenous peoples in our province?

Hon. S. Fraser: I’ll just repeat. There’s no legal force in effect. There is no expectation of a role of the UN. It’s not the role of the province. It was Canada that adopted the UN declaration on the rights of Indigenous peoples.

M. de Jong: Moving now to the articles. There are 46 of them, if memory serves.

My first question relates to article 2. I guess for the purpose of the record.... They’re not lengthy, so it’s worthwhile to read article 2 into the record. “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination in the exercise of their rights, in particular that based on their Indigenous origin or identity.” I am certain that all agree with that statement. It is self-evident.

My question for the minister. The article speaks to discrimination broadly based, but with respect to state....

Interjections.

M. de Jong: Are we good?

The Chair: It’s a very moving question.

Back to you, Member.

M. de Jong: Let the record show I brought tears of joy to the eye of the minister. [Laughter.]

Has the province undertaken any kind of a review or survey of the laws, the body of statute law that is enforced in British Columbia, to determine whether there are any lingering examples of statutory or state-based discrimination that is lingering on the books? Has that kind of review taken place?

Hon. S. Fraser: We have not embarked on that review, in response to the question. The bill creates a process, as the member knows, an action plan and such. I mean, it will allow us to have those discussions. We all know that whether or not bills or laws are explicitly discriminatory or not, those things will be dealt with, I’m sure, throughout this process.

Having the larger conversation, not just with Indigenous people but with the people of British Columbia, about discrimination and potentially having a way to try to find mechanisms to address discrimination in all its forms.... I think that’s one of the beauties of this law. It’s going to allow us that opportunity as British Columbians.

M. de Jong: The reason I ask the question.... I think most of us, many British Columbians, are aware of the graphic examples, historical examples where statutory law had embedded within it fundamentally discriminatory provisions in the case of Aboriginal peoples, whether it was the right to vote or the ownership of property.

My question was.... As the government gave consideration to implementing the declaration in the way that it has chosen to do with Bill 41, whether it had conducted any initial survey of the body of laws and uncovered evidence of lingering examples of discriminatory language that operated against the interests and the rights of Aboriginal peoples....
It sounds like that has not taken place and remains to be done in the future. Maybe the minister can confirm that.

Hon. S. Fraser: The member is right. That has not taken place. However, I’ve been in the MLA job for... It’s my 15th year, and I spent most of my first 12 years as critic for this ministry. I knew early on, I reviewed the Royal Commission on Aboriginal Peoples. It’s got to be 20, 25 years old now, but it’s still germane. It highlighted that discrimination still exists within institutions, within governments, within policing, within society in general. Part of reconciliation is addressing that.

As we go through the action plan, reviewing our laws and policies and practices, that sort of thing, to bring them in line with the UN declaration, it will be key to make sure that we are addressing anything that was discriminatory. Many pieces of legislation were built back in the day, 100 years ago, that never anticipated that Indigenous people even existed in the province. I know we’ll find those.

This is an opportunity, I think, a wonderful opportunity for us to have the conversation with British Columbians about what it means to be free of discrimination — most people take that for granted; Indigenous people do not — and find ways to address that and, hopefully, show the rest of the country and the rest of the world how to actually do that and make a better society for everybody.

M. Lee: I just actually wanted to go back to article 1 to ask one quick question to the minister. To the extent that we look at Canadian law and the Canadian constitutional framework, including the Canadian Charter of Rights and Freedoms and any legislation, whether federally or provincial legislation that builds off of that...

In the event that there’s any conflict between the body of international human rights legislation and declarations, as summarized in article 1, and any domestic Canadian Charter documents or other human rights documents, I just wanted to confirm.... If the minister can confirm which will basically have effect.

[The bells were rung.]

The Chair: I call this meeting into recess. We’re going to go vote.

The committee recessed from 5:58 p.m. to 6:08 p.m.

[S. Malcolmson in the chair.]

The Chair: I’ll ask the member for Vancouver-Langara.... You got your question out fully. Is that correct?

M. Lee: I did. They were considering the response.

The Chair: Very good. You’ve had a good, long consideration.

Hon. S. Fraser: Well, there were other things to do in the meantime.

Again, the bill doesn’t give the declaration any legal force and effect. So the laws of the land would still apply.

M. de Jong: I’m on article 3 now. Again, for the record, it not being overly lengthy, I’ll read it into the record. Article 3 of the declaration: “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.”

The term “self-determination” has been used by the minister and the government extensively and, I think, in a positive way and in a way where the minister and the government have endeavoured to articulate their desire to work with Aboriginal peoples and First Nations in a constructive way. I thought, since it appears for the first time here in the body of the declaration, that it would be
appropriate to ask the minister to articulate on behalf of the government what it means and what the
government believes that term “self-determination” means within the context of article 3.

**Hon. S. Fraser:** It should be an easy question, but it’s for a nation to determine. I mean, that’s a
strange answer to his question, because self-determination is about the nation’s right to determine
what that looks like.

**M. de Jong:** Again, within the context of article 3 of the declaration, is it, as the minister just
suggested, exclusively a collective right? Or is it a concept and a right that extends to individuals?

**Hon. S. Fraser:** I think in the context of article 3, it would be the collective.

**M. de Jong:** The minister’s view is that in the context of article 3, the reference to self-
determination is a right that extends to a collective of Indigenous peoples. In the context of B.C.,
then, what would that mean? Would that mean exclusively the band level? How does that notion of a
collective right apply in the context or become relevant in the context of the British Columbia
experience?

**Hon. S. Fraser:** To harken back to yesterday’s conversation in section 1 and a definition of an
“Indigenous governing body....” I think we all learned from that that this is about the ability to self-
determine. It can be manifested in many ways. It could be a band-and-council, a chief-and-council
model. It could be hereditary. It could be a combination. It could be a number of individual nations
within the province coming as a collective.

I don’t think we can define that, per se. It is up to the nation to determine. That’s the whole idea
of self-determination.

**M. de Jong:** Is that equally true of the phrase “political status”? Again, I’m not asking the
minister to endeavour to speak to what may have been in the mind of the United Nations or what
may be in the minds of Aboriginal groups in B.C. But I suppose it’s fair for me to ask what is in the
mind of the government of B.C. when they see an article 3 reference to determining political status.
What does that capture?

**Hon. S. Fraser:** If I’ve just got it right here, the question was: does my previous answer apply
equally to political status? Was that the gist of the question? The answer would be yes.

**M. de Jong:** Last question, I think, on article 3 for me. In the course, again, of studying this
declaration prior to making the decision to implement it in the way that Bill 41 purports to do, did the
government, in reviewing the measure, identify any present impediments in British Columbia to the
idea of Indigenous people, Aboriginal peoples, having the right to self-determination?

When I ask the question.... As I said with respect to the earlier article, when we’re dealing with
rights, there may be impediments or encroachments that exist in broader society and practices and
impediments that are statutory, legislative, and fall directly within the ambit of government. In asking
this question again, I’m referring to the latter. That is: has the government identified, at this stage,
any impediments to the exercise of that right to self-determination that it intends to...? Well, has it
identified any that it is able to share with the committee and that are a priority for it to deal with,
going forward?

**Hon. S. Fraser:** We didn’t identify any lawful impediments, if that’s the right term, but sections
6 and 7 of Bill 41, as we get through to that, provide us some tools, enabling tools, to potentially help
with self-determination — be able to recognize other forms of governance structures, that sort of
thing, outside of the Indian Act.

**M. de Jong:** Article 4 reads as follows: “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.” The last part of that article, the last phrase, speaks to a right to the ways and means for financing their autonomous functions.

Again, my question for the minister, on behalf of the government, is: do he and the government read that, within the context of the declaration, as intending to create a positive funding obligation on the part of the state?

Hon. S. Fraser: The answer is no.

M. de Jong: So what does it mean, then?

Hon. S. Fraser: I’ll just remind again, because this seems to be an important statement for many of the questions, that the bill doesn’t give the declaration a legal force and effect. But we would be working with Indigenous peoples to address the question of the financing and those issues. My opinion wouldn’t be the determining thing. We’re committing to working with First Nations and Indigenous people.

M. de Jong: For the minister restating what he has said a number of times, I will restate: the nature of the questions that we are asking recognize and don’t question what the minister has said about the fact that the declaration, following the passage of Bill 41, has no legal force and effect. The minister has said that, and he may choose to repeat it periodically as we move through this discussion. That isn’t at issue, and I’m not challenging that part of his contribution to this, our understanding of the bill.

We are now talking about the declaration that the bill purports to apply to all the laws of British Columbia. In the conversations that will take place going forward, the consultations with First Nations that are contemplated elsewhere in the bill — that are taking place now, in fact — it would be legitimate for a British Columbian to ask this question about an international declaration that has now been applied to the laws of their province.

That is: in the minds of the government and the minister presently in office, does article 4, insofar as it speaks to a right to the ways and means for financing autonomous functions.... Does the government and the minister consider that to be restricted to what we have called here “own-source revenues” from economic activity generated by the First Nation?

Or does it extend beyond that to include a right, because the article speaks of a right to funding — “financing” is the term used — that goes beyond own-source revenues generated by the community and, by implication, therefore, funding from another level of government.

I’m not sure there’s a right or wrong answer here, but there is an answer. There is an answer where the minister says: “In the mind of the government, in urging the adoption of this declaration and embedding it in B.C. laws, we believe article 4 means the following, and the reference to financing for autonomous functions means the following.”

It’s a tough job to be the minister speaking on behalf of government, but these are the days when the weight of that responsibility falls on the minister’s shoulders, and that’s the nature of my question. What does the government say article 4 means, with respect to securing financing for those autonomous functions?

Hon. S. Fraser: I appreciate the question, but I would note that the member was emphasizing, repeatedly, the word “right.” With that, I just want to reinforce that the bill does not give the declaration legal force and effect. I just don’t want to have any confusion here. The question tends to be focused on a “right.” I want to make sure that the rights here are....

The bill does not give the declaration legal force and effect. But when it comes to revenue sources, it could be own source revenues, as the member has suggested. I mean, it could be gaming revenues. There are all kinds of examples, I suppose, you could come up with, but it’s something we will be discussing with Indigenous people, with First Nations, as part of this process, through Bill 41. Again, the process is laid out in the following sections.
M. de Jong: Okay. Well, that’s helpful, in a sense. I think what I heard the minister say is that he believes the article, as it is worded by the United Nations, is broad enough to include as part of the reference to financing not just moneys generated by the Indigenous peoples — in B.C.’s case, Aboriginal or First Nations people themselves — but is broad enough to encompass conversations about funding, from the provincial government, for example. Is that a fair statement?

Hon. S. Fraser: Yes.

M. Lee: The minister, in his previous response, mentioned that it is to be determined, in effect, how article 4, in consultation and cooperation with the Indigenous peoples in British Columbia.... I’m deliberately saying those words because that is the lead-in language to section 3, which we will come to in this committee stage.

I think it’s important, as we look at the articles, by way of example, in terms of understanding the approach of this government.... Although we’ve established that it is the view of the government that UNDRIP has no force and effect and that even when we look at the usage of the word “right” in article 4.... In view of the government’s position on this — that there is no right, because UNDRIP has no legal force and effect — then we’re into what we’ll look at, which is the process.

When I marry up the opportunity that this government will proceed with — and that is to, presumably, after this bill is passed, go into the consultation and cooperation with Indigenous peoples in British Columbia.... This is an example of what we will look at in terms of how that will work.

Consultation is one thing, and I think we have a general understanding as to what that is. Cooperation is something that is more than consultation. Perhaps, in the context of this article, is it for Indigenous peoples to determine, as well as government, how this article will be interpreted?

The concern will be what expectation, even though we’re saying to each other here in committee that this has no force and effect.... Hopefully First Nations understand that, as they hear government’s responses to our questions in committee here, in an effort to get greater clarity.

Does this mean, then, that Indigenous peoples will have their own interpretation of what this right is, as expressed in article 4? Are we raising an expectation here for First Nations to determine, in absence of a clear understanding and indication from this government...? If it’s to be determined in the process, by virtue of section 3, when we talk about consultation and cooperation, will they be determining, as well, what ways and means for financing ought this be?

To the minister: help us understand what the position of the government will be in the face of that expectation. Is it the government’s expectation, as they have that consultation and cooperation type of discussion...? What is the position of the government vis-à-vis whether this is to be determined as ways and means for financing through autonomous functions? Is that to include the funding from the provincial government?

The Chair: Minister, before I ask you to answer, am I getting from the member’s question that you are finished with section 2 and that we can move to section 3, which is the one that refers to measures to align laws with declarations?

M. Lee: No, Madam Chair. I’m only illustrating by point that the minister, in his response to the member for Abbotsford West, again reiterated that UNDRIP has no force and effect, and that even though the word “right” is used here twice in this article, it doesn’t mean right. But the fact of the matter is, as the government sits down with Indigenous peoples, however that is defined under section 3, by illustration....

As the minister said, we need to look at the totality of this bill. We can’t just look at articles in isolation.

The Chair: Member, thank you for your response. I’m really only trying to clarify where we are in the legislation. I’ll turn this question back to the minister. Thank you.
Hon. S. Fraser: Just a couple of things in response. There may be different interpretations of these articles. This is why we’re going to work together. That’ll form an action plan, doing this together with cooperation. Working together, we’ll get clarity. We’ll get better outcomes. That’s what’s built into this bill.

I would harken back to the Concrete Actions document, the agreement that was entered into with the previous government. Contemplated in that — in 2015, I think it was... A new fiscal relationship was built into that, agreed to as an important initiative with government and with the leadership council in the day back then.

I’m assuming we’re on the same page on those. We took over that document, the Concrete Actions plan. We refined it, of course, and we’ve included the UN declaration as part of that too. The fiscal piece that we’re talking about, I think, in article 4 — I think that was almost contemplated by a previous government.

M. de Jong: The minister has restated something. So I’ll very quickly restate something that probably by now has emerged as a theme from the line of questioning.

We are not asking the minister to endeavour to articulate how Aboriginal peoples, First Nations, might interpret provisions of this declaration. We’re not asking him to endeavour to interpret what may have been in the mind of the United Nations, to the extent that a body of that diverse composition has a single mind, when they created this.

We are asking him to articulate, on behalf of the government that is urging its application to the laws of B.C., to share with the people of B.C. its views on what the document means? And I will say again that I believe that is not just a fair exercise for us to embark upon but, really, our duty and the duty of the government to share those views.

Article 5. I don’t have a lot to explore. Again, reading into the record: “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

My sense is that there are a lot of examples today in British Columbia about how that particular article operates, but my job is to pose the question to the minister. Does he agree? Can he summarize what he and the government believe article 5 is addressing? And then, thirdly, can he provide some examples to help illustrate what article 5 is referring to within the context of British Columbia?

Hon. S. Fraser: I see article 5 as pretty self-explanatory. I can throw some examples, perhaps. In my constituency, in Mid-Island-Pacific Rim, there are a number of Maa-nulth Nations, including the Huu-ay-aht First Nation, that have a treaty, of course, and Huu-ay-aht councillor John Jack has once again been re-elected as the chair of the regional district board.

Again, examples here. We have examples, of course, in this place, of Indigenous people entering into the larger political realm in the province. We see that in Canada too. I think those examples would be how I would interpret article 5 — the right and the ability to be able to do that. There are all kinds of other examples, I’m sure, that the members could probably come up with.

I know I’m being given the note to close out here for the day, but I just want to reinforce the value.... Bill 41.... I can’t underestimate the value of coming together in a different way, one based on respect and recognition, using the framework that we get from the UN declaration and working together with that on these articles to help develop an action plan together. That is going to be a great benefit to this province, when it comes to justice, when it comes to human rights and when it comes to economic activity — less conflict, more predictability and more clarity. This is a process that we will all....

I know the members opposite have seen the response from NGOs, from academics, from the business community, from the B.C. Chamber of Commerce, from the B.C. Business Council, from the mining sector, from tourism, from labour — across the board. The approach we’re taking, I know, is a bold step. It has not been done before. But the time is right to do this, and I very much appreciate the interaction we’re having today and the ability to go through this bill in the way we are.

With that in mind, I move that the committee rise and report progress and ask leave to sit again.
Motion approved.

The committee rose at 6:53 p.m.
The House in Committee of the Whole (Section A) on Bill 41; R. Leonard in the chair.

The committee met at 11:07 a.m.

On section 2 (continued).

M. de Jong: We ended last day.... As I recall, the minister gave a response with respect to some question about article 5. I thought, actually, that he answered the question on point that had been asked, providing some examples about how that article might be interpreted. He gave some insight into the government's views on the relevance of that article to the situation in B.C.

Article 6 in the declaration is pretty straightforward. It reads: "Every indigenous individual has the right to a nationality." My sense is that that is not an issue in the context of British Columbia. It is recognized that British Columbians, be they Aboriginal or not, enjoy status as citizens of Canada and that nationality. If the government interprets that in any way other than that, I'm happy to hear the minister offer his thoughts.

[11:10 a.m.]

Hon. S. Fraser: I agree with the member's interpretation. I think that's accurate. As we talked about before, the articles of the UN declaration need to be contextualized for each jurisdiction. Of course, this was an international declaration, so I'm sure there are applications in other jurisdictions.

If I may, hon. Chair, I do have some information from yesterday's session. The question was regarding the UNDRIP being used as an interpretive aid, and the member was looking for an example.

In addition to the three cases that I referred to yesterday, I've got several more such cases that spoke to the use of the UN declaration as an interpretative aid. Canada (Canadian Human Rights

M. Lee: Thank you to the minister and his team for giving further examples of court decisions that have utilized UNDRJP as an interpretive tool.

I did have a chance to look at the decisions yesterday that he cited. There are some brief references, certainly, that are consistent with that being the case, including one that related to one of the preambles, which is preamble 13: "Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child."

This was named as another international document in the course of one of the decisions dealing with children and their rights and the need to have greater protection and, certainly, something that we all would want to support. I think that that was an example where this document, this declaration, was being cited as recognition of that. Now, how the parties went on to utilize that principle was something that they each had different viewpoints on.

I think that was a useful example to see how a principle might be cited. But certainly, as the minister just said, it needs to be contextualized for application in the jurisdiction in which it's being applied.

The other decision was actually citing the decision I named, which really buttressed, again, the court's agreement that UNDRIP is there to be an interpretative tool of domestic law.

I look forward to reviewing the decisions that the minister cited. As I mentioned yesterday, we have a general understanding that I will have the opportunity to come back in these committee proceedings to have any further discussion regarding those decisions.

M. de Jong: On to article 7 of the UN declaration, which is divided into two parts. I'm going to focus on 7-1, which reads: "Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person." Various concepts, clearly important concepts, are referred to in article 7-1.

I wondered if the minister and the government shared my view that it is in this section, in the context of British Columbia, that health care — I know the Health Minister is here, coincidently — concepts of mental health, which I don't think are necessarily referred to more explicitly in the declaration.... But does the minister believe the notion of health care — and we talked about constitutional responsibilities within the Canadian context, that clearly being a provincial one — is captured by the first part of article 7?

Hon. S. Fraser: Yes, I believe it could.

M. de Jong: The question that flows from that is: in the days ahead — days, weeks, months, ultimately, years ahead — in the post-passage of Bill 41 and the application of the declaration in the way that the minister indicates Bill 41 contemplates, how does the minister anticipate engagement with the Indigenous peoples to change, if at all? What is the impact going forward?

The declaration, the minister has advised the committee, is designed to provide a guide and influence. How, going forward, when the minister looked at the declaration and the government looked at the declaration and saw article 7 and how it touches on these fundamental issues of health care and mental health care...? How does he see article 7 influencing the behaviour, conduct and engagement of the government going forward?

Hon. S. Fraser: Around article 7-1, I've already acknowledged that that could be interpreted in the way the member had suggested. We have a process built into Bill 41 for working collaboratively with Indigenous peoples on the articles, whether it's dealing with health care or whether it's dealing with other issues that the articles will be referring to. That process will unfold in collaboration with Indigenous peoples.
But I would cite that there are other articles, too, besides 7 that touch on health care within the UN declaration — specifically, articles 21 through 24.

It's important, I think, that the document be contextualized for each circumstance. Again, this is an example of where I think it needs to be read in its entirety. You can pull out individual articles or parts of individual articles and it may lose its context within the larger UN declaration, which of course incorporates 46 articles. So again, there are other articles, 21 through 24, that might actually help inform the question, I think.

M. de Jong: Well, with the greatest respect, I think the minister is partially correct in terms of the advisability of ensuring that, on certain topics, we explore the entire document. But the minister just had a conversation with the member for Vancouver-Langara about judicial decisions that utilized the declaration as a guide and as influencing analysis. In at least two of those decisions, I am certain the court looked at individual articles.

It's the second or third time that the minister has indicated a hesitancy about examining the articles individually. I think the minister is correct in suggesting that it can be a bit dangerous to pull out individual words, although sometimes that's necessary.

Look, Bill 41 purports to apply, in the way that the minister has described, the declaration to the laws of British Columbia. Laws are words. It is the means by which this society creates rules with words, and the words are important. I presume that the minister agrees with that. In applying the declaration to the laws of British Columbia, we are taking the words of the declaration. We may be guided by the spirit. We may be influenced by the important symbolism. But in applying it to the laws, we are taking the words.

The articles deal with a variety of.... Article 32 is different from article 2. They deal with different matters. If the minister is correct and the courts will continue to use the declaration as an interpretive guide, they will do so on the basis of the words.

When the minister began his last response, he said article 7 could be interpreted to include reference to health care and mental health care. I'm not trying to be argumentative, but the point of this exercise, in large measure, is for the committee to ascertain from the minister what the government's view is. My view is inconsequential. It is what the minister and the government believe article 7 speaks to.

I think the minister is prepared to acknowledge that it speaks to health care, but when he says it "could," that's actually not good enough. What does the government believe article 7 in the declaration refers to?

[11:25 a.m.]

Hon. S. Fraser: I mean, I hear the member here. I gave, I think, a credible answer. He may disagree with it. I also, I think, gave some advice as to where other articles might apply to the questioning that he was doing. I was trying to be helpful. I wasn't trying to be anything other.

I just want to make sure the member understands that as he delves into the words, each individual word of each individual sentence of each individual article, within the 46 articles of the UN declaration, he's missing, I believe — and I mean this with all due respect — the core aspect of Bill 41. This is, I think, the problem with him going down this rabbit hole here.

Bill 41 essentially provides a process to work collaboratively with Indigenous people in the province. We have that process in the bill. If we ever get through section 2, he will see that clearly. That is key to what Bill 41 is. To be quite clear, this is about working collaboratively with Indigenous peoples in the province in a way that maybe has not happened in the previous government or previous governments. This is about coming into the conversation — the process that I've described that is in the further sections of Bill 41.

This is a process that we're going to do with an open mind and an open heart. We're not prescribing for Indigenous people how they should interpret every article of this UN declaration. I believe it does a disservice to the bill to take us in that direction. It will be fraught with confusion, I think, to try to pin down how we will work with First Nations prior to working with First Nations.

M. de Jong: With equally great respect, I profoundly disagree with the minister.
The minister has made quite clear his and the government's desire to embark upon a process to work collaboratively — and, he just said again, differently — with First Nations and Aboriginal partners. I accept that, but the basis upon which he and the government purport to do that is a document called the UN declaration. I think people are entitled to know what that document says — because, presumably, it will guide what those differences are. The differences and the collaboration, by virtue of the bill, are based upon this declaration.

I'm surprised. I'm surprised that the government and the minister seem reluctant to want to explore what that declaration says. If the government simply wanted to create the basis for this different form of collaboration around a set of principles, it could have done that. But it has chosen, instead, to tie that different approach to this document, this declaration. It has tied the document to the bill, happily — and, I think, appropriately. Surely it is appropriate, then, for us to explore — on behalf of the committee, the House and British Columbians — what the document says.

We continue. Now we have in our presence both the Health Minister and the Mental Health Minister, so that's convenient as well. Are there any present plans — I emphasize the word "present," because I think I can anticipate what the minister's answer is going to be — with respect to article 7 and what we, I think, have established about its reference to health care and mental health care? Are there any present plans to allocate additional dollars to address the intent and the spirit of what is contained in article 7?

Hon. S. Fraser: Not that I'm aware of. We will be developing an action plan, as is highlighted further in Bill 41. But I'm going to say this again, because it needs to be contextualized: the bill does not give the declaration legal force and effect. The UN declaration helps to provide a framework for moving forward in a process that is clearly delineated in this bill, Bill 41.

M. de Jong: The minister, I think, in that case provided an answer: no present plans for a budgetary allocation. That may change. That remains to be seen in the future.

Let's go, if we can, to article 8. The reference there, in article 8-2, includes the phrase: "States shall provide effective mechanisms for prevention of, and redress for...." Then it lists, in the following subarticles (a) through (e), a number of actions that can give rise to redress. What does that word mean, "redress"?

Hon. S. Fraser: The word "redress" refers to "to remedy" or "set right." You'll probably find other synonyms for that, but that would be, I think, the appropriate definition.

M. de Jong: Thanks. That's helpful. Remedy. What would those remedies include, in the minds of the government?

Hon. S. Fraser: We're having those discussions, and we'll have those discussions, with Indigenous peoples.

M. de Jong: That's less helpful. British Columbians would like to know, when the government reads subarticle 8-2, where the word "redress" occurs — which the minister has indicated is a synonym for remedy — what the government believes that captures in terms of the range of possible remedies generally. I'm not asking with respect to any particular circumstance. What, in the government's mind, is captured by the word "redress" or "remedy"?

Hon. S. Fraser: We'll be having those conversations, and we are having those conversations, with Indigenous peoples. That's part of the process that Bill 41 is. It is a process of us working collaboratively with Indigenous peoples in a way that reflects respect and recognition.

M. de Jong: Does redress and/or remedy include financial compensation?

[11:40 a.m.]
Hon. S. Fraser: It all depends. We have no specific plans. The previous government, I think, addressed this question when they were in government. It’s dependent on circumstances.

M. de Jong: I come back to this point. The words clearly have some meaning. I understand that what is deemed appropriate redress in one circumstance may be different than what is appropriate redress or remedy in another. I’m asking, though, the minister on behalf of the government to articulate in a general way what is captured by the notion of redress or remedy. I quite frankly don’t see this as a very difficult question.

I presume it can include financial compensation. It could include land transfer. I mean, there are other things that are referred to in the document. But again, my views on this matter are far less significant and far less relevant than the views of the government and the minister. That’s all I’m asking. The circumstances may well determine which form of remedy is appropriate, but what does the government consider redress or remedy to include within the context of this article of the declaration and within the context of the British Columbia experience?

Hon. S. Fraser: Besides the examples the member provided as examples, you could include impact benefit agreements. You could argue treaty or non-treaty agreements. A whole suite, including.... Of course, these are things that all government engages in and has been engaging in. I believe those are all good examples.

M. de Jong: Well, we’re getting somewhere. These are not meant to be trick questions. The minister has been clear about the application and how that is intended to take place. It is merely a case of, as I said before, trying to properly understand what is in the government's mind with respect to these provisions that have been deemed so important and so historic.

Subarticle 8-2. I’m going to ask the minister this to perhaps provide some views from his and the government's perspective about the circumstances in which this becomes relevant in the British Columbia context. Maybe the best way for me to do that is to point to a historic example, or a couple of historic examples.

We are aware, for example, of the dislocation that took place of the Kwadacha First Nation at the time of the creation of the Williston reservoir and the building of the dams. I believe a similar phenomenon occurred for the Cheslatta. Is this provision designed to address that kind of circumstance? Is that what subarticle 8-2 is about?

[11:45 a.m.]

Hon. S. Fraser: I think the short answer is yes, it could, although I’m going to just maybe address the wording a bit.

We were not involved in the design of the UN declaration, so I wasn’t at the table. There were prominent British Columbians who were, for decades, at the table. I wouldn't want to speak for them, and I do not know what their intent was as they drafted this. But I think the answer is: yes, it could.

M. de Jong: Right. Well, I will reply by again assuring the minister. It would not be fair for me to ask him to speculate about what might have been in the minds of the authors at the UN, what may have been in the minds of the parties, the signatories. But I think it is fair for him to be asked to articulate, on behalf of the government that has chosen to take a step that no other government has taken, what these words mean to the government.

The minister has indicated that, in his and the government's view, this article would have application to the type of circumstance that we saw develop with the Kwadacha and the Cheslatta. Does the government believe that the declaration and the article are intended...? In the mind of the government, does it view there to be a historic limitation around the application of these provisions?

I've given two examples that are historic in nature. I presume that the government and the minister would say that part of why this legislation is here, and the relevance of article 8, is to ensure and guide governments in the future to ensure that never happens again and that this will play a role in helping to ensure that kind of thing doesn't happen again. But is the minister prepared to share the government's view on what the historic application of a provision like article 8 might be?

[11:50 a.m.]
Hon. S. Fraser: There's no straightforward answer, I don't think, to the question. We look, as the previous government did, at specific cases. The member cited two cases, I think, that would fit into this category. We have no... I think he was talking about limitations. I'm not sure if he meant time, but we're not contemplating any time limit here, as far as the question the member asked. We see this as moving forward. The entire declaration is about the future. It is about moving forward.

With that in mind, I move that the committee rise and report progress and ask for leave to sit yet again.

Motion approved.

The committee rose at 11:51 a.m.
M. de Jong: We have been embarking upon an analysis of the declaration that is very much at the heart of — arguably, the raison d'être — the bill before the House. We had left off with a conversation of article 8, to which the minister provided a reply.

Let's go on, then, to article 9, which reads as follows: "Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right."

When I read that, it occurred to me that the discrimination that the article is purporting to deal with.... There could be two types. There could be discrimination imposed by the state within the meaning that we have already discussed — the organs of the broader state. It doesn't say that. Or it could be discrimination that might arise with respect to an individual member, an individual Indigenous person, that originates elsewhere.

The example I actually thought about was some of the older jurisprudence, where members of Indigenous communities found themselves disenfranchised or excluded from that community by way of rules around marriage.

My question to the minister in commending the declaration to the people of British Columbia in the way that he and the government has: what does article 9 mean to him and the government?
The Chair: Minister.

Hon. S. Fraser: Thank you, Madam Chair. Welcome to the proceedings today on Bill 41. I think the case that the member referred to relates to the federal Indian Act and how it’s implemented. I believe that’s the example he’s using. Article 9 is about self-determination, once again — about self-determination and allowing for Indigenous people to be part of a nation or in accordance with their traditions and customs without fear of discrimination.

M. de Jong: Right. In referencing the historic example, I was trying to provide some indication to the minister of what I thought article 9 might be addressing or be intended to address. Again, I come back to this question about what is in the government’s mind. It is one of 46 articles that the government believes is an important part of a new approach. I’m trying to elicit from the minister some indication of what those words mean within the context of British Columbia, particularly moving forward.

I can put this another way to the minister. If the government of British Columbia — and I, in no way, suggest that he or his government are contemplating this for a moment — were intending, or subsequently passed a law that attempted, to impact the rights of an Indigenous person to belong to a particular community, I presume the minister would agree with me that that would run afoul of the spirit contained within this article.

Hon. S. Fraser: I’m reluctant, sometimes, to deal with a hypothetical, but I’d say yes, I think, to answer that.

M. de Jong: Right. Well, I would too. Perhaps to offer the minister some assurance, in considering the provisions of a document such as this, I’m not sure how we avoid dealing with hypotheticals. I’m not sure how else we illustrate, or the minister illustrates, the kinds of things that these provisions are designed to address or prevent. There are certainly plenty of examples in the history of this parliament where legislation has drawn on examples, and the minister is always quite proper, in my view, to highlight the fact that they are just hypothetical examples.

I agree with him. I think an initiative of that sort by a future government would be contrary to the spirit of article 9.

Similarly, what is the minister’s view on a measure that an Aboriginal community might take, of the sort that we have seen in the past, that purports to impact the status or ability of an individual to be a member of a community or of a nation on the basis of marriage? Would that similarly, in his view, run afoul of the spirit of article 9?

Hon. S. Fraser: In our view, this section speaks to self-determination of a nation to govern themselves. I can’t and we can’t speak for how a nation governs themselves. But our commitment, in bringing in the bill, is that when we pass laws — we, the government of British Columbia — we do not contribute to discrimination.

M. de Jong: Okay. Well, that’s helpful, because it suggests that how the government views article 9 and the spirit of what is being communicated by the United Nations here is that non-Aboriginal, non-Indigenous governments not engage in discrimination, discriminatory conduct, discriminatory legislation. But the right of an Indigenous group, an Indigenous community, to enact rules that might be disadvantageous or discriminatory towards individual members can in certain circumstances proceed because of the overarching right of self-determination.

Have I characterized the minister’s description correctly? If not, maybe he will correct me.

Hon. S. Fraser: I thank the member for the question. As Indigenous governments make their decisions for their communities in the interest of self-determination, they have internal accountabilities within that process. And I’m confident that they will use those fairly and appropriately.
But let me be clear. We don't believe there should be any discrimination as far as the government of British Columbia is concerned.

**M. de Jong:** Well, let's go to article 10. A couple of things. It is the first time in the declaration that that oft-discussed phrase, "free, prior and informed consent," appears. My colleague, in a moment, is going to pose some questions. It won't surprise the minister to know that his thoughts and the government's thoughts on the use of that phrase within the declaration will be probed a little bit.

Before we get to that, however, if we might deal with a couple of other aspects of article 10, which reads as follows: "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."

We talked, before the break, about a few examples, and there are others, in the history of the province, where relocations did take place. And what I wish to confirm at this point with the minister is.... My interpretation of the article is providing a clear enunciation of the principle that in the case of an Indigenous people being relocated, there is an entitlement under the terms of the declaration to compensation. That would appear clear on the face of the article. Does the minister agree?

[2:00 p.m.]

**Hon. S. Fraser:** As the members know, the UN declaration was written with an international context. I know the member knows that.

That being said, we know that such relocations, as the member has stated, have happened here in this province. As a government that's embarking on this direction on Bill 41, we don't want to see that happen again. As the member knows also, for those past situations, we do need to continue to work with those nations that were impacted before and address the issues, including, potentially, compensation, as the previous government did too.

**M. de Jong:** I was thinking that it's been a decade since I sat in the minister's chair. My recollection is that — at that time, at least — there were still unresolved cases of forced removals and relocations of Aboriginal peoples. I can't remember the specifics around that. I do recall, in some cases, they were large groups of people and, in other cases, smaller groups of people.

Are there still unresolved cases of what we might term forced removals or relocations of Aboriginal peoples in B.C.?

[2:05 p.m.]

**Hon. S. Fraser:** There may be assertions to the member, but still the most recent example that we can remember, and I think the member touched on this earlier, would be Cheslatta. I know that's something the previous government started working on, and we have settled that as a government. This government has settled it, but the work has spanned both governments.

**M. de Jong:** As always, I think the minister is choosing his words carefully. That's appropriate. It sounded to me as if the minister was advising the committee that there continue to be claims, assertions, by Aboriginal peoples in B.C. around issues of forced removals and relocations.

Has there been, under the existing approach that the minister points out has been followed by his government and previous governments...? Is there a reasonably up-to-date quantification around the likely cost or liabilities associated with those unresolved claims or assertions?

**Hon. S. Fraser:** That would be a no.

**M. de Jong:** Is article 10 and the approach it speaks to relevant, in the minister's mind, to the resolution of those claims?

**Hon. S. Fraser:** I would submit that absolutely it's relevant. What's more, there may be more articles within the UN declaration that also might pertain and be relevant here too.
M. de Jong: I appreciate the first part of the answer, and I agree with the second part of the answer. How is it relevant?

Hon. S. Fraser: It is relevant in principle. I think it reflects how we want to approach these types of issues, as government.

M. de Jong: It is presumably relevant if, in the minister's mind, it will alter the approach that the government intends to take to these matters. How will it do that?

Hon. S. Fraser: I would submit that it supports our current approach, as opposed to altering it.

M. de Jong: Okay. I will restate what I think I've heard, and again, I urge the minister, if I do this inaccurately or incorrectly, to correct me.

I believe what the minister has advised the committee is that there are still claims, assertions, that are unresolved within B.C. relating to forcible removals or relocations of Aboriginal peoples from their lands or territories. Two, he believes that article 10 of the declaration is relevant to those matters. Three, it is relevant because it reinforces the approach the government is presently taking. And then finally, from that, I am surmising that the minister is also saying the government doesn't intend to alter its approach to those unresolved claims.

Hon. S. Fraser: I would like to correct it for the record. I know the member may not have meant to do this, but in reflecting my words, he said that there are assertions. I believe I said there may be assertions. I'm not aware of any, but I just think it's important that that be clarified. And while I think our approach as government is reflective of article 10, nothing precludes government — this government or another government — from evolving that approach.

Certainly, as the bill that we're.... Well, we're not debating the bill. I realize we're talking about articles within the UNDRIP. But when we actually get to Bill 41, there are approaches there that will allow us to work with Indigenous peoples collaboratively. I'm hoping we get to that at some point. That will allow us to....

Government's approaches may evolve because of that, in this case or in other cases.

M. de Jong: Thanks to the minister. I stand corrected, and now I will endeavour to correct the minister on a not insignificant point.

We are in Bill 41. Bill 41 is about the UN declaration. It is the singular reason, if we believe what the minister and Premier said, for the existence of Bill 41. I think I understood what the minister meant. We will get to additional sections of Bill 41, but we are in Bill 41. The declaration is Bill 41. Back to the point the minister was making. It sounds to me like what the minister is saying to the committee is that article 10 may yet, at some point in the future, inform government on differing its approaches to the matters referred to there, if those matters present themselves. But there are no immediate plans, no plans today to alter the approach. Is that a fair comment?

Hon. S. Fraser: Yeah. I mean, I think this supports what government is doing. This allows us to still have evolution of how.... Government mandates can continue to evolve, as they have before.

M. de Jong: On these matters, no immediate plans to alter those mandates.

Hon. S. Fraser: Correct.

M. de Jong: Last thing on the article before my colleague from Langara engages with the minister on that off-repeated phrase. I read the words "option of return" literally as the UN conveying, in article 10, the notion that where a situation like this arises, there needs to be fair compensation.

As it says "where possible, with the option of return," I took that to mean the option of the Indigenous, Aboriginal peoples to return to the lands or territories from which they had been displaced.
Does the minister agree?

Hon. S. Fraser: Yes, I agree.

M. Lee: I wanted to just focus here, if I may, on the usage of the words which come up in other parts of the declaration. First, to the minister, could he please provide to the committee his understanding, for the purpose of the declaration on behalf of government, of what the terms "free, prior and informed consent" mean?

Hon. S. Fraser: The term "free, prior and informed consent" — thank you to the member for the question — refers to working together to get better outcomes.

M. Lee: I know that this term has been utilized. I attempted to have some discussion with the minister yesterday in terms of the application and progress that the government has been making against its ten draft principles. I note that one of the draft principles includes this term as well.

Have there been further learnings in terms of the government's dealings with First Nations as to how this term would be utilized, even prior to the option of this bill?

Hon. S. Fraser: It's hard to find a specific, but we're always learning, I think. And we're learning that by working together in cooperation, in partnership, with respect from the beginning, we get better outcomes.

M. Lee: Just wanted to come back to the term that the.... You know, I think that with the importance of reconciliation with Indigenous peoples, wording and spirit of working together is certainly embedded with that.

In terms of mutual understanding, is there a distinction to be drawn in the way that the minister is explaining this term from...? Is there a difference between mutual understanding and mutual agreement?

Hon. S. Fraser: The difference between mutual understanding and mutual agreement. I'm not sure I understand the question. I'm not sure where it's.... Is there any way that the member could rephrase the question? I'm just not sure how to answer that.

M. Lee: Well, I'm just curious. The minister chose to use the word "understanding," as opposed to "agreement."

So, for example, when Regional Chief Terry Teegee spoke eloquently as part of the grand proceedings on the chamber floor, he said, in response to the use of the word "consent," that consent is about agreement. He went on further to say: "Consent is a process to achieving and maintaining agreement."

I just want to, first, ask the minister again as to whether there's an intentional distinction that's being drawn here by the government to not use the word "agreement" and to use the word "understanding."

Hon. S. Fraser: The answer would be no.

M. Lee: Let me just come back first, though, to the other two words. Presumably, "free" — if we can just focus on that word first — means where Indigenous peoples are not coerced. Is there another way to describe that?

Hon. S. Fraser: Free of coercion — I think that is a good example.

M. Lee: In terms of the word "prior," what is the intentional nature of this term, in terms of...? It must be, of course, prior to government action being taken; or prior to the, in this case, forcible removal
that was to take place, or relocation, which is what article 10 speaks to. But in terms of this term itself, if you could just describe the temporal nature of "prior" as to when that might occur.

[2:25 p.m.]

**Hon. S. Fraser:** As early as possible.

**M. Lee:** When we talk about "as early as possible," I think that probably ties into the next qualifier on consent, which is informed. Presumably "as early as possible" means when all parties, including the affected Indigenous peoples, have the information necessary in order to work together with government, to use the wording that the minister has utilized, to find mutual understanding or agreement. So when is it that the minister would expect, in the course of this process, that First Nations would have that information to be sufficient to be able to provide and reach and confirm their prior consent?

**Hon. S. Fraser:** If I could answer that question, maybe, by means of examples that are real-life examples. I notice a number of companies have figured this out maybe ahead of government. In many ways, I see the work the mining industry is doing with the Tahlitan, for instance. It's involving the nation from the beginning. In my constituency, there is a company known as Steelhead that was proposing a joint venture, basically, with the Huu-ay-aht First Nation.

Inside government, we have.... The environmental assessment process was rebuilt with this in mind, actually — to involve a nation from the very beginning of a project and utilizing things like traditional ecological Indigenous knowledge, that sort of thing. I think we've got.... Rather than me trying to describe it, those examples, I think, speak for themselves.

**M. Lee:** I think it probably just brings us back down to the quality, I suppose, of the consent that's being sought. When we look at consent itself, is it fair to say...? Perhaps I could just read the rest of the quote from Regional Chief Terry Teegee. Just to restart the quote. It's in the paragraph in his speech: "Consent is about agreement. Consent is a process to achieving and maintaining agreement. Consent is about sharing and respecting our laws as equals and as partners. Consent is the trend of our court cases. Consent is the future, and most simply put, it's about coming together as governments, as people seeking to find common ground."

Can I ask...? Would the minister agree with that statement? He's also gone on further, of course, to say.... The lead-in to that is that "this declaration law is not about providing any government with veto rights." This is a contrast that he is drawing. Just recognizing that that is the lead-in statement, does the minister agree, in terms of how this government understands the word "consent" in the context of free, prior and informed consent, that he would agree with the Regional Chief Terry Teegee's explanation?

[2:30 p.m.]

**Hon. S. Fraser:** I appreciate Regional Chief Terry Teegee and his comments that he made. I think they were powerful.

I put it into my own words. I believe working together, with respect and recognition from the very beginning and throughout a process — without coercion, of course — to achieve agreement and consent is the path forward to opening up this province.

I would also note that Regional Chief Teegee worked closely, I think, with the Minister of Environment to actually help build the new legislation — again, another example, I think, of free, prior and informed consent in actually creating a piece of legislation.

I think, yeah, we're in a good place. We're working with good partners in this province when it comes to members of the leadership council, including Regional Chief Terry Teegee.

**M. Lee:** Again, I don't think anyone disagrees with the importance of working together. I think that that's what successive governments have demonstrated through the course of decades, and it's getting better. I mean, it's been, certainly, an important work in progress. Hopefully, we're making, with our combined efforts, more progress towards the kinds of partnerships that are needed with First Nations in our province.

Just back on this distinction. I think it's important to understand, even in the context of article 10, that in effect the distinction that at least Regional Chief Terry Teegee is trying to draw is that the usage
of the term…. He says "consent," but I think he presumably means how consent is utilized in the declaration, which has the words "free, prior and informed consent" in front of it. The usage of those five words in combination does not mean veto. Does the minister agree with that?

Hon. S. Fraser: It does not mean veto. Perhaps for clarification, if I could read this into the record on — people refer to it as FPIC; I hate acronyms — free, prior and informed consent. Just to put it in context, the UN special rapporteur, James Anaya, in 2007, put the term "free, prior and informed consent" into context in the declaration. I'll just quote from him. "The overarching objectives of free, prior and informed consent is that all parties work together in good faith to make every effort towards mutually acceptable arrangements, allowing Indigenous peoples to genuinely influence the decision-making process."

I think that Mr. Anaya captured the concept. It's the best description of "free, prior and informed consent" that I have seen.

M. Lee: Thank you for reading that quote and that description. Also, thank you for, in response to a few questions earlier, giving a number of examples. Certainly, I'm familiar with a number of them, including the second one, because in my previous profession, my law firm used to act for the proponent of that LNG project, Steelhead, as the minister mentioned.

I certainly understand the importance of the earlier work, either by resource companies or other entities, working with Indigenous peoples and First Nations. That sort of process has come along, and I think it fits within the definition that the minister just gave.

If I could ask to the minister: in his view, when he looks at those examples and looks at how consent is being obtained — at least in terms of working with First Nations, if that's how this is being described — is there going to be any change as a result of the application of this article 10 in the British Columbia context?

[2:35 p.m.]

Hon. S. Fraser: I'm unclear of the.... Just a couple of questions I might have here. But as related to article 10, if you're talking about free, prior and informed consent as related to article 10, this government has no plan to relocate anyone. If it's a broader question, I can try another shot at that.

M. Lee: Thank you for your indulgence, Minister.

I was actually referring to the use of the term, just while we were on it and because you gave those number of examples. I don't think any of those examples also related to forcible removal or relocation.

While it's still fresh, perhaps you could just give this committee your thoughts on whether, when you look at the quote that the minister read out and you think about the examples.... Could the minister just reflect upon and share with the committee his views on whether they're already — in practice, in terms of how resource companies and other entities in this province work with First Nations — in that process that fits within the description of free, prior and informed consent?

Hon. S. Fraser: Thank you again to the member for the question.

In the examples given already, I think it's clear that the government is already moving in this direction, and I think we've accomplished much. I would submit also that there are many businesses out there, companies with projects that are doing this already. I agree.

But it is a journey that we're on. The bill itself, Bill 41 — the core aspect of it is to develop a process to work collectively and collaboratively with Indigenous peoples on everything, including free, prior and informed consent. So we'll continue to do that along that journey, and we'll get better. We'll consult earlier, work better and have better outcomes. We're certainly not finished that journey yet.

M. de Jong: On to article 11. It's lengthy. I'm not going to read it into the record. I am going to suggest and ask for a reaction from the minister to the following. In British Columbia over the last number of years — many years, in fact — the tension that has, at times, developed around the notion of preserving archeological sites and where those sites are located and who will assume the responsibility and has revealed itself in a couple of ways.

[2:40 p.m.]
It has revealed itself with respect to a tension between Aboriginal peoples and groups and the Crown, where a particular archeological site is located on Crown land. Then in other instances, it has revealed itself in a tension between Aboriginal groups, First Nations and private landowners because of where the archeological site is located. That has frequently engaged involvement by the Crown.

Is this article 11 — 11-1 and 11-2 — relevant, in the minister’s mind, to those types of scenarios that have recurred in B.C?

**Hon. S. Fraser:** I don’t mean to repeat myself, but… I appreciate the question. Our government tends to interpret and meet the ends of the declaration appropriately, considering the articles holistically. That being said, I believe that the section referred to, section 11, indeed has relevance.

**M. de Jong:** I’m interested to learn more. I’ll ask the general question. How, in the minister’s mind, is article 11 relevant to the types of scenarios that I’ve described that have occurred in B.C?

**Hon. S. Fraser:** There are a number of examples. I know the member opposite would have been dealing with some of those back when he was the minister ten years ago also. Significant sites, artifacts, burial sites, sacred sites, those sorts of things, are a reality in this province — and have been and will be. The section, article 11, refers to some of the issues that we deal with in the province — the returning of artifacts, helping to return the remains of ancestors. Those sorts of things will be ongoing.

Article 11, like, I think, all of the articles, again, taken holistically, are things that we will…. The time for government to say, "This is how we’re going to do it; take it or leave it," is what we’re moving away from. This is about working with Indigenous partners, with First Nations and with Métis in the province of British Columbia to address these issues together. That is part of what we see. The process for doing that will follow in the later sections of this bill.

**M. de Jong:** In one of the earlier articles, I think 9 or 10, the minister made the observation that he thought that article reinforced the approach the government was presently taking to the matters dealt with in the article. It’s probably a similar question here. Does the minister see article 11 as being supportive of and reinforcing the approach the government is presently taking? Or does he cite it as an added reason for altering that approach, and if so, how?

**Hon. S. Fraser:** I mean, the how of it is part of the later section of this bill, Bill 41 — how we work together with Indigenous people to develop an action plan. These issues will come up, and we will develop that together collaboratively.

**M. de Jong:** Are there any immediate plans, present plans on the part of the government, to increase the budgetary allocation to address the issues around archeological sites?

**Hon. S. Fraser:** I know that’s in the purview of the Minister of Forests, Lands and Natural Resource Operations, who I believe oversees the Heritage Conservation Act — which, arguably, I’ve had some issues with in the past, in opposition. I’m not aware of any budgetary asks. I’m not saying no; I’m just not aware of any.

**M. de Jong:** If we drop down to article 11-2, the reference there is to states providing — there’s that word again — "redress through effective mechanisms." I won’t read out the balance of the section in the interests of time. In the minister’s view and the government’s view, do we have to use the language of the United Nations declaration, "effective mechanisms," in place now?

**Hon. S. Fraser:** Actually, the act itself helps inform us on how to approach these sorts of things. Article 38 — I’m jumping ahead here; I hope that’s allowed — says: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration." Again, that’s part of the work of Bill 41, the process that it provides for us to allow us to move forward with reconciliation in a different way.
M. de Jong: The reference to the later article is helpful insofar as it speaks to a general approach. Article 11 speaks to something far more specific around archeological and historic sites and the preservation of cultural traditions and customs.

What the declaration calls for is states — in this case, British Columbia — to "provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent" — there's that phrase again — "or in violation of their laws, traditions and customs."

I have taken as a given that there are examples in our history where that has occurred. Maybe I shouldn't make that assumption. As I say, my views on that are not nearly as relevant as the minister's. Does he share my view that there are examples in our history where that has occurred?

Hon. S. Fraser: The answer is yes. But we realize and affirm that these efforts may evolve through our consultation and cooperation with Indigenous peoples — I mean, as stated in the UN declaration itself.

M. de Jong: Right. The minister answered my question. I think he got a little ahead of himself. My question was: are there examples in our history of where the issue arose, the issue contemplated in article 11? The minister said yes, there certainly are examples of that, and I agree with him.

The question that then follows from that.... The UN, via the declaration, has called upon states to provide redress through effective mechanisms, which can include restitution and then the rest. My question is: is it the government's view that today British Columbia has effective mechanisms in place? We do, or we don't. And ultimately, I'll ask the minister whether he foresees changes to those mechanisms.

But the first question is: in the minister's mind, do we have mechanisms in place today in the way contemplated by article 11-2?

Hon. S. Fraser: There certainly are mechanisms under the Heritage Conservation Act. Again, there are those that have criticized the act, myself included. However, since I've been minister, we have utilized sections within the Heritage Conservation Act. There was the Lower Similkameen burial site that was found. We were able to address and reclaim the remains from the burial site in a very successful way, I think.

I noted that the member opposite halted when he was quoting section 2. He said the states "shall provide redress through effective mechanisms, which may include restitution," and he stopped there. But it is the next part that I will focus on: "...developed in conjunction with indigenous peoples...." Is there work to do? There may well be. And if that's the case, we will develop that in conjunction with Indigenous peoples.

M. de Jong: I am more than happy to join with the minister to reassert the importance of the following phrase. And then to follow up with the question.... My sense is the minister and the government have some fairly specific views on this. Does he see Bill 41, the declaration, specifically article 11-2, as leading to changes of the sort contemplated and being done in the way contemplated by 11-2 in the immediate future?

Hon. S. Fraser: By working with Indigenous peoples on this and on other articles, we'll develop priorities. These things will not happen overnight. But the priorities are not going to be developed by myself as minister or the Minister of Forests, Lands and Natural Resource Operations. These priorities that are contemplated, the next step within this bill, Bill 41, the action plan that comes further.... That's how we'll develop those priorities.

M. de Jong: It's a theme the minister has returned to, and I think I understand why. It begs the question, though — this notion of developing the priorities, and it won't just be the minister.... I've been around that table long enough to understand and accept the veracity of what he's saying.
Is there a mechanism? Have the minister and the government, in advance of presenting this legislation, settled on a mechanism for how those priorities are going to be developed? The minister has talked about harmonizing and updating legislation. Is there a mechanism within government today to prioritize that work, recognizing that it can't all be done at the same time?

[3:00 p.m.]

[M. Dean in the chair.]

The Chair: Minister.

Hon. S. Fraser: Thank you, Madam Chair. Welcome to the proceedings and Bill 41.

We are, as government, working always on these issues. We work closely with the leadership council and individual nations and always try to get it better. But I think the meat of the question, actually, is covered in sections 3 and 4. It specifically deals exactly with the topic that the member is asking about.

I know we're still on section 2, so I would be real happy to get in a deeper conversation on this in the relevant sections of the bill.

M. de Jong: The minister, over his term in office and the assembly, has, as you pointed out, done some work, extensive work, that involved the tensions that can exist around the preservation of archeological sites. He has alluded to some of the challenges that he incorporated.

Will the minister agree with the following proposition as it relates to article 11? That is that depending upon the approach the state — in this case, the province of British Columbia — takes and how that might be altered in the future in the wake of article 11, there can be implications for private property owners on whose land archeological sites are discovered.

Hon. S. Fraser: I think the situations and the tensions that the member is referring to exist today, and they have existed, of course, for a long time. And I don't believe that.... In that sense, that won't change. What we have is a process ahead of us that may help improve how we address these issues through collaboration with Indigenous peoples.

M. de Jong: So the message, then, I think, again on article 11, to Aboriginal peoples and non-Aboriginal peoples, who may have an interest in these questions as they relate to archeological and historical sites, is to wait and see what emerges from the work and the conversations that take place some time in the future. Is that a fair summation?

[3:05 p.m.]

Hon. S. Fraser: In answer, the bill itself does not create any new obligations for government, but it creates new opportunities, I would submit, on how we work together to address these issues and other issues too.

M. de Jong: Was something I just said inaccurate?

Hon. S. Fraser: I just didn't hear it. Sorry.

M. de Jong: I put out a proposition a moment ago, and I will try to restate it from memory. I'm simply trying to ascertain to those who will pose questions about this.... I think what the minister has said, over the course of our discussion on this article, is that work will be undertaken as it relates to these issues of archeological and historic sites. There are no immediate changes, but that may again evolve as a result of the work going forward and that will present itself to interested parties, Aboriginal and non-Aboriginal. The results of that work will present itself, in due course, following that consultative work. Is that accurate?

Hon. S. Fraser: I think we're saying the same thing. I was trying to put it in my own words. I wanted to make it clear that the bill does not create new obligations for government. We work on these
issues. It's what we do in government. It's what the previous government did too, and that'll continue. But I believe that this bill will provide us the opportunities, new opportunities, to work in a different way to address these types of issues.

[3:10 p.m.]

M. de Jong: Does the minister agree that some of the components, particularly archeological and historical sites dealt with in article 11, in addition to being of interest to Aboriginal peoples are of interest to private property owners in B.C. insofar as existing practices and legislation can impose some fiscal consequences on private property owners? Is that a fair statement?

Hon. S. Fraser: I believe those pressures are occurring right now, so I think the answer is yes.

M. de Jong: In moving forward, does the minister in this instance, at least see merit in incorporating the views and providing a mechanism by which private property owners themselves might contribute to the future work that the minister has referred to as being planned?

Hon. S. Fraser: Throughout this process, we've always been clear this is about transparency. That will continue, and there will be opportunities to engage with the public, with local government and with stakeholders throughout the work ahead.

M. de Jong: Moving, then, to article 11, does the minister agree that the areas and issues touched on in article 11 similarly engage the attention and interest of Indigenous peoples and Aboriginal communities but may, in certain circumstances, also have direct implications for private land owners in B.C?

Hon. S. Fraser: If you could try to run that question again. I was looking at article 11. I believe you cited that, so I just lost the context with article 12.

M. de Jong: My question was: does the minister agree that the areas touched upon, issues touched upon in article 12 of the declaration in addition to eliciting the interest, the engagement and the concerns of Indigenous peoples can also have implications in the British Columbia context for private land owners within B.C?

Hon. S. Fraser: I'd say yes, in the interests of transparency, absolutely.

M. de Jong: For the record, perhaps the minister would like to indicate whether there are any changes in the approach to the matters dealt with in article 12 — any immediate plans to change — and, if that is not the case, provide his thoughts on the degree to which both Indigenous and non-Indigenous persons and landowners should be engaged in future changes that might be contemplated.

[3:15 p.m.]

Hon. S. Fraser: There is nothing imminent. There is nothing planned around the private lands in this issue. I think we do have work to do, though, to identify priorities with our Indigenous partners. That work, of course, built into the later sections of the bill, includes mechanisms for full transparency and public engagement also.

M. de Jong: In article 13, the United Nations declaration refers to "the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures." There is, I was going to say, a great deal of work... My sense is that there is significant work that continues to take place in British Columbia.

Does the minister's reading of article 13.1 lead to any conclusions on his and the government's part? Are there any immediate plans to expand upon the work that is taking place? Or are those decisions that we should await sometime in the future?
Hon. S. Fraser: I think it's safe to say — the member alluded to this — that a lot of this work is underway. Actually, a lot of it was a part of my mandate letter too.

We have invested $50 million towards languages, for instance, through the First Peoples Cultural Council. It's being distributed to help revitalize languages in British Columbia. Of course, the First Peoples Cultural Council does more than just languages. I think that's incorporated there.

I know that in the curriculum, the K to 12, significant changes have been made. I think that might have even begun in the previous government, so this work is ongoing.

Again, as this bill comes forward into law — the planning, the priorities — if there are gaps in how government is working with Indigenous peoples, it should be highlighted there, I think, in that process that will follow.

We're well underway on this. We anticipated this. These were considered priority by government, not just from me but certainly from my interactions with First Nations communities. It helped, I think, inform how we move forward as a ministry, certainly with the language piece.

M. de Jong: The minister can confirm that that ongoing work and that progress and the plans to even continue and possibly expand upon that work — none of that is contingent upon or dependent on or relies upon Bill 41. That's already work that's taking place. Is that correct?

Hon. S. Fraser: I think it's safe to say that more needs to be done. I don't think we could run into a First Nations community and find there is an acceptance of it, that the languages and culture are protected. We're not there yet.

The beauty of Bill 41 is it provides us a process to provide opportunity for us to do better and find out the priorities in a way that we maybe haven't had the opportunity to do. So this is about providing more and significant opportunities to address the issues around culture and heritage and language and the identity of nations themselves. Again, those opportunities will benefit all British Columbians and make healthier communities.

M. de Jong: One last thing with respect to article 13. In number 2 — 13-2 — the declaration urges states to take effective measures to ensure that the rights referred to in 11-1 are protected and "ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation...."

When the minister and the government read that provision, do any deficiencies immediately come to mind? Are there lingering issues in the justice system, for example? Are there issues in this place or in political institutions? When the minister reads that today, does it prompt him and the government to say, "Here are the areas that we believe need to be addressed," or are there any areas?

Hon. S. Fraser: I suggest there's probably a lot of work to do, but we are engaged in work already. I know there are park name changes. There are geographic place names that have been changed. There are agreements that incorporate Indigenous terminologies. So I mean, there is work happening already. But through Bill 41 and the engagement process that will follow with that.... That's covered quite well in the following sections of Bill 41.

There may well be.... The member mentioned issues around justice. I look forward to seeing what the Attorney General comes up with in that regard as we move forward in this process, post Bill 41, when the engagement process starts happening formally from this bill.

M. de Jong: In keeping with what the minister has said in other areas of this discussion, this doesn't create any formal or legal obligation on the government to take steps in the areas alluded to in 13-2. Is that correct?

Hon. S. Fraser: That is correct. However, it creates an opportunity. I believe that's what we see here.

If I may just have some indulgence here, Grand Chief Stewart Phillip from the Union of B.C. Indian Chiefs has arrived. I just wanted to welcome him and say hello.
M. Lee: I just wanted to turn the committee's attention to article 14 and ask the minister: what is the government's current assessment as to the ability of Indigenous peoples to meet what is set out in article 14-1?

[3:30 p.m.]

Hon. S. Fraser: The question is a bit of a strange one. I wouldn't want to take into question the current ability of nations to address these issues for any matter of importance, for that matter, including education. Self-determination includes us, as government, learning, I think, from the leadership that's been shown already and then working cooperatively and collaboratively to allow that to continue and flourish.

M. Lee: I didn't.... Let me just rephrase the question to clarify that. So when we talk about the wording in the article 14-1, it relates to the right of Indigenous peoples to establish and control their educational systems. So currently, in this province, will there be any changes necessary, under the Ministry of Education's mandate, to enable this article 14-1 to be met?

Hon. S. Fraser: The Ministry of Education already has a mandate to proceed in this way. They're working closely with FNESC, and they're actually making great strides in this regard.

M. Lee: In terms of the aspect of control, is there anything different in terms of what the ministry is currently working on — as the minister mentions — versus the way it's expressed in this article?

Hon. S. Fraser: The Ministry of Education are well on their way. They're doing a lot of work now on this. The ministry, I believe, will get more opportunity through Bill 41, because it provides a path to further the opportunities to improve outcomes, for instance. So I think there's always room for improvement, and that's the expectation that we all have — everyone at the table, whether it's the ministry, whether it's us, whether it's FNESC. So we need to do more work. Bill 41 offers us an opportunity and a path and a framework to do just that.

M. Lee: Again, the exercise that we're in is trying to gain clarity in terms of understanding what the government's intention is in the application of these various articles in British Columbia. So just with that in mind, as I read through the language in article 14-1, appreciating the minister's response in terms of the progress that's been already made to date with the Ministry of Education, is it the understanding of government that this article is to eventually see education being provided and controlled with Indigenous peoples in the major 35 linguistic groups?

[3:35 p.m.]

Hon. S. Fraser: I'm going to answer it this way. The reason for Bill 41 is exactly to create the framework to have the discussions of how we will implement the declaration. Creating a legislative framework for implementation means we are creating the space to have the discussions on how the declaration will be implemented in British Columbia. This is exactly why we have our.... That's why we have such legislation. That's why it's before us now — to make the space to understand what implementation looks like for this, working with education and a whole number of other topics.

M. Lee: I appreciate the discussion we're having at committee at length about each of the articles to gain a better understanding of the government's view on the intention, status and progress that this bill is enabling in terms of working with First Nations.

Let me just put a point on it, if I can, for the minister. When you read article 14-1, and the question I asked in my previous question, against section 4(1), it's been said that.... The language that's utilized there is: "The government must prepare and implement an action plan to achieve the objectives of the Declaration."

This is something that, of course, we'll discuss when we have the opportunity to discuss section 4(1) as to what the objectives of the declaration are, because when you read the declaration, the 46 articles, it's not entirely clear where it's stated in these articles what the objectives are. I think it's possible that 14-1 can be an objective.
Does the minister read article 14-1 as a possible objective, where we are trying to enable all Indigenous peoples to "have the right to establish and control their educational systems and institutions providing education in their own languages"?

Again, with 35 linguistic groups in British Columbia, is it the intention that that is the objective for which the action plan will speak to?

[3:40 p.m.]

Hon. S. Fraser: While subsection 4(1) cited the action plan, "The government must prepare and implement an action plan to achieve the objectives of the Declaration," that's yet to come, of course — this section. But you can't read that independent of subsection (2): "The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia."

The member is trying to pin me down on this as a minister. I'm not meaning it in any kind of a bad way here, but the whole purpose of Bill 41 is for us to work together on these things and develop the priorities, not be prescriptive as government, which has been the past practice. While the member also cited, going through this article by article, the UN declaration....

I've said this before, but I'm going to cite somebody more important than I am. This is a statement from the chair of the UN forum on Indigenous issues on the occasion of the adoption of the UN declaration on the rights of Indigenous peoples. Her comment is, again: "The correct way to interpret the declaration is to read it in its entirety or in a holistic manner."

Of course, I have said this time and again to everyone present opposite, while I'm indulging and trying to go through this article by article. You realize that you are taking this process out of context for how it was intended to be in the very first place, when it was drafted and when the declaration on the rights of Indigenous peoples was adopted. So I hope you will take that into context. Two of you are going into this in a way that is not just article by article but word by word.

According to the chair of the UN permanent forum on Indigenous issues on the occasion of the adoption of the UN declaration on the rights of Indigenous peoples, that would be incorrect and maybe misconstruing the entire purpose and function of the declaration as we are going to be applying it.

M. de Jong: The minister is correct. He's made that point several times. I think we have each time responded with some variation on the observation that the author of those comments may not have been contemplating the application and embedding of the declaration into a body of domestic law in the way that Bill 41 purports to do, as described by the minister during these proceedings.

To that extent, as a declaration that I think people are proud of and attach a great weight to, in taking that additional step and embedding it into a body of law that is rooted in words, understanding both the words and what the government of the jurisdiction in which that is happening believes those words to mean is important and legitimate.

Article 14. When I read it, I thought of a situation that I was confronted by a few years ago. The minister, a little while ago in these discussions, spoke to an example, and I'm going to follow his lead in posing a question and refer to an example. It's a specific example.

The government of the day, a number of years ago, commenced a program called the school fruit and vegetable program. I think it's still operating. A body of people working with volunteers and suppliers get fresh fruit and vegetables to schools right across the province. It was, when I last checked, very impressive — the number of schools and the number of students and young people.

Somewhere along the way, I learned that the supply network was driving past schools on reserve and not stopping. They weren't stopping because, as it was explained to me: "Well, those are a federal responsibility."

It sounded ridiculous, as if the benefits of the program — which to most people, myself included, were obvious — could be denied to a group of young people on the basis of a constitutional distinction that would have made no sense to them. So the instructions went out: "You're not going to drive by a school just because of where it happens to be located."

The question that flows from that, when we are talking about education, is the degree to which the article and the declaration can act or should act to alter the division of responsibilities and whether it's the minister's and government's intention to do so as it relates to education. The minister is sufficiently
familiar and knowledgeable about these matters to know that he will be confronted and the government will be confronted by that distinction, going forward.

I know the answer to this, and the minister has provided it many times, but I will ask, because in this case, I think it's particularly important. I'll get to what the government's intentions may be and aspirations, but I will ask this: does Bill 14, the declaration and article 14 of the declaration, impose any legal obligation on the government of British Columbia to address the educational needs of Aboriginal students that are not presently being addressed because of constitutional divisions or responsibilities?

Hon. S. Fraser: There are three procedural obligations that come out of Bill 41, and they are sections 3, 4 and 5. Again, just to be clear, this bill is to be applied within the constitutional framework of the Constitution of Canada.

When it comes to education, I mean, we have a minister that's taking this seriously. The curriculum changes that have been made are significant and heading in exactly the direction they need to go. Yes, there's more work to do, but we've got a minister who's not only doing the work now but also will have more opportunity to improve that work and have better outcomes, actually. Because Bill 41 allows an opportunity, a framework and a pathway to work together in an even better way and make this province an even better place.

The example the member opposite had cited around the fruit and vegetable plan and the changes that were made, and rightly so. Again, that work continues, I would suggest, with the Minister of Housing. There's $550 million over the next ten years dedicated towards Indigenous housing — off reserve, yes, but on reserve also — so that the disparity. Trying to close the poverty gap that happens where you've got, often, very poor communities living right proximal to very wealthy communities.

Breaking down those barriers, I think, is certainly within the spirit and intent of the declaration. It's being applied already, and it has been applied by other governments in other ways, as the member has mentioned. But the only obligations from Bill 41 are covered in sections 3, 4 and 5, which I'm sure we will get to at some point in time.

M. de Jong: That's helpful. I think he cited at least one — maybe a few others, but one in particular — very appropriate example. I'm thinking of his reference to that housing, because I want to make a proposition for his consideration and response.

The minister has repeatedly reminded the committee that notwithstanding passage of Bill 41, which I anticipate to take place before the conclusion of this session of the parliament, the declaration will have no legal force and effect in British Columbia. He's also pointed to work that has been underway in the case of housing, where the province has stepped in and made budgetary allocations for housing in areas on reserve and in areas that, historically, the province has not been involved in and relied on the federal government to fulfil their constitutional responsibilities.

Does the minister anticipate utilizing article 14 as the basis for taking similar steps with respect to education? Does he anticipate additional budgetary allocations? Notwithstanding the fact that he has said that the declaration is of no legal force and effect, does he anticipate relying on and pointing to article 14 as justification for the proposition that the province should do more in areas of education with Aboriginal communities than it is presently doing or is constitutionally required to do?

Hon. S. Fraser: I'll begin my response with.... I'm just going to go back to section 2. We're in section 2 to Bill 41. It affirms that the courts can and will continue to use the UN declaration as an interpretive aid.

It's not that the UN declaration has no power. I mean, it has a role already with the courts, and we've established that. I think we provided a number.... And not just a number the first time, but we came back with more court decisions that were actually influenced by the UN declaration. So it is a powerful tool that the courts are using right now. And, of course, Canada has adopted the UN declaration. That, I think, gave the courts the ability to utilize that as an interpretive tool.
To be clear on what Bill 41 will do, it is a process that will allow a government to work collaboratively with Indigenous people in this province in a way that we haven't before. We are going to be using.... It provides a mechanism and an action plan to prioritize the changing and amending of laws and the creation of new laws, as they come up, to make sure that they are compatible and in alignment with the UN declaration.

Bill 41 is a very powerful tool that has not been available to any other government. That's the historical significance, I think, of that bill. When it comes to Bill 41, it does not change the federal funding responsibility for Indigenous people and on-reserve schools. In fact, we've had great success with the federal government. In fact, the recent B.C. Tripartite Education Agreement added $100 million of new federal funding. There's work happening. The Minister of Education has been working on this stuff.

Let's not diminish what Bill 41 is. It is a very powerful tool for government to effect change in a positive way and bring more justice to this province, and also more certainty and predictability for all people of the province of British Columbia. I think it's important to say.

Before I sit down, if I could just recognize also.... I saw Cheryl Casimer came into the room — hi, Cheryl — of the First Nations Summit. And Mary Ellen Turpel-Lafond is there behind Grand Chief Stewart Phillip. I saw her come in too. I just wanted to acknowledge them, also, in this procedure.

M. de Jong: Maybe I'll pose one more question, and then it may be appropriate to take a short break. If the minister.... I'm happy to do so.

Well, the minister provided a fairly fulsome response to everything except the particulars of my question. So we'll try one more time. I will try to verify one thing, because, arising out of the discussion yesterday, I thought the minister had established fairly clearly what the bill does and what it doesn't do. And I don't think he has.... Well, I'm going to ask him whether that has changed in the intervening 24 hours.

Yesterday he made clear his and the government's view that following the passage of Bill 41, the UN declaration will have no legal force and effect in the province of British Columbia, that it will create no new rights. The rights for Aboriginal peoples, he said, will continue to be determined via section 35. He told the committee that prior to the passage of the bill, the declaration existed as an interpretive tool for the courts, and that following the passage of Bill 41, it would remain available, optionally, to the courts as an interpretive tool, not a mandatory one.

I have been operating on that assumption. If I am misstating what he has said, he will correct me. He has emphasized the procedural elements — he did that a moment ago — of what exists in the bill, insofar as the consultation that will take place and the work together. I accept that. From a substantive point of view, I don't think his position has changed, but it is an important enough matter that if it has, I would encourage him to return to that.

Coming back to article 14, which deals with education, my question — as it has been, along with my colleague from Vancouver-Langara — is: to what degree does the government view, today and in the future, article 14 of the UN declaration as the basis upon which to alter what is taking place now?

[4:05 p.m.]

Does it foresee expanding the provincial involvement in the provision of education services to Indigenous peoples? He has quite rightly referred to a purposeful decision the government has taken to expand the provision of housing services onto reserve, where heretofore the provincial government has not been engaged and has left that to the federal government, pursuant to their constitutional responsibilities.

But does the government view, in its persuasiveness, in its spirit and intent, article 14 as the basis upon which it would expand the provision, expand the budget for educational services to Indigenous peoples, in areas where the provincial government is not presently providing those services? That was the essence of my question.

Hon. S. Fraser: As the member has said repeatedly also in this House, words matter, so I do need to correct some words that were just stated by the member opposite. He stated that the UN declaration does not have any legal force and effect. He's attributing that as a quote to me. What I have said
Repeatedly in this House is that the bill does not give the declaration legal force and effect. The UN declaration will continue to be used as an interpretive tool by the courts.

What Bill 41 will allow is to allow us to change laws, legislation, build new legislation that reflects the values of and is in alignment with the UN declaration — again, a very powerful tool. A small change in my wording can change the meaning completely, so I want to make sure that that is clear. As far as the issue of article 14 — again, the member has asked me a very specific question — I think if we had time to actually get through the bill, it would affirm that these are answers that will come.

It says in section 4(2): "The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia." So the priorities are not going to be unique, prescriptive priorities for government to dictate to Indigenous peoples in the province. I understand that's been the pattern in the past, but we need to get beyond that pattern.

If we could get to a later part of this bill, it would clearly reflect the significant changes we're doing in the process, in working together with respect and recognition in a way that has not happened in the past. So in answer to questions on article 14, the answer I will give you is that we will be developing that in collaboration and cooperation with Indigenous peoples in this province. It's part of the action plan.

I would note that everyone seems to have been calling for a break. I'm not ready for one, but I would suggest that we have a break, Madam Chair.

**The Chair:** The committee will recess for five minutes.

The committee recessed from 4:09 p.m. to 4:19 p.m.

[M. Dean in the chair.]

**M. de Jong:** I wonder if we might move to article 15 of the declaration.

I think I just have a couple of questions here, the first being: what additional steps, if any, is the government considering at the moment to advance the elements of article 15?

**Hon. S. Fraser:** Thanks to the member for the question. As in all the articles of the UN declaration, first and foremost, the plan is to have a plan, an action plan, which is built into the bill itself. So we're sitting down with Indigenous people in this province to work on the priorities around protecting the diversity of cultures and the histories and aspirations, which shall be appropriately reflected in education and public information, and eliminating discrimination. These things are all, obviously, important to government.

I mean, there are things we've been doing. I've touched on a number those — the K-to-12 curriculum changes, certainly; the support for language and culture through the First Peoples Cultural Council; also, I don't think I've mentioned this, but the creation of a human rights commission in British Columbia. We had been one of, if not the only, provinces or jurisdiction in Canada that did not have a commission. That, I think, is fundamental to ending discrimination of all types in the province, including against Indigenous peoples.

Suffice to say, how we will proceed following Bill 41 is laid out in later sections of Bill 41 itself — working collaboratively with Indigenous peoples to address these very issues.

**M. de Jong:** Again on article 15, at this point in time, has the government identified any additional resources or budgetary allocations that would be dedicated to advancing the objectives set out in the article?

**Hon. S. Fraser:** No, I'm not aware of any. For us to move in that direction now would be, I think, putting ourselves ahead of a process that we have developed through Bill 41, of working together on these issues, collaboratively with Indigenous people, and not be prescriptive, as previous governments over the history of this province have been.
M. de Jong: On to article 16. When I first read this, I thought: well this, in the Canadian and B.C. context, is more or less exclusively a federal matter insofar as state-owned media. Then I thought of the Knowledge Network, and the organs of that mechanism available.

The article, article 16-2, which engaged my interest and is the subject of my question now, reads that: "States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity."

Let's take the first part of the article. There is, actually, in the context of British Columbia, a state-owned media called the Knowledge Network. I'm wondering. Is there presently in place a policy that applies to the Knowledge Network relating to the reflection of Indigenous cultural diversity in its programming?

Hon. S. Fraser: I love the Knowledge Network, but I'm not aware of any policy in place.

M. de Jong: Does the provision of article 16-2 lead the minister to believe that it would be appropriate for there to be a specific mandate handed to the Knowledge Network around the question of reflecting Indigenous cultural diversity in its broadcasting?

Hon. S. Fraser: I suppose I wouldn't foreclose on this. There may well be. But I don't.... I look forward to the discussions that we will have as we proceed post-Bill 41 in developing the priorities with Indigenous peoples. This could well be a priority, but I look forward to those discussions coming.

M. de Jong: To be clear, I haven't asked the minister to comment on what the policy or mandate should be, because I think his response to that would be: "Well, that would be the product of a conversation with Indigenous people — Aboriginals, First Nations." I've asked him, as a representative for the government, whether he believes, in light of what the declaration that Bill 41 purports to bring to British Columbia and the way that Bill 41 does it, that a Crown, state-owned media agency should have a mandate. I haven't asked him what it should be.

Should it have a mandate that reflects Indigenous cultural diversity within British Columbia?

Hon. S. Fraser: The member seems to be asking my opinion on these things. The minister responsible might be a better place to throw that question at — the minister responsible for the Knowledge Network and the policies there. That might be a good place. As we post Bill 41, in that minister's discussions with Indigenous peoples, that may well come up as a priority.

On this article, like all articles here, as is clearly laid out in Bill 41 in section 4-2, the "...plan must be prepared and implemented in consultation and cooperation with the indigenous peoples in British Columbia." Again, I know it's a difficult concept, because we haven't moved — most governments have not moved — beyond the prescriptive role of government, one that dictates what's going to happen. This is a priority. It tries to lead the conversation. We were trying to work in real cooperation and collaboration with Indigenous peoples.

It is so clearly laid out in the bill. Again, we keep going there. We keep going to section 4-2 — section 4, dealing with an action plan that would lay out the priorities that come out of the 46 articles within the UN declaration. That will develop into, I guess, a priority list of where we need to go, what we need to do. The hows and the whys will come out of that, and a process that establishes a transparency and accountability that goes along with that so that the rest of British Columbia will be coming along with us. All of that is there.

I'm not the minister responsible for the Knowledge Network. I cannot answer the question any better than that.

[S. Chandra Herbert in the chair.]

M. de Jong: Well, I first feel obliged to make the following observation, because the minister has returned to a theme that he has oft-repeated in these deliberations. I have to say, he tends to return to the
theme when confronted by a question that he seems to be uncomfortable addressing. He would like the
committee to restrict itself to talking about the how, the why and the when of the legislation. We're
merely asking to talk about the what.

The title of the bill is the Declaration on the Rights of Indigenous Peoples Act. We're talking about
the declaration of the rights of Indigenous peoples and soliciting..... The minister has said "act" as if the
declaration on the rights of Indigenous peoples doesn't exist. It is a bill designed to breathe some kind of
life into that instrument, and we are endeavouring to explore, with the minister, what the contents of that
declaration are, what they represent, what they mean to government and what they might mean to
British Columbians.

Quite frankly, in response to a question about article 16, where I said to the minister that I'm not
asking him to comment on what the mandate should be, he has said, and I accept, that that will be
determined in the future through conversations and discussions that take place with Indigenous peoples.
I accept that.

All I have asked of him, as the spokesperson for the government on this piece of legislation and the
UN declaration, is whether he and the government accept in principle the proposition laid out in the
declaration that: "States shall take effective measures to ensure that State-owned media duly reflect
Indigenous cultural diversity."

I have suggested that in the context of B.C., when we are talking about state-owned media —
unless the minister can point me in some other direction — that is pretty much restricted to the
Knowledge Network. In principle, consistent with the declaration, does the minister believe that the
Knowledge Network should have a mandate to reflect Indigenous cultural diversity?

The minister says: "That's not for me to answer." Well, if that's the approach the minister is going
to take as the spokesperson for the government on this bill, then we're in some trouble. He certainly had
no difficulty speaking for the government on the day the bill was introduced. He has had no difficulty
applying a broad set of superlatives to the declaration itself.

I would think the answer is yes: "Yes, I think it is appropriate for the Knowledge Network to reflect
Indigenous cultural diversity." It's not a lot more complicated than that. Then we'll move on.

But I don't understand why the minister, as the spokesperson for the government on the declaration
and this bill, as it is attached to this bill, seems hesitant to address the question.

I'll try again. Does the minister believe...? In the context of what is urged upon states by the UN
declaration — that they take effective measures to ensure that state-owned media duly reflect
Indigenous cultural diversity — does he think it is appropriate, therefore, that the Knowledge Network
should have, as part of its mandate, an objective to reflect Indigenous cultural diversity, yes or no?

Hon. S. Fraser: Well, sounds good, but I'm not the minister responsible. And I know it brings
laughs here. But again, the member opposite is missing.... We are not discussing the bill, and we know
that. If we were able to discuss the bill, he would know that the planning would be prepared and
implemented in consultation and cooperation with Indigenous peoples in British Columbia. So
individual comments about individual articles....

The member opposite also knows that the articles within this declaration need to be taken as a
whole. And we need to be.... Government and ministers cannot be prescriptive on this stuff anymore.
What the bill allows us to do is to work in collaboration and cooperation with First Nations to develop
these priorities.

Now, in section 16, that may well become a priority for all. And the minister.... We are, as the
member ought to know, as a government, breaking down the silos within our own governance structures
to make sure that all ministers have responsibility for reconciliation and for adopting their practices,
policies and laws to the UN declaration. Again, the member has been around long enough.... I am not
going to speak on behalf of another minister, unless he just wants my general opinion, but I would
suggest that might not be the most useful time that we have here.

Perhaps I can bring some clarification to what we're doing here today.

"This bill requires the government to take all measures necessary to ensure the laws of British Columbia
are consistent with the United Nations declaration on the rights of Indigenous peoples and to prepare and
implement an action plan to achieve the objectives of the declaration. The minister must report annually on
the progress that has been made towards implementing the necessary measures and achieving the goals in the
action plan. The bill also provides for agreements to be entered into with Indigenous governing bodies, including agreements relating to the exercise of a statutory power of decision."

Now that, I think, clearly lays out what we're here for here today.

Again, the statement from the chair of the UN permanent forum on Indigenous issues on the occasion of the adoption of the UN declaration on the rights of Indigenous peoples clearly states that the correct way to interpret the declaration is to read it in its entirety or in a holistic manner.

Again, I'd suggest that the member might want to ask some substantive questions about what we're planning to do with this bill, what the sections of the bill are. It's great to kill time. I understand that. If there are no other plans for this government, that's wonderful. There are substantive issues in this bill, and I think it would be appropriate for us to get to those at some point before the end of this session.

M. de Jong: It is instructive to hear from the minister. I sense a measure of frustration with our attempt to explore this, I guess for the minister, odd notion of what the declaration actually says. He has now repeatedly expressed his view that that is unnecessary. He offers this argument that it is to be viewed holistically. I don't know what that means. The UN declaration is being applied to the laws of British Columbia, and the minister now, on countless occasions, has admonished the opposition for asking about the very words that exist in the UN declaration.

I must confess.... The minister is a thoughtful individual. I think he takes his duties seriously. But if he really reflects on the criticism he has brought that it is somehow inappropriate to take some time in the context of a bill that he says is doing something that has not happened anywhere else in the world — nowhere else in the world has this international declaration, this international instrument, been endeavoured to be applied to domestic law the way we are endeavouring to do here — and he admonishes the opposition for having the temerity to actually examine the words of the declaration itself, it is ridiculous.

Knowing the minister as I do, I am at a loss to explain why, of all the things he would purport to say, he would choose to harken back on that time and time again. Well, we're going to continue. We will get to the sections of the bill that speak to how the government intends to proceed, but we're going to spend a little more time discussing what it is the UN declaration represents. And if the minister apparently is uncomfortable with that, I'm sorry. But that's what we're going to do.

Others may judge. Maybe people will agree with the minister. Maybe people will agree with him and say to me when I go home at the weekend: "How dare you actually take time to explore what the UN declaration actually says before you embed it in B.C. law?" Maybe they will, but I don't think so.

The minister commented on breaking down the silos within government, which is always a challenge, and then demonstrated the effectiveness, the progress, that has been made by telling the committee that he couldn't proffer an opinion on whether or not, pursuant to article 16, the Knowledge Network should have a mandate consistent with the declaration. Well, there you go.

In the second part of that article, the United Nations says, by its declaration, that states "should encourage privately owned media to adequately reflect indigenous cultural diversity." Does the minister, on behalf of the government, agree with that proposition? Have he and the government thought on how, in the context of a subnational government like British Columbia, that objective might be advanced?

Hon. S. Fraser: All right. Just to be clear for the member opposite, I'm not rejecting the relevance of the discussion around the articles. That's all we've been doing for the last three days — reviewing the articles. I don't have discomfort with that process.

That being said, the member is asking questions about how articles are to be interpreted and implemented. I'm not going to be prescriptive here. How we're going to do it is we're going to work with Indigenous peoples, collaborating with Indigenous peoples, on the articles, on the priorities, on the action plan, on the steps forward. I'm not going to prejudice those discussions. I'm not going to prejudice those discussions that are yet to come.

On the specific question, I don't know of any plans to engage the privately owned media. It doesn't mean that.... Maybe there will be, or there are plans. I'm not aware of any that are present.
M. de Jong: Well, I'm grateful to hear the minister's observations about the relevance of the conversation. A few moments ago he characterized the discussion about the contents of the declaration as simply killing time. I want to emphasize my view that I don't think a conversation about the centrepiece of the legislation represents an exercise in killing time.

The article we're dealing with here is by no means, in my view, the most important article, provision, in the declaration. But its simplicity helps to characterize the point. If you are a privately owned media outlet in British Columbia, presumably you have an interest in what article 16-2 means to the province of British Columbia, to the government of British Columbia, which is seeking to embed that article in the laws of British Columbia. I hope that does not strike the minister as an unreasonable proposition.

The article says that the state — in this case, the government of British Columbia, the Crown in Right of the province of British Columbia — "should encourage privately owned media to adequately reflect indigenous cultural diversity." If I were, and I'm not, a private media owner in British Columbia, I would be interested to know: does the government, in bringing this legislation forward...? What does that mean? What does that mean in the minds of the government?

The minister can say, "We are going to engage with the Indigenous peoples and First Nations and Aboriginal peoples," and that is true, to be sure. But they are doing so on behalf of all British Columbians — I mean, I hope he accepts that proposition — and those British Columbians have an interest in knowing what is in the mind of the government.

I could pose this question. The government.... Governments — I don't mean to particularize this government — have a relationship with privately owned media via advertising contracts. It now and again becomes the subject of political commentary, but it's recognized that governments have a relationship with private media via the advertising that they do.

[4:55 p.m.]

Is that a lever that the minister believes might be appropriate or the government might be prepared to use to advance the objectives of article 16? I think private media owners in British Columbia would be interested to know the minister's thoughts on that.

[5:00 p.m.]

Hon. S. Fraser: I know the member asked for my opinion, and I guess it took a while to get my opinion. I would hope that all media would try to be representative. That being said, government is not going to control private media. That's my take.

M. de Jong: Well, that's helpful and, I think, appropriate, because it is consistent with the phrase in the article that says: "...without prejudice to ensuring full freedom of expression...." Happy to hear it. I'm sure those in the privately owned media world will be happy to hear it as well.

It's the phrase after that that I was particularly interested in, where the UN calls for states, in this case the government of British Columbia.... It suggests that states "should encourage privately owned media to adequately reflect indigenous cultural diversity." To what degree the minister believes and how the minister believes....

That, by the way, is a matter for the government. I mean, if you think about it in those terms, it is the United Nations calling upon the government to encourage privately owned media. Does the minister accept that as a role for the government of British Columbia? And if he does, how does he purport to do so?

I've mentioned one possibility. The minister didn't comment upon that in his short reply. I'm not sure how I feel about the approach that I described, but I did refer to it as a possibility. I'm not sure I'm supportive of that approach. But again, what I think is far less important in this context than what the minister of the Crown and the government think.

Hon. S. Fraser: I know we've canvassed this previously. I believe everybody agrees and understands that the UN declaration is an international doctrine or document or declaration. There are certainly jurisdictions in the world where state-controlled media or private media, potentially, have a dramatic effect in those jurisdictions. But I don't believe that in British Columbia there's any role for the government to tell private media what to do.
I think it would be incumbent on everyone in this province, including media, to show proper representation, to respect how that will benefit the jurisdiction that we are in British Columbia. But I don't see a role for government. I believe this was intended for another audience internationally.

M. de Jong: That's actually helpful. I mean, that is actually a helpful answer, because it provides some insight into what the minister and the government believe these provisions mean within the context of British Columbia. The minister says, properly: "It's an international document intended for an international audience." It is about to become applied to a domestic set of laws, by the choice of this Legislative Assembly, so it has that relevance.

It sounds to me like the minister has just said, insofar as this 46-article declaration, that he and the government take the view that this provision around the government encouraging privately owned media to adequately reflect Indigenous cultural diversity doesn't really have application in B.C. The minister can confirm that. That is a helpful answer.

The Chair: Any further questions on section 2?

Interjection.

The Chair: Sorry, I didn't hear a question.

Hon. S. Fraser: Like you, hon. Chair, I don't believe I heard a question there, but I think I gave my answer.

M. de Jong: Well, let's launch ahead to article 17. The part about this provision of the declaration that engages my immediate interest is actually No. 3 within the article. It's short, so I'll read it into the record. Article 17-3: "Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary."

I'm going to present to the minister a scenario. He can decide how fanciful my scenario is insofar as giving this context within the B.C. experience. The scenario goes like this. A First Nation or a group of First Nations in British Columbia — for the sake of this, let's say in the Lower Mainland of B.C. — with a developing and stated interest in development and construction and developing the expertise of members and employment opportunities for members, do all of those things, and it ultimately leads to the certification of those workers as part of an Aboriginal trade union organization that includes members from the bands and the Aboriginal communities involved.

They proceed to work as members of that Aboriginal certified trade union organization. A government comes along and, with respect to certain public infrastructure projects, says: "Whilst you may bid on those projects, in order to work on those projects, you, the members of that Aboriginal trade union organization, must leave that trade union and join a trade union of the government's choosing." Does the minister believe, were that scenario to develop, that that is consistent with the spirit of article 17?

Hon. S. Fraser: I do believe the scenario that's been provided is a fanciful one, and I don't believe there's any place in British Columbia for Indigenous individuals to have their rights subjected to any discriminating conditions of labour. Just no place in British Columbia for Indigenous peoples and individuals to have, you know, in that hypothetical situation....

M. de Jong: Well, what part of my example was fanciful? The minister says this scenario....

The government of the day has proceeded, for its own reasons, on a strategy via these community benefit agreements in precisely the way I described. The missing element of the scenario I described is an Aboriginal certified trade union that is qualified to work on the projects. I'm not aware of whether that agency exists or not.

My question, however. Were it to exist, or even if it weren't, we could apply the same scenario to an individual Aboriginal worker who has their own choices about which trade union he or she wishes to
belong to. I'm going to press the minister a little bit. Far from being fanciful, the minister is part of a government that has embarked upon this very strategy. My question is.... In these circumstances, article 17 of the declaration has something very specific to say about Indigenous individuals not being "subjected to any discriminatory conditions of labour."

Now, the minister may want to try and convince me and the committee that the community benefits agreements do not represent a discriminatory condition of labour. I'll be interested to hear him attempt that argument. But the scenario is not a fanciful one. We are living it in British Columbia today.

So the government decided to proceed in the way it did with the community benefits agreements. The government has decided, also, to advance the UN declaration on the rights of Indigenous peoples in the way that it has. The UN declaration has something very specific to say about subjecting Indigenous individuals to discriminatory conditions of labour.

I'm asking the minister to comment on whether he and the government believe that the scenario I've described — the requirement that an individual, in order to work on a public infrastructure project, must join a particular trade union organization of the government's choosing — violates the spirit of article 17?

Hon. S. Fraser: Well, the first round of the question didn't refer to any community benefits agreements or the happenings within question period, the raw politics of that. This section of article 17 is about Indigenous individuals being discriminated against through racism. I'm going to end it there and hope that we can move on to something that has to do with Bill 41.

M. de Jong: Well, I'm sorry....

M. Lee: I just think, with respect, for the purpose of the discussion that we're having here, that my colleague the member for Abbotsford West.... We are merely doing what we were elected to do here, which is get clarity about an important government bill. I appreciate that we've been at this for three days now. We appreciate the patience and the thoroughness with which the minister is responding to our questions with his team.

I think it's important that we just reflect on the dialogue that we're having, in the spirit that we have, with our guests, previously in the gallery as well. I think it's important that we maintain a certain level of professionalism and respect for each other.

The Chair: Thank you, Member. Noted.

M. de Jong: Thank you.

Look, I get that some of these questions may be uncomfortable for the minister. I will say again: we are taking an international document and — for the first time ever, anywhere — applying it to a domestic law situation.

The declaration has something very specific to say about discrimination in the context of labour. The minister may believe that is restricted to a very small component of discrimination. He may be uncomfortable with me drawing his attention to other forms of discrimination....

Hon. S. Fraser: Angered would be the right word.

M. de Jong: He says angered. Well....

Interjection.

M. de Jong: The minister is going to have all kinds of opportunity to answer, and I encourage him to do so.

I have put the proposition to him that there is an issue that arises out of article 17-3, where the declaration speaks to not being subjected to — and it says "any" by the way — "any discriminatory conditions of labour."
My question is rooted in the proposition that being told which union you must belong to in order to work is a form of discrimination. Now, the minister may disagree with that. I'm all ears. He may disagree that that represents a form of discrimination. This is his opportunity to do so, and we will have a better sense of what is in his mind and the mind of the government with respect to article 17. I'm anxious to hear his reply.

Hon. S. Fraser: I believe the member is out of order. I believe he is diminishing the issues of racism as it applies to Indigenous peoples in a way that is crass, opportunistic and out of line and out of any expectation I would ever have for anyone in this place.

M. de Jong: Well, what we have learned is that, apparently, the minister, on behalf of the government, is not prepared to turn his mind to circumstances in which people might be discriminated against on the basis of labour legislation and labour practice.

Look, if the minister wants to challenge my assertion that the model for procurement that the government has advanced is not inconsistent in any way, shape or form with article 17-3, then I'm, again, more than happy to hear him make that argument and make whatever explanation he wishes to. To simply dismiss it in the way that he has does not reflect well on him or the government.

I'll again invite the minister to comment on whether or not, on behalf of the government, he believes that the means of procurement for public infrastructure projects that requires a person, including an Indigenous individual, to join a union of the government's choosing qualifies as discriminatory practice within the meaning of article 17, yes or no?

Hon. S. Fraser: Bill 41 is about recognizing the human rights of Indigenous peoples in law in British Columbia. I don't believe my response has reflected poorly on myself or government. I believe the member's question, as quite obvious from the reaction from his colleagues, does so.

Interjection.

Hon. S. Fraser: Diminishes the role of the opposition.

M. Lee: Sorry, just to clarify. My previous standing up was actually not in reference to my colleague from Abbotsford West. It was in reference to the minister. I think there are other ways to handle that situation. But it was using unparliamentary language. What I heard....

The Chair: I'm sorry. The Chair didn't hear unparliamentary language.

M. Lee: Yes, I know. What I heard under his breath was unparliamentary language.

M. de Jong: I heard it too, but I let it pass.

M. Lee: Well, that's the reason why I handled it the way I did as opposed to asking the Chair to ask for a withdrawal. But be it as it may, I certainly do share my colleague's concern and consideration by the way he asked the question in article 17. But I will move to article 18.

Let me just say that when we're looking at subsection 2(a), in terms of the purpose of the act, it's "to affirm the application of the Declaration to the laws of British Columbia." When we're looking at the articles, we are attempting to understand the nature by which the articles have meaning — by intention with this government — as it adopts UNDRIP for the purpose of applying it to B.C. laws. It's within that frame of reference that we're asking these questions.

Keeping that in mind, as we look at the front end, the introductory words of article 18, it says: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights." What is the scope of this requirement?
Hon. S. Fraser: I believe article 18.... If there was a theme of the discussions about this bill, Bill 41, this would be it: about engaging with Indigenous peoples with respect and recognition. I would submit that Bill 41 — in sections 6 and 7, I believe — actually provides some tools to do exactly this.

M. Lee: I appreciate that as we get to sections 6 and 7, we will need to gain a better understanding of the intention behind what agreements may be entered into with an Indigenous governing body. Section 7 certainly has more specificity as to the nature of the decision-making agreements to be entered into, meaning it's for the exercise of a statutory power of decision.

But the language in article 18.... Again, I'm just trying to understand the scope of this article as it applies to British Columbia law. So to get at that.... It is not qualified in any manner by sections 6 and 7. It does say: "... have the right to participate in decision-making in matters which would affect their rights...."

These are the rights of Indigenous peoples. Is the minister suggesting that there is a qualification on this particular article?

Hon. S. Fraser: No. I think it's worded accurately. I'll give an example. It's one I've used before, I think, with the environmental assessment process involving First Nations and decisions that affect their territories and their communities.

M. Lee: In terms of the form of the participation, the right to participate, can the minister explain, and maybe by way of example: when we're talking about the right to participate, what does that mean, exactly?

Hon. S. Fraser: There are no new rights created within this bill, within Bill 41, but it does affirm the rights within section 35, jurisprudence.

[5:30 p.m.]

M. Lee: I appreciate that response. Said another way, we've talked at length that the adoption of UNDRIP in British Columbia to be applicable to B.C. law does not create any new rights. It has no force and effect. Therefore, any description of participation set out in article 18 is to be interpreted within the confines of section 35 jurisprudence. Is that correct?

Hon. S. Fraser: Yes, it has, and we recognize it will continue to evolve.

M. Lee: Just in terms of the rest of this article, 18, it is suggesting.... This will lead into article 19, in terms of even the definition of "Indigenous governing body," which we had some discussion about on the first day of our committee. This is around: "...representatives chosen by themselves" — "themselves" being Indigenous peoples — "in accordance with their own procedures...."

As to how we got to this important time, it was through the leadership council and through representative members. Is this an example, in the government's mind, as to how article 18 was functioning?

Hon. S. Fraser: Sure. It's an example.

M. Lee: So when we talk about ensuring that from government's perspective, they have met the requirement that is set out in article 18, when will government be satisfied that, at least in terms of expectation...? If it's not a separate right for Indigenous peoples, they have this expectation that they have the right to participate. When would that be satisfied?

Hon. S. Fraser: We turned around, and we were all puzzled. So if the member could ask the question again or even phrase it a little differently, it might help our puzzlement, if there's such a word.

M. Lee: Certainly, I appreciate that previously I had puzzled the minister and the team, and his response was: "Well, that was a strange question." My apologies for asking the question in a short manner and not giving the entire context. That certainly was not my intention.
Just my last question on article 18. When we talk about the language use of "right to participate in decision-making," I am merely querying when it is that government would be satisfied that that right has been met — recognizing that, as we just discussed, this is not the creation of a new right. But it is an expectation. I would suggest that Indigenous peoples and First Nations, when they look at this article, will have an expectation that they have a right to participate in decision-making. When does government know that it's met that expectation?

[5:35 p.m.]

Hon. S. Fraser: I'm going to try to answer this with an example, if I could. The development of this actual bill collaboratively with First Nations, through the three groups within the leadership council and all their members through resolution, actually led us to a place where we were all comfortable with working together in that way.

M. de Jong: Let's move on to article 19. Although it's a little bit lengthier than some, I will read it into the record: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

So I'm interested to know how the minister and the government interpret that as applying to the situation here in British Columbia. And I can say, to forewarn the minister, I am particularly interested to know whether that includes laws of general application?

Well, let's start there. Let's start by obtaining from the minister an indication of what he and the government believe that represents, with respect to the B.C. situation.

[5:40 p.m.]

Hon. S. Fraser: Yes, it applies to the laws of general application, as it may affect them, as referenced in the conditions within article 19.

I would remind, also, that section 3 of our bill sets out a process, actually, for dealing with that. I know we're not at section 3 yet, but that will be coming.

M. de Jong: That is certainly helpful. The minister is correct. We'll get into a conversation about it, in a subsequent section of the bill — and his answer, relating to laws of general application.

Does that mean, therefore, within the context of article 19, that that would capture, for example, laws that emanate out of this assembly and laws that emanate out of delegated authorities, like local governments? Is that all captured by the notion of "laws of general application" — which, the minister has confirmed, he believes are captured by article 19?

Hon. S. Fraser: This is intended to apply to British Columbia's provincial legislation. Section 3 does actually talk specifically about the government of British Columbia, recognizing that the Local Government Act is a B.C. piece of legislation too. But Bill 41 is not intended to apply to the Local Government Act.

Noting the hour, I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 5:44 p.m.

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The House in Committee of the Whole (Section A) on Bill 41; R. Kahlon in the chair.

The committee met at 2:45 p.m.

On section 2 (continued).

Hon. S. Fraser: From Lake Babine, visiting us here today are Coun. Verna Power and also Betty Patrick, the foundation agreement manager. I'd like the committee to make them feel welcome, please.

The Chair: I recognize the member for Vancouver-Langara. Sorry to pressure you, my friend.

M. Lee: Only at the suggestion of the Chair, I would also like to introduce the other two guests in our small but very important gallery. Here are my wife, Christina, and my son, Graham. They're over here from Vancouver. My son is here as a guest in this House but also to observe the proceedings.

M. de Jong: Well, it's pretty clear I have no guests or friends in the gallery.

When we left off last week, we were talking about article 19 and just a couple of things that flowed from the conversation. The minister confirmed, I believe, that he saw the essence of article 19 as applying to the assembly, to laws of general application within the province of British Columbia.

That gives rise to the question: are we, then, obliged to think about, and is the government thinking about, a different process for the preparation and introduction of legislation — the essence of article 19 being that the state, in this case, the province of British Columbia, would obtain "free, prior and informed consent before adopting and implementing legislative or administrative measures" that can affect Indigenous peoples?
Maybe if I put the question this way. We are accustomed in this assembly to the convention and the protocol that, except in very rare circumstances, legislation is presented on the floor of the assembly for all to see at the same time. That doesn't preclude consultation work taking place, but is the government contemplating a more significant change and a procedural change to the manner in which laws of general application — which certainly include the bills that come before the assembly — are developed and ultimately introduced into the House?

[2:50 p.m.]

Hon. S. Fraser: I think it's safe to say that there's going to be deeper and more involved consultation between the province and First Nations — or those nations affected, certainly, or if nations are affected as a whole. That is what's contemplated within the bill. The province is expected to "consult and cooperate in good faith," as called for in the UN declaration, when considering decisions that may affect Indigenous peoples.

That being said, the procedures for those measures cited by the member, there's no plan for change with those.

M. de Jong: Does the article, though, contemplate the notion that it adds an additional obligation to that which the province discharges now? The reason we asked about laws of general application is that by definition, each bill, each statute that passes through this chamber would impact Indigenous peoples. I think there has been an attitude for many, many years that has developed, as the notion of consultation has evolved, that in circumstances where there is legislation that is particularly pertinent to Aboriginal peoples or a particular Aboriginal community, that it makes sense to engage fully.

This, on the surface, suggests that that is an obligation that accrues to every single piece of legislation because if it is laws of general application, that includes every single bill. Maybe I'm misreading what I see in the article, but it does suggest that the obligation extends more broadly than we may have traditionally thought.

Hon. S. Fraser: There's no plan. There's no plan to change anything as far as laws of general application, except for those decisions that may affect Indigenous peoples. We are expected, in those cases, to consult and collaborate. I think that would be consistent with the advice we've received from the courts too.

M. Lee: I just wanted to come back to a few words in this article. First, in terms of the words "consult and cooperate," we will be having further discussions as we go into section 3, in terms of those same words that are utilized at the front end of that section. I think this is the first instance in the declaration that we see those words utilized.

I'd ask the minister: from the government's perspective, what would the term "consult and cooperate" mean in this instance? Beyond consultation, what level of cooperation is expected here between First Nations leadership and the government?

[2:55 p.m.]

Hon. S. Fraser: In general, I just think we can all agree that there's a better chance of agreement by working together. That's the intent here — that by involving Indigenous communities and listening to their knowledge and their concerns on projects, for instance, or laws that affect them, we're going to get a better outcome. And that helps to bring certainty and predictability also, I think, to all British Columbians.

M. Lee: When we had the discussion, when I raised it previously, on the previous article to this declaration — on free, prior and informed consent — the minister provided an explanation of the terms, recognizing that it is a process to get to a mutual understanding, a mutual agreement, but it would not constitute a veto in that context. So when we're talking about cooperation, this is consistent, in the government's view, that cooperation is intended for achieving mutual understanding and mutual agreement but wouldn't constitute a veto in the hands of Indigenous peoples.
Hon. S. Fraser: I believe the member has captured that. The legislation provides the tools, which we'll see as we go to further sections here, for ensuring that decisions are made with due process. This is a part of the transparency of the bill, I think, and the beauty of the bill. And when you have due process, there is no veto.

M. Lee: My last point on this. I appreciate the response. This is very much ensuring that there is due and appropriate, fulsome process, certainly, of consultation and cooperation between the government and Indigenous peoples represented through their Indigenous governing bodies or leadership. That means, at the end of the day, though, in terms of this level of consultation and cooperation in good faith, that the implementation of legislative or administrative measures that may affect Indigenous peoples ultimately will still be in the hands of the government to proceed with, keeping in mind that that level of consultation and cooperation has been done in that process. Is that correct?

Hon. S. Fraser: The answer is yes, but again, there is certainly a better chance of agreement by working together and involving and listening in good faith so that we'll get a better outcome from that.

M. de Jong: Let's go to article 20 briefly. Emphasizing the rights of Indigenous peoples to maintain and develop political, economic and social systems or institutions, in article 20-1 — that seems reasonably clear to me. In No. 2 of that article, we again see the reference to an entitlement to "just and fair redress" where the rights afforded and spoken to in article 20-1 have not been respected or abided by.

Can I again ask the minister: does the government take the view that that phrase, "just and fair redress," includes the notion of remedy and possibly compensation?

[3:00 p.m.]

Hon. S. Fraser: We discussed this, I believe, on Thursday, the question of redress and the issue of redress. I believe I stated "which could include financial compensation" — yes — as we have done and previous governments have done, certainly, too. I mean, there have been some examples of that. I would suggest, and I think I cited this before, the treaty itself or non-treaty agreements or impact-and-benefits agreements. So there's already a bit of a pattern, I think, from government, heading in that direction.

M. de Jong: When the minister and the government read article 20-2, does it see those provisions in the context of the application to B.C. laws as a forward-looking instrument, or does it also capture events of the past? If it also, to the minister's mind, captures events of the past, how far into the past?

Hon. S. Fraser: Generally, we're being forward-looking here, I think. While it's important to recognize the historic context, B.C. is looking to establish partnerships that will build shared prosperity, going forward. But again, I think we discussed examples last week — Kwadacha, Cheslatta — where we certainly have looked in the past — again, as the previous government has, as all governments have, I think.

M. de Jong: Around the general issue here of deprivation and the sorts of things contemplated in article 20-1, we've seen — I'd say recently, maybe in the last ten or 15 years — governments, both at the provincial and at the federal level, create specific processes to address specific claims. In fact, I think at the federal level, that's what one of the panels is called — the specific claims process.

In bringing the declaration forward attached to Bill 41 in the way that the government has, are there any present plans to create a separate mechanism by which claims for just and fair redress might be advanced by First Nations, Aboriginal peoples?

Hon. S. Fraser: Nothing contemplated, no. But we are being forward-looking. I can't speak to what will happen in the future.

M. de Jong: I'm going to go down to article 24, which speaks to the whole question of ensuring Indigenous peoples have the rights to traditional medicines and to maintain health practices, the
conservation of medicinal plants, animals and minerals.

It strikes me that in taking the concept that is contemplated in article 24, which I think most people reasonably understand and are supportive of, there is the potential for tension between that and notions of standardized drug approvals and the kind of thing that we see with respect to pharmaceutical products.

To the minister's mind, is there a way to accommodate, dare I say, the westernized notion of medicine and drug approvals with the spirit of what is being contained, being referred to in article 24, which is an entirely different form of medicinal product that historically has not lent itself to the kind of scientific study that pharmaceutical companies are contemplating?

I don't know if I've made myself clear. But I'm interested to know the minister's and the government's thoughts on the level of government with responsibility for ensuring the safety of medicinal products. How do those two coexist, in the minister's mind?

Hon. S. Fraser: I've just got to divert a bit from what I was going to say. It was last winter. I have a good friend and work colleague — I had a really bad cold — and she gave me some rat root, which she said would be effective there. I can tell you it really tasted horrible. It was really, really bad. I chewed on it for a while, and then I swallowed some of the juice, but I did think it scared the cold out of me. That being said, I'm being respectful here, because I think I felt better. I don't know if that was a placebo effect.

The jurisdiction for dealing with the safety of drugs and pharmaceuticals.... I think that rests with Health Canada. But the article we have here, I think, speaks to the right for Indigenous people to have access, without discrimination, to all social and health services. Subsection 2 speaks to: "Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health."

The article speaks to Indigenous peoples having the right to their traditional medicines as well as that, and to maintain their health practices. The issue that the member raised is a good one. I think that responsibility and that discussion would rest with the federal government and Health Canada.

M. de Jong: All right. That's helpful. It probably is the kind of issue that only arises, in a practical sense, if we begin to see more of a commercial trade in some of the traditional remedies. To the extent that it develops as an issue, I think the minister is saying that we'll let the federal regulatory authorities worry about it.

The second question that arose for me out of trying to interpret the essence of the article is.... All the various lenses that government will need to look through in approving land use decisions, does this add another lens — that being the preservation of medicinal plants and animals and minerals that may be relevant to traditional medicines and health care, health practices? Or is that lens already there? Hopefully, I'm communicating this clearly.

It strikes me that to give effect to article 24 in the context of British Columbia, it is difficult to conceive of a land use decision that couldn't potentially impact the matters referred to in article 24.

Maybe I'm overstating that. If I am, the minister can tell me. If I'm not, can he share with the committee some of the steps that he and the government may be contemplating to address that question and create that lens through which article 24 asks for land use decisions to be viewed?

Hon. S. Fraser: If I could, by way of example.... The new environmental assessment process — which is kicking in, I think, this fall — contemplates, specifically and purposefully, the use of traditional ecological Indigenous knowledge as part of the informing process for, for instance, projects that might be happening on the land base. So I think that might be captured already in that process of government, newly done. The bill was developed over the last year and a half, I believe.

Bill 41 sets out a process for how this article could be addressed in the work to align our laws with the UN declaration — or in the development of an action plan, which, again, would be following in the later sections of the act. That'll be done, again, in cooperation and consultation with Indigenous peoples. I very much look forward to that discussion that we'll have as we proceed to implement the act.
M. de Jong: Last question on this article for the minister, then. Is that...? I think that was a good example he gave — the Environmental Assessment Act and how that has already incorporated elements of the kind of thing contemplated in article 24.

Going forward, is that going to be equally applicable in the rules, regulations and processes associated with the issuance of grazing right permits or cutting permits? Is it a broader lens now that comes to bear on all of these land use decisions?

Hon. S. Fraser: That's already, I think, been captured in section 35. It already contemplates that, I believe. For a long time, since 1982.... Of course, that is when that was placed in the constitution, including with grazing rights. So that, I think, is already contemplated there.

M. Lee: I just wanted to turn now to article 25. I appreciate that, in the area of recognizing the very important, distinctive spiritual relationship that Indigenous peoples have with their lands, this article speaks to that. In the context of a further article that we'll be discussing with the minister — in terms of articles 26 and 28, for example — land use, as my colleague the member for Abbotsford West just went through on article 24, is an important consideration as to how UNDRIP will be utilized and implemented through the action plan.

Could I ask the minister, please, at this time, to give us an indication as to the government's view as to the words: "the right to maintain and strengthen their distinctive spiritual relationship with"? The words that will follow, we will talk about in terms of what they mean — in terms of "traditionally owned or otherwise occupied and used lands, territories" and the like.

Just the right itself. If the minister could provide comment on what the government's view is on what that is intended to mean in the context of British Columbia.

[3:15 p.m.]

Hon. S. Fraser: Thank you for the question. The UN declaration was drafted in a way that can, I think, broadly capture the situations that may present for all countries of the world, and we've talked about that. We needed, again, the context of the UN declaration.

Bill 41 is to be applied within the constitutional framework of Canada, which includes section 35 of the Constitution Act — again, 1982. Bill 41, subsection 1(2), specifically requires the government to consider the diversity of Indigenous peoples, including their relationships to the territories. It's actually set out in the earlier section that we were discussing.

M. Lee: Certainly, we had some discussion, of course, of that particular section that the minister referred to, in terms of recognizing the diversity of Indigenous peoples in British Columbia — subsection 1(2) of the bill.

I wanted to ask one more time at this juncture, though.... The words in article 25 say: "...the right to maintain and strengthen their distinctive spiritual relationship...." I appreciate that, in terms of applying UNDRIP from a UN perspective — recognizing the number of nations that went through that process over many years to get to 2007 — that may have broad meaning to it. But in the context of British Columbia, which is what I'm asking the minister, what does that right to maintain and strengthen their distinctive spiritual relationship mean? How will that be seen by the government as it goes into the consultation and cooperation discussion with First Nations?

Hon. S. Fraser: We'll be working.... As is laid out already in Bill 41 in the upcoming sections, we have a process where we'll be working collaboratively with First Nations to get their interpretation of what they think that means. But this work will also involve engagement with the public in general, local governments and other stakeholders. I would submit that's part of the work that we will be doing that's already contemplated within Bill 41. I look forward to the discussions that we'll be having as we proceed to implement this and other parts of the act.

M. Lee: I appreciate the response, and I appreciate the previous response from the minister, in terms of referring to the framing around any article in the declaration. But just as we've walked through each of the articles of this declaration.... We did skip over a few, which is good, to progress the discussion here. I just wanted to ask, though, when the minister referred earlier to section 35
jurisprudence.... Could I ask the minister for his view as to what, under section 35 jurisprudence, would be the understanding of "right to maintain and strengthen their distinctive spiritual relationship"? Where has that been considered and applied within that jurisprudence, if the minister has a sense of that in this committee stage?

[3:20 p.m.]

Hon. S. Fraser: Thanks, again, to the member for the question. The courts have already described.... Section 35 includes activities, practices and customs, including spiritual activities that are integral to the culture of Indigenous nations. That has been interpreted already by the courts. It's already part of consultation, as being recognized and affirmed.

M. de Jong: We'll move on to article 26, which includes some general statements of principle around the right to lands and territories and resources that Indigenous people have traditionally owned or occupied or otherwise used. Article 26 exists in three separate sections.

I think it's important enough — given the magnitude of what the UN is saying here and the importance that Indigenous peoples would naturally attach to this — that we take a moment, on the record, and ask the minister to articulate on behalf of the government what article 26 means and represents, from the government's perspective, within the context of British Columbia and British Columbia laws.

Again, I'm not presuming to put words in the minister's mouth, but I think he would, again, point the committee to the jurisprudence around section 35, and I think — I hope — he would also point out the relevance and importance and protections that exist for private land owners within British Columbia.

When I was reading through the declaration, I thought this might be the moment for us to take a moment and have that conversation and have the minister articulate on behalf of the government its views about how these rights fit within the broader context of B.C. law as it relates to private land and other tenure holders that have interests on the land base.

Hon. S. Fraser: Thank you very much. It's a good question from the member opposite.

Again, I just want to recognize that the UN declaration was drafted in a way that can broadly capture the situation, which may be present in other parts of the world too. I think this section needs to be taken in that context.

I do acknowledge the member's reference, specifically to British Columbia, but I just want to get that on the record, because the wording of this is broadly laid out. I stated earlier that Bill 41 doesn't give the UN declaration itself the force of law and doesn't create any new laws and new rights. That's inclusive of private land. It's to be applied within the constitutional framework of Canada, including section 35 of the constitution.

[3:25 p.m.]

The degree of the constitutional protection already afforded to Indigenous land rights in Canada is unique, I think, among UN member states, largely because of section 35. How this and other articles will be applied in B.C. — whether it's in relation to alignment of laws, in section 3, which is yet to come, or Bill 41 or development of the action plan set out in section 4 — will be done in consultation and cooperation with Indigenous peoples in British Columbia.

This work will also involve — and this is, I think, referring to private land — engagement with the public, local governments and other stakeholders. Again, I look forward to those discussions coming.

M. de Jong: That is helpful from the minister. I think it follows, therefore, from what he has said, and perhaps the minister would oblige and put this on the record, that it's the government's view — and I ask the question, as opposed to make the statement — that a person with a fee simple interest in lands that are within the traditional territory of an Indigenous group, Aboriginal group or a First Nation need not look at article 26 and become afraid that somehow Bill 41 and the attachment of the declaration are going to negatively impact that person's fee simple interests in their lands.

That is a question, as opposed to a statement, to the minister.

Hon. S. Fraser: That's correct.
M. de Jong: We will have an opportunity in a few minutes to discuss the question of various tenures, interests that stop short of a fee simple interest. I mentioned a few examples a few moments ago.

Is it the minister's view that those interests in land will need to be examined on a more individualized basis and that there may well be different processes that evolve as it relates to the granting of, for example, a cutting right or a grazing right on the land base? Is there a slightly different consideration at play when we are talking about something other than a fee simple interest in the land?

Hon. S. Fraser: As the member I know well knows, the evolution of case law in the country, but especially in this province.... There's been quite a dramatic evolution there with case law as regarding meaningful consultation.

But I submit that Bill 41 will create and does create opportunities by working with and meaningfully involving Indigenous people on the land. It's going to bring more clarity and more predictability on the land base, certainly. I know tenure holders already get this. They're already living and working this way in their relationships with the First Nations and the territories that they're in.

M. de Jong: A couple more things on the article. The two previous questions I've asked the minister about relate to the relationship between the Crown and individuals with interests in the land, and the interest and the rights of Indigenous peoples.

I just wanted to ask a question within the context of article 26 and solicit the minister's views on whether or not these provisions, going forward, will alter the ability of the Crown to make broad land use designations.

I'll give the minister a specific example. This has come up in the past in the context of the treaty negotiations and treaty settlements, and I think you may well be aware of that — the agricultural land reserve. If we take the article itself and, as the minister has often urged us to do, the declaration in its entirety, are those kinds of broad land use designations, in the way that that one was done almost 40 years ago, in '73.... Are the abilities of provincial governments post-passage of Bill 41 limited in any way, insofar as those broad land use designations most assuredly have an impact on lands, territories and resources and access to them?

Going forward, does article 26, in the minister's mind and the government's mind, serve to impose a different obligation on the Crown and on government before it can make those kinds of broad land use designations?

Hon. S. Fraser: Just a clarification. I'll go back and get an answer. I'm just trying to get the context of this too. I'd harken back to the previous government and it was the Tsawwassen treaty. Of course, there was an issue around an agricultural land reserve there. At the end of the day, there was the treaty with the full support of the House here — supported, in this case, removal of land from the obligations of the ALC, normally set by the ALC. I'm just unclear here. There's already a history of....

You could argue that negotiations under the Treaty Commission process.... There's already an example of how this relates to the ALC or could relate to the ALC. If I could just get some clarification on it, so I don't go onto the wrong track here.

M. de Jong: No, that's fair enough. In the case of the Tsawwassen.... It's ironic that we're correctly talking about the ALC in the context of the first urban-based treaty. The urban centre there was surrounded by very fertile farmland, and the government of the day and the minister of the day chose to remove any doubt.

There were two schools of thought around that. One was to sign the treaty and obligate the First Nation to then bring an application to the ALC for removal. I thought that was unfair. If the intention was to allow that to happen, then the government should facilitate that and not put the ALC in a position where it was required to adjudicate.

I think my question, though, is broader than that. Most assuredly, it is possible for parties to come to an agreement on things, but if I am a First Nation with traditional territories that, in part, have been
captured within.... I'm using the ALR designation, but it could be other broad land use designations. Does article 26 enhance my ability to say to the Crown: "Ah, but wait a moment; these are traditional territories, and since the advent of Bill 41 and article 26, I'm not so sure that my community should be limited or that the lands that you have purported to capture by an ALC designation, our usage, should be limited in the way contemplated by the ALC"?

I guess my question is on these sections and this section. Are we creating — the minister has said an interpretive tool; I'll use that language — an interpretive tool for an adjudicator to say that broad land use designations on traditional lands can no longer occur in the way that they have in the past and must themselves be the product of consultations and free, prior and informed consent?

**Hon. S. Fraser:** Governments are already required to consult, based on case law. I think that we've been directed that way — not just we but the previous government too. So I don't see that as a change.

[S. Chandra Herbert in the chair.]

I again would want to recognize that the UN declaration.... Bill 41 does not give the UN declaration the force of law. I think what we get out of Bill 41 is an opportunity to actually make better land use decisions by involving First Nations in their territories, as it affects them. We will end up getting better decisions and, I think, more predictability and certainty on the land base too.

[3:40 p.m.]

**The Chair:** Member.

**M. de Jong:** Thanks for stepping in, hon. Chair.

I think my last question on article 26 relates to No. 3. Again, I am mindful of something the minister has emphasized a few times over the course of our several days of discussion, and that is that we are dealing with an international declaration that is designed to speak to a multitude of different circumstances. No. 3 in article 26 speaks of giving legal recognition and protection to lands, territories and resources and that that recognition "be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned."

My question.... This also relates in part to my recollection of some of the experiences around the negotiating table. British Columbia operates on the basis of a particular land title system, the Torrens system. It's not perfect, but one that has served the province reasonably well.

[R. Kahlon in the chair.]

At this time, in advancing the declaration, is the province and the government giving any thought to an alternative or a parallel — recognizing a parallel land title system with application to Indigenous lands or settlement lands? That hasn't been the case, but perhaps there has been an evolution of thinking with the advent of article 26 and the presentation of the UN declaration.

**Hon. S. Fraser:** The answer would be no, but there are.... I mean, we have agreements. We have the foundation agreement with the shíshálh and other reconciliation agreements that are being negotiated now. They have measures to guide collaboration on natural resource management and support economic development and social development opportunities across those nations' territories. So it's a no. Even the Klappan, the plan with the Tahltan Nation, is, I think, another good example.

**M. Lee:** I'd like to just turn to article 27. It refers to the importance of ensuring that there's "a fair, independent, impartial, open and transparent process" in recognizing and adjudicating the rights of Indigenous peoples pertaining to their lands. Does the government consider the current process through the courts or through the treaty process to be adequate to meet this article?
Hon. S. Fraser: Thanks for the question from the member. As stated earlier, Bill 41 is to be applied within the constitutional framework of Canada. That, of course, includes section 35 of the constitution. The legal framework includes the ability for nations to have their rights legally recognized and adjudicated.

We, as a province, have quite a number of tools available to us. I mentioned treaty — of course, treaty is one tool — and non-treaty agreements. There will no doubt be more tools too. We're trying to think out of the box as a government as we're evolving and recognizing that rights and title do exist, as opposed to sort of a rights-denial approach, which has kind of been a universal way of governments handling affairs on the land. Suffice it to say, I think we do have quite a few tools already that are certainly being utilized right now by government, and we look forward to other tools developing.

M. Lee: Thank you for that response. I think it's been contemplated, in some of the reports by First Nations leaders, as they look at their own views as to implementation of UNDRIP, what the other tools might look like. I'd ask for the minister to comment on what he understands — some consideration of a call for, for example, some sort of Aboriginal commission to deal with some of these disputes in overlapping claims.

Hon. S. Fraser: The issues around shared territories, shared boundaries and overlap have been around for many years. The work we're doing in this area needs to continue, and it will.

The legislation — Bill 41, to be more specific — won't fix the issue of overlap. It does give us, I would submit, a platform to continue to engage in those conversations on establishing processes for boundary resolution in accordance with First Nations' respective laws, customs and, of course, traditions.

M. Lee: Thank you for that response, just to further the discussion on this particular article and what the further considerations may well be as we talk about consulting and cooperating with the implementation of this declaration and this Bill 41.

When I attended, with other members of our caucus, the recent meeting of First Nations leaders in Vancouver, there was a session that I sat in on. As the minister just referred to, the challenge of overlapping claims has been something that many First Nations have been trying to work through amongst themselves.

There was a presentation that indicated that there would be some further discussions coming up in the spring. A model or a framework was presented, as to possible alternatives. It certainly was presented as an area where First Nations themselves would take on some direct responsibility for adjudicating the rights of Indigenous peoples pertaining to lands in respect of overlapping claims.

Again, given that we're at this juncture — certainly, this has been a topic that's been going on for a long time — is there an expectation from this government that they will work with First Nations leaders as to what that possible mechanism might look like, whether it's through negotiation, arbitration, mediation, those sorts of frameworks? What level of involvement would the government expect to have in that sort of alternative adjudication framework?

Hon. S. Fraser: The work that's being done currently by First Nations to address this issue — I applaud them on that, and we're certainly aware of it. As far as our role as government goes, this may well come out in the upcoming action plan that we'll be developing and that's contemplated further in Bill 41. I think it's wholly appropriate for First Nations to take this issue on, and I very much thank them and support them for doing so.

M. de Jong: Just before I move on to article 28, and following on the discussion the minister had with my colleague from Vancouver-Langara on article 27 .... We have the treaty process; we have the courts. With respect to this notion of establishing and implementing an "independent, impartial, open and transparent process" — I've asked this question with respect to other parts of the declaration: is the
Hon. S. Fraser: On a case-by-case basis, when asked by nations, we've been involved with them on trying to address these issues. Other non-treaty-constructive arrangements are also being pursued that can address Aboriginal rights and title in British Columbia. I know we've been working with a number of nations on comprehensive reconciliation agreements. Those are happening. But I want to... The heavy lifting is happening by First Nations on this topic, and again, I applaud them on that.

M. de Jong: I think, in the context of article 27, the minister has properly referred to some of the other mechanisms and instruments that are designed to "recognize...rights." So maybe my question more fairly relates to the other part of what article 27 refers to, which is "adjudicate." We have in B.C., ultimately, as an adjudicator, the court system. Has the government given any thought to something other than the courts as an adjudicator of these interests?

Hon. S. Fraser: At this time, we're not thinking about any other means.

M. de Jong: Then on to article 28. In this case, the reference to an entitlement to compensation is clearly enunciated in the scenario contemplated by the section. A couple of questions came to mind for me in reading this part of the declaration. In the minds of the minister and the government, is article 28 speaking to a collective right to compensation, or does it include an individual's right to compensation?

Hon. S. Fraser: Section 28 cites, specifically, Indigenous peoples. So that would be, I think, by definition, collective rights.

M. de Jong: Okay. Thank you. That's helpful. That has been the traditional notion of compensatory rights in the context of relations with First Nations. I think the minister.... What I'm hearing the minister say is that he does not read article 28 as intending to convey something different, nor is the government contemplating a change in that regard.

Hon. S. Fraser: That's correct.

M. de Jong: We see again, in article 28, the phrase "free, prior and informed consent." For some reason, when I got to this section, it prompted me to think of this question that I'd like to put to the minister. We have a few, not many.... We have some modern-day treaties in British Columbia, starting in '96-'97 with the Nisga'a treaty and then seven additional modern-day treaties that were the product of the treaty commission process.

For the minister and the government, do treaties, by definition, represent free, prior and informed consent with respect to the matters dealt with therein?

Hon. S. Fraser: Actually, it's a tough question in many ways. I appreciate that. The treaty process is quite a lengthy and comprehensive process, and it's complex. It does involve nations coming to a specific decision, and numerous decision points along the way. It's done internally. It has to be brought back to the communities for ratification. I would suggest it would be the nations that would need to be asked if they feel that that represents free, prior and informed consent, if that's how they would describe that process or not.

From a government's point of view, I think our obligation is to work towards addressing the treaty process to make sure that it is in line with the UN declaration and the values that are in there.

Just prior to the writ dropping for the federal election, we signed an agreement with the First Nations Summit. For those who aren't aware, they represent, in British Columbia, those nations that are involved in the treaty process. So it would involve the summit, the federal government and the provincial government. We made some major changes addressing what I think were considered some of
the main shortfalls within the modern-day treaty process in British Columbia. The intent was to bring that process into alignment with the values within the UN declaration.

It's early days. We'll see if we can make that process even better.

M. de Jong: A couple of things flow from that. I hope I communicated clearly enough to the minister that there may well be issues around the process of treaty negotiations. There's certainly been ample criticism around the relatively modest number of agreements that have arisen out of the treaty commission process. Although there have certainly been some, it has been deemed a very lengthy, a very costly exercise. The documents are weighty, to be sure.

I think I heard the minister say at one point during his reply, though.... In response to my question about whether, if there is a modern treaty arising out of the treaty commission process, that by definition met the test for free, prior and informed consent, I think I heard the minister say: "Better to ask the First Nation." If he didn't say that, I'll stand corrected. If he did, I think I disagree.

I think it is acceptable, dare I say advisable, that the government be in a position to say with a measure of certainty — having negotiated a comprehensive settlement that has taken ten, 15 or 20 years; that is captured in 500 pages; that has been ratified by a community; all of those things that are part of arriving at a full and final comprehensive settlement agreement — that we are satisfied."We the government are satisfied that this is the product of an Aboriginal group, a First Nation, exercising free, prior and informed consent." I'm a bit troubled if that's not the case.

We'll talk a little bit more about free, prior and informed consent. I'm actually more interested in what it means practically than trying to come up with the perfect definition, because there are more experts with more definitions than I care to think about. But I do think it's fair to ask the minister, in trying to bring some notion of practical relevance to that phrase that appears and reappears in the declaration.... In applying that to the British Columbia experience, I think it is fair to ask for a clear answer from the minister.

Yes or no, do the modern-day treaties that we have negotiated...? I can list them, but I don't think I need to. I think the minister knows the seven that I'm referring to, including the Nisga'a. From the government's point of view, he and the government are satisfied that those are the product and the result of an Aboriginal group giving their free, prior and informed consent to the terms contained therein?

I've said a lot there, and I'll be interested to hear the minister's reply.

Hon. S. Fraser: I am confident that a treaty nation or treaty partner — part of our tripartite treaty process — when signing a final agreement.... To me, it fits into the model of my interpretation of free, prior and informed consent. But I wouldn't want to say.... When I'm saying that, I don't want to speak on behalf of a treaty nation. I just don't believe that's appropriate.

M. de Jong: Whilst I certainly respect the minister's reluctance or refusal to speak on behalf of an Aboriginal group or a First Nation — I understand and accept it — I think it is legitimate for him and the government to say: "But in our view...."

And I think he has said that. I think he has said that in his view, the conclusion, execution or ratification of a comprehensive treaty settlement.... Within the context of what that means today in British Columbia and the treaty commission process, he and the government are satisfied that that represents an expression of free, prior and informed consent on the part of the First Nation from the point of view of the provincial government.

Hon. S. Fraser: Yes, once we settle a treaty, we agree that that means we are satisfied that our treaty partner has agreed that they have had free, prior and informed consent. The consent would be the agreement to sign the agreement and to move on with the treaty.

Again, our obligation in Bill 41 would be to make sure that things like the treaty process do capture.... You know, the previous treaties have not had, maybe, the benefit formally of the UN declaration.
I don't know that you'd find the term... I'm not sure. I don't think you'd find the term "free, prior and informed consent" within the modern-day treaties. I don't believe so. Maybe the member opposite would know that because he was the minister at the time of the Tsawwassen treaty. I don't believe that term was necessarily contemplated within the modern-day process.

But that being said, the answer would be yes to his question.

M. Lee: Just turning to article 29. If I could ask the minister whether under article 29-1... Is there any expectation of any change in approach by the government in meeting what is set out in article 29-1?

Hon. S. Fraser: If the member could... He's phrased the question quite broadly. I know it's 29-1, but I'm not entirely sure how to answer the question. I'm just not sure what exactly was being asked. Sorry about that.

M. Lee: Under article 29-1, it refers to how "States shall establish and implement assistance programmes for indigenous peoples for... conservation and protection..." of the environment. It goes on, in terms of the actual right that's stated, that Indigenous peoples also have the right to ensure or to protect the productive capacity of their lands, territories or resources.

My question, in terms of the initiatives, the partnerships that currently the government has with First Nations in our province, in meeting what would be an expectation by Indigenous peoples as to the level of support they might be receiving from government for those programs, would the minister see, on behalf of the government, any change in approach, requirements for support, funding that would be necessary to be received by First Nations in order to meet what's set out in article 29-1?

Hon. S. Fraser: I think we actually have some pretty good tools now. I think what we're contemplating in further sections of Bill 41... We'll continue to work on that in consultation, cooperation, of course, with Indigenous people. That's exactly contemplated, this sort of thing.

It will also involve the consultation's engagement with the public and local governments, other stakeholders, that sort of thing. I'd certainly look forward to those discussions.

M. Lee: Just on article 29-2, what is the government's assessment as to whether it has in place effective measures to ensure that there is no storage or disposable hazardous materials on the lands of Indigenous peoples?

[4:15 p.m.]

Hon. S. Fraser: When it comes to the storage and disposal of hazardous waste on the land base, the Environmental Management Act has been guiding us, and the intent is that will continue to guide us.

M. Lee: Just in referring to the Environmental Management Act, are there circumstances where this government can contemplate where, when we look at article 29-2 in the application in British Columbia, there actually would be storage of hazardous materials on Indigenous lands — even if, at the end of the day, in an effort to reach mutual understanding and agreement through free, prior and informed consent, as we've been discussing, government still decides to allow that to occur? Are there circumstances where that might happen?

Hon. S. Fraser: There's certainly no intent on the part of government to store hazardous materials on Indigenous land. But the Environmental Management Act — and the Environmental Assessment Act, in part, too, could come into play, I suppose — will still be the guide for us on that.

M. de Jong: I'm going to drop down to article 31 and simply ask the minister this. What are his and the government's ideas for giving effect to the essence of what is being advanced in article 31?

[4:20 p.m.]

I'll ask a series of questions, and if we need to break them down, I will. Has the government received requests from Indigenous peoples, from First Nations? My sense is that there is some work taking place. If that is the case, what is the nature of that work?
Hon. S. Fraser: I hope I'm going to capture the question's intent properly in this answer. While intellectual property is actually an issue of federal concern, I would submit that Bill 41, subsection 1(2), does expressly refer to the diversity of Indigenous "knowledge systems of the Indigenous peoples in British Columbia." Therefore, that would be something that we'll be considering in the alignment of laws in section 3 and the action plan in section 4.

M. de Jong: I'm not sure that that captured the essence of my perhaps clumsily asked question except insofar as the minister has pointed out his view that what we are talking about here are elements of intellectual property and the protection of that and the fact that constitutionally, in this country, responsibility for that falls largely to the federal government. The article also includes references to oral traditions and literatures and designs and sports and traditional games. I'm not quarreling with the minister's reference to the federal responsibility in the area of intellectual property. In some of these other areas, though, where there is more likely to be an overlapping responsibility between the province and the federal government — and the answer to this may be "no, not yet" — has the government of British Columbia developed any specific ideas or proposals in advance of the conversations that will be taking place with First Nations about how to breathe life into the spirit and intent of article 31?

Hon. S. Fraser: At this point, there's no intention. We don't have a plan, if that's what the member is asking. But we will be working with Indigenous peoples to.... There may be more work done on this as is contemplated in section 3 and 4.

This may touch on an answer that the member is asking for. We have provided.... I know in the first budget that we had, we committed $50 million over three years towards the First Peoples Cultural Council, which certainly touches on some of the issues that are contemplated here in article 31.

M. de Jong: Hon. Chair, I am of course, and we are, in your hands. We're going to move to article 32. To advise the minister, I think our intention is to spend a little bit of time on article 32. This might be an appropriate time, if the Chair and the committee were contemplating a short break, to take that break.

The Chair: All right, Members, we'll take a short five-minute recess.

The committee recessed from 4:26 p.m. to 4:35 p.m.

[A Kang in the chair.]

M. de Jong: We'll just go into article 32. There will be a bit of a theme, with respect, I think, to a number of the questions that we ask. I'll try to lay out as best I can at the front end what I think that theme will be.

We've talked about the phrase "free, prior and informed consent" and what that means, and we've had different examples and tried to hash out what that definition captures or doesn't capture. We just had a conversation a few moments ago about comprehensive treaties and how for the government — and by the way, I share their view in this regard — it would represent an example of having obtained free, prior and informed consent with respect to the contents of those documents. But there are all of these other areas that relate to land use and decisions that the Crown is responsible for making around land use and access to resources.

Where I think there is general interest — in some cases, perhaps concern — is the question about the embedding of the declaration, in the manner Bill 41 contemplates, with all the caveats that the minister has relayed to the committee, and what the practical implications of that will be. The best way that I can think of, and my colleague from Vancouver-Langara will also be posing questions, is to probe with the minister what the practical implications of this may or may not be.

I've alluded, a few moments ago, to the question of forestry activities and the granting of cutting permits, and, in the case of agricultural activity, ranchers' access to Crown grazing permits. Maybe we can start there.
If I am operating a forestry operation in, say, the Nicola Valley.... There's no magic to where, to put the minister's mind at ease. It could on be the Island. I'll say the Nicola Valley by way of example. There is a process now that has been informed by decisions of the court that the Crown embarks upon before it issues those cutting permits. It has changed somewhat over the years from the time when I was Forests Minister, from 2001 to 2005. It has evolved, in keeping with some of the direction from the courts.

How is that going to change? Or will it change, I guess, is the first question. Will that process change as the result of the language? Will government be prompted by the language contained in article 32, which speaks to Indigenous people having "the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources"?

That's the theme of the questions that I'm going to ask. Maybe before we get to those examples, though, in fairness, I should ask the minister whether, from his point of view and that of the government, there is any particular magic or significance to the language around lands.

In article 32, the UN has chosen to refer to, in No. 1, Indigenous "lands or territories." In article 26, we were dealing with "traditionally owned, occupied or used" lands. Is there a difference? Do the minister and the government interpret those two phrases, both of them referring to lands and lands that Indigenous peoples have an interest in...? Is there a difference between "their lands or territories" and "traditionally owned, occupied or used" lands?

Hon. S. Fraser: I'm not repeating this to be bothersome. I mean, this was built with international implications. So there may be other meanings for other jurisdictions but not in the B.C. context. I would say they could be used synonymously.

M. de Jong: Okay. It's helpful to know the minister's and government's view on that matter. If we accept that approach and that interpretation, or that understanding, and we come back to the example I gave of the forestry licensee seeking the issuance of a cutting permit, does what is contained in the declaration and, I suppose, specifically, article 32 require significant change on the part of the government with respect to the processes that are presently in place around the question of consultation? If so, what is the nature of those changes?

Hon. S. Fraser: As I mentioned before, there's been quite an evolution — I think that's the best term — of jurisprudence around the issue of consultation and the directions to government over the decades now. That, I believe, continues to evolve. We know where the court trajectory has been going, based on those decades of such interpretation by the courts.

This, I believe, gives us the.... Bill 41, which includes the UN declaration and section 32, as cited, does give us, I think, an opportunity to involve Indigenous peoples in the process at an even deeper level. I believe that would be in keeping with the trajectory of the court's decisions over the recent and mid-term history.

M. de Jong: Okay, well that's helpful. I'm going to, hopefully gently, press the minister on a little bit of this. When the minister says deepen the involvement.... I should have written it down. I didn't. He had spoken about the evolution and deepening the involvement. What does that look like in a practical way?

There are, I think, people following the proceedings who are particularly interested — my colleague and I will raise a few more examples — where they're asking themselves: "So what does that mean? I know what I have to do. I know what I have to do today as a forestry licensee. I think I know what the Crown is doing and the district manager, the folks at the district office, but the minister is alluding to that evolution."

It sounds like he believes this bill and the declaration and the article will influence that evolution around the notion of consultation. But I am looking for a little more about — for the person on the ground trying to make a living or trying to operate on the land base — what that evolution might look like.
Hon. S. Fraser: Thanks to member for the question. I think the thrust of where we're going is getting to Indigenous communities early and often, and licensees have already been showing us the way in many cases. You know, in doing so, I believe that we... And doing it genuinely; this is a collaboration in good faith. It gives us an opportunity to truly understand the thoughts, concerns and interests of an Indigenous community.

Many forest companies investing in the province are doing their work in alignment with the UN declaration already and understanding that the collaborative relationships with Indigenous nations are creating improved investment certainty. And certainly, that's the goal here too.

It's not just justice. It's about certainty and predictability on the land base. I know the Ministry of Forests will continue to work with nations on various models that support strategic and collaborative management of the land base, including, potentially, engagement on the timber supply review. Modernized land use planning is also contemplated. Environmental stewardship initiatives. The collaborative stewardship framework.

I would submit also... The minister, in relation to decisions that government makes about projects where the Ministry of Forests is concerned, was directed to work with myself, as the Minister of Indigenous Relations and Reconciliation, and communities to modernize land use planning.

There are things that will be changing in that way — evolving, I would suggest — in keeping with the court trajectory, to allow us to do what many of the licensees are already doing. The goal here, on the land base, is to make sure that we are addressing concerns early. That is, I think, the real route towards predictability and certainty on the land base for those licensees.

M. de Jong: As is frequently the case, part of the minister's answer prompts me to explore one related issue. On a couple of occasions just now, but also in the context of the debate around the declaration, the minister has made reference to the corporate practices of companies operating on the land base. I think he has done so to point out some of the positive work that's taking place, and there is most assuredly some of that taking place.

But in the context of article 32, I read that to refer to the obligation that exists at the state level, or, in our case, on behalf of the Crown. Does the minister and the government read article 32 as also creating an obligation on the private sector? The minister, I think, knows the litigation, in the Canadian sense, about clearly enunciating where the obligation to consult and, if necessary, accommodate is flowing to the Crown. Does the minister read, and the government read, article 32 as expanding that to the private sector?

Hon. S. Fraser: I'm going to take a stab at answering this by a quote from the B.C. Chamber of Commerce, because this is their take. I know we had a number of groups in our collaborative work that we did with stakeholders, industry, local governments and such, and some of these entities were able to have a look at the legislation under NDA.

The chamber of commerce said that this is their take: "With reconciliation in mind, the B.C. Chamber of Commerce provincial network first adopted a policy on UNDRIP in 2018." I had to be reminded of that, by the way. I'd forgotten about that when I met with them.

They recommended that the declaration "serve as a basis for reforming laws and policies in B.C. We believe this legislation is the start of a long-term conversation that has the potential to lead toward clear and meaningful collaboration between government, Indigenous groups and the business community. Practical implementation of the legislation's intent will be vital, but our network believes a shared decision-making process between Indigenous peoples and government must be pursued and has the potential to create greater certainty for business."

That's signed by Val Litwin, of course the president and CEO of the B.C. Chamber of Commerce. I really thought she captured well the essence of... I don't want to speak for business, but she does speak for business and their role.

Sorry, that was a he. Just to correct. Of course, I know Val. I just met Val, and Val is a he. I said "she." I apologize for that, and I correct it. Sorry about that, Val.
The Chair: Thank you, Minister.

M. de Jong: I promise not to cross-examine on that point.

All right, that is helpful. The quote the minister read from Mr. Litwin referenced the importance of the practical implementation. I think that's the part of this that I'm trying to focus a little bit on right now.

I will come back to the question, because I think a clear statement from the minister and the government at this stage, around where the obligation to consult rests, would be important, and if the minister and government view that as changing in the aftermath of Bill 41. To this point, the legal obligation has accrued to the Crown. Companies and operators on the land base have certainly undertaken work, but the legal obligation has accrued to the Crown. Does the minister see that changing going forward to extend to the private sector?

Hon. S. Fraser: Thanks for the clarification. I apologize if I didn't hit that one the first time around. The legal obligation that the member refers to is the Crown's obligation. This article does not change that.

M. de Jong: Something else that the minister said I found helpful and insightful when he spoke of what he saw as the objective — challenge, maybe, is a better word — going forward in the aftermath of Bill 41 and the declaration. It was, he said, the challenge around... Well, he talked about engaging with First Nations "early and often." That was the phrase that he mentioned.

Is it fair to say, then, that the objective going forward will be to engage earlier and more often? Is that likely to reveal itself in some of the changes that we see?

Hon. S. Fraser: When I say "early and often," I do mean that, but I'm not just talking about quantity here. I'm talking about quality, to genuinely hear the concerns raised, the suggestions raised, and to substantively respond to what we hear — again, even at the strategic level.

I see that as best identified by the work in the environmental assessment process, because what it refers to is involving First Nations from the very beginning of the process and throughout the process, including the genuineness. The depth of that consultation would include things like recognizing, along with modern science, the traditional and ecological Indigenous knowledge that goes with that. There's a greater quality, I think, of consultation, if you will — that qualitatively, that's improved also.

M. de Jong: Maybe I can wrap the next question into a slightly different example. I'll stick with my geographic area because I like the area.

I'm a rancher in the Nicola Valley, and my three-year grazing permit is due to expire next year. I'm applying for a renewal. It's an essential part of my operation. I can't make the ranch work without the advantage of the grazing permit, but it is clearly located in the traditional territories of a number of First Nations.

I'm worried that what has already become a fairly lengthy process, in terms of the time it takes to have the certainty associated with securing that grazing tenure, is about to get even longer. I'm unsure about how the government, in the post—Bill 41 world, is going to take articles like article 32 and alter the process they follow to fulfil the Crown's obligation around consultation and to secure the free, prior and informed consent that will now, apparently, guide those deliberations as well.

What can the minister say today to that rancher who is harbouring some concerns on that front?

Hon. S. Fraser: There won't be any immediate changes as a result of the legislation. The act itself does not change how the province consults with First Nations, nor how operational decisions are made. We will be focusing on the higher-level strategic process that I referred to versus individual permitting processes. That's what's anticipated.

M. de Jong: Thanks to the minister for that response. I'll say one thing and then move on to a different example.
I hope the minister appreciates that the reason for the questions are the questions that we have gotten from the rancher in the Nicola Valley who says: "You guys in Victoria are sitting around talking about this historic document, which leads me to think things are going to be different. I want to get a sense of how different things are going to be and how relevant that is going to be for my ranch operation."

Similarly, if we were in the Shuswap, obtaining foreshore lease renewals is something that I think has come to the minister's attention. Some of the issues have arisen around the timely renewal of the foreshore leases, some of which are instrumental for the operation of businesses employing many, many people. What can the minister say to people with a particular interest on that front?

It may be that — I don't say this to be dismissive or mischievous — he may simply want to say the same thing he said a moment ago: that he doesn't foresee any immediate changes and that he doesn't see any change with respect to the model of consultation. I don't want to put words in the minister's mouth, but these are specific examples where people have articulated an interest in better understanding what the impact of Bill 41 will be in areas that directly impact their livelihood. So there's yet another example, around the question of foreshore lease renewals.

Hon. S. Fraser: The act doesn't change existing tenures on Crown land, and nor does it, in and of itself, give the declaration legal force and effect. The act sets the province and Indigenous peoples on a long-term path to work together to advance reconciliation; again, to foster an increase in lasting certainty on the land base that supports reconciliation; and to promote job creation and, of course, sustainable economic growth.

In the short term, we don't anticipate any significant changes in that regulatory framework. If there were future changes coming, they would come in collaboration with Indigenous nations, but there'd be the opportunity — this is built in later parts of the bill that deal with transparency and such — for engagement with the business sector, local government and other stakeholders. That's built into further sections of Bill 41 — which we will get to, I'm sure, in the fairly near future. That is already contemplated within the act. I hope that answers the question.

M. Lee: Just picking up the last point that the minister has made, certainly we will come to that. But just as a note — I'm not asking the minister to respond right now; it's just so that we can keep track of the discussion that we're having here — my reading of the bill provides for a specific consultation and a plan for local governments and other persons that under section 7 would be consulted. I think that that was what the minister was referring to.

When we look at section 4, in terms of the action plan, it's not entirely clear — in the words that are there in that section — that there's the same level of explicit consultation plan. That will be a question, certainly, that we will come to on that section.

I just wanted to come back, though, not to distract from the main focus here on article 32. The importance of understanding clarity around the language that's in article 32 is.... Certainly, I appreciate the minister suggesting that in the future, through the work that's going to be occurring, there may be some adjustments, let's say.

But at the outset, when this bill comes into effect, as it is being passed this week.... In section 3 of the bill, it has this language that we will come to after we complete the review of the declaration that "...the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." That, again, is why we've been spending the amount of time we've been spending on understanding what the declaration does say.

With that in mind, I want to come back to article 32 and ask the minister this. We talk about understanding consent, the duty to consult. Certainly, when we're looking at a project development of the nature that's described in article 32-1 and 32-2.... I wanted the minister first to confirm that, recognizing that under existing section 35 jurisprudence there is a firm duty to consult, a duty to accommodate in the ways that the Crown is responsible to do.

If the minister can first confirm that through all of that and how article 32 may be applied, the Crown still retains final decision-making authority. Is that correct?
Hon. S. Fraser: I'm going to refer to James Anaya. He was the former special rapporteur on the rights of Indigenous peoples who explained free, prior and informed consent. That standard is meant to ensure that all parties work together in good faith and that they make every effort to achieve mutually acceptable arrangements and that a focus should be on building consensus.

This is quite different than veto, of course. In fact, the UN declaration does not contain the word "veto," nor does the legislation contemplate or create a veto. So the bill does not limit the right of government to make decisions in the public interest. But there are many decisions where we need to make those decisions with Indigenous peoples. This legislation gives us the tools, I would suggest, to get an orderly, structured and, especially, a transparent process to do just that.

M. Lee: I appreciate the minister sharing that very well-formed statement. What I'm hearing are words that stated that this process of free, prior and informed consent is not anticipated to affect the need of government to act in the public interest. Of course, in acting in the public interest, presumably that does include recognizing the interests of Indigenous peoples in this province. But there's a balance there that is necessary for government to take. That's a topic to be discussed, still, at this committee stage.

What I'm asking, though, is that even if you read through that statement and the government looks at that statement and understands that that's what that means, the effect still is that the responsibility for the final decision rests with government. That is what I'm asking to confirm. Is that the case?

Hon. S. Fraser: The short answer is yes, but I'm going to just add to that. The importance, I think, of Bill 41 is that we are committing to work together collaboratively to try to arrive at decisions that have a consensus base to them. That is the direction I think we've received from the courts, time and again and again and again.

Then, just as a bit of a qualifier, too, if I may — things can change. A treaty can happen. In those situations, decision-making takes on a different... That's just one example where a decision-making process can change through things like modern-day treaties.

M. Lee: Well, thank you for confirming that government still has the final decision-making authority and responsibility. I think it's helpful to have that acknowledged in this committee stage because ultimately, when we're talking about how to implement the declaration and how it's defined for clarity, it is the government's responsibility, taking everything into account. Certainly, I respect the need to build consensus. This is what UNDRIP is about.

I just wanted to go one step further at this point, to ask a further question of some detail. That is, when we look at the term as it's referred to in article 32, there is no distinction in terms of free, prior and informed consent in terms of whether we are talking about, let's say, a project for approval — if it's a mining development or a forestry, timber licence. If that's on traditional territory where clearly, in the case of the Tsilhqot'in, there's been a determination of Aboriginal title or, if it's by treaty, there's been a determination as to the title of First Nations to a particular territory that certainly consent would be very clear in terms of that requirement...

Is there a distinction? Does the government agree that under case law — including, of course, the Haida decision in 2004 — where there are questions as to First Nations continuing to assert rights and title over particular traditional territory, that in that instance, there's a distinction as to what requirement there would be for consent in those kinds of situations as spoken to in Haida? Does the government see that there is a distinction between what is traditional land of Indigenous peoples over which title is asserted versus the same traditional lands where title has actually been declared either by court decision — in the Tsilhqot'in decision — or by treaty?

Hon. S. Fraser: The courts, I think, have recognized the.... I mean, there is a distinction we recognize when the courts make a decision, a title decision, or there is a treaty — the two examples that the member gave. The decision-making process there is the nation, so I believe there is a distinction there.
M. Lee: Well, I think, as I attempted to describe the distinction, there clearly is a distinction, as the minister acknowledged. The other side, for example, where there are asserted rights and title. The decision of Haida certainly set out the framework in Canada for the duty to consult and accommodate. The quote that came from the court of the day, which I understand is still good law, so to speak, is: "This process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal 'consent' spoken of in Delgamuukw is appropriate only in cases of established rights, and then by no means in every case. Rather, what is required is a process of balancing interests, of give and take."

It's not my intention to get into a back-and-forth of court interpretation decisions here. My only point that I'm making — which I'd like the minister to comment on — is that when we look at the language in article 32, it does not make a distinction.

[The bells were rung.]

The Chair: I hear that a vote bell has rung. I'm going to call a recess.

The committee recessed from 5:27 p.m. to 5:37 p.m.

[5:40 p.m.]

Hon. S. Fraser: Thanks to the member for the question. You know, I don't want to be a broken record here, but we have a real opportunity here to do things differently and bring more certainty, predictability, I think, to the land base.

In reference to the distinction here between title and treaty and traditional lands — I think is where the member was at — it's so important that we do this work, that we move forward with the action plan to work collaboratively, in good faith, with Indigenous people regardless of the status of the land.

I think it's informed well by the Tsilhqot'in decision. The Supreme Court of Canada, in 2014 — the Tsilhqot'in decision — talks about the situation of government proceeding with a project without the consent of an Indigenous nation. That nation, subsequently, established Aboriginal title, and that project could be cancelled.

This was, I think, a strong warning, a decision from the court that we will need to embrace opportunities, like opportunities created by Bill 41. To make decisions and not collaborate in good faith
in an asserted territory, there is a risk, a strong risk — and not just a hypothetical one, but one that the court has already established with the Tsilhqot'in decision.

M. Lee: I understand what that decision in 2014.... It was a landmark decision in many ways. It certainly encapsulated all of the tremendous — I say tremendous in the sense of significant — court decisions that have unfolded in this country over many years.

The guidance that the Supreme Court of Canada has provided is very instructive, as the minister is suggesting, but it does establish a framework. The minister cited one example of where the court turned its mind. There are other examples, of course, including strength of claim — duty to consult in the context of that.

My point here, though, is not to spend the committee's time in a full exercise of understanding section 35 jurisprudence. We could spent a lot of time doing that, certainly. My point, though, that I'm trying to make to the minister is this. In the committee stage of this bill, the understanding around section 35 jurisprudence we've talked about from the beginning of the debate on this bill at committee stage.... It's the understanding that section 35 jurisprudence is to be utilized as a framework around which this government will be viewing Bill 41 and the implementation of UNDRIP, the declaration.

If that's the case, then I would have thought that.... The response that I was looking for from the government to confirm is that article 32 will be minded, when it's read and when it's to be consulted on, when we have the mutual process between government and First Nations.... All of that process — the due process that the minister described earlier in this session — will be guided by section 35 jurisprudence and the distinctions that are drawn, including in the 2014 decision of the Supreme Court of Canada. That is what I'm looking for — confirmation from the minister — recognizing that this is a pretty technical type of question that I'm asking.

But it's technical in nature only because of the importance of article 32. There is a lot that's covered in article 32 that is not referred to. The words are not there. The words are very general in nature. As the minister has described even in this session, twice in response to my colleague from Abbotsford West, this declaration is of a broad nature. It was broadly constructed with other nations and other situations in mind.

Well, the challenge, of course, is to ensure that, as we and as this government goes forward with Bill 41, it's done within the context.... I'm merely asking for reaffirmation and reconfirmation of another technical point as to how duty to consult and duty to accommodate is to operate on lands that are not even qualified anymore by traditional occupation or other means.

This is just a term that says: "their lands or territories." Again, I believe that it would be appropriate for the government to confirm, in response to my question, that that certainly will be drawn upon, guided by, section 35 jurisprudence. That's my question.

Hon. S. Fraser: Indeed, it is to be applied within the constitutional framework of Canada, including section 35 of the constitution, recognizing that, as I mentioned before, case law will still evolve. Hopefully that clarifies things.

M. de Jong: We have been listening carefully to the answers and the explanations that the minister has been giving over the course of the discussion these past days. He said something again that is a theme that has emerged throughout that he has, I think, with the best of intentions, been attempting to articulate. He has talked about the desire of the government, in general terms, with respect to engaging with First Nations, to do things differently and bring certainty — but to do things differently.

I have taken from our conversations over these days that the significance of Bill 41, ultimately, in light of the information the minister has been able to provide to the committee, is largely procedural in nature, and not to suggest that's not important. But given what the minister has said about Bill 41 not bringing the declaration into legal force and effect and given what he has said about Bill 41 not creating new rights and given what he has said about the declaration having been an interpretive instrument for the courts and remaining an interpretive instrument for the courts as opposed to a mandatory instrument, the key here is procedural, with respect to the minister and government's mind.
When he says "do things differently," it largely relates, or perhaps exclusively relates, to the nature of that engagement, the act of coming together. There is an obvious question that flows from that. I've asked it in a couple of different ways with respect to forestry tenures and agricultural tenures or grazing tenures, foreshore lease arrangements. We could talk about it in the context of access to minerals, recreational trails, access to the back country that involved the granting of licences and permits.

I think the essence of the question is: to the extent that the minister can...? I don't pretend this is an easy question. But if what I have said is largely accurate, then the key question becomes: how's it going to be different?

There are two groups that are interested in the answer to that question. One would obviously be First Nations themselves, Aboriginal people. The second group would be non-Aboriginal people, non-First Nations, who may themselves have an interest in the land base and are listening and watching and reading and understand that, presumably, the government's intention here is to utilize this legislation and the declaration, which is its centrepiece, as the impetus for, as the minister said, doing things differently.

This is both the question and the invitation to the minister, with as much particularity as he can at this stage, to articulate what that means, what doing things differently means with respect to the procedural components of this bill.

**Hon. S. Fraser:** I do appreciate the question, and I do appreciate the time we've had together. It is day 4. The bill is 2½ pages. It's a fairly small bill, although I'm not meaning that in a qualitative sense by any stretch of the imagination. I think we're approaching hour 18 of this debate. I appreciate the question coming from the member, but I believe his suppositions are somewhat premature.

We're on section 2 of the bill and have been for quite a while. The meat of the bill... A lot the meat of the bill will inform the how, as I think the member is asking — how this will be different and how it will change — is all in the bill.

Even while one member is asking the question, the other member could actually read the bill and see what's coming. Until we get that on the record... I think that will clearly show what will be different and how we're going to make it different.

**M. de Jong:** My purpose is not to quarrel with the minister. I hope he understands and accepts that our purpose is, as well, not to be repetitive with respect to the questioning. I think there is clearly an opportunity in section 4 to explore the issue, and we'll happily do that.

I think it is equally relevant, though, I will say with the greatest respect, in the context of article 32 — where the minister has said that that article and the declaration are pointed to, by the government, as providing support for the proposition and the effort to do things differently — that it is a worthwhile endeavour in the context of these specific examples that we have been talking about for him to provide some specificity around that. But if he is more comfortable having that conversation elsewhere in the bill, then I suppose that is his prerogative.

May I pose this question, though, with respect to article 32 and the comments that the minister has made about doing things differently, about engaging earlier, engaging more, engaging better, which, I presume, he feels is an approach that is consistent with article 32 of the declaration? Does that necessitate additional resources for the minister — for, certainly, his department of government and for other departments of government?

It strikes me that what he is describing and I think what he is going to, if I anticipate subsequent discussions, particularly around sections 3 and 4... He is going to talk about a more robust engagement, consultation initiative. Does that, by definition, require more capacity on the part of government? There will be a question later in our conversation about what it means for First Nations. But for government, does it require more capacity to fulfil that noble objective?

**Hon. S. Fraser:** In answer to this specific budget question, I think that is definitely an estimates type of question. So I'll save that one for estimates.

The importance of what we do. This bill is significant in what we do, in recognizing the human rights of Indigenous peoples as a starting point, engaging early and often with Indigenous people,
working strategically in ways that we have not before. Those things will not just bring about more justice and more equity in this province, and more certainty and predictability, but they'll keep us out of the courts. Again, courts are a very blunt instrument, as we know from the Tsilhqot'in decision.

In my time over the summer working with all sectors as we moved forward with the drafting of this legislation in the collaborative work with the First Nations Leadership Council, we heard time and time again that the status quo was not effective. It was fraught with problems. Business was looking for guidance from government, and the courts were giving guidance for a long, long time, but that guidance was not being adhered to by governments. I'm not going to point any fingers here.

This is a significant piece of legislation. That is why the level of support is across the board — from business, from labour, from NGOs, from academia and from local governments — just urging us, in many cases. Business is urging us to get on with this. The B.C. Business Council is already doing this work. Government has not been doing the work that we need to do. This is about how we do things and how we do things differently, and I'm hopeful that the members opposite will support the bill because of those reasons.

Those in the business community, those in local government, those in academia understand just how this is desperately needed — a significant change of government recognition of rights that we all, generally, take for granted in this province and that, in theory, should be the rights of Indigenous peoples.

We're taking that on up front to change the relationship. It will allow us to change laws over time, to bring them into line with the human rights aspects of this bill, of this declaration. It is the guide for us to follow, and the process and how to do that is going to follow in the upcoming sections of this bill, which I'm very much looking forward to.

M. de Jong: Okay. I'll maybe try a different way, because I think there is an element of this that is relevant and appropriate to ask the minister.

In achieving the procedural improvements that the minister has referred to — the improved engagement, the more robust levels of consultation in the way that the minister has repeatedly described — is the government going to require devoting more people, more resources and, therefore, more money to the initiative?

Hon. S. Fraser: I'm just going to correct. ... I don't believe I stuck to the procedural in our discussions here over the last four days. The human rights of Indigenous people and locking that down into law in British Columbia is not procedural. It's fundamental.

Again, the question from the member to me, like the last question, would be a question for estimates.

M. de Jong: Well, I think the minister is staking out his turf. I think if I were endeavouring to quantify in any specific way from the minister's budget, he may have a point.

Asking in the context of what the minister has described as a historic piece of legislation that is going to be the catalyst for doing things differently, whether in general terms.... There is a budgetary implication, and whether the government and the minister contemplate devoting additional financial resources to achieve that objective, I think, is entirely appropriate. And that is my question.

Hon. S. Fraser: Every minister in this government has received mandate letters to move forward on this from the very beginning — so over two years ago, when we formed government. I think the member could reflect on the actions, significant actions taken by this government, through cross-ministries, in response to those mandate letters.

In our ministry — a very small ministry in the big scheme of things — the first big-budget item that changed was languages and the $50 million designated towards Indigenous languages, the most significant move towards protecting and revitalizing Indigenous languages. It was certainly something that we undertook. Housing — $550 million over ten years. Indigenous languages — off and on reserve.

I mean, I could go on. Pretty much every ministry can point to specific budget items that they have undertaken, significant budget items — $3 billion over the next 25 years towards any revenue-sharing
through gaming; Mental Health and Addictions, a brand-new ministry with a significant budget addressing specific needs for Indigenous people and addressing mental health and addictions. It goes on.

These budget issues do come up, of course. They have been coming up. We are going into the next piece of this legislation, Bill 41, and it will talk about where we're going next and how we're going to do that.

Will there be budget implications for that? That will become.... Those implications, if there are implications, will be dealt with in the next budget. Therefore, it would be.... This is not the place for that. The place for that would be in the estimates process.

M. de Jong: Again, my purpose is not to quarrel with the minister. I can assure him that it is a time-honoured tradition of this institution that when ministers bring legislation before the House for consideration, an always appropriate, relevant and acceptable question is: what's it going to cost?

I am not asking the minister to specify in great detail. I'll ask it one more way, and the minister can answer or not or tell me to go elsewhere and pose the question. I will say, though, that for as long as I have been here, ministers, when presenting legislation, have been prepared to offer whatever information they can about the fiscal implications of the new law they are endeavouring to advance through the assembly.

The last question on this point. Has there been any preliminary analysis conducted on what the costs are to the government — I'm not talking about the First Nations at this point — of enshrining into the laws and applying to the laws of British Columbia the UN declaration, as contemplated by this Bill 41?

Hon. S. Fraser: What's still coming in the deliberations that we have here in third reading and committee stage.... I call it the meat, I guess, of this bill. It is the alignment of laws, the process for that, the action plan. These have not yet happened. This hasn't been passed yet.

Obviously, those pieces that the act directs government to do — action plans and alignment of laws.... Those details will be considered in future budgets by government. When that does happen, that would be the place to ask specific questions or any real questions about the monetary aspects of this or the budget.

M. de Jong: In fairness to the minister, I will interpret that answer as no. If he disagrees with that....

The question was a fairly basic one about a preliminary analysis of the impacts of the bill and the costs that will accrue to the government to implement the bill, once passed. The minister didn't address that, or to the extent he did, it was to say: "We'll deal with that later."

My specific question was: has there been a preliminary analysis around the cost of doing that? I assume from his answer that the answer is no. If I'm incorrect, at his next opportunity he can tell me that's not the case and there has been a preliminary analysis of cost, but that is not what I took from his answer.

I wonder, if we go to article 34, where there is reference to juridical systems or customs. This is, again, one of those general questions to the minister. Within the context of B.C. and applying the declaration to B.C. in the way contemplated by Bill 41, how does the minister interpret and how does the minister believe article 34, dealing with unique juridical systems or customs, applies to the British Columbia example and British Columbia experience?

Hon. S. Fraser: Thanks to the member for the question. The article is connected to self-determination, which we've already discussed earlier. But as set out in subsection 1(2) of Bill 41, the province recognizes the diversity of Indigenous peoples in this province, including with respect to their customs, their traditions and their governance structures. We'll take this into account when going about the process set out in Bill 41, which we will get to at some point.

But I'll give an example. In 2017, the province and the B.C. First Nations Justice Council signed a landmark MOU to create a First Nations justice strategy that is Indigenous-led rather than Indigenous-
informed. It doesn't sound like much, but it's significant. There's a difference there between Indigenously-led rather than Indigenously-informed.

The work in this area includes creating new Indigenous courts, developing alternatives to traditional courts and developing culturally relevant ways, I would say, of delivering justice services for First Nations people.

M. de Jong: What I'm hoping to do is ask two more questions, so I'll keep them brief before I think we're obliged to be on our way.

I'd be very much obliged if the minister could provide just a little bit more information about what he and the government contemplate to be captured by the notions of Indigenous courts and alternative courts.

Hon. S. Fraser: The strategy that I referred to also includes up to 15 Indigenous justice centres throughout the province to provide legal support and advocacy and wraparound services in holistic and culturally appropriate ways. The province is also committed to working with the Métis Nation B.C. Of course, we have an accord there, with the Métis Nation B.C. justice council on developing a Métis justice strategy.

If there are any other questions on this particular issue, they're probably best aimed at the Attorney, because I know that's work that they're doing at the Attorney General's office.

M. de Jong: I'm going to go to article 36, and this may be.... Recognizing the time constraints that we're on, maybe I'll ask the question and I'll lump a bunch of questions together. It'll give the minister and his team something to chew on until we meet again, as they say.

Article 36 speaks to Indigenous people's rights and interests where there are international borders. This can apply in different ways, depending on where you are in the world. In our context, it involves an international border with one country, the United States. The question I wanted to put.... I was going to do it in separate instances, but I'll bundle them all together, and the minister may be in a position to speak to it when we gather again.

We are engaged in negotiations with our neighbours, the United States. We are engaged, for example, in softwood lumber agreements, which is an interesting one because there is, I'm told, some prospect that we may, as a nation and a province, return to a model of agreement — if we ever get there — that we saw 20 years ago with a quota system that involves the provincial government assigning to forestry companies a certain right to ship lumber to the United States. It limits their right to do that. How does that operate in the context of us giving effect to the international rights contemplated in article 36 for First Nations? That's the first example — the softwood lumber agreement.

We are engaged right now in negotiations around the Columbia River treaty. I am advised that certain First Nations have observer status on those negotiations. Does the government, moving forward in the post-Bill 41 world, believe that the rights of First Nations change or — maybe that's the wrong terminology, given what the minister has said — in giving effect to the rights of First Nations, are they entitled to something other than observer status and a more direct participation in that exercise?

And then thirdly, the Skagit River treaty is becoming the subject of discussion once again. I am told that the treaty is jointly managed by the city of Seattle and the province of British Columbia. What role, if any, does the minister and the government contemplate for British Columbia First Nations who would have a genuine interest and a historic interest in matters touched on by the Skagit River treaty?

Three examples that I think are relevant to article 36 and I think I have taken this as close to the deadline as I dare to.

The Chair: Thank you, Member.

Minister, noting the hour.

Hon. S. Fraser: Thank you, Madam Chair. Again — ten seconds — matters that cross international borders are generally matters of federal jurisdiction, so this may be another example, like military issues. I think that would be the applicable answer and the place to place this. But we can discuss that when we meet again, as the member said.
I move that the committee rise and report progress and ask leave to sit again.

Motion approved.

The committee rose at 6:23 p.m.
Hon. S. Fraser: If my recollection is correct, we're on article 36 of the UN declaration. We've been reviewing the individual articles. The question was... I will try to answer the question in three parts. And I want to thank those behind me who have done the work to actually come up with the answers for the specific issues — softwood lumber, the Columbia treaty and the Skagit Valley treaty. I'll do them in that order, if that's all right with the member.

Canada, several lumber-producing provinces, including British Columbia, and industry have been in the countervailing duty and anti-dumping duty litigation with the United States for the last three years. That litigation is ongoing with the U.S. courts under the North America Free Trade Agreement and before the World Trade Organization, and Canada leads that litigation. Canada negotiates trade agreements with other countries and would lead any further negotiations with the U.S. It's premature in the midst of litigation to speculate as to what shape or form hypothetical future negotiations might take.

When it comes to the Columbia River treaty, the Columbia River treaty is a transboundary water management agreement between Canada and the United States. It was ratified in 1964. A review of that treaty is currently occurring between the two parties. It is the federal government that has the responsibility for conducting these negotiations, and it is Canada that decides on the roles of other parties on the Canadian negotiating team. Canada decided to involve three Indigenous groups at the negotiating sessions: the Ktunaxa Nation, as represented by the Ktunaxa Nation Council, the Secwépemc Nation, as represented by the Shuswap Nation Tribal Council, and the Syilx Nation, as...
represented by the Okanagan Nation Alliance. The province of B.C. is also participating in these negotiations.

When it comes to the Skagit River treaty, the Swinomish Indian tribal council in the United States has provided correspondence to the province of British Columbia to halt the exploratory activities by Imperial Metals Corp. in a particular area located between Skagit Valley Provincial Park in Washington state and the E.C. Manning Provincial Park in B.C. and to support the effort led by the Skagit environmental endowment fund to buy the mineral rights and to reclassify the area adjoining it with the adjacent E.C Manning Provincial Park.

The Swinomish Indian tribal council raised a number of concerns with this mining exploration activity, including downstream effects of any development in this area, which could impose a threat to water quality in the upper Skagit River, impacting their treaty right to fish in the Skagit River. Given the concern about potential downstream impacts of this proposed activity on the treaty right to fish, the province, through the Ministry of Energy, Mines and Petroleum Resources, has consulted with the Swinomish Nation tribal council about these proposed exploration activities. The province is also consulting numerous Indigenous groups based in B.C. about potential impact to their Aboriginal rights and title interests. It is not uncommon for the province to consult with U.S.-based groups, where proposed projects in B.C. may have downstream impacts that could affect them.

The bill that's before us today, Bill 41, would not change this approach. Suffice it to say, these cross-border, international border issues are generally the jurisdiction of Canada, but certainly B.C. believes that First Nations should play a role. But the ultimate decision of who's at the table, I believe, still rests with the federal government.

M. de Jong: To the minister, that is a helpful answer in terms of understanding the approach. The first two examples I gave touch on matters for which there is clearly a shared jurisdiction within Canada, the international trade function falling squarely to the federal government to take the lead in those bilateral, and sometimes multilateral, negotiations.

But the subject matters themselves, having a component of provincial responsibility in the case of the softwood lumber, of course, forestry and the management of the forest resource falling squarely within the realm of provincial constitutional authority, it does make for a complicated negotiation domestically within Canada, to be sure, because all of the other provinces play a role as well. It's obviously got an importance in B.C.

I won't belabour this, but the minister has made the point that Canada leads the negotiations in softwood. I think my question looks ahead, and the minister says it's speculative at this point. But of course, much of what we've discussed is speculative in terms of the conversations that might take place with First Nations. I don't think any of us have objected to that aspect of the debate.

There is a history. The speculation is guided by the history on this file. We have had two kinds of trade deals. One imposes a border tax as a way of managing the flow of goods from B.C. and Canada to the United States. The other has been a quota that regulates the amount of product that can flow from Canada and B.C. into the United States.

In the latter example, which we are told has been very much a point of discussion at the negotiating table, it falls to the province to assign the quota to operators within B.C. I think my question is: to what degree the minister....

Given the spirit and the essence of what is contained within article 36, were the province placed in that position again as a result of an agreement signed off on by the federal government with the United States — where the province was put in a position where it was obliged to assign quota — is there a new dimension to that that would not have existed the last time the province was assigning quota? And that is an Aboriginal dimension.

There are, for a variety of positive reasons, I would suggest, more First Nations involved in the forest sector that will have a direct interest and maybe more that want to get into that sector.

Does the incorporation of the UN declaration in the matter contemplated by Bill 41 add an additional layer of consideration for a provincial government going forward, were it obliged to assign trade quota to the forest sector in B.C.?
Hon. S. Fraser: Thanks to the member for the question. The scenario that he has cited about quota actually isn't settled at this time. So I can't really comment directly about that. But we don't anticipate that Bill 41 will change our approach to cross-border treaty discussions, including this one.

M. de Jong: Okay, that is an answer, and I appreciate the minister providing the answer with respect to his view on softwood lumber negotiations.

The Columbia River treaty, of course, has a level of importance that relates both to the management of a river — and the environmental considerations related to that — and a fiscal dimension. The treaty has generated hundreds of millions — dare I say billions? — of dollars over the life of its existence. My recollection is that B.C. is a signatory to the treaty. But we should confirm that before I ask one or two more questions.

Hon. S. Fraser: It's our understanding that it was ratified between Canada and the United States back in 1964.

M. de Jong: Yeah, I have a distinct recollection of the photos of President Johnson, Prime Minister Pearson and Premier W.A.C. Bennett. The reason I posed the question, of course, is because the hydroelectric resource that is very much a part of the essence of the treaty is a matter that falls very much within the ambit and constitutional jurisdiction of the province of British Columbia.

I took it, from the minister's answer, though, that in the post-Bill 41 world, were there to be any difference in the type of involvement by First Nations to what is taking place today around the negotiating table, that would exclusively be a decision of the federal government. The province is not contemplating any change whatsoever in the role played by First Nations with respect to the work being undertaken on the Columbia River treaty.

Hon. S. Fraser: Correct.

M. de Jong: Then, finally, the minister's answer to the question around the Skagit River treaty was again helpful. He made the point that Bill 41 and passage of Bill 41 wouldn't change the approach taken by the province. He did say something, though, that prompted me to at least pose this question to the minister.

Do the passage of Bill 41 and the application of the declaration, as contemplated by Bill 41 and the provisions of article 36, alter the relationship between the province and First Nations or Indigenous peoples outside of British Columbia's borders? We tend to talk about that in terms of our obligations within the province, but of course, the declaration speaks of an obligation of signatory states, and we are about to be more than just a signatory state by virtue of Bill 41.

The minister, to be clear and to be fair, talked about work that has taken place between the province and the Snohomish in the case of the Skagit River and the consultation that has taken place. Do the provisions of article 36 within the declaration, to the mind of the government and the minister, change or create a different dimension to the relationship between the province and First Nations located outside of British Columbia's borders, particularly our international border?

Hon. S. Fraser: If I can have leave to jump ahead to section 3 for a moment, in Bill 41, section 3 states: "In consultation and cooperation with the Indigenous peoples in British Columbia" — it's the key piece here — "the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." So my specific referral to section 3 and the term "Indigenous peoples in British Columbia" I think clarifies that issue, which we can discuss in the next section.

That being said, as I mentioned previously, it's not uncommon for the province to engage with U.S.-based groups, including First Nations, that may have downstream impacts. That process won't be affected at all.

M. de Jong: Okay. That's helpful. I won't belabour this. There is certainly the question of the jurisdiction that the province has and those matters for which it's responsible. I took the essence of the
declaration to include the notion that beyond the constitutional elements of this, signatory states were accepting of an approach and an obligation that transcended their immediate borders. But the minister has clarified what his and the government's view on that matter is.

Let's move ahead, then, to article 37. Just two points to explore here with the minister. He may recall that a day or two ago — I think it was two days ago — in these discussions, I posed the question about whether or not the government considered a treaty, particularly a modern-day treaty — to represent full, prior, informed consent — as satisfying that obligation. We had a discussion about that, and I don't propose to reopen that here.

But I did feel an obligation to ask the minister, on behalf of the government, whether he felt that the passage of Bill 41, incorporating the declaration as it does, would trigger or could trigger a reopening of any existing treaties.

**Hon. S. Fraser:** The answer is no.

**M. de Jong:** I'm just going to go to the section of the debate that took place at the Senate standing committee, where the Assistant Deputy Minister of Crown-Indigenous Relations, federally, I think supported the minister's view in that regard. The quote here at page 5542: "...the government's view" — in that case, the federal government's view — "remains that the agreements that we enter into with Indigenous peoples are the best example of the implementation of the concept of free, prior and informed consent. Those agreements all go through a process that involves community ratification. So no, we don't see the adoption of" — in that case — "Bill C-262 as reopening the agreements we have already entered into."

The minister's view would seem to be consistent with that of the federal government. Also, I hadn't recalled an interesting observation about the concept of "free, prior and informed consent," where the federal government seems to take the view that in the case of a comprehensive treaty settlement, that by definition would constitute satisfaction of that particular phrase.

A second issue arose for me out of article 37 and something the minister said much earlier in this discussion, relating to the treaty mandates. The minister, at a certain point.... I can't remember when, and I don't think I'm taking it out of context. But I'm pretty sure that I heard him say that part of the work that the government is undertaking involves adjustments or amendments or changes to treaty negotiating mandates. It sounds like that is taking place and was initiated separate and apart from Bill 41. The minister may wish to confirm that.

To what degree, if at all, does passage of Bill 41 affect the work that is taking place with respect to changing the treaty mandates that the province takes into negotiations?

[11:45 a.m.]

**Hon. S. Fraser:** Good question from the member. As I've mentioned before and as the member is aware, every minister received mandate letters from the Premier. So from 28 months ago, or probably 27 months ago, every minister was tasked through the mandate letters to implement the UN declaration.

My specific mandate letter also referred to revitalizing the treaty process, I think it was, or addressing some of the failures of the treaty process. So we've done that. We've worked on that. It's not that it's over, but certainly, we signed off on some significant changes to the treaty process just prior to the federal election. It's a tripartite group that works on that — the federal government, the provincial government and, of course, the First Nations Summit.

I believe those changes that we've made were consistent with, certainly, the spirit and intent if not just the words of the UN declaration. Significant changes, too, by the federal government — release from obligation of debt — and then, in general, like the removal of the requirement for extinguishment, some pretty fundamental changes that certainly were a problem for many nations to embark on the treaty process.

Our intent, part and parcel with the mandate letter that we had to adopt the UN declaration in what we do and also revitalize the treaty process.... I believe we did those in a complementary fashion.

**M. de Jong:** The changes to the treaty mandate undoubtedly will provide an interesting topic for discussion at another time, in another venue. I won't take up the committee's time here, mostly because
it seems to have been work done previously that was not dependent upon the passage of Bill 41 and incorporation of the declaration in the way that Bill 41 contemplates.

[11:50 a.m.]

Can the minister advise, on behalf of the government, following passage of Bill 41...? Maybe this is the question. How, if at all, will the passage of Bill 41 impact the province's mandates for treaty negotiations moving forward?

Hon. S. Fraser: To the question, we will continue to work with First Nations inside and outside of the treaty process to get things better. We've made significant advances in the past two years, but there's certainly more work to do. Our commitment to advance reconciliation together through legislation builds on other work, including this work that we're talking about with treaties, that we're doing across government with Indigenous partners. Introducing the legislation solidifies this commitment and ensures that the important work of reconciliation continues.

I move that the committee rise and report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:51 a.m.
The House in Committee of the Whole (Section A) on Bill 41; S. Chandra Herbert in the chair.

The committee met at 1:48 p.m.

**The Chair:** I want to acknowledge that we are on the traditional territories of the Lək̓ʷəŋən-speaking people — the Songhees and the Esquimalt. I want to thank them for hosting us here on their lands.

On section 2 (continued)

**M. de Jong:** I'm going to ask to direct the minister's attention to article 38 of the declaration and, in posing just a couple of questions, acknowledge that we will have a more fulsome discussion in a moment about similar language that appears in the next section, specifically, a statutory requirement to take all measures necessary.

The language in article 2 is slightly different and reads: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration." We are, I think it's fair to say, very much engaged in that exercise, today and these past days, with Bill 41.

[1:50 p.m.]

From the conversation that we have had and the information the minister has been able to impart to the committee, it's my sense that, as part of both its overall response to the declaration and its response to article 38 and the language in the section coming up next, the Legislative Assembly should anticipate, over the course of future sittings, additional legislation that would be pertinent to giving effect to the government's intentions around the declaration.
additional legislation that would be pertinent to giving effect to the government's intentions around the declaration.

I'm not, at this point, asking the minister to provide specifics around what that legislation might be and in what order that might be. But is that a fair assumption on my part?

**Hon. S. Fraser:** Yes, that would be a fair assumption.

**M. de Jong:** The next question is a little more specific. It relates to something we came across earlier in our conversations, when we were talking about some of the work that has already taken place. We talked about the Environmental Assessment Act and one other example. I have forgotten now.

**M. Lee:** The Professional Governance Act.

**M. de Jong:** The Professional Governance Act. Thank you to my colleague from Vancouver-Langara.

In both of those instances, we saw specific reference to the United Nations declaration embedded in the act or in the amendments to the act.

This will be a question that I'm certain the minister will want to check with his team, and at the end of the day, he may say: "I'm not in a position to answer." Going forward, following the passage of Bill 41, which I expect will pass here in the next few days, is...? Will there continue to be a need, in future legislation, to make those references in individual statutes, or does Bill 41, by virtue of how it is constructed, upon passage, preclude the need for that?

**Hon. S. Fraser:** The bill itself does not require or preclude the citing of the UN declaration. We'd be dealing with this — I think the member alluded to that — case by case.

**M. de Jong:** Okay. That's helpful.

I guess what I'm trying to establish is the degree to which, if at all, the language in Bill 41 represents a blanket application.... We've talked about the declaration remaining, actually, an interpretive guide for the courts, for example.

[1:55 p.m.]

To what degree, if at all, does Bill 41 apply a blanket interpretive guide? Does there remain a need, in at least some instances, in the minister's and government's minds, for individual statutes to include a separate reference to the declaration in the way that the

**Hon. S. Fraser:** The UN declaration itself provides limited guidance on how governments should implement its provisions. But Bill 41, the bill before us, addresses how B.C. will go about achieving the ends of the declaration. Subsection 2(b) — sounds Shakespearean, I know — states the purpose of the bill is "to contribute to the implementation of the Declaration...."

On the legislative measures, section 3, which is yet to come, provides that the province will "take all measures necessary to ensure the laws of" B.C. are consistent with the declaration.

The action plan, which will be coming in section 4, is intended "to achieve the objectives of the Declaration" and could also include more than just legislative measures. For example, it could include policies or programs, as well.
M. de Jong: Again, I don't wish to belabour this. I'll just try one more time, because I thought in his first answer, the minister came pretty close to providing a discernable answer.

We have seen examples — in advance of the introduction and, soon, passage of Bill 41 — where the government, in pursuit of its objective to incorporate and be guided by the tenets of the UN declaration, amendments and drafting to specific statutes that include specific reference to the UN declaration.... We have, in the bill before us, in the previous section, in this section and in the section that follows, provisions that speak to the implementation of the declaration, the application of the declaration, to the laws of B.C.

I guess what I'm driving at is, on the surface, at least, it would appear that the need for future references to the declaration in individual statutes would not exist. But maybe there are circumstances or maybe there is a legal reason where it does — where there will remain a need, in the minds of the government and the ministers responsible, to include a specific reference in an individual statute, above and beyond Bill 41.

Can the minister provide a response to that? Under what circumstances might that be necessary?

Hon. S. Fraser: I think I agree with the member. I've mentioned before that it does not preclude referencing the UN declaration, but it doesn't require it. But we want to make sure that laws are compatible with or in agreement with the UN declaration. I wouldn't want to hamstring future governments in the work of bringing legislation into alignment. I can't think of any legal reason, but maybe there is.

I know in the case that was cited initially — the two cases that were cited by the member opposite, who was talking about the Environmental Assessment Act and the governance, so both of those..... I'm not sure about the requirement for that in the future. But it could be.

I guess I'll ask the member: are you looking for specific examples where it might be required? Should I be delving deeper on this one?

M. de Jong: No, thanks. I'm not sort of leading to any one specific looking for specific examples where it might be required? Should I be delving deeper on this one?

M. de Jong: No, thanks. I'm not sort of leading to any one specific example. The proposition I'm testing is the degree to which Bill 41, in and of itself, serves a purpose that might otherwise be necessary on an individualized basis. In the case of the two statutes that we've identified, which predate Bill 41, in order to accomplish the government's objective of embedding a reference to and guiding behavior by the declaration, it would have been necessary to include that specifically in the bill.

What I'm querying in a very general way is whether Bill 41, in the government's mind, accomplishes that on a far broader basis, such that that's no longer required. So I'm not advancing the proposition that the bill or the declaration requires it. I am posing the question about whether or not passage of Bill 41 precludes the need for it.

Hon. S. Fraser: It certainly wasn't our objective to preclude referencing the UN declaration. I would say that the two previous pieces of legislation that were cited are very broad in the use of the term "UN declaration." I mean, it's not specific. It's not surgical in any way. Whereas, the intent, I think, following with the action plan is to look at legislation and to amend it case by case, as necessary, more surgically than the allusion to the UN declaration in the other two, the previous pieces of legislation.

Again, these would be case by case. But it's not our intent to have Bill 41 preclude the use of the term "the UN declaration."

M. de Jong: Okay, thanks to the minister.

Let's go on to article 39. I'll quickly read it into the record. "Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration."
How does the minister and the government interpret that article?

[2:05 p.m.]

**Hon. S. Fraser:** We've already addressed the financial assistance issue in the context of self-determination. As I stated previously, article 4 does not create a positive obligation on the part of the state, but there will be conversations about funding from the provincial government.

**M. de Jong:** Would the minister

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article 4 does not create a positive obligation on the part of the state, but there will be conversations about funding from the provincial government.

**M. de Jong:** Would the minister agree with me that the essence of what is conveyed via article 39 is that states which sign on and seek to implement the declaration are also accepting, to one degree or another, the notion that Indigenous peoples will have the right and the need to access funding from those states? In the context of British Columbia, that would be the government of British Columbia.

**Hon. S. Fraser:** I think as government, we certainly recognize the need for nations to have the capacity and the funding to provide the capacity. The province already provides capacity funding and technical support, as the previous government did, to a significant number of First Nations negotiating tables.

I think in recognition of... Besides that, other funding opportunities for capacity and for things including capacity, I would suggest, would be the long-term source of funding — the stable, long-term funding from gaming revenue that has recently begun to flow to communities. It's almost $100 million per year — which, I think, directly supports self-government and self-determination.

**M. de Jong:** Does the minister accept this proposition, which has been made to me by First Nation leaders with whom I've had a discussion about this?

Part and parcel of embracing and embedding the declaration in the way contemplated by Bill 41 is the need for the government to recognize that the enhanced levels of consultation that the minister has discussed throughout this debate, engagement and processes — which the minister has alluded to in general terms — are going to place additional demands on the very First Nations with whom the government wishes to engage and that that will translate into a need for additional resources that First Nations will be looking to government to help provide.

Is the minister accepting of that proposition?

[2:10 p.m.]

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**Hon. S. Fraser:** It is a good question around capacity. Capacity has been... I think we've recognized this is a challenge with communities, with First Nations and working with government. I did mention some of the ways we tried to address that. I would suggest the sections of Bill 41 coming forward also address a way of us working with First Nations to prioritize the needs, to put priorities down as far as legislative change. That will certainly help develop an orderly path forward to help inform us of issues of capacity that might go along with that.

But you know, there are other... Besides the existing capacity that's been ongoing for funding for things like technical support for a lot of tables and the stable, long-term funding that was recently begun with the $3 billion investment over 25 years, a direct transfer of revenues from gaming to all First Nations communities in the province, the province also provides funding for capacity through the First Nations public service secretariat, the First Peoples Cultural Council that we've talked about — the $50 million towards language revitalization, amongst other things — the friendship centres to support Indigenous peoples in urban areas, First Nations Health Authority, of course — they're part of that picture — funding for housing and child and family services, etc. Besides that, of course, there are...
The federal government has a role here also. Then of course, there's working with First Nations, ensuring, in the interests of self-determination... There is own-source funding too. We're seeing a lot of nations creating a lot of opportunities and wealth and building capacity themselves within their own nations.

M. de Jong: Maybe I'll relay to the minister the argument that was advanced to me by this First Nations leader, who said something along the following lines. I'm paraphrasing, but I think it's pretty close. "If UNDRIP," he said, "is going to have any practical impact, we" — we being First Nations — "are going to need more capacity dollars from government." That was his point to me.

Now, the minister has, appropriately, gone through a list of areas where First Nations have received, are receiving, financial contributions and sharing. You mentioned the gaming, which is not an insignificant amount, and I'm not quarreling with that.

He's mentioned the role of the federal government and the role that own-source revenues can play in meeting the additional requirements that First Nations will have in terms of engaging with the government along the lines

the role of the federal government and the role that own-source revenues can play in meeting the additional requirements that First Nations will have in terms of engaging with the government, along the lines contemplated in the declaration. The proposition being advanced, I think, by many First Nations leaders, is that in addition to that, there will be both a requirement and an expectation that funding for consultation capacity from the provincial government will increase.

I'll try to bring all these questions together. Does the minister agree with that proposition that post-passage of Bill 41, in addition to the other areas the minister has quite properly referred to, there will be a requirement for additional capacity funding? Does he agree with that proposition?

Secondly, if he does, has there been any preliminary attempt by the government to quantify what that might look like, recognizing that it may well be a matter for future budgets? But has there been any preliminary work? Has there, for example, been a Treasury Board submission prepared to advance the requirement for that additional funding? So two or three questions I've lumped into one there.

Hon. S. Fraser: As a government we have recognized, certainly, the needs for capacity. You know, we have already... I'll cite it again. This is part of why we went forward in partnership with the First Nations Gaming Commission to develop the plan for gaming revenue sharing. That is part and parcel of what we did there.

There may certainly be needs in the future. What will help to determine that will be through the workplan that we will proceed with in sections 3 and 4 that we'll be following here.

But government still needs to... I mean, we have to work within our own capacities too. Reconciliation won't happen overnight, through Bill 41. It's a plan that's already

that we will proceed with in sections 3 and 4 that we'll be following here.

But government still needs to... We have to work within our own capacities, too. Reconciliation won't happen overnight through Bill 41; it's a plan that's already anticipating that this will happen over time. But we have to meet our realities of government — things like balancing budgets and such. We have to do it within that framework and that context.

M. de Jong: Thanks to the minister. I think, last question on this.

If we look forward — following, again, the passage of Bill 41, and to the extent that the scenario the minister eludes to plays out — and there are additional needs on the part of First Nations with respect to carrying out the work that flows from Bill 41 and the UN declaration, and the government is
called upon and agrees to shoulder some of that fiscal burden, where in the budget would it appear? Would it naturally be a function of his ministry, of the ministry he presently leads? Is that...?

I guess the question... To the extent that the government seeks to assist with costs that First Nations point out as accruing to them as a result of the passage of Bill 41, and to the extent that the government is prepared do that in the future, where do we look for it in the budget? Will we see it in the minister's budget? Will his ministry be the point person or the point agency within government for advancing that, or will it be elsewhere?

[2:25 p.m.]

Hon. S. Fraser: It's probably a question for future budgets, but each ministry already has a mandate

Hon. S. Fraser: It's probably a question for future budgets, but each ministry already has a mandate and a responsibility under that mandate towards the UN declaration and reconciliation. Following from that... That will be considered through future budgets, at least in part based on the work of the action planning that will come out of Bill 41.

We have a commitment towards a balanced budget. So it has to be done within that. There are already examples, I think, if you look at existing budgets since the mandate was given two years ago to each minister to work towards the implementation and adoption of UNDRIP.... We see that reflected in the budget, for instance, for Indigenous housing through individual ministries. I'm anticipating that will be similar — again, within the context of commitments towards things like a balanced budget.

M. de Jong: Thanks to the minister.
Hon. Chair, we are beginning to draw close to the final provisions of the declaration. I know it has been a lengthy examination. Candidly, I think a very helpful one in terms of better understanding this instrument.

Just a couple more articles that I'd like to solicit the minister's thoughts and views on. Article 41 is not too lengthy. I'll read it into the record so anyone following later can have the written record before them. Article 41 reads: "The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established."

I have a version of what I think that means, but I'm interested to hear how the minister interprets article 41.

Hon. S. Fraser: I think this article speaks to work being done, certainly, at the international level, in its essence, to implement the declaration.

M. de Jong: Okay. Well, I'll share with the minister what I thought it meant. I read it kind of literally. It sounds like an offer of financial assistance. I thought the minister might be excited by that proposition.

I don't mean for this to sound cheeky, but we are engaged here in something that has not happened anywhere else in the world. We've established that over the course of the discussion. This must be, from the point of view of the United Nations and those within that very large organization, something very satisfying — to see a jurisdiction, at the domestic legal level, take the step that the government of British Columbia is purporting to take with Bill 41.

I think the minister or someone in the course of this debate has used the term "pilot project" — or advancing, for the first time, where no one else has gone. If we're right or if I'm right.... I won't presume to know the minister's mind. But if it is an offer from the United Nations to at least consider the option of providing funding....

In light of the conversation that we just had, has there been any contact with the United Nations to explore that?
Hon. S. Fraser: No, there has not been. I would not dismiss the idea. As the member raised it, I think it's worthy of an opportunity here, as we move this legislation through this august place in British Columbia, as a leader in the world.

M. de Jong: Thanks, and to the member "bon chance," as they say in the diplomatic world.

Article 46. There are two parts to article 46, and I'll ask the minister about both of them. One, they're a little lengthy. I'm not going to read them into the record. Actually, there are three sections to article 46. It's 1 and 2 that engage my interest.

Can the minister indicate to the committee how he and the government interpret the provisions of article 46.1? What, in effect, is the declaration saying there?

Hon. S. Fraser: Moving to the essence, I think, of article 46, I think this speaks right to the rights in the UN declaration — that they're not absolute.

M. de Jong: I'm inclined to agree with.... Well, I do agree with the minister. I think the article breaks that down in a couple of ways, and 1 is intended to convey — well, not surprisingly — something slightly different than 2.

Does the minister wish to particularize, as between 1 and 2, what those limitations on the rights conveyed in the declaration actually are, as between article 46.1 versus article 46.2?

Hon. S. Fraser: A good question. I'll take a stab at it here.

Paragraph 1 of article 46 should be read together with the declaration's provisions on self-determination, specifically. But paragraph 2 of article 46 confirms that the province continues to have the right to make decisions in the public interest. But I, again, qualify this. Neither the UN declaration nor Bill 41 provides a veto.

M. de Jong: All right. Let's go back to 1, because my sense was that 1, in drawing some form of limitation around the application of the rights conveyed in the declaration, was largely intended to convey a protection or a reference to the territorial integrity of member states of the United Nations. Does the minister share that view?

Hon. S. Fraser: Yes.

M. de Jong: Then, with respect to article 46.2, I read that as, somewhat, the United Nations declaration equivalent of section 1 of our Charter. Section 1 of our Charter makes the point that the rights conveyed in the Charter, which are overarching and constitutional, can only be limited in circumstances where it's prescribed by law and demonstrably justified in a free
The language here is different, but I interpreted the concept as being similar — that it is, as the minister said a few moments ago, designed to create, on the part of the declaration itself, a form of limitation and the broad rules around which those limitations might be defined and applied. Does he share my view around number 2?

Hon. S. Fraser: Thanks to the member for the question. I think, on the face of it, I would tend to agree with the intent of what the member is suggesting. But for the record, perhaps I'll put it in my own words.

The rights of the UN declaration are not absolute. I see it this way. This is a reading of 46 — paragraph 2 of article 46. It confirms that the province continues to have the right to make decisions in the public interest. But as discussed earlier, the province is expected to consult and cooperate in good faith when considering decisions that may affect Indigenous peoples, within that context.

M. de Jong: I was trying to think of an example that would fall within the provincial... I suppose if I took enough time, I could think of one where the provisions of article 46-2 might come into effect. I mean, I must confess I had an easier job doing it in areas that are more squarely within the federal jurisdiction.

So we talked a little while.... We didn't spend any time on the article dealing with military activities on traditional lands. I think, though, that might be an example, if we were talking about the federal setting, where, in the event of crisis and conflict, there might be an opportunity where a government could invoke 46 to disregard or temporarily disregard some of the processes and protections contained in the declaration.

Can the minister think of an example within the provisional constitutional jurisdiction where 46 might have application? I just think that it's illustrative of the.... It might be a better way to illustrate the workings of 46-2 than to just talk about it in abstract terms.

Hon. S. Fraser: I guess the military might be an obvious example. But I wouldn't want to try to figure out other examples, maybe, at this point. The province views the UN declaration as to be applied within, certainly, the constitutional framework of Canada. This interpretation of UNDRIP, the UN declaration — that limits on Indigenous rights, in certain circumstances, can be valid — is consistent with Canadian jurisprudence regarding the need for governments to justify infringements on Aboriginal or treaty rights recognized and affirmed, of course, under section 35 of the Constitution Act in 1982.

Again, the UN declaration, with the context, could be international. I'm not sure of the intent. In the international arena, there might be some other meanings there. But I think within British Columbia's context, that would cover it.

M. de Jong: Well, that brings us to the conclusion of our specific examination of the declaration itself. I know we've taken some time to undertake that work. I think it was a worthwhile exercise to obtain some of the minister's thinking about how these provisions of this international declaration, UN declaration, have application within the context of British Columbia and the Canadian constitutional framework. It also allows us, I think — for the balance of our time in this committee in this examination — to focus on the legislative provisions as opposed to the provisions that derive from that other body, that international body, of the United Nations itself.

I think my colleague from Vancouver-Langara has several more questions related to the wording in section 2. Then we'll be in a position to move on to the subsequent sections of the bill.

M. Lee: I just wanted to also add my thanks to the minister and his team for, again, the patience to walk through many of the articles in the declaration with the member for Abbotsford West and myself over the last number of days. I think it's important to establish an understanding of the declaration.
Because as we turn back to subsection 2(a), in terms of the purposes of this bill, it says: "to affirm the application of the Declaration to the laws of British Columbia." I know that we've had, at various junctures through the course of this committee stage, opportunities to summarize with the minister the

it says: "to affirm the application of the Declaration to the laws of British Columbia." I know that we've had, at various junctures through the course of this committee stage, opportunities to summarize, with the minister, the meaning and the application and the impact of this Bill 41.

When I look at this purpose, I believe, from our understandings here at committee stage, that when it says "to affirm the application of the Declaration," we've heard and we've had the discussion with the minister that the declaration has been an interpretive tool utilized by the courts. On day 2 of our committee stage, the minister and his team were helpful to come back with a number of court decisions, which I wanted to come back to in a moment, just to walk through two of them by way of example.

With the passage of the bill, the minister has indicated, on behalf of the government, that the declaration would have no force and effect and would continue to be an interpretive tool by the courts and that really, when we go through the articles and walking through how they might be applicable to British Columbia law, we've come to understand — and the minister has just actually underlined it again — that with the nature of the declaration itself being international in scope, it was done for a variety of purposes by a variety of nations for specific circumstances and contexts that they have with their Indigenous peoples in their lands. I think the meaning from that is that they may not have direct applicability in British Columbia.

On the first or second day, we covered that certain articles are also in federal jurisdiction, like the militarization or the military activities that article 30 concerns. There may be other areas around health and education that we've talked about, international treaties. Those are the kinds of articles and elements of the articles that may well have application and require the cooperation and contribution as we implement the declaration in British Columbia, as per the purpose set out in subsection 2(b).

Of course, the declaration itself would continue to be applied by this government as it goes through the action plan process to meet the commitment in section 3 of this bill, as well, within the confines of the Canadian constitution and the Canadian legal framework, section 35 jurisprudence, and that it's a process to come, for which this declaration is being applied.

I just wanted to reconfirm, with the minister, my basic summary as to where we are with this as we go back into section 2(a): is that what the government intends when they're saying that the declaration applies to the laws of British Columbia? It applies as an interpretive tool for the courts, as the basis on which government will look "to ensure the laws of British Columbia are consistent with the Declaration," as set out in section 3, and there'll be an action plan process under which the declaration will be implemented "to achieve the objectives of the Declaration"? We will discuss what those are.

Then lastly, in terms of the decision-making agreements that are set out in section 7, there are certain abilities, certainly — which, by way of agreement with government, are expressed. I just wanted to have a clear understanding with the minister that that is what this government intends when they use the words "to affirm the application of the Declaration to the laws of British Columbia." Am I correct in my understanding?

Hon. S. Fraser: I'll try to be very clear here. In section 2(a), I think you've got it. The courts may look to the declaration as an interpretive aid — where if there's ambiguity in legislation, such that if there's an interpretation that aligns better with the declaration, that interpretation would be preferred.

Yes to the other points that the member raised, I think rightly so: the alignment of laws and action plans, yes.

M. Lee: Let me say that I appreciate that confirmation. To the minister: I know that we're on day 5 of this committee process and that we're near the end of our process as we get through the balance of the bill, but I do think it's important that we have a clear understanding of what is going to be
I know we're on day 5 of this committee process and that we're near the end of our process as we get through the balance of the bill, but I do think it's important that we have a clear understanding of what is going to be a framework to implement the declaration in this province over many years and that we will see in terms of the action plan.

Let me just say that there was a decision that the minister had cited, which is the Judy Sackony and Mary Anne Shooey-Devries decision back in 2010. On paragraph 35 of this decision, on page 10, I just want to read into the record:

"At the time, the court said this: The UNDRIP is an international instrument regarding the rights and treatment of Indigenous peoples, adopted in 2007 by the United Nations. As pointed out by counsel for the respondent, it is not legally binding under international law, and although endorsed by Canada in 2010, it has not been ratified by parliament. It does not give rise to any substantive rights in Canada."

"International instruments such as the UNDRIP may help inform the contextual approach to statutory interpretation, but no issue of statutory interpretation has been raised in the case. The appellant's argument relating to UNDRIP also has no chance of success."

Well, that wasn't the part that I needed to emphasize, and that's not intention.

I just wanted to say, though, at the time, of course, there was no ratification by parliament. That's something that many in this country expect the Prime Minister to be doing with this new government. That will come. Certainly, that's what we're seeing here in British Columbia. I think that that is consistent with the discussion we've been having at this committee stage. And when the minister says that it's there as an interpretive tool and that it does not give rise to any substantive rights, that, I think, is a demonstration of that, in the view of the courts.

There was another decision in November of 2013, again in the set that the minister referred to, which relates to Chief Jesse Simon and others in New Brunswick, a decision of the federal court. And in that instance, at paragraphs 117 and 121, the court, in referring to .... This was to do with the applicants' rights to receive benefits under income assistance programs. In that case, there was reference to section 35 of the Constitution Act, as well as UNDRIP.

In fact, the articles that were particularly cited included article 43. I think it was 19 and one other. The court there again reiterated that while the instrument does not create substantive rights, the court nonetheless favours an interpretation that will embody its values.

I think, again to the minister's point, we're looking at the declaration as expressing principles, principles of interpretation. So I wanted to just state that I don't know if the minister has any comment about those two particular decisions I've referred to.

Hon. S. Fraser: I do believe they represent a fair summary of the court's decisions, yes.

M. Lee: Thank you, Minister. I appreciate that I was only choosing two examples. There are a few other examples. Some are very similar; some are not similar. But that was because there wasn't sufficient reliance, let's say, of the court on the declaration.

I just wanted to then turn to section 2(b). This is something that the minister did refer to in response to a number of questions that my colleague the member for Abbotsford West and myself had on certain articles in the declaration.

There was a response given at the time, which I'd just like to invite the minister to reiterate at this stage, now that we're back in the main section of the bill, that what's intended here, in terms of the purposes of the act, is that British Columbia, in effect, will contribute to the implementation of the declaration, meaning that there are other parties that will also do the same.

Hon. S. Fraser: I do believe they represent a fair summary of the court's decisions, yes.

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First of all, is that the correct understanding? Secondly, which other parties does the minister expect to contribute to the implementation of the declaration?
Hon. S. Fraser: Thanks to the member for the question. I think it's good to clarify these as we go back into the body of the bill, and I thank the member for allowing me the opportunity to do that.

With respect to paragraph (b), the act contributes to the implementation of the declaration by requiring the B.C. government to align its laws with the declaration, which will be coming up in section 3, and to prepare and implement an action plan, which will be referenced fully in section 4, and to report annually on the progress made.

M. Lee: I'll just make a comment that we'll come on to in terms of understanding the action plan and how that process will unfold. Clearly, the minister has indicated — and I respect and understand at least the consideration of this — that government does not want to be overly prescriptive as to how the declaration ought to be interpreted.

There is an area of cooperation here that the government is expecting with First Nations, and that contribution is where the government sees its effort. Is that correct?

Hon. S. Fraser: I think the member has it correct. It is an opportunity for us, as government, to work cooperatively and in collaboration with Indigenous people — with First Nations, Métis, Inuit — and also with our federal partners too.

M. Lee: Lastly, on this section, is the third purpose, which is section 2(c). First of all, I know we've had, on the first day, a discussion around the definition of "Indigenous governing bodies." I would just like to invite the minister to walk us through, as a committee, the purpose or the intention of having this wording set out as the third purpose of this act.

Hon. S. Fraser: Thanks to the member, again, for the opportunity to do just that and to make it clear to those watching and those that might review this later.

Paragraph (c) of section 2 relates to the portion of the proposed legislation allowing government to enter into agreements with Indigenous governing bodies. By enabling government to contract with the entity, Indigenous peoples have authorized to represent their section 35 constitutional rights. The government is able to acknowledge the right of Indigenous peoples to determine how they govern themselves.

M. Lee: It's helpful to hear that explanation, which is consistent with what other members on this side have understood in the technical briefings.

Can I just ask, then...? Where in the bill, specifically, does the government have that ability to enter into an agreement? Is the minister referring to section 6(1)?

Hon. S. Fraser: Yes. Both sections 6 and 7, I think, could be referenced here.

M. Lee: We will get to a full discussion about section 7. Perhaps I'd just invite the minister, at this juncture.... Given we're on to sub (c), if he could just elaborate a little more as to how that would operate, meaning.... When we talk about supporting the affirmation of Indigenous governing bodies.... I think I understand the term "develop relationships with," but in terms of the "affirmation of," what exactly do we mean by that?

[3:00 p.m.]

Hon. S. Fraser: It is about recognizing the relationship we've already got with nations. But also, by enabling government to contract with Indigenous governing bodies — with those entities Indigenous peoples have authorized to represent their section 35 constitutional rights — the government is able to acknowledge right of Indigenous peoples to determine how they govern themselves. We will go into detail on the specifics and examples of how we're going to do that, in the upcoming sections.

[S. Malcolmson in the chair.]
M. Lee: So when we say "affirmation," what's government's role in that affirmation?

Hon. S. Fraser: To recognize the Indigenous governance and organizations we work with now. But to recognize other Indigenous bodies that may form in the future, that we wish to embark into contracts with. That sort of thing is contemplated within sections 6 and 7.

M. Lee: Well, just working between the language in subsection 2(c) and subsection 6(1), I think what I'm hearing the minister say is that there will certainly be some involvement around looking at Indigenous governing bodies in this province.

So let me again ask the minister, just while we're on this particular section, so we have that understanding when we get to section 6: how will the government determine which Indigenous governing bodies would be affirmed in this province?

[3:05 p.m.]

Hon. S. Fraser: Indigenous governments will follow their own rules and protocols, of course, when forming. That will be their choice, and that's, of course, part of self-determination.

For the province, the two key factors in recognizing an Indigenous government for the purposes of this act will be confidence that the constituents of the Indigenous government have freely agreed to this representation and that the government has the capacity to work under this act to participate in the process, if you will, and to be accountable for any decisions that are made.

M. Lee: Well, that's helpful to have the two main considerations summarized by the minister as to how the government would make that assessment. On the first day, we had a discussion around Indigenous governing bodies. This is a clear answer around confidence and capacity.

Having said that, if I could just ask the minister: through what mechanisms will government consider, when Indigenous peoples themselves in a particular territory, as parts of members of a First Nations or a band...? What mechanisms would government consider to be evidence of free authorization or support for an Indigenous governing body coming forward?

Hon. S. Fraser: Thanks to the member for the question. The people within the nation authorize who represents them as a governing body and also by what process. I think that's important, and that is truly self-determination. So we need to be confident as the provincial government that we are dealing with the right Indigenous governing body.

The legislation gives us room for that, and it codifies a process that has been going on for many years where the province works with various Indigenous governing structures across the province. I mean, examples I would give of these: confirmed by, maybe, a chief and council, by band resolutions, by assembly resolutions.

There's a clause in the interpretation section that recognizes the diversity of the Indigenous peoples in B.C., including in relation to their distinct institutions and governance structures. We intend to respect that diversity and work with Indigenous nations to understand their particular government structure. Again, there are numerous ways that we could do that. I cited several of them.

M. Lee: Appreciate that the effort that we've been having at the committee stage is to get clarity. That's the reason why we've been going over these points: to get that clarity. I think that that response is more clarity than we previously received on the first day in looking at the definition itself.

I would expect that when we talk about codifying the process.... I understand what the minister is saying in terms of the process around self-determination and the need for ensuring proper authorization by the members and the different mechanisms in which that might occur. But I don't actually see that process codified in the bill itself. Where will that be codified?
Hon. S. Fraser: This will be considered as we go through sections 6 and 7. In 6 and 7, it lays out the process to determine just how we do this. And I cited already, I think, the two key factors that come into play there.

I believe we can get clarity. I can start going to those sections now, but I think we can get clarity on that in those sections.

M. Lee: Well, let's note that, and we'll come back to those important considerations.

I'm happy to reserve my questions around capacity as well. That is the second main factor — to understand from government what factors will be assessed to determine capacity in order to ensure that First Nations can be — in the words the minister put, I think — held accountable for the responsibilities under these agreements. So let's have that discussion, then, on section 6.

One other question I have, before the member from Abbotsford West, who has a further question on section 2, is this. I know this was discussed in the precursor to this bill, at length, in terms of timing. But I just wanted to, now that we have a full understanding in terms of the minister's overview as to how, in section sub 2(a), the declaration will be applied to the laws of British Columbia....

The discussion we had in section 1, sub (4), which is that "Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia," I think is consistent with what the minister has said in the past, which is that to the courts nothing will delay the continued application of this declaration, in terms of the interpretive nature of the tool that the courts have been utilizing to a certain degree.

Is there any concern that this government has that that purpose of this bill would be interpreted by others in terms of the interpretive nature of the tool that the courts have been utilizing to a certain degree.

Is there any concern that this government has that that purpose of this bill would be interpreted by others, including First Nations, to suggest that when you look at sub 1(4) against sub 2(a), there is a specific purpose of this bill, which is to affirm the application of the declaration — that there is no other purpose other than judicial interpretation in the interim?

"In the interim" is while government continues to do the necessary consultation and cooperation with Indigenous peoples and puts in place the action plan. In that intervening period and while that action plan is developed and implemented, is there any concern by this government that by virtue of aligning subsection 1(4), which says no delay, in effect, and sub 2(a), there should be any concern by any party in this province that might demand to the government that they're somehow not moving fast enough in terms of the implementation of this declaration? Is there any concern that that might be the case?

Hon. S. Fraser: Bill 41 actually creates room for these kinds of conversations, and nations have been working on these issues for a long, long time, you know, in the interest of getting out from under the Indian Act. It's an important part of self-determination, and we look forward to working with Indigenous partners, as appropriate.

M. Lee: I certainly appreciate, again, the spirit of the intention of the bill and working together with First Nations. I think, based on the response from the minister, that the government continues to see this in a very positive light, and I think we all share the optimism and the hope for moving forward in a strong way, in a positive way, for First Nations and all British Columbians, with this bill.

But I think what we'll do is we'll come back to this question again from a different perspective.
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But I think what we'll do is we'll come back to this question again from a different perspective, once we continue to look at that in the context of section 3. With that, I'm just going to turn that over to my colleague the member for Abbotsford West.

**M. de Jong:** There's not a lot left with respect to section 2. In the next day or two, I think the Aboriginal forestry, the B.C. First Nations Forestry Council is going to stop in. I don't know if they're meeting with the minister; they may be meeting with the Finance Minister. I had done some work in the past, in previous capacities, around this place. Obviously, it's important to the First Nations that are engaged, many of them, in forestry, and to the province as a whole. Does the forestry council, the B.C. First Nations Forestry Council, constitute a governing body within the meaning of sub 2(c)?

**Hon. S. Fraser:** I guess that would be a question for Indigenous communities. It's not a question that I'm aware has been asked or answered by Indigenous communities.

**M. de Jong:** Well, I suspect First Nations may well have a view on the matter, but I think the government also will necessarily need to have a view. As we come to the sections about who the government is purporting to enter into agreements with — and, in this context, developing relationships with Indigenous governing bodies — I think it is appropriate and fair to ask the minister whether he and the government consider the First Nations Forestry Council to be a "governing body" within the meaning of the act.

I'm trying to ascertain what the prerequisite is for being a governing body. The minister will undoubtedly know that the First Nations Forestry Council is a society that was established in 2006, a non-profit society that advocates for the role of B.C. First Nations in forest land and resources and that supports First Nations in advancing their role as stewards.

There's a mission statement that I'm sure the minister has seen in the past, and the forestry council seeks to engage with government. I think it's a fair question to ask whether or not it constitutes a governing body. And in answering, maybe the minister can indicate what some of the prerequisites are to being a governing body, from the perspective of the provisional government. Are we talking about elected bodies? And if so, elected by whom?

I picked this one: a) they're coming tomorrow; b) they have developed a very comprehensive forest revitalization strategy and one that speaks directly to the UN declaration. So I am interested, and I'm sure they will be interested, to know whether or not they are considered within the parameters of section 2 of Bill 41 to be a governing body with whom the government intends to develop relationships.

**Hon. S. Fraser:** I'll begin with the answer to that question, with the definition of Indigenous governing body. It "means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act...." That's 1982, of course. At this point in time, we do not view the First Nations Forestry Council as a governing body, under that definition, but we would want to hear from Indigenous communities if that question has not been posed or asked or answered.

[The bells were rung.]
The Chair: The bells are now ringing for a vote in the House. I understand that there may be an agreement to continue committee stage of Bill 41 in the House. Is that so?

Our other option is to simply call for the minister’s motion to report progress. Sorry. That’s not true. Or else we could simply recess and go to the vote.

M. de Jong: We would recess. It is not for us to determine where we sit. We take our instructions from the House Leader.

The Chair: Then we will simply recess for the vote and return here.

The committee recessed from 3:28 p.m. to 3:39 p.m.

[3:35 p.m.]

The committee recessed from 3:28 p.m. to 3:39 p.m.

[S. Chandra Herbert in the chair.]

The Chair: I’d like to call the committee back into session so that we can shut down this session and move into the bigger chamber.

Hon. S. Fraser: I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 3:39 p.m.

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The House met at 1:33 p.m.

[Mr. Speaker in the chair.]

**Routine Business**

**Orders of the Day**

**Hon. C. James:** I will call a motion on notice, Nisga’a Final Agreement Amending Agreement (No. 4).

**Hon. S. Fraser:** I move Motion 24 standing in my name on the order paper.

[Be it resolved that, pursuant to section 38 of Chapter 2 of the Nisga’a Final Agreement, the Legislative Assembly of British Columbia consents to the amendments to the Nisga’a Final Agreement set out in the attached Nisga’a Final Agreement Amending Agreement (No. 4).

**NISGA’A FINAL AGREEMENT AMENDING AGREEMENT (No. 4)**

THIS AMENDING AGREEMENT is dated for reference March 31, 2019

AMONG

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Crown—Indigenous Relations

("Canada")

AND

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA, as represented by the Minister of Indigenous Relations and Reconciliation

("British Columbia")

AND

The NISGA’A NATION, as represented by the Nisga’a Lisims Government Executive
Second reading Bill 42 approved unanimously on a division. [See Votes and Proceedings.]

[3:35 p.m.]

Hon. B. Ralston: I move to refer the bill to Committee of the Whole House at the next sitting of the House after today.

Bill 42, Fuel Price Transparency Act, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Mr. Speaker: Members, we'll take a five-minute recess, please.

R. Leonard: I seek leave to make introductions.

Leave granted.

Introductions by Members

R. Leonard: I'd like to introduce to the House the class from Mark R. Isfeld High School in Courtenay. Students from the whole Comox Valley have come down here today with their teacher, Heather Beckett, and — I don't know how many — five other chaperones, I guess. I just hope that the House will make them feel very welcome as they watched an historic moment. Unanimous.

Mr. Speaker: Members, we are now recessed. We'll be back in five minutes.

The House recessed from 3:36 p.m. to 3:40 p.m.

Committee of Supply (Section A), having reported progress, was granted leave to sit again.

Hon. M. Farnworth: In this chamber, I call continued committee debate on Bill 41, United Nations declaration act.

Committee of the Whole House

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT (continued)

The House in Committee of the Whole (Section B) on Bill 41; R. Chouhan in the chair.

The committee met at 3:43 p.m.

On section 2 (continued).
M. de Jong: When the division bells rang, the minister was in the midst of delivering an answer to my last question relating to the First Nations Forestry Council. The part I clearly heard was where he indicated that, based on the available information, he thought and communicated that the B.C. First Nations Forestry Council would not qualify as a governing body within the meaning of subsection 2(c). Then I thought he gave some helpful rationale for that, but the bells were ringing and we started to move, and I didn't clearly hear what some of that rationale was.

Perhaps he could, in this new setting, in this new chamber, confirm what he said about the forestry council not representing a governing body within the meaning of subsection 2(c) and some of the rationale that would determine whether or not a group or agency was a governing body.

[3:45 p.m.]

Hon. S. Fraser: I guess just to repeat in the new chamber here, at this point in time, we do not view the First Nations Forestry Council as a governing body, but the legislation, Bill 41, that's before us will allow Indigenous peoples to determine

I guess to repeat just in the new chamber here. At this point in time, we do not view the First Nations Forestry Council as a governing body. But the legislation that's Bill 41 that's before us will allow Indigenous peoples to determine what governance structures best represent their nation when entering into agreements with the province.

Existing Indigenous governance structures such as treaty nations, for instance, Indian Act bands, tribal councils, etc., can remain. It also means we can work with other forms of government chosen by nation's citizens, such as collectives of nations or hereditary governments.

This supports the nations doing the work of rebuilding their nations and governments and supporting self-determination and also supporting self-government.

M. de Jong: I think the last question on this point. Again, using the First Nations Forestry Council as an example, would the government and the minister be looking for something specific as an indication that First Nations themselves have conveyed a willingness to have a body such as the forestry council elevated to governing-body status? Would that require band council resolutions on the part of membership First Nations?

Is it possible for an agency like the forestry council to graduate, if that's the right word, to governing-body status and, if so, what indicators would the government be looking to for confirmation that that term can legitimately be applied and that status can be applied to an agency like the forestry council?

Hon. S. Fraser: The legislation actually provides some room for government to recognize other types of governing bodies, so that opens up the space to do that. But for the province, the two key factors in recognizing an Indigenous government for the purposes of this act will be confidence that the constituents of the Indigenous government have freely agreed to the representation — that would be one key factor — and that the government has the capacity to work under this act, to participate in the process and to be accountable for any decisions that are made.

Section 2 approved.

On section 3.

M. Lee: I appreciate the discussion we've been having and the manner in which we had it on section 2. I'd like to invite the minister to work with the member for Abbotsford West and myself through section 3.

This is a very important section of the bill, and it has some key considerations as part of it. Let me just start at the back of the wording here. There is an obligation here on government to "take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration." We've spent quite a deal of time understanding the articles of the declaration.
Hon. S. Fraser: Thanks to the member for the question. We've not done the law-by-law assessment, if that's the right term to be used here. This will be the work that we will embark on with Indigenous Peoples as part of the action plan. The priorities will be set here and in its course, recognizing by all, that this will take time.

M. Lee: I appreciate the response from the minister and the fact that this may well take time. Does the minister see this as an immediate obligation of the government when the words say that "government must take all measures necessary to ensure the laws of British Columbia are consistent with the declaration"?

Perhaps, I can ask the question two ways. One is, is that an obligation of this government first? Secondly, is that an immediate obligation of this government? Thirdly, if it's not immediate, in what time period would the government be meeting this requirement?

Hon. S. Fraser: The priorities and the pace of the work will be set out in the action plan. We didn't prescribe that as such. This work will be expected to take time bringing laws into alignment with the UN declaration. It won't happen overnight. It will be generational work.

M. Lee: The minister has made reference to generational work. I know, even in the technical briefings, we heard words to that effect. Just to confirm, how does he define the time period of generational work? Is that, say, 20 to 30 years?

Hon. S. Fraser: We have not set a time for this. What we have set is a plan to move forward with priorities with Indigenous Peoples. We know it will take time. What we've developed here through Bill 41 is a very orderly and transparent process to proceed, and I'm excited to be embarking on that work.

M. Lee: I appreciate the need for transparency and the need for clarity and understanding. That's why the time that we spend at this committee stage, the five days that we're taking, is the opportunity for us to have that transparency to the extent that we have it, meaning to the extent that we understand from the government what the way in which and the manner in which and the timing of which the declaration will be implemented.

Let me just come back to a point around consistency though. We've talked at length in the discussions around the articles that in the government's view, it will take a meaningful exercise to work with First Nations and Indigenous Peoples in a consultative and cooperative way, which is the lead-in language to this section.

Who decides and makes the determination as to when a law of British Columbia is consistent with the declaration, knowing that the declaration article to which a law might be compared against, that is to be defined between, at least, the government and the relevant Indigenous governing body, First Nation or others who are authorized to have that discussion about a particular article?

Who, at the end of the day, will determine
Hon. S. Fraser: The workplan anticipates us working together with Indigenous peoples, as was suggested by the member opposite. That's how we'll work collaboratively to determine what the priorities are, which laws are providing impediments towards reconciliation, that sort of thing. That's how we'll determine the priorities.

M. Lee: I appreciate that there is a need to determine priorities, and we will get to that in terms of section 4.

What I'm really asking the minister, though, here is on the process which government will be embarking on as this bill gets passed — because it is a cooperative process, the way this has been framed in this section 3. When will government know that it has met the obligation, set out in this section, to ensure that "the laws of British Columbia are consistent with the Declaration," if the articles themselves and their meaning — and their application, meaning to British Columbia laws — are yet to be determined?

I'm asking the minister, hon. Chair, when the government will have determined that it's reached that point.

Hon. S. Fraser: In answer to that question, possibly I can give an example or two of how that will work.

The Environmental Assessment Act was determined by our work — the Minister of Environment's work with Indigenous peoples in the province — where barriers were seen to be in place to move forward in a collaborative way with environmental assessments that reflect respect and recognition of First Nations in a territory where work was going to be done or projects were going to be done — again, collaboratively. That is how that act was modified and amended to reflect the values within the UN declaration. It would be that sort of pattern that we'll follow.

I guess I could go to a more fundamental example. That might be how a collaborative process arrived at a new piece of legislation in this House, known as Bill 41, that we are in committee stage of right now. It was done in a different way, not one that was prescriptive by government. This was done in collaboration with First Nations. The First Nations Leadership Council, through resolution of all their members, individual nations, had a mandate from Indigenous people in this province to actually move forward, for First Nations to move forward, on working collaboratively in a different way with government, based on a respect-and-recognition relationship.

That is actually how it's got us to this place today, on Bill 41. It's exactly, I think, the pattern. Those two examples will show just how, exactly, this will work.

M. Lee: Well, let me just try and go through another section of this section, which is the term that's utilized: "all measures necessary." Can I ask the minister to explain, on behalf of the government, what that test is?

[4:00 p.m.]

Hon. S. Fraser: It would involve introduction of legislation, if there's new legislation or amendments to existing legislation.

M. Lee: It certainly would involve that, you would expect. In terms of.... We've talked about this bill being applied, so to speak, on the laws of British Columbia going forward. The minister made it very clear that in response to many of the applications, let's say — interpretations of the articles of the declaration — it would be on a go-forward basis. For example, in areas of redress.

In terms of amending existing laws, perhaps I could ask the minister to elaborate more, in terms of what expectation he sees on behalf of government. Again, when we're talking about all measures necessary, is that a review of eventually all laws of British Columbia?
**Hon. S. Fraser:** We will work with Indigenous peoples to identify the priorities and which laws are most important to amend or change. Or if there are new laws, new legislation coming forward, then we'll work with them on those to make sure that the measures we do take to align laws with the declaration are consistent with that action plan and the priorities that we work with them on.

But this, of course.... Section 3 is specifically entitled — the measures to align laws with the declaration. Those measures are new legislation, in some cases, and the amendments of existing legislation. Those are specifically the two tools that we have at our disposal.

**M. Lee:** I appreciate that we will be talking about the action plan and the priorities of the government with First Nations leadership in this province. But section 7, with respect, does not read with any limitations on it. When we talk about "all measures necessary," and it says "to ensure the laws of British Columbia are consistent," that will suggest that whether it's reasonable or otherwise, this government has the obligation to use all measures necessary.

This means from any considerations, including considerations from a cost point of view and other priorities of government, presumably. That is what is required here in order to ensure that the laws of British Columbia, and not just some laws of British Columbia, are consistent with the declaration. Is that the case? Am I reading this section correctly?

**Hon. S. Fraser:** I'll take a stab here. The requirement to align laws in consultation and cooperation with Indigenous peoples means that government will have to work with First Nations, treaty nations, Métis and Inuit to determine the best way to seek their input.

Then what we have available to us as government, the means to do that, will be through new legislation, consequential amendments — those things. Of course, they would all come back to this House, also, in the interests of transparency. I think it's part of the....

The member cited section 7. I'm assuming he meant section 3, if I'm correct. I just couldn't see the link on section 7. Thanks.

**M. Lee:** That's quite right. I intended to say section 3. So to the extent that I referred to section 7, it was section 3. Thank you for that.

I know that as we look at the declaration itself.... We talked, as well, at committee stage yesterday.... I referenced the Haida decision in the sense of where consent is not necessarily required in every case on a

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**Draft Segment 032**

we talked as well at committee stage yesterday.... I referenced the Haida decision in the sense of where consent is not necessarily required in every case on asserted rights and title, according to the court in that decision.

We look at, as a specific way of example here, this government taking all measures necessary to ensure the laws of British Columbia are consistent with the declaration. Is it intended that the government will read in — for example, in this case — recognizing that there is a distinction as we look at the term consent and how it's applied, how it is applied differently on territories over which there is asserted title versus traditional territories over which title has been determined through treaty or through the court, as we discussed yesterday? Is that the case?

**Hon. S. Fraser:** The revitalization, I think, of the Environmental Assessment Act is an example how a law in British Columbia can align with the UN declaration, in consultation and cooperation with Indigenous peoples in British Columbia.

The act sets out a collaborative decision-making process within the act that includes the addition of an early engagement phase designed to ensure all parties can understand the proposal from the early stages of the regulatory process; consensus-seeking requirements throughout the process on key process steps with Indigenous nations; and a new dispute resolution opportunity during key phases of the assessment process to promote consensus-seeking.

It's really a perfect example in answer to the question.
M. Lee: With respect, I don't believe the minister is actually answering my question. I appreciate the response, and I understand the response in terms of the process and consultation and cooperation. But all I'm trying to take the minister back, in the context of section 3, is to the discussion we've been having the last number of days — in effect, that the application of the declaration in terms of British Columbia law would be through the lens of section 35 jurisprudence.

I'm just giving a specific example, which we discussed yesterday, that when we talk about ensuring the laws of British Columbia are consistent with the declaration, there are actually words that we have utilized by way of explanation that we are hearing from the minister through the course of the last number of days in committee stage.

I am looking for an acknowledgment from the minister that, again, when we talk about... Just to pull it back to the level of the section, when we say "the government must take all measures to ensure the laws of British Columbia are consistent with the Declaration," it could go on to say, "to the extent that such measures continue to be consistent with the Canadian constitution, the legal framework and section 35 jurisprudence."

I'm not asking the minister to confirm the exact wording of that qualification, but I would like the minister, based on our discussion over the last number of days, to at least acknowledge that that would be an appropriate qualified understanding as to how section 3 should be applied.

Hon. S. Fraser: Just to confirm that everything that's within Bill 41 is within the Constitution of Canada and section 35. For certainty, nothing in this act nor anything under this act abrogates or derogates from the rights recognized and affirmed by section 35 of the Constitution Act, 1982.

[4:10 p.m.]

M. Lee: Well, I will just take the minister's response as a further indication of the discussion we've been having to recognize

DRAFT SEGMENT 033

M. Lee: Well, I will just take the minister's response as a further indication of the discussion that we've been having to recognize the confines in which the declaration will be utilized and the process that the government will be following with First Nations.

I just want to make one last point and then turn it over to my colleague, the member for Abbotsford West, on this section. That is: a great deal of the discussion that we've been having with respect to reconciliation, of course.... And as we look at section 3 as to how it would be applied, I would also ask the minister to acknowledge that under section 35 jurisprudence, there certainly has been guidance given by the courts, which we talked about yesterday, that the final responsibility, from a decision-making responsibility, lies with the Crown, but also that in exercising that responsibility, there is a need for the Crown to take into account the broader social, political, and economic interests. In this case, it would be for the entire province.

Those words are not also in this bill. They're not in the declaration. But by virtue of the acknowledgment of this minister on behalf of the government that the implementation of the declaration in British Columbia under this Bill 41 will be done consistent with the Canadian constitution legal framework and section 35 jurisprudence, that particular point of guidance from the courts would also apply. I would just like the minister to confirm that as well.

Hon. S. Fraser: I will confirm that everything in Bill 41 will be consistent with the constitution. But I think the member used the term "confines," and I think the more accurate phrase would be "the opportunities." I believe Bill 41 and the constitution of Canada together provide great opportunities for us to work together in a way, with respect and recognition, recognizing rights and title. That sort of thing will move us in a way to bring more certainty and predictability to the province, to make us a more just province also. So I don't see the constitutional context or section 35 jurisprudence context as a confines. I see Bill 41 within that as a real opportunity here for British Columbians.

M. de Jong: Just a couple of things that flow from the conversation that my colleague from Vancouver-Langara was having with the minister. There are two phrases that have been the subject of
some conversation so far, the first being "take all measures necessary" and then the second, "the laws of British Columbia," contained within section 3.

In his presentation to the senate committee, Professor Newman — I think it was Professor Newman, and I am relying on my memory now — I believe, drew the Senate committee's attention to the fact that in his view, "all measures necessary" was a phrase heretofore unknown in the statutes of Canada. Is that a phrase that has been used in any other statute in British Columbia?

**Hon. S. Fraser:** To the member opposite, thanks for the question. I haven't done an analysis of all the laws on the books in the province. But to be clear,

**M. de Jong:** Right. Well, I'll come back to that in a moment in the second part of my inquiry of the minister. Has the phrase been judicially considered anywhere in Canada — the phrase "take all measures necessary"?

**Hon. S. Fraser:** We're not aware of it, but again, there are only two measures available to us. As it relates to Bill 41, there are two mechanisms available to us: the creation of laws or the amendment of laws.

**M. de Jong:** Again, I'll come back to that qualifier that the minister has just offered.

In our discussion earlier today, the minister, I think properly, pointed to the limitations that governments are confronted by and are obliged to contend with as they move forward with public policy initiatives. The one he mentioned was budgetary and the present government's stated desire to govern within the context of a balanced budget. In fact, there are statutory provisions that require that.

My interest in the phrase "take all measures necessary" relates to whether or not, in the context of this legislation or any other, some of those limiting considerations are being stripped away from government. In the face of a phrase that says "take all measures necessary," is it still open to a government — any government, not just this government — to assert that, for example, there are budgetary considerations that preclude us from doing more even though we want to? Or does the language utilized here preclude that kind of argument from being advanced because it requires the government, quite simply, to take all measures necessary?

**Hon. S. Fraser:** Just to be clear, there is nothing in the bill that takes away our ability to balance our budget. The work is expected to take time, and bringing laws into alignment with the UN declaration won't happen overnight. As I mentioned before, it's been described as generational work. I look forward to that work done collaboratively with Indigenous peoples in this province, as we have done to actually create this bill, as we have done through the Environmental Assessment Act.

**M. de Jong:** All right. Well, I'll put this scenario, and then I'll move on, and the minister can, I hope, comment.

In the months and years ahead, a First Nation is confronted by a piece of legislation — maybe it's historic; let's assume it's historic legislation that is on the books now in the revised statutes of B.C. — that it believes is inconsistent with the provisions of Bill 41, the spirit of the declaration, and it leads to judicial interpretation of that question. The government's reply is: "We don't wish to quarrel that point; we merely wish to point out that this is an onerous task that we are embarked upon. We have limited resources, and we are doing the best we can to move through the updating process." I think this is, so far, a plausible scenario for me to lay out.

**Hon. S. Fraser:** It is then confronted by a query from the court, in this instance, that says: "Well, counsel, that's all very well and good, but we presume the Legislative Assembly meant something when it said 'take all measures necessary,' and that didn't include, in our view, asking this First Nation to wait.
from the court, in this instance, that says: "Well, counsel, that's all very well and good, but we presume the Legislative Assembly meant something when it said, 'Take all measures necessary,' and that didn't include, in our view, asking this First Nation to wait two, three or four years. You clearly don't have the resources you need. The Legislative Assembly has said, 'Take all measures necessary.' Therefore, you are obliged to do so."

That is an argument I can envisage being advanced with respect to the phrase we are dealing with. My sense is the minister disagrees with me, from the earlier answer, but I am curious to know his response.

Hon. S. Fraser: While I might disagree with the member's characterization here, this work that we're embarking on, the process, will be done in consultation and collaboration with Indigenous peoples in British Columbia. I mean, that's part of the bill. That is the next step here. I think that will clarify things as we move forward.

M. de Jong: With the greatest respect, I'm not sure it does, but I think I have offered my query and perspective, and the minister, his.

The second part of the section that I just wanted to take a moment to ask the minister about is that phrase "laws of British Columbia." On several occasions just now, the minister has pointed to the introduction of new laws, an amendment of existing laws or words to that effect. At least that's my recollection.

Not to cause the minister more grief, but I'm going to make a proposition for his consideration. The laws of British Columbia certainly include the body of statutes that are on the books presently, the revised statutes of B.C., any new laws that might be added to it and the updating an amendment thereof. But does the minister agree that the laws of British Columbia, also for the purpose of this legislation, Bill 41, include every single OIC on the books and every single municipal bylaw? Am I correct?

Hon. S. Fraser: This does not apply to municipal bylaws and that sort of thing. OICs could apply, yes. Regulations could apply. The priorities and the pace of the work will be set in collaboration with Indigenous peoples.

M. de Jong: Well, that's instructive. So the minister agrees that the vast body of orders-in-council, regulations, that are enacted by the province are captured by this, and the magnitude of the task is multiplied accordingly. But I'm surprised to hear the minister say that the laws of British Columbia insofar as municipalities are subordinated, delegated jurisdictions accordingly. But I'm surprised to hear the minister say that the laws of British Columbia insofar as municipalities are subordinated, delegated jurisdictions don't have any independent sovereignty of their own, take their authority from this Legislative Assembly.

I am a bit surprised, quite frankly, to hear him say — and First Nations may be a bit surprised to hear the minister say — that section 3 and Bill 41 do not capture laws passed by those delegated authorities that are municipal councils around B.C.

If that is the advice and the position of the minister, I will accept that, but I'm a bit surprised to hear that.

Hon. S. Fraser: That is correct.

M. de Jong: A final question, then, on section 3, and just in the interest of time, I'll try to summarize. We had a conversation earlier, when we were going through the articles of the declaration itself. I don't want to repeat that, but the impression I gained from that conversation is that with respect to the work that needs to be undertaken with respect to section 3, at this point in time, there has been no
analysis undertaken of what the costs of that represent in terms of additional resources, additional
draftspeople that might be required. There's been no budget set at this point in time. There's been no
Treasury Board submission. We've just determined that the work is not just the statutory volume but the
vast array of OICs that are captured by the requirements of section 3.

Have I correctly stated that — that there is no analysis around the cost of that work and no budget
allocated at this point in time to undertake that work?

**Hon. S. Fraser:** The priorities and pace of the work will be determined in working collaboratively
with Indigenous peoples, and it will take time. There is no... We're not putting a time limit on
reconciliation. Reconciliation is about evolving our relationships in a way that will be a benefit to all in
British Columbia, so it's expected by all that this will take time and that there is no time limit on it.

As this process develops, if there are costs associated with that, that would become part of the
budgetary considerations in the future.

Section 3 approved.

On section 4.

**M. Lee:** Let me just first ask the minister. Section 4(1) of the bill refers to an action plan to achieve
the objectives of the declaration. Could the minister outline to us what the objectives are in the
declaration?

[4:30 p.m.]

**[J. Isaacs in the chair.]**

**The Chair:** Minister.

**Hon. S. Fraser:** Thank you, Madam Chair. Welcome to the proceedings of Bill 41.
The term "objectives" is not used in the UN declaration, but I would suggest that you can imply the
intentions from the articles that we've been discussing over the last five days.

**M. Lee:** I think, at least from the time that we've had together, we have, at least from the
government's understanding at the current time — what those intentions might be. But those intentions,
as we've learned from the minister, are partly reliant upon First Nations leadership and Indigenous
peoples as to how they also see the meaning of these articles in the British Columbia context.

So, again, when I was asking earlier about consistency with the declaration and not having a clear
definition of what the declaration means, that there has to be a process that the action plan will speak to,
is there any concern here by the government that they're developing an action plan to achieve the
objectives of the declaration when there are no explicit objectives in the declaration itself? And the
action plan.... As I'm hearing from the government, the aim of the action plan is actually to determine,
arguably, what those objectives are.

So it's a bit circular in nature in terms of this process. Is there a concern from this government as to the
challenge of knowing when it has met the objectives of the declaration, particularly in the eyes of
First Nations leadership?

[4:35 p.m.]

**[J. Isaacs in the chair.]**

**The Chair:** Minister.

**Hon. S. Fraser:** How we developed this piece of legislation was a good example of how to work cooperatively and
together and collaboratively. By doing that, by listening, by engaging with respect and recognition, as
we've been doing throughout this whole process, with Indigenous peoples is the path forward. It's our
framework forward.
I mean, when we work together, when we collaborate genuinely, with good intentions, with respect and recognition, the decisions we make.... We will get to them. We will get better outcomes.

**M. Lee:** Well, I think, just on the words of the minister as he ended his response: "We will get better outcomes"—I think we all want better outcomes in this province. The question is—I’m just going to come back to this point—how do we know when we get there though? How do we know what outcomes we’re trying to achieve, particularly in the context of objectives of the declaration? That is the question that I’m raising with the minister.

He may choose to further comment on that, but let me ask this second question. When you look at subsection 4(1) of this bill, it could have focused on achieving the alignment of laws with the declaration, referring back to section 3, but it doesn’t. It actually turns to the objectives of the declaration, which are not explicit. Can I ask the minister why that is?

**Hon. S. Fraser:** Thanks to the member for the question. These are two separate sections, 3 and 4. For section 4, the action plan is "to achieve the objectives of the Declaration," which, as we talked about before, is wider in scope and separate from the requirement to align laws in section 3.

Although the action plan could highlight work under section 3, or processes by which the work will be undertaken, they are separate sections.

**M. Lee:** In the interest of when we began the review of the bill starting on section 2, after the length of time we spent on the articles, we talked about clarity and the importance of clarity at this time.

In the interest of clarity, I want to take this opportunity then to ask the minister: the action plan that’s spoken to in section 4... on the articles, we talked about clarity and the importance of clarity at this time. So in the interests of clarity, I wanted to take this opportunity, then, to ask the minister.... The action plan that's spoken to in section 4. First of all, could he confirm that the purpose of the action plan in section 4 is intended to deal with what is required under section 3?

**Hon. S. Fraser:** The answer is no. Section 4, while it could deal with alignment of laws in section 3, purposely could include other actions beyond that. It could be working together with First Nations to build more understanding around reconciliation. I mean, it could be around languages. There could be other things contemplated besides what is in section 3.

**M. Lee:** Well, let me just continue to understand how section 3 will be implemented then, just because we just came off that section. I thought, through all the time we spent on the articles, that there was, certainly.... In fact, the minister referred to the need for consultation and cooperation with Indigenous peoples in terms of the individual articles themselves. Again, if I could ask the minister: how will the alignment of laws with the declaration, pursuant to section 3, occur with Indigenous peoples? How will that process occur?

**Hon. S. Fraser:** It will be done by working with First Nations collaboratively, whether it's developing the action plan or whether it's aligning laws or whether it's other actions that could be contemplated. That's the purpose of Bill 41.

**M. Lee:** Well, I suppose, when we were talking about article 38 with the member for Abbotsford West, there is an acknowledgement that: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures...." Here, of course, the wording is "appropriate measures" as opposed to "all measures necessary." So, you know, I....

Let me just ask the minister that question as I look at this. Why is it that...? I’m utilizing this section of this article in the context of the
to "all measures necessary."

Let me just ask the minister that question as I look at this. Why is it that...? I'm utilizing this section, this article, in the context of the implementation of section 3 through section 4. So I'm referring back to article 38, which we did cover earlier, and wording that's there, just as we look at how section 3 may be implemented in the context of an action plan, which I'm still trying to get to.

Just while I'm there and having this discussion, could I ask: why the difference in wording between what was referred to in the declaration, "appropriate measures," and now in the bill is actually "all measures necessary" — which, as my colleague the member for Abbotsford West described and discussed with the minister, doesn't appear to have been ever tested judicially by the courts? Why the higher standard that's being applied here?

Hon. S. Fraser: It's important that we have this debate to make sure that we're all crystal clear about what's happening here. Section 3, the wording — it is related to legislation, specifically to legislation. Section 4 is related to... It's a broader scope there. But the scope of article 38 is broader than just legislation. They're different, right? There's a different intent there.

M. Lee: Well, I think this discussion that we're having, for those who are interested, is another demonstration of: there's so much here. There's so much here in this declaration that needs clarity. It's the reason why, I'm sure, in the government's view, it will take time. It will take time for government...
Columbia are consistent with the declaration, particularly when it's to be done in consultation and cooperation with Indigenous peoples.

This is a fundamental point that I want to draw out from the minister to confirm for further questions that we have on this section. First of all, again, I'd like to invite the minister to confirm that the action plan will address and deal with how section 3 will be implemented.

Hon. S. Fraser: The action plan in section 4 is intended to achieve the objectives of the declaration and can also include more than just legislative measures — for example, programs and policies as well.

M. Lee: I appreciate that we're making a distinction here. The minister, in his response, made a distinction to myself. That is one response that I could be asking, but I'm not asking that question. I'm asking, specifically, not the objectives of the

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M. Lee: I appreciate that we're making a distinction here. The minister in his response made a distinction to myself. That is one response that I could be asking, but I'm not asking that question. I'm asking specifically on not the objectives of the declaration, but really, the objectives of this bill. The purpose of the bill we've described in subsection 2(a). I summarized that for the second or third time in the last hour or so. So I think we have a clear understanding of what that purpose is. That includes implementing section 3.

I am asking this question because I have another point to be made here, but I need to establish, first of all, that the action plan will deal with the implementation of section 3. If the minister is suggesting that... You know, there's one thing that the member for Abbotsford West had indicated a few days ago: we're trying to understand the intention of the government, but we're also trying to ensure that the language in the bill is clear and consistent with the intention of the government.

Again, unless... I'm looking for confirmation, from this government through the minister, that section 4(1) includes an action plan that will relate to the implementation of section 3. If the minister continues to refer to "the objectives of the Declaration" — which is what the words say, and I understand that — is there something missing in this section that should actually say and also address how section 3 will be implemented?

Hon. S. Fraser: Madam Chair, I think I've been abundantly clear. Section 3 is about the alignment of laws. The action plan is to achieve the objectives of the declaration, which is wider in scope and separate from the requirement to align laws, in section 3. Although the action plan could highlight work under section 3, or processes by which the work will be undertaken, it doesn't have to.

M. Lee: Well, I guess in the discussion that we were having, the minister at various times, including even on section 3, referred to priorities of government or priorities as to how statutes would be reviewed in what order, I believe — which laws of British Columbia might be reviewed, in cooperation and consultation with Indigenous peoples to ensure their consistency with the declaration. I had assumed, in his response, that that would be something that would be laid out in the action plan.

What I'm hearing from the minister — and I appreciate that he's attempting to clarify this — is that the action plan may or may not include this. So I think I would urge the government to ensure that it does. But assuming that it does, let me just move to my next question.

In subsection 4(2), it says: "The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia." That language, of course, is consistent with the lead-in language to section 3.

Can I ask the minister...? I made a point earlier, at the end of the discussion of section 3 — about guidance by the courts in terms of consideration of the broader interests by the Crown — that that is something that is necessary.
Can I ask the minister...? I made a point earlier, at the end of the discussion of section 3, about guidance by the courts in terms of consideration of the broader interests by the Crown — that that is something that is necessary. Is there any contemplation in this action plan that government is considering to consult with other British Columbians and stakeholders in our province?

Hon. S. Fraser: I appreciate the question. Again, it's an opportunity for me. I just want to be very clear and get it on the record again that we have a clear commitment to engage with British Columbians, with local government, with stakeholders, business, industry, labour, as we have been doing throughout this process for many, many months.

M. Lee: So do I take it, from the response from the minister, that the action plan will include steps to detail out the need — action steps that are going to be taken, as part of this action plan — to engage with stakeholders in our province, including the ones that the minister named and British Columbians?

Hon. S. Fraser: We've been abundantly clear, I think, that we will work with British Columbians, with local government, stakeholders, industry, business, labour and others in a transparent way throughout this process. If there are issues of import that come up in the action plan, yes, that will all be happening.

M. Lee: Thank you for that response. One reference I wanted to read into the record, which is an acknowledgement of why that's important... I want to just quote from page 8 of the Union of British Columbia Indian Chiefs report, which was entitled True, Lasting Reconciliation, which said: "The government should undertake public education and outreach to raise awareness of the UN declaration in B.C., both within the public service and the general public."

Obviously, there's been an important move forward to introduce the bill, and there was a very remarkable ceremony on the floor of the House a few weeks ago. But it's going to be very important that as the government moves forward with First Nations, with this action plan, there is that level of public engagement that the minister outlined is the commitment of this government to do. It's for that reason that it will be important that the

to be very important that as the government moves forward with First Nations, with this action plan, there is that level of public engagement that the minister outlined the commitment of this government to do. It's for that reason that it will be important that the implementation of this bill, including section 3, is spoken to as part of that action plan and, therefore, part of the consultation.

Given the lack of certainty that I received in the response from the minister about my question to that, perhaps I could just ask the question one other way then. In the context of the government agreeing about the importance of public engagement with stakeholders and British Columbians, even in the way that the Union of British Columbia Indian Chiefs had also recommended and called for, because, after all, reconciliation is about everyone in this province, will there be that same level of public engagement and consultation in respect of the implementation of section 3?

Hon. S. Fraser: There will be full transparency on both section 3 and section 4.

M. Lee: While we're on this section.... I appreciate that response from the minister. Just in terms of the action plan itself, has the government considered other opportunities for this Legislative Assembly to consider the plan as the consultation and cooperation process is unfolding? What is contemplated under section 4(4) of this bill is that the plan would be laid before the Legislative Assembly or filed with the Clerk of the Legislative Assembly if the House is not sitting.

Does the government not see the need to engage the other members of this Legislative Assembly in this process? Or is that something that also could be spoken to in the level of engagement that the minister spoke to just a few minutes ago in terms of stakeholders? Will there be an opportunity for members of this Legislative Assembly also to participate in that consultation process?
Hon. S. Fraser: I guess I'll read that section 4(4) again just as context. "After the action plan is prepared, the minister must, as soon as practicable, (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting."

That is built in as the process for transparency so that this is brought to this place. I don't think it... That's how it was laid out in Bill 41, as we're debating it. If it necessitates more work with this assembly, it doesn't preclude that happening, but this is the process that we have laid out in our collaborative work with the leadership council, with Indigenous people in the province, in the interests of transparency.

[5:10 p.m.]

M. Lee: Just a quick follow-on to that. My point, certainly, in referring to 4(4), is the lead-in action, which is "After the action plan is prepared." So I presume, of course, the consultation we're referring to is consultation that would be held with all stakeholders in this province and British Columbians in the course of preparation of that action plan.

All I'm asking is whether all members of this Legislative Assembly will be given the same opportunity to participate in that level of consultation prior to the action plan being finalized.

Hon. S. Fraser: The plan here is to lay the action plan before the Legislative Assembly. That is the plan. But this will be a transparent and orderly process. It's going to take time.

M. de Jong: I think I'm being fair if I observe that over the course of the conversation that we've had over the last number of days, the minister attached a great deal of importance to the section and to the action plan. I think that the minister attached importance to the action plan itself as a blueprint for moving forward but also to the process by which the action plan is arrived at and finalized.

Just a few specific questions about it. When will we see the first action plan?

Hon. S. Fraser: There's no date by which the first action plan must be tabled, and the consultation and cooperation with Indigenous peoples as it is developed will mean that an action plan will likely not be finished for some months.

M. de Jong: Well, that's helpful. We are talking months, as opposed to years.

Maybe the better way for me to ask the question is: from the minister and the government's prospective...? Recognizing that it's work involving others, but also the legal obligation falls to the government in terms of the section that we're dealing with and the requirement to prepare and implement an action plan, what would be a reasonable objective for the minister to lay out for the committee?

Would a reasonable objective be that the action plan be prepared and in a position for implementation over the course of the next four months, six months?

Hon. S. Fraser: I can't say precisely the time. But I think that we are talking months. So we can get that specific. We want to do it right, with meaningful involvement with Indigenous peoples in the development. We're getting started with that work right away. That's the plan. But I cannot pin it down to, you know, how many months. We are talking months, not years.

M. de Jong: Who signs off on it for government?

[5:15 p.m.]

Hon. S. Fraser: While we do this in collaboration, I would be responsible for tabling it here.
M. de Jong: I take that as meaning that the Minister of Indigenous Relations would be responsible for signing off and presenting the action plan in accordance with the provisions of the bill in this section.

Hon. S. Fraser: I have been instructed that I probably misspoke. The minister responsible would be the appropriate response.

M. de Jong: Will the action plan take the form and have the authority of an OIC pursuant to section 9?

Hon. S. Fraser: That would be a negative.

M. de Jong: Because this is something the minister has frequently alluded to, will the action plan include a schedule of statutes and OICs to be dealt with in terms of the priority assigned to them?

Hon. S. Fraser: Keeping in mind that we haven't built the action plan yet, it could include priorities, alignments of laws from section 3.

M. de Jong: Does the minister see merit in the idea of laying out, at least in the initial action plan, a prioritization of the statutory instruments that the government would be applying itself to update in accordance with the terms of Bill 41?

Hon. S. Fraser: It's fair to say that that could be part of the work we do with our Indigenous partners here. But this is being done in collaboration, so I don't want to preclude or be prescriptive here.

M. de Jong: Okay. Well, let me try it this way with a far more open-ended question. The language and the desire to create the legal obligation for the action plan was, I presume, the product of a conversation with Aboriginal partners, as the minister has described. What was in the minds of the minister and those with whom he consulted when he decided to include section 4 and the requirement for an action plan? What should we look for in general terms with respect to the action plan?

Hon. S. Fraser: As the member would well know, there were some of the existing priorities set out in the commitment document, back from 2015. It was begun by the previous government, and we continued with some of that work. So the commitment document and concrete actions, that work was underway, as well as the existing agreements and the commitments that we will draw on as we work to develop the action plan.

Examples. Again, without trying to be prescriptive here, general examples: actions related to governance building, engagement with British Columbians around reconciliation and what we are doing as a new approach, new approaches to negotiations, dispute resolutions. Those sorts of things could certainly all be examples of what could be contemplated within the action plan.

M. de Jong: Well, I mean, it sounds like the message here is largely wait and see, so we'll wait and see.

Subsection (2) of section 4 makes it clear that there will need to be consultation and cooperation with Indigenous peoples. The minister, to be sure, has emphasized that fact throughout these discussions.

My sense is that much of the work that took place, much of the consultative that took place, around the creation of this document — this document being Bill 41 — involved work between the government

My question to the minister is: is that what is contemplated moving forward? I'm going to anticipate the minister's reply, which is perhaps sometimes unwise, but the minister is going to say: "We intend to consult with as broad a range as possible."

But we are talking about a document, an action plan document. It strikes me that if it is the minister's intention to consult with 203 First Nations across B.C., certainly this is a good place to say that.

If, on the other hand, what is contemplated is an engagement along the lines of what took place with Bill 41 itself, this might also be a good time and place to make that clear because my sense is that a great deal of that work was bilateral between government and the First Nations Leadership Council. I think that the minister understands the gist of my question and will take advantage of the opportunity to provide a reply.

**Hon. S. Fraser:** Thanks to the member for the question. Let's let the record show that the work that we did to this point with the Leadership Council — the member is correct — was done through multiple resolutions. So all three membership groups — the Union of B.C. Indian Chiefs, the First Nations Summit and the Assembly of First Nations of British Columbia — and all through resolutions over the years on behalf of the majority of First Nations in the province who belong to one or many of those organizations, several of them — and all of them, in some cases. They have provided direction through resolution to do the work.

It's safe to say that we will continue to have those conversations with, certainly, the First Nations Leadership Council and others: Métis people — Métis Nation B.C., presumably — and other Indigenous groups. But part of the work we will do as we move forward is to establish the best way to do that through resolutions. The best way that was determined by First Nations in the province was to engage in the work to date through those, through the Leadership Council itself. That's why they had the mandate to do so.

**M. de Jong:** That's very helpful. Do I understand the minister correctly that the mandate handed to the Leadership Council by the three representative bodies through resolution includes the authority to continue with the work on the action plan on behalf of the member nations of those three bodies?

**Hon. S. Fraser:** My understanding is that the Leadership Council had resolutions that took them to this place where we are now as far as developing the bill. I don't believe they went beyond that. So, of course, those discussions will need to happen, not just between us and, for instance, the Leadership Council but with the Leadership Council membership themselves.

**M. de Jong:** Okay. So, then, to be clear, in order for the government to engage with the Leadership Council with respect to the work required on section 4 of this bill, it will be necessary for the Leadership Council to secure the mandate from the three bodies represented on the Leadership Council. Absent that, the government would be confronted by the need to work with individual First Nations. Is that an accurate summary?

**Hon. S. Fraser:** That'll be a conversation that we'll need to have, as we move forward, with the leadership council. It's something the member raised earlier, the 200. It's actually.... I think it's 204 now with Binchy, but I'm hopeful that we will have a more streamlined process than 204 consultations. That's my hope as we go forward, just for practical purposes.
M. de Jong: Just quickly, two final questions with respect to the section. Who will be conducting the consultation on behalf of the government? And when I say who, I don't necessarily need a name. I mean which department of government. I assume it will be someone — well, one should never assume. But my sense is it may be someone from within the Ministry of Indigenous Relations, but I'm curious to know.

Hon. S. Fraser: The Ministry of Indigenous Relations and Reconciliation will be the lead on this, but we will be working closely with other ministries and other ministers. Of course, on the other side of this, our discussions will continue and our work with the leadership council. I don't want to leave out Métis people or treaty nations, presumably, as well. But we'll be inclusive.

M. de Jong: One last question. The minister and my colleague from Vancouver-Langara had a conversation about the consultation that would take place, the bilateral consultation between government and First Nations and Aboriginal groups. I think my colleague urged upon the minister the importance of engaging with other British Columbians — non-aboriginal British Columbians — around the preparation of the action plan.

I'll go one step further, though, and urge and ask the minister to indicate what plans he foresees for engaging with British Columbians, both Aboriginal and non-Aboriginal, following the settlement of the action plan. The plan by definition is going to point.... The minister has been cautious about painting an overly detailed picture about what may be in the action plan.

I am surmising and relying on his observations that it would not be unreasonable to assume that it may point to individual statutes that are in line for review and work. That will engage the attention of a lot of people. I take it there has been no separate budget set aside yet to address the need to inform people about what that may mean.

But I will ask the minister today whether he and the government recognize and are prepared, in the future, to examine the need to devote resources to ensuring that British Columbians across the board are in a position to understand and engage and acquire a sense of the kind of work that is going to take place and provide input and thoughts, particularly when we get to the stage where individual pieces of standing legislation are being considered for amendment and review.

Hon. S. Fraser: Certainly, as we move forward with this process, with the action plan, we're committed to the transparency that goes along with that for all British Columbians. We've been clear about that from the beginning, and certainly a lot of my time for the last number of months has been meeting with groups, individuals and industry, various entities, local government, labour, all that. So work needs to continue, but the transparency around this will be part of the success of this. I'm confident that the work we have with Indigenous partners on this will.... They'll be part of that work — working with British Columbians to make sure that we're all part of this significant change in our relationship that will bring about more predictability and certainty for British Columbians and benefit all British Columbians.

Section 4 approved.

On section 5.

M. Lee: As we leave section 4 and refer to the annual report on the action plan, there was.... In response to the member for Abbotsford West, the minister, a few responses ago, again made reference to the 2015 commitment document which was signed on behalf of the previous government, the current
member for Nechako Lakes, and representatives of the First Nations Leadership Council. I just wanted to reconfirm.... I'll go on to ask my question about section 5, but perhaps the minister can, just for the benefit of time here, confirm that the nature of the engagement framework that was set out in this commitment document in 2015 is, from what I'm hearing, the scale and scope of what government intends to continue with in terms of First Nations engagement, business and industry engagement, federal engagement — with the federal government — as well as public awareness and other stakeholders. There is an indicative engagement work plan that's attached to that.

What I'm hearing from the minister is that the government is continuing with the overall framework and the action plans that were set out by this government with the First Nations leadership — that that framework is what really, in answer to my colleague, the member for Abbotsford West, is what we can expect in terms of that high-level action plan that government is going to be coming back with, with Indigenous peoples' leadership.

Can I just ask, though, one question around the annual report? In section 5(3), when it speaks to the report — the minister responsible reporting on "the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan" — can the minister describe and perhaps give an example of what he expects will be a goal in the action plan, particularly as it pertains to subsection 4(1)?

Hon. S. Fraser: You know, we do not have the action plan yet. So without the action plan it's hard to answer the question about reporting out on it. But I did use an example of the concrete actions in the commitment document. It may be in our work in collaboration with Indigenous peoples that that or portions of that become part of the priority. That certainly would be something we would report out, but again, I don't want to be prescriptive there. Those discussions have not yet happened.

Section 5 approved.

On section 6.

M. Lee: Earlier, when we were speaking to subsection 2(c) of the bill, we were speaking with the minister about this section. First, if I could ask the minister to describe the nature of the agreements that would be entered into pursuant to subsection 6(1)?

Hon. S. Fraser: Section 6 enables ministers, for the purposes of the act, to enter into agreements with Indigenous governing bodies. Yes, the legislation will allow ministers to enter into a variety of agreements with Indigenous governments. This includes various kinds of collaborative decision-making processes that do not contemplate joint or consent statutory decisions.

M. Lee: Can the minister provide an example of what he means in terms of a collaborative decision-making agreement?

Hon. S. Fraser: I think the best example I can give, to start with, is certainly the shishálh agreement, the reconciliation agreement that we entered in last year with shíshálh.
M. Lee: With this type of agreement that's contemplated under subsection 6(1), it doesn't have the same sorts of requirements that are set out in section 7 — for example, any contemplation of restriction on the initial authorization given by the Lieutenant-Governor-in-council or some contemplation of consultation with local governments or other persons or even a filing requirement.

Can the minister comment on whether any of those requirements in section 7 for a different type of agreement would also be applicable to this type of agreement under section 6(1)?

Hon. S. Fraser: The member is right. It's not required, but it's our general approach to ensure that we have the appropriate mandate engagement transparency also.

M. Lee: I think the minister agreed with my observation that, explicitly, those requirements aren't being applied in section 7. Is the minister indicating, though, that in the absence of those explicit requirements, that would still be the case?

Hon. S. Fraser: So section 6 and section 7... The conditions laid out in section 7 do not apply to section 6(1), but general best practices do apply to agreements in 6(1). But section 7 is very explicit in the requirements for the very specific types of agreements. That's why there is a difference there.

M. Lee: Actually, I have no further questions on section 6.

Section 6 approved.

On section 7.

M. Lee: Just to acknowledge the response from the minister, I believe he is indicating, as he did before, that there is just general best practice. So we're relying on government to....

While the bill doesn't actually say these requirements, there is general best practice of the government that they would do the kinds of things that are indicated in areas of consultation, in terms of a limitation on authority, as well as filing of the agreement. If that's the best answer the minister has

these requirements, there's a general best practice of the government that they would do the kinds of things that are indicated in areas of consultation, in terms of a limitation on authority as well as filing of the agreement.

If that's the best answer the minister has, then we'll just have to move on, at this stage, to section 7. I just wanted to at least respond in that manner.

In terms of section 7, is it the government's view that the application of section 7 is within the confines of the Canadian constitution legal framework and section 35 jurisprudence?

Hon. S. Fraser: The answer is yes.

M. Lee: Is there any concern, by this government, in terms of fettering the discretion of the Crown?

Hon. S. Fraser: The answer is no.

M. Lee: What indications has government given to industry and to stakeholders as to how this section will be utilized?
Hon. S. Fraser: What we've said to industry partners is that agreements where Indigenous governing bodies and government jointly exercise the statutory power of decision or agreements relating to the consent of an Indigenous governing body before the exercise of statutory power of decision.... These would all require consequential amendments. They would come to this place. That's part of the transparency that's built into the assurances we gave to industry.

M. Lee: I have an understanding that.... There was some communication by the organization MABC to their members as to what the government has confirmed. I just wanted to read that into the record and see if the minister agrees with the statement.

In respect of this section of the bill, it's been noted to their membership that.... Government has confirmed to the MABC that these kinds of decision-making agreements would focus on high-level strategic decision-making interests, not individual permitting processes.

Is that correct?

Hon. S. Fraser: Yes, it is.

M. Lee: It goes on to say that the agreements would require public notice and involve local governments and other stakeholders. They would also set out the rules and processes for decision-making and be subject to the Judicial Review Procedure Act, ensuring that the decisions are administered in accordance with administrative fairness and accountability and subject to judicial review, if challenged.

Is that also something the minister would agree with?

Hon. S. Fraser: Yes.

M. Lee: Just in terms of the rules and processes for decision-making and coming back to the test that the minister had stated earlier, in terms of entering into types of agreements under section 7 or section 6 of the bill.... The minister referred to having confidence in the way in which Indigenous peoples would be freely agreeing as well as capacity to ensure that government could hold, in this case, an Indigenous governing body accountable for its responsibilities.

Could the minister comment on how that will be factored into these agreements?

Hon. S. Fraser: For the province

Interjections.

Hon. S. Fraser: Yeah. I mentioned this earlier on. Sorry. I'm getting a little punchy here. For example, band council resolutions, assembly resolutions, that sort of thing.

M. Lee: I just want to come back to a statement that the minister confirmed on behalf of the government, that in their view, the application of section 7 would be read and applied consistent with the Canadian constitution in section 35 jurisprudence. The way in which, the manner in which this section is set up, where there is a requirement for.... Well, first of all, government needs to agree to enter into the agreement. I appreciate that — that government may choose not to enter into an agreement. But where it does — with Indigenous governing bodies — it contemplates that the requirement is that the exercise of the statutory power of decision must be done jointly by the
Indigenous governing body and the government or another decision-maker. It's that and/or that the consent of the Indigenous governing body presumably be obtained before the exercise of a statutory power of decision.

So, but for the government's indication to stakeholders like the MABC that this would not be in the context of a permitting type activity or a statutory power of decision, there are other areas, of course, that government may choose to enter into an agreement. Is it the case that government is controlling or intending that it won't enter into agreements where there be any risk, that the application of this section and this joint decision-making process would go beyond section 35 jurisprudence?

Hon. S. Fraser: Joint decision-making is not new in provincial law. A number of current pieces of legislation already reference joint decision-making with First Nations. For instance, the Haida Gwaii Reconciliation Act comes to mind to me now. The environmental assessment legislation passed last year. It also has a process of collaborative decision-making. And joint decision-making is contemplated through agreements like the recent one with the shishálh Nation, as I mentioned also.

The joint decision-making will create the means for Indigenous peoples to fully participate in decisions that affect them and create conditions for success and predictability for good projects moving ahead. I think that's the intent that we're looking at here.

M. Lee: Just one last question, if I may, on this particular section then. What I'm hearing.... I just want a reconfirmation from the minister that the areas in which the government will apply these joint decision-making agreements would be in areas where it would not go beyond what is a recognition that.... As we were discussing in committee yesterday, there was a confirmation by the minister, when we were having discussions around project approvals and project development approvals, that it would not go beyond what is a recognition that, as we were discussing in committee yesterday, there was a confirmation by the minister, when we were having discussions around project approvals and project development approvals, that the Crown certainly continues to have the final decision-making authority. So in that context, clearly this section would be inoperative, and the government would not enter into a decision-making agreement in areas where the Crown does have the final decision-making authority. Is that correct?

Hon. S. Fraser: We can enter into agreements, but they can't be implemented without consequential amendments. In my previous response, I should have said also that everything within the bill, Bill 41, is within the constitution in section 35.

Sections 7 to 9 inclusive approved.

On section 10.

M. de Jong: I have, I think, one question, which I could actually ask with respect to the schedule. But with the minister's indulgence, the committee's indulgence, I'll ask it in section 10, and then we can allow the schedule to pass.

I will say, firstly, that I think I can communicate, on behalf of my colleague from Vancouver-Langara and myself, that we have found the discussion about Bill 41 and the exchange helpful, illuminating. One is almost tempted to say enjoyable. That is due in large measure to the minister's willingness to engage and provide, where he can, illumination about the government's intention — and, of course, the assistance of his staff and the team that has been supporting him, some of whom I know well from other duties in this place. So we're grateful.

It is not my intention to, in light of what I just said, in any way try to leave the exercise on a negative note. But something has been nagging at me that I want to put to the minister, at least for his response. I am curious. Over the course of the discussion, it's not surprising that we spent time talking
about the concept of free, prior and informed consent. We attempted, as best we can, to better understand what that meant.

That was one area that I think we spent some time on, but there were others. The minister, to his credit, over the course of the debate, repeated some positions, understanding that he and the government have. He, particularly in response to questions from my colleague from Vancouver-Langara, repeatedly asserted the fact that the bill and the UN declaration must be viewed through the lens of Canada's section 35 jurisprudence. He was particularly clear about wanting to repeat.... The quote I have here is: "I just want to be clear. Bill 41 does not bring UNDRIP into legal force and effect." Another occasion: "Upon passage of the bill, there will be no immediate effects on laws other than as an interpretive aid. As I've mentioned before, an interpretive aid — that's still up to the courts. To be clear, it doesn't give legal force and effect. Again, I stated it earlier, but Bill 41 doesn't give the UN declaration itself the force of law and doesn't create any new laws and any new rights."

The minister, I think, on the advice he has received from his team and particularly from the Attorney General's staff and ministry, has felt compelled, by my count, almost 20 times during the debate to make that clear on the record. That has been helpful, and we've been appreciative of that clarity.

My question in light of some of what I have read and some of what I have had communicated to me.... The minister has made those statements in a public setting, in as public a setting as we have. So this might seem a bit odd to pose this question. But has the government's position in that respect, on those matters, been communicated directly and formally to the leadership council? Is the government's appreciation and position on those matters clearly understood by the leadership council with whom the government has worked in creating Bill 41?

Hon. S. Fraser: Yes. We've had frank and open conversations with the leadership council about where we're going with this bill, what it means, the communications, the messages. This has all been openly discussed with the leadership council in a frank way. To be clear, it still doesn't in itself change the laws of B.C. It commits us to an action plan and to aligning our laws with the UN declaration on the rights of Indigenous peoples over time. When legislative changes are proposed through this process, they will, of course, come to this House for full debate.

It is important to note that the action plan will be carefully considered in consultation and collaboration in good faith with Indigenous peoples. The public industry, local governments and other stakeholders will be engaged as we move forward with legislative changes. This is changing the Crown-Indigenous relationship in a way that will benefit all British Columbians. It's bringing more transparency, more predictability to business. It will benefit families and create jobs. It will make this province more just.

I harken back to the Truth and Reconciliation Commission's calls to action, and one of the key calls to action was for governments to adopt — governments, plural, all governments — to adopt the UN declaration for the key calls to action. It's important that we take that seriously.

I want to thank British Columbians and local government, industry, business, NGOs, labour, and academia, all of which have shown such great support for the direction that we're going, that it's about time we do this.

Also, certainly in this short time, relatively, as minister and the time in opposition as the critic for many, many years, this is has been called for over and over again as a way, a mechanism...
that it's about time we do this. Also, certainly in my relatively short time as minister and the time in opposition as the critic for many, many years, this has been called for over and over and over again as a mechanism to move forward and a way to make things better in this province.

I thank the Indigenous people in this province who have helped educate me about the importance of this.

With that, I want to thank the members opposite for their thorough work on this. It's day 5 — five full days on this. I think they've done a good job. I hope we have done a good job in response to your questions.

Section 10 approved.

Schedule approved.

Title approved.

Hon. S. Fraser: I move that the committee rise and report the bill complete without amendment.

The Chair: Division has been called.

[6:20 p.m.]

DRAFT SEGMENT 059

Motion approved unanimously on a division. [See Votes and Proceedings.]

The committee rose at 6:22 p.m.

The House resumed; Mr. Speaker in the chair.

Report and Third Reading of Bills

BILL 41 — DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Bill 41, Declaration on the Rights of Indigenous Peoples Act, reported complete without amendment, read a third time and passed.

[Applause.]

Hon. M. Farnworth moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 1:30 tomorrow afternoon.

The House adjourned at 6:25 p.m.

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