

Gary Merasty: Good day, ladies and gentlemen. My name is Gary Merasty and I'm the co-chair of the Independent Expert Panel entrusted with the modernization of the National Energy Board. I'm accompanied by my co-chair H  l  ne Lauzon and our fellow panelists Wendy Wendy Grant-John, Brenda Kenny and David Besner.

As you may be aware, our mandate is to conduct a review of the NEB structure, role and mandate pursuant to the *National Energy Board Act*. Meaningful engagement with indigenous peoples is an integral piece of our review. Our review must enable early conversations and relationship building between the Government of Canada and indigenous peoples whose rights and interests could be affected by a specific project under the NEB's mandate.

Our review must facilitate ongoing dialogue between the Government of Canada and indigenous peoples on key matter of interest on projects to inform effective decision making. It is in this context today that we are also holding a separate video presentation with Chief Wilton Littlechild, a highly respected member of the Cree Nation widely recognized for his contributions to advancing the rights of indigenous peoples and for avidly promoting self-determination and Treaty implementation.

Doctor Littlechild is a legal expert on the United Nation's Declaration on the Rights of Indigenous Peoples sometimes known as UNDRIP as well as its principles, including the principle of free prior and informed consent. He has represented North America for two three-year terms as the North American representative —

Tech: (Off microphone)

Gary Merasty: Okay. I'll start from here. I won't start at the start. Can I go a couple of paragraphs down?

Tech: (Off microphone)

Gary Merasty: Okay. Ready? Meaningful engagement with indigenous peoples is an integral piece of our review. Our review must enable early conversations and relationships building between the Government of Canada and indigenous peoples whose rights and interests could be affected by a specific project under the NEB's mandate. Our review must facilitate ongoing dialogue between the Government of Canada and indigenous people on key matters of interests, on projects to inform effective decision making.

It's in this context today that we're also holding a separate video presentation with Chief Wilton Littlechild, a highly respected member of the Cree Nation widely recognized for his contribution – contributions to advancing the rights of indigenous peoples and for avidly promoting self-determination and Treaty implementation. Dr. Littlechild is a legal expert on the United Nation Declaration on the Rights of Indigenous Peoples or UNDRIP as well as its principles, including the principle of free prior and informed consent. He has represented North America for two three-year terms as the North

American representative to the UN Permanent Forum on indigenous issues, and currently serves as an expert member of the UN expert mechanism on the rights of indigenous peoples. We invite you to view the full list of Dr. Littlechild's achievements and accomplishments on our website.

Without further delay, we are honoured to welcome Dr. Littlechild who has graciously agreed to provide the panel with a background of UNDRIP and what it means for this review (indigenous language – no interpretation). Chief Littlechild, the panel is so pleased you could be here today to share your knowledge with us. And I'll turn it over to you.

Dr. Wilton Littlechild: Well, thank you very much and for those kind words especially and also as a Chief welcome you in our territory. I'm the International Chief for Treaty 6, 7 and 8 and we're in Treaty 7 territory today. So welcome and I'm really honoured to have this dialogue with you. You're embarking on a very important review that's for the benefit of all – of all of Canada in a very difficult area as well, I might add, giving the current situation not only in Canada but indeed globally.

So I want to begin just a very brief background history to the UN Declaration in particular. In 1977 – actually 1975, there was a meeting of indigenous leaders in the United States and it was followed up by a global conference in Gröna in Sweden in 1977. It was at that meeting that two documents were reviewed by the international delegations from all the global regions of indigenous peoples. I was tasked to chair the session on the ILO Convention 107, the International Labour Organization number 107 which was at the time the only existing legal instrument for indigenous peoples' rights. It was – it is a Convention so it is legally binding.

We also discussed a Declaration of Principles for Indigenous Peoples. So after the international meeting, I was asked to go to Geneva to present the outcome of the discussions at the world conference at the time chaired by very well-known and internationally renowned Chief Manuel from British Columbia, so I was tasked to go to Geneva to meet with the ILO executive committee to present our results the consequence of which was to amend the ILO Convention 107. It is now Convention 169, again, the only existing international legally binding Convention on the rights of indigenous peoples.

The forum there however could not deal with all of the rights. As you know, the international mechanism deals with five sets of rights: they're economic, social and cultural rights are one bundle, and then the civil and political rights are another. So the ILO felt it could not deal with political rights like the right to self-determination and they accepted our proposal to amend the ILO Convention, but we needed to go to the UN itself to discuss political rights, civil rights and including the other rights.

I should jump to a high point right away because one of the results of that which is an indigenous contribution to the world, I think. There was never any mention about spiritual rights and as you know there is a very important respect of our indigenous

peoples especially with lands, territories and resources, that there is a special spiritual relationship. Well, after years of discussion and debate, there is now actually a sixth right that's recognized globally and it's the one of spiritual rights. So that was thanks to the elders and spiritual leaders that participated in the early goings of the development.

So we had to go to the UN and again in 1977 the first world conference at the UN was held in Geneva. So it gave us an opportunity there to bring in the principles, the statement of principles that were discussed in Sweden. So we had those two documents and I mention them because we need to consider them together in any area of discussion, I think, especially one that deals with lands, territories and resources. So we have these two parallel documents that are important from a historic perspective that brings us right to today.

So when we got to the UN, a working group was established to two mandates. The first mandate was to review developments and that gave an opportunity for indigenous delegations on an annual basis to come to the UN and present concerns or violations of rights, difficult challenges that were maybe areas of conflict and so on. So they were able to report to the UN from their region what was going on sadly to say that a lot of it was violations of human rights. Those annual presentations were an ongoing series of violations of human rights.

So that led us to argue for a permanent place to bring our issues forward. So a working group was struck at the UN under the Human Rights Commission. Actually, it was a body of the subcommission of the Human Rights Commission. So there was kind of a hierarchy in a sense of structures that we need to work through. So the mandate that was given to the working group was really relevant to us even though the first one is also relevant, the review of developments, but was standard setting. They were given a task to set international standards on the rights of indigenous peoples.

So of course we came in and said, look, we've had these principles drafted. Begin with these principles which we think are important as a statement of indigenous peoples. Unfortunately, the working group chose not to and they started from a clean sheet of paper, as they said. But thanks to the Chirpers (ph) and their courageous women made a comment at one of the meetings and said that this is about indigenous peoples and especially about the rights of indigenous peoples. Wouldn't it important to hear from them? So the committee actually agreed and that opened the way for us to go annually to make presentations on the UN Declaration on the Rights of Indigenous Peoples.

So it was a drafting process, a very detailed process, and as you know group drafting is always the most difficult way to go about this. But it was important they thought and we thought as well that we participate, we give our views about what we think should be included in the rights especially under the Declaration. Now why that's necessary and important is because in 1948 when the Universal Declaration on Human Rights was adopted, we were not there. No one represented us, so indigenous peoples were actually excluded out of the Human Rights mechanism globally, the Universal Declaration.

So as an effort in a way to catch up to the world, it was thought important that we do a declaration on the rights of indigenous peoples, we declare what these rights are in – with – in concert with the UN. So it was early obvious that some elements of rights that are common to everyone globally didn't apply to us, but on the other hand we had other contributions to make, for example, collective rights, the whole notion of collective rights had not been talked about and I said spiritual rights had not been mentioned. So it was a long process. It was the longest debated declaration in UN history. It took us 27 years to do that drafting even though we had come in with a Statement of Principles. So this long process, on the other hand, gave us a lot of opportunity to participate, a lot of opportunity to contribute to what we thought were the contents of our rights.

So it was still a government process so when it came time for decision making we couldn't participate in that. So a second working group was formed as an intergovernmental process. Some states argued that civil society or indigenous peoples should not be allowed into the meetings. This is a state, a government process and only governments should be involved. So although the first draft of the UN Declaration was adopted, a second committee was organized. So we fought for participation at that level. Actually, I remember making a motion that since it's about us, maybe it'd be a good idea to have a co-chair as indigenous. Well, that stopped the meeting completely. They called for legal opinion to be done in New York and of course it came back. The answer was no. But they opened the way anyway for us to continue participating so that was important.

So this UN Declaration has a lot of input from perspectives, in this case indigenous peoples and governments. There was still a third element that came in after, a very contentious and difficult element in terms of this discussion. It was corporations. Private industry was invited to come and participate as well and I have to say that was – since that was one of the first chairperson Robert Touring in UN history that was indigenous, it was the most difficult meeting I've ever chaired, you know, with the private industry, companies represented at the table, governments and indigenous peoples because it became very, very heated at times, to say the least.

So the good news though is that eventually all three of us came together to adopt the UN Declaration in New York after the intersessional working group had completed its work. And of course, there are highlights of those articles that are relevant to your work in the UN Declaration, but the important thing to underscore, I think, is that there was indigenous participation in shaping the declarations so and it's been universally accepted not that there's global consensus on the Declaration. Some areas are moving forward with it in different ways and of course Canada, I applauded them when they came and spoken in May at the United Nations to announce to the world – and I had been at the UN for 39 years and I can tell you I might have seen two standing ovations ever at the UN.

But when Canada spoke last May and said that we're here to announce that we are now full supporters of the UN Declaration without qualification, we got a standing ovation. It

was as if the world was just waiting and watching and listening to what Canada was going to say. And when they said that, Minister – Dr. Bennett got a standing ovation at the UN. So it gave a very good positive signal, I think, to the rest of the world that Canada is now ready to lead on implementation of the Declaration. And the new impetus to that I think was the Truth and Reconciliation Commission of Canada's report. Sixteen articles or calls to action are about the UN Declaration.

So there is a convergence now of – of the ILO Convention, the UN Declaration and the Truth and Reconciliation Commission's calls to action that give us very strong and good guidance, I think, going forward on how should we engage ourselves as partners or how do we restore respectful relationships? How do we promote good relations in Canada in whatever area faces us, because the UN Declaration has clusters of articles that are – some are political rights, some on education? There are some on culture, health, economic development. So these clusters are important to consider because sometimes it's easy for an individual just to take one article, read it out of context and mischaracterize it. So we need to look sometimes not only at the single article, but a cluster of articles to really reach a fuller understanding of the UN Declaration.

So we felt on September when the UN officially at the General Assembly adopted the Declaration that we had caught up now. Since we were left out in 1948, we're now together as far as the possibility of indigenous peoples benefiting from the international legal standards that are there like the Universal Declaration on Human Rights, like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. Those are important to mention because they're legally binding conventions and Canada has ratified those. So now we have internationally legally binding conventions that Canada is a party of since, I believe, 1976-75. And then we have the Declaration and the Calls to action I think are really good framework to work through.

Indeed, we as a Commission, the Truth and Reconciliation Commission, called on all governments, federal, provincial, territorial, municipal and indigenous governments, to use the UN Declaration as a framework for reconciliation. So when we look at this – this part of the work, one of the areas of interest I noted was the spirit and the principles. How are they reflected in the Declaration? And I think if one looks at the UN Declaration, the preamble. The preamble sets out in a really good way sort of what there was the spirit and intent of the Declaration and the scope of the Declaration.

As far as principles, there's an article in the Declaration that – that states what the principles are going forward with – with implementation of the Declaration. I just wanted to maybe refer to the paragraph in a sense that – well, first of all, the – in the preamble, the last – the last paragraph indicates that "The UN solemnly proclaims the following Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in the spirit of partnership, in a spirit of partnership and mutual respect." So right in the preamble, I think it's a very important statement of what the spirit and intent is of the Declaration. It's about partnership and it's about mutual respect. So that sets out a really good guideline, I think, for going forward with it.

But also, as I said, the distinction (ph) in here between for example the Declaration on Minorities is the inclusion of both individual human rights and collective rights, collective rights of indigenous peoples. And an example I like to use is the Treaty relationship, the partnership under Treaty. It's a collective rights. The Treaty rights are collective rights, but the benefits are individual. They're shared individually as benefits. So when we say indigenous peoples have a right to education on a collective rights basis, it's individuals that benefit from that right.

So there was a lot of controversy in the debates when collective rights were first mentioned. States – some states did not want to recognize collective rights because they were concerned about the impact in their own country if they recognized collective rights. So I watched and I looked at how the women advocated for their rights at the UN. It was interesting that some of the states who were concerned about recognizing collective rights were states that were also not in favour of recognizing the rights of women, you know, collective rights of women. So – but nevertheless their collective rights are there.

On the inherent rights there is a very important foundation of arguments by elders in our languages, in our individual languages. For example, in our language (indigenous words) is what an inherent right is. And to put it in English it's a right that you are born with. So when we say you're Cree. You're born with inherent rights as a Cree person (indigenous words), in other words the Great Spirit gives you a gift that you're born with you don't go to a government or you don't go to a corporation or anyone else to ask them to give you inherent rights. You have them.

So there's a very fulsome paragraph in the preamble about what is an inherent right and I think that it's really – I think it's one of the best preambles or paragraphs I've seen. But it's really important, I think, in our work to reflect on that part of the Declaration that – well, let me just read it quickly for you because it's – I think it's all encompassing:

“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.”

That's what inherent rights means as far as indigenous peoples are concerned. And that's a real fundamental pillar, I think, of the Declaration, one of the fundamental pillars. The other one is culture. There is, I think, when I called the – when I actually reviewed the number of times culture is mentioned, it's 33 times culture is mentioned in the Declaration. So it's a very important pillar as well. Why is it important? Well, in our hearings for example in the Truth and Reconciliation Commission when the policy was stated to be a direct assault on indigenous languages, on indigenous cultures, indigenous family, indigenous communities, when you look at the cultural component of that, how it was manifested.

For example, the first day of school your traditional name was taken from you and a number was given. If you had braids, they were cut off. So the self-identity through cultural manifestation was attacked immediately and I think that it's important from reconciliation perspective that culture also be given consideration. And it's reflected in the – in the preamble of the Declaration.

So we have another area that for the first time was recognized and that's indigenous traditional knowledge. And in this work in terms of natural resources like the inherent right or like culture, traditional knowledge is now recognized in the Declaration. So when discussions are happening on climate change as they are today, when discussions of scientific knowledge are being presented or views being presented, it's important also the traditional knowledge of indigenous peoples be given space to be able to be voiced and acknowledged, not only acknowledged but taken into serious consideration.

I think lastly I would say that what got us to the UN in terms of the concerns of our spiritual leaders or elders was Treaties, the violation of Treaties. So now we have a very important set of preamble of paragraphs and an article on Treaties. And I think there's two notions of it I would want to just underscore with you in a preamble. One where it says, "Considering that the rights affirmed in Treaties are in some situations matters of international concern, matters of international interest, responsibility and character." But also importantly it says that "Considering also that Treaties and the relationship they represent – the relationship Treaties represent are the basis for a strengthened partnership between indigenous peoples and the states."

So when you look at the notion of nation-to-nation relationship that's what we're talking about. That nation-to-nation relationship is what's reflected in the preamble and it's expressed in Treaties. So when you look at the map, for example I was going to show you a big – all this pink territory here is the Treaty, the numbered Treaties. And of course there is pre-Confederation Treaties and then there's post-area of numbered Treaties. And when a pipeline is being discussed for example to go through Treaty 6, well it's actually going to have to go through the whole territory of Treaty 6.

But anyway, it's a good map that reflects the nation-to-nation relationship. Some people are, I think, concerned sometimes that when we said – when we use that term "nation-to-nation", it connotes some idea of, well, you're going to break away from Canada or you're going to destroy Canada. But I can tell you from myself, I didn't go and work at the UN for 27 years on the Declaration to break up Canada. It's the reverse. It's to build a better and stronger Canada.

But anyway, the partnership that's reflected by Treaty is the basis for strengthened good relationships which reconciliation is. That's why we call on the UN Declaration to be used as a framework and taken into consideration the Treaties also, because both of them, both the UN Declaration and the Treaty are solutions. They're not problems. They're solutions. And when we look at it and I usually use an illustration of an eagle – an eagle. So when an eagle flies, of course there's two wings, you know, they – so on

one wing are the Treaties and on the other wing is the UN Declaration and it's going to take both of them for the rights of indigenous peoples to fly.

So it's important in the consideration of going forward and modernizing the National Energy Board as I understand this year is your mandate that we reflect on these international standards because they're new standards. They're recognized now. They've been accepted as a term of reference. The international standards are now standards to be met. They're not there for – well, not to be considered, not to be used. So I would suggest that whenever an issue regarding lands, territories and resources we need to look at these standards, the ILO Convention, the UN Declaration and the Treaties.

Now, there's a fourth one that has just been adopted in June of this year. That's the organization of American States. They too have adopted a Declaration on the Rights of Indigenous Peoples. So now we need to look at both Declarations and I'll give you one example of why that was important and the continued advocacy was important internationally on Treaties. When we were at the UN debating the article on Treaties, we didn't satisfy ourselves that we had a good capture of what Treaties are about in the UN Declaration. Because when the elders after ceremony and after prayer and through tears tell us that they're concerned about Treaty violations, one of the instructions they gave us is to ensure that the world looks at how we understand Treaty, the Cree understanding of Treaty, for example.

That we have a Treaty song, there's a ceremony, a Treaty ceremony. There's – there's traditional law attached to that, but it's not written down. A document like this writes it down, but what's not written down is the oral testimony where the spiritual relationship is memorialized in a ceremony and so on. So we need to look now to the OAS Declaration because the OAS Declaration captures that element. When the elders gave us an instruction to go to Geneva, they said it's important for the world to understand that we have an understanding of Treaty as well, but also that it's an inherent right and it's about right to self-determination. (indigenous words) we say in self-determination.

So the UN didn't capture that oral testimony argument because the Supreme Court of Canada ruled on it through Delgamuukw to begin with. So now the OAS article for the first time and the OAS tell the members state of the Americas so it's our region. So we need to reflect on it too. The indigenous understanding of Treaty and the original spirit intend of Treaty are now reflected in the OAS Declaration. So we need to consider both of these Declarations together and importantly to recognize that in some cases they're going to be one higher than the other. So the rule, as I understand it, is to use the higher standard.

So now we have a call for Treaties to be honoured and respected and then the OAS goes further and says, "According to the spirit and intent of Treaty as understood by indigenous peoples". So it brings in the oral testimony, part of time. And in Delgamuukw if I remember correctly it says "oral testimony has to be given equal legal weight as the written text". So we have – we have the – the legal framework – the international legal framework is there for us to refer to and going forward on trying to

build better relations in Canada through reconciliation.

So now you – I'm sorry. You ask about nat – what about national interest? Where is that reflected? Well, it was almost a deal breaker during the debates because states were really aggressively arguing about their rights without recognizing, well, all the other rights are about your rights, the state rights. This is for indigenous peoples and it was almost becoming a UN Declaration on the rights of governments. So – but yet it was an important one to balance it out. So you'll see there's a preamble paragraph and I don't know if you've noted the numbers, but there's a preamble paragraph that deals with the significant of national and regional differences, the national differences and they have to be taken into account.

So that's the first time there's reference, I think, that really sets out how you interpret the Declaration and for states it's mentioned in the preamble, but the main article is article 46. That sets out the national interest and it couches it in a way of territorial integrity and political unity of sovereign and independent states. Now, that was really debated seriously at the UN to try and ensure that to give states the comfort, I guess, in a sense that we weren't going to come in and start ripping up the territorial integrity of a country or destroy the political unity and so on.

But I did – I remember raising a question though at the time of the debates. I said, yes, now we are recognizing state sovereignty, territorial integrity, political unity. What about us? Who's protecting our territorial integrity? Who's protecting our sovereignty? Who's protecting our political unity? So anyway, it didn't get anywhere but I think that – I think that the national interest is reflected in the Declaration as well, because it was important to balance the rights. Because we're coming in with a new notion of collective rights and the state is used to practising individual rights and there had to be a balance and so 46 was one of the ways it was – it was balanced, article 46.

So I don't think states ought to be afraid when we talk about the UN Declaration and indigenous peoples' sovereignty that we're going to be destroying their political sovereignty or their unity or their territorial integrity. So it was adopted on that basis. The states felt okay, we agree to this because it balances it out in a fair way.

But the other important article, I think, in that regard is the principles that were adopted on the interpretation of the Declaration. And if you look at the – they're actually a Canadian – they were Canadian list almost from the Constitution. I'm just trying to find it quickly because it sets up the – the interpretation. Sorry, I forgot to flag it here. I was going to – I was going to mention it in a way that it's – it acknowledges the national interest in a very important way. For example, if you look at article 46, the – paragraph 2, the last sentence. Actually, it comes from the Constitution, the Canadian Constitution, that wording:

“In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all (we underlined “all”) shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such

limitations – that’s coming from the Canadian Constitution – 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.”

So when – when one reads that “others” means I think the national interest or the Canadian interest. And for meeting the just and most compelling requirements of a democratic society so that’s almost – well, the – the source of that is actually the Canadian Constitution. So I think national interest is covered there and I was going to refer to one more reference in a Declaration that I think is an important reflection. Maybe it will come to mind after – I’m sorry, I’ll just – maybe I’ll stop there and see if there is any questions or comments that you might have in this area.

It’s sort of a long winded presentation of – why it started, why it was needed and why we are today. We have a government that’s – the prime minister has stated repeatedly that no relationship is more important to him and to Canada than the one with indigenous peoples. But it’s based on pillars. It’s based on respect. It’s based on partnership. It’s based on cooperation.

So and the discussions on climate change, the Pan Canadian Framework discussions with the premiers and Vice-President Biden introduced another word that was not in the Declaration but I was kind of interested why he did it and I was happy he did it. He put in trust. He said it’s based on cooperation, trust and partnership, respect and – the respect of law. So in a mandate letter that he presents to the Minister of International – I’m sorry, Indigenous Relations, he calls on her to continue with the Truth and Reconciliation engagement, but he specifically says starting with implementation of the UN Declaration on the Rights of Indigenous Peoples.

Now, having been at the UN for 39 years going on 40 years, if I had said that to you a year ago, a year and a half ago, you would have thought I was absolutely – he’s been there too long. He’s gone nuts. But now we have it. It’s a political commitment for Canada that we’re going to implement the UN Declaration and the Calls to action from the Truth and Reconciliation Commission, starting with the UN Declaration. And then hearing the Province of Alberta, the premier has also made a similar statement about the importance of the Declaration – been working together.

And by way of conclusion, I will repeat this because for me it’s – it’s – it’s – I think maybe a different way of looking at things going forward, but the Treaties and the UN Declaration are solutions. And now in when the TRC comes to us and says “states, implement the UN Declaration”. But also it calls on us as indigenous peoples to be there doing our heavy lifting as well so that we can have a two partnership going forward in terms of implementation of these rights. It’s a rights-based approach. Some people don’t like our rights-based approach, but we were left out at the beginning and now we’re happy that we’re part of the possibility of benefitting from human rights that everyone else benefits from.

When I spoke at the 60th anniversary of the Universal Declaration on Human Rights, four people were selected from around the world to address the UN and I was fortunate to be one of them. So I expressed how happy I was to be a part of the human family, you know, from the UN family as indigenous peoples' tribes and nations, to be welcomed into the UN family. So we're there.

I want to leave you with three – five documents, actually. I give you some homework. But it's helpful, I think. This is a guide we did for members of Parliament on the UN Declaration. So it's about implementing the UN Declaration. It's for parliamentarians and we did it globally for I mean all the parliamentarians around the world. And I found out actually – because I used to cry in my own soup about the low number of indigenous members of Parliament. But globally, there are now how many? If you want to guess, just venture a guess. Nine thousand.

So this handbook is very important for members of Parliament to understand each other on the UN Declaration, the Human Rights Institutions globally. And here in Canada also have done – we have done a handbook for them on how the UN Declaration needs to be interpreted when human rights institutions get together and discuss our rights. But the gem, the gem for you I think is this one, *A Business Reference Guide*. This is for corporations when you ask about what this free prior and informed consent means. And it's described in here for corporations.

And I wanted to perhaps by way of conclusion just read out one little section of it, because the National Energy Board is many times dealing with corporation's right. And there are some good practices. There's a corporation right here in the City of Calgary who has committed to implementing the free prior and informed consent in their business activities, a huge multinational corporation. But also as a pleasant surprise for me and I'm very happy – a revelation that Canadian Association of Petroleum Producers have also made that commitment. So it's a very significant commitment, but the *Guidebook for Corporations* is not just only for oil and gas companies but other whether it's mining companies or hydro or forestry companies. And if gotten together and started implementing this, this handbook.

But what does it say? The very first page says this and I want to – for the record actually read this part of it:

“All businesses should take the following fundamental actions some of which may be required in conjunction with local and state governments to meet the responsibility to respect indigenous peoples' rights. The first one is adopt and implement a formal policy whether on a stand-alone basis or within a broader human rights policy addressing indigenous peoples' rights and committing the business to respect indigenous peoples' rights.”

So there are corporations, the Global Contact for example, the voluntary organization is doing that. Secondly:

“Conduct human rights due diligence to assess actual or potential adverse impacts on indigenous peoples’ rights and integrate findings and take action, track and communicate externally on the performance.

So there’s an internal mechanism for companies to broadcast out how they’re complying with the Declarations.

“Consult in good faith with indigenous peoples in relation to all matters that may affect them on their rights – or theirs rights”. Sorry. “Commit to obtain and maintain the free prior and informed consent of indigenous peoples for projects that affect their rights in line with the spirit of the UN Declaration; establish or cooperate through legitimate processes to remediate any adverse impacts on indigenous peoples’ rights; establish or cooperate with an effective and culturally appropriate grievance mechanism.”

So this is kind of a summary statement of what the guide is asking corporations to do. So whether it’s pipelines or oil and gas companies, whatever. They have this – I would recommend to you, if I’d be bold enough to recommend, is to ask the Board to look at these, to use these international standards when going about their work.

The two other documents I wanted to leave you with is – I mentioned the – and I’m glad you, in your introductory comment, co-chair, you mentioned decision making. Well, we did a study at the UN on the right to participate in decision making of indigenous peoples and we did a report, but they came back to us and asked us do another one with the focus on extractive industries and that’s what this report is. This talks fully about the UN Declaration, specifically about the free prior and informed consent and how it is to be implemented. But to underscore the important part of it is on the right to participate in decision making of indigenous peoples.

So there’s that call on this for example to recommend maybe a designated seat on the National Energy Board for indigenous peoples? I don’t know. They – but this is a good review. It’s a global review. Sometimes you hear about the bird’s eye view. This is the worm’s eye view. It’s the – from the indigenous peoples’ perspective.

The other one I did is the – when professor Ruggie was asked to come up with a set of principles for business and human rights, unfortunately we were a footnote and we were also one mention in the whole 59 page of that report, 59 pages. So I went through all the 59 principles and I said, let me look at these with an indigenous lens. What does that mean to – as an indigenous person when he – can you read yourself into this business and human rights? And unfortunately we couldn’t but this one does that. This – and it’s been accepted by the Human Rights Council as well.

So I leave you with these because I think they’re helpful reference points for the Board going forward, as I say, because they’re new international standards. We as a country have committed to live up to those standards. And how do we do it? Well, some of the

answers are in here. Other answers we need to work out together. So thank you very much, co-chairs and members of the panel. I appreciate this opportunity to share some of the journey I was on in these few years and you may have some questions. I don't know.

Gary Merasty: First of all, thank you so much for coming and talking with us about UNDRIP. And I'm just wondering – much in the news and much to all of our interest is the issue of free prior and informed consent. And I wonder if you would give us an idea what that really means because I think different people think it means different things and I would like to have a better understanding for all of us.

Dr. Wilton Littlechild: Well, free prior and informed consent is not a new notion, because for example in our Treaty, Treaty #6, consent is already in there. Treaty 6, 7 and 8, this region of Alberta, each has that mentioned in the Treaty. So as we all know, a fundamental principle of international law for treaty making is the ability to say yes in the agreement, to an agreement. So when the debates were being held over the years on the Declaration, the question of what does that mean came up. So an expert group meeting was held on attempting to define what that means again from a global perspective.

So a clarification was called for one of which was to – to expand mutual consent or to change it to make it more clear, to introduce those words of “free prior and informed consent”. “Free” meaning of course it's a free will. It's not forced. It's not coerced in any way. It's not bought. It's a free expression that a community says yes to a proposal. “Prior” of course is important that this happened before a decision is made because sometimes corporations and governments have come after a project has started and it's too late to be able to express your opinion on whether or not you agree with this project that has been coming on to your land or territory.

The “informed” basis means that indigenous peoples have to be given all the information both positive and negative, pros and cons of a particular proposal so they can go away and make – make a decision so “free prior and informed consent”. Now, it has been mischaracterized, in my view, as being a veto and it's not, in my view. The Declaration much like the Treaty calls on us to work together. So free prior and informed consent is a big part of that working together, discussing a proposal – a proposed project, and maybe sometimes the discussion will take longer, but we also know that there is a legal requirement that on any matters that will directly impact indigenous peoples, they have the right to be at the table to participate in decision making.

So when it's mischaracterized as a veto it prohibits, I think, genuine dialogue because immediately people will say and have said there is no way that a small group of indigenous peoples should be able to veto something in Canada. That's not what – that's a different perception or characterization, in my view, of free prior and informed consent. So it's a call on us to work together and I would call – and having said that though, we need to answer the question of when – when can a government or a

corporation be satisfied that they have free prior and informed consent?

What is the mechanism that illustrates that, yes, we agree with the proposal? Is it a referendum? Or is it a committee of leadership like T (ph) for council? Or is it a specific body of the community with the authority to express consent? Or denial in a way that provokes more dialogue, continue deliberation?

So it's not – it's not coerced. But you know there is – there is another thing that has happened and this is not free prior and informed consent either. It's manufactured consent. Manufactured consent has happened in many communities where a corporation or a government meets with indigenous leadership and they say no, we want to talk about it some more. Well, they'll go to somebody else and keep going until they get a yes from somebody. And unfortunately, and I don't like to say this, but unfortunately sometimes it's been the use of alcohol to get a yes from somebody. So as long as you get that one "yes", then you say I've got the consent when really it wasn't the proper mechanism.

But communities we have an obligation, I think, responsibility to express that mechanism through which it's clear to corporations or governments this is the way we will express our consent, through this body or through this mechanism, through this ceremony or through this referendum. I think – we say that in the report, by the way, I gave you, of the – the Expert Mechanisms Report on the Right to Participate in Decision Making with a Focus on Extractive Industries. We illustrate that – those elements of what is free prior and informed consent and what is – or what's good practice and what's bad practice. So it's illustrated further in that – in the report.

So hopefully that kind of covers some of the –

Gary Merasty: Thank you very much.

Female Voice: Thank you very much. It's been very, very interesting and useful. I'm sure other viewers will find this important information. And the question I just wanted to add was further to what you've described so far. One of the things that the National Energy Board and our role as this panel has to confront is the linear infrastructure which as you know can be a little different perhaps and a localized development which is a few communities and often in many cases over a hundred or even two hundred different communities, several different categories and the like. Is anything that you've described for us in terms of consent or the principles or fairness and working in partnership, any other insight to offer where – where along when your projects such as the NEB might be deciding on affect so many different communities?

Dr. Wilton Littlechild: Well, it's like the mechanism of free prior and informed consent and how you express that. There is, I think, political alliances that are there within Treaty territory, for example. If you look at Treaty 6 map and you'll see the territory I mean. We have 42 First Nations in that territory. So as a – so as an entity or a political organization in a way, we get together and we collectively consider the situations. So

there is – excuse me – the political vehicles are there already I think that need to be consulted and from whom that the – because each of them will also have their own mechanism of getting the consent of their own – their own community.

That's why I said it's important to make that clear from our side, from the indigenous side. And hopefully through your hearings you'll be able to elucidate that – that in a beneficial – beneficial way. I think the other point I wanted to comment on is the relationship with Section 35 of the Constitution. And while I didn't have time to do a legal opinion, I'll just give you a quick worm's eye view in a sense again of what that means in that area of work.

I think for many years we've been in a situation in Canada where it has been termed that Section 35 is an empty box. And in order for you to define what that means, Section 35, you have to go to the courts. It's a very long and expensive process. So courts will determine goes into that Section 35 box as a right, but now I think and believe that we have a full box. We have a box that contains – it's called Section 35. It contains Treaty. It contains the UN Declaration and it contains the TRC Calls to Action. Those together give you a definition of what Section 35 means. We no longer should have to go to court to define what Section 35 means.

So I know it's a new perspective of it, but the other process has been process very costly, timely and ineffective, I think, as a way to try and get an understanding of what Section 35 means. Now I think all of this information fills that box in a good way.

Gary Merasty: Good. Well, once again, Chief Littlechild, we're absolutely thankful and grateful for your time and your presentation very well informed and wise advice for us and we thank you for – for that. (indigenous words – no translation).

Dr. Wilton Littlechild: (indigenous words – no translation) Thank you very much.