

Honourable Senators,

On May 30, 2018, the House of Commons passed Bill C-262. Indigenous peoples and individuals, leaders, and human rights experts hailed this historic event as a victory for the human rights of Indigenous peoples in Canada. We are 101 experts and academics who research and work in the fields of Indigenous, human rights, constitutional law and/or international law. We are glad that Bill C-262 has finally been referred to Committee, 11 months after its adoption by the House of Commons. We urge you to proceed swiftly so that it can be passed and become part of Canadian law before the current session of Parliament ends.

Worldwide, Indigenous peoples are amongst the world's most disadvantaged and victimized peoples. They share common problems related to the protection of their rights as distinct peoples and suffer widespread discrimination at various levels. On September 13, 2007, the United Nations General Assembly held a historic vote to adopt the United Nations Declaration on the Rights of Indigenous Peoples. Canada, as you are aware, was initially opposed to the Declaration; it based its arguments on extraordinary and erroneous claims, for which no credible legal rationale has been provided. We are concerned that similar misguided claims or apprehensions continue to be used by some Senators to justify opposition and slow the progress of the bill in the Senate.

Bill C-262's full title is: "An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples". It is a basic, bottom-line piece of legislation that does not create new rights. It establishes a process for the government, in full partnership with Indigenous peoples, to achieve implementation of the Declaration in Canadian law. It does so in three ways.

- First, Bill C-262 affirms the Declaration as a universal international human rights instrument with application in Canadian law. This is consistent with the fact that the UN Declaration already has legal effect in Canada and can be used by Canadian courts and tribunals to interpret Canadian laws.
- Second, the Bill requires the government to work with Indigenous peoples to review existing laws and bring forward reforms to ensure their consistency with the Declaration.
- Third, Bill C-262 creates a legislative framework for the federal government to collaborate with Indigenous peoples to establish a national action plan for the implementation of the Declaration.

Honourable Senators, the recognition of the human rights of Indigenous peoples works to strengthen human rights for everyone. The provisions in the UN Declaration were developed based on existing standards in international law. Many are already legally binding on Canada, either because they are part of customary international law, or because they are necessary to fulfil obligations under the human rights treaties that Canada has ratified.

The UN Declaration does not create a hierarchy of competing human rights claims. It is absolutely false, as some have claimed, that it gives Indigenous peoples a veto over, for example, development projects. It requires States to consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Respect for free, prior and informed

consent is an essential standard in international law and can already be used by Canadian courts and tribunals as a source of interpretation of Canadian laws, including the Constitution, where Indigenous rights are at stake. The UN Declaration provides for comprehensive balancing provisions. It reaffirms what international and Canadian law already acknowledge: the human rights and fundamental freedoms of all must be respected, but limitations may be necessary in a democratic society. Limitations are possible if they are non-discriminatory and strictly necessary for the purpose of securing due recognition and respect for the rights and freedoms of others. Bill C-262 only reinforces this essential attribute of human rights law.

The UN Declaration offers a framework to enhance harmonious and cooperative relations between the State and Indigenous peoples, “in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith”. These are the core principles and values of not only Canada’s Constitution, but also the international system that Canada has championed.

The Declaration is a universal human rights instrument. It is also a consensus instrument that has been reaffirmed seven times by the UN General Assembly. No State in the world formally objects to it. Bill C-262 provides a much-needed framework to ensure that Canada works in cooperation with Indigenous peoples to see it fully and effectively implemented. Honourable Senators, you have the power and privilege to make a crucial step in Canada’s pathway to reconciliation, but also to reaffirm Canada’s true commitment to human rights for all. We urge you to proceed swiftly with Bill-C-262.

Bernard Duhaimé

Professor

Faculty of Political Science and Law, Université du Québec à Montréal (UQAM)

Beverly Jacobs

Assistant Professor

Windsor Law

Mohawk Nation of the Haudenosaunee (Iroquois) Confederacy, Bear Clan

Fannie Lafontaine

Full Professor

Faculty of Law, Université Laval

Canada Research Chair on International Criminal Justice and Human Rights

With:

Payam Akhavan
Full Professor
McGill University

Merle Alexander
Principal
Miller Titerle Law Corporation
Board Member of University of Victoria

Reem Bahdi
Associate Professor
Windsor Law

Bev Baines
Professor
Faculty of Law, Queen's University

Nicole A. Barrett
Director, International Justice and Human
Rights Clinic
Executive Director, Allard Prize Initiatives
Peter A. Allard School of Law, The
University of British Columbia

Stéphanie Bernstein
Professor
Département des sciences juridiques, Faculté
de science politique et de droit, Université du
Québec à Montréal

Amar Bhatia
Assistant Professor
Osgoode Hall Law School, York University

Andrée Boisselle
Associate Professor
Osgoode Hall Law School, York University

Dr. Robyn Bourgeois
Assistant Professor
Centre for Women's and Gender Studies,
Brock University

Bruce Broomhall
Professor
Department of Law, University of Quebec at
Montreal

Julia Brown
Lawyer
Olthuis, Kleer, Townshend LLP

Ruth M. Buchanan
Professor
Osgoode Hall Law School

Michael Byers
Professor & Canada Research Chair in
Global Politics and International Law
University of British Columbia

Pascal Calarco
University Librarian
University of Windsor

Angela Cameron, PhD
Associate Professor
Shirley Greenberg Professor of Women in the
Legal Profession
Faculty of Law, University of Ottawa

Pascale Chapdelaine
Associate Professor
Faculty of Law, University of Windsor

Gordon Christie
Professor & Director of Indigenous Legal
Studies
University of British Columbia

Lynda Collins
Full Professor
Faculty of Law, University of Ottawa

William E. Conklin
Professor of Law, F.R.S.C.
Windsor Law

Charles-Emmanuel Côté
Full Professor
Faculty of Law, Université Laval

François Crépeau
Full professor
McGill University
Hans & Tamar Oppenheimer Chair in Public
International Law
Dr. Emma Cunliffe
Associate Professor
Peter A Allard School of Law, The
University of British Columbia,

Annette L. Demers
Law Librarian
University of Windsor
Faculty of Law

Karen Drake
Associate Professor
Osgoode Hall Law School, York University

Mark Ebert
Lawyer
Semaganis Worme Lombard

Doris Farget
Professeure
Département des sciences juridiques,
Université du Québec à Montréal

Karine Gentelet
Associate Professor
Université du Québec en Outaouais

Leah George-Wilson
Lawyer
Miller Titerle Law Corporation
Chief of Tsleil-Waututh Nation

Amanda Ghahremani
International Lawyer & Consultant
Former Legal Director of the Canadian
Centre for International Justice

Michael Heine
Director, International Centre for Olympic
Studies
School of Kinesiology, Western University

Sakej Henderson
Research Fellow
Wiyasiwewin Mikiwahp
(Native Law Centre of Canada)

Jeffery Hewitt
Assistant Professor
Faculty of Law, University of Windsor

Felix Hoehn
Assistant Professor
College of Law, University of Saskatchewan

Shin Imai
Professor Emeritus
Osgoode Hall Law School

Mylène Jaccoud
Professor
École de criminologie, Université de
Montréal

Paul Joffe
Attorney

Julie Kaye
Assistant Professor of Sociology
University of Saskatchewan

N. Kate Kempton
Partner
Olthuis Kleer Townshend LLP

Mark Kersten
Fellow
Munk School of Global Affairs and Public
Policy

Nancy Kleer
Lawyer
Olthuis, Kleer, Townshend LLP

Jennifer Koshan
Professor
Faculty of Law, University of Calgary

Harry LaForme
Senior counsel
Olthuis Kleer Townshend, Toronto, Ontario
Anishinabe, Mississaugas of the Credit First
Nation, Ontario

Marie Lamensch
Project Coordinator
Montreal Institute for Genocide and Human
Rights Studies, Concordia University

Louis-Philippe Lampron
Full Professor
Faculty of Law, Université Laval

François J Larocque, PhD
Full Professor
University of Ottawa
Canadian Francophonie Research Chair in
Language Rights

Yvan Guy Larocque
Lawyer
Miller Titerle Law Corporation

Nick Leeson
Lawyer
OKT LLP

Janine Lespérance
Legal Counsel
Lawyer Without Borders Canada

Vicki Leung
Reference Librarian
University of Windsor

Anne Levesque
Assistant Professor (July 2019)
Faculty of Law – Common Law section,
University of Ottawa

Dr. Grace Li Xiu Woo, LL.D
Author of Ghost Dancing with Colonialism

Ryan Liss
Assistant Professor
Faculty of Law, Western University

Constance MacIntosh
Viscount Bennett Professor of Law
Acting Associate Director, Dalhousie Health
Law Institute
Associate Professor, Schulich School of Law,
Dalhousie University

Jason MacLean
Assistant Professor
University of Saskatchewan College of Law

Dr. Kent McNeil
Distinguished Research Professor
Osgoode Hall Law School, York University,
Toronto

Naiomi Metallic
Assistant Professor of Law; Chancellor's
Chair in Aboriginal Law and Policy
Schulich School of Law

Sarah Miller
Limited Term Librarian, Law
Diana M. Priestly Law Library, University of
Victoria

Shaunna Mireau
Legal Information Specialist
Shaunna Mireau Consulting

Helen Mok
Supervisor, Library & Information Services
Blake, Cassels & Graydon LLP

Geneviève Motard
Associate Professor
Faculté de droit, Université Laval

Dr. Maureen Muldoon
Associate Professor
Faculty of Arts, Humanities and Social
Sciences, University of Windsor

Tamara Napoleon
Principal
Miller Titerle Law Corporation

Val Napoleon
Professor
Faculty of Law, University of Victoria

Alex Neve
Secretary General
Amnesty International Canada (English
branch)

Nicole O'Byrne, Ph.D.
Associate Professor
Faculty of Law, University of New
Brunswick

Obiora Chinedu Okafor
Professor
Osgoode Hall Law School of York
University, Toronto

Darlene R. Okemaysim-Sicotte
Co-Chair Iskwewuk Ewichiwitochik
Party With Standing with National
Inquiry to Missing and Murdered
Indigenous Women and Girls

John A Olthuis
Lawyer
Olthuis/ Kleer /Townshend, Barristers and
Solicitors, Toronto

Valerie Oosterveld
Associate Professor
Faculty of Law, Western University

Frederick John Packer
Associate Professor of Law and Director,
Human Rights Research and Education
Centre
University of Ottawa

Me Pascal Paradis
Directeur général
Lawyers Without Borders Canada

Victoria Paraschak
Professor
Department of Kinesiology

Elisabeth Patterson
Lawyer
Dionne Schulze

Antoine Pellerin
Assistant Professor
Faculty of Law, Université Laval

Johanne Poirier
Professor
Faculty of Law, McGill University

Richard J. Preston
Professor Emeritus
McMaster University

Catherine Savard
Assistant coordinator
Canadian Partnership for International
Justice

Tim Quigley
Professor of Law (Emeritus)
University of Saskatchewan

Dr Sara Ramshaw
Associate Professor
Faculty of Law, University of Victoria

Jean Roath
Administrative Assistant
Windsor University Faculty Association
(WUFA)

Craig Scott
Professor of Law
Osgoode Hall Law School of York
University

Dayna Nadine Scott
York Research Chair in Environmental Law
& Justice in the Green Economy
Associate Professor, Osgoode Hall Law
School and the Faculty of Environmental
Studies, York University

Sara Seck
Associate Professor
Schulich School of Law, Dalhousie
University

Elizabeth Sheehy, LLB, LLM, LLD (hons),
F.R.S.C.
Professor Emerita of Law
University of Ottawa

Colleen Sheppard
Professor
Faculty of Law, McGill University

Penelope Simons
Associate Professor
Faculty of Law – Common Law section,
University of Ottawa

James G. Stewart
Associate Professor
Allard Law School, University of British
Columbia

Érick Sullivan
Lawyer, Deputy Director
International Criminal and Humanitarian
Law Clinic, Law Faculty, Université Laval

Dr. Lina Sunseri
Associate Professor
Brescia University College

Marie-Eve Sylvestre
Full professor
Faculty of Law – Civil Law section,
University of Ottawa

Alain-Guy Tachou Sipowo
Lecturer
McGill University, Université Laval,
Université de Sherbrooke

Sophie Thériault
Full professor
University of Ottawa, Faculty of Law – Civil
Law section

Marion Vacheret
Full Professor
École de criminologie, Université de
Montréal

Lucinda A. Vandervort
Professor of Law
University of Saskatchewan

Christine Vézina
Assistant Professor
Université Laval

Christopher Waters
Dean and Professor
University of Windsor, Faculty of Law

Jo-Anne Wemmers
Professor
École de criminologie, Université de
Montréal

Peter Zimmerman
Archives, Rare Books, and Special
Collections Librarian
Leddy Library, University of Windsor
President, Windsor University Faculty
Association

