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Ms. Nancy Karetak-Lindell

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• (0905)

[English]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning. This morning we have meeting number seven, and I'd like to call the meeting to order. Pursuant to the order of reference of Tuesday, November 2, 2004, we are dealing with Bill C-14, an act to give effect to a land claims and self-government agreement among the Tlicho, the Government of the Northwest Territories and the Government of Canada, to make related amendments to the Mackenzie Valley Resource Management Act, and to make consequential amendments to other acts.

Appearing before us this morning is the Honourable Andy Scott, Minister of Indian Affairs and Northern Development. Welcome, Minister. Also appearing with him is the Honourable Ethel Blondin-Andrew, Minister of State for Northern Development. We're very honoured to have Ethel here with us this morning. The minister has his support staff with him and his legal representatives.

I'd like to hand the floor over to you, Minister, as we start our study of our first bill before this committee.

Hon. Andy Scott (Minister of Indian Affairs and Northern Development): Thank you very much. Merci, Madam Chair.

When I conclude my remarks the Minister of State will also address the committee, and after that I think we will introduce the people who are with us.

The Chair: At this point I'd also like to welcome the witnesses. I see some people from the band who are represented. Welcome also.

Thank you.

Hon. Andy Scott: Again, thank you for that, Madam Chair.

Let me just get accustomed to being at this end of the room. I spent an awful lot of time at that end of the room.

Madam Chair, I appreciate the opportunity to outline my views on Bill C-14. I have every faith in this committee's ability to give the legislation the careful analysis it deserves. As I said when appearing before the committee on estimates, I've spent a lot of time in committee and I believe this is a very important part of the parliamentary process. I wish everyone well in the exercise.

As you know, Madam Chair, the central component of Bill C-14 is an agreement negotiated between the Tlicho people and the Governments of Canada and the Northwest Territories. What committee members may not recognize, however, is that the agreement represents a milestone in Canada's relationship with aboriginal peoples. The Tlicho agreement is the first in the

Northwest Territories to combine land claims and self-government. This agreement is the product of over 10 years of hard work by many people.

[Translation]

Bill C-14 is indicative of the Government of Canada's determination to forge new relations with Canada's aboriginal peoples, relations that are based on mutual respect, trust and cooperation.

[English]

Through this agreement, we will be providing certainty and clarity of rights over ownership and use of lands and resources for all parties.

The claim made by some, Madam Chair, that the agreement lacks finality is misleading. Canada receives certainty and finality about legal rights of ownership and management of lands and resources within a significant portion of the Northwest Territories.

The agreement also establishes a process by which non-land rights can be added to this agreement if the parties agree. Therefore, finality is provided with respect to land rights while certainty is achieved for non-land rights. This arrangement reflects the inherent right of self-government and creates a more predictable and secure decision-making environment, with the potential to attract investment and economic growth.

The Tlicho agreement is designed to achieve the constitutional objective of section 35 of the Constitution Act. This section recognizes and affirms existing aboriginal and treaty rights. We know, Madam Chair, that the courts recommend negotiations over any other method in resolving aboriginal issues, and we have a fine example of successful negotiations right here in the Tlicho agreement. The agreement exists within the four square corners of the Constitution.

As a result, Madam Chair, the Canadian Charter of Rights and Freedoms applies, as it always has. Let there be no question about this: the Tlicho people, like all Canadians, will enjoy the rights and freedoms the charter guarantees. The agreement is very clear on that point. Under the terms of Bill C-14, the Tlicho will gain control over 39,000 square kilometres of land, approximately 19% of their traditional territory, and will receive payments totalling approximately \$152 million over 14 years. More importantly, Tlicho leaders will acquire the power to manage their affairs in a way that respects modern democratic principles and honours ancient traditions.

Bill C-14 provides for two types of government. The first of these, a central Tlicho government, is empowered to manage Tlicho land and resources and to enact laws in areas such as aboriginal language and culture. The bill ensures that this government will be represented on resource management boards that consider and approve development activities within the area described in the Tlicho agreement.

The second type is municipal government created under territorial legislation in each of the four Tlicho communities. Similar to other municipal governments in the Northwest Territories and across Canada, their councils will license businesses, manage water and road services, and enact zoning bylaws. These powers are set out in the territorial legislation.

To ensure that interests of non-Tlicho residents are fairly represented in the community governments, special election rules and regulations permit non-Tlicho residents to qualify to vote. In addition, up to 50% of the seats on community councils will be open to non-Tlicho candidates. The chief and the head of each community government must be a Tlicho citizen.

It's worth noting, Madam Chair, that the vast majority of residents, upwards of 93% in these communities, are Tlicho people.

With these provisions, Bill C-14 ensures that key decisions will be made by the people most familiar with and most affected by local issues. Comments claiming that this agreement creates a racially based electoral system ignore the fundamental objectives of the agreement. This agreement supports the objective of expressing aspects of aboriginal self-government in the Northwest Territories through public government.

I understand, Madam Chair, that there is some confusion over how the various law-making authorities will operate under this agreement, so let me explain the relationship. The relationship is explicit in the agreement and the bill, leaving no room for doubt. The legislative powers of the Tlicho government will be exercised concurrently with law-making powers of Canada and the territorial government. That means all laws will continue to apply. If it happens that there is a conflict between a federal law of general application and a Tlicho law, the federal law will prevail. It is clear. There are no exceptions. In the case of a conflict between a Tlicho law and a territorial law, the Tlicho law will prevail, except in a case of international legal obligations. In this case, territorial laws will prevail.

• (0910)

With respect to the relationship between the Tlicho agreement and Bill C-14 or other federal or territorial legislation, in the event of a conflict or inconsistency, the agreement will prevail. However, this does not mean that Tlicho laws will prevail. It means the agreement will prevail, and the agreement says that federal laws are paramount.

As federal laws prevail, it is clear that Canada will maintain the ability to implement and negotiate international treaties. The agreement makes that very clear. The agreement does not extend the authority to negotiate international treaties to the Tlicho, or the Government of the Northwest Territories, for that matter. It states that the Tlicho government will exercise its powers in ways compatible with Canada's international legal obligations.

If the Tlicho government passes a law or takes an action that prevents Canada from performing an international legal obligation, the agreement requires the Tlicho government to remedy its law or action in order to enable Canada to perform the international legal obligation. It is very clear; there is no room for doubt.

Madam Chair, the Tlicho people have demonstrated that they are more than ready to take on the responsibilities associated with this agreement. This is, after all, one of the more prosperous and successful aboriginal groups in the north. The Tlicho have built and maintained their own airport. They help manage local schools, a seniors centre, and a long-term care facility. The Tlicho have also negotiated service delivery agreements with the Government of the Northwest Territories, and they operate a growing number of businesses.

The Tlicho have negotiated a number of mutually beneficial agreements with private sector firms. Impact benefit agreements were struck with diamond mine companies Diavik and BHP Billiton. These agreements have helped provide jobs and training opportunities for Tlicho people and contracts for aboriginal firms. In fact, in a letter of support, the president of BHP Billiton says:

We have worked cooperatively together to make the Ekati Diamond Mine a leading example of how mining companies and aboriginal peoples can work together.

This focus on achieving a brighter future through partnership was also evident during the process that led to the signing of the Tlicho agreement. Tlicho leaders organized a series of community meetings to ensure that the opinions of all residents were heard. People discussed issues, shared ideas, and worked through problems. This collaborative approach was also taken in developing the Tlicho constitution, which will guide the operation of the Tlicho government.

To further clarify boundary issues, the Tlicho negotiated separate accords with our aboriginal neighbours prior to finalizing the agreement. These accords with the Saultheux, Dene, Métis, Gwich'in, Deh Cho, and Akaitcho—Treaty 8 Dene—are further examples of the careful and collaborative approach adopted by the Tlicho. I'm convinced that this approach can also deliver significant benefits to all Canadians.

Enacting Bill C-14 will increase cooperation and stimulate new levels of economic activity in the north. It will enable the Tlicho to honour their proud tradition of self-sufficiency and make a greater contribution to the overall economy. The legislation will also send a powerful message about the Government of Canada's commitment to first nations and aboriginal communities.

Madam Chair, the Tlicho people are capable of assuming and carrying out the crucial responsibilities granted under Bill C-14 fairly and faithfully. They are ready, willing, and able to play a larger role in the northern economy. We must enact this legislation and ensure that the Tlicho have every chance to succeed in this role.

Thank you. Merci.

Now, Madam Minister of State.

• (0915)

The Chair: Thank you very much, Minister.

Hon. Ethel Blondin-Andrew (Minister of State (Northern Development)): Madam Chair, I appear before the committee today because I believe in Bill C-14 and I believe deeply that our country's north has a brilliant economic future that can benefit not only the Tlicho but all Canadians.

I want to start by recognizing one of the most thorough, outstanding, and hard-working negotiating teams, the Tlicho negotiating team, headed by Chief Charlie Jim Nitsiza and chief negotiator. I also want to recognize their Deline neighbours from Sahtu region in the Northwest Territories, to the north of them on Great Bear Lake, who are here in attendance. They are the self-government negotiating team headed by sub-Chief Andrew John Kenny and Danny Gaudet, the self-government negotiator. It's traditional to observe and to show support by observing, and they're here to do that.

I am here to provide support to the minister, and also to the groups that have come before us, especially the Tlicho, on this occasion when we discuss their bill.

My belief is founded on solid evidence that the time is right for the proud Tlicho people to take ownership of a significant portion of their traditional lands. If we look to the facts, the Tlicho have demonstrated a remarkable ability to absorb, adapt, adjust, and apply entrepreneurial and business skills. Furthermore, the north has vast stores of natural resources, the full extent of which we can only estimate. I'm certain Bill C-14 will create synergies between these two facts and give rise to the entrepreneurial spirit among the Tlicho that will become an engine of development across the north and for the betterment of Canada.

Examples abound, as the minister indicated, of the Tlicho making astute and visionary decisions about the 39,000 square kilometres in question in the bill before us today. The Tlicho's business acumen was fully evident as it negotiated partnership agreements with, as the minister indicated, the two largest diamond mining firms in the region, BHP Billiton and Diavik. Notably, Canada will soon become the world's third-largest producer of diamonds. These agreements are virtually unprecedented, nationally and globally.

The benefits of partnership extend well beyond economics. The diamond mining companies also contribute to training programs, scholarships, and infrastructure improvements in Tlicho communities. The Tlicho's burgeoning business partnerships will also lead inexorably to a higher standard of living, and therefore a higher quality of life for the people of the north. As you see, Madam Chair, the Tlicho's judicious dealings with private companies have acted as a catalyst for increased self-reliance and improved educational opportunities.

Madam Chair, I ask the honourable committee members to recognize that Bill C-14 will help establish the secure and prosperous future for the Tlicho. The legislation mandates that the Tlicho establish effective and democratic governments. It also guarantees them representation on resource management boards. These mechanisms will enable the Tlicho to exercise greater control over lands and resources.

Bill C-14 guarantees that all adult residents, including those who are not Tlicho citizens, will be eligible voters in the local elections. This bears repeating because there is a sense that this is an undemocratic process and an agreement that speaks to a rather isolated, marginalized provision for one group of people. This is not so. The head of each community government must be a Tlicho citizen, but half of the councillors can be persons who are not Tlicho citizens. In this way, Bill C-14 not only contributes to the investment the Tlicho have made in their futures, but it also ensures that all northern voices are heard by the Tlicho community governments.

Among these voices, Madam Chair, are the increasingly strong voices of the women in the community. We have a member who is legal counsel who is a first-ever Tlicho member to be called to the bar, Bertha Rabesca Zoe. She's a very committed and hard-working member of this team. There's room for women in the Tlicho government. The committee members will find as they analyze the agreement that it supports gender equality in many ways.

• (0920)

The agreement gives all Tlicho citizens, including women, a larger voice in governance. Tlicho citizens, regardless of gender, will have equal access to the benefits provided under the agreement. Women play a strong role in the Tlicho communities. In fact, the majority of Tlicho people in post-secondary education are women, who will eventually play strong roles in the community and government structures under the Tlicho agreement.

As you know, Madam Chair, under the terms of the Indian Act, first nations face numerous obstacles to economic development. What you may not recognize is that by clarifying legal status and ownership of resources, this bill provides the certainty sought by private sector investors. The Tlicho agreement draws a distinction between land rights and non-land rights. Certainty is achieved for both land- and non-land-based rights, and finality is achieved for land rights.

The Tlicho appreciate the opportunity that stands before them, and 84% of those who voted were in favour of the agreement. This means there is overwhelming support by the Tlicho, who are more than ready to participate in the development of the vast natural resources, and in turn, the northern communities. We have an opportunity with Bill C-14 to strike a balance between economic development and respect for cultural self-determination.

I ask the honourable committee members to give this bill the careful consideration it deserves and make the most of this opportunity.

Thank you. *Mahsi cho*.

The Chair: Thank you very much, Minister.

We'll go to our first round of questioning.

Hon. Andy Scott: Madam Chair, the associate chief federal negotiator, Paula Isaak, will introduce the officials who are with us today.

Ms. Paula Isaak (Associate Chief Federal Negotiator - NWT, Comprehensive Claims Branch, Department of Indian Affairs and Northern Development): Thank you, Minister.

Richard Ashton is the assistant negotiator on this file. Mary Douglas is legal counsel. James Stringham is legal counsel as well. Annie Carrier is from the Department of Finance.

The Chair: Thank you.

Mr. Prentice.

Mr. Jim Prentice (Calgary Centre-North, CPC): Thank you very much, Madam Chair.

Thank you, Minister. I'd like to begin by welcoming here today the representatives of the Tlicho First Nation and the Sauleaux First Nation.

Minister, I'd like to ask you a series of questions, and you can respond to these in the order you wish. First, this is an agreement under section 35 of the Constitution; article 2.1.1 of the agreement points that out. As I'm sure you are aware, section 35 of the Constitution has certain very important consequences for the application of Canadian laws in the charter and a number of other consequences.

The effect of the way this agreement has been packaged and presented is to incorporate all of the comprehensive claims aspects of the agreement and all of the self-government provisions into section 35. The consequence of that, really, is that all of the nuts and bolts of the government structures are being brought into section 35 of the Canadian Constitution. There are consequences that flow from that.

First, can you explain why the government has followed that position, which is somewhat inconsistent with the approach that's being followed elsewhere in the country? For example, in the B.C. treaty tables there has been a refusal to follow that kind of approach, where all the nuts and bolts of self-government agreements are incorporated into the Canadian Constitution in this manner.

My second question flows from the last. The government has been soundly criticized, most recently in the report of the external adviser on smart regulations, with respect to what has been referred to as the complex and unpredictable cobweb of regulations in northern Canada. Those are not my words; they come directly out of the report that was commissioned by the government. The report has been critical of the regulatory uncertainty, the legal complexity that has been created in northern Canada that imperils the future governance of northern Canada, the environmental objectives of northern Canada, and the objectives of aboriginal people.

It seems to me the incorporation of this 208-page agreement as a constitutional document is certainly not going to make that situation simpler but rather more complex. What consideration has the government given to that problem? We already face the situation where the regulatory complexity in the north is a problem. How does this agreement improve the situation?

On the other question I'd like to pose to you, it's clearly a policy of the Government of Canada that Canadian sovereignty is non-negotiable in the context of aboriginal self-government. Again, those are not my words; those are the words in the government policy—"non-negotiable". Why has the government, in the context of this agreement, negotiated arrangements that clearly, to some degree, compromise Canada's international sovereignty? Why has that been done when instructions were given to the negotiators? Is this approach being followed elsewhere in Canada?

It was mentioned in the House that there are precedents for this type of agreement, and I believe one person actually suggested that the West Bank was a precedent. That clearly isn't the case. I'm not aware of any other comprehensive claims agreement that contains these kinds of provisions relating to international treaties.

Perhaps you could address that and just explain where these provisions come from, why they have been incorporated into the agreement, and where they take us as a nation, in terms of the other 600 first nations with whom we will be negotiating on these issues.

● (0925)

In respect of the comments you make about jurisdictional clarity or jurisdictional confusion, I wonder if you might be good enough to examine article 2.10.7 of the agreement and explain it to the committee. It prescribes a legislative hierarchy that seems to depend on federal laws of overriding national importance. Perhaps you would explain the relationship between that and laws of general application, and which test is to apply.

In that regard, the agreement also says that nothing in the agreement prejudices the devolution or transfer of responsibilities from the Government of Canada to the Government of the Northwest Territories. Can you explain how the government intends to deal with the overlay of governmental authority in the north between the Government of the Northwest Territories, the Government of Canada, and the Tlicho First Nation?

The final issue I would ask you to address is the question raised previously, about the application of the charter. I have requested this before the justice committee and will request it again of you, that perhaps you would be good enough to produce the legal opinion provided by the Attorney General of Canada relating to this agreement in the context of the Canadian charter. The Minister of Justice, the Attorney General, is obligated to provide such an opinion in respect of legislation that pertains to the charter. So perhaps you would be good enough to produce that.

In that context, how do you see the charter applying to this agreement, and why does the language of this agreement differ from the language incorporated by the government into agreements such as Nisga'a?

Those are lengthy questions. I would appreciate it if you might, in an orderly way, try to respond to them as best you can, sir.

● (0930)

Hon. Andy Scott: We will do our best in terms of all the elements of that series of questions.

I guess in reverse order, the Constitution refers to the agreement, and the agreement is very clear on the question of the charter. It is absolutely clear, as I mentioned in my opening comments. There is really no other explanation to give but to say that nothing here would compromise that.

On the question of overlay, where there is inconsistency between the Tlicho laws and the federal laws of general application, the federal laws of general application would apply. In a case of conflict between the Tlicho law and the laws of the Northwest Territories, the Tlicho laws would apply.

On the question of Canadian sovereignty, the reality is that these citizens are in fact citizens of Canada, having all of the freedoms that are available under the charter.

On the question of smart regulations and the complexity that is in fact the regulatory regime of the north, the reality is that this is intended to bring greater certainty, which it does, to these issues. I don't know that, given the overwhelming support from the Tlicho community in the context of their consultation and the support in the area, whether it's for... Certainly the community itself has as much ambition for the community as we would have for them, and certainly those are issues that would seize their attention.

I think people have been writing rather hurriedly here in anticipation of my asking technical people to speak specifically to technical issues. I'll try to keep track, but on the question of section 2.1.1, I am going to ask Paula to either take it or refer it, as she would know best which person should respond.

Ms. Paula Isaak: Thank you, Minister.

The Tlicho agreement was negotiated pursuant to the comprehensive claims policy as well as the inherent right policy, which recognizes the inherent right of self-government as an existing aboriginal and treaty right under section 35 of the Constitution; thus, the parties agreed to negotiate one agreement that combines both. So in this case, all three parties agreed to negotiate form and content of this agreement under those two policies.

Mr. Jim Prentice: The entire Canadian Constitution is 50 pages, plus or minus, in length. What you are effectively doing is incorporating a 208-page document that deals with the governance of a community of 3,000 people into the Canadian Constitution by bringing it in as part of section 35.

I've drafted a lot of agreements myself, including settlement agreements. I've never seen a single agreement in my 25 years of practising law that couldn't be improved upon later or where things weren't incorporated into the agreement that were found wanting in some way later on.

The approach you're following is essentially to cement this entire agreement into the Canadian Constitution. Other governments aren't doing that and are saying there is a lack of wisdom in that approach.

Why are you following that approach as opposed to splitting the comprehensive claim and incorporating it as a section 35 right and having self-government arrangements that are dealt with other than under section 35 of the Constitution?

• (0935)

Hon. Andy Scott: The Minister of State would like to answer.

Hon. Ethel Blondin-Andrew: First of all, I'd just like to remind the member that whether it's one aboriginal person or whether it's 200 or 3,000, whatever arrangements are made between the Crown and those people, if there is constitutional protection, that's a given. It doesn't matter what the size of that group is. That's the essence of it.

For the purpose of people who don't know, section 35 of the Constitution Act, 1982, protects both aboriginal and treaty rights. The prime objective for government in negotiating these agreements with aboriginal groups is to obtain certainty as to which rights are exercisable.

The Tlicho agreement does not purport to define any existing aboriginal rights but achieves the certainty by a commitment of the Tlicho not to assert any rights not set out in the agreement. They thus trade the assertion of their aboriginal rights and most of those in Treaty 11 for those in the new agreement. It was therefore necessary to confirm for the rights in the new agreement the same constitutional protection as those they had in the rights no longer assertible.

I'm assuming you're a lawyer, Mr. Prentice. You will understand that, first of all, the complexity doesn't mean it can't work. Just going back to the regulatory phase, when you talk about things like the Constitution and the regulation, you make it sound as if, because it's in this particular arrangement, it's not going to work. That's not the way it is. You have many regulatory regimes, related to resource development, related to almost every aspect—for instance, health—that are very complicated, but they work.

In almost everything you do, your comments are laced with the fact that you don't have confidence that this will work. I don't understand how you can feel that way, doing the work you've done.

Mr. Jim Prentice: Well, if I might—

The Chair: We have to move on to the next questioner. We'll come around again to the Conservatives.

Mr. Cleary, please.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Madam Chair, before I get to my questions, I'd like to explain to people that our intention is not to criticize the agreement that has been negotiated. On the contrary, our goal is to gain a clearer understanding of this accord, certain components of which need to be explained to us in further detail. Bearing this in mind, I'd like to put my first questions. I have a number of questions for the minister, and I'd like him to answer them as fully as possible. Subsequently, I may have some sub-questions for him.

The first element that I don't quite understand is the statement that the full agreement will be entrenched in the Constitution. Clearly some components of the accord will need to evolve. As I see it, agreements evolve and are not carved in stone. We've seen what happens when agreements are supposedly carved in stone. Remember the James Bay Accord. Over a twenty-five-year period, changes were constantly being made to keep up with the evolving situation. Therefore, as a negotiator, I've always believed that some components of an agreement need to be constitutionally protected, while others should not. I'm curious as to whether you've taken the fact that agreements need to evolve into account.

Secondly, there is the matter of inherent rights. When the Department of Indian Affairs claims to recognize inherent rights, I for one am very skeptical of this pronouncement, because recognition of inherent rights by Indian Affairs flows from a policy, that is a policy on inherent rights. To my understanding, inherent rights are rights that belong to someone, not to the Department of Indian Affairs in this case, but to a nation. Recognition of inherent rights amounts to recognition of what a community wants in terms of inherent rights, that is the affirmation of its inherent rights.

Upon examination of the policy of Indian Affairs, I see that some things are allowed, while others are not. I'd like someone to explain these nuances to me. Can anyone tell me if inherent rights are limited, or restricted in some way by something? To my way of thinking, it's not a matter of recognizing inherent rights. It's a matter of recognizing that such rights apply. In my opinion, agreements need to focus on the application aspect. I'm an aboriginal and no one is about to tell me what my inherent rights are. They can tell me or we can discuss how these rights apply, and we can try and find solutions that include non-aboriginals, because we do not live in a vacuum, but inherent rights are just that, namely inherent rights. Therefore, I'd like that issue to be clarified. This is the first time that I've seen inherent rights recognized in an agreement, but it isn't clear and I'd appreciate some explanations.

Lastly, you maintain that the bill is not binding on the Crown. I do not see how a bill to ratify an agreement cannot be binding on the parties. In essence, the purpose of the bill is to bind the parties with a view to ensuring that they affirm and assume their responsibilities and that the Crown complies with the terms of agreement signed with the Tlicho people.

● (0940)

It's perfectly reasonable for certain elements of this agreement to be binding on the parties. Therefore, I don't quite understand why the Crown is not bound in the same way that the Tlicho are bound by this agreement, specifically when they agreed to the terms, as spelled out in the proposed legislation. In my opinion, the agreement is binding on the Tlicho. How can the Crown claim that it is not bound by the agreement then? That I do not understand and I would like someone to explain this to me.

Thank you, Madam Chair.

[English]

The Chair: Thank you.

Just to remind the questioners, your time includes giving the minister time to answer the question.

Minister.

Hon. Andy Scott: Of those three questions, I think Ethel would like to take the question on section 35 protection.

As for the question on our policy of self-government and the inherent right, this is an expression of our policy. This is an effort on the part of the Government of Canada and the Tlicho people to offer expression of that policy, and for our part, I think it is a wonderful expression of that policy. The fact that the community has embraced it to the extent that it has, I believe would suggest they share that view.

On the question of the section 35 protection of the agreement, I'm going to go back to the Minister of State, who answered it for a previous questioner.

Just for purposes of preparation and the question of the binding of the parties and the Gwich'in, Ms. Isaak wants to refer that to Justice.

● (0945)

Hon. Ethel Blondin-Andrew: On section 35, you talk about inflexibility and it not being amendable. That is not the case. The provisions in the Constitution provide protection for the whole agreement—and there is room. It's not part of the Constitution, but the Constitution itself provides the protection for this whole agreement. The agreement can be amended by agreement of the parties; I think it's very, very clear that it can be done.

On the issue of whether it's binding or not, that too is very clear. You'll understand that certain sections of the Tlicho agreement will express that clearly. I'll give you an example. It is also the same for other claims that have a provision, such as the Inuvialuit and perhaps the Sauleteaux ones, though I'd have to check. But it's very clear that if the Crown wants to go on Tlicho lands, for instance, it will say clearly that they can do so with or without consent. It will give complete clarification on that. So wherever it's binding, it will clearly explain that. I can't give you all the examples, of course, but it's quite clear that whenever that is the case, it expresses that clearly.

The Chair: Thank you.

I understand that the minister has to go to a cabinet meeting at 10, so I want to try to speed up the questioning so that everyone has an opportunity. But the officials will be here for the more technical questions in the second hour.

If I can get Mr. Martin to take his time, and then we have Ms. Barnes for the government....

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Madam Chair.

Thank you, Minister, for being here.

I too would like to begin by recognizing and paying tribute to the Tlicho people and to what I see as the patience and the dignity they've demonstrated in guiding their people to this point in history, where we are now at the edge of giving a final treatment, I would hope, to this bill and to this agreement.

I would like to use what little time I have to speak to the bigger question on the policy issues associated with this agreement. First of all, I'm not critical of the Tlicho agreement. I fully recognize the right of the Tlicho people to enter into this agreement with the Government of Canada and to chart their own destiny in this way.

What I point out to you, Mr. Minister, is the contradiction, or what appears to be a contradiction, in the extinguishment aspects of this bill. I can pre-empt you by saying that in my view the only reason these are not viewed as extinguishment is because you say it's not. I would like to point out places where I believe it is.

Now the contradiction is when, in August of 2002, the United Nations Committee on the Elimination of Racial Discrimination recognized Canada's statement that they would no longer push for extinguishment clauses in any land claim agreements. Three weeks later, three weeks after the United Nations took Canada at its word that it would not push extinguishment policy, it signed a 130-page land claims agreement with the Tlicho people in the Northwest Territories, which clearly calls upon them to cede, release, and surrender Treaty 11 rights to pursue their usual vocations of hunting, fishing, trapping, etc.

Now I could go on about how this contradicts Coolican, it contradicts Hamilton, and it contradicts the Royal Commission on Aboriginal People. This Dogrib method of pushing for extinguishment, it seems, is now policy for all future land claims. It would appear to be a contradiction to the promise we committed to the international community at Geneva in August of 2002.

Who pushed for these provisions in the Tlicho agreement? Which one of your negotiators pushed for this?

The government is not ceding any of its rights. It holds on to all of its rights absolutely in this agreement, but yet it has forced the Dogrib people, the Tlicho people, to cede at least some of their rights and to extinguishment. Is this not one-sided, and is this not contradictory to the spirit or the principle of the international commitments we made in Geneva?

• (0950)

Hon. Andy Scott: On the broader question, I would again refer the member back to the 84% of the community that support the agreement.

Mr. Pat Martin: I fully accept that it has been ratified by the people of that area, and I do not criticize them for making that choice.

I'm talking about what could be one-sided negotiations and that the government is pushing this policy that they committed not to push for, leaving very little choice for the people who want to move forward on economic development through self-determination. That's my point.

Hon. Andy Scott: You referenced the negotiators. Paula will either take it or direct it to the appropriate person.

Ms. Paula Isaak: The Tlicho agreement reflects what we call a non-assertion technique, which is an alternative to an extinguishment model.

Mr. Pat Martin: It's a modified rights proposal.

Ms. Paula Isaak: It's not a modified rights proposal; it's a non-assertion technique, which the Department of Justice can explain in more detail.

Mr. Pat Martin: Modified rights being more what the Nisga'a agreement had? Am I correct in that understanding?

Ms. Paula Isaak: That's right.

Hon. Ethel Blondin-Andrew: The surrender clause would only be exercised if the court determines that it should be. We have confidence that there's going to be recognition of the non-assertion technique. We believe that will be accepted. We have confidence in that.

There has been a tremendous amount of work that has gone into this. Essentially, the objection to the extinguishment clause was that it presumed, before you even got to the table, that you would cede, release, and surrender all rights to lands and bodies of waters within Canada, but non-assertion doesn't do that. You have certainty with dignity. You don't have to cede, release, and surrender before you get to the table.

In this case, it's a non-assertion technique. The surrendering or ceding of rights would only happen if it's determined by the courts. We're confident that won't happen.

How many times has that happened? None really.

Mr. Pat Martin: Thank you for trying to answer that in a clear way. I do understand your point.

My point is that there are six points that are the crux of the extinguishment of Tlicho rights. I don't have time to itemize them. I will, of course, in future speeches, but I want to make it abundantly clear that I am not being critical of the Tlicho people for entering into this agreement. I celebrate their steps toward self-determination and I'm happy to be here to be a part of it.

I am being critical of you, Minister, and your government because I believe you found a way to circumvent the commitments made in Geneva, to still push for the subtle and gradual erosion and extinguishment of these rights in this and subsequent land claim settlements. I hold by that point. I'd be happy to have a more in-depth conversation with you or anyone else about this.

Do I have another moment, Madam Chair?

The Chair: You have about 30 seconds, Mr. Martin.

Mr. Pat Martin: Further along this same vein, I do want to address one other issue. Subclause 3(3) is an area I'd like to draw your attention to, that the agreement is binding on all persons and bodies, and so on. This is a variation of the measure of the Nisga'a ratification act, which made no reference to bodies, and the Yukon settlement legislation, which is different and is binding on all persons and bodies that are not parties to it. Can you explain the rationale behind subclause 3(3) and the choice of language used, which differs from the Yukon act and the Nisga'a ratification act? Is there a subtlety that I'm missing or is there some rationale that's legitimate here?

•(0955)

Hon. Andy Scott: I'm going to refer to Mary, but before I do, I want to acknowledge that the member can in fact agree to disagree on the question of the non-assertion provisions and still support the legislation in the context of the important step it represents to the Tlicho people. I would also assert that the confidence the government has shown in the method in which we've dealt with this is the same confidence that has been shown by the Tlicho people themselves.

On the question of the change in the wording, I'll refer to Mary. Is it subclause 3(3), Mr. Martin?

The Chair: You will have to do it in a technical round when the minister has left, because you're now over your time limit.

Ms. Barnes, please.

Hon. Sue Barnes (London West, Lib.): Thank you very much, Madam Chair.

Welcome to all the officials and ministers present today, and also to all those people who are witnessing this procedure, not only physically here in Ottawa but also through their television sets. I know people up in the Northwest Territories and the region are very interested in this process. It's the end of a long process.

Last year I was fortunate enough to go into Tlicho territory. I was also fortunate enough to take a look at one example of the human resource capacity-building mechanisms that have benefited not only industry but Canada and the Tlicho. That was when I visited the Diavik mining operation and saw what was happening and the people who were involved in making this community prosper for the benefit of all of us. I see this agreement as benefiting Canada, not just the Tlicho. I think this is a benefit to Canada, moving forward.

I do want to talk about and make people understand that this is a ratification process that we're going through. The agreement has been bargained in good faith and entered into amongst three levels. Before that, there was consultation that spanned many years.

I would like a little bit of an overview on the extensiveness—how this was done, how much time it took, the numbers of organizations or people consulted, how this happened—just very briefly. We didn't just show up here today on something that was done recently.

Hon. Andy Scott: When the community appears specifically before the committee, I think it would be appropriate for us to ask the community. I'm not going to dictate to the committee what course of questioning it might engage in, but my sense is that the exercise on the side of the community has been extensive, creative, and generous. It is as a result of the effort that has been put into this both by the Government of Canada and by the Tlicho community, I think, that both the government and the community see this as such a landmark opportunity. Notwithstanding the fact that it's very seldom you're going to find in legislation or an agreement of this nature that everyone agrees on every line, I think there's generally a significant recognition of the importance—and in fact the improvement this represents in the community.

As was suggested earlier, this has been a very long and intense exercise. We have negotiations being undertaken across the country in various communities on various subjects, and these are not easy.

As a result, when we are successful and reach an agreement, I think it speaks well to the efforts and capacity of negotiators, and it also speaks well to the efforts and capacities of the community on the other side of those negotiations.

•(1000)

Hon. Sue Barnes: Thank you. I just want a very quick answer. My understanding is the Tlicho agreement actually reduces the number of governments operating in the region, because the agreement recognizes the role of the Tlicho government as an aboriginal government that replaces Dogrib Treaty 11 council and the Indian Act band governments that currently exist in the four Tlicho communities.

Is there somebody at the table who can confirm that?

Hon. Andy Scott: I can confirm that. My guess is that's not quite enough.

Hon. Sue Barnes: No. I just wanted to—

Hon. Andy Scott: Perhaps Paula can speak specifically to the Indian Act bands and the other governments this replaces, because as I think has been pointed out earlier, we are trying to bring more rationality, certainty, and more comprehensive understanding to this.

I'll turn to the associate chief federal negotiator.

Ms. Paula Isaak: Currently there are four bands, as you identified, as well as two community governments and a tribal council government. What this agreement does is create one Tlicho government and four community governments, which does reduce the number of governments. There are no longer band governments as well as community governments within two of those four communities.

Hon. Sue Barnes: Thank you very much.

Hon. Andy Scott: Madam Minister of State?

The Chair: Minister Blondin-Andrew.

Hon. Ethel Blondin-Andrew: The powers and delegation of the Tlicho government are something all of Canada should be proud of. We have talked for so long about the dependency of aboriginal people upon different levels of government. This is the real empowerment that governments at all levels in Canada want to achieve.

The Tlicho government will be a legal entity. It will have the legal capacity of a natural person. This means the Tlicho government may enter into contracts or agreements, acquire property, raise, invest, or borrow money, form corporations, and do any other things that are conducive to the exercise of its rights, privileges, and powers.

I believe anyone who understands the current state of affairs of aboriginal peoples across Canada would want to support this, would really want to make it a priority and give all the support we can give to it, because it's the height of empowerment of a people.

Thank you.

The Chair: You have about a minute left.

Hon. Sue Barnes: In my minute I want to put to rest this idea that Tlicho governments have authority to enter into international agreements. The minister has clearly said that's not so. But in the technical part.... I would like the technical delineation—and I may not be able to get it in the time allowed here—because there has been raised, not by the government certainly but by another party, a suggestion that there is a confusion. I don't see the confusion, but I would like someone to go through step by step, putting out the sections on international treaties.

I think this would probably be Mary Douglas or someone else.

Hon. Andy Scott: If I may, I'll allow Mary to speak to that in the hour that follows. Let me just say, as the chair has said, that both the Minister of State and I have to go upstairs, but I would feel negligent if I didn't express my appreciation to the committee. This process is not intended to always be unanimous. I'm certain the people who are members of the committee will bring to the exercise the kind of scrutiny that legislation—in this case, this treaty—demands. We're confident as a government, and I'm confident as the minister responsible, as is my colleague the Minister of State, that this represents a very positive development for the north, for the country, and most importantly for the Tlicho people.

I think it is important that the process be given the kind of diligent analysis that is represented by the work of a committee. As I've said many times before, I'm a strong supporter of this process. In advance of the thoughtful work that's going to be done by members of the committee, thank you.

Finally, to the various witnesses to this exercise who are seated in the gallery, our thanks for their interest, and best wishes for what I believe to be an extremely positive development in the history of the country and in the history of the Tlicho community.

Merci.

• (1005)

The Chair: Thank you very much, Minister and Minister of State. We thank you for sharing your time with us.

We'll go into the second round of questioning here. We'll start with Mr. Lunn for his five minutes, and the officials will be staying to handle those questions.

Mr. Gary Lunn (Saanich—Gulf Islands, CPC): Thank you, Madam Chair.

I have a number of questions I'd like to ask. First I'd like to ask Ms. Isaak, did you recognize or is it your opinion that the Tlicho agreement creates a new order, or a third or fourth level, of government? Would you agree with that or not?

Ms. Paula Isaak: No, this agreement is within the current constitutional framework, so it does not create a third or fourth order of government.

Mr. Gary Lunn: But it does create the Tlicho as a legal entity.

Ms. Paula Isaak: That's right.

Mr. Gary Lunn: I disagree. I believe it creates a new order of government. If I go to section 2.8.3—I'm reading from the agreement—I find:

Where there is any inconsistency or conflict between the provisions of the settlement legislation or the Agreement and the provisions of any other legislation

or Tlicho laws, the provisions of the settlement legislation or the Agreement, as the case may be, shall prevail to the extent of the inconsistency or conflict.

Clearly, when you read through it, and even in the minister's own words.... At least, the minister believes that with general application the federal law would be paramount, and that's arguable when you read the agreement. There are discrepancies throughout the agreement, and in some cases you can argue the Tlicho agreement would have supremacy. But the minister also agrees they would have supremacy over territorial law, so I don't see how it's not creating a new order of government. That's one of the struggles we have.

We appreciate that the Tlicho people are looking for self-government, and of course we believe there are other models and we would like to go down that road. So we'll have to disagree on that.

The other issue I struggle with—because basically I see we have a 200-page document that's going to be annexed to section 35 of our current Constitution, in effect—is whether we create a patchwork quilt across the country of self-government agreements. Clearly this is a significantly different agreement from that of the Nisga'a in many different ways. Obviously, as we negotiate these agreements there are going to be differences, depending on the needs of the people, but I believe we have to follow the same framework.

To give you some examples, consider international treaty obligations. Clearly under this agreement the federal government must consult with the Tlicho before they enter into any international treaty obligations. If we end up with different provisions in all these agreements we negotiate, are we going to be creating something that's basically almost impossible to work with down the road? I see this as fraught with problems.

One of the other provisions I really struggle with is the finality, of course. The minister would argue that there is finality. Clearly there's not. This agreement does not explicitly state that it's final, as the Nisga'a agreement did. I would like you to respond to those concerns.

It says this could be reopened, that the Tlicho could obtain additional benefits if there were other aboriginal groups who negotiated new types of benefits. The Tlicho could open this back up so they could also pursue those benefits. I see a number of areas within this agreement that could create difficulties not just for the Government of Canada but for the Tlicho people as well.

Those are some of the questions I have, and I'd ask you to respond to those.

• (1010)

The Chair: You have 30 seconds, since you spent most of your minutes asking questions.

Ms. Paula Isaak: I'll respond first to your question with respect to this being a different agreement from other agreements across the country.

This is a different agreement. This agreement reflects the agreement of all the parties who were at the table and the unique circumstances of those parties.

The inherent right policy is the basis for the negotiation of the self-government aspects of this agreement. That's the policy basis for this agreement, and other agreements as well, but the outcome of those negotiations always reflects the unique circumstances of the groups.

With respect to your question on finality and the opening up, I'll refer that question to the Department of Finance. The clause it referred to is, I believe, with respect to taxation powers and exemptions only.

The Chair: Ms. Carrier.

[Translation]

Ms. Annie Carrier (Chief, First Nations Taxation Section, Department of Finance): Allow me to answer your question. We negotiated a new taxation arrangement with the Tlicho. The Tlicho no longer benefit from the exemption set out in the Indian Act. When we began negotiating with the Tlicho people, it was the first time ever that the Government of Canada stood prepared to grant constitutional protection to certain aspects of self-government. It was also the first time that the government was negotiating within the framework of the federal policy on inherent rights.

Our intention was to give that part of the agreement respecting tax treatment or taxation powers room to evolve over a certain period of time in the Northwest Territories. To all intents and purposes, the agreement with the Tlicho people was to be the test case for Canadian fiscal policy. That's why this clause was included in the Tlicho agreement. There is no such clause in the other agreements that are now being negotiated elsewhere in Canada and that have reached the agreement-in-principle stage. This is the one group for which we felt the need to include a provision of this nature.

[English]

The Chair: Thank you very much.

Mr. St. Amand, please.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Madam Chair.

I, too, wish to recognize those individuals who are here as observers and interested parties. My appreciation to each of you for your presence this morning.

Through you, Madam Chair, to Ms. Isaak, I presume the negotiators did not endeavour to create an unduly lengthy agreement. That was hardly the purpose. Mr. Prentice has indicated that the agreement, in his view, is lengthy, and he was hinting that perhaps it's too lengthy. Could you expand, please, on the length of the agreement? I presume it's the sheer scope and breadth of the agreement and the parties involved and the number of bands involved that account for the length of the agreement, but could you expand for us on how much was involved within the agreement in terms of resource rights, etc.?

Ms. Paula Isaak: The agreement contains a wide variety of items, from land claim elements to self-government elements, so it covers a broad scope of self-government rights, land rights, harvesting, fishing, the whole breadth of issues. As the agreement is the core document to which all parties must refer, it's important that it be clear and that it identify the relationships and rights and responsibilities of all the parties; therefore, it's important that it be as lengthy as it needs

to be in order to fully identify and clearly state all the rights and responsibilities of all parties involved in the negotiations.

● (1015)

Mr. Lloyd St. Amand: I've made reference to the negotiators involved and you have as well. I'm wondering, however, Ms. Isaak, apart from the negotiators who ultimately dealt with the nuts and bolts of the agreement, who else was consulted. What in fact was the consultation process that led up to the agreement itself?

Ms. Paula Isaak: The consultation process was quite lengthy and spanned the entire time of the negotiations. So beginning in 1994 when these negotiations began, all parties were involved in consulting their own specific caucuses, if you will, as well as other aboriginal organizations, third parties, and industry. There was a broad and lengthy consultation process throughout the negotiation process. Similarly in the legislation process with respect to amendments to the Mackenzie Valley Resource Management Act, there is also a broad consultation process associated with that.

So the consultation process is throughout the entire negotiation process.

Mr. Lloyd St. Amand: And lastly, if I yet have time, Madam Chair, there is a suggestion, or an innuendo, that the Tlicho community, as a result of this agreement, will be given a mandate to enter into international agreements. Minister Scott indicated that of course they remain citizens of Canada. I'm wondering if you can clarify for us any confusion as to whether or not the Tlicho will in fact have the right to enter into international agreements.

Ms. Paula Isaak: No, the Tlicho will not have a right to enter into international agreements. That is the sole jurisdiction of Canada. I think it would be helpful for legal counsel to go through some of the provisions to identify how exactly that works, so I'll defer to Mary Douglas to do that.

Ms. Mary Douglas (Legal Counsel, Comprehensive Claims and Northern Affairs, Department of Justice): The various authorities that were confirmed with Tlicho are subject to some limitations, and some of the limitations relate to international agreements, but they don't confirm authority to negotiate. On the contrary, for example, there's one provision—it's in 7.5.12—that refers to the authority to make laws respecting taxation, and this provision of the agreement explicitly confirms that any of these laws are subject to federally negotiated treaties, conventions, and protocols respecting that subject matter. There's another example of references to international legal obligations; it's in the same chapter, chapter 7. In 7.13.2 there is a provision that says that if some anticipated international negotiation may affect the rights that have been confirmed for the Tlicho government, then that government must be given an opportunity to express its views. That does fall short, way short, of an authority for the Tlicho government to actually enter into.... There's nothing in there that suggests it might become a party to any such international agreement. Furthermore, the obligation to allow it to express its views falls short of the full consultation process, which is an obligation that applies in other circumstances throughout the agreement.

The Chair: Thank you very much.

We now have Mr. Cleary, Mr. Valley, and Mr. Martin on the speaking order.

Mr. Cleary, please.

[Translation]

Mr. Bernard Cleary: Madam Chair, I would like an answer to the questions I raised earlier. I didn't get one, and I probably won't, but I will persist nonetheless. I may sound like a broken record, but it's important that I understand.

As for the fact that the bill is not binding on the Crown, in the briefing notes that we received, the following is noted: "Previous legislation to ratify comprehensive land claim settlements has specified that it binds the Crown."

Therefore, prior to the Nisga'a Final Agreement and Bill C-14, all legislation to ratify agreements was binding on the Crown. It's clear to me that this is not the case here. I'd like to know why this bill is not binding on the Crown, whereas all previous legislation to ratify agreements was binding. It's a simple question. Why the change? How are things different now?

• (1020)

[English]

Ms. Paula Isaak: I will have legal counsel answer that question.

Ms. Mary Douglas: Although clause 3 of the bill does not use those words, this act binds the Crown. It does use words that confirm expressly that it's binding on all persons and bodies. I understand the intention was to have those two expressions, "persons" and "bodies", cover all government bodies as well, not just private organizations. With that understanding, it would be repetitious to also confirm that it binds on the Crown.

A very large portion of the agreement itself relates to either the federal government, the territorial government, or both, and describes with some precision what the obligations of the Crown would be and what its rights would be. So the first part of clause 3, which says that this agreement has the force of law, in effect invigorates those sections in the agreement itself. The end result of clause 3 is intended to be that the agreement, where it says the Crown can do something and the Crown must do something, is given effect.

The Chair: Does that answer your question, Mr. Cleary?

[Translation]

Mr. Bernard Cleary: Unfortunately, no. If certain things are spelled out in the agreement and that agreement is binding, why then would the enabling legislation say that this is not binding on the Crown? I don't understand. In my opinion, this is an example of Justice Department baffle-gab. I could quote several pieces of legislation that have been enacted. Major problems were encountered in the case of James Bay. And why was that? Because the enabling legislation was incorrect. It was drafted in an office somewhere and failed to properly reflect the agreement.

I want the legislation to clearly reflect the agreement's provisions and for the Tlicho people to be legally protected, because the act has primacy over the agreement. The government speaks through its legislation, not just through its agreements. When legislation is enacted to implement an agreement, that legislation must be a reflection of the agreement. In this particular instance, there is a void of sorts, and no one can tell me why that is so. I'm hearing how the agreement offers sufficient safeguards, and I don't disagree with that

statement, but I'm also hearing that there is no need to include this clause in the act. I don't agree with that decision. The purpose of the legislation is to enact the agreement on the government's behalf.

I asked to hear the reasons for this vacuum. I didn't get an answer to my question, but that's alright. However, as I see it, the Tlicho people are not fully protected. My job here is to ensure that the Tlicho benefit from the fullest possible protection. Since my question hasn't been answered, there is still some doubt in my mind.

As you no doubt appreciate more than I do, the underlying danger here is that an agreement can lead to other agreements. Past agreements always serve as an inspiration. If certain issues are glossed over in an agreement, subsequent agreements will have the same flaw. Therefore, we have a duty to ensure that the terms of the Tlicho agreement are clear. It's important not only to the Tlicho people, but to other peoples as well because it's a known fact that you look to agreements that have already been signed for inspiration.

• (1025)

[English]

The Chair: Thank you, Mr. Cleary. We'll have to wait for your next turn again because we have Mr. Valley and Mr. Martin waiting to question the witnesses.

Mr. Valley, please.

Mr. Roger Valley (Kenora, Lib.): Thank you, Madam Chair.

Through you to the negotiators, inside the 39,000 square kilometres there will be four communities that will have—I'm not sure of the term—independent governments elected. The formula used is that 50% must be Tlicho citizens. I suppose that's to protect the non-Tlicho or the Tlicho, whichever way you want to look at it, and the chief or leader must be Tlicho. Can you tell me a little bit about the process or the discussions that led to this figure being used?

Ms. Paula Isaak: In the four communities created under this agreement, the majority, the vast majority, are Tlicho citizens, upwards of 93% or so of the population. The form of those governments was negotiated to ensure that all residents, Tlicho and non-Tlicho, would be represented and could vote for members of the council. But understanding the unique demographic nature of those communities, which are majority Tlicho, it was determined that the chief of those councils would be Tlicho citizens. That's also a recognition of the expression of the inherent right of the Tlicho through this public government structure.

Mr. Roger Valley: Were there any other options discussed, or any other numbers used, during your discussions?

Ms. Paula Isaak: The 50% figure actually reflects a current reality in one of the communities that was created under territorial legislation; it is a charter community, and 50% of the representation of the council for that community is Tlicho and 50% is open to non-Tlicho as well. So it is based on a current reality that exists in one of the communities already.

Mr. Roger Valley: So it's an example of something that's working there already?

Ms. Paula Isaak: That's right.

Mr. Roger Valley: Lastly, was there any opposition from any of the communities, or any of the groups, involved with the Tlicho to using this formula, or was it fairly widely accepted? Give us a sense of what happened when these discussions were going on. Was there any lobbying to change this, or was the example that it was working sufficient for everyone involved?

Ms. Paula Isaak: The example seemed to be working for individuals involved. As I mentioned, the demographic makeup of the communities is largely Tlicho, so there was acceptance of this formula as one that (a) is already working and (b) adequately represents the population and demographic makeup of the communities.

Mr. Roger Valley: Thank you.

Madam Chair, I think this emphasizes that people involved in this agreement have known what they're doing for quite some time. They know how to move forward on issues, and I think it's an example all of us should take time to look at and make sure we understand. Thank you.

The Chair: Thank you.

Mr. Martin, Mr. Smith, and Mr. Harrison.

Mr. Martin, please, you have five minutes.

• (1030)

Mr. Pat Martin: Thank you.

I'll try to speak to a broad policy issue that bothers me and I would think must bother you as senior policy advisers and negotiators, and I'd ask for your comments on this.

It's the government's publicly, widely stated view that they recognize the inherent right to self-government. But a first nation can't exercise that right until they have agreement with the federal government. Does that not seem contradictory, to recognize the inherent right of self-government but say you can't exercise those rights until you negotiate an agreement such as this, with our terms and our conditions surely overriding those issues brought to the table by the Tlicho people? That's the contradiction we start from, which I think gives rise to the level of misunderstanding associated with this.

I'll give you time to comment, but I'll walk you through how I see this developing and then end with a question.

I'll take you back to the Penner report, which said in the recommendations that the doctrine of extinguishment should be eliminated from the settlement of claims. Then there was the Murray Coolican report, *Living Treaties: Lasting Agreements*, which said blanket extinguishment of all rights and title should no longer be an objective. Then—I'll speed it up—there is the Hamilton report, from my own province of Manitoba, which recommended that alternatives to surrender be investigated. This very committee, the House of Commons Standing Committee on Aboriginal Affairs, in the mid-1990s called upon government to consider the feasibility of not requiring blanket extinguishment. Then there was the Royal Commission on Aboriginal Peoples, which was very clear in saying we believe a policy that recognizes and affirms aboriginal rights and emphasizes co-existence, and so on, is to be preferred over current federal extinguishment policies.

All that said, we have this Dogrib non-assertion-plus policy, which really accomplishes the same thing for the government in a circuitous way. They found a legal way to accomplish the same objectives with this non-assertion-plus policy as they were achieving through their extinguishment policies.

Am I completely wrong here? Am I reading this incorrectly? Is there any one thing you can tell me that would give me satisfaction that this is not the objective of the federal government still, the systematic extinguishment of treaty rights?

Ms. Paula Isaak: I'll deal with the extinguishment question first.

This agreement, as you pointed out, sets out a non-assertion technique with a fallback release, and that fallback release only applies to where there may be an additional land right, which the Tlicho agree to release back to Canada if that does occur. This is done simply to ensure that there is finality with respect to land rights in this agreement.

Mr. Pat Martin: Stemming from Delgamuukw, influenced by Delgamuukw in terms of title...?

Ms. Paula Isaak: It's influenced by the whole range of jurisprudence and policies that have existed for a number of years, but it is a non-assertion as opposed to an extinguishment model. So the Tlicho agree not to assert other rights outside this agreement.

Mr. Pat Martin: How could the layperson, the general public, understand the difference between extinguishment and a permanent duty to not assert those rights? Why have them if you can't assert them?

Ms. Paula Isaak: The purpose of negotiating these agreements is to come up with a mutually agreed upon way of understanding rights and who's going to assert them and how they're going to be asserted. That's the objective, to negotiate an agreement that everybody can understand so everybody knows what the rules are.

• (1035)

Mr. Pat Martin: Given the misinformation that's circulating around the country, I'm not sure everybody understands. I'm not sure we're there yet. I guess the people who matter most, which are the Tlicho people, understand, but I think they also understand and neighbouring peoples who may be looking at settling claims in the future understand that there's enormous pressure that if you want to get the agreement so you can start to exercise your right to self-determination, you're going to have to give up quite a bit, or at least never assert rights that you have always had by virtue of section 35 of our Constitution. That's what I have a really hard time with.

My party is not going to stand in the way of this agreement. We're going to vote in favour of Bill C-14, but we have really qualified support, and we're critical of the process and critical of the philosophy and the policies at the front end of this whole process.

The Chair: Thank you, Mr. Martin.

Mr. Smith, and then Mr. Harrison.

Mr. David Smith (Pontiac, Lib.): Thank you, Madam Chair.

First of all, I would like to say thank you to everybody for being here and to everybody in the gallery. I have the greatest respect for any organization or any nation that will take all those years and negotiate or try to come to terms with different parties to achieve a common goal.

I've read the documents that were furnished to me and I have also assisted at certain information sessions on the subject. My understanding is that 84% of the Tlicho population agrees with this agreement.

Coming from a rural region of Canada, in the riding of Pontiac, my question, or the question the people from my riding would probably ask, is, what will this change in my day-to-day reality? Will the Tlicho people have more advantages or more rights than the people, for example, of the riding of Pontiac? That would be one of my first questions. Would somebody address this?

Ms. Paula Isaak: I think what the agreement does is it sets out the rights of the Tlicho people and what rights they will assert. It's an expression of the inherent right of the Tlicho people, so it does identify how those rights are going to be expressed both through the Tlicho government and through the community governments. That expression of their inherent right is through public governments and the four community governments and through an aboriginal government on Tlicho lands.

Mr. David Smith: So mainly, if I understand, it's structures that do exist, for example, in my riding. It will be seen as a municipal government, where people will identify their needs and desires and will work collectively to develop their own resources. Is that correct?

Ms. Paula Isaak: The Tlicho community government model is a municipal type of model similar to other municipalities in the NWT, and I'm assuming across Canada as well.

Mr. David Smith: Okay. So having this assumption and seeing that this is what is done, there are no new structures being made. It's something that is functional in other areas. So there are no additional rights given to these people, whether it's internationally or whether it's the Charter of Rights and everything. It's the same for all Canadians, if I understand correctly.

Ms. Paula Isaak: Yes. Those laws are identified, such as the Constitution. Federal laws continue to apply and will prevail. Those do not change as a result of this agreement.

Mr. David Smith: So we're giving these people the opportunity to participate and to make this country an even better place by offering them opportunities in business, education, and being less dependent on the different structures that do exist, and maybe being more proactive.

Ms. Paula Isaak: Yes. It does provide economic and governance tools for the Tlicho to continue to participate—they already participate to a large extent in the northern economy, to continue that as well as the growth of their own cultural and traditional ways through governance structures.

Mr. David Smith: If we look at, for example, the past agreements that have been made between Canada and different nations, it has been said that there is no template. I imagine it's because of the specifics of the situation with the Tlicho population and the environment in which they live.

• (1040)

Ms. Paula Isaak: That's right. There's no one model. There's no one template. This agreement does reflect the circumstances of the parties at the table—the Tlicho, the Government of the Northwest Territories, and Canada—and it reflects those unique circumstances of those parties.

Mr. David Smith: As a member of this party, I can only congratulate and recognize the efforts of all parties in this exercise, and I encourage our honourable members of this committee to support this bill.

The Chair: Ms. Isaak, perhaps we could just ask you to clarify. You said there were no new structures. We understood that because there would be one group instead of those band councils, there is a new structure in governance.

Ms. Paula Isaak: Yes. Sorry if I misspoke. There will be a Tlicho government, which will replace the current tribal council plus four band councils, so that is a new structure. There will be four community governments as well, which don't currently exist but will exist under territorial legislation.

The Chair: Thank you.

I believe you're done, Mr. Smith? Thank you.

Mr. Harrison, please.

Mr. Jeremy Harrison (Desnethé—Mississippi—Churchill River, CPC): Thank you, Madam Chair.

First of all, I'd like to welcome everybody to this meeting. I'd like to start off by asking a fairly specific question about article 7.13.2, which is the article dealing with international obligations and the duty to consult. The article reads:

Prior to consenting to be bound by an international treaty that may affect a right of the Tlicho Government, the Tlicho First Nation or a Tlicho Citizen, flowing from the Agreement, the Government of Canada shall provide an opportunity for the Tlicho Government to make its views known with respect to the international treaty either separately or through a forum

What this creates is a duty to consult on international treaties. I'm wondering if we could get some explanation as to the rationale behind the inclusion of this provision in the agreement, first of all.

Ms. Paula Isaak: There is recognition that as a government, the Tlicho government may have some views with respect to an international treaty the Government of Canada may negotiate that may affect them. That is why the Government of Canada has agreed to provide an opportunity for the Tlicho to make its views known. That's not consultation as defined in the agreement; that is an opportunity to discuss and make its views known.

Mr. Jeremy Harrison: What happens—or has this been thought out—if the Tlicho government doesn't agree with an international treaty Canada is entering into on which there's a duty to consult with the Tlicho government?

Ms. Paula Isaak: Again, it's a duty to provide the opportunity for the Tlicho government to make its views known; it's not a duty to “consult”, as defined in the agreement. The Government of Canada would take the views of the Tlicho, but the Government of Canada retains the sole jurisdiction to enter into an agreement of an international nature.

Mr. Jeremy Harrison: So it isn't clearly defined. Then what happens if the Tlicho government is adamantly opposed to an international treaty Canada is entering into?

I guess my next question would be, is there any jurisprudence on this type of issue that exists in Canadian law on a provision such as this, respecting international treaties and the duty to have the Tlicho make their views known on it?

Ms. Paula Isaak: I will ask my Justice counsel.

Ms. Mary Douglas: I don't believe there is yet jurisprudence on this. I'm unaware of any.

Mr. Jeremy Harrison: So essentially we're jumping into the darkness with this type of provision. We don't know what will happen if the Tlicho decide to litigate through the court system a disagreement on an international treaty. Essentially we could be—we don't know—giving the sovereignty of this country over because we aren't sure why we're including the provision within an agreement.

Ms. Paula Isaak: I don't think we can predict any outcome of any potential litigation, but I think one would turn to the agreement and look at the words of the agreement that identify what the intent was. The intent was in this case for the Government of Canada to provide an opportunity that is different from consultation. They would have to look to the words of the agreement.

• (1045)

Mr. Jeremy Harrison: I remain concerned, and my party remains very concerned, over this particular provision.

The second issue I would like to talk about is the issue of certainty. I know the minister, in his comments—and I wish he were still here because I'd like to ask him about it—talked about how essentially there was certainty, because we knew there was a certain process for changing the agreement; hence there was certainty. To me this isn't certainty; this is anything but. I wish I had the specific article within the agreement that talks about how if any new rights are found by the Supreme Court or another court of competent jurisdiction, those rights will be incorporated into the agreement, which to me isn't final.

It's not a final agreement, and there's definitely no certainty. I wonder if there could be some comment on that.

Ms. Paula Isaak: This provides certainty in that all the rights that are exercisable are set out in the agreement now. If there should be something of a non-land rights nature that is found in the future, there is a process set out by which that right can be added to the agreement. That recognizes the evolving nature of self-government rights. But there is certainty with respect to the fact that all the rights that are exercisable are set out in the agreement right now.

Mr. Jeremy Harrison: So there's—

The Chair: I'm sorry, Mr. Harrison, that's the end of your time.

Ms. Barnes, and then Mr. Bellavance.

Hon. Sue Barnes: Thank you.

I'll take my time to maybe help elucidate Mr. Harrison's concerns about international legal obligations. In the agreement—we're on ILOs here—I'm at 7.13.4, and then that will take me into 7.13.6. I'll just read into the record part of 7.13.4 where it says:

If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Tlicho Government law or other exercise of power causes Canada to be unable to perform the international legal obligation, the Tlicho Government shall remedy the law or other exercise of power to enable Canada to perform the international legal obligation. The resolution of a dispute pursuant to this paragraph is without prejudice to the application of 7.13.6.

If I go down, I'd like to read 7.13.6, which reads:

Notwithstanding 7.13.4, if there is a finding of an international tribunal of non-performance of an international legal obligation of Canada attributable to a law or other exercise of power of the Tlicho Government, the Tlicho Government shall, at the request of the Government of Canada, remedy the law or action to enable Canada to perform the international legal obligation consistent with the compliance of Canada.

Am I reading this incorrectly, or does that not state exactly what people are concerned about?

Ms. Paula Isaak: That's what the agreement states.

Hon. Sue Barnes: Is there any concern in your own mind as a negotiator or legal counsel at the table that this prevents the Tlicho government from doing anything that would impede or infringe on us being able to fulfill our international legal obligations, or is there anything there that allows the Tlicho to go out and vary in any way? Do we not have the mechanisms internal to this agreement to foresee any of these occurrences?

Ms. Paula Isaak: No, we believe the clauses negotiated provide the comfort and clarity that is needed to ensure that Canada can negotiate and implement international legal obligations.

Hon. Sue Barnes: I would also like to hear from Mary Douglas because she was the negotiator. No disrespect to you, Ms. Isaak, but I'd also like to hear that from Justice.

Ms. Mary Douglas: I think you accurately describe what appears to be the effect and intentions of these provisions.

Hon. Sue Barnes: Let's do another legal point. Does the Canadian Charter of Rights and Freedoms apply to everybody living in Canada, every citizen here in Canada?

Ms. Paula Isaak: Yes.

Hon. Sue Barnes: Is there anything different under this agreement that would affect people differently?

Ms. Paula Isaak: No. The charter applies.

Hon. Sue Barnes: Thank you. *C'est tout pour le moment.*

• (1050)

The Chair: Thank you, Ms. Barnes.

[Translation]

Mr. André Bellavance (Richmond—Arthabaska, BQ): Thank you, Madam Chair.

First of all, I would like to reiterate our support for Bill C-14. However, further to the questions put by my colleague Bernard, I'd like to give Ms. Douglas the opportunity to answer the question concerning the Crown.

As we know, legislation enacted prior to the Nisga'a and to this agreement was binding on the Crown. Even the provisions of Bill C-31, which died on the Order Paper during the last Parliament and which was reintroduced as Bill C-14, were binding on the Crown. Something happened in the interim and I'd like Ms. Douglas to explain things to us. What accounts for the change of heart on the part of lawmakers so that in the case of this agreement, the enabling legislation is not binding on the Crown at this time?

[English]

Ms. Mary Douglas: The provisions we now have in this clause of the bill are not intended to change the end result. The intention all along has been to confirm that wherever in the agreement there is any indication that government—whichever government, the Crown—is caught by a provision or has the benefit of a provision, that will be given effect. The agreement being many, many pages and this clause of the bill being just a few words, it was considered more precise to make sure we rely on the details of the agreement to tell us when government is bound, when the Crown is bound, and when it is not, rather than to try to summarize this in one sentence.

It's for that reason that we have ended up with the text we now see before us in the bill. It was felt more precise to direct the attention to the agreement, to confirm the agreements given effect in the force of law, and just in case there is still any remaining doubt, we have these “for greater certainty” clauses to confirm that all persons and all bodies, whether or not—and this is what's understood—they're party to the agreement, although government of course is a party, equally get the benefit or have imposed on them the obligations that are described in the agreement. That's what we were trying to describe in these provisions.

[Translation]

Mr. André Bellavance: The focus of our attention is the bill, not the agreement. I realize that this clause is included in the agreement, but that it was stricken from the bill. Can we assume that this is the way it will always be in future? This bill is not binding on the Crown, whereas Bill C-31 was binding. There must be a reason for this change of heart and I'm still trying to understand what that reason might be.

[English]

Ms. Mary Douglas: I can't predict what will happen in a future bill; I can only explain that in this bill we concluded it was more precise to express the concept of binding the Crown in this way, rather than with just the statement that the Crown is bound.

The Chair: Thank you.

We have Mr. Valley from the government side, and since there is no NDP, Mr. Lunn can speak after that.

Mr. Roger Valley: Thank you, Madam Chair.

Through you to the negotiators—whoever wants to answer this—on the Mackenzie Valley Resource Management Act, can you take me through how you're going to involve the communities or involve the people? This is going to impact a lot more people than the Tlicho, so could you run me through how you're going to bring the stakeholders in and involve them in this?

Ms. Paula Isaak: The Mackenzie Valley Resource Management Act applies to the entire Mackenzie Valley, and it was put in place as

a result of the Gwich'in and Sauteaux agreements. The amendments that were made to the act as a result of the Tlicho agreement are simply to reflect the aspects of the Tlicho agreement. But while drafting those amendments we consulted with all the aboriginal groups in the Mackenzie Valley because they will all be affected by the Mackenzie Valley Resource Management Act and all are affected by the Mackenzie Valley Resource Management Act. We sought their feedback and made appropriate changes and finalized the amendments as a result of that consultation with all the aboriginal groups.

• (1055)

Mr. Roger Valley: So there has been the creation of boards to control things like water, and the Tlicho will be involved in that?

Ms. Paula Isaak: That's right. There are two boards. There is one board created there and there is one existing board. The Wekeezhii Land and Water Board will be created as a result of the Tlicho agreement. That's a panel of the larger Mackenzie Valley Land and Water Board. As well, what currently exists and what will remain is the Mackenzie Valley Environmental Impact Review Board, which applies to the whole Mackenzie Valley.

Mr. Roger Valley: And anyone in the future who becomes involved in the Mackenzie Valley and is not covered by an agreement right now...they'll be involved in the future?

Ms. Paula Isaak: Yes. They are currently covered by the Mackenzie Valley Resource Management Act, and if there are any changes to that act, they will be consulted on those changes.

Mr. Roger Valley: And they all have access to these boards?

Ms. Paula Isaak: That's right.

Mr. Roger Valley: Thank you.

The Chair: Thank you, Mr. Valley.

Since we don't have anyone here from the NDP, we have Mr. Harrison and then Mr. St. Amand. We're just about to the end of our two hours.

Mr. Harrison, please.

Mr. Jeremy Harrison: A number of times today I have heard the agreement described as a municipal type of government structure or a municipal government, that type of set-up. What other municipal government in the country can make laws that override the specific application of federal laws?

Ms. Paula Isaak: The Tlicho community government will not make laws that override federal laws.

Mr. Jeremy Harrison: My understanding is that the specific application of federal laws is overridden by Tlicho law.

Ms. Paula Isaak: The Tlicho community governments will have law-making powers. That's not the Tlicho government.

Mr. Jeremy Harrison: I'm talking about the Tlicho government.

Ms. Paula Isaak: The Tlicho government wishes not to have jurisdiction over the communities. Its law-making power does not prevail over federal laws either.

Mr. Jeremy Harrison: So a federal law's specific application is paramount to any Tlicho law?

Ms. Paula Isaak: Federal laws of general application prevail over Tlicho laws.

Mr. Jeremy Harrison: Not specific application, though.

Ms. Paula Isaak: Not specific application.

Mr. Jeremy Harrison: Right.

Okay, that's it. Thank you.

The Chair: Thank you.

Mr. St. Amand, and then that's the end of our speaking order.

Mr. Lloyd St. Amand: I have perhaps one or two questions for Ms. Isaak.

In his questions Mr. Harrison talked about a future right not articulated and not contemplated. If a right crops up that hasn't been anticipated, then I understood his suggestion to be that the right will automatically be incorporated into the agreement. That's incorrect. Is that right?

Ms. Paula Isaak: That's right. There is a process.

Mr. Lloyd St. Amand: That's correct.

You answered by saying there will be a process to, I presume, scrutinize that right, which remains hypothetical at this point. What exactly will the process be?

Ms. Paula Isaak: The parties will negotiate that as to how it's going to be exercised though the agreement.

Mr. Lloyd St. Amand: All right. So it's certainly not a *fait accompli*. It won't automatically be incorporated into the agreement.

Ms. Paula Isaak: That's right.

Mr. Lloyd St. Amand: Lastly, Ms. Isaak, how does the agreement address the issue of matrimonial real property?

Ms. Paula Isaak: The issue of matrimonial real property is one that is of some concern on reserves. The Tlicho do not live on reserves, nor will there be reserves created out of this agreement.

Currently the territorial laws with respect to matrimonial property apply and they will continue to apply in communities as they do now. All residents of that area live in the four communities, and territorial laws respecting matrimonial property will continue to apply.

Mr. Lloyd St. Amand: Thank you.

The Chair: Thank you so much, everyone.

I have some housekeeping information to pass on to you, but first of all, I'd like to thank all the witnesses who were here at this session.

We look forward to our next meeting, where we will actually get a chance to speak to the Tlicho. On Thursday we will have Chief Charlie Jim Nitsiza and John B. Zoe, and their legal counsel will be with them.

For the information of the members, there was a memorandum sent to you on November 5, 2004, giving the information that there are two personnel assigned to the committee, Mr. Doug Ward and Ms. Joann Garbig, who can assist you with the amendments you might wish to make or any technical questions you might have regarding the legislation. This information is with your offices, along with the clerk. With this piece of legislation, we do have additional personnel who can answer questions and verify whether the amendments you wish to make are in order and can also assist you in writing up the amendments, as far as I understand.

Thank you very much. We look forward to seeing everyone back on Thursday morning at 9, again in this room, and again it will be televised.

The meeting is adjourned.

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