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**Chair**

**Ms. Nancy Karetak-Lindell**

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## Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, November 23, 2004

•(0910)

[English]

**The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.):**  
Good morning. I'd like to call the meeting to order.

Today is our meeting number nine for November 23. Pursuant to the order of reference of Tuesday, November 2, 2004, we have before us 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.

This morning we have the Honourable Joseph Handley, Premier and Minister of Aboriginal Affairs with the Government of the Northwest Territories.

I see you have your group with you. I encourage you to start now and introduce the people who are with you. We look forward to hearing from you this morning. Thank you.

**Hon. Joseph Handley (Premier and Minister of Aboriginal Affairs, Government of the Northwest Territories):** Thank you, Madam Chair.

It's an honour to be here before the committee this morning.

With me are Roy Erasmus, who is director of negotiations for the Government of the Northwest Territories; and John Holden, legal counsel for our government.

Madam Chair, as I say, I'm honoured to be here to speak to Bill C-14, the Tlicho Land Claims and Self-Government Act. I want to thank the members of the Standing Committee on Aboriginal Affairs and Northern Development for inviting me to appear as a witness.

I want to express my full support for the rapid passage of Bill C-14, which provides Canada's approval for the first comprehensive land resources and self-government agreement in the Northwest Territories.

The agreement describes the Tlicho government's lawmaking authority over a number of territorial-type jurisdictions. It clarifies the future relationship between the Tlicho government, the GNWT, and Canada. The agreement also provides the Tlicho people with economic benefits, including \$150 million paid over 15 years and surface and subsurface rights over a 39,000-square-kilometre block of land surrounding the four Tlicho communities.

The Tlicho agreement clarifies land ownership and jurisdiction over another large portion of the NWT. As a result, the ratification of

the Tlicho agreement will not only be welcomed by the Tlicho people but also by many people and companies who wish to invest in the Northwest Territories. This marks the beginning of a valuable contribution to the economic future of the Northwest Territories, as economic development will grow and prosper with the settlement of another land claim.

The implementation of the Tlicho agreement will increase economic and political stability for the Tlicho people but also for other northerners and Canadians, who stand to benefit from this arrangement.

Madam Chair, in addition to Bill C-14, there are three pieces of territorial legislation that must be enacted to give effect to the Tlicho agreement. The Northwest Territories counterpart of this bill, which approved the Tlicho land claims and self-government agreement, was unanimously passed in October 2003. In June 2004 the Government of the Northwest Territories passed the Tlicho Community Government Act. The final piece of legislation, the Tlicho Community Services Agency Act, has received second reading and our standing committee is expected to complete its review in early December.

The Northwest Territories legislation required to ratify the Tlicho agreement cannot come into effect until this federal bill comes into force. Bill C-14 would approve and give effect to the Tlicho land claims and self-government agreement, the tax treatment agreement, and provide legal recognition of the Tlicho agreement and Tlicho laws. It would be the key step in bringing all ratifying legislation and the agreement itself into effect.

I'd like to speak briefly about the process that led to this point. The Tlicho land claims and self-government agreement was signed by Canada, the Tlicho, and the GNWT in the Tlicho community of Rae-Edzo or Behchokò on August 25, 2003, after more than ten long and hard years of negotiations.

In reality, the negotiation of this agreement took much longer when you take into account the negotiation of the Dene Métis comprehensive claim that was really the origin of this claim.

For the Tlicho, the negotiation of this agreement has been a long, difficult, and expensive process, as it was financed by loans from the Government of Canada, which the Tlicho must pay back.

Madam Chair, there have been many important events and hard-earned milestones on the way to the agreement. The Tlicho people worked with their neighbours, the Akaitcho and the Deh Cho, to negotiate agreements that ensure that each party's interests are protected in overlapping boundary agreements. These side agreements demonstrate the willingness of the aboriginal peoples to collaborate so that the land claims and self-government agreement can be negotiated without compromising third-party interests.

The Tlicho agreement is unique, given it is the only land claims and self-government agreement I'm aware of that was initialed twice by its chief negotiators. After the first initialing in 2002 the three parties undertook an unprecedented public review and comment period during which they invited comments from all interested individuals and groups. More than 40 groups were directly invited to review the agreement and to comment.

The review period included a series of meetings with individual groups, including several public meetings on the agreement. This resulted in a number of changes to the agreement. More importantly, it provided an important and public opportunity for interested parties to raise any issues of concern.

At the end of the process, the agreement was initialed for a second time and the Tlicho people voted to ratify the agreement. A total of 93% of eligible Tlicho voters participated in the ratification process; 84% of those voters were in favour of the agreement. I'm sure you will agree that by any reasonable measure, this was an overwhelming endorsement of an agreement by the Tlicho people.

At the effective date, the Tlicho will begin to implement their agreement and move forward to secure a prosperous future for their people. For these reasons, the Tlicho understandably are anxious to proceed with the last steps necessary to reach the effective date. The GNWT shares the Tlichos' view that Bill C-14 is perhaps the most critical step in this process.

The implementation of the Tlicho agreement supports the vision that the Government of the Northwest Territories set out in its strategic plan, *Self-reliant People, Communities and Northwest Territories—A Shared Responsibility*. It's a strategic paper for our government. One of the key priorities in this plan is to negotiate fair deals with Canada and aboriginal governments, and includes settling outstanding land, resources, and self-government agreements.

This vision also supports our commitment as a legislature to work in partnership with aboriginal governments toward greater self-determination for aboriginal peoples over their lands and resources, as well as their economic, social, cultural, and political destiny. We support the Tlicho people's desire to be full partners, as a government, with Canada and the Northwest Territories and to work with us and other aboriginal peoples toward other important goals such as resource revenue sharing and devolution.

The positive relationships that we have strengthened over the past years with aboriginal people are extremely important. Each of us as leaders at the federal, territorial, and self-government level have a stake in continuing to foster these collaborative relationships.

By supporting this bill's passage, Canada and the Northwest Territories will send a clear signal to aboriginal leaders across the nation that we support the inherent right of aboriginal people to self-

determination and to regain control over their land and resources. It would demonstrate our commitment to partnerships that go hand in hand with our collective aim to finalize self-government and land claims in a fair and expedient manner.

The Tlicho agreement is an example of how public and aboriginal governments can work in collaboration while ensuring all people's interests and rights are protected. All residents in Tlicho communities or on Tlicho lands will continue to be protected by the Canadian Constitution and the Canadian Charter of Rights and Freedoms.

The Tlicho agreement will be primarily an aboriginal self-government for the Tlicho people. However, community governments that will be established will represent both Tlicho and non-Tlicho citizens, and all residents will have a say in how they are represented. The principle of democracy is maintained throughout the Tlicho agreement. All eligible residents living in Tlicho communities or on Tlicho land can vote for the community government councillors and for some members of the Tlicho government.

The Tlicho intergovernmental services agreement, which is a subagreement to the Tlicho agreement, requires the GNWT to establish the Tlicho Community Services Agency to deliver programs and services to all residents in Tlicho communities, not just Tlicho citizens. This is yet another example of how public and aboriginal governments can work in collaboration to ensure all people's interests and rights are protected.

The Tlicho agreement has set a new standard for land and self-government claims across the country. It provides certainty for the Tlicho people while leaving room for self-government to evolve over time.

Both Canada and the Northwest Territories are committed to aboriginal people having greater self-determination, increasing their independence, and returning the rightful control of lands to its original owners. This agreement and the legislation to approve it will move that vision forward. This legislation is the critical step toward the implementation of the Tlicho agreement and the one that the Government of Northwest Territories hopes this committee and Parliament will support.

In closing, I wish to congratulate all three parties to the agreement, particularly the Tlicho team that has waited so long for this moment.

● (0915)

I urge this committee to approve and all members of Parliament to pass Bill C-14 as soon as possible, for the Tlicho, for other aboriginal people across Canada, and for the good of the Northwest Territories and all Canadians.

In closing, I would like to welcome all members of this committee to come to the Northwest Territories to visit with our government, to visit with the Tlicho government, and to see for yourselves what importance this agreement can have for all of our people in the territories. I certainly issue a welcome and would be pleased to host a visit by any of the committee members, or even better by the whole committee.

Thank you, Madam Chair.

•(0920)

**The Chair:** Thank you very much, Mr. Premier.

I would like to start this round of questioning with the Conservative Party.

Mr. Harrison, please.

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

I'd very much like to thank the Premier and his officials for coming all the way down to Ottawa to testify before our committee today. I think I'll take the Premier up on his offer of hosting committee members in the Northwest Territories; I would very much love to visit.

I also noticed the Premier in the Speaker's gallery yesterday during question period. I hope for the sake of his own sanity that the question period in the Northwest Territories isn't quite like ours here.

The main question I would like to put to the Premier and his officials is what he would see as being the main benefits to the Government of the Northwest Territories that flow from the signing of this agreement and its implementation.

**Hon. Joseph Handley:** Thank you, Madam Chair.

There are a number of benefits from this agreement. First of all, as I've said in my opening comments, it's the first to recognize the inherent right of aboriginal people to self-government and to return the lands to the people who are the traditional holders of that land. More specifically, having achieved this kind of land claims and self-government agreement provides a level of certainty for the Tlicho people themselves, but also for industry and for our government, in that it clarifies what the rules are, what the guidelines are, and what the relationships are for anyone who is wanting to do business in that area. On an economic front it is vitally important as we take advantage of the tremendous wealth we have in our territory.

At the political level it is important for people if for nothing else than self-esteem and for the feeling they are rightful partners in the economic, social, and cultural development of the people. There are some provisions in this legislation as well that recognize the traditional rights, practices, and cultural aspects of Tlicho life, but I think it is inherently very important to the individuals who live there. As much as anything, as much as the economic benefits, it's the political benefit in that feeling that finally they have achieved the self-government they're entitled to.

**Mr. Jeremy Harrison:** One provision I must say our party has been somewhat concerned with in looking for the certainty and finality that has been talked about is article 27.6.1, which provides for any new aboriginal right, whether it be discovered by the Supreme Court or another court of competent jurisdiction. I wonder whether the government is at all concerned about these new rights that may be found being incorporated into the agreement. I'm wondering if I could get the Premier's comments on that particular section.

**Hon. Joseph Handley:** No, Madam Chairperson, I don't have any particular concerns about this provision in the agreement. This is a unique agreement for us in the Northwest Territories. There may very well be issues that will come forward at some point in the

future, Madam Chair, but I'd like to turn to Mr. Holden, our legal counsel, to give a more specific response to this one.

•(0925)

**Mr. John Holden (Legal Counsel, Department of Justice, Government of the Northwest Territories):** I think in consideration of article 27.6.1, as a clause that has been termed a "re-opener", if you will, it's important to place the clause in the context in which it falls in the agreement, which is the tax chapter. You have to ask yourself, I think, what this clause is limited to. What is its purpose?

We see in the wording of article 27.6.1 that it really is addressed to tax powers or exemptions. It doesn't function as a general re-opener for the Tlicho agreement as a whole.

The Government of the Northwest Territories feels it is an appropriate thing that the agreement be capable of incorporating or dealing with changes along lines strictly pertaining to tax powers and exemptions as they may happen.

I'd simply say, let's not forget the context. It deals with tax powers or exemptions; it's not a general re-opener to the agreement. Its role is therefore limited to the taxation area.

**The Chair:** Mr. Harrison, you have more time.

**Mr. Jeremy Harrison:** I really don't have, at this time, any additional question for the guests.

**The Chair:** All right.

Mr. Cleary.

[Translation]

**Mr. Bernard Cleary (Louis-Saint-Laurent, BQ):** Mr. Premier, I was very pleased to see that you seem very eager to get a prompt resolution of that issue. We also wish to work as fast as possible.

Yesterday, I was at a meeting of the Standing Committee on Finance where the Nunavut government representative was explaining how inadequate the financing formulas of his government were because they had subscribed to a taxation system similar to that of other governments. In fact, these formulas are extremely disadvantageous for the government of Nunavut. They have no other choice but to seek the help of the central government to try to compensate for their lack of funding.

As you are probably aware of that problem, did you have the opportunity to discuss it and propose different funding methods? I am mainly thinking of royalties on resources, mining, etc. In these negotiations, have you found other solutions so that the Tlicho government will not suffer from a lack of funding and will not have to beg every year for subsidies from the central government?

[English]

**Hon. Joseph Handley:** Thank you for the question.

As members of the committee may know, the Northwest Territories is in the fortunate position of having tremendous economic wealth and opportunity right now. First of all are our diamond mines. We have two operating diamond mines that are mining probably somewhere between \$3 billion and \$4 billion worth of gem quality diamonds per year out of the traditional area of the Tlicho people. We also have tremendous wealth in oil and gas. The Mackenzie Valley pipeline is being discussed. That one will make the diamond mining seem very small in comparison to the potential from oil and gas. We're fortunate in having a territory that's very wealthy potentially and will soon become a net contributor or a have jurisdiction in Canada.

The member is correct that our financing formula is an antiquated one. It was developed at a time when there was very little economic wealth in the Northwest Territories other than the traditional harvesting and so on. It's time for it to be changed. I have a saying that we're going broke as a government supporting economic development because economic development costs money. Our government isn't being financed to be able to do that.

What we have been doing is we have been working in partnership with the aboriginal governments, including the Tlicho, to negotiate both devolution, that is, the responsibility and the rights over land and water and minerals from the federal government, and at the same time also to negotiate resource revenue sharing. It's frustrating for us. That's been going on for 18 years, and we still haven't made nearly as much progress as we'd like. It's critical for us and aboriginal governments right now because of the economic wealth that's being taken from the territories. One of the mining company presidents recently told me that they had just written a cheque for \$132 million to the federal government for royalties. We would have liked to have seen some of that money stay in the north for the Tlicho government and for ourselves.

We are negotiating with the federal government. We want to move ahead with devolution and resource revenue sharing. I have proposed to the Prime Minister that in the interim we do some form of interim resource revenue sharing—the sharing of the royalties and the taxes between the aboriginal governments, our government, and the federal government—in a way that's fair and that recognizes the costs of economic development and the challenges in training people to work in the mines. I think there is potential there. In fact, I have to say that I have tremendous respect for what the Tlicho people did in one of their impact benefit agreements where they were able to enter into an agreement with mining companies that gave them a scholarship fund for post-secondary students that increased the number of post-secondary students from somewhere around 10 to 130 people in a matter of a few short years.

Madam Chair, there are opportunities. We're pursuing them. We're doing it in partnership with the Tlicho. I think this speaks to the tremendous economic future that we have in our territory.

Thank you.

• (0930)

[Translation]

**Mr. Bernard Cleary:** I have a supplementary. You seem aware of the importance of that source of funding for the Tlicho government.

Do you think that the Tlicho Nation should have an equity ownership in mining companies as did the Crees in Quebec? Do you think that mining companies or other resource companies would be ready to let the government or the Tlicho people get their share of the economic benefits from their own resources?

[English]

**Hon. Joseph Handley:** Thank you.

Yes, there certainly is the potential to do that, and in fact the Tlicho people have, through their business arm, developed a number of very successful corporations that are providing services and support to the mining industry. We've been very supportive of that and certainly encourage it.

I would also like to see some day in the future when the aboriginal peoples of the Northwest Territories are able to be partners in some of the mining ventures in the same way that the Aboriginal Pipeline Group has negotiated a one-third equity ownership in the pipeline. Not only will they get the jobs in the supply and support services industry, but they will have an equity ownership in some of the activity going on here. With all these developments happening, we're learning. In the case of the pipeline, the one-third ownership is a real hallmark, in my view, in terms of how aboriginal people can benefit.

Thank you.

• (0935)

**The Chair:** We have Ms. Barnes and Mr. Lunn.

Ms. Barnes.

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

Gentlemen, we welcome you to our committee.

I always think it's wonderful when the federal committees have representatives as witnesses, and here we have our head of government and our Minister of Aboriginal Affairs. Obviously that shows the importance you see this situation taking in your territory.

I visited you when you were finance minister there. I must say that every parliament is different, and you have an unusual parliament compared to the parliament we sit in. I want to give you an opportunity to just briefly put on the record whether or not your parliament is partisan, whether or not you conduct your affairs in English or French or some other languages, and how your parliament went about doing this particular ratification. Go ahead, please.

**Hon. Joseph Handley:** Thank you.

Our legislative assembly, as we refer to it, is made up of 19 members. Each of us runs in a constituency. We don't run on a party basis; we run as non-party people interested in serving. Once the 19 of us are elected we have our own caucus process for selecting a speaker, selecting a premier from the 19, and then selecting six cabinet ministers—two from Yellowknife, which makes up about 40% of the population in size, and two from the south and two from the north. So we have a good geographic distribution.

It works well for us because we have a small legislative assembly, and it's a way of taking maximum advantage of all of the talent pool we have in those 19 individuals who are elected.

We don't operate with a typical government opposition system. It's largely by consensus. We spend a lot of time working through issues that will meet the interests of most of the northerners. The role of our government house leader is very important in being able to broker the deals that have to be made in order to achieve that consensus, or as closely as we can to it.

We also have a legislative assembly that takes strong measures to ensure that we are always accountable to the people throughout the territories and that they know what is happening in the legislative assembly and the importance of it to us. So we operate our legislative assembly in eight official languages. There is not always translation happening in every one of those eight languages, but if any member wishes to speak in the traditional language then they have every right to do that.

Those eight languages are also recognized in other respects as official languages, in that people can ask for transcripts, for example, to be done in the official languages.

With a population as diverse as ours, where we have Inuvialuit and Dene people who speak many different languages as well as English and French, it's complex, but it's essential that we do that to ensure we're fully representative of and responsible to our constituents.

Thank you.

**Hon. Sue Barnes:** Is Tlicho one of the official languages of your legislature?

**Hon. Joseph Handley:** Yes, it is one of the official languages, both the oral and written language.

**Hon. Sue Barnes:** Thank you very much.

I was amazed at the economy and the future economy that is in your territory. I want to congratulate your negotiator.

I'd like now to turn to Mr. Holden, because I want to go over and in some other words maybe get whether or not you agree with what I'm going to say. It's regarding the same clause that was just raised, article 27.6.1. The interpretation I'm going to put on it is that the Tlicho agreement provides that in future, if either the Government of Canada or the Government of the Northwest Territories agrees to provide another aboriginal group in NWT tax benefits that are greater than those set out in the Tlicho agreement, the Government of Canada, the Government of the NWT, and the Tlicho government could enter or may enter into negotiations to provide equivalent benefits to the Tlicho at the request of the Tlicho government.

Would that be a fair way of interpreting that section?

• (0940)

**Mr. John Holden:** Yes, it would. The key wording is that in that circumstance the parties "will negotiate and make best efforts to reach an agreement". Again, the Government of the Northwest Territories thinks, out of a sense of parity, even-handedness, this is an appropriate clause to have in the agreement.

**Hon. Sue Barnes:** And that's specific, Premier, in your estimation, because there are other agreements that are not yet complete in your territories and you wish to show the fairness for the future, as well as the present?

**Hon. Joseph Handley:** Yes, there are several self-government agreements that are under negotiation. There's more to come in the future and it's important that we do show this for the future.

**Hon. Sue Barnes:** You've mentioned that you don't have party positions. When you came to your unanimous vote in the House, the individual legislators must have felt that there had been sufficient understanding to do their individual vote. They're actually operating as independents, is that correct?

**Hon. Joseph Handley:** That's correct, they are operating as independents. There had been a lot of consultation, a lot of debate on this before the vote was taken to make sure everyone had a full understanding.

**Hon. Sue Barnes:** Mr. Erasmus, as a negotiator, do you think the consultation was sufficient?

**Mr. Roy Erasmus (Director, Negotiations, Ministry of Aboriginal Affairs, Government of the Northwest Territories):** Yes, the consultation was sufficient. In fact, as the Premier pointed out in his presentation, it was the first agreement, in the Northwest Territories, at least, that was initialled twice.

After the first initialling there was a consultation period, through which people were invited to come to meetings and they were able to make presentations and ask questions of the negotiators, as well as the legal counsel who were there. We don't believe this has been done anywhere else.

**Hon. Sue Barnes:** That's correct.

Premier, obviously you have desires for your economy to benefit. Do you see this agreement and its ratification affecting the...? I'll put it the other way. Would a non-ratification negatively impact your economy in the north?

**Hon. Joseph Handley:** It would send a huge signal to industry and to investors in the Northwest Territories that there's no certainty for them. I think it would make it very difficult for us to continue, not only in the Tlicho area but in all other areas around the Northwest Territories that are negotiating self-government. If that were to happen, I would think a lot of potential economic opportunities would be at risk. These are very important in clarifying what the rules are for everybody, for the Tlicho people and aboriginal people themselves, as well as for industry, as well as for us as a government. So it's critical, in my view, that this be ratified.

**The Chair:** Thank you.

Mr. Lunn, please.

**Mr. Gary Lunn (Saanich—Gulf Islands, CPC):** Thank you very much, Madam Chair, and good morning and welcome, Premier Handley and your officials.

First, let me apologize for being late this morning. I just got in from British Columbia.

About twenty years ago, after I graduated from university, I went to work in the Northwest Territories just south of Great Bear Lake. So I have a great fondness for your territory—which, if I look at the front page of *The Globe and Mail*, may be a province not too far off in the distant future.

I'll also comment that when you talk about the importance of resource revenue sharing, of course, the territories are rich with resources, and I think that's something that has to happen. Personally, I think it would benefit all levels of government. Maybe we can get a few lessons from Premier Williams in Newfoundland and one day we'll be having these discussions with the territories.

Let me go to the Tlicho agreement now and say at the outset that in reading the agreement, yes, there are concerns and questions that we raise. That said, we've discussed as members of the committee from the Conservative Party that it's not our intention at all to hold the legislation up. No doubt this legislation will go through the House quickly and it will pass, and I look forward to following it to see how it's implemented.

One of the concerns I have, just looking at this and knowing how large your territory is and some of the challenges in front of you in resolving future land claim agreements, is this: Is this the model you want to set as a template? I look at it and at some of the powers, and at least it appears to me—and I appreciate that it's open for debate—that we're creating another order of government. Some of the powers to the Tlicho—and it may work very well—seem very broad and sweeping and basically create another level of government. But again, I want to wish the Tlicho people success, and hopefully it is successful for the people of the territories.

I will pose one question. I would like you to comment on whether you believe this is creating another level, a third or fourth order of government.

Secondly, how is it going to work in future land claim agreements? I think there needs to be some consistency with future land claims as a territorial or provincial government to actually work with those agreements. In other words, if you have a lot of variation between all of them, is it at some point going to make it unmanageable to actually do the consultation process with all these various agreements? I think they're going to come, so I'd like your thoughts on that, please.

● (0945)

**Hon. Joseph Handley:** Thank you.

As we said in the opening comments, this is our first land claim self-government agreement in the Northwest Territories, so I'd have to say yes, it is unique. It's something new that we're doing.

I'm not sure it's really a template that we would then follow for every other self-government. I suspect that as they're negotiated we may find that there's some uniqueness to many of them that will come in the future.

As well, I suppose we could debate whether this is another level of government. It is a form of public government. It's a Tlicho government, but it's a public government as well. The alternative, if the Tlicho people had not gone this route, could have been an aboriginal government. It could theoretically have been like a reserve system in the south, and so on. Instead, the people have chosen to go the route of a public government that will represent all people who live in that area and all Tlicho residents. So in a way, it's not entirely a unique other level of government.

I wouldn't really want to call it a template. I think there are some things we'll find over the years as we negotiate self-government agreements that will be similar, but I have to expect as well that many of them will be unique in their own way.

That doesn't cause us a lot of uncomfortableness. We're very comfortable working with this one the way it is. If we were to have others that were very similar to it, then I think we could visualize how we could work together with them as well, but also being open to the concept that ones to follow might be different in some ways. It wouldn't be exactly this way.

Thank you.

**Mr. Gary Lunn:** Thank you.

**The Chair:** We'll start our five-minute round now. We have Mr. St. Amand and Mr. Bellavance.

Mr. St. Amand.

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

Premier Handley or Mr. Holden, you gentlemen have heard the clear sentiment expressed by committee members, and voiced by Mr. Lunn, for instance, that the legislation seemingly will ultimately pass. The sentiment certainly is to pass the legislation and move forward, but not without some concerns or trepidation having been felt by some of the committee members.

Mr. Prentice could not be with us this morning, but I know he in particular has a concern vis-à-vis the Charter of Rights and how it will impact upon this agreement. A concern has been expressed during debate that the agreement clearly indicates the charter does apply. It's set out in section 2.15.1 of the agreement that the charter in fact does apply. Just reading, if I may, the entire section:

The Canadian Charter of Rights and Freedoms applies to the Tlicho Government in respect of all matters within its authority.

The Tlicho Constitution, as I understand it, describes itself as the highest law for the Tlicho people. I'm just wondering, then, in light of the Tlicho Constitution describing itself as the highest law and the land claims agreement clearly stating that the Charter of Rights and Freedoms does apply, if there's any asymmetry with respect to those clauses, and if in fact there's any cause for concern whatsoever that we may be going down a slippery slope and, without intending to, excluding a community of Canadian citizens from the Charter of Rights.

● (0950)

**The Chair:** Mr. Premier.

**Hon. Joseph Handley:** Thank you, Madam Chair.

In our understanding, and I believe the Tlicho people's understanding, the Charter of Rights and Freedoms certainly takes precedence over any Tlicho laws, but I'll ask Mr. Holden to add further clarification.

**Mr. John Holden:** In looking at the Tlicho Constitution and starting with section 3.1, it does state, "this Constitution is the Tlicho Nation's highest law". Then, it would seem to me, the next logical question you would ask is, all right, what does the constitution say? To that, section 2.3 of the Tlicho Constitution says:

The Canadian Charter of Rights and Freedoms applies to the Tlicho Government and its institutions in respect of all matters within its authority.

When you see the sections like that, I would suggest there's a clear understanding that the Tlicho government and its institutions shall safeguard individual rights and freedoms consistent with its responsibility in section 2.1 of the constitution. It doesn't mean that the Tlicho Constitution overrides either the Canadian Constitution or the Charter of Rights.

I think I would echo the premier's comments that in contrasting the language about the charter and the agreement and the specific clauses in the Tlicho Constitution, there's nothing to suggest to me there is the potential for, as you say, a slippery slope.

**Mr. Lloyd St. Amand:** Thank you for that, Mr. Holden and Premier Handley.

Have I time, Madam Chairman?

**The Chair:** You have 30 seconds.

**Mr. Lloyd St. Amand:** I was just wondering if any of the three of you are familiar with Bill C-20, the First Nations Fiscal and Statistical Management Act, which is currently before the House of Commons. I appreciate that's not why you're here, but I just wondered by the by if you're familiar with that bill.

**Hon. Joseph Handley:** Madam Chair, I'm only very generally familiar with it; I have not followed the proceedings on it at all.

**Mr. Lloyd St. Amand:** All right. I won't ask about that, then.

Thank you.

**The Chair:** We now have Mr. Bellavance and Mr. Smith, and then Mr. Martin.

[Translation]

**Mr. André Bellavance (Richmond—Arthabaska, BQ):** Mr. Premier, I thank you and your officials for being with us. Your presence here is particularly useful to us as you have distinguished yourself during negotiations with Aboriginal people in 1992-93 and now in negotiating the Tlicho agreement.

You have probably heard of the Nisga'a agreement in British Columbia. There were also some agreements in the Province of Quebec when the Parti québécois was in power. I am thinking of the Paix des braves with the Crees and the common agreement with the Inuits. Was there in the Tlicho agreement a unique element that did not exist in your previous agreements or the other agreements that I have mentioned if you are aware of them? What is the main difference?

• (0955)

[English]

**Hon. Joseph Handley:** Madam Chair, I think I'll refer that one to Mr. Holden, if I may, because I'm not familiar with the details of some of the other agreements.

**Mr. John Holden:** Your question was pertaining to differences between the Nisga'a agreement and this particular agreement, was it?

[Translation]

**Mr. André Bellavance:** I am referring not only to the Nisga'a agreement but also to the agreements that you have signed in 1992-93 and those that were made elsewhere in Canada with other native

peoples. I would like to know if there is, in the Tlicho agreement, a specific characteristic that is not found anywhere else. What would be the main difference?

[English]

**Mr. John Holden:** I think the main difference is that this agreement, as opposed to the Inuvialuit agreement or the Sauteaux agreement, includes provisions for self-government. The other agreements in the Northwest Territories—the Inuvialuit agreement, the Sauteaux agreement, the Gwich'in agreement—deal strictly with land and resources. And so, as the Premier mentioned in his opening comments, this agreement really is blazing new paths.

If you were to ask me how this agreement differs from the Nisga'a agreement in British Columbia, I'd say the most obvious difference is the different model in terms of certainty—a modification model, as opposed to the non-assertion, non-exercise model that you find in the Tlicho agreement.

[Translation]

**Mr. André Bellavance:** Mr. Premier, you said earlier that you did not wish this agreement to become a template, but I would not want to misinterpret what you said. However, in your introductory remarks, you said that the Tlicho agreement was creating a new standard for the settlement of land claims and self-government. Mr. Holden just said that this agreement was referring more specifically to self-government. In the least, could this agreement be a model to follow as concerns self-government? It will not necessarily be a template in all cases, but could it be an interesting model for future agreements?

[English]

**Hon. Joseph Handley:** Madam Chair, yes, this one could become a model that could be followed very closely by other groups who are negotiating land claims or self-government agreements. There is nothing that would bind them to this, but I am sure the Tlicho agreement will be reviewed and examined very carefully by others who are pursuing self-government. I could foresee where we would have very similar agreements.

At the same time, as I said earlier in answering a question, each one could also be unique in its own ways. People may want to do things a little differently from what has been spelled out here. But as a territorial government we're very comfortable with this one, and if there were other ones in the future that were similar we'd be pleased to work with them.

**The Chair:** Thank you.

Just as another clarification, when you ask about the difference between, let's say, the Nisga'a and this agreement, as the Premier noted the Tlicho government is a public government, but the Nisga'a is not a public government. That's one of the differences too.

We now have Mr. Smith, and then Mr. Martin.

• (1000)

**Mr. David Smith (Pontiac, Lib.):** Premier Handley and gentlemen, thank you very much for being here.

We'd like also to congratulate you as a member of the negotiating team for having achieved what you've done. You had ten long years of negotiation and probably many years before also.

One issue that is important to me is consultation. Last time we had the opportunity to ask the question to the Tlicho on the procedure for consultation among their people. This time it would be towards the people of the Northwest Territories. You were saying there was significant consultation that was done. Maybe Mr. Erasmus could add to this.

**Mr. Roy Erasmus:** Yes. Thank you.

As I mentioned earlier, we had a unique circumstance in the Northwest Territories with this particular agreement. We believe there haven't been any other agreements where the negotiators initialled the agreements twice. After the first time the agreement was initialled there was a round of consultation for people, and the agreements were made public. People were invited to come to meetings where we had negotiators, legal counsel, and that type of thing. People could come and could express their views and their fears and whether they liked what they saw. They also could ask questions directly to the people who were there and get answers. We thought it was quite good and we're assuming that's going to be the standard from now on.

**Mr. David Smith:** I've learned something today, that in the Northwest Territories government there are 19 representatives who have no party, so there is no party line. People represent the people of their constituencies and so are directly accountable for their own decisions. This understanding tells me that when you decide to support an issue, as all members have decided to support this agreement, it's a personal decision, not a party decision. It is their decision as individuals that according to their understanding they totally agree with it. Am I correct in saying this?

**Hon. Joseph Handley:** Yes, Madam Chair, that is correct. Each of us represents the people who elected us, and we make our decisions on that basis. It's not on the basis of a party line or party politics. It is how we represent our people.

**Mr. David Smith:** Some of the members of this committee had concerns. In the past, the Tlicho came and answered some of these questions. Today you are here. I don't know if you listened to our last meeting, but you are in the same way of thinking. I come from Quebec and am sitting on the outskirts of this agreement. I've read it; I've participated in different briefings. When I see that the people it's going to affect directly totally agree with this, there is nothing than can be said but congratulations. I totally support your agreement. You'll get my total support on this.

**The Chair:** Thank you very much, Mr. Smith.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Madam Chair, and thank you, Premier Handley and your guests, for being here.

I would say briefly simply that the NDP caucus in the House of Commons is very much in favour of this bill and would like to do all we can to help with its speedy passage. We recognize the historic significance, in that it's unique: it's a comprehensive land claim with a self-governance component. We're cautious about saying this could or should be any kind of template. I don't think we're ready to go that far, because we know there is resistance to the idea of a cookie-cutter approach in developing a pattern for other independent, unique negotiations.

I would simply point out that I lived in the Yukon for eight years during a period when that territory found itself in virtual limbo in terms of development because everything was tied up and was frozen because of pending land claims. In order to build a house for my family I had to stake a mining claim and make believe I was placer mining, because you couldn't get a lot in the whole territory; it was frozen because of pending land claims.

My question to you—and I think I know the answer—is, given that investors crave stability, demand stability in order to have confidence in an area in which to invest, can you expand on the opportunities you see pending from the final resolving of land claims one by one?

• (1005)

**Hon. Joseph Handley:** As we've said before, this provides some certainty for Tlicho people, but also for industry, for investors, and so on, that they know what the rules are, they know what land is available, they know who the owners of the land are, and they know how or if they can do development on that.

As an example, I can tell you that in the areas where we do not have settled land claims yet, in the Deh Cho and in the Akaitcho regions, it is very difficult for industry to come in. Those two unsettled areas are in the southern part of our territory. We have good forestry potential, but that industry has been essentially shut down because there is no clarity in terms of what the rules are of who can issue a permit without objections being filed, and so on.

When we look at our territory and see what's happening in the unsettled areas compared to where there are settled claims, there's a huge difference. This is especially important at a time when we have the diamond mining, which is a very profitable venture right now and a lot of interest in it, and other minerals, oil and gas. So regarding the settling of these, I just can't overemphasize the importance of ratifying it and getting on with it, both for the Tlicho people as well as for all of the residents of the territories.

Mr. Erasmus wants to add to what I just said.

**Mr. Roy Erasmus:** I just want to comment on the cookie-cutter approach. We're certainly not advocating any type of an approach. As the premier had indicated earlier, each aboriginal group is unique. Of course, the federal government's self-government policy allows for different approaches for different groups.

We also have our own policy. What we like to do is to ensure that there's a type of consistency across the board so that things can work. We also want it to be affordable and implementable. We don't want to negotiate some pie-in-the-sky thing without any hope of achieving that, so we try to keep it realistic, but at the same time, we're trying to keep some consistency across the board. I guess we are the people who are going to have to live there, so we are trying to ensure that's the way they're negotiated.

**Mr. Pat Martin:** That's very helpful.

I guess you were interested to hear the thoughts of the Prime Minister on the future of the Northwest Territories, soon to be the province of a name of your choosing, I suppose.

My question is a little further into the practical aspects of what happens next. We know your devolution framework agreement is well under way, yet there are still negotiations under way, too. You haven't reached a final conclusion to outstanding negotiations. Are you getting push-back or resistance from groups that are still in the process of negotiating? Is there a conflict there with devolution taking place? Is that jumping the gun?

**Hon. Joseph Handley:** With this one, we'll have four settled claim areas that take up a large portion of the Northwest Territories. All those organizations, governments, are anxious to get on with devolution and resource revenue sharing.

We have three unsettled claims: the Akaitcho, the Deh Cho, and the NWT Métis. All of them, those ones in the southern part of the territory, would like to see more progress made at their negotiating tables before we proceed too quickly on devolution. So they have a bit of hesitation but at the same time accept that while they're moving ahead with their process, we're also going to continue to move on the devolution one. They have some concerns, no doubt, that they want their settlement first, if that could be achieved.

• (1010)

**The Chair:** Thank you, Mr. Martin.

We have Ms. Barnes and Mr. Harrison, and then Mr. Cleary in the third round.

Ms. Barnes.

**Hon. Sue Barnes:** Thank you very much, Madam Chair.

Premier, you touched on the intergovernmental services agreement, the first ten years after this agreement comes into effect. Exactly what's encompassed in that agreement? Not definitively but just as examples, what does it cover? Is it education? What services are covered, and how will this come about? How did this apparatus get set up and why?

**The Chair:** Mr. Handley.

**Hon. Joseph Handley:** Madam Chair, speaking very generally, at one time we had what was called a Dogrib education board and a Dogrib health board or committee—I can't remember which it was. One dealt with education, and the other dealt with health issues and the administration of health at the Tlicho level. That, at the request of the Tlicho people, was combined into a Dogrib Community Services Board, which provided the administration services for education and health.

Now in the intergovernmental services agreement there will be a provision where essentially the same services that were handed to the Dogrib Community Services Board will be managed through this new organization. It's basically a continuation of the way we've administered those health and education programs in the past. I think there's inclusion of social services as well with the health services. It's essentially a continuation of what is there, but with a legal vehicle for doing it.

**Hon. Sue Barnes:** Can you tell us how, as a negotiator, Mr. Erasmus, you've seen capacity building in doing this process inside the Tlicho community, and how it's made an impact on the way the whole north can do business?

**Mr. Roy Erasmus:** Well, actually I didn't negotiate the agreement. After we get to a certain stage, then we no longer need negotiators. It's similar to the federal government's involvement. Ms. Isaac has taken over the Tlicho file, but she didn't actually negotiate it. Similarly, I didn't negotiate the agreement. I took it over after the negotiations were finished.

There has been some capacity building in this instance, but not as much as we would like to see. There are some problems with the federal funding that is in place now for land claims. You don't actually receive funding prior to the effective date, which means it's very difficult to do the capacity building we would like to do.

We view these types of agreements as being in the realm of the federal government and think they should be funding these types of things. If we were to start funding them ourselves, it could be a dangerous precedent, so that we would be looked at for funding all future capacity building prior to the effective date, I suppose.

**Hon. Sue Barnes:** I'll put it more simply. When will the money start to flow?

**Mr. Roy Erasmus:** Money will start to flow on the effective date.

**Hon. Sue Barnes:** So...?

[*Translation*]

So it is now necessary. That's all.

[*English*]

**The Chair:** Thank you very much, Ms. Barnes.

Mr. Harrison, please.

**Mr. Jeremy Harrison:** Thank you, Madam Chair.

There is one more question I'd like to ask the premier, and that would be whether he sees any of the authority or any powers of his government or successor governments in the NWT being eroded with the agreement.

• (1015)

**Hon. Joseph Handley:** Madam Chair, I think someday in the future—after the first ten years, particularly—we will see some transfer of authority and responsibility for delivery of programs and services to the Tlicho people. I don't think of it as an erosion in a negative sense. To me, it's a way of doing business in our government.

There are some programs and services that I don't expect will ever be transferred—for example, justice and corrections, or issues that are broad, like the operation of any kind of infrastructure, such as broad transportation infrastructure, for example. Those are things that may very well always stay with the GNWT. But the delivery of education programs, health programs, some municipal programs could all be administered eventually through the community and the regional governments.

To me it's not a negative evolution of government or a negative way of operating here. I think it's a natural way of doing it in such a way that people are responsible for their own programs.

**The Chair:** Next is Mr. St. Amand, then Mr. Cleary.

**Mr. Lloyd St. Amand:** Thank you, Madam Chair.

It's my understanding, sirs, that the Tlicho agreement applies to approximately 3,000 individuals. Is that more or less the accurate number?

**Hon. Joseph Handley:** I think it's closer to 3,500, but it's in that ballpark.

**Mr. Lloyd St. Amand:** Are the overwhelming majority of those individuals members of the Tlicho community?

**Hon. Joseph Handley:** That's correct.

**Mr. Lloyd St. Amand:** And a handful only are non-aboriginals, the handful being tens or perhaps a few hundred. Is that fair to say?

**Hon. Joseph Handley:** That's correct. That hasn't changed over the years, either. In terms of numbers, it has stayed significantly the same.

**Mr. Lloyd St. Amand:** All right. Whatever their numbers, of course, obviously, as we all would agree, they're entitled to rights and protections.

A couple of questions are spawned from that. First, did the non-aboriginals within the community have an opportunity to put forward their views with respect to this agreement? If so—and it may be just anecdotal—what was the consensus among the non-aboriginals?

Second, will the workings of the agreement fully allow those non-aboriginals to participate in decision-making, if in fact they so choose?

**Hon. Joseph Handley:** Yes, all people in the Tlicho area—in fact, in the territories—were given opportunities to have input into this proposed agreement. Those living in the Tlicho area certainly had lots of opportunity to have input. I don't know of any strong objections at all that were faced, other than for clarification of how this would work.

I think people living in the Tlicho communities recognize that they are living in an area of roughly 3,500 people. There are probably at best only a couple of hundred or 250 people who would be non-Tlicho. They recognize the situation that these are Tlicho communities and are satisfied with that.

I think people are satisfied that they can be represented and their interests can be represented, that their interests are protected, that the Charter of Rights and Freedoms, for example, certainly applies. They can seek and take office as council members. There are some positions, for example as chief, that they could not achieve unless they were to become—and there is a process for them to become—Tlicho members. There is a process for that, if they wanted to, and if someone were to take that on, they could become a member. But as non-Tlicho, that would be the only limitation.

Madam Chair, to my knowledge, I have not heard and have not had even one individual raise to me any concern that somehow their rights were being limited in a way that wasn't acceptable to them.

Thank you.

**The Chair:** Thank you, Mr. St. Amand.

Mr. Cleary, please.

[*Translation*]

**Mr. Bernard Cleary:** Thank you, Madam Chair.

Mr. Premier, first of all, I must say that I am Aboriginal myself, an Innu from Lac-Saint-Jean. I was elected in the last elections in a white riding in the Quebec City area.

I had another career before, but in the last 25 years, I have worked as a negotiator for Aboriginal groups in the Province of Quebec. Therefore, I was able to appreciate the governments opposite because I was always negotiating against two governments. I must tell you that I do not easily congratulate a government. The Tlichos have been lucky to work with a territorial government that wanted to make sure that the Indian people would get solidly settled. You deserve my congratulations. I must also tell you that you are not really boasting about what was accepted in that agreement. It is only the second time that I see that. Over the past 25 years, I tried to make governments recognize the right of Native peoples to use the underground resources of their land to which they do not have access in other provinces, at least in Quebec, where we were never able to make any progress in that area.

This agreement is a big success even if there is a precedent in the Yukon Territory. It is the only other place where I have seen it before. It is a great thing to have allowed Aboriginals to use the underground resources of their land. As you said, it is those resources that will allow for the development of Native communities. In the U.S., communities that have developed are those that had oil in their soil. Without those resources, Native groups will never reach their development goals.

So you can be proud of it. Maybe you won't make any friends within government circles in the Province of Quebec and other provinces, but you can be proud. You will certainly make friends among Aboriginals. You have seen the situation with an open mind and I think that you have opened the door. You said that this agreement is not a template. I wish that in the least that part of your agreement will become a model.

Thank you.

● (1020)

[*English*]

**The Chair:** Mr. Premier, please.

**Hon. Joseph Handley:** Thank you, Madam Chair.

I can only say that I'm sure that Mr. Cleary, as an Innu, also recognizes that as northerners we take a very practical approach to life and to issues of how we work together and so on. I think this model that has been negotiated by the Tlicho, our government, and the federal government is a good example of something that is practical, that works, that can be a model. It isn't necessarily the model or the template. We don't believe in the cookie-cutter approach but rather the rights of each group. Yes, I'd say that we are proud of the achievement by the Tlicho people and we're happy to participate in this.

Thank you.

**The Chair:** Thank you.

Thank you, Mr. Cleary—or did you have another question?

[*Translation*]

**Mr. Bernard Cleary:** My question deals with the inclusion of self-government in the Constitution. Most agreements have a tendency to favour a form of phasing in because a native government is built step by step. Yet, when we will want to include part of these agreements in the Constitution, it will be extremely difficult to re-open the Constitution in order to improve a number of things that an agreement cannot provide for.

Have you thought of mechanisms that would allow this agreement to evolve in case we were to face unexpected developments impossible to predict without a crystal ball? Have you provided for a re-opening of the agreement to take new developments into account?

• (1025)

[*English*]

**Hon. Joseph Handley:** Yes, Madam Chair, there is a provision in here that allows for that. Maybe I'll ask Mr. Holden to explain more how it will work.

**Mr. John Holden:** I always like to think of the context of the self-government part of the agreement being placed in the context of things that are evolving, things that are new. One of the aspects of the agreement that I think is the most elegant is how it is capable of dealing with new matters pertaining to self-government rights—a new and evolving field—and how it is possible to bring something that was not foreseen by the negotiators at the time of this agreement, something new that's been legally recognized, into the agreement and its certainty framework.

I think this particular certainty model is one of the greatest contributions the negotiators made, in the sense that the land rights aspects of it—the aboriginal rights pertaining to land resources and land use and so on—are subject to very stringent certainty provisions. The self-government aspect of it is capable of adapting, is capable of flexibility, but in the sense that it brings something new and unforeseen into the agreement. It does not necessarily face a situation where the agreement is not capable of dealing with something that arises, so that there is the inevitable situation where a judge will perhaps have to determine what the parties meant, what the intent of the parties was. The agreement is capable of bringing in novel or unforeseen developments in the area of aboriginal self-government rights and dealing with them within its own framework. I feel that's one of the major achievements of the agreement: that it is capable of a forward-looking and responsive approach to new developments as they occur years from now.

**The Chair:** Would you, just for clarification, let us know what section of the agreement you were referring to?

**Mr. John Holden:** It would be section 2.10.2.

**The Chair:** Thank you very much, Mr. Holden.

I think that's it for questioning from our committee members, as far as I can tell. I'd like to give an opportunity to the premier to have some closing remarks, unless Mr. Martin wants to take another...

Okay, I don't see any more questions coming from our committee members.

I would like to thank you for sharing your time with us this morning in committee. If you have any closing remarks, I will give you some time to close off the meeting

Thank you.

**Hon. Joseph Handley:** Thank you, Madam Chair.

I would only like to say that I have read with interest most of the comments in the transcripts from the committee's proceedings over the last while. I appreciate the thoroughness with which all members of the committee have raised questions and made their positions known. I think it makes for good legislation.

I again want to thank the Tlicho people. I think this is a tremendous opportunity for them and I think it's a great piece of work that the negotiators on all sides did. I again urge the committee and members of our Parliament to pass this legislation as quickly as possible.

Again I'd like to sincerely extend an invitation for all of the members to come to the Northwest Territories to celebrate the coming into force of this piece of legislation. I think it's an important piece of Canadian history.

Thank you.

• (1030)

**The Chair:** Thank you very much.

**Some hon. members:** Hear, hear!

**The Chair:** It's 10:30. I know there weren't any more questions, but I would just like to take care of a few reminders and note that December 3 is the deadline for submitting any amendments, if anyone dares to do so.

For the next session, on Thursday, we do have the Assembly of First Nations' Grand Chief, Phil Fontaine. Also with him will be Bill Erasmus from the Assembly of First Nations, the NWT regional chief. So those are the two witnesses we have for Thursday at 9 a.m.

Also, thank you to everyone who came to listen to the session this morning. Thank you.

The meeting is adjourned.





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