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Ms. Nancy Karetak-Lindell

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• (0905)

[English]

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

Our meeting number 10, on Thursday, November 25, 2004, is pursuant to the order of reference of Tuesday, November 2, 2004, consideration of 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.

We have before us this morning, from 9 a.m. to 10 a.m., National Chief of the Assembly of First Nations. With him is Chief Bill Erasmus from Yellowknife, the regional office of the Northwest Territories.

National Chief, perhaps you'd like to speak to the committee this morning. I think you have someone with you who is not on our list this morning.

National Chief Phil Fontaine (Assembly of First Nations): Yes, Candice Metallic, legal counsel for the Assembly of First Nations.

The Chair: Thank you for coming this morning. The floor is yours.

National Chief Phil Fontaine: Thank you.

Good morning. We have a written presentation that I will speak to.

Good morning, Madam Chair, and members of the standing committee. I am pleased and truly honoured to be here to support the Tlicho in their efforts to have their agreement codified into law. I intend to speak in favour of Bill C-14, the bill that will give effect to the Tlicho land claims and self-government agreement. I would like to begin by urging you to consider Bill C-14 in a timely fashion so that the parties can begin implementing this agreement.

As you know, this is the final phase of ratification. The agreement has been duly considered and unanimously accepted by both the Tlicho and the Government of the Northwest Territories. Now the final phase is for Parliament to give effect to the will of the parties.

As you know the Tlicho, the Government of Canada, and the Government of the Northwest Territories have invested 10 years of their time, energy, and considerable human and capital resources into this challenging negotiation process. My colleague Bill Erasmus would argue that the time spent on this is actually 31 years.

The result of that investment is a monumental tripartite agreement that is now before Parliament. This is a significant and notable achievement because it is a unique piece of legislation; this is the first agreement of its kind to integrate both a land claim and self-government component into one comprehensive agreement. I commend the parties for their focus and dedicated commitment to this very important work. It is a leap forward for the future of the Tlicho, Canada, and the Northwest Territories. The Tlicho agreement is a real and tangible example of reconciliation between first nations' constitutional rights and federal Crown and territorial interests.

To appreciate this accomplishment, we must acknowledge the challenges associated with the process and the limitations of the current federal policies that govern comprehensive land claims and self-government negotiations. Reconciliation was and is the key to this process. The parties were able to formally resolve the federal requirement of extinguishment, and in doing so agreed with the recognition of Tlicho title. The parties were able to reach consensus on a government structure that meets the needs of the Tlicho and their people and Canadians, despite the shortcomings of the federal inherent right policy.

This approach is exactly what Canada's highest court has encouraged in cases such as *Delgamuukw* and, most recently, in *Haida* and *Taku River Tlingit*. Ultimately, this is what the honour of the Crown entails and what the rule of law demands.

With respect to the inherent right to self-determination or self-government, we strongly believe there is already room in Canada's constitutional framework to recognize and give effective self-government regimes for first nations. What is needed is the political will to make it happen.

Since first contact, the original peoples of this land have entered into agreements and treaties with the newcomers. These agreements take many forms, written and verbal, pre-Confederation and post-Confederation. Some are based on military alliances and some on peaceful coexistence or a sharing of land and resources. It is through these agreements and this approach that Canada came into being; our country is founded on these values.

First nations elders tell us that we entered into treaties and agreements on the understanding that they would last as long as the grass grows, the rivers flow, and the sun shines. Treaties are living agreements that define Canada. They codify and express the relationship between first nations and the Crown; they state that this relationship exists as long as we continue to exist. They cannot be unilaterally repealed or withdrawn by either party.

We recognize that circumstances change with the passage of time. Treaties must be the tool we use to respond and adapt to these changes through dialogue and negotiations based on trust and mutual respect.

● (0910)

We see this in the Tlicho agreement. It can be viewed as an extension of the original treaty relationship expressed in Treaty 11.

As recently as last week, the Supreme Court of Canada spoke of the Crown's duty to negotiate contemporary treaties. Chief Justice Beverley McLachlin, speaking on the unanimous decision in the Haida case, made the following statement:

Where treaties remain to be concluded, the honour of the Crown requires negotiations leading to a just settlement of Aboriginal claims....Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the Constitution Act, 1982.

This is not the first time Canada's highest court has recognized pre-existing aboriginal sovereignty. In the 1998 decision in *Delgamuukw*, Chief Justice Lamer stated that the purpose of section 35 is to reconcile aboriginal and Crown sovereignty.

Although some may disagree with the Supreme Court's vision of section 35, first nations possess inherent sovereignty. At the core of the sovereignty is the right to self-government, which is deserving of formal recognition and protection in the Constitution. This is what the Tlicho, the Government of Canada, and the Government of the Northwest Territories have quite rightly accomplished.

First nations from east to west, north and south, are diverse nations with distinct languages, cultures, and traditions. This is the reality of the original peoples of Canada. Accordingly, the Canadian Constitution requires a degree of flexibility so as to incorporate first nations government regimes that reflect the cultural diversity and needs of first nations peoples. Essentially, the Constitution must evolve and react to the spirit and interests of Canadian society, including first nations society.

Some have said that this agreement lacks the necessary certainty because it can be amended. We disagree. As with the Constitution Act, the Tlicho agreement is a visionary document, because it incorporates an amending formula to ensure that the agreement can address changes in either Tlicho or Canadian society. This is important. In fact, it is visionary and forward-looking. This agreement must be able to meet the needs of the people it is designed to govern, now and well into the future. This is not a weakness, as some suggest; it is strength. This is certainty.

The Constitution Act, 1867, and that of 1982 were never intended by their framers to be final documents. Nevertheless, the Constitution provided the necessary certainty to empower the federal and provincial governments to govern within their respective spheres of jurisdiction. In fact, one of Canada's most pre-eminent constitutional experts, Mr. Alan Cairns, has aptly described Canada's Constitution as a living tree. This descriptor reflects the visionary nature of Canada's Constitution, which has the capacity to respond to societal changes and values so that it can continue to accurately define us. Why should the Tlicho and first nations expect anything less?

The Supreme Court of Canada, in *Regina v. Sparrow*, firmly rejected the notion that aboriginal rights were frozen in any

particular time. The Crown must also reject the frozen rights theory when negotiating modern treaties so that the parties can respond to the future needs of their people. The Tlicho agreement integrates the necessary evolutionary element that must define any self-government regime. It is now time for Parliament to acknowledge and support the many years of intergovernmental political negotiations that led to this agreement by passing Bill C-14.

In considering Bill C-14, Parliament must ensure that the Crown acts honourably in addressing constitutionally protected aboriginal and treaty rights that have been duly considered, negotiated, and agreed to by all concerned parties. I commend the efforts of the parties who have worked together to reconcile their mutual goals in a way that respects their original relationship.

● (0915)

I was honoured to be a witness on August 25, 2003, to the historic signing of the final agreement. This is indeed a unique agreement and a historic achievement. This is an opportunity for all parties and for yourselves as parliamentarians to make constructive history. Passing the Tlicho agreement will be a legacy in which all Canadians, and indeed the world, can take pride.

Meegwetch.

The Chair: Thank you, National Chief. I believe Bill wants to add to your presentation.

Chief Bill Erasmus (Regional Office, NWT, Assembly of First Nations): Yes. Thank you, Madam Chair.

Our people from the north, the Tlicho, have this piece of legislation before you, and we're pleased to bring our support to them. In the national chief's comments he mentioned that they've taken 10 years to compile this, to put it on paper and have it before the country called Canada. Actually, it has taken longer than that.

As you probably remember, at one time all of the Dene were working toward one agreement. We were close to concluding our agreement—in fact, we had signed a final agreement with the Mulroney government—and several months later they chose to change their policy. We were then forced to go into regional claims.

If that didn't happen, we probably would have had a final agreement, we would have gone through this process and finished it by maybe 1991, or 1992 at the latest, and we would have had the practice of governance under our belt for a good 10 or 12 years. But we went with the order of the day and now we are negotiating five different regional land agreements.

We've settled the Gwich'in and the Sahtu. Those agreements didn't go quite as far as this one is going. They were more about land and economic realities. This one includes defining more clearly what section 35 is intended to entail, and we're very pleased that they've been able to get to this point. We've waited many, many years for Canada to not only recognize the right—we went through that experience in the 1980s—but now to implement it. Some of us are getting impatient because we're probably the only people in the country who don't have the right to govern ourselves.

We have a whole generation of people who are very frustrated because for the last 30-odd years we've been telling them that we will govern ourselves. People are sitting and waiting, and it's always very volatile. You look at the TV and you see what's going on in Kiev. People just want fairness.

We appeal to you to understand that our people are not asking for any more than anyone else in the country. They want to exercise what they've always done. Our original treaties with the Crown in 1899 and 1921 were not cession treaties; they were not surrender agreements. The courts established that in the early 1970s through the Paulette case.

If you look at the Paulette case, it makes it clear that in our part of the world, in the north, we were not on our knees when Canada came north. We were quite healthy, very cognizant of what happened in the south, and we knew that people were already on reserves. There were no buffalo left. We knew the railway was coming to the west and that economics had changed so much that the country relied on us but at the same time was creating a lot of change, and we wanted assurance that we would survive in the future. The treaty arrangement was one of coexistence, where we would support each other in time of need. Now we recognize that this kind of a situation is still here. It's the same. We need your assistance. We need the assistance of your system, which breaks down into a party system.

To us, it doesn't matter which party you are. I'm trained as a political scientist, but I'm also trained as a Dene that you're part of a system that we really don't understand. Sometimes, it seems like a lot of games are played on your side to manipulate our existence, and we get frustrated with it. You either support us or you don't, and if you don't support us, then talk with us. We need to know what the problem is.

● (0920)

If it's public education, let's deal with that. If people want to understand this agreement, ask us the questions. Let's do it in public. Let's put the issues on the table, because if the general public doesn't understand it, it's not going to work. I don't think anyone on our side is trying to bring something forward that will not work.

Those are some of the thoughts our people have. They're anxious to move on this. They have waited a long time. Section 35, in their view, is an arrangement whereby Canada is committed; they're obligated to work with us and they are our allies. We don't swear allegiance to the Crown in terms of being subjects of the Crown; we're allies. Our treaties solidified that. Canada's courts solidified that, and this is a step to again bring that clarity forward.

What the Tlicho have done...the authorities they have are not all being recognized. Some of their powers are being put in abeyance. I think it's a good way of moving forward, because Canada is not quite prepared to recognize some of the authorities we have.

In the end, if we talk of Arctic sovereignty, if we talk of protecting this part of the world, we believe those treaties will be the instruments that guide us, because they're international instruments. Treaty 11, for example, which is what these people are part of, goes to the Beaufort Sea. International law has it that those rights then extend out into the water. Those are laws that were there prior to NAFTA, so if the Americans, or anyone else, challenged us through

the Northwest Passage or whatever it might be, that's the treaty you have to go to. Treaty 11 will protect this country. I believe that was part of the intent of those original treaties. They're right across the country. They're numbered treaties. There are Robinson-Huron treaties in this area, there are pre-Confederation treaties in the east, and there are other ones in British Columbia. I think we really have to recognize what all that means and not act as if history is only now unfolding in this young country called Canada.

We bring that forward. We strongly support the Tlicho. There are other people who are also at the table. There's the Deh Cho, who constitute a large region, a huge piece of territory, who are on the northwest side of the Tlicho. On the northeast there are the Akaitcho people, where I come from. We're also at the table. These agreements will be coming before you soon, and it's important that you understand the intent and the practice of our people. We want to put into effect what section 35 suggests, and it will only strengthen this country. So we bring this to you and we encourage you to see it in a positive light.

Thank you.

● (0925)

The Chair: Thank you very much, Bill.

We'll start our first line of questioning with the Conservatives, Mr. Prentice.

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

I'd like to welcome both of you here today. You're obviously both well known to the members of the committee, and I congratulate you on the work you've done for your people and the work that you continue to do. You're both very well respected in this country.

As you are aware, our party has not been supportive of all aspects of the Tlicho agreement. We've indicated that there are good things about the agreement that we support, that we think are positive, but we've raised a number of very specific issues about the agreement. During the course of the committee's inquiries, we've had an opportunity to speak with witnesses, including some of the lawyers who participated in drafting it, and we continue to have the concerns that we have raised about the agreement.

We've also made it clear, however, and what I want to say to you here first and foremost is that it is not our intention to delay this process in any way. We've made that very clear in these proceedings previously, and I want to assure both of you that that is our position.

This is a unique treaty. It is the first of its kind. There are aspects of this agreement that raise some very important questions, obviously for the Tlicho but also for future agreements and for the governance of the country as a whole. These are subjects upon which reasonable people can sometimes not agree.

We have said this agreement, as it has been presented, is not one we would have negotiated, but we understand that there has been, as Chief Erasmus has said, a 31-year process to arrive at where we are today, and certainly 10 years of arduous negotiations. We understand that. It's difficult at this time to change the agreement in a piecemeal fashion. We are aware of that, but we do not intend to delay this legislation before the committee or before the House. We haven't to this point and we don't intend to on a go-forward basis.

We expect that this committee will deal in a very expeditious way with the legislation, and I know the chair has taken steps to tighten up the schedule to move it forward so that it happens and so we can complete both these hearings and then what is known as the clause-by-clause review. We will then be finished as a committee, hopefully in early December, and it will go back to the House of Commons and will be dealt with as quickly as the House of Commons deals with legislation such as this.

We've put forward no amendments at this committee for discussion. As I said, it's not an agreement we would have negotiated, but we wish the Tlicho all the very best under the terms of the agreement.

Certainly, the objections we raise.... We have no disrespect for the FN in any way or for the Tlicho people or their negotiators, but there are aspects of the agreement that we simply don't agree with, and we've stated our position. I won't reiterate that today. It's clear and it's on the record. I'm not sure it's useful.

Having said that, I do have a question, National Chief. You referred to the inherent self-government policy, which, as I recall, was put forward by the federal government in 1995, and you referred to the—I forget if you said limitations or shortcomings of the policy. It might help us to understand if you explain what you meant by that.

● (0930)

National Chief Phil Fontaine: First of all, Mr. Prentice, your remarks are appreciated. We know you're making a concerted effort to be fair in your interventions. We appreciate the fact that your party is not going to do anything to delay passage of this bill. Your support is recognized and appreciated.

This agreement and other previous efforts, for example, the framework agreement in Manitoba, took the position that the inherent right is not something that is delegated or conferred by another level of government. It is inherent.

The inherent right policy, as offered to us by the federal government, is, in our view, offering us municipal-type government powers. These are largely delegated to us by another level of government and thus not subject to real negotiations, because the government sets out the powers and authorities that first nations governments will exercise—and they are limited. For example, there is a recent decision that has been taken by the federal government that instructs the federal negotiators that the issue of citizenship is not part of the self-government negotiations. As you know, our position is that we want to be recognized and our governments ought to be recognized as having government powers. One of the powers that governments have is the ability to determine citizenship. So if citizenship is not on and is not part of the powers that will be transferred to our governments, we are left with what other

governments can decide upon. That is just one example of the flaws in the inherent right policy. That is one point.

The other point is that we believe it is entirely inconsistent with section 35 of the Constitution, which recognizes existing aboriginal and treaty rights, including the inherent right. We believe it is a more inclusive, more comprehensive proposition than is expressed through the policy.

● (0935)

Mr. Jim Prentice: Just to pursue this, one of the issues we have raised and that has struck me in the different self-government agreements and arrangements currently in place.... I appreciate that we are just starting down this road; there is the Westbank agreement and there is this agreement, and I believe there are 50 or 60 other tables at work.

I am struck by the diversity and the different arrangements that are in place with respect to self government. I am just wondering how, in the long term, all of that is going to knit together into a Canadian system of governance that is governable. I wonder how you think we should be getting to the heart of the self-government issues and dealing with the issues in an overall way before we start negotiating specific agreements that may or may not fit together.

National Chief Phil Fontaine: First of all, in regard to the existing agreements, you referred to Westbank, and we note that your party supported the Westbank agreement. These agreements that exist and those being negotiated recognize the diversity that exists within our community, as it does in the rest of Canada.

All of these agreements, including the one you referred to and others, fall within the existing legal and constitutional framework. There's never been any thought on our part that when we talk about self-determination or self-government, or indeed when we talk about sovereignty, that we're talking about anything more than what is possible within the existing framework.

For example, the notion of sovereignty. In our view, that's really one that speaks to self-definition, and it's really about defining our place within Canada. It's not about separation or independence. It's really trying to determine and figure out our secure place in Canada, so clearly, as I said, it's within the existing framework. But within that framework we believe, given the recognition of existing aboriginal treaty rights under section 35, that it's possible to effect agreements that clearly describe and articulate first nation governments as equal to the other two levels of government, the federal government and the provincial government, keeping in mind that we're talking in some situations about shared jurisdiction. In other situations we recognize the exclusive jurisdiction of the federal government, or in other situations the provincial government.

But we believe that a flexible approach on the part of all of the interests and all parties will make it possible for us to establish true self-government for first nations so that we can exercise powers consistent with the Constitution, and in this way we believe we can re-establish first nation governments as vibrant entities within Canada.

The Chair: Thank you very much, National Chief.

Now we'll go to Mr. Cleary. I was a little overgenerous with that because I think we needed to get that information for everyone.

Mr. Cleary, please.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Thank you, Madam Chair.

First off, I want to thank our witnesses for meeting with us this morning. Grand Chief Phil Fontaine deserves to be congratulated for coming here to lend encouragement to the Tlicho. I wish I could have negotiated this agreement personally. Therefore he has good reason to be proud of it. I've already had an opportunity to praise the Tlicho for the excellent job they have done and I hope the opportunity arises to tell them so once again.

Secondly, I have to say that I am delighted to see Bill Erasmus again. Bill and I worked together in the late 1980s or thereabouts on negotiations that ultimately failed. In fact, he is one of only a handful of people to have read my first book, *L'enfant de 7,000 ans*, and in French to boot. That required a considerable effort on his part. Moreover, he promised me that he would continue to work on his French.

What strikes me about this whole thing is how proud the Tlicho are of their agreement. Therefore, they deserve our support as soon as possible, given the ever-present threat of an election. We wouldn't want them to lose out a second time, so I hope we can move on this as quickly as possible and get through everything.

I'd like the Grand Chief to talk about the basis for this agreement, namely the desire to give concrete expression to ancestral treaties. We've known for some time now that many treaties are outdated and need to be modernized. In my view, the Tlicho's greatest accomplishment is to have done just that. It's no secret that the federal government has trouble embracing this approach. The belief was that when treaties were signed, a deal was struck for eternity. Today, we know very well that nothing lasts forever, hence the need to modernize these treaties. The Royal Commission was very clear on that score. To my mind, the Tlicho agreement is the best example of bringing treaties into this century. The work was done quietly and produced concrete results.

Aboriginal groups that already have treaties will no doubt wish to do something similar. Would Grand Chief Phil Fontaine care to comment on this initiative?

● (0940)

[*English*]

National Chief Phil Fontaine: There are two parts to your question. There's one that Chief Erasmus wants to speak to, which has to do with the UN process related to the major study of treaties, both domestic and international, a study that has been directed by Dr.

Alfonso Martinez from Cuba. Chief Erasmus would like to address that issue.

One point I wish to make, and I hope I'm as clear as I can be, is that we don't see treaties, as we said, including rights as static, as something frozen. We see treaties as living documents. They're alive, and they go on for as long as the parties who engaged in the negotiations and concluded the agreement are honourable and continue to conduct themselves with mutual respect.

The issue is not so much the terms of the agreement, the actual written text, as important as that matter is. There is also the spirit and the intent that prevailed during the negotiations that led to these important documents.

The big issue for us has been, and this has been consistently so, how to give effect to these treaties, whether we're talking about pre-Confederation treaties in the east, the Robinson-Superior Treaty in Ontario, or the numbered treaties in the west, the Douglas treaties in British Columbia, including Treaty 8 in northeastern B.C., and, yes, including the McKenna-McBride Commission. It's always been an issue of how to give effect to these.

For example, you will not find one first nation leader representing first nation governments and communities who will ever argue that, for example, self-government was part of the negotiations. This was always something that was retained by our people. Of course, what happened is that others chose to deny us that right. So the issue should be around this table, as well as in Parliament and the House of Commons, how do we give effect to these treaties? How do we ensure the honour of the Crown? How do we ensure that the terms of these treaties can in fact live on?

Just as an example, and Mr. Prentice is well aware of this, take specific claims, which speak to, according to the federal policy on specific claims, treaty violations, improper surrender of land, theft of land, the breach of the fiduciary. There are a thousand claims—one thousand claims—and over 300 of those have been validated.

So clearly one of the essential elements in treaties has to do with land. I don't have to tell you, sir, that we have this deep connection with the land, the land that expresses our people and our communities. There are over a thousand claims.

Land is still an unresolved matter. Promises made that promised land to our negotiators and our communities have still not been honoured.

So it's not so much that these treaties are outdated. It's really to give life to and to revitalize the spirit and the intent that overshadow, if I can say in a positive term, the treaty negotiations and these important agreements that were concluded. That is why, for example, there are over a hundred tables in all parts of the country.

● (0945)

On self-government negotiations, we've yet to conclude one self-government agreement that speaks to the issue of implementation. We operate with a policy, a policy that is deficient and flawed. It does a disservice not only to our people but to the country. It compromises the interests of others as well as our interests.

The Chair: Thank you, National Chief.

I have Mr. Valley for the government for the first round, and then we'll come around and give everyone an opportunity again.

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

Thank you for coming today to provide some information.

First of all, I'd like to thank Mr. Prentice and his party. On hearing that there are no amendments coming forward, it will show that this committee is working together. We can move issues forward and we can get the job done.

I have a specific question, similar to Mr. Cleary's. I'd like you to run through, as quickly as possible, how it took us 31 years to get here. Especially with the last 10 years of intense negotiations, for the other 21 years, how was it delayed for so long?

I have another specific question. The chair is not as kind with the time to this side of the room as she is with the other side, but my specific question is this. When this legislation is through the House and an agreement is signed and official, what impact will it have on the confidence and the timelines of other discussions that are going on, from the first nation side of it?

Either one of you can answer that, please.

● (0950)

Chief Bill Erasmus: Thank you for your questions, sir.

It's quite complicated, but I think the discussion merits the time. I want to encourage the chair to have patience with the discussion, because I think, for the record, that it's very important. It's not often that we appear before you, but I think we are people who helped the country to evolve. I'll try to answer it, but I won't delay your proceedings.

The Chair: We're only trying to get all the parties in the first round.

Chief Bill Erasmus: I suppose the easiest way is to speak of my own experience because I can speak to that better than to anything else. I'm 50 years old this year and I can remember when we were not at the table. I can remember when my mother's father translated for our local chiefs. The Tlicho are a very dynamic people, and I'm related to them. I have the option of being a member under their agreement or under other agreements in the north because of our social organization.

My grandfather also translated for one of their leaders they still recognize today, Monfwi. He was one of their main leaders at treaty time in 1921. My grandfather passed away in 1968 or 1969 at this time of year. I remember when he would come home after translating for the chief, not Monfwi, but the leader in Yellowknife, Sangris. Chief Sangris was leader for 30 or 35-odd years, and he spoke very little English. But my grandfather would come home and my mother would say, how did it go? He'd be very frustrated, and very seldom did I see my grandfather frustrated. He'd say, well, we told the Indian agent the same thing last year, the same thing the year before, the same thing the year before, and the same thing the year before.

They only had one opportunity every year. There was a provision in the agreement where if there were grievances, you'd bring it up. Now they call it treaty time. In the spring you get together. There

were provisions to solidify the treaty and to repair it if there was damage made.

And I remember, I was just a young little fellow, and I'd see the frustration in him. It was almost helplessness, where someone else was in control of him. That bothered me because we were always taught that....

I never went to residential school. My parents moved into Yellowknife, so we grew up in Yellowknife; my older brother was born in Rae. But my parents made that conscious decision to move into town and teach us the ways of Canada so we could communicate, and at that point I made a decision, a conscious one, that I'd have to get involved to go that next step where my grandfather couldn't because of the lack of whatever at that time.

When we started to question what the treaty really meant in the early and late 1960s, we found that Canada actually believed—now we call it a myth and the perpetuation of this myth—that we had given up our land. Canada actually believed the land belonged to them. We just found that out in the sixties, and we couldn't believe it when they called it crown land. And it's not Dene crown land; it's British crown land.

So we started to meet amongst ourselves and we said, we have to correct this; they have courts for that. And we went to court and we corrected it. The judicial arm said we still have an interest in the land, and to us that means interest in every sense of the word. It's an economic one, it's a cultural one, it's a values one, it's laws, and it's everything that entails us as nations because we fit the test Dr. Martinez looked at when he studied treaties.

Indian treaties, or whatever they're called, NAFTA, and any other treaty in the world are international instruments; they're all treaties. A treaty is a treaty; ours is not any different. They were concluded by Great Britain with us, Great Britain and the Dene. If we weren't nations, they never would have made treaties with us. The Royal Proclamation talks to that, and that's in Canada's Constitution. We ensured that in 1982, so section 35 brings that back to life.

Why take so long? Because Canada doesn't want to recognize, for whatever reason, that we're landowners because it shatters the myth.

● (0955)

What it means in reality is that the foundation of Canada, then, is under question. Confederation is under question, because Confederation is based on two societies, the English and the French. It is an individualistic one. Ours is more a collective one.

Section 35 talks about collective rights and individual rights. Part of what the Tlicho agreement does is rewrite history the way our people understand it. It builds expression into section 35, and I think what it actually does in the original intent of these treaties is to combine our authorities, section 35 with sections 91 and 92. That's what it's actually doing, and that's what our people have always wanted. They say our treaty is like this: we are holding hands.

That's why in 1990, when Canada walked away from our table, when Oka was on, when Meech Lake was on, some of our people wanted to go to the Mohawk over here and support them with arms. I was the leader then, and we said no. We said, we can't, because we have a treaty with these people. So we believe in those treaties. We believe they're valid, and on a daily basis we try to understand what that means in this so-called modern society.

So Canada's side now has to understand what that means. What does it mean to be a party on your side? That means you have rights and privileges and responsibilities, and so do we. Let's put them into effect. This agreement tries to validate that in a modern context.

As I said earlier, it doesn't matter which government is here. To us, they're all the same. Obviously they're not, but to us, it doesn't matter if they're Conservative, Liberal, or NDP.

You don't look Conservative to me, Jim. You look like a person who has reason.

Some hon. members: Oh, oh!

Chief Bill Erasmus: I didn't mean that Conservatives don't have reason, but you said you didn't negotiate this. I dare to say that you did. Canada represents you. Canada represented you at the table. If you have issues, I think you have to deal with Canada, not the Tlicho.

I think that's what you're saying in the way you came forward. You don't want to make amendments, right? So Canada does represent you.

On the other hand, I'm a little bit different. The law already recognizes that. If you and I go hunting and we get charged, there's a whole set of laws that look at me and there's a whole set of different laws that look at you. It's not based on race; it's based on the way the Constitution is framed. Section 35 looks at you differently from the way it looks at me. It's how this country has evolved. I really have to stress that.

You may not agree with the government of the day, but it does represent you. If I were a citizen of the Tlicho, I might not agree with the chief, but the chief represents me. I think we have to mention that.

The other thing is that if we truly want to move forward, the parliamentary and the executive arms have to listen to the judiciary. The Supreme Court has made decisions with the Inuit, with the Métis, with the first nations, but the policy doesn't reflect the courts. Policy overrides the judges. Policy overrides the treaties. Policy overrides the laws. That's the problem with our people, and we allow it to occur.

We chose not to fight against Canada in 1990. We could have. We had many meetings in Ottawa with all our chiefs from across the country. This is not common knowledge, but we had people in our halls who wanted to fight. They had guns. They had arms. There's a warrior society in this country, and we stopped them. We prevented them from doing that.

I mentioned earlier that there is impatience. I don't say that to try to generate something. It's real. My youngest brother is 32 years old. He didn't experience what I did. He didn't see, like I did, where we

were in the early 1960s compared to now. We've made progress. He was born in the late 1970s, and since he was born we've been telling him we're going to settle it.

• (1000)

He's 32 years old and we haven't settled it. We're still at the table. What kind of a future is that for him?

I think the urgency is for us to really deal with this, because what's happening is the national chief and I really are not part of your country called Canada. We can't really participate in a constructive way. We're like aliens. We're like people from the outside who have to fight you, and we don't want to do that. This is our country. We want to contribute in a positive way, and that's what the Tlicho are talking about. If this passes into law, our people will be dancing in the streets. The north will solidify economically. It will solidify politically. It's time to implement.

The Auditor General last year talked about the Gwich'in and the Sahtu agreements, and she said they're good agreements but they're not being implemented. Canada is not implementing them and they've been in effect for 10 years. We want to develop the economy. We want to develop the country, and this is an opportunity not only for us but for everyone else.

Thank you.

The Chair: Thank you very much, Chief Erasmus.

I know we were going to go in camera at 10 o'clock, but if I have unanimous consent, if you want to do another round, we can be a little more relaxed on time for the questioning.

Mr. Harrison, please. We're into a five-minute round.

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

I'd very much like to thank both National Chief Fontaine and Chief Erasmus for being here today. I've benefited a great deal from listening to both of you today, and I think probably all members of this committee have.

One question I would like to ask, perhaps to further my own understanding with specific relation to this agreement, is what role did the AFN play, how did the AFN help facilitate the negotiation of this agreement, and what is the role that the AFN is playing in the facilitation and negotiations of other agreements in the north?

National Chief Phil Fontaine: Thank you.

Let me make one point here. I think it's important to consider that as national chief I don't have any inherent power or authority. Whatever authority I have is derived from the chiefs, who instruct me from time to time through resolutions.

The Assembly of First Nations is not a government. The Assembly of First Nations is a political organization that represents first nation governments and first nation communities. It cannot negotiate treaties. It's not a party to any treaty.

What we do is negotiate the broad policy framework. For example, if we're talking about specific claims or specific claim legislation that has been considered by Parliament and remains to be proclaimed, we engage because we receive a mandate from the chiefs. We've negotiated the terms of that legislation, and as I said, we were able to do so because we had received very clear instructions.

The same holds true with self-government negotiations. Our interest there is in the broad policy framework that instructs the negotiations. We don't engage in the specific negotiations, but we may be called on from time to time, if negotiations falter, for whatever reason, to intervene on behalf of the claimant group or some other interest, and we will do so directly with the minister, with various ministries, or indeed engage in discussions with opposition parties. Our ability to influence is determined by our mandate.

In some situations we've been very influential in determining the course that government takes in certain sectors or policy areas. Other times we've been less influential and less successful, but we continue to engage and intervene as we need to.

In this case, as you well appreciate, we weren't involved in the day-to-day negotiations, but we were called on from time to time to give general support to the process. We did that in various ways, including direct intervention with the ministers, the justice minister or the finance minister, but we were never involved at the table.

•(1005)

The Chair: Mr. Harrison, you have about a minute.

Okay, Mr. Cleary.

[*Translation*]

Mr. Bernard Cleary: I want to take this opportunity to point out to Chief Phil Fontaine that I was given a mandate by the Bloc Québécois. Moreover, that's the reason why I ran for office and was ultimately elected. I received a mandate to defend negotiations with aboriginals to the fullest extent. I was delighted to accept this mandate, which I viewed as the culmination of my life's work. But I also believe, as you do, that the key to the future of aboriginal groups is linked to the negotiation of agreements like this one.

In late September of this year, I travelled to Geneva to take part in meetings of the Working Group on the Draft Declaration for the Rights of Indigenous Peoples. I was given the very broad mandate to voice the Bloc Québécois' support for recognition of indigenous peoples' right to self-determination. I was a strong, respectful advocate of this position. I did have occasion to meet with members of the Canadian delegation to the working session and our relations were amicable.

As MP and as my party's critic for aboriginal affairs, my job is also to promote this initiative. I cannot remain as neutral as I once did when I was a journalist, but this matter is important for my party, as I have made abundantly clear. In the past, people often tried to twist my arm to enter the political arena, but failed in their efforts. Ultimately they convinced me and gave me this mandate. I want both Bill and the Grand Chief to know that I will be working with this objective in mind.

A word of caution is in order, however. This doesn't mean that I will be taking orders from the Assembly of First Nations. I represent my constituents. I was elected by the people of Louis-Saint-Laurent, Quebec, and my first job is to represent them. However, the aboriginal part of me also has a job to do and I will do it. I just wanted you to know where I stood.

•(1010)

[*English*]

The Chair: Thank you.

Would anyone like to comment on his comment?

National Chief Phil Fontaine: We appreciate the very generous offer from Mr. Cleary. We know a bit about this gentleman.

As he noted, Mr. Erasmus read his first book and is in the process of reading the other four. He has asked you for a bit of time, Mr. Cleary.

We acknowledge with appreciation your position, and we thank you, as I said, for your generous offer of support for our work. Thank you.

The Chair: Mr. St. Amand, please.

Mr. Lloyd St. Amand (Brant, Lib.): I will ultimately have a question, but I also have a couple of comments, if I may.

First—and I don't mean this in a glad-handing or ingratiating fashion—it's an honour to meet both of you. It's always an honour to meet people of distinction and people of accomplishment. The two of you have over the years advanced the cause of your community with solid, far-sighted leadership. I'm sure Ms. Metallic knows she is in distinguished company this morning, and I suspect the reverse is true for you fellows in her company; I don't know.

A friend of mine from my earlier life as a practising lawyer is a gentleman named Owen Young, whose name may be familiar to both of you. Owen has worked with first nations over the years. When I was chosen to serve on this committee—a development that was very pleasing to me, I must say—I called Owen and asked him if he had any tips. He said fundamental to the workings of this committee must be an understanding that Canada is comprised of three nations: first nations, English, and French. Always, he said, bear that in mind. Whatever nuances or issues or developments arise, always bear in mind that we have three nations in this country. I'm pleased to hear your comments in that regard this morning. I won't forget it.

Among the concerns raised by the Conservatives—articulately, of course, by Mr. Prentice—one was with respect to the Charter of Rights and Freedoms and the application of the charter to the Tlicho agreement. I appreciate you're not here to give us a legal analysis, but have you any comment or statement with respect to the charter and how you see it applying to the Tlicho agreement?

National Chief Phil Fontaine: I was going to ask Candice, if she wanted, to go on record. She said no, she didn't, so I'll respond.

Our position is pretty straightforward. First nation governments must be capable of determining what, if any, federal laws they will comply with. In this case, the Tlicho have agreed that the charter applies to the Tlicho government. The agreement, as you know, provides that the charter is the standard by which the Tlicho constitution will provide protection.

That question and the response, of course, must be within this context. Our rights are collective in nature. We want to ensure our collective rights are protected, and you do that by recognizing those rights as valid. That's an important consideration.

As for individual rights, we of course also recognize individual rights, and those individual rights must be both recognized and protected. We believe the charter must apply where appropriate, absolutely.

• (1015)

The Chair: Mr. St. Amand, I hope your friend Mr. Young meant aboriginal people of Canada are part of the three.

I don't have anyone on the government side, but I have Mr. Prentice.

Mr. Jim Prentice: Thank you.

Chief Erasmus, I'll take away a compliment—your description of how I look—though I'll have to think about it for a few days. But I don't think you were suggesting I look like a Liberal.

Let me ask you about implementation. As you've said, we are making great progress in the north; that is clear. There have been a couple of reports in the last year about implementation, however, that raise some real questions.

First, the Auditor General has released a report that is very critical of Canada and the implementation of these treaties. It is pointed out that in the case of almost all of the comprehensive claims that have been settled, the problem hasn't been the text of the agreement; the problem is that the agreements are not being implemented. It is frustrating the northern communities who have negotiated the comprehensive claims because they thought they had made progress, but on the ground nothing is changing.

At the same time, there's been a recent report of the external adviser on Canada's regulatory system. A panel of experts have looked at the north specifically and have offered the observation again that the regulatory system isn't working, that there's been a failure to implement. They point out that a number of the structures are not clear or they're not in place, and the resource companies who want to do business in the north are being frustrated, not because they're being refused in their approvals, but because they can't even find out what the process is to try to get an approval.

More recently, a number of appointments to the Mackenzie Valley water boards and management boards have not been filled, so the committees aren't staffed. So the implementation there is not happening either.

What is the problem, and what needs to be done once these treaties are negotiated, as you say, by Canada? Why are these treaties not being implemented, from your perspective?

Chief Bill Erasmus: Thank you for the question, Mr. Prentice.

I alluded to it earlier. I tried to understand the way Canada sees the world. I think it is the question of property. Canada believes it owns the land. On the other hand, we believe we own it. It is a question of reconciling these positions.

In our sense, the courts made it clear that we didn't give up our interest. Then Canada, to perpetuate the myth, has to have us extinguished. They tell us to give up the land through this process, and in return they will give us land back with a different title.

Right now it is original title; it is Dene title. It is either Tlicho or Denesutine or Gwich'in or Sahtu or Deh Cho. It is a particular title. It's not crown title; it's not crown land. The courts have clarified that.

Canada wants it to be crown land so that it feels secure. We're neglecting to do that. We are saying no, it's not crown land; let's talk about how we can work together. We're not talking of taking away private property rights. Yellowknife will still remain the same. The mayor can govern within the municipality. People can still go to the schools. People can still have their jobs. But when you talk of land outside of Yellowknife, because we are the primary occupants and always have been, it will most likely be a different set-up.

When the royal commission did the big study George Erasmus chaired with the other chair from Quebec, they spent \$58 million to \$60 million looking at this question. The commission advised that this question of ownership has to be dealt with. I think that is what Canada has to come to grips with.

By putting in abeyance some of those authorities Canada has problems with, this agreement will allow us to step forward, because people can still function.

In fact, we dare to say that if you lived in the north, Jim, you'd probably have more rights living within the Tlicho region than you have in the south, because they allow a different kind of reality. Sure, the chief will be in charge, but the chief allows you all kinds of rights and privileges you wouldn't have in the south. You could go hunting with them; you could marry into their people; you could share all kinds of experiences you'd have difficulty doing in the south.

Without getting into all of that, this is part of the problem. I think we really have to move quickly to deal with this question that the royal commission has already dealt with.

Just finally, Madam Chair, I think this discussion is very good, but we want you to go in camera. We want you to decide how you are going to deal with the clause-by-clause. We appreciate this opportunity to talk and we're going to have to make more opportunity for this, but we do encourage you to go in camera.

• (1020)

The Chair: Thank you very much. I think we are going to close off the questioning portion. I am not sure if Mr. Martin wants to have one opportunity to say something before we go into our in camera session.

Mr. Pat Martin (Winnipeg Centre, NDP): No, I'm quite satisfied. Thank you.

The Chair: Thank you, and thank you to the witnesses who were on the speaking list who have decided they would not take any more of the time, so that we can get on with our future business.

However, I do want to give you an opportunity to give closing remarks to the committee, and we thank you for coming this morning, and the same with Chief Erasmus.

National Chief Phil Fontaine: Very briefly, we want to express our thanks and appreciation to this committee for giving us an opportunity to present and to engage in this discussion. It has been very useful, and we appreciate the patience of this committee. We encourage it to carry on with the good work it is doing.

The Chair: I also want to thank you for the brief history you gave us, because I think it was very important for the older members and the newer members to realize the long road that takes us to this place. It makes us appreciate more the work the committee plays in some of those steps we take to get to legislation. So thank you for that.

We will adjourn very briefly to set up for the in camera session—about five minutes.

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