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Chair

Mr. Lloyd St. Amand

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● (1535)

[*English*]

The Chair (Mr. Lloyd St. Amand (Brant, Lib.)): Ladies and gentlemen, I will call the meeting to order, as we have quorum.

I apologize for my own tardiness. I won't say that I was beset by, but was speaking with, some folks with respect to a national philanthropy day, and I lost track of the time for a few minutes. So I apologize to members of the committee and, more importantly, to the witnesses who inconvenienced themselves to join us in a punctual fashion this afternoon, unlike the chairperson of the committee.

The floor is yours, ladies and gentlemen.

[*Translation*]

Ms. Nadia Bartolini (Research Manager, Specific Claims Branch, Department of Indian Affairs and Northern Development): Thank you, Mr. Chairman.

I would just like to point out that we have been asked to submit our notes, no doubt to facilitate simultaneous interpretation. However, we need these notes in order to begin.

[*English*]

The Chair: Ms. Bartolini, do you mean that with respect to your own presentation, as well as to the presentations of the others?

I'm assured by the clerk that the photocopying should not take much longer, so perhaps we can remain where we are. Hopefully, in the next two or three minutes the notes will be—

[*Translation*]

Ms. Nadia Bartolini: Thanks very much for your patience. My name is Nadia Bartolini. I am research manager at the Specific Claims Branch. Today, I will describe the research aspect of the claims process.

The claims process begins when a specific claim is filed by a first nation. Upon receipt of the claim, we prepare an acknowledgement of receipt. An analyst assigned to the file then does a preliminary analysis. At this stage, we usually consult the first nation. We may do so to obtain clarification or additional information that we need for the file. The file analyst then determines whether additional research on the file is required. Should this be the case, the research will then be done by the Department of Indian Affairs or, conversely, by someone outside the department, meaning that we refer to a list of sole suppliers. We draw up this list every three years and it includes approximately 54 sole suppliers. As part of the contract process, these people do the additional research required for Canada.

The next step consists in conducting additional research for the first nation file. The research methodology is established. Should they so choose, the first nation can be consulted and make comments. The analyst and the consultant then agree to the research methodology and the research begins. This can take anywhere between two to five months. The research is then submitted to the Department of Indian Affairs.

When the department is satisfied with the final draft, it is sent to the first nation for comments. Should the first nation make minimal comments, meaning that the comments can be integrated into the Indian Affairs historic report, we do so. If the comments are more lengthy, the file is forwarded as is to the Department of Justice for the purpose of analysis. The comments are then added. Obviously, the first nation plays a significant role in assessing the veracity of the facts and completing the file. This is why we wait for their comments.

The following step consists in forwarding the file to Justice Canada. The first nation is informed when this has been done. In order for a file to be forwarded, it must include the research submitted by the first nation as well as any additional research carried out by the Department of Indian Affairs. This is all forwarded to the Department of Justice, which is responsible for doing a legal analysis of the file.

During the legal analysis of the file, Department of Justice lawyers may ask for some clarification, but solely with respect to the facts. Our research branch forwards this additional information or we ask first nations representatives whether they have any information that may help complete the file.

Once the Department of Indian Affairs has received the legal opinion from the Department of Justice, the analyst ensures that this opinion is based on all of the facts presented in the file. Should the analyst not understand certain aspects of the Department of Justice analysis, the department provides the necessary explanations.

We then do an internal consultation, either within the Specific Claims Branch or another group in Indian Affairs, such as the regions, the Lands and Trust Services, the Treaty Policy Branch and so on. Once everyone has been consulted, we make an official recommendation with respect to the file, and this is forwarded to the minister. The minister then decides whether the claim should be accepted for negotiation. A meeting with the first nation then occurs. The purpose of this meeting is to determine whether or not the first nation wishes to discuss the minister's decision.

In a nutshell, this is what type of research is done between the time the claim is submitted and the minister makes his decision. Thank you.

Thank you.

● (1540)

[*English*]

The Chair: Thank you, Ms. Bartolini.

We also have representatives from the Department of Justice, and we have Mr. Brassard here as an individual.

Do you wish to proceed, Ms. Duquette or Mr. Robinson?

Ms. Sylvia Duquette (General Counsel, Specific Claims, Aboriginal Affairs Portfolio, Department of Justice): Yes, I thought I would just give a brief overview of the role of the Department of Justice in the specific claims process.

I'm the general counsel and manager of the specific claims section of the legal services unit of the Department of Indian Affairs and Northern Development. I head the group of lawyers within the Department of Justice who are responsible for supporting DIAND's specific claims program.

The role of the Department of Justice in this ADR process, as legal advisers to the Department of Indian Affairs, is to provide an opinion to the Minister of Indian Affairs informing his decision on whether to negotiate the claim. What we are asked to do under this policy is to advise the client minister of whether we are of the opinion that the claim discloses an outstanding legal obligation on the part of the Crown in one of the categories covered by the policy. For example, this would include unfulfilled treaty obligations, but not aboriginal rights and title claims, which are dealt with under the sister policy of comprehensive claims.

Under the policy, we're asked to prepare this legal assessment without taking into consideration laches, limitations, or strict rules of evidence. What this means is that some claims that would not be successful in a court of law would nevertheless be considered outstanding obligations under the policy.

At the same time that we provide our advice to our client minister on the question of an outstanding legal obligation, we also provide our opinion to him as to the legal principles that we think a court would apply in determining compensation.

The scope of our advice to the client minister is limited to the question of an outstanding legal obligation under the policy. In other words, the Department of Justice has no scope to recommend negotiation where we have not assessed a lawful obligation, or to recommend that the minister not accept negotiating the claim where we have assessed an outstanding legal obligation under the policy. So we're really focused at that stage on that one assessment.

Relying on our advice with respect to whether there is a legal obligation, the Minister of Indian Affairs decides whether to accept or not accept being a party to the ADR process and negotiate the claim.

I think it's important here to understand that under this particular policy—the specific claims policy—the Minister of Indian Affairs' decision to participate in the ADR process must be based on the advice of the Department of Justice that there is an outstanding legal obligation under the policy. That is the way the 30-year-old policy was constructed.

If the decision is to negotiate the claim, my group also provides legal support to the negotiation tables. This is another major area of our practice. At most negotiation tables, a Justice lawyer is required to attend, owing to the presence of first nation counsel. We provide advice to the federal team on legal issues, such as compensation, as well as all the issues related to the legal drafting of the agreement between the parties.

Where the minister has decided not to negotiate the claim, because he has been advised by us that there is no outstanding legal obligation under the policy, the first nation may ask that the claim be reviewed by the Indian Specific Claims Commission, the ISCC. The ISCC is mandated under the Inquiries Act to inquire into the reasons for the minister's decision not to negotiate the claim.

Where the first nation refers the minister's decision not to negotiate the claim to the ISCC, justice department counsel in our section, such as Perry Robinson, are then responsible for preparing the Crown submission and appearing before the ISCC on behalf of the Crown.

If the parties—the first nation and the minister—do not resolve the claim through the ADR process, the only option left is to commence or reactivate litigation and to obtain a decision from the court on the validity of the claim.

I'll briefly tell you about our resources within the Department of Justice. In our group, we presently have 22 lawyers in our office—19 in Gatineau and three in B.C. These lawyers deal with all the specific claims across the country. These 22 lawyers are currently responsible for providing legal support to 85 negotiation tables, 35 ISCC inquiries, and legal support to policy development by the DIAND client, and the preparation of the legal advice to the client minister on the issue of an outstanding legal obligation.

● (1545)

This latter part of the work, the legal obligation opinion, about twenty such opinions are prepared per year. The preparation of those opinions is very labour-intensive. It takes between two and five months of hands-on time for a lawyer to complete these opinions, and the range of time depends obviously on the level of complexity.

I should mention that there are probably several factors that contribute to the complexity of the lawyer's task. It is the age of these claims first and foremost. The facts that the lawyer must examine provided by the research branch can stretch back in time to before Confederation.

In addition, the law in this area is fact-sensitive, and it is rare that we have a specific claim that mirrors the facts for which we have decided cases. Where we do have cases on point, or nearly on point, the relevant decisions themselves often raise more questions at the same time as they answer them. This level of complexity can then be multiplied, as most individual specific claims, each based on the first nation's particular history with the Crown, contain multiple allegations of wrongdoing on the part of the Crown or unfulfilled promises. Obviously, we take our responsibilities very seriously in this regard and try to assess each claim with care.

Within our section of the Department of Justice we have streamlined our internal processes and are constantly looking for ways to produce legal opinions in a shorter timeframe than the two to five months we currently take. We have virtually eliminated any bureaucratic steps in getting the opinion out to the client and we work on these claims in the order determined by the DIAND client, usually based on the age, how long ago it was submitted.

The two to five months of time spent on a lawful obligation opinion represents the time needed by justice department counsel to review the claim diligently. In terms of resources allocated, our fortunes more or less, if you like, follow those of the Department of Indian Affairs. What I mean by that is although the Department of Justice provides resources from its own budget, the expectation is that the bulk of the resources must be requested and paid for out of the budget of the client department responsible for the program. So in this situation we are really in the role of a service provider to the Department of Indian Affairs.

I think I'll stop there.

The Chair: Thank you, Ms. Duquette.

Mr. Robinson, did you wish add to Ms. Duquette's comments?

Mr. Perry Robinson (Acting Senior Counsel, Specific Claims, Aboriginal Affairs Portfolio, Department of Justice): Thank you. I have a few remarks to make.

Good afternoon. My name is Perry Robinson. I'm an acting senior practitioner with specific claims of legal services for the Department of Indian Affairs. I mainly assist in the coordination of Canada's participation in the public inquiries conducted by the Indian Specific Claims Commission.

The inquiries, as is the commission itself, are conducted under the authority of an order in council enacted pursuant to the Inquiries Act.

The commission, under their terms of reference, has the authority to inquire into and report on two matters: specific claims that have been rejected by the Minister of Indian Affairs, and disputes over compensation criteria. However, at least 99% of the commission's work is concerned with the rejected claims, and not so much the compensation criteria.

In a nutshell, before the commission, Canada explains the basis for the refusal to accept a particular claim for negotiation. Because, as my colleague mentioned, lawful obligation is the cornerstone of the claims policy, the central concept of course before the commission is whether or not Canada has a lawful obligation to accept a claim for negotiation. Essentially, the Department of Justice represents Canada's position before the commission. The first nations are represented by their counsel and the commission hears both sides and issues a report.

To date, since the inception of the commission in 1991, I believe they have released approximately 38 inquiry reports. They've also released a number of mediation reports, but that has to do with another branch of their business, which I'm not really involved in. At the moment there are 35 inquiries under way. These are 35 public separate inquiries under the Inquiries Act. My understanding is that overall, statistically, of all the claims that are presented to the Specific Claims Branch at Indian Affairs, 70% of all claims are accepted. That means that 30% of the existing inventory is rejected. Out of this 30%, that is your potential inventory for a claim before the Indian Claims Commission. I understand that at least 30% of the rejected 30% have gone to the commission to request an inquiry overall.

Although the commission process has been described as an appeal process, it is actually of course a public inquiry, and the commissioners do not perform a binding adjudicative function. The commission releases a report with recommendations. The commission controls its own process. They set their own deadlines for delivery of submissions and the conduct of the inquiry. One of my responsibilities is to make sure that Canada is responding to the deadlines imposed by the commission.

Those are my introductory remarks. I'd be happy to answer any questions.

● (1550)

The Chair: Thank you, Mr. Robinson.

Mr. Brassard, did you wish to present?

[*Translation*]

Capt Denis Brassard (As an Individual):

Good afternoon, I do not have a prepared written statement. I was told last Friday that I could testify before this committee regarding specific claims.

As I have not had enough time to consult any band council or first nation regarding the content of my presentation, I am appearing as an individual. I am here to testify about my experience as a professional. I have had 25 years of research experience in the aboriginal sector, including 20 years in the area of specific claims. I will touch on three or four issues which, in my opinion, are important with respect to first nations' specific claims.

If you were to ask me what is currently the main problem with specific claims, I would answer, without hesitation, that it is the wait time. It really takes a very long time for the Department of Indian Affairs to make a decision with respect to a claim. If I'm not mistaken, the delay can be laid primarily at the door of the Department of Justice, which is responsible for analyzing the claims. I understand that the analyses and the work done by the department are not being questioned here.

I regularly work in the area of specific claims. However, one of the first nations for whom I work beat an unfortunate record last September; it was the Quebec first nation that had to wait the longest for a decision from the department in response to a specific claim. This claim had been filed in 1995. Since then, not one word had been said about this claim, except to say that the file had been forwarded to Justice Canada and the Department of Indian Affairs was waiting for a legal opinion prior to making a decision. At the end of September, the minister finally agreed to negotiate, but only with respect to one part of the specific claim. Personally, I find it totally unacceptable that these people have been made to wait for 10 years.

In my opinion, the number one problem is the wait time. If you were to ask me what causes these delays at Justice Canada, I would say that, based on what I know, the problem is staff-related. This department does not have enough resources to analyze these files more quickly. Unless I'm mistaken, I believe that the situation is worse on the francophone side than on the anglophone side. All things being equal, I believe that there are fewer francophone lawyers responsible for files than there are on the anglophone side. I would be curious to know exactly how many francophone lawyers review our claims. I do not have the figure.

The second problem, in my opinion, is funding. This question is always raised during annual meetings of research directors and other researchers who work on specific claims of this type throughout the country. We are talking about funding levels which, at the outset, are inadequate to do first nations research. The budgets have been frozen for many years. In the case of the first nations for whom I work, the budget has been frozen for about 10 years. It has not been increased. Generally speaking, this is the situation that prevails elsewhere in Canada when it comes to aboriginal organizations. This is an enormous problem given that all of our costs are increasing, whether we are talking about legal advisors, archival research or travel costs. All of these costs have risen over the years, but the budgets have stayed the same.

● (1555)

My third point pertains to what is said during our meetings with the Department of Indian Affairs. We are often told that the current process, despite its shortcomings, is preferable to going to court. The department alludes to the fact that legal action is very expensive. However, if we were to make the calculation from the time that the claims are filed until the time they're resolved, we would conclude that the current process is just as long if not longer. On average, the wait time is several years. During these years of waiting, the first nations often wonder whether or not they should have gone to court for the sole purpose of obtaining a faster decision. When first nations take legal action, they do not have to deal with this infamous conflict of interest problem. That is, however, the case for the department, given that it is both judge and jury. It also holds the purse strings, because it funds the research and negotiation work.

The department brags about the positive side of the current process, but we must not forget that the conflict of interest situation still exists and has an impact on specific claims. The department often lets it be understood, during our meetings, that agreeing to these claims or to negotiating them is tantamount to doing a favour for the first nations. We are often left with the impression that the department wants the first nations to view the situation in this light. We, however, view this as a debt. These claims are part of Canada's liabilities. These are matters that Canada will have to resolve at one point.

Canada does not always have a pleasant attitude during these meetings. The first nations depend on the funding and the department's position regarding the acceptability or validity of the claims. As far as this process is concerned, the first nations are, in the final analysis, dependent in many respects. This process may be less costly than going to court. Nevertheless, I do feel that the department is carrying a weight on its shoulders and that its credibility in this area has been undermined.

Very often we are disappointed by the position taken by the department, especially when we have thought that our claim was rock solid or when it has taken a long time to get a response. We are under the impression that the department takes a position that is the lowest common denominator. It would appear that this position is based solely on its fear of being found guilty should the first nations bring the matter to court. We have the impression that the Department of Justice issues an opinion based solely on the perceived risk as to whether or not, given the circumstances, the department would win or not. We do not have the impression that the department is trying to resolve past injustices. Rather, it would appear that the minister is simply trying to get rid of a hot potato as cheaply as possible. We are disappointed by the position taken by the department, which makes decisions on the main arguments put forward by the first nations. Canada upholds arguments only if they are inexpensive and easy to deal with. In my opinion, that is an important aspect.

I also wanted to talk about provincial participation in the negotiations. I could deal with this issue quickly. Based on my experience, it has always been very difficult to negotiate when a province is involved.

● (1600)

With regard to Quebec, the province has always refused to sit down and negotiate at a table dealing with specific claims, simply because Quebec does not recognize the federal policy regarding specific claims. This has always been a very awkward situation. I remember a case involving a specific preconfederation claim. We realized that, in the view of the justice department or of the Department of Indian Affairs and Northern Development, a province had to share the responsibility involved in any preconfederation claim. We find this most discouraging, because in the first place, this kind of claim is addressed to the federal government. It has nothing to do with Quebec.

It seemed then, as it still does now, that when dealing with preconfederation claims, the federal lets the province take part of the blame. This is a very awkward situation.

If things must continue in this way, I would like to make a suggestion. In the future, the federal level should settle the entire claim with the first nation and thus take responsibility for the claim, and then it could go to the province to get its own settlement, if need be, instead of casting a part of the burden on the province by asking the first nation to negotiate directly with it.

Thank you.

● (1605)

[*English*]

The Chair: Thank you, Mr. Brassard.

We'll now begin our first round of questioning, commencing with Mr. Harrison from the Conservative Party.

Mr. Harrison, please.

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

Thank you very much to all our witnesses for being here today. I've listened with considerable interest and heard a lot about process and what not. I want to thank Mr. Brassard for pointing out that there are real impacts on first nations with these incredible delays.

I know my hometown of Flying Dust First Nation, right beside Meadow Lake, has a specific claim, a railway bed case. Now, this land is where development in the community should be taking place. It would be beneficial for both the town—the citizens of Meadow Lake—and the first nation to have that development taking place on reserve land. But owing to the fact that this particular claim has been ongoing now for over twenty years, there is a lot of economic uncertainty; therefore, development is taking place somewhere else. It has a detrimental impact both on the community and for the future economic prospects of the first nation.

So there are very real impacts for first nations and for other Canadians because of the delay.

I think we all agree that the timeframes we are looking at are too long—ten years, as Mr. Brassard talked about in one particular case. I know others that have taken nearly that length of time or are ongoing for nearly that length of time.

We have to remember as well that prior to the submission even, the first nation itself has to do a tremendous amount of research, and sometimes it can take years and years before the claims are even submitted.

So we're looking at a process that's measured in decades rather than months or even years. I don't think this is an acceptable state of affairs.

I guess my question would be—and we heard from Audrey Stewart last meeting—what is the average length of time for the research component of a claim?

Ms. Nadia Bartolini: When you talk about the research component, does that include the Department of Justice's legal analysis as well?

Mr. Jeremy Harrison: Yes, the entire research component, from the time of it being submitted to the time of acceptance to negotiate.

Ms. Nadia Bartolini: I'll divide it, because I think for the research stage we try to limit it from one to two years—just on research. Once it goes to the first nation, there's also a length of time there. I just want to divide those stages so you know that it's a little bit.... Sometimes we don't have control over these delays.

So it would be one to two years from submission to the time it goes to the first nation for review. Once the first nation has it, it can take over a year, and that we have no control over. I think once it gets to the Department of Justice, the difficulty is priority-setting. As Audrey Stewart mentioned, the number, I believe, is 296 claims right now at the Department of Justice. It's to determine these priorities that we have biweekly meetings with the Department of Justice. I can't really give an average time of how long a claim stays at the Department of Justice, but I think it's important to consider these priorities as well.

Did you want to add something?

Ms. Sylvia Duquette: Yes, I did want to add something, because it is a very good question.

We've mentioned the delays, the backlog, and the bottleneck at the Department of Justice. I mentioned a figure of two to five months, and I was very careful to say that this is hands-on time with a lawyer. What is happening is there is a backlog, obviously, at the beginning of the process before the research can be completed, but there is another huge waiting time before we have a lawyer available to look at that claim and do the legal analysis. So the work itself is taking two to five months, depending on the complexity of the claim. That's the hands-on time. But the availability of a lawyer, for the reasons I explained earlier, takes a lot longer than that, and can take up to five years.

They are doing one claim after another, but the total workload, as I explained earlier, for the 22 lawyers is 85 negotiations, 35 inquiries, 20 lawful obligation opinions, and client support. So right now what we have is a situation where the lawyers' docket, if you like, is full. When a lawful obligation opinion is completed, another one, determined by the Department of Indian Affairs, moves up to take its place.

But that wait time, that sit-in-box time, can be very lengthy indeed.

● (1610)

Mr. Jeremy Harrison: We're essentially looking at five to seven years, probably closer to seven on average for a first nation to be notified as to the negotiation on the part of Canada.

You mentioned priorities and priority-setting. How exactly does that work? How are priorities for a review by lawyers determined within the department?

Ms. Sylvia Duquette: They're not determined by the Department of Justice. We go according to the client's definition.

Ms. Nadia Bartolini: For the average number of claim submissions per year, which is 70.... An analyst is assigned to every single new claim submission. That's not where the priority-setting is, obviously. The priority-setting is at the stage when the research is complete, and then it goes to the Department of Justice. How that's done is that basically, in assessing priorities Canada will balance the date of claim submission as well as efficiency. I'm saying this because there's a balance between fairness. The older the claim, the more it's going to be dealt with first, obviously, but there's also efficiency.

I wanted to bring efficiency in, because we try to prioritize per older claim, but if, for example, a more recent claim is submitted that has a subject matter that can assist with analyzing many of the claims that are in the inventory or the new claim submissions that are coming in, then maybe Canada would prefer to deal with a more recent subject matter in a claim. It takes an example of a claim so that once the Department of Justice analyzes that example, we can use it for others in the inventory for additional claim submissions.

It's really a balancing every time we do a priority-setting.

Mr. Jeremy Harrison: Okay. I think I heard that there are currently 296 claims that are in the process, so to speak, right now. Is that correct?

Ms. Nadia Bartolini: That's in the Department of Justice.

Mr. Jeremy Harrison: Okay, there are 296 at the Department of Justice.

How many additional claims does DIAND have right now?

Ms. Nadia Bartolini: I don't have the statistic for that at this point.

Mr. Jeremy Harrison: How many claims are dealt with per year, finished per year, with first nations notified?

Ms. Nadia Bartolini: I believe, from the last committee meeting, the department was going to provide the committee with summary data on this, so these kinds of summary data will be provided to the committee. Right now I don't have them in front of me.

Mr. Jeremy Harrison: We haven't gotten that information as of yet. You're not actually sure, then, how many claims are dealt with each year, how many first nations are advised whether there's going to be a negotiation or not?

Ms. Nadia Bartolini: If you're asking how many claims are being accepted for negotiation or not by the minister per year, the average right now is 14 to 18 per year.

The Chair: You have 15 seconds left.

Mr. Jeremy Harrison: The point is there are 14 or 18 per year that are dealt with. We're getting 70 per year. Again, we're looking at an increasing length of time rather than a shortening of time. This problem is getting worse rather than better.

The Chair: Thank you, Mr. Harrison.

Mr. Cleary, please.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): One thing is sure: I won't be alive anymore to see the outcome.

I am an aboriginal and in the past I have been a negotiator for global claims, but also for specific claims. I find your timelines very optimistic. Even Ms. Bartolini talked about very short timelines.

In fact, I've had the pleasure of working with you during the most recent negotiations. Discussions went on for almost three years before a resolution was presented to the Department of Justice. So it takes a very long time. These negotiations are very long, but they could happen more quickly.

A little earlier there was talk of money. The money was lent; there were no grants involved. In the case of financial support for specific claims, the money is lent to the first nation, which must repay it when it receives financial compensation. Consequently, there is no reason why there shouldn't be any money available. I don't understand. If we really wanted to find a solution, we should... But without it, the process will go on ad in finatum. At that rate, it won't be possible and it might simply add...

You should tell your superiors that it won't be possible. It's impossible. I've often seen people from the Department of Justice hire local lawyers who knew very little about these issues and who had to do their best. The process was long and it went on forever.

Something has to be done, it has to be taken seriously, and you have a role to play in this regard. Your role is to advise the department's officials, or other authorities, to make sure that things move forward.

As Mr. Brassard also said, I'm struck by how people don't seem to care. There is little interest in specific claims. From the moment we make a claim and receive funding for our research, it seems that it's a waiting game after that. We do the research, we present it, we ask three or four questions, we add things, and so on. This can go on for a very long time. I've seen the Atikamek-Montagnais Council spend between seven and eight years on research, but it wasn't actually research, it was to answer questions. We had to start all over again; it was like a wheel which kept on turning. You can't say that you are tackling the issue and that you will settle this matter in a short and specific period of time.

There is another part which is extremely important, namely when you want to negotiate. Just imagine how long it takes to assess a compensation claim when you bring together two different evaluation groups. I've seen one situation in which negotiations went on for three years until both sides finally reached an agreement on the assessment. The department had hired people who of course came up with the lowest possible assessment. We had our people who worked out the highest possible assessment. There followed discussions and negotiations on the assessment itself.

But I had the problem solved, because we agreed on the choice of an organization which conducted the assessment; we agreed on the criteria.

It would therefore be easy to solve a number of issues if a serious analysis of the process were done, whereby native groups could receive the results beforehand.

Don't forget that the reason they want a resolution is because the money will be useful. If chances are that negotiations could lead to a one-million-dollar compensation award, and if the amount is paid out immediately instead of 10 years down the road, well, that's much better.

My question is for you. Do you regularly meet with native groups and officials to evaluate the process?

● (1615)

[*English*]

The Chair: We're limited to a certain timeframe for every speaker. Could you please keep your answers very short, especially if you're all going to endeavour to answer, so that we can move on?

● (1620)

[*Translation*]

Ms. Nadia Bartolini: I will address Mr. Cleary's question.

I would first like to clarify a couple of issues. First, it's true that while negotiations are ongoing, money is lent to first nations. However, as far as research is concerned, monetary contributions are made. The money is given to first nations. I just wanted to clarify that.

Second, the timelines I've referred to apply to fairly routine claims. These claims are very specific and involve specific issues which correspond to our policy.

When a claim is a bit more complex—when some parts involve global claims and other specific ones—the department might take a little longer to assess the claim.

In answer to your question, as Denis Brassard said, we meet annually with organizations representing first nations, and with native organizations, on the issue of research. They will often suggest ways for us to improve the process, and we do the same within the department, as well.

I believe that we now have the ideal opportunity to review our policy, which goes back 30 years. In fact, we are doing that now. I think that Audrey Stewart mentioned this the first time she appeared before the committee: we all agree that we want to have a re-engineering process to avoid delays, which, as it now stands, are fairly long.

So the answer to your question is yes.

[*English*]

The Chair: Do any of the remaining three of you wish to comment, very briefly, on the question?

Ms. Sylvia Duquette: I think one of the things that was raised was the idea of the importance being attached, for example, in the Department of Justice, and of course we're there to support that program.

The relative allocation of resources between different programs is not something we decide on ourselves, obviously. These are decisions of a higher political order.

I would not want you to take from this that we don't take our work very seriously. From the point of view of the Department of Justice, we're very aware of the validity, if you like, of these claims, or the foundation of these claims, in the sense that we traditionally find in at least 70% of the cases that there is an outstanding legal obligation. Maybe it wouldn't be upheld by a court of law, because of what I explained earlier about laches and limitations—but it is certainly something we are very aware of.

[*Translation*]

Capt Denis Brassard:

I simply wanted to ask the questions I raised a little earlier. How many francophone lawyers are working on specific claims?

Ms. Sylvia Duquette: I've worked it out: at the moment, four lawyers are working on specific claims. That may be because of current priorities, but we are dealing with fewer cases from Quebec than cases from other parts of the country. The francophone lawyers want those cases. As Ms. Bartolini explained, the system establishes its priorities based on the date a claim was made and on other factors.

● (1625)

[*English*]

The Chair: Thank you, Ms. Duquette.

Mr. Valley.

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

I have a number of short questions, and I'll start with Ms. Bartolini.

You were asked about an average time. You had a very good answer, but you said you didn't have an average time. It's something I think we'd like to know. You must know how many cases you get in. I know there are reasons for the delays; you explained them very well. But I'd like you to try to give us an answer in the future, if not sooner.

I'm curious. When you get seventy new cases a year, what do you say to the people who sent in the case this week or last week when you know that at that rate you're going to be an awfully long time getting to them? What kind of response do they get from your department that gives them some kind of encouragement even though the timelines are going to be difficult?

Ms. Nadia Bartolini: I think every first nation knows the timelines right now are quite long. Most of the first nations we discuss with, along with the analysts assigned to the files, have informed me that at least the first nation has someone from the department actually examining their claim. So there is communication at the front end.

Something that's very important—and we're here today to discuss the research—is the actual evidence put before us. Because it's all based on lawful obligations, we just need to make sure the evidence is complete.

First nations understand this, and I think that in the first couple of months or the first year when it is within the research stage, the communication goes fairly well with the first nations. They're aware of that stage. It's the longer term that they have more difficulty with. It is very frustrating to them and we have calls regularly on that aspect.

Mr. Roger Valley: Ms. Duquette mentioned that there are 22 lawyers across the country working on this. How many researchers would you have in your department, so that when a claim comes in from a riding, they can reasonably expect a response? You say the first few months works fast. How many resources do you have to move those first initial steps?

Ms. Nadia Bartolini: Currently we have nineteen full-time employees across the country, working in the research unit.

Mr. Roger Valley: They're not all lawyers, are they?

Ms. Nadia Bartolini: No, we have no lawyers. Fifteen of those are the actual claim analysts. So we have fifteen full-time employees working on, as you can imagine, a lot of claims. It's a big workload.

Mr. Roger Valley: Ms. Duquette, just on a lighter note, I was going to say I found the problem in your office to be 22 lawyers, but I always tease my colleagues about the number of lawyers we have around here.

You mentioned a couple of things that I'll have to ask you about, because I'm not sure if I was clear on them. You talked about legal obligation in your department, and you mentioned unfulfilled treaty obligations. What would your department see there? What would that be? Can you give me an example of what may or may not hold up a case?

Ms. Sylvia Duquette: Sure, and Perry can add a word or two if that would be helpful.

Sometimes under historic treaties, for example, there have been promises of land and reserve land. Either the land has not been provided or not all of the land promised under the treaty has been provided, so there's a claim by the first nations to have that land.

Other kinds of benefits might be things like agricultural provisions in treaties. There might have been a treaty promise that certain agricultural implements would be provided to first nations that wanted to take up farming, but those implements may never have been provided. We apply the law to both determine if the obligation is owed and to determine what the benefit might look like if modernized, in accordance with the jurisprudence.

Mr. Perry Robinson: The agricultural benefit provisions of the numbered treaties that stretch right across Canada are a very interesting and recent claim that has come in. Canada has actually accepted a number of those claims, and we're currently negotiating them.

Mr. Roger Valley: Would some of the issues you mentioned be compounded by provincial and municipal jurisdictions? Is that what drags out some of the issues?

Ms. Sylvia Duquette: On treaty claims—and perhaps Perry can again add to this—those obligations are obviously owed by the federal Crown to the first nations. The provinces tend to get involved, for example, if lands are going to be provided as part of a settlement. Often those lands are lands within the province, of course, so there has to be some cooperation there.

There are other sorts of claims in which the provinces have more implication, but I don't know if you want me to address that issue at all or not.

● (1630)

Mr. Roger Valley: Sure.

Ms. Sylvia Duquette: I'll pick up on something Mr. Brassard said as well. It's the idea of who is responsible for what.

Obviously we have constitutional provisions in sections 111 and 112. One of the issues here, though, is that property was transferred to the provinces at Confederation. The provinces took on certain responsibilities and jurisdictions, the feds took on others. Sections 111 and 112 of the Constitution deal with who is liable and who is liable to indemnify. Frankly, we haven't had any decisions dealing with that issue since a few years after Confederation. That's one of the cases in litigation today, and it's in litigation in the Whitesand case in Ontario, through which we're trying to get some clarity around that.

Mr. Roger Valley: You mentioned that about twenty opinions are given a year by your department, with anywhere from two to five months from hands-on to when you actually have everything in place and can actually make a decision. Have we been doing better or worse in recent years?

Ms. Sylvia Duquette: Let me perhaps clarify hands-on before.... Believe it or not, we're doing better. To the extent that it's possible, we have been doing it on our own. We have internally streamlined in the justice department, and we're also working with clients collaboratively to streamline the interface between the two departments so that there's no re-work, duplication of work, or any of those kinds of things that can slow down a claim.

I'm sorry, but I've forgotten the original thing I was going to answer.

Mr. Roger Valley: Yes, and I forgot too.

You mentioned that you're doing better, not worse, because there are twenty opinions, and that every year we can expect the number of opinions that are delivered by your department to go up.

Ms. Sylvia Duquette: Yes.

I wanted to clarify hands-on time. The hands-on time is from the time a lawyer picks up the file, looks at it for the first time, and goes all the way to preparing and delivering the opinion to the client. That's the two to five months of full-time work I'm talking about.

If you wanted to look at it in a re-engineering way, the cycle time is much longer. As I mentioned, there is a whole whack of time before we have a lawyer available to pick up that file, look at it, and do the legal analysis, because we have 22 people and we're spread out across that work.

The Chair: Thank you, Ms. Duquette.

We'll now turn to Mr. Harrison, for round two.

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

I'm constantly frustrated with the speed at which government works in this place, or maybe doesn't work, more precisely. As an example—and we were talking about this earlier—when Preston Manning first got here in 1993, he tried to get the water pitchers changed. About a month ago, we got these new ones. It took thirteen years to change the water pitchers at committee meetings. I guess that's an example of how quickly things work.

An hon. member: It's the same water, though.

Mr. Jeremy Harrison: It's the same water? I don't know.

My question, though, is for the people here who work every day on the specific claims research side of things. What would your recommendations be for how the process could be speeded up? Please be candid.

Ms. Nadia Bartolini: I guess what I can say is—and I don't want to have a personal opinion about this—I think everyone in the research stage is going in the same vein, especially in our sector right now. I think one of the major delays is that claims are being treated one by one. That's not bad in itself, because many claims are unique, but we realize many claims have common interests or common subject matter, and I think that's what we want to discuss more and more with the Department of Justice—to look at some type of foundational research on particular issues.

If there is foundational research on one aspect—and I'm just going to give as a very broad example leagues and miles in the Ontario Robinson-Huron Treaty and the Robinson-Superior Treaty as well—if we look at that issue, then we, as Canada, can examine with first nations what every first nation has brought forward in terms of evidence. We can find additional evidence as well, to come up with a complete understanding of the facts relating to leagues and miles. If we're satisfied this is the bulk of the issue, then maybe—and this is what we're discussing internally—the Department of Justice can examine that issue and then we can discuss issues piecemeal with each first nation.

This is something we're thinking of more and more because we have such a huge number of claims. We're trying to group them together to have the justice department examine subject matter like this.

● (1635)

Mr. Jeremy Harrison: One of the presenters mentioned that one of the problems was the law itself is not as clear as it could be on a number of facets of these claims. When I was in law school, I studied some of the cases in detail, particularly having to do with the railway bed cases. I guess my question would be, when there is no clear case law, how are certain things dealt with? How is that determined by the departments when looking at these?

Ms. Sylvia Duquette: It's not unusual for a lawyer to be in the situation of not having cases exactly on point. One of the things we do as lawyers is try to draw analogies. We draw from principles, we draw from precedents, and we try to apply and predict. In some cases we have to try to take the indications of the court of where they might go if they don't have a decided case. For example, Marshall came along at one point, but Badger had already perhaps previewed where Marshall might go, so we were able to provide some advice. Sometimes it is extremely difficult. There are other areas where we have more settled law and it is less difficult.

Mr. Jeremy Harrison: I guess that gets back to the conflict of interest problem, where we have the federal government both a party to the issues and the judge in making the decisions.

I wanted to move on to something else, and that had to do with the question of contracting out some of the research. Could you expound on that a little further?

Ms. Nadia Bartolini: Sure. When we contract out, the specific claims section develops a package called “requests for proposals”. This is done in conjunction with our contracting services at the department. This package outlines research and analysis terms of reference and is posted on MERX, a system that tenders contracts for public sector bidding for business opportunities with the federal government, the provinces, and municipalities. The offer goes out on MERX and it outlines exactly what research and analysis we want. Once we get all these proposals, the specific claims section will examine these in terms of content, as well as cost. Then we evaluate whether or not these bidders will be retained.

I don't want to go into too many specifics at this point, but this year we have a total of 51 out of 61 bidders retained on the non-aboriginal list. On the aboriginal list, four bidders came in and we retained two of the four.

● (1640)

The Chair: Thank you, Ms. Bartolini.

Mr. Smith.

[*Translation*]

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

My first question is for Ms. Bartolini. You said that you conduct research on claims and that you have a fair idea of how many cases your department still has to process. You said that about 70 claims are filed every year.

In the normal course of events, would these 70 cases be reviewed throughout the year, or rather in a six-month period? Do you have a general idea of how much time it takes to review all these cases?

Ms. Nadia Bartolini: Yes. It usually takes between one or two years, but it's closer to one year. However, for now, research takes between one and two years, since there are so many claims.

Mr. David Smith: So, once a case is reviewed, do you ask the Department of Justice to analyze your research?

In addition, if I'm not mistaken, the Department of Justice lends money to first nations. Once the first nations reach an agreement with the department or with the government, the money is kept for legal fees. Is that correct?

Ms. Nadia Bartolini: I'm not sure if you are referring to the money...

Mr. David Smith: Take, for example, land claims.

Ms. Nadia Bartolini: Yes.

Mr. David Smith: An amount is worked out once the process has been completed.

Ms. Nadia Bartolini: Yes.

Mr. David Smith: Costs were incurred for research. First nations don't pay for this, do they?

Ms. Nadia Bartolini: There are two processes: contributions for research for first nations, and loans.

As Mr. Cleary said, the expenses apply to the entire negotiation process of the first nation, and only to the negotiations.

Mr. David Smith: What I understand from all that is that close to 300 files are at the Department of Justice at the present time.

Ms. Nadia Bartolini: Yes.

Mr. David Smith: There are 296 files, to be specific.

Ms. Nadia Bartolini: Yes.

● (1645)

Mr. David Smith: A number of people living on these reserves will have time to die before these files are settled. Our objective today is to work together to try to find ways of speeding up the process.

Earlier, you spoke about combining some claims in order to find solutions. That is one possibility. I am the member of Parliament for the riding of Pontiac. There are two reserves in my riding, including the one called Kitigan Zibi, which has about 30 land claims. The possibility of combining these claims is being considered. I hope that happens for this community, because the claims could be settled more quickly in that way than if they were dealt with individually.

What disturbs me is the fact that there are some 300 at the Department of Justice. I know there are only 22 lawyers, but the people living on first nations' reserves are suffering a great deal. We have to find solutions to allow them to move on to another stage in their lives, once their land claim is settled, and to improve the life of their community.

I'm sure that that is one of your objectives as well. People doing jobs like yours try to find the appropriate corrective measures for the community as a whole.

Are you considering any other solutions?

I now come back to the question of money. If money is loaned to the first nations, what is stopping the Department of Justice from speeding up the process by using outside resources to analyze the remaining 300 files? Do you see what I am getting at?

Ms. Nadia Bartolini: I have a problem with the question about funding. The other part of your question suggests that the Department of Justice could hire outside experts...

Mr. David Smith: You are the client of the Department of Justice, are you not?

Ms. Nadia Bartolini: Yes.

Mr. David Smith: Who pays the cost associated with the claim—say of $10,000? Is it your department, or the community?

Ms. Nadia Bartolini: The department pays.

Mr. David Smith: Your department will therefore have to pay the cost of analyzing these 300 files. Is that correct?

Ms. Sylvia Duquette: The lawyers hired for this program are paid out of the budget of the Department of Indian and Northern Affairs. This department decides how many lawyers will be assigned to specific claims or to claims generally.

Mr. David Smith: I understand that, but earlier you spoke...

[*English*]

The Chair: Thank you, Mr. Smith.

Mr. Brassard, I know that you had your hand up, but I think time will permit all of us to speak for one or two minutes at the end, so if you just want to retain that thought....

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I've just become familiar with the general issue of aboriginal affairs. Despite the fact that you are nice and that you made an outstanding presentation—both of you are really very nice—I am shocked. It seems to me that anyone would be shocked on hearing about the delays and the work being done.

I am a lawyer myself, Ms. Duquette, as are you. Do you have any idea about the number of cases heard by the Supreme Court of Canada every year? Would you tell me that your 22 lawyers cannot work as hard? Is the Indian Act so much more complex than the work done by the Supreme Court justices? As far as I know, the latter hand down over 70 judgments a year, and all nine of them study them together.

I think it is incredible that lawyers who are specialists in the field take two to five months to give you an opinion. The idea of combining similar cases should have occurred to you long ago, in light of the delays you are dealing with.

How long have you been responsible for this unit, Ms. Duquette?

Ms. Sylvia Duquette: Two years.

Mr. Serge Ménard: Did you complain about the fact that there was an abominable lack of lawyers?

Ms. Sylvia Duquette: Yes.

Mr. Serge Ménard: Who did you complain to and what was the response?

Ms. Sylvia Duquette: As I stated earlier, I am not responsible for resource allocation. That is a political decision, in the same way that other resources and budgets are: where should the money go? How will the resources be allocated amongst the various programs? I would say that I stay current. No one can manage a program with this kind of backlog. Who wouldn't want to have no backlog and to have the means to respond effectively to these important claims? However, I have to accept the fact that my program is not the only one managed by the government or the Department of Aboriginal Affairs and Northern Development.

Mr. Serge Ménard: Ms. Duquette, who do you think we should call before this committee in order to find out when the necessary resources will be allocated in order to resolve this issue? Perhaps it would help you to tell him that this has been raised by a wicked separatist, although I am a sovereignist, not a separatist; you'll understand the difference one day. You could tell him that one of the things that shocks me is that the federal government always has money to infringe on provincial jurisdictions but doesn't have any for its own jurisdictions. How is it that every year there is a surplus of several billions of dollars?

Ms. Duquette, what supplementary amount would be required for...

● (1650)

[*English*]

The Chair: Mr. Ménard, if you are asking this witness to account for surpluses, that's clearly well outside our bailiwick. So you might want to ask a relevant question.

[*Translation*]

Mr. Serge Ménard: You're right, but I was trying to help formulate the question. I was just getting to the relevant question. How much money would you need to hire enough lawyers to get rid of your backlog in two years's time? Do you have any idea?

Ms. Sylvia Duquette: Yes, but I would like to explain something first. It's not that I don't want to answer your questions, sir, but you need to understand that a civil servant's role is not to justify political decisions.

The answer to your question is yes, I do have an idea, because I know what kind of work that would involve.

[*English*]

Maybe it would be better in English.

If the rate of about 70 claims per year continues, then to do the lawful obligation opinions for the Minister of Indian Affairs; to support all the negotiations, or 70% of those, per the historic rate accepted out of those claims; to go and present before inquiries, etc., on those claims not accepted by the Minister of Indian Affairs for negotiation, we would be talking of between 50 and 60 lawyers. That was, I think, the number of lawyers originally planned for this program, but cuts have occurred over the years.

Mr. Serge Ménard: Did you say 15 or 50?

Ms. Sylvia Duquette: It would take 50 to 60 to do all of that; I'm not talking about 50 to 60 doing lawful obligation opinions.

The Chair: Thank you, Ms. Duquette.

Ms. Karetak-Lindell.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): Thank you, Mr. Chair.

I want to get a little more clarification on the pre-Confederation cases. I think we touched on them a little bit, and on how you felt that some of them fell under provincial jurisdiction.

I think Mr. Brassard mentioned that he would like to see them taken on completely by the federal government. Is that what I understood, and then the federal government would negotiate with the provinces on provincial jurisdiction? I guess what I'm looking for is just a little more clarification on some of the pre-Confederation cases and whether you think that is the solution for these types of cases.

Ms. Sylvia Duquette: Obviously, without providing our legal opinion on the matter, I think it might be helpful for you to know some of the issues that are raised. I understand that suggestion.

Why doesn't the federal government, for example, just go forward, negotiate the claim, settle the claim, and then if there is some provincial responsibility for the claim, seek indemnification from the province? I mentioned earlier the Whitesand case—where these positions are public—but one of the issues is whether we can actually get indemnified by the province if we settled the claim. One of the things that happens is that when you're seeking indemnification from another party, it is generally necessary to mount a vigorous defence of the claim in order to make good on an indemnification claim against the other party.

So one of the issues or legal questions—and I am going to tell you that there is no answer to it at present—is whether it's a proper process to settle a claim, for example, and then try to go and see the province when the fact of settling the claim without a vigorous defence may in fact not allow the federal government to seek indemnification from the province.

These are the kinds of legal issues that have to be examined. So it's a little more, perhaps, than meets the eye.

● (1655)

Ms. Nancy Karetak-Lindell: I think part of it is you're dealing with the unknown in a lot of these cases, versus the Supreme Court, where they're probably challenging a law that's already been passed in the country. You're dealing with issues that have not been dealt with, according to the first nations. So you're treading through unknown waters. That's part of it.

I want to go back to another point that we heard at the last session; I think it was on Thursday. They talked about having guidelines for the very minimum package that should be received by the Department of Indian Affairs. When you talk about meetings between the different parties, whether it's with the justice department, and INAC, and then with the first nations group, are you trying to establish guidelines so that a package you received is going to be complete and that would maybe shorten the time people spend working on it? Who determines those guidelines? I want to also give Mr. Brassard a chance to comment on this one if there's time. I know you didn't have much time to talk about having the government take on the full case. There are two questions there.

Ms. Nadia Bartolini: At the annual meetings that were discussed, yes, we do establish some discussions on what the federal government likes to see in the claims submission, because, as you know, whatever we submit to the Department of Justice is usually twofold: the first nation's submission and Canada's additional research. We have basic guidelines that are on the website, for example, for all first nations to have access to, but if ever we have specific requests from first nations, if they wish to meet or discuss it over the phone, on how best to provide that package, we are always available to provide that. We have a written package that we're right now reformulating for it to be a little more precise in terms of guidelines. But I think generally it's on the website and there's access to everyone.

[*Translation*]

Mr. Brassard, did you have something to add?

Capt Denis Brassard: I would like to make two points. First, packaging claims has been happening for several years, it's nothing new. In my opinion, it neither improves nor does it increase the efficiency of the current process. Furthermore, if the department is afraid of negotiating with the province after a resolution has been reached with a first nation, then imagine how the first nation feels about negotiating with the province, with no federal assistance, very little support, and especially no provincial policies to deal with these claims.

[*English*]

The Chair: Thank you, Ms. Karetak-Lindell.

Mr. Harrison.

Mr. Jeremy Harrison: My questions have been touched on already, Mr. Chair.

The Chair: Does anybody else from the government side wish to comment?

Mr. Eyking.

Hon. Mark Eyking (Sydney—Victoria, Lib.): Yes, Mr. Chairman.

It's the first time I have been on this committee, but my riding has three native communities. The largest one is Eskasoni, which is the largest Mi'kmaq community in Atlantic Canada. I'm sure some of their claims are on the list that we have in Nova Scotia.

My question is on comparing ourselves to other countries, maybe Australia or New Zealand, because I'm sure they have the same situation in dealing with their aboriginal claims. My sense is that New Zealand aboriginals, especially, and maybe it's because they are a major part of the population, seem to have a lot better progress with their claims and the claims of the aboriginal people. Do you know much about that? Could you comment on it? Do they have a different system or a better system than we have?

● (1700)

Ms. Sylvia Duquette: They definitely have a different system. I'll only comment that one thing to keep in mind is that of course in New Zealand there is one aboriginal group, the Maori, so there's a certain amount of homogeneity there. I wouldn't be able to speak further on that.

Ms. Nadia Bartolini: I can't either, on this particular question.

Hon. Mark Eyking: The other thing is there's a history of our dealing with native claims. I'm sure this has been going on for a couple of hundred years, or.... When did we really get involved with the legal process of native claims? Was it a hundred years ago, or was it just that somebody in government decided whether they got something or not, or was it always a legal process that took a long time?

Ms. Sylvia Duquette: I think both the current comprehensive claim policy and the specific claims policy were developed by the Department of Indian Affairs in response to the Calder decision way back in 1973, when for the first time it became clear that some of the obligations to aboriginal groups in Canada were legal in nature. They weren't moral duties; they were interests, and interests that had to be dealt with.

Hon. Mark Eyking: Do you see many groups or communities going a different route? You mentioned earlier that some are going to the legal system and bypassing your claims system. Is that what you were stating earlier? Is that very common, and is it very successful for them?

Ms. Nadia Bartolini: I don't think that's exactly what we were.... I think it's always an option for first nations to go there. I'm not sure of the statistics, but I think the number of first nations that enter the specific claims process and then, for various reasons, decide to go to the court is very minimal, actually.

Hon. Mark Eyking: Why is it very minimal? Is it because they can't afford it? Is it that you don't pay the legal costs, or what is it? Is it that they don't get it any more quickly? What would be the reason for them not to go to the courts?

Ms. Sylvia Duquette: This is more Nadia's area, perhaps, but for those claims accepted, over 90% are resolved through negotiations. I'm sure improvements can be made to negotiations as well, but the success rate is very high.

For a certain percentage of those that are not accepted for negotiation, the litigation will be reactivated. Often the first nation has filed a claim and put it in abeyance in the hopes of trying to resolve it through this ADR process. Then it is reactivated if it's not resolved.

I don't know if that helps you.

Hon. Mark Eyking: I think, as many members have already stated, this whole process seems to be taking far too long, especially for so many native communities that are trying to change the way they're living. We as governments are trying to make more accountability in our systems, even our medical system, and our waiting times. There's a whole report card being done, and maybe we should have a report card on the waiting times to get these things done in some of our departments. It's hard to say, but maybe it would speed up the process if there were some sort of penalization after so many years of trying to agree on something, and a band would get money or whatever.

Do you think there's anything in there that could speed up the process? Is there any trigger of compensation, anything that could help the thing move faster?

The Chair: May we have a brief answer, please, from anyone who wishes to answer?

Ms. Nadia Bartolini: Since we are dealing with public funds, a specific claims process is dealing with lawful obligations, so I don't think it's a situation in which we would contemplate providing compensation for incentive. I don't think that's where we're going with this program and policy.

● (1705)

Ms. Sylvia Duquette: Maybe it's worth emphasizing that we're talking about the current policy and the way of dealing with things. This policy, as constructed, is very labour-intensive. It's very labour-intensive on the client side. It's very labour-intensive on the justice side, because it involves sitting down with reams of documents, going through each case individually, and sorting out the law—but the law as applied backwards in time. Under the current policies, with the current resources, there's a constant testing and retesting and searching for opportunities and savings. We've done a lot of that, but at a certain point in time, it is a resource issue.

The Chair: Thank you, Ms. Duquette.

Mr. Cleary.

[*Translation*]

Mr. Bernard Cleary: Mr. Brassard, my question will be brief.

You can see that we're trying to improve the system and above all make it more efficient by cutting delays.

Do you have any suggestions to make that we haven't already heard?

Capt Denis Brassard: My suggestions were in my brief.

Obviously the process is cumbersome. The Crown's conflict of interest is problematic and raises a fundamental question: is the Crown truly interested in correcting past injustices?

Everyone acknowledges that the delays are endless and that many, many years will be required to deal with past claims, outstanding claims, not to mention future claims.

I believe that as long as there is a lack of a true commitment to correcting past injustices suffered by first nations, then unfortunately the process will not be able to resolve this situation and nothing will change.

[*English*]

The Chair: Thank you.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard: Mr. Brassard, I am new to this file, but I strongly suspect that the reason why the department, and more specifically Ms. Duquette's department, does not receive enough funds, is that the government is afraid that the department's decisions might become far too expensive. I understand why Ms. Duquette cannot respond to that.

Would you correct me if my suspicion is groundless?

Capt Denis Brassard:

I think that you are reading the situation correctly, but as I said at the outset, the first nations are not asking for handouts, they want Canada to pay back its debts to the first nations. We are dealing with past injustices that must be remedied in a way that satisfies all parties.

Unfortunately, things do not seem to be moving ahead, and I have no solution in sight.

[*English*]

The Chair: Thank you, Mr. Ménard.

I had indicated earlier that if any of you as witnesses felt that you were shortchanged in terms of time, I would give you an opportunity. As a committee, we have some other business to deal with that would consume 10 or 15 minutes, so you have no obligation nor need feel under any obligation to say anything further. You've all presented at some length, clearly. If any one of you, though, wishes to wrap up with a comment for a minute or so, please feel free to do so.

All right, if not, then thank you very much on behalf of the committee for coming and presenting in a cogent fashion. Thanks very much, ladies and gentlemen.

As far as the committee is concerned, there are two matters.

You'll recall that there was some flexibility afforded us with respect to witnesses, and through the clerk I've received a letter from a Mr. Valley requesting that Chief David Gordon, Chief of Lac Seul First Nation, appear before us. Chief Gordon has expressed an interest in appearing before this committee.

I'm hoping that in the spirit of fairness nobody will object to the clerk requesting that Chief Gordon appear. Is that fair to say?

Some hon. members: Agreed.

The Chair: All right. Thank you.

And secondly, I've been handed an operational budget request, which I believe is just being circulated now.

I'm assured by the clerk that this is a standard request in the amount of $20,000 for 15 witnesses, the witness expenses being $18,000, and some other miscellaneous expenses.

Can I have a motion that this operational budget request be approved?

● (1710)

Ms. Nancy Karetak-Lindell: I so move.

The Chair: Seconded by Mr. Cleary.

(Motion agreed to)

Until Thursday morning at nine o'clock, then. Thank you.

The meeting is adjourned.

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