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Tuesday, June 12, 2007

Chair

Mr. Colin Mayes

Standing Committee on Aboriginal Affairs and Northern Development

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● (1150)

[*English*]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I would like to convene the Standing Committee on Aboriginal Affairs and Northern Development of Tuesday, June 12, 2007.

Committee members, you have the orders of the day before you. We're continuing our study on Bill C-44, An Act to amend the Canadian Human Rights Act. We'll have two sets of witnesses today. The first witnesses are from the Native Women's Association of Canada. With us today we have Mary Eberts, legal adviser, and Yvonne Boyer, legal adviser. After, we will be entertaining the Assembly of First Nations, the national chief, Phil Fontaine.

I apologize to the witnesses that we were interrupted by votes. I would ask the committee if they would like to extend the meeting past the one o'clock time set, if we can.

An hon. member: I'm sorry, I have a meeting at one.

Another hon. member: So do I.

The Chair: Well, we only need three people to continue. I think I'd like to do that. I know the Native Women's Association of Canada was interrupted last time, and we'd like to give ample time for them to speak. Maybe we can go until 12:30.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Here is my suggestion, Mr. Chair.

I am going to let my colleagues take their seats. I will wait until the interpretation begins, because that is certainly very important.

Mr. Chair, we have just received a message informing us that the National Chief of the Assembly of First Nations, Mr. Phil Fontaine, will not be with us today. We have only just been informed of this. He will be replaced by his executive director.

I do not know what our schedule looks like but I know that we are sitting on Thursday, unless my government colleagues tell us differently. We could perhaps hear from the native women today and take all the time that we need until 1 p.m. We could welcome National Chief Phil Fontaine on Thursday in the first hour of the meeting. That would probably take care of everyone.

I agree with you, Mr. Chair. I respect the native women too much not to grant them the time that they deserve. We could continue with them until 12:30 p.m. or 12:45 p.m. and the National Chief could join us on Thursday. That is my recommendation.

[*English*]

The Chair: What's the pleasure of the committee?

Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): I'm maintaining a position held in a previous meeting. I expressed at that time that our party's position was that the witnesses who had been called previously have already made submissions to this bill. As such we would like to proceed with the clause-by-clause. So our position hasn't changed.

The Chair: Madam Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): I think it's important that we hear from the Assembly of First Nations. I'm prepared, if there's a willingness of the committee, to stay today. If not, I think we have to do it on Thursday, but I think it's imperative that we hear from the Assembly of First Nations.

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Because of the respect that I have—and it is an enormous respect—for the Assembly of First Nations and its National Chief, I have to say that he is the one I would like to hear from. Today we learned that it is the executive director who will appearing. I would like to hear from the National Chief himself.

This bill is so important that I want him to appear before us. Perhaps he is available. I see that his executive director has just arrived, perhaps he would be able to tell us if the National Chief would be available on Thursday. We have just been told—I have just found out—that Mr. Fontaine will not be with us today. I think that it is important that he be here and that we hear from him.

[*English*]

The Chair: Mr. Bruinooge.

Mr. Rod Bruinooge: Mr. Chair, aside from Mr. Lemay's source of information, I'm not sure if we've received any official pronouncement from the national chief.

[*Translation*]

Mr. Marc Lemay: He is there. We can check. The Clark can check in two minutes. We could begin hearing from the witnesses.

[*English*]

Mr. Rod Bruinooge: Okay.

The Chair: The clerk has not been advised that National Chief Phil Fontaine will not be here as of the convening of this meeting.

Mr. Rod Bruinooge: Should he arrive later in this hour, I'm sure we could make arrangements to extend the meeting.

The Chair: I have asked the clerk to check with representatives from the AFN, and National Chief Phil Fontaine will not be here. There are representatives here, so the committee can ask questions of them. We can deal with it at this meeting. Unless I hear otherwise, that's what the chair will do.

We will continue with the witnesses we have from the Native Women's Association of Canada until about 12:45. Then we will hear from the AFN representatives who are here now. Unless I hear any motion otherwise, that's the course of the agenda for this meeting.

I'll ask the witnesses to please make your presentation. You have up to 10 minutes, and then we'll ask questions. Thank you for your patience.

● (1155)

Ms. Yvonne Boyer (Legal Advisor, Native Women's Association of Canada): Thank you very much for the time considerations.

My name is Yvonne Boyer. I am one of the legal advisers to the Native Women's Association of Canada. My colleague, Mary Eberts, is with me. I will be making the opening statement, and together we can answer questions following my presentation.

President Jacobs and Ellen Gabriel were before you not that long ago and gave you a fairly detailed outline of where the Native Women's Association stands on these issues. Just to recap, I have eight points that I would like to clarify that came out of their presentations. I'll start with those, and then we would like to comment on the position of Indian and Northern Affairs and also the Canadian Human Rights Commission.

First of all, in relation to the repeal of section 67, we want to state that there is full agreement that this is long overdue. But there must be meaningful consultation as a strong first step in an evolving and collaborative process.

Capacity-building and education are necessary, and these are key factors in communities when they're implementing their own mechanisms of protecting human rights. What we're looking at as a timeframe is a minimum of 36 months from the repeal of section 67 to the coming into effect. This is to provide adequate consultation and to put into place capacity-building and education.

There has to be a balance between collective rights and individual human rights, without jeopardizing either set. A core of this issue is to address conflict through various forms of indigenous legal traditions that allow the communities to decide how best to address the conflicts themselves.

An interpretive mechanism is also very important to guide the application of Bill C-44. The process for deciding what would be included in the interpretive provisions would be addressed during the 36-month period before the act came into force.

In relation to INAC's position on some of the key areas, the Native Women's Association disagrees with INAC's stance that there already has been consultation because of various initiatives in the past to repeal section 67 and respectfully disagrees with the statement that there have been significant consultations in the past 30 years.

Further, the position that INAC has taken that there has been no direction from the Supreme Court of Canada regarding a duty to consult before passing legislation is directly contrary to the recent ministerial representative's report on matrimony and real property and the legal opinions she garnered—

Do you want me to slow down? I'm getting excited.

In relation to her ministerial representative's report on the duty to consult, Wendy Grant-John garnered legal opinions on this important issue. In fact, the result of these legal opinions was that she strongly stated that Canada needs to develop a policy on consultation and hasn't done so.

In their presentation, INAC minimized the potential impact on first nations of repeal of section 67, while also admitting they had done no real analysis of that impact.

In sharp contrast with its present position, the government expressed a number of concerns to the La Forest commission. This is recorded by the commission in its year 2000 report, and it's on page 129. These included: that the lifting of section 67 might lead to retaliation against claimants and extra costs to aboriginal governments called to defend their actions; that a period of transition would allow aboriginal governments to review their practices; that new litigation against the department might have an adverse effect on resources available for aboriginal programs; and that aboriginal people, especially women, will need to be educated about asserting their rights. Those statements that were made by INAC are in direct contradiction to their present position.

The Native Women's Association has made a well thought out proposal dealing with all of these issues, including consultation, capacity-building, education, and the bridging of indigenous legal traditions as a foundation and implementation of human rights after the repeal of section 67. To date, the government has not responded to the Native Women's Association's proposal.

● (1200)

NWAC's opinions on submissions made by the Canadian Human Rights Commission are as follows.

The Canadian Human Rights Commission has recommended that the minimum of 18 months before the act applies to first nations should be extended to a significantly longer period. NWAC agrees with this position but prefers a minimum of at least 36 months.

The Canadian Human Rights Commission would like to see an interpretive clause, as recommended by the La Forest review in 2000. NWAC agrees that an interpretive clause is necessary.

On June 7, 2007, the Canadian Human Rights Commission suggested wording for this clause. NWAC, however, disagrees with that approach and believes the final wording should be settled during the consultation phase that NWAC has called for.

The Canadian Human Rights Commission points out that to date no new resources have been allocated to support the commission's initiatives to engage with first nations stakeholders or to plan implementation. NWAC considers the need to provide resources for capacity-building and consultation is very urgent and must be attended to promptly.

Thank you.

The Chair: Thank you very much.

Do you have a further presentation, Madam Eberts?

Okay, we'll move on to questions.

Madam Neville, please.

Hon. Anita Neville: Thank you.

Thank you for coming back. We very much appreciate your taking the time to respond. It is important that we hear from you.

You referenced the Canadian Human Rights Commission and their interpretive clause. In fact, what they are recommending is an interpretive principle. Have you looked at the wording of what they are recommending, and what are your thoughts on it as it stands?

Ms. Mary Eberts (Legal Advisor, Native Women's Association of Canada): We have looked at the wording as proposed by Ms. Lynch when she came on June 7. We have a few comments, but our basic position is that the language of the interpretive clause is something that is most appropriately developed in consultation with aboriginal peoples who will be subject to the act.

That being said, let me point out that the proposal for an interpretive clause relates to just the complaints that would be brought against first nations. It's not unlikely that the need for that interpretive clause could also arise in complaints that are brought against the Government of Canada. One of the things that might usefully be considered is whether the interpretive clause should apply across the board or only in complaints brought against first nations.

The other thing we want to point out about the interpretive clause is a somewhat deeper principle, that it is always suggested the rights of individuals are in conflict with the rights of communities. When President Jacobs came to this committee the first time around, for the main presentation of the Native Women's Association, she said, no, that is not the case because individuals are individuals in nations.

So it's necessary to reconcile the two groups of interest. NWAC believes very strongly that one way of doing that is to go back to indigenous legal traditions. One of the things we notice about the interpretive clause proposed by the commission this go-round, and also that was proposed by Judge La Forest in 2000, is that there is no mention of using indigenous legal traditions to resolve some of these issues.

I also want to mention that in section 2 of the Canadian Human Rights Act, the purpose of the act is set out as being to extend the laws of Canada to give effect to the principle that all individuals should have an opportunity equal with other individuals. Then it continues: “consistent with their duties and obligations as members of society”.

We already have some recognition, even in the main Canadian Human Rights Act, that individuals exist within the context of society. It's really important that we bring that recognition home to aboriginal peoples by building in more references and more resort to indigenous traditions.

We've had no opportunity for the last 30 years to have indigenous principles brought to bear on Canadian human rights law because indigenous peoples have been shut out of the Canadian human rights mechanism. There is a lot of wisdom in those traditions and in the dispute resolution mechanisms that needs to be brought to bear on these issues. Our big disappointment with the language that has been proposed so far is that it does not recognize the indigenous legal traditions.

● (1205)

Hon. Anita Neville: Thank you.

Ms. Yvonne Boyer: I would like to note that John Borrows has published a very wonderful body of works through the Law Commission of Canada that is posted on the website in relation to indigenous legal traditions that would be very helpful.

Hon. Anita Neville: Following that, we've heard the minister say many times that he wants to give first nations, particularly women, the rights and privileges of non-first nations or non-aboriginal women. I'm listening to you, and when you speak about the legal traditions and the collective, are you seeing this legislation in that context of providing women with the rights that non-aboriginal Canadians have?

Ms. Mary Eberts: One of the really, really important principles that our Supreme Court has recognized about equality and anti-discrimination measures generally is that people do not have to be the same in order to be treated with equal dignity and equal respect and to have their equality promoted. It has been mentioned many times, right from the first decision in 1989 under the equality guarantees of the charter. Aboriginal people are not the same in all respects as other Canadians, and if this government is saying that the only way aboriginal Canadians can get the same rights as other Canadians under the Human Rights Act is really to be stripped of their community roots and identity, that is not acceptable.

It is important—it is essential—that the community ties and the identity of aboriginal Canadians be respected. That's the essence of human rights. So we think it's necessary to take a sophisticated approach to this. And, luckily, our Supreme Court has laid down these very basic principles that will guide us here.

The Chair: Thank you.

Mr. Lemay, please.

[*Translation*]

Mr. Marc Lemay: Good morning.

Good morning, ladies. I appreciate you being here.

I have listened carefully to what you said, and I have one very specific question, more or less. I will try to speak generally. The issue that concerns us today is the reason we asked you to come back to see us, and we would like to hear what you have to say. The issue is as follows. The question is a fundamental one. I assure you that we will ask the Assembly of First Nations the same thing. Several groups have come before us and have asked for consultation within the meaning of the Supreme Court decisions before Bill C-44 is passed. Perhaps I did not understand very well, I do not know, but I really want to be sure. You say that you would be ready to see the bill passed on the condition that it was amended to contain an interpretive clause, a delay in implementation, etc. We can look at the amendments again, and evaluate whether they should be included in the bill. My question is simple. We are torn at the moment. Should we interrupt our work so that another consultation can take place, or should we pass the bill—or recommend that it be passed—with very specific amendments? That is the issue at the moment. This is why I am asking for your opinion. You understand that it is very important in the context of the debate that will be taking place over the next few hours.

● (1210)

[*English*]

Ms. Mary Eberts: I can understand why you're having such a lot of difficulty with that debate. You're asking us what would be our choice, or what would be our advice to you on that question.

[*Translation*]

Mr. Marc Lemay: I am sorry. I do not feel that what I am asking you qualifies as a consultation, but I am asking for your opinion. How do the native women in Canada—whom you represent here today—respond to the question I have just asked?

[*English*]

Ms. Mary Eberts: We are very committed to the consultation, and we have made a very detailed proposal to the government on several occasions now for the consultation and for the capacity-building, and we have been given no response whatsoever. We do not think simply repealing section 67 will work.

As for your other possibility—that there be a repeal of section of 67, with some very precise amendments accompanying that appeal—we take the position that the provisions of the interpretive clause, for example, really cannot be settled without consultation. There must be an involvement of the aboriginal community to settle the wording of the interpretive clause before it can be inserted into the legislation.

So we do not see how the amendments can be made without the consultation if they are to be good amendments.

Ms. Yvonne Boyer: I would also like to add that the Supreme Court has been very clear in that before aboriginal rights are infringed upon, the consultation must occur, and the consultation must occur with the holders of the rights. If the Supreme Court has guided us in any way, this is what the Supreme Court says.

● (1215)

[*Translation*]

Mr. Marc Lemay: I have read the Supreme Court of Canada decisions.

If an amendment to the bill says that Bill C-44, which repeals section 67, will come into effect after—, it is vital that there be an interpretive clause which must be defined in conjunction with the first nations. I do not have the exact words. This is why I was rereading the clause, and I am going to read it to you: "In relation to a complaint made under the Canadian Human Rights Act against an Aboriginal authority, the Act is to be interpreted and applied in a manner that balances individual rights and interests with collective rights and interests."

This is what the Human Rights Commission suggests to us as an interpretive clause. Is this what you disagree with, the clause I have just read to you, that is?

It protects rights and interests of both types.

[*English*]

Ms. Mary Eberts: As I said to Madam Neville, we believe that the ultimate wording of this interpretive clause should be developed in consultation with the first peoples and with aboriginal people who will be affected by it.

I know from reading their presentation that the Assembly of First Nations, for example, has an interpretive clause that is different from the one provided by the commission, and the interpretive clause that was suggested by Justice La Forest in his report in 2002 is different again from what is put forth by the commission. So we don't have a consensus.

I think it's also very important to discuss the role of this interpretive clause within the legislation itself. There are some provisions that are in the code. There are some provisions that are defences. It is not proposed that this interpretive clause be a defence to a complaint. It may be that consultation would bring forward some kinds of defences to complaints that are important to include in the legislation.

It is a complicated question, and while we certainly appreciate the motivation of the commission in bringing forward its language, we think the work is still unfinished, and we would not be prepared to see the act go forward with this clause and no consultation.

The Chair: Thank you.

Madam Crowder is next, please.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thanks, Mr. Chair.

I want to thank you for coming before the committee.

I want to come back to this issue around consultation. It seems to me that in a perfect world what would happen is there would be consultation, then legislation, and then a transition period.

A number of witnesses came before the committee. In her testimony, Ms. Mandell said:

> But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.

In my view, we need to be really clear about when consultation should happen. Should it happen prior to legislation, so that the legislation best represents the people it's going to directly impact and recognizes what rights may be infringed upon or not, and then be followed by a transition period, or should consultation happen after a piece of legislation is passed?

I know you've answered, but I still think people are really unclear, because they talk about transition and they talk about consultation. It seems to me there are actually two consultative processes: there's consultation prior to legislation, then the development of the legislation, and then a transition period when some additional consultation may be required.

Could you comment on that?

● (1220)

Ms. Yvonne Boyer: This is why a policy on consultation is really important. These issues need to be really sorted out and clarified so that everybody's working from the same page.

Ms. Jean Crowder: It seems to me, though, that when we have a piece of legislation that could potentially impact on rights—well, we know it'll impact on rights—it would seem important, even with a transition period, and I can imagine this transition period if we're talking about an interpretive clause, we're talking about resources, we're talking about capacity, and we're possibly talking about non-derogation. It would seem to me that consultation should happen prior to the legislation. I know that in the absence of a consultation policy it may be difficult, but it's beyond me why we wouldn't consult first.

Ms. Mary Eberts: It certainly is not the case, as INAC has tried to tell you, that there has been a lot of consultation already on the repeal of section 67. That is not so. It's very significant that section 67 was put into the Human Rights Act because of a recognition in the 1970s that it would be improper for the federal government to change the Indian Act without consultation. The reason they put section 67 in there was to prevent the piecemeal change of the Indian Act through human rights complaints. If there was going to be a change to the Indian Act, they wanted it to be in consultation.

In this context especially the federal government has an historical recognition that this is an issue that requires consultation. I actually like the way you describe the two phases of consultation, because even after the law has been enacted with a satisfactory interpretation clause in it, there would still have to be a lot of implementation activity and capacity-building, but if there is a choice, I think it is better for there to be consultation first on the content of the law.

Ms. Jean Crowder: Part of the argument we've heard around the duty to consult has been either that there was no requirement for the government to consult prior to developing legislation or that the duty to consult only applies in cases of resources, yet when I looked at the language that justices have come forward on, they talk about the potential existence of aboriginal right or title. It seems to me that the duty to consult should apply to rights, not just resources.

Do you have anything you could add to that?

Ms. Yvonne Boyer: If we're looking at section 35 of the Constitution, we're looking at aboriginal rights and we're looking at treaty rights. And in terms of any sort of infringement upon either one of those bundles of rights involved within section 35, this is crucial. This is the key point right here. Of course, the issue we're looking at with human rights falls within, obviously, aboriginal rights, treaty rights.

So these are the rights that are protected.

Mary, do you want to carry on?

Ms. Mary Eberts: The cases that deal with the duty to consult did arise in different contexts—resource contexts, the building of roads, or what have you—but when you consider the potential impact of a piece of legislation on aboriginal rights as compared with the building of a road, you're talking about a much more serious impact in the long term. It does not seem logical for there to be an obligation to consult about the building of a road when there is no obligation to consult about a piece of legislation that will affect millions of people.

The other thing I'd like to mention is that one concept that is very important to the obligation to consult is the concept of the honour of the Crown. There is case law that says the courts will not interfere with the legislative process. Once a bill has been put into the House, the courts won't interfere. But that does not prevent the application of the duty to consult to the government's decision to introduce legislation in the first place. That is still the Crown that is acting, and in making its decision about whether to introduce legislation, the Crown must act in accordance with the honour of the Crown and must consult.

● (1225)

The Chair: Thank you.

We'll move on to the government side. Who's going to speak?

Mr. Bruinooge, go ahead.

Mr. Rod Bruinooge: Thank you, Mr. Chair.

Thank you to the witnesses for continuing to provide your views on this important piece of legislation. I'm very much looking forward to the moment in Canada when individuals who live on first nation reserves and who feel their human rights are being violated will have an opportunity to at least express that to the Canadian Human Rights Commission. Hopefully that won't be too long into the future.

Some of my initial questioning will be, again, somewhat on the topic of consultation. I know there have been some comments made that—

Ms. Eberts, you indicated that thankfully the Supreme Court has laid down these principles of consultation for us. I think that's subject to debate. That's not the law of the land. I say this in the sense that currently many first nations people live under the Indian Act. I find it very difficult that, for instance, should the government want to fix parts of the Indian Act—many people have talked about that as being a broken piece of legislation—if we follow the logic that you're talking about, there is nothing we as legislators could do to assist first nations. For instance, for first nations people on reserve who feel their human rights are being violated and would like to have this option of being able to bring their views to the Canadian Human Rights Commission, we as legislators don't have the power to bring about legislation.

I just see that as not being the case. We have brought forward legislation. It's actually a good thing to extend this forum to first nations people on reserve. There are many people I have talked to who would like the opportunity to be able to bring their rights forward in a new forum.

As my overall question to you, going back to the description of developing a consultative policy or a process, how would that work? For instance, I'm not even sure, based on the logic you've presented, that government could even contemplate...or not even government; all the people in this room here couldn't even contemplate building that ourselves, or attempting to build a consultative process. It seems to me it would be challenging to get consensus on how that consultative process would work.

So would there even be a start point to the type of scenario you're talking about?

Ms. Mary Eberts: I think there are two starting points. One has been described by the ministerial representative on matrimonial real property, Wendy Grant-John. She has pointed out that the Government of Canada needs to develop an overall policy on consultations—when it will consult, what the consultations will consist of, and so on.

I believe you have correctly identified that the government cannot develop that consultation policy unilaterally. The policy itself would have to be developed in consultation, and it is I think premature to conclude that it would not be possible to accomplish that task.

When you look at what has happened recently with the negotiation of the residential school settlement agreement, for example, it was a very large, complicated process. The self-government agreements that have been negotiated are large and complicated, and yet they do get negotiated. So that's the first thing I think. We would highly recommend to you what Chief Grant-John said in her study.

With respect to this particular issue, NWAC has also put forward a proposal on how consultation might work in the context of the human rights reforms. It has several phases.

The first phase is a discussion, the development of discussion papers, and the pulling together of a think tank. The theme of the think tank would be access to justice and reconciling individual and collective rights in aboriginal communities.

Then there would be the discussion of that think tank, followed by a third phase of regional and national consultations, education, and community engagement. Then a final phase could be, actually, the holding of several pilot projects on dispute resolution within aboriginal communities.

This proposal has been put forward to the Department of Justice, to the Department of Indian Affairs, and I believe it has also been shared with the minister himself. We have never got a response to this.

You have some good minds out here thinking about how to do these consultations. All it takes is the willingness on the part of the government to engage.

● (1230)

Mr. Rod Bruinooge: Ms. Eberts, when you look back at the last 30 years, I think when it comes right down to it, you would agree that the repeal of section 67 is necessary. I think that's your perspective, is it not?

Ms. Mary Eberts: Well, when you put it that baldly, I would say the repeal of section 67 is necessary, but it is not sufficient, as the scientists would say.

Mr. Rod Bruinooge: So perhaps with some—

Ms. Mary Eberts: It's necessary but not sufficient, because if you simply repealed section 67, there would be pressure and chaos, and there would be a situation of disequilibrium in the aboriginal communities, because you would never know what parts of the framework would be under threat.

I've been a litigator for over 30 years, and I know that when policy starts being made through litigation, you burn up a lot of resources doing the litigation and then there are no resources to develop the policy or to implement policy. So that's not a desirable situation.

The Chair: Thank you.

We're going to move into the second round.

I've just been advised by the clerk that National Chief Phil Fontaine can be here at 12:45, so he'll be arriving at that time.

Moving to the five-minute round, Mr. Russell, go ahead, please.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair, and good afternoon to both of you.

Your testimony seems to be vitally important because of the way the government has tried to sell this piece of legislation, which is by saying they are the champions of native women's rights. That's what the government says: “We are the champions of native women's rights; therefore, we must get this bill to go through ASAP, as is, with no amendments. We need to have it go through.” That's the approach it has taken.

Can I ask a couple of specific questions? How long ago did you make a proposal to the federal government around effective consultations? When did you present this?

● (1235)

Ms. Mary Eberts: Two years.

Mr. Todd Russell: Two years?

Ms. Mary Eberts: Yes.

Mr. Todd Russell: Okay. And the current minister is well aware of your proposal on consultation on the repeal of Bill C-44?

Ms. Mary Eberts: This proposal went to the Department of Justice. I was not there when it was discussed with Justice. I was there when it was discussed with Monsieur Ricard at INAC, and that was last summer. So it had already gone to Justice first and then it was discussed with INAC, with no result. And then at a meeting with the minister, I would say maybe April, this proposal was raised again by the president and the executive director of NWAC. The history of the proposal was discussed with him, and he was reminded that it had been brought before the government, through the public service, several times. So he was aware not only of the proposal but also of the history of NWAC putting forward this proposal and not receiving any response.

Mr. Todd Russell: And there has been nothing formal coming since?

Ms. Mary Eberts: No.

Mr. Todd Russell: Nothing whatsoever?

Ms. Mary Eberts: No.

Mr. Todd Russell: Do you believe consultation is a right in itself?

Ms. Mary Eberts: Yes.

She's our expert on consultation. That's why I'm looking at her.

Ms. Yvonne Boyer: No, I'm not an expert. There are a lot of people with expertise in the area, a lot of people who could help with this issue.

Mr. Todd Russell: The legislation seems to be somewhat targeted at first nations themselves and the impact it's going to have on the first nations governments themselves.

Let's take this scenario. If somebody launches a complaint against the first nations, how many lawyers do they have to defend themselves? Because there's going to be a defence if it goes to a certain stage in the process. Compare that with a complaint lodged against INAC. How many lawyers does INAC have to defend itself against certain complaints?

There seems to be an imbalance, certainly in terms of the impact it's going to have.

How would you respond to that?

Ms. Mary Eberts: There is a huge imbalance in the impact it will have. INAC has a large litigation capacity because it has its lawyers and also access to Department of Justice and external counsel, if necessary.

And the budget of INAC.... We found it significant that in speaking to the La Forest commission, INAC itself said that litigation against INAC under this amended Human Rights Act would divert resources to litigation from programs.

So what is going to happen is that INAC will defend itself with first peoples' money. Money that would go for clean water, money that would go for housing, for education, for health, is going to be diverted into litigation.

As a litigator, I can tell you that in the first few years of a new piece of legislation, there is the whole issue of the test case. People don't know what the legislation is really going to mean, so the temptation is to take the litigation as high as you can, and it's very expensive.

The Chair: We'll move on to the government side, please.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Thank you to both of our witnesses for being here today.

I don't think I need to remind anyone around this committee of the number of attempts there have been to repeal section 67, going back to 1992. And then there was this extensive review panel of the Canadian Human Rights Act in the year 1999 and 2000. All of the groups that represented aboriginal women at that point strongly supported the repeal of section 67.

Then again in 2002 there was Bill C-7. One of the major criticisms of Bill C-7, as I understand it, was the vagueness of the interpretive clause that was to have been included in that bill.

You mentioned, Ms. Eberts, that there is lots of wisdom in indigenous legal traditions, and I certainly agree with that. I certainly would not argue that for a moment.

But in terms of the number of first nations groups that exist across Canada, is it realistic for us to be able to achieve a one-size-fits-all interpretive clause when we're representing such a diverse group of first nations across Canada? That would be one of my concerns, when already a previous attempt was targeted with that criticism. How can we surmount that obstacle?

● (1240)

Ms. Mary Eberts: I don't think the previous interpretive clause was the result of consultation either, so you can't really rule out the possibility that consultation won't get you a stronger clause and something that has more of a consensus behind it.

One of the other things that consultation will do is show the possibility of other solutions to some of the issues that come up, and that could be very desirable, to bring, for example, the wisdom of indigenous dispute resolution mechanisms to bear on some of these issues.

Mr. Harold Albrecht: So you're fairly confident that with more extensive consultation we could come up with an interpretive clause that we could all agree on, in spite of the fact that just a few moments ago you commented that the Canadian Human Rights Commission, the Assembly of First Nations, and La Forest—all three—came with three different suggestions. I guess I'm finding it difficult to have the optimism you have in terms of coming up with an interpretive clause that would fit all of the different first nations groups across Canada.

Ms. Mary Eberts: We have just been through a process on matrimonial real property where, for the first time, INAC, the AFN, and NWAC sat down together to search for solutions. If you look at the ministerial representative's report, there wasn't 100% consensus, but there was a very, very broad consensus on a number of critical issues. The reason there was not 100% consensus is that the Government of Canada would not accept that the legislation should recognize the inherent jurisdiction of first nations over the legal topic of matrimonial real property.

Of course, people can thwart consensus by the positions they take at the table, but the federal government has an obligation to come to the consultation process in a way that is consistent with the honour of the Crown.

Mr. Harold Albrecht: It's difficult for me to understand, in any size of group, whether it's 10, 100, or 10,000, how you would achieve a consensus of unanimity around a clause like this. So my feeling is that we need to consult, we need to process, and we need to listen, but at the end of the day, someone, somewhere, needs to make the decision.

I think you would probably find that among first nations groups. I'm sure they consult with their people on issues that arise among their people, and yet someone or some group, at one point, is charged with the responsibility of making a decision that would apply to the entire group, even though one person, or maybe a family, might not agree with that.

I don't know if you would have a response to that.

Ms. Mary Eberts: In the law that has been developed by the Supreme Court of Canada on the issue of consultations, the court recognizes that there will be, in some cases, requirement of the consent of those who are consulted, so that you have a consultation process, and at the end of it, if the issue is serious enough and the rights at issue are strong enough, the only satisfactory result for the consultation is that the group consent. But there are other positions that fall short of that, and the question is just really finding the right range where you should be on any particular issue.

● (1245)

The Chair: Thank you.

We're going to end our questions now and move on to the next presentation.

I want to thank the witnesses for their time. I apologize once again for our tardiness in beginning the meeting, but it indeed was valuable. Thank you very much.

Ms. Mary Eberts: Thank you very much.

The Chair: We'll suspend for a few minutes.

● _____ (Pause) _____ ●

● (1250)

The Chair: Could we reconvene, please?

Committee members, we are ready for the second portion of our witnesses today.

We have with us today National Chief Phil Fontaine. Along with him, we have Candice Metallic, who is legal counsel; Richard Jock, who is the chief of staff; and Lisa Abbott, a policy analyst.

We appreciate Chief Phil Fontaine for making time to come here.

Due to the lateness of our meeting, we're going to continue until about 1:30 or quarter to two, at the latest.

Mr. Harold Albrecht: Mr. Chair, I would point out that some of us have other meetings for which we have to leave. We're not doing it out of a sense of disrespect.

The Chair: Okay.

Would you like an opportunity to make a statement, Chief Fontaine?

Chief Phil Fontaine (National Chief, Assembly of First Nations): Yes, Mr. Chairman.

Thank you, and my thanks and appreciation to committee members for giving us another opportunity to present on a matter that we consider of vital importance to all of us. There should be absolutely no question or doubt that first nations leaders are concerned or committed to protection of human rights for all of our citizens. We are all very committed. We are all very interested. We all want to see the most appropriate protections be afforded all of our citizens: women, men, young people, and elders. We will do whatever we can as a national organization to ensure that these protections are in place for all of our citizens, on and off reserve.

I think there was some question or doubt about whether we were in fact committed. I want to underline that it's very important for us, and it's very important for you to know that we are committed. We've pushed very hard to ensure that all of the right and appropriate steps are taken so that Bill C-44 reflects all of the interests of all first nations citizens, and that whatever decision is ultimately taken on Bill C-44 it will not result in further jeopardizing the rights and interests of all of our people.

We've already made it very clear that we're very concerned about impoverished first nations communities. We're very concerned that too many of our communities can't access safe drinking water; that too many of our communities lack good schools; that there is a tremendous backlog in housing; that we can't access quality health care; that suicides are still far too high; and that there are too many children in care—27,000 now, mostly in western Canada. All of those matters are directly related to the human rights of our people.

Water, for example, is a human right. That right has been violated, not because chiefs and councils are corrupt or not sensitive or caring about all of their peoples. We didn't contaminate the water to begin with, so I don't know why people continue to blame leadership for those conditions. We didn't create the housing crisis that our communities face. We didn't insist that our people be unemployed to the levels they are. The list goes on, and it's completely unfair to keep pointing the finger at first nations chiefs and councils for being the cause of all of what challenges our communities.

So dispel the notion that we are somehow not concerned about human rights or committed to the human rights for all of our people; we are. But we need you to help us ensure that these rights are protected to the same degree that the human rights of all Canadians are protected. That shouldn't be too much to ask. In our view, it's a very straightforward and simple proposition.

That is the preamble to my speaking. I had a more detailed presentation, but I know you're pressed for time. I apologize that we arrived here late, and I know that some of you have to leave. I don't know how you want to proceed.

If you'll permit me the time, I want to make three points. These points are very important for the discussion you're having here.

● (1255)

I'll quickly summarize the key amendments that we advanced in our submission. I'm also tabling a list of amendments that we feel best address what we heard as a consensus of concerns raised about Bill C-44 from the witnesses who appeared before this committee in the last little while.

The first issue that underlies this whole discussion is the duty to consult. Inherent in this is the duty to accommodate and mitigate adverse impacts on aboriginal and treaty rights or undue hardships on first nations. We note this is completely absent in this bill.

Second, there is the need to amend Bill C-44 to include safeguards for the unique collective inherent rights and interests of first nations.

Finally, the last point relates to the need for effective and appropriate transition and implementation measures.

I should note that we've been following the presentations of the various witnesses who have appeared before this committee. It's pretty clear, from our perspective, that there's agreement on the need to address the human rights of first nations, as well as the need to repeal section 67 of the Canadian Human Rights Act. There's no hesitation on our part to advocate for that. However, it's also become very clear that Bill C-44, both in process and substance, may not have been the best way to do this.

I'll leave it there.

● (1300)

The Chair: Thank you.

We'll go to the round now, starting with Madam Neville.

Hon. Anita Neville: Thank you.

I'm going to just presume upon the time and follow on the national chief's comments with a very brief preamble, Mr. Chair, to assert that members from this party are not opposed to human rights either, nor are we opposed to the repeal of section 67, as has been asserted several times.

Our concerns relate to process. The process, to our mind, has been far from what it should have been, but at no time have we ever indicated that we are opposed to the intent of Bill C-44, and I want that to be clear on the record.

Thank you again for coming back to talk to us, National Chief. I have a number of questions. It has been proposed by some that we should delay the passage of this bill to allow for a consultation period. The other proposals, as you well know, have indicated to put it through with all of the appropriate amendments and clauses with a very lengthy consultation process.

I'd like your comments on that and what you see to be the most effective way of dealing with this issue.

Chief Phil Fontaine: Mr. Chairman, committee members, it's important we point out that the fact that we would advocate a delay in this process to ensure that there is full and adequate consultation with our people should not to be seen as a contradiction because we advocated that three other bills be given due consideration for passage. We appeared on the Hill here with Mr. Suzuki and Mr. Barr, and we staked out our position on those bills.

We absented Bill C-44 from that position because we believe there has to be full consultation on this. We consider the bill, as drafted, flawed, deficient, and the appropriate response, in our view, to fix this is to ensure that we further discuss it.

Hon. Anita Neville: Thank you.

I'm just going through your summary of recommendations, which we received now. One of the recommendations you speak about is an operational review. I wonder if you could comment on the analysis that you see necessary for the potential impacts of the legislation, and how you would like to see that reported back to this committee.

Chief Phil Fontaine: I'll give you the general overview and then call on my able support team to speak to the technical details of your question.

It's clear that most recognize that our communities are in a very difficult situation. In an ideal situation, these communities ought to be in a position to protect the interests of all their citizens, whether we're talking about housing, water, health, education—you name the program or the service—that these programs and services be delivered in the most appropriate and effective way possible.

Given the situation we're in, the crisis we face with housing, the fact that there are too many first nations communities operating under a boil water advisory, and the fact that we're still struggling with attaining success rates in education equivalent to the mainstream, we need to ensure that the capacity within our first nations communities is such that all of our first nations governments will be in a position to deliver effective, fair, and just government services to all of their citizens.

That should be an overriding concern on the part of this committee, and in fact the House, when they consider the effects and impacts of Bill C-44 on our communities. It's pretty clear that if it were to pass as is, it would cast our leadership in a completely unfair position and we would be judged on standards that are completely unfair. Canadians believe in fairness; Canadians are fair-minded people. If they knew the dangers inherent in this bill as it is cast, they wouldn't support it.

● (1305)

Hon. Anita Neville: Thank you.

I'm assuming I have no more time.

The Chair: No.

We move on to Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: It is Mr. Lévesque's turn.

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Good afternoon, Mr. Fontaine. I am glad to see you again.

I recall that it was a week ago now that we marked the second anniversary of the government's commitment to consult first nations on any bill or any restructuring that might cause changes to the lives of members of first nations. We have a bill before us. You are telling us that it is important to have changes, consultation and amendments. One question is of fundamental concern to us today. Should we support the bill and try to amend it or do you prefer—as a number of people have asked us—that we delay its passage and make sure that we have had consultations and taken the steps necessary to protect first nations in the form of a new bill that reflects your vision? This is vital for us to know. We have to know your position.

[*English*]

Chief Phil Fontaine: Very quickly, Mr. Chairman, if the proposed amendments fairly represent the consensus view of the witnesses who appeared before the committee, and you share their concerns that Bill C-44, as drafted, is flawed and would not give fair protection to our people, because our governments wouldn't be in a position to deliver, due to lack of capacity, then that will be okay. But if it's obvious that we need more time to give you ample opportunity to reflect on the validity, legitimacy, and appropriateness of our proposed amendments to make this bill as good as it ought to be, then that's what we would ask the committee to consider.

It's important that we note some of the technical considerations regarding this bill that make it extremely difficult for us to accept as is.

Richard.

● (1310)

Mr. Richard Jock (Chief Executive Officer, Assembly of First Nations): I just want to add that regardless of the final shape of the bill, the operational considerations would remain. We feel that undertaking a review of any preparations would be prudent and would be really just good sense, in terms of then assessing whether there have in fact been preparations made, whether the resource issues have been properly rolled out as anticipated. It's a way to deal with those issues in a way that moves forward.

We feel our amendments would strengthen any approach that's taken and thus would also provide a stronger focus and maybe a more pointed focus for any consultation. We think this is a way to proceed, and also to do so in a way that would reduce any unintended negative impacts on communities that we have experienced from other legislation, such as Bill C-31, and from some of the other approaches. It has been assumed that these have had no impact, but in fact and in reality they have. They're not negative reflections on the content of that bill; they're just unintended and unplanned for consequences of legislative actions.

The Chair: Mr. Lemay, you have two and a half minutes—no more.

[*Translation*]

Mr. Marc Lemay: My colleague was very concise. I am going to be even more so. I have your proposed amendments in my hands. I have just read them in French and English. If they were included in Bill C-44 and it was amended accordingly, would it satisfy you? That is what I want to know.

[*English*]

Chief Phil Fontaine: We'd certainly be happier than we are with what we have now. That's for certain.

[*Translation*]

Mr. Marc Lemay: National Chief, there is no way that Bill C-44 will be passed as presently drafted. We are going to propose amendments. With your agreement, we will use yours. Would that meet with your satisfaction?

[*English*]

Chief Phil Fontaine: We would certainly be much happier.

Thank you.

The Chair: Madame Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

I want to thank you for coming before us today.

It seems to me that the best possible scenario would be consultation, legislation, and then an adequate transition period, and the legislation would actually reflect the consultation. My understanding is that a second position would be to put forward the amendments as proposed.

There are two pieces there that I wonder if you could address for me. One is that I'm assuming that all amendments would need to be passed in order for it to be suitable. The second piece is that in other cases where that kind of legislation has been passed and then there has been a transition period, the resources and the capacity have not always been there to enable nations to actually be in a position to respond. I wonder if you could comment on those two pieces.

Chief Phil Fontaine: I will very quickly on one point, and then I'm going to call on Candice Metallic here to speak to the more technical aspects of your question.

Remember Bill C-31. We were told when Bill C-31 was introduced that no first nation community would be worse off as a result of the bill. As good as the intentions were when it was introduced, the immediate impact of bringing this bill into force was to completely undermine the ability of first nations governments to deal fairly and justly with the effects of Bill C-31. We're really very concerned that the bill, as it is presently constituted, would bring about the same kinds of results, or even worse.

Ms. Jean Crowder: Before I go to Candice, isn't that an argument in itself to do the consultation prior to the legislation then?

Chief Phil Fontaine: We made those arguments. We expressed those concerns right from when this thing was first introduced. What is particularly difficult for us to accept, and an unfair characterization that we've had to shoulder, is that somehow this problem we were dealing with was caused by chiefs and councils—male-dominated chiefs and councils—that were determined to cause harm to women particularly. We know that's not true, and it's just unfair. I make that point.

● (1315)

Ms. Candice Metallic (Legal Counsel, Assembly of First Nations): I think the position of the Assembly of First Nations has always been that in an ideal world, consultation takes place first. I had the benefit of listening in on your question to the representatives from the Native Women's Association about this point. I agree with your proposed approach to consultations, and the law certainly points to that very process as well, with consultation at the beginning. But the Crown has an ongoing role to consult, and I think that's very important. They have an ongoing duty to consult throughout the various processes and stages of legislative and policy development.

In the circumstances in which we find ourselves with respect to Bill C-44, we gave it a lot of thought when we were looking at the position the Assembly of First Nations would take. We structured our amendments to extend the transition period to 36 months. And we tried to build in a consultation element. That's the reason we extended it to 36 months. It was to have a review period between immediately and within 18 months so those consultations can take place and so there will be this operational review and assessment to ensure that first nations have the necessary capacity to bring their buildings, their policies, and their laws up to the standard that would withstand the scrutiny of the Canadian Human Rights Act. But it was also to look at ways in which first nations governments can sustain the protection of human rights in general.

So there's a two-stage process here that we have to consider, and the way we have structured the amendments takes into account all of that.

The Chair: You still have two and a half minutes left.

Ms. Jean Crowder: Based on that, then, all the elements are in these proposed amendments.

I want to come back to consultation again, just for a moment. I asked the Native Women's Association this question as well, but I think it's an important one because of the fact that the argument is made that there isn't a duty to consult on legislation or on rights; it's only on resources. Yet it would seem that when we're looking at section 35, when we're looking at other court decisions, they talk about aboriginal rights or title. I wonder if you could comment on that.

Ms. Candice Metallic: I would say that certainly, in the case law that has come down from the courts, and particularly from the Supreme Court of Canada, the facts in those cases have revolved around resource development. But the courts, in the language they've used to define the duty to consult, state, as Ms. Eberts has said, that whenever there's a right or—I think you quoted Louise Mandell in your question—whenever the government knows or constructively is aware of an aboriginal right and contemplates action, whether legislative or policy, that will negatively or at all impact those rights, that's when the duty to consult is triggered.

I think to limit it simply to resource development is not a very honourable way of looking at the Crown's duty.

Chief Phil Fontaine: In fact, every decision taken by government that has an impact on first nations we see as a matter that is consistent with the duty to consult. The government casts a wide net over everything first nations governments do, and every decision that's taken has an impact or an effect on our rights and interests.

If we're talking about good public policy here, in itself that issue requires the federal government, in our view, to sit down and talk with us in a very meaningful way. Otherwise, the policy is flawed, as well-intentioned as the government may be.

The Chair: Thank you.

I'll go to Mr. Bruinooge, please.

● (1320)

Mr. Rod Bruinooge: Thank you very much, and thank you, National Chief, for coming back to provide us with your additional sentiments on this important piece of legislation.

I also want to commend you for your advocacy for the extension of the Canadian Human Rights Act to first nations people. I have to give credit where it's due, and clearly you have maintained that position since your first appearance before us.

My initial question will be along the lines of your second submission. I have only read it briefly, and I was just wondering if perhaps you or Mr. Jock or Ms. Metallic might be able to highlight any changes there might be from the initial submission.

Chief Phil Fontaine: I'll call on Candice to provide you the highlights.

Ms. Candice Metallic: What we've provided to you here is a clause-by-clause analysis of the legislation. The original text of the bill is in italics and our changes are in bold. So the majority of what we've provided is consistent with our original submission. The only thing we changed was the interpretive provision.

We met with representatives from the Canadian Human Rights Commission and we had several discussions with them about the best way to approach the development of an interpretive provision. In trying to find consensus with the Canadian Human Rights Commission, we agreed that we would outline a principle that would be included in the legislation, in the Canadian Human Rights Act. We essentially took the principle that the Canadian Human Rights Act proposed to us and we modified it to ensure that traditional laws and customary laws are included within the interpretive principle so that the traditional ways in which first nations people resolve disputes amongst themselves would be given due consideration in the resolution of disputes involving the Canadian Human Rights Act.

Mr. Rod Bruinooge: The interpretive principle that was suggested by the Canadian Human Rights Commission I believe met with language that was put forward by all the opposition critics as well as the government. I believe they also indicated that they met with you, and I think you've just said that. On the language they put forward, you're suggesting that it's perhaps something that would be agreeable as part of any amendment that might be brought forward.

Ms. Candice Metallic: Our position would be that a modified version of what they provided would be acceptable on the condition that further policies and guidelines would be the subject of further consultations with first nations people.

Mr. Rod Bruinooge: Where, within the document, is the modified provision?

Ms. Candice Metallic: It's under number 3, “Interpretive Provision”:

> In relation to a complaint made under the Canadian Human Rights Act against a First Nation government, including a band council, tribal council or governing authority operating or administering programs and services pursuant to the Indian Act, the Act is to be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws in adjudicating disputes to balance individual rights and interests with collective rights and interests.

Following that, there is an explanatory note that essentially sets out what I've just explained.

Mr. Rod Bruinooge: Okay. So at this point, based on much of the information that you brought forward and your answers to some of the questions of other individuals on this committee, with some of these ideas incorporated, there is some interest in seeing this proceed further to the next stage of this bill, which would be to become the law of the land.

Chief Phil Fontaine: If there is due consideration of all of the amendments that we've advanced, then of course we would support that work, provided it proceeds with the consensus of the committee.

Mr. Rod Bruinooge: I guess, though, National Chief, it becomes challenging as parliamentarians when we have to adjudicate somewhat the varying positions that are put forward—from the Native Women's Association, of course, and there are a number of other regional leaders who have brought forward positions as well. So I think it would be difficult for the committee to be able to incorporate all of the elements that you've put forward, in light of the fact that there are other bodies that have differing views.

As a parliamentarian, I find that perhaps the most difficult part of the job, to assess what needs to be incorporated, because I think you can't incorporate everyone's position. So do you have any advice for me as to how we might be able to adjudicate these varying positions?

● (1325)

Chief Phil Fontaine: Well, one of the areas where there's obvious consensus is with respect to consultation. So if we haven't been able to reach a consensus view or position on the proposed amendments, it's incumbent upon the committee to undertake appropriate and full consultations with all of the interests that have presented amendments to the committee.

I would be completely unfair if I came here and suggested that our amendments are the best. If you spoke to me in private, I would probably argue that they are, but publicly....

Consultation is absolutely essential, and we would urge the committee to make the right decision in that regard.

Mr. Rod Bruinooge: How much time do I have, Mr. Chair?

The Chair: Actually, you're out, unfortunately.

Okay, we've finished one complete round. Do you want to continue?

Mr. Rod Bruinooge: Mr. Chair, if the committee is open to Mr. Russell's having a brief session and then moving on, could we see that as...?

Mr. Marc Lemay: Do it for the Atlantic Accord.

Some hon. members: Oh, oh!

The Chair: Please stay focused. Remember where you are.

Mr. Russell, I'll allow your question.

Mr. Todd Russell: Good afternoon, National Chief, and your support staff as well.

If this bill went ahead as is, without any changes, from a process perspective, do you believe there's been a breach of the duty to consult?

Chief Phil Fontaine: One point I would make here is that we would be cast, as I said earlier, in a very unfair position. We would be treated differently. Our governments would be treated differently in terms of ensuring that there's appropriate time to ready our governments to be able to deal with this legislation. All governments in Canada were afforded three years as a transition period; our governments were being asked to undertake this very important task in six months.

Mr. Todd Russell: Could proper consultations, depending on how they're structured, cut down on the transition period?

For instance, if you had a proper consultation, with input from all the various first nations and the various interest groups and stakeholders, and depending on the types of questions that were asked, could it potentially cut down on the transition period?

You're asking for 36 months, but let's say you have 18 months or a year of consultation and you arrive at some type of consensus. Could that potentially cut down on the transition period?

Chief Phil Fontaine: Our proposition is based on some notion of fairness. You would have to assess that against what was considered fair in terms of the other governments with respect to the charter. That was a three-year process. Of course, preceding that, there had been full consultations with all governments in the country. This was not imposed on them with the expectation that they would respond and ready their governments in a very short period of time to give this appropriate effect.

At the very least, we should be given the same consideration, to ensure that this is managed well.

Mr. Todd Russell: There seems to be a perception that there are very many differences, either perceived or real, among various first nations. People have their own traditions, their own cultures, their own languages; it's certainly not a homogeneous unit there, in many senses. Has any thought been given to an opt-in clause, saying there will be bilateral negotiations with various first nations regarding the non-derogation or the interpretive provision? Has any thought been given to that?

Then, if you couldn't arrive at that triggering clause or whatever it would be, you'd go to a default one. Let's say it's yours, for instance, to use it as an example. Has any thought been given to that?

● (1330)

Chief Phil Fontaine: That's an interesting idea. I must admit that we haven't given it much thought. I thought we had run a pretty comprehensive undertaking here. We could think about that.

Mr. Todd Russell: It's just an idea I was playing with in my own way. There seems to be a sense from the government that since there are so many different people and so many different groups, how can you arrive at a consensus even after consultation? If you have default clauses and individual first nations couldn't arrive at something consistent with the government, that would trigger implementation.

I just leave it there for you to give some thought to.

Chief Phil Fontaine: The only thing I would point to is...it's not the same kind of issue as with the settlement agreement for residential schools. In the residential school settlement agreement there's an opt-out period. It runs out August 20. It's up to each individual survivor to decide for themselves whether this agreement is fair and just. If it is not, then they can opt out. If you remain silent, then the settlement agreement is deemed as presented—fair and just.

Ms. Candice Metallic: If I may respond to that as well, I think it's an interesting concept, and I have given it some personal thought.

But I really I think the bottom line is this. If the resources aren't there to ensure that first nations have the capacity to do it, then an opt-in provision really doesn't do anything. It could even be frustrated if the necessary resources aren't provided.

Mr. Todd Russell: I agree with what you said. Regardless of which way you go, whether it's this way, an opt in, an opt out, or whatever phrase you want to use, you need to have resources.

Ms. Candice Metallic: Yes, resources are critical.

The Chair: Thank you, committee members.

I want to assure National Chief Phil Fontaine that the committee has heard from many witnesses. In a lot of the testimony that has been given to us—both practical and legal, because there is a difference—some chords are resonating of the same opinions. I think it's important for us.

There's a saying that leadership is not about finding consensus but is about moulding consensus. I think it's important for us to take all of the testimony of the witnesses and mould that consensus somewhere along the line. We'll be seeking to do it in the near future.

Thank you very much for your time.

Chief Phil Fontaine: Thank you for your time and consideration. You've been very patient with us.

The Chair: Committee members, Thursday's meeting is in La Promenade Building at 11 o'clock.

The meeting is adjourned.

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