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Chair

Mr. Barry Devolin

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● (1540)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): I'd like to call the meeting to order.

Welcome to the members. I appreciate that with the votes today after question period we're about ten minutes late getting started and some of our members have not yet arrived, but I anticipate they will be here soon.

To refresh everyone's memory, we have the minister, the Honourable Chuck Strahl, here today to talk about Bill C-30. He will be here until 4:30 but his officials will remain until 5:30, for the full committee meeting, to pose questions and have some answers to those questions.

As we did the last time, our typical process is that once the minister is finished with his opening remarks, we will have the first round of questions, which will be seven minutes long, followed by subsequent rounds of five minutes. As the last time, I will be fairly tight on the time in an effort to get as many turns in as possible.

With that, on behalf of the committee, I'd like to welcome you here, Minister Strahl, and ask if you have an opening comment for us.

Hon. Chuck Strahl (Minister of Indian Affairs and Northern Development): Thank you, Mr. Chairman.

Members, it's a delight to be here. I'm obviously very pleased to be here to speak to a bill that's been on the minds of many Canadians and I think especially first nations leadership for decades, and that's Bill C-30, the Specific Claims Tribunal Act.

[*Translation*]

As you ail know, Bill C-30 is the key element in implementing the broader specific claims action plan announced last summer by Prime Minister Harper along with Assembly of First Nations National Chief Phil Fontaine.

[*English*]

While federal governments have entered into treaties with first nations since this country began, we acknowledge there have been instances when the crown has not lived up to its obligations stemming from these treaties and other agreements. Bill C-30 will help right those wrongs. In doing so, this bill carefully balances the interests of first nations with the interests of all Canadians.

First nations leaders have been calling for this kind of legislation for 60 years. It has taken willing partners to finally have it become a reality. We have listened, we have worked closely with the AFN, the Assembly of First Nations, to finally get it done, and in the words of National Chief Phil Fontaine, concerning Bill C-30, “it's pretty darned good”.

This bill is the embodiment of a spirit of genuine productive collaboration between the Government of Canada and the Assembly of First Nations. We are showing the rest of the country the benefits of working in partnership towards a common goal, a new and forward-looking way of addressing historic grievances.

By establishing a specific claims tribunal with the authority to issue binding decisions, this government has shown that it is serious about resolving these long-standing claims. And in just two years of office our government has made significant strides forward on land claims, many of which have languished during previous administrations, sometimes for generations.

Last July a joint task force was established between our government and the AFN, consisting of representatives from the Prime Minister's Office, former minister Jim Prentice's office, and departmental officials, as well as the national chief's office and regional chiefs from British Columbia, Alberta, and Saskatchewan.

This task force oversaw the development of the legislation and was fully supported by a group of technical experts from both the AFN and the federal government who discussed the elements of the bill in great detail.

It's important to look at several key features of this historic piece of legislation. I want to also explain how we have built upon both past recommendations and past criticisms arising from a number of sources—the Standing Senate Committee on Aboriginal Peoples report entitled *Negotiation or Confrontation: It's Canada's Choice*; the Canada-Assembly of First Nations joint task force report of 1998; and lessons learned from the Specific Claims Resolution Act.

As announced by the Prime Minister on June 12, 2007, claims valued over $150 million will no longer be dealt with through the specific claims process. The tribunal proposed in Bill C-30 would have a jurisdictional limit of $150 million, which means the tribunal cannot award compensation in excess of that amount.

I'd like to stress a few points related to this issue.

First, a jurisdictional limit of $150 million per individual claim is a huge increase from the $10 million limit included in the Specific Claims Resolution Act, which was highly criticized by first nations.

Secondly, the vast majority of specific claims can be resolved within this limit through negotiated agreements or through tribunal decisions.

Thirdly, there must be greater flexibility for the very large claims, which can only be achieved by securing separate cabinet mandates on a case-by-case basis. Removing these large-value claims from the application of the specific claims policy and the tribunal process means that the $250 million per year of dedicated funding available on an annual basis will be available for the resolution of more specific claims.

● (1545)

[*Translation*]

Finally, the Political Agreement National Chief Fontaine and I signed just over two months ago commits the federal government to further discussions on approaches to claims that are outside the specific claims policy and the scope of the proposed legislation.

[*English*]

In summary, this bill and the accompanying political agreement were the result of a collaborative effort that included compromises on both sides. Striking the right balance can be challenging. This initiative is a good example, though, of how when two parties work together the end result will be balanced and fair for everyone. In light of this collaborative process, I would suggest, and I hope, that we can move forward quickly with this bill without amendments.

I have heard some concerns expressed that $250 million per year will not be sufficient to pay for both negotiated settlement agreements and compensation awards issued by the tribunal. As I mentioned, because large-value claims will not be paid out of this dedicated funding and because the federal government retains the ability to have funds paid with interest in installments over a five-year period, I am confident that the funding set aside for the resolution of specific claims will be sufficient.

Lastly, there will be a five-year review of the legislation, which will provide an opportunity to examine whether sufficient funds have been made available.

I would like to spend some time discussing the ineligibility of claims based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights, to be filed with the tribunal. Let me be clear: these kinds of claims are not being accepted for negotiations under the specific claims policy. The fact that the bill precludes the filing of these grievances as specific claims is not a narrowing of the application of the policy; rather, it's a necessary clarification.

The specific claims policy was designed to deal with historic grievances, with a view to settling outstanding debts and obligations in a final manner. The specific claims process is simply not the appropriate forum to deal with the broader issues of ongoing treaty rights, which are part and parcel of our ongoing relationship with first nations. I'm happy to talk about some of the other initiatives that we have going in British Columbia and elsewhere if members would like to do so.

We do recognize the importance of this issue. For that reason, the political agreement contains a commitment to work together on a joint approach to address other treaty issues not dealt with in the bill or the specific claims policy. This joint engagement will begin with a national historic treaty conference taking place this coming March.

Although the tribunal will hear all varieties of specific claims, including those related to lands, it will only award monetary compensation. First nations may choose to use the money they receive to purchase land on a willing buyer and willing seller basis. As set out in the political agreement, any lands purchased with such funds would have a priority status for addition to reserve.

The first nation interest in the land that was the subject of this specific claim will be released at the time of the tribunal decision. Because so much of the land that is the subject of specific claims is now in the hands of third parties, the release provision is necessary in order to clear title to the land. I would point out that this is consistent with the approach taken in negotiated settlements. Provincial and territorial governments have a role here too. They participate in some negotiation tables, and we look forward to their increased participation in settlement negotiations on specific claims.

[*Translation*]

Our Conservative government continues to believe that negotiations are the best way to resolve specific claims.

[*English*]

Bill C-30 will not bind provincial or territorial governments, unless they have been added as a party to the proceedings and certified in writing that they have taken the necessary steps to be bound by the tribunal's decision.

While we respect the jurisdiction of the provinces and territories, I realize that there may be some uneasiness about tribunal decisions where Canada has been found not to be wholly responsible for the losses of the claimant first nation. I wish to make it clear that if the province or territory has not volunteered to become a party to the proceedings, the tribunal has no jurisdiction to rule on provincial or territorial liability. In the absence of the province or territory, the tribunal will determine federal liability only. However, first nations will continue to be able to pursue their claims against provinces and territories through the courts or negotiations with those parties.

This bill is designed to bring greater rigour to the specific claims process, something which, I believe everyone can agree, is long overdue. During the proceedings of the Standing Senate Committee on Aboriginal Peoples just over a year ago, many witnesses stressed the need for the federal government to commit in legislation to strict timelines for addressing specific claims. We have done that in Bill C-30.

We've also included consequences if those timelines are not met. This legislation requires the federal government to assess specific claims within a three-year time period. The claims in the existing backlog would receive similar treatment as set out in special transition provisions. In order for the government to be in a position to meet this time period, all claim submissions must meet a reasonable minimum standard to be followed in relation to the kind of information required, as well as a reasonable form and manner for presenting the information.

If the government fails to respond to a first nation as to whether its claim has been accepted or rejected for negotiations within this three-year period, the claim will be deemed rejected, and the first nation will have the option of filing the claim with the tribunal. First nations will also have the option of filing their claims with the tribunal if three years of negotiations have not resulted in a settlement agreement, or if Canada agrees, prior to the end of the three-year timeframe.

It should be highlighted that although a first nation will be able to file its claim with the tribunal after three years of negotiations, it is not obligated to do so. The parties can continue negotiating, but once a claim is filed with the tribunal, unless it is subsequently withdrawn a final decision will be rendered.

With respect to concerns raised by the Standing Senate Committee on Aboriginal Peoples and others regarding resources for the specific claims process and the development of new guiding principles, I would like to reiterate that these matters were addressed in the government response to the Senate report in the following manner:

> The Government of Canada will be carefully reviewing what resources are necessary to achieve a timely resolution of specific claims and accepts that the principles of fairness, inclusion and dialogue are important to the Government of Canada's new approach to settling specific claims. Obviously, the application of resources will track the new structures.

We have certainly shown that we have worked closely and collaboratively with first nations on the development of Bill C-30 and that we will continue to engage in dialogue on many other matters, as agreed in the political agreement I signed in November. We will also be working to ensure that the necessary resources are secured in order to make the new approach to settling specific claims a success.

In closing, I would like to quote from the Senate committee's report, “Negotiation or Confrontation: It's Canada's Choice”. In it, the national chief is quoted as saying:

> Many Canadians are afraid of land claims. People have this real fear that if a claim will be settled, they will be dispossessed of their lands and their property and rights that they enjoy will be taken away. There has never been any desire or any interest on the part of First Nations to dispossess or deny someone else rights that we should all enjoy.

Mr. Chair, the time has come to afford first nations the same courtesy by righting past wrongs and resolving these longstanding grievances. I would encourage all members, no matter the party, to support this important legislation so we can resolve specific claims once and for all, for all Canadians.

Thank you.

● (1550)

The Chair: Thank you, Mr. Minister.

Before I go to our first questioner, I wonder if you could introduce the officials you brought with you today.

Hon. Chuck Strahl: I thank you. I should have done that.

Sylvia Duquette and Robert Winogron are my two officials. They were involved in negotiations, and they'll be able to answer all the technical questions. But I do want to thank them publicly for the work they did, along with other negotiators, to put this deal together. It's a tribute to the work of the entire task force that they came up with this agreement.

The Chair: Thank you very much, Mr. Minister.

Our first questioner is Ms. Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much. Thank you, Minister, for coming. We appreciate your being here today.

This is an important piece of legislation, and we acknowledge that it is.

Before I begin my questions, though, I want to make a comment on your remarks. I noticed that you use frequently in your presentation the word “collaboratively”, and we commend you for that. We hope that any future activities with first nations, Métis, Inuit, or whoever will also be done in a collaborative and a consultative manner. As you and I both know, that's the only way there will be any success in dealing with these issues, so I want to acknowledge that.

I have a number of questions, Minister.

Could you speak a bit further about the specific claims over $150 million? You know that there will be a large number of claims that will not have access to the tribunal. They too have to be resolved in a timely and fair manner. Could you comment on how you see those claims unfolding?

● (1555)

Hon. Chuck Strahl: Thank you. I would agree with you of course on the “collaborative”. Whenever any groups, including political parties, can work together, I think the collaborative effort is worth the while and gives us good results. I'm hopeful this bill will be one of those examples.

But probably two of the best successes of this Parliament have been the residential schools settlement and this bill. They are two I'd say shining examples of what happens when we work collaboratively; and I agree with you, it's the best way forward when that's possible.

The large claims that are not covered under this tribunal act are any that are over $150 million. There are anywhere from six to twenty of them, depending whom you listen to. Regardless, what we've done in this tribunal, of course, is set out the parameters that are covered. The large specific claims will require a cabinet mandate to negotiate one-off deals.

The really big deals tend to need more flexibility and tend to need a cabinet mandate to drive them home. To simply put them into this process I think would run the risk of bogging them down and of our actually slowing down the rest of them. There are 800 claims in the system overall. Most of them are covered here, and I think that if we put the really big ones in here, you would run the risk of clogging up the system.

So it would take a cabinet mandate. The cabinet mandate would give the flexibility on a case-by-case basis to the negotiators to try to strike a deal based on that mandate.

Hon. Anita Neville: And do you anticipate that those claims, recognizing the complexity of the claims, will be dealt with in an appropriately timely manner?

Hon. Chuck Strahl: I hope so, of course. I was up in northern Alberta, where we signed an agreement on principle for the Bigstone agreement. That one actually evolved into something that involved the province, involved schooling; there was a bit of a self-government agreement in it; there's a lot of money involved, and lots of land. It ended up being quite a comprehensive deal, if you will, although it's not under the comprehensive claims policy. Still, it shows how flexibility is necessary.

I anticipate that we'll be able to negotiate two things, I'd say. One is to anticipate negotiating them as quickly as possible, although the bigger the deal, frankly the more due diligence there is required on all sides. There's due diligence on first nations side. They want to be very careful, of course. It's a big deal with a big impact, so it has to be done carefully from their perspective, and it's a big deal for the Canadian government as well. So due diligence is required, and the timelines are not as easy to specify as they are in this bill.

But I believe the overall impact of this tribunal will be to pave the way for speedy resolution of many more negotiated deals, whether they be large or small, because it sets an atmosphere in which you say we are not only showing that we can do business, but that we can resolve long-standing claims quickly. That, I hope, will set the atmosphere for quicker negotiations on all negotiations, whether they be large or small.

Hon. Anita Neville: Let me follow up on a question concerning the tribunal. One part of the political agreement, which I would like more expansion on, states that:

> The National Chief will be engaged in the process for recommending members of the Tribunal in a manner which respects the confidentiality of that process.

I need some clarification on this, because it certainly differs from the scheme put forward in 1998, which made eligibility for appointment contingent on the joint AFN-ministerial responsibility.

Can you tell me how you arrived at that decision and why?

Hon. Chuck Strahl: It's important to note that the tribunal will be judges. They're actually judges, so that changes things.

● (1600)

Hon. Anita Neville: I'm aware of that, but I'm talking about the appointment process.

Hon. Chuck Strahl: Right, but once you put judges into the mix, and the agreed-upon solution was to put judges—and I'm hoping very experienced judges—onto these tribunals, then the appointment of judges is within the mandate of the Department of Justice and the Department of Indian and Northern Affairs. We do want a consultative process with the national chief.

We're not creating a new process to appoint judges per se. What we are saying is that we will be working closely with the national chief. He, working through the Assembly of First Nations, will make recommendations. Because the judges will be selected from existing judges, then it's not appropriate that any one judge is going to be selected to sit on a panel. In other words, there will be recommendations, working with the Assembly of First Nations through the national chief, but they are selected from judges, and judges are the purview of the Minister of Justice in that whole appointment process.

Hon. Anita Neville: Just for clarification, are you saying that the Minister of Justice will make that appointment rather than the Minister of Indian Affairs? Is that the intent?

Hon. Chuck Strahl: Right. They will be selected from existing sitting judges, and that selection will be done by the Minister of Justice.

The Chair: Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

Thank you, Mr. Minister. I greatly appreciate the work that has been done. The creation of the Specific Claims Tribunal is important work; a good job has been done.

Mr. Minister, I have a few questions that I will admit are somewhat sensitive. I am in no way questioning your competence, that is absolutely not the case. My first question is a little more general, however. Were the provinces, and obviously Quebec, consulted before the bill to create the Specific Claims Tribunal was introduced?

I might ask at this point that your assistants look at clause 15 of the bill, because I will have questions about that.

[*English*]

Hon. Chuck Strahl: I could answer that. There were consultations with provinces on the specific claims idea, if you will, but they were not part of developing the actual bill itself. We were quite careful in the drafting of the bill to make sure that provinces are not obligated, nor are we trying to obligate provinces or territories to participate in this if they don't want to. There's no attempt to meddle in their jurisdiction in that way.

However, there is an opportunity for provinces, if they want to, to participate in this by expressing interest and making that expression of interest in writing.

[*Translation*]

Mr. Marc Lemay: I don't want to interrupt you, Mr. Minister, but if I could read subclause 23(1) of the bill:

> 23. (1) The Tribunal has jurisdiction with respect to a province only if the province is granted party status.

Quebec is still a party to the Confederation of Canada, and what I am going to say also applies to other provinces. Suppose that a land claim affects part of Quebec. It might be made by the Algonquin north of Maniwaki, for example. I would note that this could happen in other communities.

Should the bill not provide that when a specific claim may affect a province, the province would immediately be made a party, that we not wait until a judgment is given? This has an impact on the province, the municipality and the regional county municipality. It isn't happening in a vacuum. It's fine in the case of "isolated" land, but when a specific claim is made for $100 million that affects land that is enclosed by a municipality or a province, I wonder: should the province not be made a party immediately?

● (1605)

[*English*]

Hon. Chuck Strahl: I may get the officials to comment on this as well, but it's important to distinguish that nothing in this bill is meant to, or will, obligate the provinces to do anything. They don't have to participate in this in any way, they don't have to be part of it, they don't have to acknowledge liability—they don't have to acknowledge anything. They are completely outside the ambit of this bill.

There's is a provision that if they would like to be part of the tribunal—and they would like to be part of it for their own purposes—they have to go through a process to become a party of the tribunal. They have to submit in writing their willingness to do so and show how they have made commitments, perhaps in the provincial legislature, on how they would follow through on it.

Once they sign on they are part of the process. But only if there's a willingness, for whatever purposes the province may designate, would they participate in it. Otherwise it's strictly a federal obligation and a federal government and first nation relationship.

We've seen this at times, and I know one of the other members here has asked if the provincial governments ever take part in these negotiations. They do so at their discretion. They already sit at the negotiating table, and they may or may not participate. We always welcome them, but there's nothing in this bill to compel them.

[*Translation*]

Mr. Marc Lemay: Okay.

[*English*]

Hon. Chuck Strahl: Maybe Sylvia would like to speak to this.

[*Translation*]

Ms. Sylvia Duquette (Executive Director, Specific Claims Reform Initiative, Department of Indian Affairs and Northern Development): I would like to point out one thing. You referred to the Algonquin. This does not affect comprehensive claims, these are specific claims. The only thing the tribunal can ever do is determine the amount of money owing. So there will be no declaration concerning, for example, the position of lands or anything else that may affect the province.

Mr. Marc Lemay: I might come back to that in the second part, but just quickly, what happened in relation to specific claims before Confederation, before 1867? Was a mechanism provided? We know that there are claims in that regard.

[*English*]

Hon. Chuck Strahl: The officials are eager to answer this.

Mr. Robert Winogron (Senior Counsel, Department of Indian Affairs and Northern Development): There are provisions in the bill. Subclauses 14(2), 14(3), and 14(4) are a little wordy, but they do provide for a claimant to submit a claim based on facts that occurred pre-Confederation.

The Chair: Thank you.

Ms. Crowder.

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

Thank you, Mr. Minister, for coming before the committee on this important bill.

I have three questions. I'm going to ask them all at once and then turn it over to you to answer.

First, what kinds of commitments and assurances are there to ensure that the political accord is followed through in a timely way? We've seen with other political accords that when there was a change of government they often collapsed.

The second question is a philosophical one for those of us who in previous lives dealt with mediation, negotiations, and what not. Many of us have come from an interest-based position on negotiation and mediation. I wonder if philosophically there is any will to work toward a more collaborative approach to settling these claims instead of an adversarial one. Even with this work it's still an adversarial approach.

My third question is based on some of the very good work that was done by the parliamentary staff on transition. We know from the records that there are 612 claims under review and 138 in negotiation. Previous departmental witnesses who came before the committee indicated that the backlog was significantly more than that because there are claims that have not reached the stage of being reviewed.

Parliamentary research said that when we're looking at claims that are already in the hopper, the practical effect of clause 42 is to return the clause 16 clock to zero for all claimants with active claims, irrespective of when their claims were submitted or decisions to negotiate the claims were made under the pre-SCTA system.

In essence, to have the clock turned back to zero for the claims that are already in the system and could have been in the system for a significant number of years once that review is done seems to disadvantage them. Are any extra resources or mechanisms put into effect to not disadvantage people who have already been in the system for years and years?

Thank you.

● (1610)

Hon. Chuck Strahl: Thank you. Those are all good questions.

On the political accord, it was something that was agreed to by the Assembly of First Nations, and I finally agreed to it as well. It was part of the negotiations in Jim Prentice's day, but I signed off on it as we came to the end of the task force work.

The political accord sets out the expectations of the Assembly of First Nations, the national chief, and me on the frequency of meetings and the ministerial commitment to follow through on decisions. Negotiations were started under Jim Prentice, but this is something I readily agreed to. It gives a level of comfort, I hope, to the Assembly of First Nations, in that it operates at the ministerial level. It's not just a departmental office or a wing of something. We want to make sure that the minister himself or herself is engaged in resolving issues surrounding claims.

It's a political commitment, a political accord. Because it's a political commitment, I would think that any minister who holds this job will want to follow through on it. To break this would be very unwise. Much goodwill has been established, and the political accord is more evidence of it. So it's a political commitment. It's not a piece of legislation, but it is an important document that goes right to the highest level of both first nations and the Government of Canada.

The other question, the philosophical question, is what can be done to take us away from the confrontational role that this presupposes? I think this will do three things. One is that we are committing more resources. The current commission, for example, is going to be transformed into a mediation role. It's going to change from simply accepting the claims as they come in and tallying them up in the pile. They've done a lot of good work, but it's going to change. Because of the tribunal, the role will change into a mediative one. That's an important role, and I hope they'll be able to bring parties together and move it along before it gets confrontational.

Overall, the biggest effect is the tribunal itself. The tribunal sets time limits, finally. So first nations will no longer have to take up claims they inherited, which is a frustrating process. It can get pretty nasty, after it's been going on for a generation. If it gets to a stage where you can't see your way to negotiation, or if three years have gone by, it can be sent at first nation discretion to the tribunal, to judges. It's no longer confrontational; the judges will actually make a ruling.

I think the fact that it's there and happening will take a lot of the sting out of it. Instead of a lifetime drag-out fight—and I think we've seen plenty of those in the past—it will encourage everyone to work together. We will all know we have a three-year limit, so we won't waste time. I think that in itself is going to be a great mediating element, a leavening, in the whole system.

The last thing I jotted down here is claims in the system. There is a need to have more resources, and this was one of the things that was identified, both in the Senate report and by the task force. More resources are necessary to make sure that we don't just transfer one backlog to another. Otherwise, I don't know how we can do it. You mentioned the three-year claim. It's at the discretion of the first nations. The first nations will have a choice. They'll be able to refer it to the tribunal if they think it's gone on long enough. It's at their discretion; it's not something the government will do.

I believe the minister can also agree to do it earlier. If first nations come to me and say it's already dragged on so long that they want to move it right to the tribunal, the minister has the ability to do that inside the three-year limit.

● (1615)

I would think some of those claims that have been in the system a long time would be prime candidates to get right in there so we wouldn't have to wait three years for our first claim.

The Chair: Thank you, Minister.

Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

Thank you, Minister Strahl, for coming to the committee today. I know that ever since you received this important appointment, you've really embraced this bill and of course the work that needed to be done in order to bring it to fruition.

I have seen the amount of effort that has been put in, not only by your staff and the department, but also by the AFN. There needs to be a lot of credit extended to them for the important work they did in assisting on the drafting of this bill. I think it really speaks to the fact that in a democracy there are times when parties can come together and really do excellent work in areas on which they can find agreement, and I think obviously this is a really strong example of that.

I know that you've really taken an initiative on this. Perhaps you could talk a bit about how you see this as a very substantive, systemic reform, especially in relation to what we've seen as a massive growth in outstanding claims over the last number of years, and really how this has been a priority for you and how you think this will begin to find a way to diminish that massive number of outstanding claims that we have.

Hon. Chuck Strahl: Thank you. I would just echo that. I think I've spoken about it enough, but it always bears repeating, that collaborative work is most ideal in any subject, and perhaps even more so on the first nations side, where you have, quite often, a vast variety of interests, some of them dating back to Confederation or pre-Confederation.

I do think this is going to help us solve more specific claims quicker. I already mentioned that I think it's going to create a new dynamic. It's going to create a new attitude among negotiators. It's going to relieve a lot of tension from people who understandably say it's been going on too long, and they want to see a solution, and they'll be able to see it in their lifetime. In fact, most of them will be able to see it, perhaps, during their electoral cycle. They say, “I started this land claim, and before I ran for election as chief, it went on to the next stage”. They can really see progress. I think it's a huge change in the way they'll be able to show progress to their own people, and I'm going to be proud to be part of that.

There's also a lot of work we can do to speed up claims generally. We've been talking about grouping claims, for example. In B.C., for example, there'd be claims on graveyard sites. A lot of the research that we would do would be common. The graveyards are isolated. They've been left out. There's concern that there are specific claims on it. But instead of saying “We're going to do the research on grave sites for you, and when that's all over we'll start research on grave sites for you”, and so on, it just makes a lot of sense to say that there are twenty specific claims on grave sites, and a lot of the research is common—for example, what constitutes a grave site, what are the boundaries, how do we designate it. I think we can do a lot of work to speed things up. There will always be specific claims, individual settlements, so to speak, but a lot of the research can be sped up. We can do a lot of things in common, because you can imagine in 800-plus claims there's a lot of repetitive argument and repetitive research even. So I think we can do some good work, working together with first nations to settle more of them, quicker.

Mr. Rod Bruinooge: Mr. Minister, I think another element of this that hasn't been discussed maybe as often as it should is that there's considerable interest from the resource sector as to the certainty this will provide, not only for the resource sector, but for entrepreneurial first nations communities. How do you think this will accentuate first nations communities and the resource sector to perhaps increase the economies of the north in the short and long terms?

● (1620)

Hon. Chuck Strahl: It is important, as Ms. Duquette has already pointed out, to note that specific claims don't deal with land per se. This has to do strictly with monetary compensation; land is not part of it. Now, it may eventually be part of it, if a first nation decides to buy some land and asks for it to be added to a reserve. That can be done, but it's done on a willing buyer and willing seller basis. When that happens, on our part we're going to accelerate and make additions to reserves a priority. To use the example of the graveyard, we'd say let's not mess around; they want it part of the reserve, so let's add it and get it done quickly.

But there is, of course, an element to specific claims, some of which are quite large, where you'll be saying—once you hand it off to the tribunal—I want a final decision on this. That's part of what you agreed to: we want a final decision. So both parties, in a sense, are saying we've done our negotiations, we've done our research, we handed it off to the tribunal and we want a final decision. Then that final decision is binding on the parties, and then we will move on.

In that sense, I think it gives everybody a degree of comfort. It doesn't involve land, per se, but it does involve the final disposition of the issue or specific claim itself. In that sense, I think it does give some assurances in a timely way for everybody who might have an interest. Even if it's a third-party interest looking on, they'll be able to say this process isn't a lifetime thing, but we can track it and see how it's going to happen, and it's going to be dealt with with finality—and quickly.

I think that's a great thing for first nations, and I think it's a great thing for all Canadians. That's why I say it balances all those rights, and I think it gives a really nice option for first nations who want to use it—though they don't have to use it—of some assurance we're going to move on it quickly.

The Chair: Thank you.

We've finished the first round. Now we're into the lightning round.

Five minutes of lightning, Mr. Russell.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair.

Good afternoon, Minister Strahl. It's good to see you here.

Again, this is one example of a collaborative approach taken by your government—one example, I would emphasize. I don't know if there are others. I would only suggest that if we had done this with the repeal of section 67 of the Canadian Human Right Act, we wouldn't have had such a protracted debate on that particular piece of legislation. So I would encourage more of this approach.

I just want to ask a question. You say that land is not involved, but when a first nation comes forward with a grievance of some sort, isn't the land one of the contentious issues that is part of the claim being asserted? Isn't that one of the most contentious issues, in the sense that, even in this legislation, there is the extinguishment or release of any rights of the first nation to any lands? You can't grant larger lands or establish a boundary that might be in dispute, or talk about encroachment of interests around that particular piece of land, but you can only grant some compensation for that.

Is that going to be a stumbling block, do you think? Are we trying to get out of this situation, just because we're increasing the dollar amount of compensation? Is that the rationale behind this?

Hon. Chuck Strahl: Maybe land isn't involved, in the sense of it being part of the dispute, but this bill and the tribunal can only award cash. The federal government usually doesn't own any land any way. Usually land is not part of it. Certainly with this tribunal, it's strictly cash. Again, they may decide to buy land with the cash, but we don't award land; that's not part of what this specific claims process will do.

Some of the other things you mentioned are typically part of more comprehensive land claims agreements or have to do with constitutional or treaty rights. This bill's not meant to deal with those either. For example, if the issue is harvesting rights or resource rights or rights to more land, or even additions to reserve, it is not part of this. For example, we added 159,000 acres to reserve last year in Manitoba, and we're hoping to add another 150,000 this year, and so on. That's a land-based issue, an addition to reserve, and it is not covered by this legislation. This isn't meant to solve every negotiation issue we have, but is strictly for the specific claims process.

● (1625)

Mr. Todd Russell: No, I was just trying to make the point that land is a contentious issue—

Hon. Chuck Strahl: Oh, of course.

Mr. Todd Russell: —once the claim has been asserted.

With regard to timelines, I appreciate the fact that we have six months or three years for various parts of this particular process. Why wasn't the decision taken—or I can't read it in here, at least—to assert a timeframe for the tribunal itself to make a decision once it reaches that particular level? There's nothing in this particular bill that establishes a timeframe for the tribunal once it's heard all evidence or taken all positions into account to make their decision.

Hon. Chuck Strahl: No, but the tribunal will be made up of judges. The judges want to hear all the evidence. I don't think it would be right to tell a panel of judges that we'll give them three weeks and then the time is up. Every case is quite different and quite complex. Some cases may be dealt with very quickly, but for some cases the judges may say they want to hear more evidence because it's so complex. They might need more time.

Obviously judges take the necessary time to do a good job, and I'm not going to be one to tell them—I don't think it would be right—to hustle their buns.

Mr. Todd Russell: I appreciate that, but there could be a time span.

The $250 million, is this new money per year?

Hon. Chuck Strahl: Robert was just pointing out to me that there are provisions saying that it should be done fast, that it should be done as quickly as possible. But I think the truth is that it has to be done properly. I don't think anybody wants a slapdash approach to this. When you take it to the judges, you want it done with solemnity. These are big, important issues for people who have been waiting a lifetime to get something solved.

Mr. Todd Russell: I agree.

Is the $250 million new money?

Hon. Chuck Strahl: It's a new commitment of more than $250 million a year over ten years, with a chance to review it all in five years. It doesn't include any of those big specific claims. The ones bigger than $150 million would be a separate cabinet mandate. We would have to deal with that separately. This money is set aside in order to commit resources, which is one of the things that were lacking in the previous attempts to solve this.

The Chair: Thank you, Mr. Minister.

Mr. Albrecht.

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

Thank you, Mr. Minister, for being here today.

This topic is certainly of interest to all Canadians. In my riding especially, whenever I mention the fact that there are all these outstanding specific claims, they find it hard to believe.

I think I heard you say that there are 800 or more of these claims. Can you give me a bit of a timeline as to how we could have possibly gotten into a backlog of that magnitude? Has this grown very rapidly in the last year or two, or is this something that's been accumulating for the long term?

I'd be interested to know if we have a record on that.

Hon. Chuck Strahl: I'm told that it's been accumulating since 1993. The difficulty has been that there's been no....

In a sense, the government has been, up until now, kind of judge and jury. We've been responsible for all parts of it—accept the claim, reject the claim, award compensation or not, and on and on. Previously all power was held under the government. And the government is saying that rather than do it that way...and it wasn't successful. In fact, it was arguably a disaster.

So by saying that we're going to unleash it, we're taking our hands off it, we're going to give it, we'll just commit a pile of cash to it in order to settle it, I think that's a big reassurance for people who are saying it's not right to have the government pass judgment on the validity of my claim, on the validity of my research, on whether or not they're going to accept it, and on how much they're going to pay, holding all the cards.

This way it's somewhat at arm's length from the government. It's being given to the judges to make the decision. It's a far different system, and I think why we have AFN acceptance.

Mr. Harold Albrecht: I think it would probably be fair to extrapolate from this that if we didn't implement a system like the one you're proposing, the 800 would quickly grow to many more.

On the issue of financial compensation, you mentioned the $250 million per year. If, for example, in year one there were only claims settled that would have expended $50 million, would the $200 million that was left from that year be accumulated to the following year? Or do we start over with a new allotment of cash in the subsequent year?

● (1630)

Hon. Chuck Strahl: My understanding is that the money does not lapse. It's a commitment that goes forward. It's not in the bill. The settlement fund is created to make sure that it's done as are other resources that are committed to this process. That's not in the bill, but that commitment has been made. That money will roll forward.

Mr. Harold Albrecht: So then in any given year, if the money isn't used, it would be rolled into next year's, and $250 million would be added to that. Is that clear? Are we not clear about that?

Ms. Sylvia Duquette: No. This is something that we're still identifying, so we don't have an answer for that today, but there will be $250 million available every year. That amount will be reviewed some years hence. There are the installment payments too, so the fund can be controlled in that way.

Maybe, in a more practical sense, we're talking about large claims. More than 50% of the claims are probably under $3 million, so that gives you a little appreciation of how many claims can go through with that amount.

Mr. Harold Albrecht: I understood from your comments, Minister, that because of the fact that you are able to pay this in installments with interest, we certainly have control over how quickly those funds would be expended, and there is adequate cash there, in your opinion, to deal with them.

Hon. Chuck Strahl: I believe so. We'll see, and that's why we have the five-year review, but that gives us a lot of ability to manage that and to make sure we use all the money that's available to us. If we have to cash-manage in order to do it, there are ways to make that happen.

Mr. Harold Albrecht: Thanks. I'll pass it on to my colleague for a minute, if he wants.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Well, I'd rather have five minutes.

Thank you very much, Minister.

Could you give us some feedback as to the reaction you've received, in particular from Chief Fontaine and the AFN, and maybe some of the timelines that you see this legislation moving forward in—as both of you see it moving forward?

Hon. Chuck Strahl: Very quickly, there were ongoing discussions to put this all together with the task force and lots of input throughout. We did have a ceremony here across the road to announce the legislation, when it was finally all put together. Chief Fontaine participated in that, as did many other elders and chiefs who have been either part of the process or had dreamed of this day, I guess. There is a big degree of support, as there was at the Assembly of First Nations assembly that they had here in Ottawa a short while ago, where they passed motions in support of it. I'm sure you'll have them as witnesses as well, but my sense is that there is broad support for the bill.

The Chair: Thank you, Mr. Minister.

That concludes this round. Mr. Storseth, you're probably up in the next round.

Mr. Minister, it is 4:33 and you had agreed to be here until 4:30. We were ten minutes late getting started. I don't know your timeline, whether you need to leave at this moment or whether you can stay with us a few more minutes.

Hon. Chuck Strahl: I think I'm fine for another ten or fifteen minutes, if you wish.

The Chair: Okay.

Monsieur Lévesque, you are next, for a five-minute round, please.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you for your patience.

I would like to talk about clause 16. If I understand it correctly, it is still up to the Minister to decide whether a claim will be negotiated or not. He has three years to make his decision. If the answer is yes, he can take three more years to complete the negotiations.

How was the timetable that provides for the times before access to the tribunal is allowed decided? Do the time limits provided mean that a claimant whose claim is determined to be valid will not be able to apply to the tribunal, or might not be able to do so, without the Minister's consent, for six years after filing the claim with the Minister? Do you believe these time limits are going to improve the current process significantly?

[*English*]

Hon. Chuck Strahl: Of course, I do think it will improve it. It's three years for each of the stages, and that gives time for first nations to develop their case and put it all together and submit it. Once it's accepted, then there is a three-year process to get it to the next stage. So it does set some timelines in place, and it does allow it to move through the system.

I just want to reinforce that the hope is that most of the claims will be negotiated anyway. It's not our hope to flood the tribunal with cases. Our hope is to accelerate the number of cases and the speed in which we negotiate, as well. That is achieved by committing resources, by grouping common claims, by doing, where possible, common research and working with first nations to get their claims in as quickly as possible. So there are other things we can do to help accelerate it, but if they choose, at their discretion, they can send it in to the tribunal.

There is a certain minimum standard in the application. You can't just write a letter saying “I'd like to have a claim”. There's a certain minimum standard of information that must be in the application, and what a successful application consists of has been developed over a course of time. You have to have historic facts. You have to have band council resolutions. You have to have a bunch of things in the documentation, and it is up to us to help make sure that, when it is submitted, it is as complete as possible, because once it's submitted you can't just add information as time goes on. If that happens, it is another process to get that going, so you want to get it as complete as possible and submit it. We want to help make sure it is complete so that when the clock starts ticking it's actually a good, complete application.

● (1635)

[*Translation*]

Mr. Marc Lemay: Mr. Minister, do the 853 pending claims all affect the federal government?

Will this bill also apply to all federal government agencies? I am thinking, for example, of Fisheries and Oceans Canada, VIA Rail, the railways, and the ports. Are federal agencies for which there might also be specific claims affected by this bill?

[*English*]

Hon. Chuck Strahl: I'd just say first, concerning the federal claims, that there are 800 claims. Not all of them will be successful. There are lots of claims, but not all of them are going to amount to an award, because whether they go to the tribunal or whether we negotiate them, at times we make an argument that some of the claims are not valid. That's part of the debate and negotiation and mediation sometimes, and in the tribunal's case it will also be a decision that they make.

As to who is covered, it's any specific claim that's covered under the definition in here. There are some opportunities for undertakings and different definitions in here; I think it's clearly spelled out what is covered under this.

Bob or Sylvia, do you want to add anything?

Ms. Sylvia Duquette: It is, and it's mostly to do with things under the purview of the Minister of Indian Affairs, because of course it's actions taken under the Indian Act and matters dealing with certain types of historic treaty rights—the definition is very clear in that regard—it's not about fish.

The Chair: Thank you.

Mr. Storseth.

Mr. Brian Storseth: Thank you very much, Mr. Chair.

I should say right at the beginning that I have a couple of questions and will split my time with my colleague Mr. Warkentin.

Mr. Minister, in your mandate one of the things you talk about all the time is economic development and education for first nations communities. Can you tell me how this bill will help advance some of those priorities for our government as well?

All too often we get caught in the immediacy of what we're talking about. Could you take some time to explain and maybe give us a bit of your view of how this fits into your vision of structural reform within the system as well?

Hon. Chuck Strahl: That is a big question, and certainly not all of it's covered in the bill. The bill is very specifically about specific claims.

But I think there's no question that many first nations see the settlement of their specific claim as part of the way out of their economic problems, or of taking advantage of economic opportunities.

For example, I was up in northern Saskatchewan the other day. We had an agreement on a $10 million deal with the Muskoday First Nation. They're delighted with the opportunities it's going to give their first nation. It's a well-run first nation—they have good governance and all those kinds of things—and now, in addition to all that they already do well, they have $10 million to look at opportunities, whether it's to buy land to add to the reserve or other opportunities. It's a pretty nice jump-start for them.

Depending on the specific claims—as has already been mentioned, many of them are quite small, as well—it's not as though it's a panacea, and I don't want to sell it as such. You might end up with, for example, a case where someone has had the corner of their property taken off. A first nation might say that no one had compensated it for that road allowance, and it's a legitimate claim.

They might only get, depending on circumstances, a couple of hundred thousand dollars for that land. Let's not pretend that's going to turn the nation around. On the other hand, it settles a grievance, which creates, I think, a different atmosphere because it's settled. And of course, any money they get is almost always useful for economic development; in that sense it will help it. But it's completely at the discretion of the first nation.

● (1640)

Mr. Brian Storseth: Thank you very much, Mr. Minister.

You mentioned something that you may not have the answer to but I'm sure your department has some insight into, and that's the size of the specific land claims. Do we have any idea, of the 800 that are out there, of roughly and proportionally the size of these things?

Hon. Chuck Strahl: And it's important that they're not specific land claims. They're specific claims. Claims are generally, unfortunately, run together sometimes. But I have to say that they run the gamut right from small, medium, to large. And then there are a few of them, not many but a handful, that are bigger than this tribunal can handle and bigger than $150 million; and because they're so extensive and usually so complex, they're going to require a mandate from cabinet to drive that to conclusion. But in that 800, there will be everything from small, little $10,000 deals for interest lost or non-deliverance of some sort of a fund perhaps....

Let me just say, the longer we delay in getting this solved, as Mr. Albrecht has already pointed out, the more claims we're going to have. Because pretty soon you have claims about how we took too long to settle the claims. In other words, you get interest on your interest. That's why it's important to get this bill done so that we can get at those claims quickly so that we don't create other problems for ourselves, which would be about how we didn't solve these things in a timely fashion, because once that happens, it's another problem.

Mr. Brian Storseth: What role will the provinces be playing in the tribunal process?

Hon. Chuck Strahl: They won't play a role unless they want to. They won't play any role in the selection of the judges or the makeup of the tribunal at all. But if they decide they want to.... And there are always examples where almost every province will say on occasion: I have an obligation here as well, because fifty or one hundred years ago we should have allocated this land or we should have given this access to a resource or whatever, and we'd like to be part of this. And when they say that, we'll be delighted to include them. There's a process to have them added to the specific claims tribunal process. They have to specify in writing that they want to be part and they have to show how they're going to be bound by the decision. But in some ways, I think I would encourage the provinces to look at it. At times it will help solve the bigger issue all at once, and then we can all move on. First nations, province, the federal government can all move on together. And I would encourage the provinces to look at it, because I think—on occasion at least—this is a good opportunity for them to deal with it with finality so that we can all move on together.

The Chair: Thank you, Mr. Minister.

Mr. Warkentin, you'll be in the next round.

Mr. Minister, thank you for being here today and for staying those extra minutes to let us get our full hour's worth from you.

I'm just going to suspend for one or two minutes when the minister leaves and then we'll continue with Ms. Crowder with the officials.

● (Pause)

●

● (1645)

The Chair: We're back. We'll now continue with our second round. We have two more slots, and Ms. Crowder is next and then we'll just continue going until half past.

Ms. Crowder, you have five minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

I wanted to elaborate a little bit on the claims that are already in the system. I'm still not clear. My understanding of the practical effect of clause 42 is that it actually returns the clause 16 clock to zero for all claimants with active claims, irrespective of when those claims were submitted. I think that's an important point, because again, claims have been in the system for sometimes a couple of decades. I know that the process didn't start until 1993, but some of these claims have been hanging around for a long time.

I'm still not clear on the transitional procedures for existing claims. And tied into that, I'm still not convinced that simply a new dynamic, a different dynamic, will mean that the claims will be expedited. I think I need more information on exactly what it is that's going to expedite the process, other than grouping claims and shared research, because I think those, in and of themselves, simply will not expedite that process.

I wonder if you could tackle those two.

Ms. Sylvia Duquette: Yes. The key part of the backlog, all at once, is up to 500 claims, just in that initial phase, as you've said. So on turning back the clock and starting the clock, you're quite correct in that. It is three years going forward. So it does add to the time. They've been in there before, and they have another three years.

Ms. Jean Crowder: Will they be given any priority over new claims coming in?

Ms. Sylvia Duquette: There is a special process there that allows them to.... They will want to refresh their claims, as well. They will not lose time by doing that, and we will be accommodating that, because of course once a claim sticks around for a long time, it's not necessarily ready to be assessed. At that point in time, the first nation needs the opportunity to update the claim and put it in good order.

One of the things I would say in terms of improving the timelines, though, despite the fact that you're quite right that the clock starts when the legislation is.... Right now, without making changes, the projections would be many years beyond three. All those first nations with claims in that backlog assessment phase will have a response on those claims within three years. So that's a very important part of that process, but we do need at least those three years to respond to this glut of claims that is backlogged there.

● (1650)

Ms. Jean Crowder: Are you going to have the resources to do that? I think that's the other issue. I'm not sure that there's confidence that there's going to be sufficient resources to deal with these 500-plus claims that are currently in the hopper.

The second piece of that is whether any part of that $250 million that's being allocated is going to be put into the administrative aspect of this.

Ms. Sylvia Duquette: No. I should separate out those two things, but as the minister said earlier, in fact, yes, there will be additional resources, because we are very committed to getting through the backlog within that three-year timeframe. We now have a legislated timeframe, and we need to give a response.

The $250 million has nothing to do with government resources. The $250 million is exclusively and solely available for the payment to first nations on their claims.

Ms. Jean Crowder: So none of it is for administrative purposes.

Ms. Sylvia Duquette: No. That is something completely separate, and the resources will track that process so that we can meet that timeline.

Ms. Jean Crowder: Have you done an analysis in the department of the kinds of resources that will be required to meet your commitments within three years? Say, for example, that a significant part of this 500 or 600 claims that are in the hopper.... Have you done the analysis on the kinds of resources that will be required in the department to meet your commitment, to meet the three-year timeframe?

Ms. Sylvia Duquette: Of course we are looking at all that, and at the efficiencies, as well, and we've identified all those efficiencies so we can go forward in that way.

Ms. Jean Crowder: Is that information available for the committee?

Ms. Sylvia Duquette: We don't have a report per se that we could introduce. We can certainly try to get back to you with something. But essentially, we do know what resources need to be allocated, and we're confident, and there's a commitment there that those will be there for us to proceed.

The Chair: Thank you.

We'll go to Mr. Bruinooge

Mr. Rod Bruinooge: Thank you, Mr. Chair. Perhaps we'll just have a few questions in relation to some of the processes that will be undertaken by the judges.

One of my questions is whether there have been any parameters set for the judges in relation to the timelines. Is there a process they'll be able to follow so they can achieve the timelines? I'm just thinking of other scenarios. This is kind of tangential, but in Manitoba we have a public process for insurance. There are limitations on things that you can get for a sprained neck or a broken leg, and this really clarifies the process. There are timelines associated, there are dollars associated; it's very efficient. It actually is an entity that serves the province somewhat well.

My point in comparing it to this process is to ask what types of levels would be employed in order to achieve the chronology that you spoke of. For instance, if one judge felt the $250 million was suitable for one claim, I can imagine that the other cases that year wouldn't be able to be completed. So the $250 million, to me, speaks to an amount of money that will have to be parsed over a number of claims.

To wrap up my question, is there any initial process that the judges will be employing in order to parse out that $250 million?

Ms. Sylvia Duquette: If I can go back one step, one of the things that's important here is that when we're talking about the whole backlog—these 800 claims—as the minister said, the vast majority of them will be negotiated. So what we're talking about when we talk about the tribunal is that minority of cases where either the parties haven't agreed that there's a legal obligation there—so where the government has declined to negotiate the claim—or where the negotiations have broken down. So a good majority of those claims will be nowhere near the tribunal at any time.

Regarding that minority of claims before the tribunal, the minister mentioned that these are judges. They will control their process. And as we pointed out in the bill, part of what the tribunal is urged to do is to consider timeliness as part of what they must consider in going forward with a claim. That being said, it still has to be done diligently. They will be making their own rules, and in making their own rules they are directed to do so in such a manner that the claim can go along quickly.

● (1655)

Mr. Rod Bruinooge: There's been considerable bipartisan support for this bill. I believe we'll see it pass in a timely manner, perhaps even in the next six to eight weeks. After it achieves royal assent through the Senate, which I don't expect would be held up either.... Perhaps it would achieve that in early May. This is blue-skying it, because my experience with getting bills through this committee hasn't been a good one. But I'm hopeful that on this subject we will have a good experience and a lot of diligent work to get it done.

So let's say, perhaps, we receive royal assent sometime in mid-May. When could you imagine this tribunal being up and running?

Ms. Sylvia Duquette: Of course it has to be up and running 120 days later, when the bill comes into force. There's an automatic coming into force. Here I'll look to my colleague at the Department of Justice, but under the Interpretation Act, even before it comes into force we can start doing all of the administrative preparation in getting the tribunal set up to be prepared for that day four months later.

So there's royal assent, then 120 days later it automatically comes into force. And in that intervening period we expect to be ready to launch so that on day one the tribunal is up and running.

The Chair: Thank you.

Ms. Keeper, five minutes.

Ms. Tina Keeper (Churchill, Lib.): Thank you, Mr. Chair.

I'd like to thank you for staying so that we have this time.

I'd like to go back to clauses 22 and 23, around the issue of the provinces, and the fact that the minister said that they don't have to acknowledge liability. If they'd like to be a party, then they can notify the tribunal in writing. I'm a little confused about the relationship, then, of the crown and the first nations in this process, because what he stated was that this is the only way the province would be involved.

Is that right, that it's only if the province decides to be involved?

Ms. Sylvia Duquette: Yes. This is, of course, a federal tribunal. Most of the matters being dealt with have a large federal or even an exclusively federal responsibility component to them. That is not to say that provinces don't have some responsibilities on some claims as well.

Ms. Tina Keeper: Right, because clause 22 says that the tribunal may have a decision that a "specific claim might, in its opinion, significantly affect the interests of a province, First Nation or person", and then it would notify them in that instance. In that instance, what is the process at that point?

Mr. Robert Winogron: If you look at clause 23, it provides the tribunal with jurisdiction to grant party status to a province, and that happens under subsection 23(2) where the federal government makes a claim, essentially, against a province. The federal government is faced with a claim by a claimant first nation, and the federal government's position is that actually this province is partly responsible for this; that's the government's position and it invites the province to attorn to this tribunal's jurisdiction and be part of this claims process.

● (1700)

Ms. Tina Keeper: Is it only the crown, or is it only the federal government that would have the ability to make that kind of claim? Would the first nation as well? Would that be part of their claim and then the tribunal would make that decision?

Mr. Robert Winogron: That's right. The first nation can make an allegation that a province is at fault. It doesn't happen. It usually happens that it's the federal government that makes an allegation against a province, but it is possible. Then it's the province's decision as to whether or not to attorn to the jurisdiction of the tribunal.

Ms. Tina Keeper: Then it is really up to the tribunal to take that action?

Mr. Robert Winogron: Yes, the tribunal grants party status.

Ms. Tina Keeper: Okay. I would like to also ask a question. You had said that the vast majority of the claims will be negotiated and those that you are unable to negotiate will move to the tribunal process. Many first nations have claims that are focused on land, and they are not interested in a cash-only claim. What is the process that the government intends to put forward for the claims that are focused on land?

Ms. Sylvia Duquette: This is a very good question.

Usually when the claim involves land, we need to have the province involved, and we do that at the negotiation table. From the federal government's perspective, though, even at the negotiation table, the component from the federal government for its responsibility is usually cash, and that will be the same thing at the tribunal. As the vast majority of claims are being negotiated, we look for participation from the provinces wherever possible, and we certainly invite them to all of the specific claims tables where they can be of assistance or where they might be partially responsible where land issues are engaged.

Ms. Tina Keeper: Is there a particular type of relationship in that negotiation process? Is it is sort of a trilateral, or is there a bilateral, or a double-tracked bilateral process? Is that decided by the first nation and the crown?

Ms. Sylvia Duquette: The best example of this is treaty land entitlement. Sometimes land is owed under historic treaties, and it has not been provided, or not enough land has been provided. In most of the provinces we have an actual agreement with the province now, a mandate to go forward. We have tripartite tables, and at those tripartite tables there is a first nation, there is a province—say Saskatchewan—and there is the federal government. The province works with us so that the land component can be dealt with at the same time as the cash component.

That's very positive, and that will continue.

The Chair: Thank you.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chair.

Thank you very much for staying and being part of our deliberations this afternoon.

I'm wondering if we could just talk briefly about the determination of validity of claims and how that is done, and what the process is in this new piece of proposed legislation. How will the different parties come to a determination of validity of the claim?

Ms. Sylvia Duquette: Go ahead. It's the tribunal.

Mr. Robert Winogron: Is the question how will the tribunal decide validity, or how will the minister decide whether or not to negotiate?

Mr. Chris Warkentin: I think probably the tribunal first.

Mr. Robert Winogron: If you look at clause 26 of the bill, it sets out very broadly that the tribunal will conduct its hearings in any manner it considers fit. Then subclause 26(2) of that is on taking certain things into regard, such as achieving an expeditious resolution. The tribunals, and these are Superior Court judges, will write their own rules of process, and they'll conduct their hearings as they see fit. If it's in the traditional court model, they will hear evidence, they'll hear witnesses, they'll look at documents, and they'll come to a determination as to whether there's an outstanding lawful obligation.

Mr. Chris Warkentin: What would the timeframe of a determination of validity usually be? I suppose it would depend on the circumstances. Would that be part of the three-year process from the time...or that's in addition to?

Ms. Sylvia Duquette: Tribunal hearings usually are much shorter than that. An average claim we would anticipate might take up to three weeks; some will only take two days. These are hearings; evidence is put forward, and the judges will then make a decision.

The three-year timeframes relate to assessing the claim by the minister for negotiation—so a decision from Canada that we want to negotiate this claim—and the other three-year timeframe is for the negotiation process. You can go beyond that, but it's a three-year timeframe, after which if you haven't got a settlement agreement, the first nation has the option to say this is enough; we want to take it before the tribunal and get a decision.

● (1705)

Mr. Chris Warkentin: So in terms of the determination of validity, if they're deemed to be not valid, is that a binding determination, or is there a process after that by which other mechanisms might be utilized?

Ms. Sylvia Duquette: Go ahead, and you fill in.... It's a final decision by the tribunal.

Mr. Robert Winogron: It's a final decision, and the respondent parties are released from obligations. Interest in the land is released if land is an issue. So the decision is final, subject only to judicial review, which is a process wherein if the jurisdiction of the tribunal is in question, then that jurisdiction can be questioned; otherwise it's a final decision.

Mr. Chris Warkentin: Obviously, specific claims come in so many different forms, and I'd like to just question a little bit in terms of the expropriation of land, specifically for transportation corridors and specifically for rail. I understand there are some specific claims that address the issue of rail, either currently being used, or ones that have been abandoned but haven't been given back to the aboriginal community. I'm wondering, in this type of a situation where there may be a third party company, like CN or CP, involved, how that will play out or how they'll be involved in the process in determining either damages or restitution.

Mr. Robert Winogron: The answer is that they will not be involved. The tribunal will only assess the liability of respondents, so third parties will not be respondents in this process. So if there is a fact situation that involves a third party, the tribunal will look at those facts and determine what the liability of the federal government is, in that set of facts, or whoever else is responding, whatever provinces, and award compensation against a respondent party for its share only.

Mr. Chris Warkentin: I understand we're getting into the hypothetical, and maybe that's a dangerous place to be. I'm just wondering how you would foresee a dispute over rail—currently used rail—being resolved, if in fact that's brought forward as a specific claim.

Mr. Robert Winogron: There are a number of questions there. It is an interpretation. If you look at clause 14, it sets out in great detail grounds on which a claim can be brought. If the facts of any particular case fall within one of these grounds, then the claimant has an opportunity to bring a claim, first to the minister, and then in three years to the tribunal. So we can speculate on different fact scenarios, and maybe it's not good to guess how it would play out, but the grounds are clearly set out in that section.

The Chair: Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Thank you. I am going to try to be concise.

Ms. Duquette, you said something earlier that bothered me and stuck in my mind. That being said, I will take what Mr. Winogron in its most positive sense. Paragraph 14(1)(d) says:

> 14. (1)(d) an illegal lease or disposition by the Crown of reserve lands;

Imagine that we are on the shore of the ocean and there is a land claim all along the coast, because there was an expropriation and the shoreline has been taken from a reserve and surrendered to the Department of Fisheries and Oceans so it can build a port. Should the Department of Fisheries and Oceans not be named as a party to the proceeding? Could other government entities—I referred to the railways earlier—be named as parties to the proceedings?

● (1710)

[*English*]

Ms. Sylvia Duquette: I'm going to ask for legal counsel to add to this.

When we talk about the federal government, we're talking about fiduciary obligations. The reason the federal government is involved, in particular the Department of Indian Affairs, is because when lands are taken under the Indian Act, it is the minister and the Department of Indian Affairs who are involved in saying yes or no to that, and dealing with surrenders and the like. Usually the claims that come to us are about our failure to fulfill our fiduciary obligations in consenting to lands being taken. That's where the federal liability comes in. That federal liability is often related to the Indian Act and duties that are marked out in the Indian Act.

I don't know if that helps you.

[*Translation*]

Mr. Marc Lemay: Yes, that helps me. So the issue is confined to reserve lands under the Indian Act. For Indians off reserve who have occupied land for 50 years, for example, but it had not been established as a reserve, it would not apply?

Ms. Sylvia Duquette: No.

Mr. Marc Lemay: I understood correctly when I said that? So it would not apply to them. That's correct?

[*English*]

Mr. Robert Winogron: If I understood your question, as I mentioned earlier, the grounds are set out in section 14. Of course the grounds are not restricted to reserve lands. Claims on other grounds can be brought.

[*Translation*]

Mr. Marc Lemay: Wait, there is an important point. I want to understand. We have aboriginal people living off reserve, who are on land that has not been established as a reserve, and they have been there for decades. We are talking about 15 to 20 years. Could this Specific Claims Tribunal apply to them? Can they make a claim using that tribunal?

[*English*]

Mr. Robert Winogron: The question is not where individuals reside. You can see under the act that "claimants" are defined as bands under the Indian Act. These are claims by bands, not individuals, so it doesn't matter where an individual resides. Claims are brought by first nations. They are the only eligible claimants.

[*Translation*]

Mr. Marc Lemay: If a band is established, it is larger than aboriginal people on a reserve, can it go farther?

[*English*]

Ms. Sylvia Duquette: I'm not sure. We're probably not understanding your question completely.

I want to make something very, very clear. I'm concerned—

Mr. Mark Lemay: I suggest you do that.

Ms. Sylvia Duquette: Yes. I'm concerned with members thinking that this tribunal or this process deals with claims to aboriginal rights and title and occupation of territories by aboriginal groups including bands. This is not about that. That is dealt with in the comprehensive claims process and in the B.C. treaty process.

The kinds of land matters that are dealt with here have to do with wrongful takings of reserve lands under the Indian Act. They have to do with the failure to provide or to have met the obligation to provide reserve lands, and that might have happened under treaty. And the end result of this is that if it's at the negotiation table, all the relevant parties are there and we address it there and come up with an agreement. If it's before the tribunal, the tribunal will establish whether wrongdoing has occurred and will give money only.

● (1715)

The Chair: Thank you. I missed the one minute warning there. I was forty seconds late, so I gave Ms. Duquette a little bit of extra time.

Mr. Bruinooge.

Mr. Rod Bruinooge: Mr. Chair, I'll ask that you remember that extra time that was provided. Add it to my next round, perhaps.

The questions that I'll ask maybe follow up just a little bit on some of the previous questions, and specifically in relation to previous specific claims that have been awarded in the last number of years, even right up until the most recent announcements that we as a government have made. How do you imagine that these dollar amounts for specific claims—certain claims in certain regions—and those levels in the criteria used are going to affect the judges in the types of benchmarks they set and the levels they set?

Ms. Sylvia Duquette: The judges will be doing a judge's job, which is determining whether or not there's a legal obligation. They're not involved with comparing one claim against the other. The first nation claim comes forward, they make a judgment based on the legal obligation that's owed, and then they quantify that legal obligation, the damages, if you like. So those other issues are not relevant. What has been settled in the past at a negotiation table, we settle, and the parties agree. At the tribunal, the judge makes a decision based on law.

Mr. Rod Bruinooge: Right. I guess I'm just imagining the judges must have to look to some type of benchmark. They must use some rationale, so I imagine there must be at least some utilization of past awards to incorporate into their opinions. I think that's maybe self-evident in the answer, so I don't need an answer on that.

Maybe I'll ask just a few questions about Bill C-6, a bill that was passed by a previous government. Could you maybe highlight some of the improvements that Bill C-30 would have over the previous Bill C-6?

Ms. Sylvia Duquette: There are some key differences between the two. Of course, we've talked about the use of judges. The limit has gone up from $10 million to $150 million. There are legislated timeframes for assessing and getting back to first nations on claims and providing access to first nations when negotiations have not resolved the claim. So that is very, very different.

Another key feature is that when the tribunal is seized with making a decision, it deals with the whole claim at once. In other words, it deals with both what is the legal obligation and what is owed, so that when the parties leave, that claim is settled once and for all. There's not an additional step of saying "We think you have a valid claim; now go back to the negotiation table". It is dealt with once and for all, and that speeds up the process quite considerably.

Mr. Rod Bruinooge: I'll follow up on some of the finality elements of Mr. Warkentin's question.

When the tribunal makes a final decision, my layman's perspective is that other judges in the traditional courts would be hesitant to reconsider a judgment that one of their colleagues has made, a colleague who is taking on these claims as a full-time occupation. My point is that it seems quite unlikely that after a final judgment by this tribunal, one of these cases would be reconsidered in the courts.

● (1720)

Mr. Robert Winogron: There are no appeal provisions, so the case can't be reconsidered on its merits. It will not be reconsidered in reference to the law or the judge's interpretation of it. The only provision for review is judicial review, which is an administrative remedy, available when a judge exceeds his jurisdiction. These are Superior Court judges to begin with, and I don't want to forecast what the odds might be of a successful judicial review. But those are the only grounds on which a matter might be looked at again.

The Chair: Ms. Crowder.

Ms. Jean Crowder: I'm sorry if I keep going back to the claims that are in the system, but there are so many of them that it's a significant issue. I went to the specific claims branch and looked at its public information status report, which is 270 pages long. In all fairness, some are closed or settled cases, but I looked at a few of them. For example, one that was filed in 1998 is still with the Department of Justice for a preliminary legal opinion.

So I wonder what the relationship with the Department of Justice will look like in this new configuration and how it will speed up the process.

Ms. Sylvia Duquette: We are working with a special legal services section of the Department of Justice.

We were talking about resources earlier. In addition to the efficiencies and the resources, we work in partnership. Resources will also be there for the Department of Justice, which is very much involved in this process. For the process to work efficiently and be properly resourced, both the Department of Justice and INAC have to be adequately resourced. They will be.

Ms. Jean Crowder: So can I assume that the speed-of-service guidelines will enable the Department of Justice to respond in less than ten years' time?

Ms. Sylvia Duquette: Well....

Ms. Jean Crowder: You don't have to comment. I have a second question for you. When I look at the list, there's a significant number of files waiting in the Department of Justice for preliminary legal opinions. Some of them seem to be quite old. I'm sure there are many factors, but it does seem that the Department of Justice, forgive me, is a bit of a roadblock at times.

I'd like to just ask a question about mediation. I believe the minister said that part of the role of the Indian Specific Claims Commission has been mediation. Am I understanding that it has until December 31, 2008, to wrap up cases that are significantly far along? Bill C-30, as far as I understand, doesn't make any mention of either the ISCC or a dispute resolution process. So I wonder if you could tell us what's going to happen to the ISCC after December 31, and what provisions will be put in place for mediation.

Ms. Sylvia Duquette: The ISCC has two functions: first, it hears inquiries and makes non-binding recommendations; second, it provides mediation at the request of the parties. As announced eight months ago, the Indian Specific Claims Commission will finish those inquiries that are far enough along to be wrapped up by December of this year. Meanwhile, it will continue to provide mediation services to the negotiation tables.

Ms. Jean Crowder: So after that date of December 31, 2008?

Ms. Sylvia Duquette: It will go till December. After that, mediation services will come under a new body. It has to be a new body, because the Indian Specific Claims Commission is technically a commission of inquiry. So after that date, mediation services will be provided to the negotiating table. It will continue.

Ms. Jean Crowder: That commitment will be in place, and mediation services will be provided after December 31 at the same level that is provided under the ISCC?

Ms. Sylvia Duquette: As per "Justice at Last", this is part of a comprehensive proposal. The idea is to give enhanced access to mediation, recognizing the value of that, and recognizing also that the idea is to negotiate as many of these claims as we can. Let's get those mediation services in. That's a key government proposal and a key pillar in the "Justice at Last" plan.

● (1725)

The Chair: We've arrived at the end of the third round.

The last questioner is Mr. Albrecht. We're going to squeak in by 5:30.

Mr. Harold Albrecht: Thank you, Mr. Chair.

The great collaborative approach that's been taken to come up with this process has been pointed out a number of times today by the minister and also by the department's officials and colleagues, and certainly we all applaud that.

I'd like to question in terms of the regional first nations. We know there has been collaboration between the AFN and the government. Has there also been collaboration between regional first nations groups, and how have they responded to the drafting of this bill?

Ms. Sylvia Duquette: I know the government consultation and the collaborative process was with the Assembly of First Nations as the national organization representing first nations across the country. This is a bill, and it's national in scope.

In the joint task force itself, of course the AFN designated four individuals and Canada had four individuals. There was a cross-section there: Roger Augustine, the chief of staff for the AFN; of course we had Lawrence Joseph, who is the AFN regional chief and also the chief of the Federation of Saskatchewan Indian Nations; Wilton Littlechild, the AFN regional chief of Alberta; and Shawn Atleo, the co-chair, who is the AFN regional chief for B.C.

I know this is probably something, in terms of individual first nations, beyond the group in consultations with them, and something the AFN could elaborate on should you invite them to the committee.

One of the other things worth mentioning is that the consultation on the idea of an independent body goes back many years, so most concerns were well known by this juncture.

Mr. Harold Albrecht: You're fairly confident that the regional first nations groups were adequately represented in the consultation process from the Assembly of First Nations on down, if we could use that terminology?

Ms. Sylvia Duquette: It's probably not for me to say. I think this is something the Assembly of First Nations could elaborate upon. What I can say is that this has been going on for so many years that the concerns and the problems are very well known, and that we did deal very closely with the national organization that I understand represents first nations across Canada.

Mr. Harold Albrecht: I think it's important that all Canadians are assured of the fact that this isn't a one-sided approach by government mandate. We've seen the AFN, and I'm encouraged to hear that other groups at regional levels were also included in those consultations.

Thank you.

The Chair: That's it?

Thank you, Mr. Albrecht.

We're done on time.

I want to wrap up by thanking the witnesses for being here and for staying after the minister was here.

The meeting is adjourned until Monday.

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