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Chair

Mr. Barry Devolin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1535)

[*English*]

The Vice-Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): I call the meeting to order.

Our regular chair is away and Nancy wasn't sure if she was going to make it back in time for the meeting, so I'm chairing the meeting today.

I want to welcome our guests, Jody Woods and Debbie Abbott.

For your own information around the format, it's a fairly formal structure here. We'll ask you to take about 10 minutes to present, and then the committee members will take turns in asking you questions. Those turns will include your responses. For example, in the first round each member has seven minutes to ask a question and get your response, and we will ask you to be complete within that seven minutes.

I'm going to turn it over to you for your opening presentation, and then we'll turn it over to the members for questions.

Ms. Debbie Abbott (Director, Nlaka'pamux Nation Tribal Council, Union of British Columbia Indian Chiefs): Good afternoon.

I am Debbie Abbott. I'm a member of the social development committee for the Union of B.C. Indian Chiefs.

I would like to thank you for inviting me to make this presentation to you today on behalf of the Union of B.C. Indian Chiefs.

With me I have Jody Woods, who is a member of the research staff of the Union of B.C. Indian Chiefs.

We did bring a bit of a presentation. Because of the length of time, I will just make a few comments from our paper. We have copies for the committee as well. I'll get right into our presentation.

First of all, I'd like to quickly go over the history of specific claims research and policy reform advocacy. The Union of B.C. Indian Chiefs is a not-for-profit organization representing over 80 first nation communities in British Columbia. Our goal is to improve intertribal relationships through common strategies to protect our aboriginal title and rights.

We also strive to support indigenous peoples at regional, national, and international forums, and continue to defend our aboriginal title through the revival of our way of life politically, legally, socially, economically, and spiritually.

The Union of B.C. Indian Chiefs houses the oldest, largest, and most experienced specific claims research program in the province of British Columbia. It provides research services to any first nation that provides us with a mandate.

In addition to our ongoing specific claims research projects, we focus on providing B.C. first nations with up-to-date information on specific claims and policy reform, and since our inception we have worked tirelessly for the fair, just, and timely resolution of B.C.'s specific claims.

For more than 20 years now, first nations have sought an independent and impartial process for the resolution of their historical claims. The Union of B.C. Indian Chiefs has been at the forefront of this effort.

The three fundamental failings of the current specific claims process are that Canada sits as the judge and jury over its own conduct, that Canada takes as long as it likes to consider and respond to first nations' claims, and that Canada consistently underfunds B.C. for the research, submission, and negotiation of its specific claims.

Bill C-30 is Canada's latest attempt to address some of these flaws, first by establishing an independent and impartial tribunal having the power to make decisions binding on Canada, both as to whether a claim is valid and what compensation Canada must pay, and second, by.... There has been a misprint here.

● (1540)

Ms. Jody Woods (Research Director, Union of B.C. Indian Chiefs): Bonnie, perhaps we could see one of the copies we gave you. I'm sorry to do this; something has happened in our notes.

Thank you so much.

Ms. Debbie Abbott: And second, it does so by establishing timeframes for Canada's response to first nations' claims. These are marked improvements to the existing process.

That said, there are particular concerns that Bill C-30 does not adequately address. Some of these have national implications, while others are unique to British Columbia's claims situation. Without significant amendments, Bill C-30 will do little to resolve the backlog of specific claims, especially those arising from B.C.

I will return to this crucial issue in a moment, but I will first outline for you the unique history of reserve establishment that has given rise to so many specific claims in British Columbia, as well as the unique status of British Columbia first nations' specific claims in the large, much growing backlog of claims awaiting action by the federal government.

As for B.C.'s unique claims situation, in the colonial period from 1848 to 1865, Indian reserves in British Columbia were established by Governor James Douglas, pursuant to his commission from the Hudson's Bay Company and the British Imperial Crown. On southern Vancouver Island, small reserves were established by Governor Douglas as a result of the Fort Victoria treaties. In the Fraser Valley and in parts of the southern interior, Governor Douglas ordered the establishment of large reserves. When Douglas sent his surveyors out, he told them to ask the Indians to point out the lands they wanted to reserve. He wanted them to include cemeteries, hunting grounds, villages, gardens, and favourite resorts.

From 1866 to 1870, his successors proceeded unilaterally to cut back significantly, or cut off, Douglas reserves. In 1871, British Columbia entered Confederation. In the post-Confederation period, from 1871 to 1905, several federal-provincial Indian reserve commissions were appointed to complete the allocation of Indian reserves in British Columbia. These commissions were established and guided by orders in council and formal letters of appointment from federal and provincial authorities. Commission decisions to establish reserves were unilateral executive actions, as no specific legislation, other than the orders in council or treaties, was involved.

Entirely separate from these 19th century reserve commissions, Treaty 8 was signed in 1899. Pursuant to its terms, treaty reserves were created in northeastern British Columbia and in the old Peace River Block.

From 1913 to 1916, another joint federal-provincial royal commission, known as the McKenna-McBride commission, was established to adjust Indian reserves in British Columbia. Many reserves were reduced in size or cut off completely. A small number had acreage added, while most simply had their earlier allotments confirmed by this royal commission. Reciprocal orders in council by both governments approved the McKenna-McBride commission's decisions. As with earlier reserve commissions, the decisions of the McKenna-McBride commission were unilateral and have resulted in many specific claims in British Columbia.

In short, after Confederation, reserve establishment in B.C., with the exception of Treaty 8 in the northeast, did not take place pursuant to treaties, but rather through a series of joint federal-provincial reserve commissions that were established without the input of first nations, and whose reserve decisions were made without the consent of first nations. Before 1938, these allotted reserve lands, although promised to the first nations, were adjusted, reduced, and in some cases eliminated without the consent of first nations. These unilateral government actions have given rise to the many historical grievances to be resolved as specific claims.

It is against this historical context that the present circumstances of the B.C. first nations' specific claims need to be addressed. In British Columbia, there are over 200 individual Indian bands or first nations living on over 1,680 small Indian reserves.

● (1545)

The Vice-Chair (Ms. Jean Crowder): I would ask you to wrap up in one minute.

Ms. Debbie Abbott: Essentially, these reserves comprise the second smallest reserve land base in Canada, yet we have the third largest on-reserve population in the country.

Wrapping up very quickly, there are two things. We look at the creation of the specific claims tribunal and we find that the tribunal is still, again, not addressing the conflict of interest on the part of the federal government. The conflict of interest of Canada sitting in judgment against itself is not fully removed. In our briefing note, we also talk about the accessibility and the issues of that, of the tribunal, the standards for claim submission. Funding is a very critical issue for communities wanting to do the research for their claims. We talk about reserve creation claims, remedies.

Finally, my conclusion is that the goals of the specific claims policy were stated to be justice, equity, and prosperity for first nations—outstanding business. The existing specific claims process has not realized these goals.

The Vice-Chair (Ms. Jean Crowder): Thanks, Ms. Abbott.

Before we get into the round of questioning, I'm going to ask the committee's indulgence to insert myself in the round where the NDP would normally be. Does anybody have any strong objections to that?

We'll start out with the Liberals.

Mr. Russell.

Mr. Todd Russell (Labrador, Lib.): Liberal to the core, Madam Chair.

Thank you, and good afternoon to our witnesses, Ms. Abbott and Ms. Woods. I'm certainly looking forward to your full brief and going through it in a bit more detail.

This is a significant piece of legislation, and one that will impact quite significantly on first nations people and the resolution of outstanding land claims. You touched on a couple of issues that I want you to comment on a little further.

The tribunal cannot award anything outside of cash, in terms of a cash settlement. It doesn't deal with land as such. Once you take a cash settlement, you basically have to quit your claim to certain lands that may be in dispute, for instance, and then you may have to go to the province in order to establish a claim or to take the province or some other interest to court. I find it a bit contradictory if you've already quit your claim and you've taken the compensation. I find that land in itself is a very fundamental issue to aboriginal peoples throughout the country, whether they're in comprehensive claims or in specific claim situations.

So this is my first question. What is your sense of that, that even if you go through the negotiated process or if you go through the tribunal specifically, you cannot be compensated in terms of lands, you can only be compensated in terms of cash?

The government purports that this bill is going to speed up resolution of claims, but it can still take six years from the time the government says, okay, you submit your information, we'll take three years to assess it and see if we're going to accept or validate the claim and another three years for negotiations, unless both parties agree and say, okay, we're quitting this, we're going to go to the tribunal. So that's my second question.

My third question is this. I'm of the understanding that first nations had a direct say in the appointment of judges or adjudicators or people at the tribunal level under Bill C-6. Under this particular piece of legislation, it only says that we may talk to the grand chief of the Assembly of First Nations. There's no dual role for each to recommend. As I understand it, under Bill C-6, there would be three people sitting in judgment on a specific claim, whereas under this particular legislation, there's only one judge. How do you feel about those changes, those specific instances of Bill C-30?

● (1550)

Ms. Debbie Abbott: On your first question of taking compensation for a cash settlement, as a quick example, the communities I work with live in the transport corridor, Ashcroft and Spuzzum. They are very tiny reserves and they're already divided up by two railways, a highway, and a hydro line. If there is no opportunity for a land settlement, it makes it very difficult to try to purchase additional lands within that very confined transport corridor.

One community I work with is in the process of purchasing additional land, as recommended by the regional office of Indian Affairs. In that recommendation they not only support the purchase of additional land to build new homes on, but the recommendation included paying the regional district $10,000 in lieu of taxes. This very small community is challenged to come up with $10,000 to pay in lieu of taxes. So they're not only expected to purchase land, but they're expected to pay in lieu of taxes. It creates further challenge. There really needs to be a serious consideration of not only cash, but land as well.

Your second question was in terms of the timing. Yes, we know it's going to take six years minimum, and at least it's a start. It's a serious start, because on the work that I have done, we started in 1985 and currently, on behalf of 11 communities that I work directly with, we have 102 claims in the system and many of those have been in the system since that point in time. We need to see resolution, because that most likely deals with one railroad. We still have the second railroad, the highway, and the hydro line to deal with. There needs to be some process that will move the claims forward in a more timely fashion.

We actually were encouraged when there was the possibility of grouping claims, because claims in that transport corridor most likely will have the very same issues, and if we can mutually agree on what types of issues can be brought together to support the grouping or the clustering of claims.... But the final end product would be to allow the first nations to negotiate on their own behalf as to whether or not it would be a cash settlement or possibly even a land settlement.

Mr. Todd Russell: And the third question?

Ms. Jody Woods: Just very quickly, I think you were asking about one judge reviewing it versus a number of judges, and that actually doesn't seem in keeping with any other adjudicative body I've ever heard of. I guess it's intended to mirror a Supreme Court thing, an appeal, the last appeal—there's no appeal after this. Well, in any other context, you would probably have a review board of some kind, and that board might also consist of people who are experts or technicians in the field.

Just to add something to Debbie's earlier point on six years for the addressing of these claims, well, there are actually only six judges at a time, I think. As I understand, it's six full-time at a time operating, and I still can't quite see how they can manage it in six years.

● (1555)

The Vice-Chair (Ms. Jean Crowder): For the Bloc, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good afternoon, and thank you for being here. The issue before us is extremely important, and I have specific questions for you.

Through this bill, the government is trying to avoid a conflict of interest situation. But in your preliminary remarks, Ms. Abbott, you said that this bill will not eliminate entirely conflict of interest problems. I would like you to elaborate on this. Why do you think it would be so, since the tribunal would be the one who sets the agenda?

[*English*]

Ms. Debbie Abbott: It has to do with the makeup of the tribunal. We really have no say in the composition of the tribunal.

Ms. Jody Woods: As I was saying before, it seems that in any other adjudicative body, if decisions are binding, then both parties typically have a say in who makes those decisions and agree on that jointly. This is not the case here. The power of the AFN to make recommendations is not the same in any way as Canada being bound by those recommendations.

The other thing is that because the cap of $150 million limits access of claims that are over that cap, those claims do not have access to the tribunal were it remedied to completely get rid of the conflict of interest. So they still face that. It's still ministerial discretion or it's still other ways of resolving it.

[*Translation*]

Mr. Marc Lemay: I appreciate that, but what would you recommend? The government intends to name independent judges. Right now, the government is judge and jury. It decides how much time the process will last and when negotiations will take place. It makes all the decisions.

I am one of those who believe that, with the creation of an independent tribunal, and those words speak for themselves, both the government and the first nations... There must be an atmosphere of trust, but I believe the creation of an independent tribunal would be within the parameters of the agreement with the first nations.

What would you suggest in order to put in place an independent body like a tribunal?

[*English*]

Ms. Debbie Abbott: I believe for it to be a truly independent tribunal, the first nations must have a say in the composition of the tribunal.

[*Translation*]

Mr. Marc Lemay: I did not hear your point of view on one aspect of Bill C-30, that being the role of the province. I would like to hear it. I understand that there have been negotiations and that you have a great deal of experience. I thank you, it has been very interesting. For example, what is the role of B.C. concerning this bill? As concerns the land issues, the government says that it cannot grant land because the province should take part in the negotiation on land claims.

Would you accept the involvement of the provinces? How do you see the role on the provinces in such a negotiation?

● (1600)

[*English*]

Ms. Debbie Abbott: Right now it's really unclear as to how the province will be involved. I think that's something that has to be definitely worked through.

I say that as a result of a very recent court case that happened in British Columbia, the Williams case, and having to go through that. The province had to foot the bill at the end of the day for $60 million, after so many months of court hearings and so on.

So I think there really has to be a commitment for the federal and the provincial governments to get together and sort that one out with the first nations.

The Vice-Chair (Ms. Jean Crowder): I want to thank you for making the long trip here, and on very short notice. I'm from British Columbia, and it's important to me that we have representatives from British Columbia.

I have a couple of questions. One is that some of the talk in British Columbia is that a significant number of the specific claims in B.C. are going to be over the $150 million level. Could you comment on that?

Ms. Jody Woods: I don't think I could come up with a number, but there certainly are a number. One was recently rejected based on the Weyweykum Supreme Court case. The land value of that is approximately $750 million. It was a larger commonage claim, and there are a number of those right now in the process.

I don't know how many of those larger claims are from B.C., but certainly a number. They haven't been evaluated, I don't think, at this point.

The Vice-Chair (Ms. Jean Crowder): So you don't have an analysis of that.

Part of this process is around the political accord. The political accord is an ongoing process that will take place in parallel with the legislation. Both provincially and federally we had a political accord signed—in 2005 federally—and I understand that there is some uneasiness with the political accords that are in place with the Province of British Columbia right now.

Do you have any comments on what needs to be done to ensure that the political accord that is part of this process actually stays in place and is respected by successive governments?

Ms. Debbie Abbott: I think the bottom line has to be that there really is a need for meaningful consultation with first nations.

The Vice-Chair (Ms. Jean Crowder): And if you are talking about meaningful consultation, what would that look like to you?

Ms. Jody Woods: It would mean talking directly with communities, particularly in British Columbia, because British Columbia represents a unique situation in terms of specific claims: the largest number of claims in the backlog, the largest number of new claims by far. B.C. first nations need to be consulted directly, need to be spoken with directly about this, need to be included in the process every step of the way.

Some of the uneasiness surrounding the political accord may be that we've been given assurances that the political accord will cover some of the main concerns that UBCIC has with the bill, but it's not inspiring a lot of confidence, particularly because first nations in B. C. have never directly been spoken with about the makeup of that accord and how their concerns are going to be addressed by it.

● (1605)

The Vice-Chair (Ms. Jean Crowder): You mentioned that you thought a number of amendments to the bill needed to be in place to have this bill meet the needs of British Columbia. Can you talk about some specifics around that—I don't mean the language around it, but the specifics about what would need to be included in order to have your organization's support? Of course, this is very general.

Ms. Jody Woods: I think first that all reserve creation claims must be accepted for review and have access to the tribunal; that there must be no cap on the claims that are considered and that have access to it; and that the issues surrounding conflict of interest must be truly dealt with through the consultation with first nations in B.C. and through their power to make binding recommendations about who sits on that tribunal.

Probably one of the key issues would be increased proportional resourcing to cover the costs of research, submission, negotiation, and access to the tribunal of claims. As I said, there are 65% of the claims in the backlog, 45% of the claims in the system, and—we were talking about this earlier today—we anticipate a high number of new claims. Also, there are a pretty high number of claims sitting stagnant right now without research funding. All of those are going to need the appropriate proportional resources to be advanced and to be dealt with meaningfully.

The Vice-Chair (Ms. Jean Crowder): One of the other points the officials made when they came before the committee a couple of weeks back was that the philosophy was that a significant number of claims would not actually go to the tribunal; that there would be negotiation, that there would be this funnelling of claims so that smaller numbers would go to the tribunal. Could you comment on whether you would see this negotiating process as a possible solution, and what problems you might see with it? You have approximately a minute.

Ms. Jody Woods: I think some of the remedies the minister was discussing in his testimony had to do with grouping claims and with joint research. As Ms. Abbott was saying earlier, the general idea of grouping claims is very logical. I think it can move a lot of claims through quickly.

There are still some problems with it. There may be claims that are of similar nature in fact but of different nature in impact. They may not actually fit as easily as they would appear to.

The other was joint research. Generally the idea of joint research is okay. We've pursued this a bit in the past in B.C. We've never actually been able to make it work. We've had, for instance, just some very basic research concerns about access to documents, the wait times we have, and the fact that this situation creates a not-so-level playing field.

The Vice-Chair (Ms. Jean Crowder): Thank you, Ms. Woods.

Mr. Bruinooge.

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

I've never heard such balanced questions out of the member for Cowichan in my life. It's quite interesting to hear. You should be in the chair more often, maybe.

I will first start by thanking the members for coming before us today, travelling all the way from B.C. I'll just start off with a question and a point of clarification.

I want to ask whether you are aware of the fact that the Minister of Indian Affairs sent a letter to the BCAFN regional chief, Mr. Shawn Atleo, in relation to how reserve creation claims would be included in this process and would be eligible to go before the tribunal. If you weren't aware of that, then I guess I'm bringing it to your attention. But if you were aware of it, then how does it change your opinion? Or is your opinion still the same about reserve creations being eligible?

● (1610)

Ms. Jody Woods: We are aware of the letter. Unless it's legislated, it comes off as another assurance. I can give you an example.

Since that letter was sent, the Okanagan Indian Band also received a letter from the minister in which he informed them that he was backing out of negotiations on their commonage claim. He cited Weyweykum as the reason. Because the claim is over $150 million, it doesn't have access to the tribunal. There is no recourse in the process for this.

So the assurances in the letter seem a bit empty. I think that unless it's legislated, unless it's embedded, there's no guarantee for first nations in B.C. that this will happen.

Mr. Rod Bruinooge: Well, based on the information I've been provided, the reserve creation is eligible and is legislated within this bill, so I'm not sure that what you're suggesting is the case.

Ms. Jody Woods: Except that it was just rejected; it was a reserve creation claim that was rejected and now has no recourse within the current system.

Mr. Rod Bruinooge: But the tribunal is not up and running yet. Once it is, when this bill, hopefully, passes, then the legislation will be in place, and the tribunal will see the eligibility of these things that you're calling for. My point is, and perhaps I'm not making it in the easiest way, that I feel that concern is maintained within the context of Bill C-30.

But perhaps we'll move on from there. One question I want to ask, and I guess it is more along the lines of consultation in general, is this. You mentioned a few moments ago in response to one of Madam Crowder's questions that you felt that binding recommendations in relation to who the judge would be should also come, I think you mentioned, from a representative from British Columbia. Is that what you said?

Ms. Debbie Abbott: Yes.

Mr. Rod Bruinooge: I guess my question for you would be: how do you imagine we would be able to incorporate binding recommendations from all the different regions for the selection of these individuals? It seems to me to be a process that wouldn't come to a conclusion.

● (1615)

Ms. Debbie Abbott: I'm not sure for the rest of the regions, but I would see there being an opportunity to work through the First Nations Leadership Council, which is comprised of the three political groups within British Columbia.

Mr. Rod Bruinooge: Well, the process as it's currently set up is that the minister will be working hand in hand with the AFN's national chief, as he has for this entire bill. This bill was co-authored by the AFN at every step and has been endorsed by that organization. Of course, there was a political accord signed off as well.

So my question would be, is our ongoing work and consultation with the AFN legitimate in terms of being able to proceed with this bill? Based on my understanding, the AFN has told us as a government and this House of Commons that they have undertaken consultation and basically checked off that box in terms of all the things they had to do before they could sign off on this bill. Are you agreeing that the AFN was able to enter into this legitimately with the Government of Canada?

Ms. Debbie Abbott: The point I really want to highlight is that B. C. needs to be directly consulted.

Mr. Rod Bruinooge: Are you saying that, based on your information, British Columbia wasn't consulted by the AFN?

Ms. Jody Woods: What we found was that the political accord was presented, and this—what we're experiencing right now—I understand to be some sort of consultative process.

What we're saying is that B.C. communities need to be directly consulted, given the large number of claims in the system that come from B.C. Given the history of the Union of British Columbia Indian Chiefs in advocating for specific claims reform, B.C. needs to be directly involved in this entire process.

The Vice-Chair (Ms. Jean Crowder): You have just 15 more seconds.

Mr. Rod Bruinooge: Chief Atleo was the B.C. Assembly of First Nations regional chief and was also a co-author, a co-chair of this process. Does that represent consultation in terms of British Columbia being at the table?

Ms. Debbie Abbott: The challenge was quite simply that they were bound not to discuss publicly what was in the process and what the final decision was. So we have no real sense of the input that was required.

The Vice-Chair (Ms. Jean Crowder): Thank you, Ms. Abbott.

We will now go to the five-minute round, and we'll be alternating on either side of the table here.

Ms. Karetak-Lindell.

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

And thank you for appearing before our committee.

Just to go further on the consultation questions that Mr. Bruinooge started out with, we're never quite on the same side when we talk about consultation. I always feel there needs to be better consultation when we're drafting legislation and that it needs to be a true partnership, not just token, as I've seen it in the last little while.

From your answers, I'm getting the feeling that you don't feel there was enough in-depth consultation, and I know you're nodding. What do you think should have been the process to get input, especially British Columbia's, as you say, because of the numbers of claims there? I know it's very difficult also to make one legislation that is going to serve everyone to the same extent, because we have a very large country, and situations in different parts of Canada can be very different. From your point of view from a province where the claims are very different from those in other parts of the country, what do you need to see to feel that this legislation is going to serve the best interests of the first nations in B.C.?

Ms. Debbie Abbott: Very quickly, I really feel there needs to be a tour of the communities. The region is very diversified and there needs to be a tour of the claims research units as well. As an example, in my community, Lytton, we have approximately 55 small reserves. So when you come from a community with those kinds of complexities, to really get to understand our issues, we would really encourage a tour of the communities to see the challenges.

Ms. Nancy Karetak-Lindell: So you feel, then, that there wasn't enough consultation to draft this legislation the way it is.

● (1620)

Ms. Debbie Abbott: Yes.

Ms. Nancy Karetak-Lindell: What do you feel would be an improvement? What would you like to see that would better take your concerns into consideration? What type of legislation were you looking for? We need to improve the process that we had before because of obvious reasons, and I think everyone agrees that it needs to be improved. What improvements are you looking for that would better address some of your concerns? I know you're worried about the one adjudicator listening to claims versus maybe a panel of them.

What are some of the things that you would like to see to improve this legislation?

Ms. Debbie Abbott: Again, more funding, less conflict, no cap on the claim, an adjudicative panel, and that reserve creation be included are really many of our concerns that we continue to stress. Without the necessary resources to do the proper work, communities are not able to move forward, and we really would like to see the resolution of claims so that they can improve the lifestyle of communities. I don't know if you're aware, but in British Columbia we have a very high rate of children in care, and that stems from poverty. If we're able to see resolution to claims, communities can move forward and start planning for a better future.

The Vice-Chair (Ms. Jean Crowder): You have about 20 seconds.

On the Conservative side, Mr. Albrecht.

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

I want to follow up for a moment on the issue of consultation. I was present in the summer in June when Minister Prentice and Chief Fontaine made the announcement of this new process, and it was clear to me at that point that there had been a lot of discussion prior to that event and a great degree of collaboration. There seemed to be agreement that this was the way to move ahead. Following that, there was a task force established in July to expedite the consultative process across Canada. In fact, if my information is correct, the first nations were given a significant amount of financial resources, $500,000, in order to help them carry out the consultation that was to occur.

My basic question is this. Was there adequate consultation at the regional level, whether that's provincial or even on a level beyond that, to help us as committee members to be assured that consultation occurred?

Ms. Debbie Abbott: From what I understand, the Assembly of First Nations received the funding, and I don't think there really was enough consultation in British Columbia. We attended one chiefs council meeting and were reminded that that forum was probably the only forum that we were going to have in consultation. We had hoped that there would be a series of forums within the region to accommodate consultation.

Mr. Harold Albrecht: Could you comment at all on your perspective as to the composition of the task force that was put into place to do the consultation? Were there concerns in that regard?

Ms. Debbie Abbott: We did have Chief Atleo and Chief Ken Malloway as part of the task force, but the issue there is that they were not able to share with us the process they were in and the formulating of the legislation that was happening. They could not share publicly the work they were doing, the kinds of discussions they were involved in.

Mr. Harold Albrecht: You mentioned in your opening comments some of the problems with the existing way that specific claims are dealt with, and certainly I think we agree. You mentioned that Canada sits as judge and jury; there are no time constraints, so these claims drag on for an inordinate amount of time; and then there is the underfunding problem with the research that can be done. Certainly I think we agree that those are some issues that need to be addressed.

We have in front of us a proposed bill to begin to move ahead and address many of those issues, if not all of them. I would like to ask a very pointed question.

The process we have currently is obviously failing all of us—first nations and all Canadian people. The process that is outlined here for us, to me, appears to be a giant step forward. Is your group prepared to encourage us as committee members to move ahead with this, recognizing it's not perfect and never will be a perfect document? Should we at least move ahead and improve the system that we currently have, or are you prepared to say this is so bad that we should just continue with what we have and encourage this committee to defeat this legislation?

● (1625)

Ms. Debbie Abbott: I think it's a lot better than the existing one and I think it can be worked on with amendments.

Mr. Harold Albrecht: So you would encourage this committee to recommend moving ahead with this bill?

Ms. Debbie Abbott: With amendments, yes.

The Vice-Chair (Ms. Jean Crowder): You have 45 seconds.

Mr. Rod Bruinooge: Perhaps I'll just defer to the next round.

The Vice-Chair (Ms. Jean Crowder): Monsieur Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Madam Chair.

You mentioned a little while ago that decisions were made unilaterally and without the consent of first nations when Bill C-30 was prepared.

On June 12, 2007, the prime minister and the national chief announced a new plan of action that would provide for discussions between government officials and leaders of the first nations. On July 25, the then minister, Jim Prentice, and chief Fontaine set up a Canada-AFN task force.

When he appeared on February 6, the present minister said he took into consideration its recommendations and previous critics found in the Standing Senate Committee on Aboriginal Peoples report, “Negotiation or confrontation: It’s Canada’s Choice”.

What is your opinion on the task force the minister mentioned in this report for the development of Bill C-30?

[*English*]

Ms. Debbie Abbott: I think the working group is fine. The issue we have is that they weren't able to consult with us. They weren't able to have our input into their process. They weren't able to vet the issues they were trying to address in the group.

[*Translation*]

Mr. Yvon Lévesque: You talked about the selection of judges. In a way, if Bill C-30 provided the selection from a list made after consultations with first nations, it would certainly be difficult to appoint a judge from each province. But would you agree if a list was drawn up in consultation with you, a list of judges who could hear these claims?

[*English*]

Ms. Debbie Abbott: Yes, it would.

● (1630)

Ms. Jody Woods: If first nations had the same level of approval as Canada had of who was on that list.

[*Translation*]

Mr. Yvon Lévesque: Would the selection be made through the AFN or would you make it mandatory that the AFN consult with you?

[*English*]

Ms. Jody Woods: There have already been a number of instances where communities or organizations from across Canada have made recommendations about who should sit on the tribunal, so it could be as simple as setting up a process for how those recommendations are made.

[*Translation*]

Mr. Yvon Lévesque: Despite its shortcomings, could you go along with Bill C-30 if it passed as is? Would you be ready to work with Bill-30 as it stands now?

[*English*]

Ms. Debbie Abbott: We don't believe it would take care of the backlog in its current form. We will encourage amendments to see some significant progress to address the backlog.

The Vice-Chair (Ms. Jean Crowder): Thank you, Ms. Abbott.

And from the Conservative side.

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

You suggested that there's a need for amendments, and you had a couple of concerns with regard to the bill. If it's all right with you, I just want to go through those specific concerns that I've identified. You can just tell me if indeed these are the sticking points for you.

In terms of the judicial independence, you expressed some concern with regard to that. My understanding is that these judges will be selected from within the Superior Court system—these are Superior Court justices—and that the recommendation for these judges to become judges within this process would be a recommendation from the justice department along with the Assembly of First Nations.

I'm just wondering if you believe this process, with these judges already serving in a capacity of maximum independence currently from the government, and then of course with the government not making the appointments, but the AFN, along with the justice department...do you feel that provides enough assurance that these judges will be independent?

Ms. Debbie Abbott: I think it's all about the first nations' confidence in it.

Mr. Chris Warkentin: That's what I'm trying to get to the bottom of. What would make you more confident, then? Appointing somebody who is in the most independent venue as far as the court system is concerned and then having outside bodies other than the government making the appointments? I'm wondering what else, what additional safeguards, could possibly assure you that these folks are more independent?

I know that for some people there are concerns. I'm just wondering what your concerns are and how we might assure you that these folks and these judges in fact are the most independent.

I don't mind if either of you comment on it.

Ms. Debbie Abbott: I guess basically if the first nations recommendations are held in the same regard as the government's....

Mr. Chris Warkentin: Yes, and that's specifically what I am getting to the bottom of right now. The government is not involved in the process of making these appointments. There is the justice department, which makes this recommendation out of the Superior Court judge system. So already these are independent bodies, and then of course there is that partnership with the Assembly of First Nations.

Are you concerned about the impartiality of the Assembly of First Nations?

Ms. Jody Woods: No. We're concerned that the first nations recommendations are not binding on the process. The ultimate responsibility and power for that I guess would lie with the DOJ, and they can take or leave the AFN's recommendations.

● (1635)

Mr. Chris Warkentin: So you're more specifically concerned about the Department of Justice appointing a non-partial body from within the independent Superior Court justice system.

Ms. Jody Woods: That the appointment process isn't truly joint.

Mr. Chris Warkentin: I'll just move on to another issue that you seem to have concerns with, and that is with regard to reserve formation. I might just draw your attention to paragraph 14(c), and of course this is with regard to grounds for compensation. I know you had concerns with regard to reserve formation and the issues surrounding that. I'm wondering how you would amend paragraph 14(c) so that it more strongly addresses the concern you identified. It reads:

> (c) a breach of a legal obligation arising from the Crown's provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law

—and it goes on.

I'm just wondering if you could tell me how you feel we should change that so it addresses the issue you're concerned about—reserve formation—more clearly. Clearly it's in the legislation. I'm just wondering if there's something specific that you would add or subtract from that point to alleviate that concern more fully.

Again, I don't mind, Ms. Woods, if you comment directly—either one.

Ms. Debbie Abbott: I don't have the bill in front of me, so I can't answer that question just now, but I really would like to take the opportunity, because it's a very critical issue for us.

Mr. Chris Warkentin: I certainly understand that, from what I read here. I would maybe direct you to this section for your further consideration. If there's something specifically that you would want added or changed in the wording, maybe you could forward it, because clearly that issue is addressed here in the legislation, and certainly we want people to—

The Vice-Chair (Ms. Jean Crowder): [*Inaudible*]

Mr. Chris Warkentin: Thank you.

The Vice-Chair (Ms. Jean Crowder): I want to come back to the appointment of the tribunal for a moment. It relates to a question I asked earlier around the political accord. In fact, the process that includes the Assembly of First Nations is actually in the political accord, not in the legislation.

The legislation talks about the fact that the Governor in Council shall establish a roster of 6 to 18 Superior Court judges to act as members of the tribunal. The political accord says of participation in appointments to the tribunal 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".

My question earlier had been about confidence in the political accord. What, in your view, would need to change around the political accord and/or the legislation in order to create the level of confidence that the Assembly of First Nations or first nations would be involved in actually making binding recommendations? What, in your view, has to change?

Ms. Debbie Abbott: First of all, I don't know whether it's because of a case of lack of resources or limited resources, but there have been no real consultations with regard to the formation of the political accord.

The Vice-Chair (Ms. Jean Crowder): That's the political accord itself. I mentioned as well that we've already had experience where political accords are not honoured. What do you think needs to happen? What would you recommend to strengthen that political accord so that you would have more confidence in a political accord? Is there something that needs to be included in it?

You talk about consultation, but I'm not sure you could actually build.... If you were going to build that consultation into a political accord, what would that look like?

Ms. Debbie Abbott: I really feel there has to be a conversation with the communities in British Columbia. Once you achieve that, then you're beginning to build the trust, and trust is so very key, because these are very tough issues. I think that is the step that was overlooked very seriously and I think it still has to happen for there to be true support of the political accord.

● (1640)

The Vice-Chair (Ms. Jean Crowder): I can't speak for others, but I was surprised to hear that you did not have the details of either the political accord or the consultation before they came forward. I'm not clear how your input is being represented, then.

Ms. Jody Woods: Neither are we in B.C. The bill and the political accord were presented as they were: as we see them, as you see them.

The Vice-Chair (Ms. Jean Crowder): So the consultation was represented as the fact that there were some people from British Columbia who were on the working group?

Ms. Debbie Abbott: Yes.

The Vice-Chair (Ms. Jean Crowder): But they didn't have the ability, because of confidentiality agreements, to come forth and actually talk to you about what it was. So they were bound by an agreement that actually didn't allow them to speak to you?

A witness: Right, exactly.

The Vice-Chair (Ms. Jean Crowder): It's hard to think of that as consultation, when people are tasked with doing consultation but actually can't talk to you. That's a challenge.

I'm not quite done; I still have a minute.

I want to come back a bit. I really do only have a minute, but I'm still concerned about the fact that part of the success of this bill is being presented as the fact that claims will actually be negotiated in a speedier fashion so that they won't have to go to the tribunal. I'm still not clear that, just by saying this will happen, even if you group claims, it's actually going to speed up the process. We know British Columbia is significantly underresourced and is having a lot of challenges with this.

I wonder whether you could comment on that.

Ms. Jody Woods: We're actually not seeing that. What we've heard about is that there are going to be reasonable minimum standards for the acceptance of claims. What we've actually been hearing from communities—I haven't heard from any in B.C. yet—in Ontario is that with regard to claims that are being submitted to specific claims branch, some of them are actually not being accepted for review because these reasonable minimum standards that are supposed to be produced jointly are actually being imposed.

The Vice-Chair (Ms. Jean Crowder): Thank you. I'll have to come back to that.

Mr. Bruinooge.

Mr. Rod Bruinooge: Madam Chair, how much beyond one hour are we going on this?

The Vice-Chair (Ms. Jean Crowder): My understanding is that because we didn't have other witnesses we were going to see these two and then deal with some in camera committee business at 5:15, unless people want to finish up and deal with the motions that were before the committee.

Mr. Rod Bruinooge: Okay, very well then. We could look at that after 5:15 perhaps, since one of the movers of the said motion isn't here, at least in the role of being part of the committee.

The Vice-Chair (Ms. Jean Crowder): I'm sure I could probably convince Ms. Karetak-Lindell to assume the chair so I could address my motion on the United Nations declaration.

Mr. Bruinooge, would you like to continue with the questioning?

Mr. Rod Bruinooge: We'll cross that bridge when we get there, I guess.

Perhaps we'll get back to some of the elements of your submissions that I'd like to discuss a little further.

You mentioned that there was no involvement of the provinces in this tribunal, or perhaps that there was not going to be necessarily any way for the provinces to be involved. I think it should be said that because this is federal legislation, and of course we can't necessarily compel these provincial bodies to be a part of the proceedings, it needs to be made clear that the tribunal results will actually have an effect, of course, on provinces and it is expected that the provinces will take part in a meaningful way. I believe that to be the case. There has been a lot of support from across the country for this bill. There hasn't been one provincial leader who has spoken out in any way against this process. We've seen good strong support, and I expect that to continue.

In relation to the element that you discussed on the cap, which I think has been brought up by a number of individuals, and you also have raised that point in relation to the $150 million mark, it's our understanding that there's actually quite a small number of specific claims that are above the $150 million mark. It was felt that this bill would capture effectively the ones that are perhaps quite a bit smaller than $150 million, the claims that tend to get lost in the judicial system and obviously lost in the negotiations with the federal government. When we see very small claims in the range of $1 million or perhaps $10 million, these are small claims that I think past governments overlooked. That of course was the reason to bring forward this bill. So I feel this will be a very effective process in being able to deliver results for those small claims.

Now, on calling for the expansion of the cap, going above and beyond $150 million, when we get into claims of that size, I believe those claims in particular would very likely bog down this very tribunal that we've set up, with its specific budget, which has been approved by our government, of $2.5 billion. It's our sense that the larger specific claims needed to be addressed in a more directed manner, through the political offices, to grab hold of them and drive them to conclusion, because I think that is something we've seen in the past that needs to be improved. But once the smaller claims are removed from the system and put into the tribunal, I believe there will be more of a focus on these very substantial large specific claims that aren't as plentiful as the smaller ones.

So in my very roundabout way I've expressed some logic. Do you have any agreement with what I've said?

● (1645)

Ms. Debbie Abbott: I guess the thing that really comes to mind is that there needs to be complete fairness to move all communities forward to resolve their specific claims, and I don't know if this would really, truly be the process to do that.

When we see communities that, as Jody had confirmed, had been rejected and now have to wait for the tribunal, there is such frustration of our leaders right now that we really need to see some positive early wins. As our leaders have confirmed, 2010 is around the corner, and they are going to bring the message forward that things are all not as well as they should be. We're very mindful of that and we're really encouraging the best possible opportunities that are here to resolve the specific claims in a manner that is timely and just.

The Vice-Chair (Ms. Jean Crowder): Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I have one question, and I'll share my time with Todd Russell.

I know you want some amendments and you give really good cases as to why you wouldn't get very far very fast under the new system. If worse came to worst, would it not be better to pass this? At the moment you just have the government adjudicating on itself, and things are going to take over a century to get finished at this rate. Even under the worst circumstances, wouldn't it be better to pass this bill the way it is, if it came to then being stuck with what we have?

Ms. Debbie Abbott: Hopefully this would come with a definite commitment for amendments to this bill for sure.

Ms. Jody Woods: If the goal of the bill is to get rid of the backlog and ensure the fair, just, and timely resolution of specific claims, I don't know if a "wouldn't it be better to accept it as it is" approach is the sort of approach we would necessarily think about. I think we need to push for the reforms that are going to make the bill do what it's intended to do.

Hon. Larry Bagnell: My question is, if you have two choices and the only two choices are this or what we have now, is this not better?

● (1650)

Ms. Jody Woods: I don't know if those are our only two choices. I think no matter what, we have to push for the amendments that are going to make the bill do what it's intended to do.

The Vice-Chair (Ms. Jean Crowder): Mr. Russell.

Mr. Todd Russell: Thank you, Madam Chair.

I agree with my colleague in some senses that the government sometimes puts us in the position where either we're for it or against it, and we either accept it and we make no amendments, and then we're all put in a very difficult position.

That being said, part of the committee's work is to study this bill, to listen to witnesses such as you. Sometimes amendments to a particular bill can go through quite quickly if all parties agree that substantive amendments can be made, or not-so-substantive amendments can be made, and that sort of thing.

I want to go back to the appointment of judges. We have heard the government in the past saying that the current judges on the bench were too liberal or liberal-minded, and that we needed to appoint judges that were more conservative-minded. We had the Conservative government questioning the decisions of the Supreme Court of Canada and other courts, saying they were too lenient and didn't favour their political ideologies. So I can understand why one had reservations about the government solely being responsible for the appointment of judges without the cooperation or the legislative commitment to have both parties, the aboriginal people and the government, coming forward with recommendations. I can certainly understand your apprehension in that.

Can anybody give me an example of where there is only one judge, at the end of a process with no appeal, making the final decision? I find that troublesome, from my perspective, that there would be a sole judge, with no appeal mechanism after that, making the decision. That is why I think we should have adopted what Bill C-6 says...at least three, so there would be various opinions, varied expertise on the bench listening to this particular case.

Would you agree that three as opposed to one would be an improvement in terms of the tribunal process itself?

Ms. Debbie Abbott: Yes.

The Vice-Chair (Ms. Jean Crowder): You still have a minute.

Mr. Todd Russell: The gifts keep flowing today, don't they?

I'll go back to the whole issue of process. Do you think the process as outlined under this specific piece of legislation is actually going to speed up the resolution of the specific claims process? I am worried, for instance, that we'll see a jamming up of the process, whereby negotiations fail and then everybody says we have no recourse except to go through the tribunal, and the tribunal only has one recourse, which is to offer you money as opposed to some other type of settlement. And they get this "put the cash on the table", we raise the ceiling on the cash settlement, and therefore more people will go to the table and solve their claims quickly.

I'm concerned about that. Is that a concern for you, that if they jam up the process you're forced into the tribunal basically because there's nothing else to do except go to court, and maybe the higher cash ceiling is more attractive to people who say "let's get this over with" and the lands are basically done?

Ms. Jody Woods: There's potential on a bunch of different levels for the process to be as jammed up, as you say. For instance, my understanding is that the claims that have already been rejected, that may already have been in the system for 15 or 20 years, are going to have first stab at the tribunal. Many of those claims, because they've been lying dormant for so long, are going to require new research, new analysis of case law and stuff like that, so it could jam up at that end as well. With only six full-time judges, if I'm understanding this correctly, it may not be quite big enough to handle all of it.

Another recommendation could be that there be more judges or more experts.

The Vice-Chair (Ms. Jean Crowder): Thanks Ms. Woods.

Mr. Albrecht.

Mr. Harold Albrecht: I have a quick question and then I'll split my time with Mr. Epp.

To clarify, Bill C-6 did not require that the people on the tribunals be judges. A majority of them had to be on a quasi-judicial body, and the judges we're selecting here are not new judges we're appointing. They've already been selected from a roster of judges. I think your concerns are not well placed. In fact, probably the concerns are related to the Liberal judges that are already there.

I'll defer to Mr. Epp.

● (1655)

The Vice-Chair (Ms. Jean Crowder): Mr. Epp.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): I'm going to change tack just a little bit.

I understand, Ms. Abbott, you are a chief. You're not a chief. What role do you have, then, in the Union of British Columbia Indian Chiefs?

Ms. Debbie Abbott: I'm a member of the social development committee on behalf of my community, Lytton First Nation, and I am a council member of Lytton First Nation.

Mr. Ken Epp: Thank you.

How many Indian chiefs belong to this organization?

Ms. Debbie Abbott: Approximately just under 80.

Mr. Ken Epp: Eighty, okay. And does that comprise all the chiefs in the province?

Ms. Debbie Abbott: There are 203 chiefs.

Mr. Ken Epp: So you represent roughly a third of them, a little more.

Ms. Jody Woods: I should clarify too that we also do specific claims work for bands outside that membership.

Mr. Ken Epp: So they retain you on a fee-for-service basis, or whatever?

Ms. Jody Woods: No. We receive funding from RNFU to do claims work. They just provide us with a mandate, and we add them to our economy of scale.

Mr. Ken Epp: When you talk about consultation—and I think we all agree that's very important both in the creation of the legislation as well as with respect to consulting in general—how did you consult on Bill C-30 on this particular issue with the Indian chiefs you represent? Did you have any consultation with them?

Ms. Jody Woods: All we've been able to do is present, because there's been no consultation. There's been nothing to present to chiefs to get comments on and give feedback to.

Mr. Ken Epp: And the reason for that?

Ms. Jody Woods: Because we didn't see the legislation or the political agreements in process. It was only presented to us at the end, so we didn't—

Mr. Ken Epp: So then the reason you haven't consulted with them is that there's been lack of time. Is that the reason?

Ms. Jody Woods: No. Because we didn't see the legislation or the political agreement, we had nothing to show them to get feedback on. As soon as we did, we presented it to them.

Mr. Ken Epp: The first reading of this was November 27, so you would have had a copy of the bill since then.

Ms. Jody Woods: Right. That's been presented to the chiefs.

Mr. Ken Epp: They haven't responded yet. Is that the case?

Ms. Jody Woods: Many chiefs have, and these are the concerns they have articulated.

Mr. Ken Epp: Are you aware of the process that the chiefs use to communicate and to consult with the people they represent?

Ms. Debbie Abbott: I think the chiefs really haven't had much of an opportunity to consult with their community members, and so as a result, as an example, we do have a chiefs council meeting coming up later on in the week, and based on our report, then the chiefs will consider how they're going to carry out community dialogue.

I guess one of the challenges we have as well is that out of the 203 communities, probably only 150 really are involved in the specific claims process. There are still many communities that do not even know about specific claims.

Mr. Ken Epp: Is it possible that they just don't have any?

Ms. Debbie Abbott: That's a possibility, but it's also likely that a lot of the new leaders have no idea what specific claims are.

Mr. Ken Epp: So there's an education component that's missing there.

Ms. Debbie Abbott: Yes.

Mr. Ken Epp: Thank you very much. I appreciate that additional insight into your organization.

The Vice-Chair (Ms. Jean Crowder): Given that there's only seven seconds, I'm not sure you—

Mr. Ken Epp: I know that. My watch tells me that.

The Vice-Chair (Ms. Jean Crowder): Mr. Albrecht was actually trying to get in on the end of your questions.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I need a clarification from you, Ms. Abbott. I listened carefully both in English and in French.

Would you prefer a tribunal made up of three judges, similar to an arbitration tribunal, in which one person is named by the community, another one by the government, and both of them name a third judge? Would you like to have three judges? What is it exactly that you want?

● (1700)

[*English*]

Ms. Jody Woods: We would probably have to consult with the communities with that to see what they would feel comfortable with. But the idea of having joint appointments of whoever sits on the tribunal is what is the important thing.

[*Translation*]

Mr. Marc Lemay: I am sorry, but the jurist in me has to tell you that, as a lawyer, I never selected the judge before whom I would plead my causes. I am just trying to understand. I am really open-minded, but I do not see why it should be any different in this case. If there is a discussion over a $15 million claim by a community, and it is taken to the tribunal, the judge is above the parties. You present your arguments and the government presents its own, and the judge renders a decision, and it is final and non appealable.

I am wondering whether this should be the way to proceed, instead of having one party chose its judge. If everybody begins choosing his or her judge, there will be no end to this.

[*English*]

Ms. Debbie Abbott: I guess the bottom line would be to have the first nations' input, so that when there is a selection process it's fair and just and there is confidence in the final process that's in place. This is a very serious process, and we need assurances that there will be a fair outcome. So there needs to be a process for the first nations to get that sense, that comfort, in terms of how they're going to be heard. If it's through the selection process, it would be the first nations who would make the decision. But we need to have an opportunity for the first nations to be consulted and for them to provide the input to this very crucial question that you have. Right now we're at the end of the results and we're being told what that composition would possibly look like. We really should have been more informed of the process about political accord and everything that had followed suit. We wouldn't be making this kind of presentation if we had that level of informed involvement.

Ms. Jody Woods: In other circumstances where the decisions of the tribunal are binding on both parties, they agree to an arbitrator or a panel of arbitration, and this is the approach.

[*Translation*]

Mr. Marc Lemay: It is important, and I think this is the crux of the matter. In an adversarial system, each party has its own position, and the judge is impartial, hopefully. He or she should be neutral even if he or she is a Liberal or a Conservative. But this does not seem to be to your liking. You would rather have an arbitration tribunal where the first nations would name one member, the government another one and both would agree on the third member. I sense some suspicion here. Is that the best system?

● (1705)

[*English*]

The Vice-Chair (Ms. Jean Crowder): Mr. Lemay, your time is up.

Ms. Woods, do you have a very brief comment?

Ms. Jody Woods: My understanding, in terms of accessing the tribunal, is that it's to try to make it as non-adversarial as possible. Take, for instance, the idea of being able to cross-examine witnesses when most of the witnesses would be elders from communities, who hold the knowledge that sometimes can make a claim. Setting it up as an adversarial system is not making it accessible to all those witnesses, because it makes it too difficult. I guess that's the point of departure. In this particular issue its whether or not the adversarial nature—

The Vice-Chair (Ms. Jean Crowder): Thank you, Ms. Woods.

Mr. Bruinooge.

Mr. Rod Bruinooge: Thank you, Madam Chair.

I'm going to split my time with Mr. Albrecht.

Actually he's holding up a document here, “Justice at Last”. This is a document the Government of Canada sent out in June 2007 to all first nations leaders across the country. It outlined much of what we were considering in the drafting of what is now known as Bill C-30 . After this was sent out and agreed upon with the AFN, we entered into a good-faith negotiation with the Assembly of First Nations on Bill C-30 . Though the drafting of a bill is usually done behind closed doors before it's presented, it was done with the AFN, and as such we as a government feel that we entered into this in good faith with the body that represents first nations people across the country.

My question to you Ms. Abbott is this. Do you believe that AFN is able to enter into that type of negotiation with the Government of Canada? Does it have the legitimacy to do that?

Ms. Debbie Abbott: There is a lot involved in that question, and I don't know if we really have the time to answer that, other than the fact that I really feel that B.C. needs to be consulted, and there needs to be a process for B.C. to really make an informed decision.

Mr. Rod Bruinooge: Go ahead, Mr. Albrecht.

Mr. Harold Albrecht: I just want to follow up on the point that this document not only went to each first nations leader and each group within Canada, but actually to each first nations person. It's clear on page 12, which outlines the next steps, that over the summer of 2007 discussions would take place between federal officials and first nations leaders, and it goes on about the process. It would seem to me that if I had received this and became aware that a process was going to be initiated, and if I had deep concerns about it, even in the general sense, I would try to get those concerns registered. I am disappointed to hear that, in your words, less than adequate consultation has occurred, because the government did everything we could have done to get the word out.

On the point of feedback and discussion, I understand that the special chiefs assembly occurred in December 2007. I'm just wondering if you could comment. I don't know if you or Chief Atleo would have been there. What was the outcome of the discussion surrounding Bill C-30 at the chiefs assembly in December 2007?

Ms. Debbie Abbott: I believe I was there, but I did not participate in that topic at that time. I don't really recall, other than someone highlighting for me that this is it, this is our opportunity for consultation: where do we go from here? There was a bit of concern because of the lack of opportunity to have a forum dedicated to walking the leadership through what was being intended.

● (1710)

Mr. Harold Albrecht: So this was distributed, there was the first reading of the bill, upon which the leadership of first nations communities across Canada would have been informed of the actual specific content, and yet at this forum in December, you say you don't feel there was adequate opportunity given for discussion and input around Bill C-30.

Ms. Debbie Abbott: Yes.

The Vice-Chair (Ms. Jean Crowder): You have about 20 seconds.

Mr. Chris Warkentin: I may just follow up on that.

In terms of the consultation process, what would have been more effective, in your estimation, maybe at that last forum? There has been a significant amount of money spent. My understanding is that $1.5 million was allocated for the information to be distributed and for consultation to take place.

The Vice-Chair (Ms. Jean Crowder): It is time to wrap up, Mr. Warkentin.

Mr. Chris Warkentin: I'm wondering what you feel that money could have been more effectively spent on so that you would have been more informed, beyond what was done.

The Vice-Chair (Ms. Jean Crowder): You're asking for more than a two-second answer.

If you can be very brief around it....

Ms. Debbie Abbott: Basically, talk to communities.

The Vice-Chair (Ms. Jean Crowder): I'm next on the list, so I'm actually going to follow up on that.

Clearly, based on the questions I'm hearing from committee members and the concerns raised about consultation, the crux of it is going to be the consultation piece and whether or not people feel they've been included.

This brochure that's being bandied about is an example of information being sent out to people, but whether that's considered consultation is a really good question. Many of us who have had the opportunity to work with people on reserves know that often mail delivery is highly unreliable. There is an assumption that people actually get the information in their hands. For many people, English is still their second language, particularly for many of the elders. Whether or not people's understanding of the information presented is such that it could be deemed consultation when there is no actual opportunity for them to have input....

I guess because I'm from British Columbia I'd also like to comment on the fact that UBCIC represents a portion of first nations bands in British Columbia, but the First Nations Summit also represents a portion . And there is a very strong leadership council that comes together to work collaboratively across first nations in British Columbia. So while UBCIC represents 80 first nations, that does not reflect how closely first nations in British Columbia work across a variety of interests.

I wonder if you could talk about the consultation process in the context of the amount of time that was allowed for consultation, the lack of recognition of a nation-to-nation status in Canada, and having three or four or five months in which you were not able to share information with the people, because that does seem to be where people are going to come down.

The AFN had an opportunity to consult. You have a disagreement with what's in the bill. The implications are either that the AFN didn't do their job or they're not a legitimate organization, which is one of the arguments I heard the parliamentary secretary use.

My take on that is that it's not a fair representation. What you actually need is added time and resources to be able to conduct that consultation, and there needs to be a respect for a nation-to-nation process.

So perhaps you could comment on that.

● (1715)

Ms. Debbie Abbott: There really is a need for proper time and necessary resources.

One of the ways we look to achieve support from political organizations is to see when they are having their meetings and then bringing forward a resolution that is consistent among the three political organizations, so that we have consensus through them as a part of the First Nations Leadership Council. Each organization—the Union of B.C. Indian Chiefs, the First Nations Summit, and the BCAFN—has an opportunity to bring it forward on its respective agenda.

It's discussed, and then it ultimately shows the support of a majority of the communities, because there are communities in British Columbia that are not party to any of those three organizations. But at least you can start to see the foundation piece having consensus through those three political organizations.

The Vice-Chair (Ms. Jean Crowder): Thanks, Ms. Abbott.

It being 5:15, I need to bring the questioning to a close, because the committee does have other business it needs to consider.

I want to thank you, on behalf of the committee, for travelling across the country on short notice and for appearing before the committee and answering some pretty tough questions. Thank you for you presence and for your journey here today. I wish you a safe journey on the way home.

Go ahead very briefly, Mr. Bruinooge.

Mr. Rod Bruinooge: Could I make a point of order?

The Vice-Chair (Ms. Jean Crowder): You could make a point of order, absolutely.

Mr. Rod Bruinooge: You might as well receive at least one during your chairmanship.

I would just like to make a point in relation to your comment that I insinuated that the AFN was not a legitimate organization. That is not the case. In fact the Government of Canada entered into this agreement with the AFN because we do see them as a legitimate organization.

The Vice-Chair (Ms. Jean Crowder): Thank you, Mr. Bruinooge. That begins to sound like debate to me.

Mr. Rod Bruinooge: Well, nonetheless that is the point I'd like to make.

The Vice-Chair (Ms. Jean Crowder): Thank you, Mr. Bruinooge.

I'm going to suspend for about 90 seconds so we can go in camera.

[*Proceedings continue in camera*]

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