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Chair

Mr. Barry Devolin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): I will now bring the meeting to order, please.

We are going to be continuing with our hearings on Bill C-30 today.

Before I get to our guests today, I have just a couple of comments. First of all, I'd like to thank Ms. Crowder for taking the chair on Monday in my absence.

One other general comment before we start is that before the break we had a discussion about witnesses and the agenda for the committee, and we agreed we would plan up until the two-week Easter break and for the first meeting back afterwards. There was some concern, obviously, that we might be into an election campaign. I think now it appears that is not going to happen.

I won't make any comments on that score, but it appears that we will be here longer; therefore, I'm hoping that next week we can have a meeting of the subcommittee to discuss the agenda on a go-forward basis for after the Easter break—how we're going to continue working our way through the witnesses for Bill C-30.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Do you mean the vote on March 4?

The Chair: Presuming that we will be here after the Easter break, I think we'll go ahead and do some planning.

On that basis, I would like to thank our witnesses here today, Deputy Grand Chief Glen Hare and Eliza Montour from the Union of Ontario Indians, and Luke Hunter, who's here from the Nishnawbe Aski Nation. We are also expecting Grand Chief Denise Stonefish from the Association of Iroquois and Allied Indians. She's not here yet. I understand she was scheduled to arrive in Ottawa this afternoon, so we're hoping she can make it.

I would like to ask the witnesses to make a brief presentation, and then we'll follow that, as is our normal routine, with questions.

I'd like to start with Deputy Grand Chief Glen Hare, if you'd like to make a five-minute presentation, please. Try to keep it to five minutes, but I won't cut you right off.

Deputy Grand Chief Glen Hare (Union of Ontario Indians): Good afternoon, ladies and gentlemen. We appreciate being given the time to speak to you today.

My name is Glen Hare. I'm from the M'Chigeeng First Nation. That's on God's country, Manitoulin Island. I'm also a former chief of our community—for 14 consecutive years—and I've had three terms as councillor. Now I'm the deputy grand chief. We're halfway through our three-year mandate at the union.

We're here to applaud and support the historic bill that's before us. We do have some recommendations, and we're hoping it is taken that we are here to enhance and strengthen it, and that everything is taken positively.

I'll go right to the recommendations.

The first one we have is that subclause 6(2) of Bill C-30 be amended to include lay people and legally trained persons with subject matter expertise as well as superior court judges in forming the membership of the Specific Claims Tribunal. This makeup has the potential to be more representative of our first nation communities, given that there are not many first nations superior court judges.

Mr. Marc Lemay: You're speaking very fast. This is important.

Deputy Grand Chief Glen Hare: That's good to know; I have five minutes.

The Chair: Okay.

Deputy Grand Chief Glen Hare: To facilitate a fair process and to establish a system that is more cohesive with our traditional forms of governance, subclause 11(2) should be amended to state that a hearing will be held in front of a three-person panel to implement a consensus-based approach to decision-making. We are unequivocally opposed to one person having final decision-making power, and feel that a consensus-based decision-making approach is more consistent with our traditional forms of government.

Therefore, we recommend that the hearing be heard and decided by a three-person panel.

Bill C-30 should be amended by striking subclause 12(3) to prevent overtaxation of first nations' financial resources. We are also of the opinion that an award of costs against a first nation claimant is another form of denial of justice. First nations are not the ones responsible for the long-standing backlog of specific claims; thus we recommend that subclause 12(3) be removed from the bill to ensure that first nations are not footing the bill of injustice.

Subclause 13(2) should also be struck from the bill to ensure that first nation claimants are not penalized for Canada's failure to resolve specific claims in a timely manner. The same reasoning is applicable to subclause 12(3). First nations should not be held accountable for injustices that would not have occurred if the crown's honour had been upheld.

Paragraphs 15(1)(d) and 15(1)(g) should also be struck, as the crown and first nations disagree as to whether the exceptions listed therein are, or are not, treaty rights. It is up to the Specific Claims Tribunal to determine what constitutes a treaty right and to keep open the possibility that first nations' harvesting rights in the future may form the substance of a specific claim.

It is suggested that a federal–provincial working group be established to harmonize the resolution of specific claims, particularly to resolve the issue of returning or adding lands back to first nations.

Bill C-30 should also be amended to include a new subclause 15(5):

> The Minister shall review subsection (4), three years from the coming into force date, the exceptions listed therein to determine if compensation will still be limited to monetary compensation.

Subclause 20(1) should be amended to include the current legal principles with respect to compensation, as the rule with respect to equitable compensation may hinder a first nation's claim from fitting into the proposed regime.

Subclause 21(1) should be amended by including a right of first refusal provision for the first nation who has been found to have been unlawfully disposed from their land.

Understanding jurisdictional matters of specific claims, the Nishnawbe Nation recommends that a federal–provincial working group be established to harmonize the resolution of specific claims, as it is unlikely that the province, particularly Ontario, will elect to become a party under subclause 23(2).

Those are our recommendations. Again, we're here for questions and answers later.

● (1540)

The Chair: Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I would like to raise a point of order.

Is this your brief? Is it the brief from the Union of Ontario Indians?

[*English*]

Deputy Grand Chief Glen Hare: Yes.

The Chair: Mr. Lemay, the brief with the recommendations was presented to us. The translation was only completed earlier today, and this is why it was distributed.

Oh, pardon me, there's confusion between the name on the cover and—

[*Translation*]

Mr. Marc Lemay: Right. That is exactly it, Mr. Chair.

[*English*]

The Chair: It's the same group.

All right. Thank you.

I only have one comment. It was my understanding that Haliburton, where I'm from in Ontario, is actually God's country, and not Manitoulin Island. So that is the only point I would quibble with.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): On a point of order, Mr. Chair, I actually think Nanaimo—Cowichan is God's country.

The Chair: I think we have a majority here.

Anyway, thank you for that presentation and those recommendations.

Mr. Hunter, would you like to make your presentation, please.

● (1545)

Mr. Luke Hunter (Research Director, Land Rights and Treaty Research, Nishnawbe Aski Nation): Good afternoon to you all. My name is Luke Hunter. I'm the research director of Nishnawbe Aski Nation. I am very pleased to be able to speak to you on Bill C-30, An Act to establish the Specific Claims Tribunal.

First I would like to provide a brief background on the organization that I represent. The Nishnawbe Aski Nation, or NAN, represents 49 first nations within the territory of the James Bay Treaty and the Ontario portion of Treaty No. 5. The James Bay Treaty, also known as Treaty No. 9, was signed in 1905-06 with adhesions in 1929-30.

The treaty covers two-thirds of Ontario, more than 200,000 square miles, spanning from the height of the land to the James and Hudson's Bays, to the boundary of Quebec to the east and Manitoba on the west boundary.

Matters are complicated with respect to treaty land claims under Treaty No. 9, for two reasons. First, the Province of Ontario was a signatory to the treaty and played a major role in drafting and executing Treaty No. 9. This is the only numbered treaty in Canada, of 11 in all between 1871 and 1930, to have had full participation of the provincial government in the drawing up of its terms and negotiations with the first nations.

I want to begin by quoting a recent court case that involved a first nation and a resource development company. It was a dispute over lands and resources.

Paragraphs 79 and 80 of Mr. Justice G. P. Smith's reasons for judgment, on July 28, 2006, commented on the special relationship that first nations have with the land in awarding an injunction in favour of a first nations community known as Kitchenuhmaykoosib Inninuwug, commonly referred to as KI.

The quote is:

> Irreparable harm may be caused to KI not only because it may lose a valuable tract of land in the resolution of its TLE claim, but also, and more importantly, because it may lose land that is important from a cultural and spiritual perspective. No award of damages could possibly compensate KI for this loss.
>
> It is critical to consider the nature of the potential loss from an Aboriginal perspective. From that perspective, the relationship that Aboriginal peoples have with the land cannot be understated. The land is the very essence of their being. It is their very heart and soul. No amount of money can compensate for its loss. Aboriginal identity, spirituality, laws, traditions, culture, and rights are connected to and arise from the relationship to this land. This is a perspective that is foreign to and often difficult to understand from an non-Aboriginal viewpoint.

Many of NAN's claims arise from the manner in which the treaty was made. The reserve provision of the treaty, for example, was understood in tandem with the belief that harvesting in the traditional territories would not be interfered with. Will the tribunal take into account the oral history surrounding the making of the treaty and the verbal promises made by the treaty commissioners?

The proposed tribunal seems best suited to address the current problems that the government is experiencing, i.e. the backlog in resolving land claims, rather than addressing the first nation's concerns. The proposed tribunal cannot address that many of NAN's claims stem from the making of the treaty itself, which are confirmed by the oral history and the recorded promises contained in the diaries of the treaty commissioners.

The tribunal will only deal with issues involving matters that arise from the Indian Act, such as failures of the federal government regarding the administration and management of lands and other first nations assets, including trust funds and breaches of the Indian Act. Some of these examples include land expropriation, illegal surrenders, road and railroad corridors, timber, and other band assets.

● (1550)

The tribunal cannot address claims where the province arbitrarily amended reserve boundaries in the post-treaty years as a result of the third party interests, or the creation of provincial parks or federal parks wholly encompassing reserves, despite the promise that first nations could continue to live as they and their forefathers had done.

Since 2001 NAN has begun researching treaty land entitlement claims that involve land, and therefore Ontario's involvement to resolve them. How will this proposed tribunal help NAN, since Ontario does not have to be a party and can choose to ignore the tribunal altogether?

The Ipperwash inquiry in Ontario recommended the creation of a commission of Ontario that would assist Canada, Ontario, and first nations to negotiate settlements and land claims. How will Canada work with Ontario to ensure that the federal specific claims process, the tribunal, and the TCO commission of Ontario work together?

There is no mention in the proposed Specific Claims Tribunal Act of how first nations are to be funded in order to appear before the tribunal. Will first nations receive funding to bring claims to the tribunal?

It is a concern that the tribunal will make orders of costs. An example is in subclause 12(3) of the bill. It states that:

> The Tribunal's rules respecting costs shall accord with the rules of the Federal Court, with any modifications that the Tribunal considers appropriate.

Costs generally flow from the event, meaning that the losing party pays the costs of the winning party. Will first nations have to pay Canada's costs if the tribunal rules against their claim?

The current draft bill also assumes that once a tribunal makes a decision the claim is settled once and for all; therefore, if a claim involves land issues, Canada's legal obligation is discharged and released at the time of the tribunal decision. In essence, it has the same effect as an extinguishment policy inherited in the current specific claims policy. No first nation will ever agree to take a specific claim to a tribunal involving land. When the Government of Canada appeared before this committee it made references to first nations purchasing land using settlement moneys from a third party interest, and those lands could be converted to reserve lands. There is no mechanism in this bill for this to happen other than the political accord that was signed between the minister and the AFN.

These are my comments to the draft bill. l've raised some serious issues and shortcomings of the proposed legislation.

Thank you.

The Chair: Thank you, Mr. Hunter.

I'm glad to say we have been joined by Grand Chief Denise Stonefish.

Thank you for being here. Perhaps you could make a brief five-minute presentation, please.

Grand Chief Denise Stonefish (Association of Iroquois and Allied Indians): Thank you for this opportunity.

The Association of Iroquois and Allied Indians was established primarily as a political organization in 1969 to represent its members in relations with any level of government affecting the well-being of the members as a whole. The association currently represents eight member nations, with a combined membership of approximately 20,000 people. These include the Batchewana First Nation, Caldwell First Nation, Delaware Nation, Hiawatha First Nation, Mississaugas of the New Credit, Mohawks of the Bay of Quinte, Oneida Nation of the Thames, and the Wahta Mohawks.

Again, the association provides political representation and policy analysis, and AIAI is committed to protect, defend, and enhance the inherent rights of our member nations.

First, the association would like to acknowledge our disappointment with the Assembly of First Nations and their decision to submit this new legislation for consideration by Parliament. AIAI feels that AFN did not have such a mandate for this action and wants this to be acknowledged. We feel there was an important consultation function that was not performed. The AFN was mandated by resolution 08/2007 and 23/2007, which I have attached to our package.

Both resolutions speak to a mandate of advocacy for a new specific claims process, but nowhere do they state that AFN has the authority to make decisions on behalf of first nations, that they have the authority to agree to develop the process, and/or that they have the authority to submit such significant legislation to Parliament for consideration.

It was always our understanding that AFN would work on developing a new specific claims process with the Government of Canada, but that before any serious movements were made on a new process such as a submission of the bill for consideration, that first nations could and would review the bill. This important consultation never occurred, and the association is adamant that it should have occurred and that the AFN had no mandate to move it forward as it did.

When the AFN passed resolution 50/2007, which is attached, the AIAI chiefs and/or proxies opposed this new resolution, which encouraged first nations to review Bill C-30 and forward their views to the crown and the parliamentary committee on aboriginal affairs. First nations should have been consulted before this legislation was submitted to the parliamentary process. At this point, the only option first nations have to be consulted is in this committee forum, and therefore our decision-making ability has been taken away from us. We are now at the mercy of the parliamentary process.

On the importance of land, Canadians have seen, over the years and decades, first nations peoples working and fighting for the return of their lands. Some first nations peoples make use of the avenues of advocacy set up by the Canadian government, and some resort to the infamous tactics of blockades and protests. First nations people work and fight for land because it is so important to our way of life and to our people's physical, mental, emotional, and spiritual survival. Canadians may never fully understand the connection first nations feel to our land. Because of the importance of land to first nations people, it's difficult to put it into words.

Keith Basso, an anthropologist, describes the impact of depriving peoples of their connection to the land. He says:...deprived of these attachments...

—meaning connections to places—we

> find ourselves adrift, literally dislocated, in unfamiliar surroundings we do not comprehend and care for even less. ...sense of place may assert itself in pressing and powerful ways, and its often subtle components—as subtle, perhaps, as absent smells in the air or not enough visible sky—come surging into awareness. It is then we come to see that attachments to places may be nothing less than profound, and that when these attachments are threatened, we may feel threatened as well. Places, we realize, are as much a part of us as we are a part of them....

● (1555)

Keith Basso nicely articulates the deep-rooted connection that first nations people feel to our land, and it is very much a part of who we are.

Now, here are our comments on Bill C-30. The association understands that, if passed, Bill C-30 would continue to deprive first nations peoples of their attachment to their land and to their places. The most damaging aspect of Bill C-30 is about the monetary compensation and not about the land. AIAI understands that there is an initial negotiation process that could have small possibilities of resulting in settlement that includes land. However, we also understand that this is highly unlikely.

When negotiations fail, which they certainly will in most cases, the claim will be moved to the independent tribunal process for a decision. The tribunal has no authority to award land. Subclause 20 (1) of Bill C-30 outlines the basis and limitations for decisions on compensation. It is this clause that states that the tribunal will only award monetary compensation, that this compensation shall in no way exceed $150 million, and that it shall not be given out for punitive and exemplary damages or harm or loss, including those of a cultural or spiritual nature.

Not only is this process not about land, but it is also not about the things that the land informs, such as culture and spirituality. These are important aspects of the way of life for first nations, and they are also being removed from the factoring into this process.

AIAI is not willing to support a specific land claims process that has no true ability to return land. Our communities are not focused on money, although we will concede that money does play a role in land claim settlements.

At the core of land claims is the land and our connection to it. This is what we would like the Standing Committee on Aboriginal Affairs and Northern Development to remember when reviewing Bill C-30, the Specific Claims Tribunal Act, an act that has no real ability to settle land claims in a manner that will honour our connection to the land.

We share our comments with the committee in hopes that our grave concerns do not fall upon deaf ears. The association recommends that Bill C-30 be withdrawn.

Thank you.

● (1600)

The Chair: Thank you, Grand Chief Stonefish.

If I can clarify on the briefings, we've had three different presentations. The first presentation that shows on our list was from the Union of Ontario Indians. There was a brief submitted that was translated and was circulated to members just today. The NAN, the Nishnawbe Aski Nation, made a presentation but did not submit a brief, so there is no brief attached to the second presentation. The third presenter, Grand Chief Denise Stonefish from the Association of Iroquois and Allied Indians, submitted a brief today, but it has not yet been translated; when it has been, it will be distributed.

Members, you currently have one of the two briefs that you will have when this is completed.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, could we have Grand Chief Stonefish's brief when it has been translated? As well, would Grand Chief Hunter like to submit a brief, it does not have to be today, so that we can have it to read and study afterwards?

[*English*]

The Chair: To answer your question, in terms of the brief from Grand Chief Stonefish, the answer is yes, we will receive it. In terms of Mr. Hunter, to my knowledge there is no formal brief. The presentation that was made today will be part of the transcript of this meeting. So that's the leave-behind, I guess, from your presentation today.

Just to remind members, some of the witnesses who will be appearing before us this week and next week received relatively short notice to come here. People have had to juggle their schedules. We appreciate the efforts that have been made to appear here to prepare a presentation. If in addition to that they were able to put it into a written brief, that's great, but I suspect over the next couple of weeks we will have maybe more than one witness who will make a verbal brief but won't have something written, for that reason.

Anyway, thank you for the presentations.

We're going to begin our questioning now. Basically, for the first round of questioning committee members are given seven minutes, and that's a combined seven minutes to ask questions and for you to respond. I will cut it off fairly quickly after the seven minutes, so that more of our members get a turn. After the first round, in which each caucus will have one turn, the rounds are five minutes long in the second and third rounds, as opposed to seven minutes in the first round.

I'd like to begin with Todd Russell from the Liberal Party.

Mr. Todd Russell (Labrador, Lib.): Good afternoon. I thank you all for appearing before the committee. I certainly want to commend you on your presentations.

To the Union of Ontario Indians, with Deputy Grand Chief Hare, I certainly appreciate the fact that you've itemized some of the amendments you would like to see and the rationale behind them. That certainly makes our work very easy in terms of progressing if we as a committee decide to go in that particular direction.

As well, I appreciate the comments of Mr. Hunter and Grand Chief Stonefish.

One of the first questions I raised with the minister when he was before this committee talking about Bill C-30 was the issue of land and the prohibitions within certain phases of the Specific Claims Resolution Act that, once you go to a tribunal, you can only compensate people in a monetary fashion. The minister's response basically was, listen, the federal government doesn't own any land, or what we do own is so minuscule that it really wouldn't have much of an impact, because we can't award it; we have no jurisdiction to award it.

But I still think this is a major issue that's reflected in each of your presentations, and I wonder, with the way the bill is structured and the language that's in it, will first nations themselves be willing to engage in this process with that prohibition in place, the fact that you cannot compensate with lands? They can only compensate from a monetary perspective. Will people be less willing to engage in this process? If the bill goes through as it is, will people be less engaged?

I wonder about section 91.24 of the Constitution, which says that the federal government has responsibility for Indians and lands reserved for Indians. That might not necessarily be the boundaries within which people operate now or have been confined to by the various historical incidents, happenings, laws, people taking the land, that type of thing.

I'm looking for more clarification on this from each of you. What I want to know is, are you going to be willing to engage? If this bill goes through, will people engage? If people don't engage, what's the use of it?

Secondly, how comfortable is anybody with one judge being the final arbiter of any claim that you put forward, if you went to the tribunal? There's only one judge—not three, just one. I'd like to know that.

● (1605)

Ms. Eliza Montour (Treaty Research Council, Union of Ontario Indians): On the land issue, we have some recommendations in our brief, particularly with respect to subclause 21(1).

What we're providing there is that based on the fact that there's a jurisdictional matter that occurs between the feds and the province, we understand this. That's why we're recommending that a working group of some sort be established with the province to talk about the issue of land, just like in the political accord between the feds and the AFN. That's one of the suggestions in our brief.

But the other suggestion we're putting forward is that even though there's going to be compensation awarded from the tribunal, the first nations essentially get a right of first refusal to that land. It's almost like how the federal crown or the province is vested in every piece of land across Canada. We're thinking that a first nation claimant could have a vested interest in that land—not to take away from third party interests, but if it ever comes on the free market, on the willing seller and willing buyer policy, they can have the right of first refusal. Because what we're looking at right now is situations where people are refusing to have first nations purchase the land. So we're kind of getting into those issues.

As to your question, do we think the Union of Ontario Indians, our member nations, would participate in the process, yes, I do think we would still participate in the process, even with the land. We're just hoping that we can work down the road to have that reviewed again.

That's one of the things we're recommending for clause 15, that there be an addition to that clause, a subclause 15(5) that says, let's look at it, review it after about three years, to see whether we can focus on anything besides the monetary compensation.

Mr. Todd Russell: Okay. Thank you.

Mr. Hunter, would you comment?

Mr. Luke Hunter: When we talk about land, we don't necessarily distinguish between the federal government and the provincial government. We view it as crown land.

As we all know, in the communities I represent, the Nishnawbe Aski Nation, although it's provincial crown land, there are large tracts of land still available. By “available”, I mean there is still not enough development. Although there is development going on, there are still large lands available. From that perspective, land is available; from our perspective, why shouldn't the tribunal be able to make that decision?

In terms of the narrow point of view regarding treaty land entitlement claims, it's my view that it does not matter that the third party holder, currently Ontario, would have a say on the allocation of reserve lands.

When you look at the reserve provision clause in the treaty, it's the federal crown that provides that legal obligation to provide reserve lands. The federal government can go ahead and say to a first nation, “You have so many acres under your entitlement, so we're prepared to award you that land”; the province would have no say, even though they own.... I suppose it's presumed to be under their jurisdiction. They say they own the land, but I'm pretty sure it can be accomplished.

As to your question regarding the use of a tribunal, I think if it involves land, especially the large tracts of land.... In our case some of our treaty land entitlement claims are large, and I'm pretty certain that first nations wouldn't want to take the risk of taking that to a tribunal. If it's a smaller claim regarding timber or a legal decision or a small amount of assets, yes, it's a useful tool.

So I suppose the short answer is yes, but it would be minimal. If it's talking about land, no, it's too risky.

● (1610)

The Chair: Okay, thanks.

We're well over seven minutes, but if Grand Chief Stonefish would like to add something, we'd like to hear from her.

Grand Chief Denise Stonefish: I'll try to be quick.

In answer to your first question, first of all I would like to say that we do appreciate the work that has been done between the AFN and the Government of Canada. As I said, our concerns are mainly about having our opportunity to review the bill and have some analysis done on that so that we can potentially support the bill, but as it was only presented to us on December 6, it just didn't give us much time.

In answer to your questions, if the bill goes through, yes, probably our first nations will more than likely utilize the process, but again there are going to be concerns about the $150 million cap. Preliminary comments ask about land claims over the $150 million and about the potential for the government to channel all claims via the tribunal process. Those are a couple of the concerns that have been expressed.

How comfortable are first nations with the potential of one judge? Well, I'm not sure, but I'm going to say personally, no, not one judge. We've always said that two heads are better than one, or three heads are better than one, so I think there probably should be more than one judge.

The Chair: Thank you very much.

Monsieur Lemay is next.

[*Translation*]

Mr. Marc Lemay: I am going to try to ask precise questions. Perhaps I will have time to ask others when everyone else has had their turn. Your comments today are extremely important and interest me greatly.

Mr. Hunter, I come from the other side of Lake Abitibi. So you and the Algonquins are our next-door neighbours. Did Treaty No. 9 not include a way of settling the question of the traditional lands of the First Nations who lived there?

I am going to ask my questions and then let you answer, Mr. Hunter, just like the other members. Ms. Stonefish has already begun to answer.

In Grand Chief Hare's brief, I saw the amendment to subsection 6 (2) that he recommends. The Union of Ontario Indians, the Anishinabek Nation, goes quite far, to the point of saying that the tribunal should include lay people and legally trained people, as well as Superior Court judges. I would like to hear what you have to say about that. Why is this your recommendation for amending subsection 6(2)? If I get the chance, I will come back to this. I have read your briefs and this interests me greatly.

I also have a question for you, Ms. Stonefish. I understand that land claims are extremely important, especially for the Iroquois and especially in southern Ontario. How do you think this bill could improve the settlement of land claims for your communities, given that the process has been going on for almost ten years and no one can see the end for several more years? Could this bill at least help move the matter forward?

I am anxious to hear what you have to say.

● (1615)

[*English*]

Mr. Luke Hunter: I didn't really quite understand your question, but what I think I hear you saying is that Treaty No. 9 has provisions regarding the way to settle traditional lands or land claims. Yes, I think it has, so it's a question, strictly speaking, of Bill C-30.

One of the problems I see with Bill C-30 is that once you start negotiating anything to do with land and take it to a tribunal, you cannot be awarded land. It's only compensation—money. Once that tribunal makes a final decision, all legal obligations are discharged.

Who's to say someone from the federal government won't say, “We have dealt with your land issue and we have no legal obligation in the future to provide land”? That's the major obstacle that I see with the bill.

Yes, strictly speaking, in general terms the treaty provides an avenue for a direct government-to-government relationship regarding how we use land. But Bill C-30 it does not provide that mechanism or avenue to address major treaty issues.

Deputy Grand Chief Glen Hare: Just seeing a panel of more than one, we feel that we want different ideas and individuals who know who we are, where we come from, and how we do business, versus having one person doing the decision-making, especially on this topic. This comes from consultations with our leadership—the 42 member chiefs who we're here on behalf of. They also raise the concern that there should be more than one so we can have a fair decision-making process on our behalf.

● (1620)

Grand Chief Denise Stonefish: You asked if the bill will move the settlement along for claims made over the last 10 years. It's unfortunate that if the federal government has no land or jurisdiction to award land, we are again at the mercy of the parliamentary process, and our member nations, or at least some of our member nations, would utilize that to move these claims along.

Unfortunately, even though we spoke specifically to the role that land plays in our communities, we know that southern Ontario is being developed on prime agricultural land. All these urban centres are expanding far more than I think they should, but where are you going to put all those people? Therefore, in southern Ontario there is greater potential for no land to be available, and we would probably have to utilize the land claim process.

When I made my recommendation that Bill C-30 be withdrawn, it was so we could have the opportunity to provide a proper analysis and address the concerns that are being questioned of us today.

The Chair: Thank you.

Ms. Crowder.

Ms. Jean Crowder: Thank you, Mr. Chair.

Thank you for coming before the committee today.

A number of your recommendations or concerns are covered in the parallel political accord and are not actually outlined in legislation. Some are around appointments to the tribunal and how that process happens; reacquisition of land and additions to reserves; the treaty process, looking at things that are currently outside the specific claims legislation; and future work.

When the minister came before the committee I asked him specifically how people could have any comfort that an actual political accord would be followed up on. The minister said it was a political commitment to a political accord. Because it's a political commitment, I would think that any minister who holds this job would want to follow through on it. To break that would be very unwise.

I want to talk very briefly about the history and get your comments about your comfort level with the political agreement. We have a political agreement that was signed on residential schools. In it there is a commitment that the federal representative will work and consult with the AFN on truth, reconciliation, and apology. Of course, we know an apology is currently being drafted without the participation of the AFN. That political agreement was signed back in May 2005.

There was also a first nation-federal crown political accord on the recognition and implementation of first nation governments. Of course, that was intrinsic to the Kelowna accord, and we know that agreement has been broken.

A parallel political agreement is fairly important to how tribunal members are appointed and first nations are involved in that decision-making about any other problems that are raised around specific claims. What's your comfort level with both the current government and future governments living up to political accords, when we've seen that they've consistently been broken in the past?

That's a fairly political statement, but I think there's a lot of trust involved in asking people to sign on to Bill C-30, and that political accord is tied into it. I wonder if you could comment on that.

Deputy Grand Chief Glen Hare: Yes. That's a big question. I'll try to answer as best I can.

First, if I can, I want to go back to the panel, the one panel. We are not asking for our first nation members to specifically be included on that panel. It's just to have different ideas by having more than one person make the decisions there.

For me, and also from where I sit now as the deputy grand chief, we're strong supporters of the AFN. They advocate for us and with us for the residential schools and things like that. You know, we want to be players. We don't want to go backwards. I certainly don't want to ask my chiefs to go that way anyway. We want to move forward. The government we have, it's here, and we have no choice. We have to work together. I like to believe that we're a strong advocate. We stand behind the AFN in what we do and in what they do.

● (1625)

Ms. Jean Crowder: My question was more about the political accord. It outlines some fairly specific requirements, but it doesn't have any legal obligation. It's simply an agreement. The political accords in the past have been broken. And because this one is fairly important, I guess I would have preferred to see these things enshrined in legislation, such as an appointment process for the tribunal, for example, and having first nations involved in that appointment process, instead of having a political accord as a parallel process that actually doesn't tie any government's hands.

I don't care who it is. This isn't a partisan remark. It could be any government in power. It doesn't tie their hands to actually involve first nations in selecting the tribunal members, whether it's justices or lay people. There's a political agreement that says we'll consult, but there's no legal mechanism to make sure governments do it.

So I wonder why we wouldn't recommend that it should be included in legislation.

Ms. Eliza Montour: I think, madam, that some of our recommendations centre around what was covered in that political accord, to strengthen and enhance what the AFN has already done with the federal government. I can't specifically speak to the comfort level, but our recommendations are here. So we're trying to work together and to keep working together.

Ms. Jean Crowder: So you'd prefer to see them in the legislative piece rather than just as a political accord.

Deputy Grand Chief Glen Hare: Yes.

Ms. Jean Crowder: I'll ask Mr. Hunter or Chief Stonefish.

Mr. Luke Hunter: I think there has been, I guess, political agreement in the past. You mentioned residential schools. I guess most of those resulted either through our legal system or through political pressure from interest groups if there was an issue that needed to be addressed or raised.

Yes, I've read the minister's comments regarding the parallel approach. Also, it is not only the political accord that plays in parallel with Bill C-30. We also have the existing process Canada uses to settle specific claims. The specific claims branch within Indian and Northern Affairs plays a huge role in defining specific claims.

In terms of the political accord, there's no way. It has no legal standing. It's just a tool the two parties made to make sure that Bill C-30 complements what they're trying to achieve. I know that the minister talked about one of the plans to speed the settlement of claims. But in terms of whether a lot of those suggestions in the political accord should be incorporated into legislation, in short, yes, we'd like to see a majority of those incorporated into the tribunal or in some form of NAC, where first nations can take their grievances.

A panel of judges can make a decision on whether first nations are owed land. And it doesn't have to be land; it could be about money or the interpretation of a treaty. That's our major concern regarding land claims. How we interpret the treaty is different from Canada's interpretation.

● (1630)

Grand Chief Denise Stonefish: Comfort level? I guess I'll be honest with you and say that for the first nations here, there's always going to be a level of trust that's not there; I guess it's been for too many years. It's going to be hard to change that comfort level.

I can understand that government changes, the people who sit at those tables change, and hopefully it's part of our job that we can eventually educate the members of Parliament as to who first nations people are and what our roles are in this country. Maybe then that trust level will be there.

Yes, accords or political statements are broken, and it isn't necessarily with a change in government; it could be at any time.

To your comment regarding the incorporation of these items into legislation, I understand that legislation is what gives the government its mandate and its roles and responsibilities to carry out certain functions. But what about review and evaluation of legislation? Things, throughout the years, change. If you have a piece of legislation on the books for a number of years and nobody really takes a look at it, then sometimes these pieces of legislation don't keep up with the times.

The Chair: Thank you.

Mr. Bruinooge.

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

I want to make reference to how, after spending one meeting in the chair position, Madam Crowder had to fill the quota of partisan rhetoric that she missed from the last meeting. That's understandable. She took on the role in a non-partisan way, so she deserves some commendation for that.

In relation to one of her points concerning political accords, one good thing about this political accord that our minister signed was that it was actually an accord; it actually did have a signature page. I am very supportive of the action taken by that minister, and I know we are going to fulfill the obligations of that signed accord.

Moving on to the witnesses today, I want to pass along my appreciation for all of these witnesses, in light of the fact that the presentations made by all of you are very thoughtful and very interesting from the standpoint of how you approach the argument. I appreciate the logic you're using. I don't always agree with all the points being made; nonetheless, the sentiments that have been brought are sincere.

Perhaps I'll just start with one point, in relation to land. A number of times by a number of the witnesses, the issue of land has been brought up, and how this tribunal won't be able to deliver the awards with an actual land allotment—partly because, of course, as I think was already mentioned, much of the land is held by the provinces.

It's quite easy to see that it would put an unfair burden on this tribunal to attempt to get into a type of negotiation for land. Truly, a cash settlement allows for the first nation to go out and purchase that land, if available, and if not, then there are other opportunities. This is really the only way, in my opinion, that we could achieve this. I'd be interested to hear it, if there were perhaps a suggestion as to how it could be achieved in some other way. But in light of the lands being held by other parties, this is not something I see as feasible, so this would probably be the only approach.

In relation to the above-$150-million claims not being subject to this tribunal, I would like to also raise the point that pulling all those smaller claims out of the current system will give the Government of Canada the opportunity to focus its negotiations on the very large claims, which really represent less than 10% of all the specific claims out there.

My first directed question would be for Mr. Hunter, in relation to the number of judges. I think he made the point about raising that number to three. My question would be this. Because this would cause a very large change in the way judges are appointed and created in terms of their positions in Canada, I think it would slow down this process. Do you believe it would be worthwhile to slow down this process for the inclusion of more judges? Or do you think we should perhaps continue with the one judge?

● (1635)

Mr. Luke Hunter: Actually, I didn't comment on that at all.

Mr. Rod Bruinooge: You didn't comment on that? Okay.

Ms. Eliza Montour: To answer your question, sir, we're actually making a recommendation that the committee be formed of lay people and legally trained people with subject matter expertise just like superior court judges—and superior court judges.

That roster would be pulling how many judges out...and probably less than six now. We're thinking maybe if you have a tribunal of nine, you'll have three lay people, three legally trained people, and three judges, so you're not actually burdening the judicial system. The three-person panel suggestion or recommendation would be based on our first recommendation's being implemented.

Does that answer your question?

Mr. Rod Bruinooge: Yes, I think so.

Do you believe that having just a judge making the ruling lends a degree of legal credibility to the actual award?

Ms. Eliza Montour: We're recommending that the three-person panel be more based on our traditional form of government—on that consensus basis. And legally speaking, if we're talking about a tribunal, they're still going to have that expertise and they're still going to be given that deference. I do believe they can award those high amounts of settlement and still have that expertise behind it legally. So they're still going to have to uphold a due diligence.

Does that answer your question?

Mr. Rod Bruinooge: I think it does, yes. I appreciate that.

Perhaps I could move on to Grand Chief Stonefish, in relation to some of your sentiments in relation to the bill's being withdrawn. I appreciate that you did say subsequently that you appreciated the AFN's ongoing interest in advocating for a new process. And though you would have appreciated more consultation, I think you did say that the AFN very likely was trying to act in the best interests of the first nations people.

Am I wrong in thinking that?

Grand Chief Denise Stonefish: No, I don't think you're wrong. Again, we do support the Assembly of First Nations. However, as in any other organization, we do have concerns about organizations and their way of doing business. Of course, I could say the same for my own organization at times too, and that also can be applied to both the federal and provincial governments.

Yes, there are times when we feel they're not acting in the best interest. The only thing I'm saying in this particular instance is that we were not provided, I believe, sufficient time to review and provide analysis for our member nations.

Mr. Rod Bruinooge: Okay. I think I'm out of time.

The Chair: Thank you.

I have been relatively liberal with time here today in the first round, giving the witnesses—

Some hon. members: Oh, oh!

The Chair: Some of the members are a little frisky today. We had caucus this morning, so they're still getting over that.

In the second round I'll try to keep the time close to five minutes.

Ms. Keeper.

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

I'd like to thank our guests for being here today. It is really important for me as a parliamentarian to hear your presentations. Indeed, as we are discussing this piece of legislation it is especially important that your voice is heard, so I really appreciate it.

I'd like to ask a question specifically to the Anishinabek Nation, to the Union of Ontario Indians. In your presentation, under item 1 of concerns and recommendations, the last sentence says:

> This strict adjudicative nature and functionality of the Specific Claims Tribunal will hinder the *sui generis* nature of specific claims resolution and the Aboriginal-Crown relations because the Specific Claims Tribunal will be just like any other court, as it limits First Nation jurisdiction and fails to promote mediation and negotiation, which is fundamental to reconciliation.

Could you just elucidate on that statement?

● (1640)

Ms. Eliza Montour: Pardon?

Ms. Tina Keeper: Could you explain to us what that means to you and why you put it in there?

Ms. Eliza Montour: After reviewing the whole bill, what we're looking at is that the tribunal will—if it consists of all judges—sit down and draft their procedures, their rules, how they're going to do business. Not only that, their decisions will be final and conclusive. What we're looking at is that if there are only judges being members of this tribunal, it's going to very likely mirror a court. It's going to be very—

Ms. Tina Keeper: In terms of aboriginal law, is there something that's out of order? I guess that's what I'm asking. Is that what this is alluding to? In terms of how a specific claims resolution should move forward in terms of the aboriginal common relations, is there something that you see as out of order in what has been presented?

You're saying we'll move forward in this fashion. That's true, but why is that problematic, in your mind? Why is that a problem?

Ms. Eliza Montour: I don't understand your whole question or explanation.

Ms. Tina Keeper: You're saying that you don't agree with the process that had been put forward, right? So what is the problem with that process, from your position?

Ms. Eliza Montour: Our position here is that we're looking at reconciliation. We're going back to our first recommendation, that we feel the tribunal should be made up of superior court judges, lay people, and legally trained people, so you have a mixed membership. We're looking at a panel that is somewhat understanding and representative of our governance in first nations.

If we're looking at just another type of court system, everybody knows that litigation usually doesn't lead to reconciliation. We're supposed to get to the resolution of specific claims. We're supposed to reconcile our differences. But we feel that if we have just another tribunal that's specifically structured in a court manner, we're not going to get there, so that's why we're making these recommendations, to try to be more cohesive.

Ms. Tina Keeper: So as far as you're concerned, that's a fundamental flaw in terms of a process that's supposed to be, as you're saying, about reconciliation.

Ms. Eliza Montour: I'm not saying it's a fundamental flaw. I do believe that this bill, even as is, is better than the current system. What we're trying to do is enhance and strengthen it by giving you some more recommendations and saying, here's what we think will make this a great bill.

Ms. Tina Keeper: Thank you very much.

I'd like to ask Grand Chief Stonefish a question, and Mr. Hunter may want to respond as well. This whole issue, which has also been raised by the Union of Ontario Indians, is around the relationship of the province as a party. We were told by the bureaucrats who are involved in this process that they cannot be made a party to the bill or to the process. We're kind of going back, in terms of a reconciliation process, and asking how we move forward.

I'd like to ask, in terms of this recommendation around the federal-provincial working group, why is that critical to this process?

● (1645)

The Chair: I'll just ask for relatively brief answers.

Ms. Eliza Montour: Why is a federal-provincial working group critical to this process? Well, legally we have a division of powers. That division of powers in jurisdictional matters does hinder the resolution of our claims, because as we all know, feds don't own that much land; it's held by the province. If first nations want the land back, or would like to get land or acquire land of some nature, we need the province sitting at the table.

We'd like the working group to be established because we know these jurisdictional issues aren't going to be solved overnight, but we'd like some work to be started.

The Chair: Anybody else?

Grand Chief Denise Stonefish: In terms of the relationship with the province, again, similar to what Eliza has indicated on the division of powers, with us, the federal government and the provincial government are the crown, one and the same. Maybe there should be a relationship with the province in these matters.

As I indicated earlier in my presentation, some ways of trying to do business are protests and blockades, and I don't think we want to go there any more. It can lead to a volatile situation, and we want to be able to sit down and work with both the federal and provincial governments in addressing these land claim issues.

The Chair: Mr. Hunter, do you have anything you want to briefly add?

Mr. Luke Hunter: Yes, thanks.

In relation to the provinces, yes, as we all know, in Treaty No. 9 we do have that treaty relationship. In terms of working together to deal with land issues, in the past, federal and provincial governments worked together to draft the land transfer act. We weren't part of it in the initial round. There's no reason why we shouldn't be involved this time, be involved in how we benefit from and distribute resources.

The Chair: Thank you.

Mr. Albrecht, five minutes.

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

First of all, thank you to each of the witnesses for being here today.

I just wanted to comment to Grand Chief Stonefish that you can be assured that your concerns have not fallen on deaf ears today. I appreciate your sharing of your concerns regarding the spiritual connections and the cultural and spirituality considerations that we should take into consideration. However, I need to remind you—and I don't think I would need to remind you—that we are somewhat limited in our ability to award land. As you pointed out, it's not widely available in terms of just saying you can have this land.

I have a couple questions to ask Deputy Grand Chief Hare. You gave us a six-page document here, with nine recommendations.... Oh, was it ten? I have nine.

Had you the chance to formally discuss these with the Assembly of First Nations during the consultation process? And what kind of response did you receive during that process?

Deputy Grand Chief Glen Hare: I don't want to speak on behalf of the grand chief, but I'm assuming the grand chief did. On behalf of and with the support of our nation, he asked me to be here today because, again, today we're meeting as a nation in Garden River First Nation, and he was required to be there.

So I do believe there is that good relation between the AFN and our organization.

Mr. Harold Albrecht: But you're not aware of what kind of response there may have been from the Assembly of First Nations to the submission you made to them.

Deputy Grand Chief Glen Hare: No.

Mr. Harold Albrecht: Okay.

With regard to representation on the tribunal, there's a concern about having one person sit. I can accept that, and I respect that. I should point out that in the proposed legislation, in subclause 12(2), there is the opportunity there for an advisory committee to advise in the development of the rules of the tribunal. Also, in paragraph 13(1)(c), with regard to the appointments, it says the tribunal will "take into consideration cultural diversity in developing and applying its rules of practice and procedure".

So I think there is worked into the draft document an understanding that we do take those cultural considerations seriously. I just wanted to point that out.

Going back to you, Grand Chief Stonefish, you pointed out first of all that the AFN did not have a mandate to represent you. I think those were your words, or something to that effect. I can accept that. It's my understanding, however, that the AFN was charged with the responsibility of engaging in consultation with first nations groups. Yet I heard you say repeatedly today that the consultation never occurred, that it was not performed. I think I heard you say as well that the first time you saw this draft document was December 6.

So you were not involved at all in the development of this draft document? Is that correct?

● (1650)

Grand Chief Denise Stonefish: Correct, yes.

And I did indicate that the AFN, through the resolutions, was mandated to work with the Government of Canada to develop this process. But in the meantime, it was also our understanding that once that process was developed and the bill was developed it would come back to the first nations for review and consultation. However—

Mr. Harold Albrecht: Prior to coming here?

Grand Chief Denise Stonefish: Prior to coming here. That was my comment.

Mr. Harold Albrecht: Okay, thank you for that clarification.

I want to comment briefly as well regarding the political agreement that's been referred to a number of times today. Unlike some of the other agreements that have been referenced today, it should be pointed out that work has already begun to implement many of the things that are covered in this agreement. The reacquisition of land in additions to reserve is already in progress. The treaty process is going ahead. Even some of the future work that's outlined in this document is already in process.

So I think some of the concerns about whether or not the government intends to follow through on its political agreement are somewhat misplaced. There certainly is all kinds of evidence that was happening.

I would like to ask a question regarding Bill C-30. We recognize there's a problem with the current system of addressing specific land claims. We recognize there's a huge backlog. The current system doesn't appear to be functioning well.

Would it be your preference to live with the system as it is or accept and work on a bill that may not be perfect but would at least address many of the shortcomings that currently exist? Would you rather live with what we have or move ahead with an imperfect but improved situation that we have now?

Deputy Grand Chief Glen Hare: For me, the quick answer to that is that we have to move forward. I know our leadership is concerned that it has been outstanding too long. I know we've been waiting years and years in my own community. So we have to move forward, and I hope we can all do it collectively. That's why I appreciate the time we were given here today to enhance and support the bill.

Mr. Harold Albrecht: Do we have time for Mr. Hunter to respond, just yes or no, to the current...?

The Chair: Yes.

Mr. Luke Hunter: Yes, short answer, yes—

Mr. Harold Albrecht: You prefer we move ahead?

Mr. Luke Hunter: Yes.

Grand Chief Denise Stonefish: Yes, move forward, but we would still like the opportunity to review the bill and provide comment.

Mr. Harold Albrecht: Thank you.

The Chair: Thank you.

Thank you, Mr. Albrecht.

To the Bloc, Monsieur Lévesque.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Good afternoon, ladies and gentlemen.

I heard Ms. Stonefish mention that First Nations have little confidence in the processes that have been put in place up to now. I understand that, and I doubt if she is the only First Nations person to think that way. You just have to remember the agreement that was signed in Kelowna. You were probably there, after all. That was enough to destroy anyone's confidence.

But on the matter of the tribunal, your proposal is that three judges make up more a board of arbitration than a tribunal. If you were asked to work with the department to recommend judges from a list that you and the department had agreed on, would you have a little confidence in the judge chosen to hear cases? There would only be one judge per case, but there would be a list drawn up by First Nations in collaboration with the department. Would that help a little to address your lack of confidence and your problem with the judges' credibility?

● (1655)

[*English*]

Ms. Eliza Montour: Sir, being legal counsel, I don't think I can say I don't have confidence in judges. I do have confidence in judges.

Mr. Yvon Lévesque: I hope so.

Ms. Eliza Montour: I think what we're seeing here.... I think you misunderstood, sir. We're not recommending an advisory committee. If you look at the structure of the other tribunals, usually it is mixed membership. We're usually looking at legal people and lay people. So I think that type of system can be facilitated here.

I know that in the political accord the national chief will be working with the minister to develop that roster or make recommendations. So we have faith and we support the AFN's work.

I hope that answers your question.

[*Translation*]

Mr. Yvon Lévesque: In one sense, yes. but I tell myself that, in the people around a judge, there will be legal people and non-legal people. You would probably like there to be at least one person that you chose, and I wonder if, at that point, the department would not ask for one person that it chose.

Do you not think that that could drag the process out?

[*English*]

Ms. Eliza Montour: No, I don't think it would make the process more drawn out. We have the political accord there that says we're going to work together to develop this roster with the concern with judges. Why not use the same political accord and say we're going to develop a roster of however many it takes—24—of lay people, legally trained people, with judges also? So I don't think it could; I think it can quickly be done.

[*Translation*]

Mr. Yvon Lévesque: What do you think about it, Mr. Hunter?

[*English*]

Mr. Luke Hunter: I really have no issue with the judges. Judges are very competent people. I would rather see an independent judge make an impartial decision, as opposed to government bureaucrats making decisions on all my claims. I'm okay with it.

Grand Chief Denise Stonefish: I wouldn't have a problem with judges. I wouldn't have a problem with your comment about being appointed by the government and first nations. However, I have a concern about the advisory committee itself.

To me, an advisory committee only provides advice or recommendations. How would it be accepted if the advisory committee recommended A, B, and C, and then, when it got to wherever it goes, they said they were not going with A, B, and C? My concern would be on how much mandate or authority an advisory committee has.

The Chair: Thank you.

Mr. Storseth, you're next.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very, Mr. Chairman. If you'd just let me know when I have about 20 seconds left in my five minutes, I'd appreciate it.

I want to thank all the witnesses for coming forward today. They were excellent presentations. I know some of it was at short notice, which makes it even more difficult to get translation and everything else done, but I found the presentations to be very educational.

Ms. Crowder started to allude to something that's been said before, which is that trust is a critically important part of all these processes. I agree 100%. We as a government have to develop that relationship with you on an individual basis, because it's something we have to work forward to the longer we're in government. It's equally important that we have that trust and continue to develop it. We're at a fairly fresh stage of that right now. I think this is a great first step.

It's very important to set the dark days of the Liberal government and their broken promises behind us. It's also important to recognize who our real friends are. You know, at one point in time the homeless actually thought the NDP was their friend, until they started voting against every initiative that came before them to help them out in the budgets.

I would actually like to start by asking a question of Deputy Grand Chief Hare. You put forward a very detailed presentation and you've obviously put a lot of time and thought into this legislation. Would you consider that what you're doing today is consultation? Would you consider this process right here to be consultation with the Government of Canada, and have you had an opportunity to discuss your recommendations—the nine recommendations that you've put a lot of thought into—with the AFN before they brought this forward?

● (1700)

Deputy Grand Chief Glen Hare: Again, I would pose that to my chief, the Grand Chief John Beaucage, but we certainly did consult with our leadership from where the grand chief has taken it. But to your question about consultation, no.

Mr. Brian Storseth: Mr. Hunter, have you had an opportunity to consult with the AFN before this came forward?

Mr. Luke Hunter: No. I'm not an elected individual. I'm not a chief or a politician.

Mr. Brian Storseth: Nonetheless, you are here. I'm asking everybody.

Mr. Luke Hunter: Yes. I deal with land claims, and I work in the research department. I assist our first nations, dealing with their land claims and also treaty matters. Whatever definition we use for consultation, in general terms if you look at the English dictionary, it's a straightforward definition.

In terms of the government consulting me on the bill, I would have to say no, I would not define this as consultation. I'm appearing before the committee to express my concerns on the bill and the problems we perceive moving forward.

Mr. Brian Storseth: I appreciate that, and we have enough politicians in the room to dance around the question.

I'll go to Grand Chief Stonefish. You really caught my attention when you said at one point in your consultation with us that this legislation should be withdrawn. Do you still feel that way? Have you had an opportunity to express your opinions with AFN to this point in time?

Grand Chief Denise Stonefish: No, there has been no real consultation. Our opportunity to comment to the AFN was to express our same comments as we're bringing forth today at their special meeting on December 11. Again, it was December 11, and we only received the presentation on December 6. I feel that the consultation process was inadequate.

Mr. Brian Storseth: How much time do I have left, Mr. Chair?

The Chair: We're all dying to know what you need 20 seconds for, but you have 20 seconds left.

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

I think it's imperative that this committee has the AFN here post-haste. We can no longer go through these presentations where we are talking to groups of people who feel they have not had the opportunity to be consulted.

As the parliamentary secretary alluded to, they've been paid a significant amount of money to bring this legislation forward. They've had the opportunity to consult. I want to be able to ask them what their consultations have been. I don't know how we can go forward without having the opportunity to talk to AFN first.

The members on the other side, who for a year and a half have ragged about consultation, now all of a sudden aren't that worried about it. All of a sudden this is your consultation process.

● (1705)

The Chair: Thank you, Mr. Storseth.

As I said at the beginning of the meeting, prior to last week's break we had set up an agenda to carry us through until the Easter break, which is a three-week period. We are in the first week of this three-week stint.

The AFN has been invited. We had initially asked them to appear at the beginning of our consultation process, immediately after the minister. They had expressed an interest to appear after we had heard from some of the other witnesses. That is what we're doing at this point. I don't think we need to continue this conversation today.

At this point, the AFN is still on our list of people to be invited. One of the questions I'm going to deal with at the subcommittee when we meet next week is how we can make that happen sooner rather than later, but sooner would still be after the Easter break.

Mr. Brian Storseth: On a point of order, Mr. Chair, I appreciate what you have said. This may be a point of privilege, but I'm not sure I'm willing to go that far at this point in time. I have two points.

First, the AFN was paid to do consultations on behalf of the Government of Canada. I want to know whether those consultations have been done.

Second, we are a parliamentary committee that has the right and the ability to call our witnesses. We do not ask our witnesses when it's best for them to come forward if it is critical to the legislation that we have them here.

The Chair: Ms. Neville, on the same point of order.

Hon. Anita Neville (Winnipeg South Centre, Lib.): It's been the practice of this committee, as long as I've been on it, to treat witnesses with courtesy and try to accommodate them at their convenience. To hear this kind of rudeness from the member opposite is astounding.

It was the government that was anxious to bring this bill forward quickly. I have no problem with that. But before we start assigning blame, we have to understand why this bill came forward at the speed it did. Perhaps informal consultations were made that we don't know about, and these kinds of allegations are totally uncalled for.

The Chair: Thank you.

Mr. Brian Storseth: I'd like the opportunity to rebut that.

The Chair: No, Mr. Storseth. This is not a point of order. As I said already, we have a list of witnesses we have agreed to and a process we've agreed to follow. As for whether it's the preferred process of each member of the committee, that may not be the case, but so be it.

Grand Chief Stonefish, do you want to make an additional comment?

Grand Chief Denise Stonefish: Yes. I want to clarify that just my organization felt that the consultation process was inadequate. I'm not sure how the Assembly of First Nations did their consultation process throughout the rest of the country.

The Chair: Okay. Thank you.

Ms. Crowder, you have five minutes.

Ms. Jean Crowder: I have a couple of editorial comments. There's no response required to this; I just want to be clear about the record on this.

My issue in bringing forward the political accord—and I clearly must have hit a sore spot with the government—was more about the fact that there's a history, and not necessarily just with the Conservatives. I only went back a couple of years, but I'm sure if I went back decades I'd find any number of political accords broken by any number of governments. The context in which I was raising the political accord was more around the fact that when the next government comes into place after we have an election...whether people would actually trust it to honour a political accord that a previous government had signed. That's just an editorial comment.

I want to come back to consultation for a moment. I don't have the precise definition, but the Supreme Court has directed that consultation must be meaningful, require much more than the mere sharing of information, be substantive, have a procedural component, and require the participation of first nations people in the decisions that affect them.

Any body that is drafting legislation is somewhat hampered by its ability to take the legislation out to the broader public before it's tabled in the House of Commons. I don't have the terms of reference that the AFN was tasked with, but we heard from people who came before the committee on Monday that the AFN was told it could not share the information before it was tabled in the House of Commons.

I don't recall the exact date that it was in the House of Commons, but I think it was early December. Given that there was a special chiefs assembly on December 11, with other things intervening there was no possibility to have a fulsome consultation. The Assembly of First Nations was limited—and I can't speak on its behalf, but from my understanding of the legislative process, it was limited—in what it was able to do.

Given those limited kinds of circumstances, we're now in a position of having to ask people what they would like to see done differently with this piece of legislation. I would argue that what we're doing now is not consultation. It's certainly hearing from witness, but in terms of what we've heard from first nations from coast to coast to coast—from Inuit and Métis—what constitutes consultation is simply not going out and saying to people, “Well, this is what we're up to. What do you think?”

I wonder if you could comment. If the time and resources had been available, what could a consultation process that developed a more comfortable bill have looked like?

● (1710)

Deputy Grand Chief Glen Hare: I think we might have had more recommendations that we had worked on with our members.

I don't want to go back to the AFN and the timeframes in December. For all governments, even ours—we're a government—that's Christmastime. Nobody's going to be sitting in any house at Christmastime. We weren't there in December, I don't think—not all of us.

You talk about consultation. We at the Union of Ontario Indians have to run around to get our chiefs. When we call our chiefs to gather in our assemblies, there are 95% in attendance.

For this, again, with the timeframes.... We have met as a whole—we were given the time and financial resources, I guess—but to answer your question, it is our chiefs' duty to go back to their councils, and to have community meetings if they so wish, and for the council tables to talk and deal with this and bring it back to the PTO and then to here.

From December until today is not reasonable. It's not reasonable for us. I don't even know whether your governments are all back yet. It's holiday time.

This is pretty major to be put upon us, and to hear the member over there question our positions here.... Maybe if we were given more time we'd be more prepared and we'd have answers, and the grand chief himself would be here. To me, the scheduling of all this.... I feel that it's hurting us, but we are here to try to work with everyone. I think this would have been pushed ahead if I couldn't make it or any of us couldn't make it, but we're here and we're trying to work with everyone. That's our main goal here.

Grand Chief Denise Stonefish: I think there probably should have been another component in this: that once Canada and the AFN had developed a bill, there should have been a process that allowed first nations the opportunity to sit down in working groups to review and analyze the potential impacts or potential benefits that might arise out of that bill, and that allowed us to provide this government or any government with suggestions or recommendations on how to move forward on a jointly developed piece of legislation.

The Chair: Thank you.

Did you have any comment, Mr. Hunter?

Mr. Luke Hunter: Yes, on the issue of consultation, I want to point out that Canada is a very large country, and we need resources to be able to provide that meaningful consultation.

In terms of AFN, I know there's been a joint task force on various matters concerning land claims. I would think that if they were being given proper resourcing they would have done their job. In terms of timelines, I guess that's an issue.

Based on the comments I heard from the chiefs I represent, at the meeting in December a lot of the chiefs weren't aware of the political agreement; they didn't have it before they attended the meeting. So I think it's the timeframes, as I said, that were an issue.

● (1715)

The Chair: Thank you.

The last participant in round two is Mr. Warkentin, for five minutes.

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

Thank you very much to each one of you who have taken the time, even on short notice, to be with us this afternoon. We really appreciate it.

I want to localize the issues concerning specific claims to issues that you in your everyday life may see need to be dealt with in the specific claims legislation. You've had an opportunity to look at it. We've spoken at length now about issues of consultation, with respect to whether people were consulted or not.

There is legislation before us. Each one of you has spoken about the positive parts of the legislation that may assist your communities in dealing with some of the specific claims you may have.

Specifically, I'm wondering about specific claims you're aware of in your communities that this legislation, if it were to expedite the process.... Let's just assume that it expedites; there are questions as to how fast it can move. If this were to expedite the process of specific claims that you are aware of in your personal lives, and if they were moved forward, how might that alleviate the situations in your communities?

I don't know whether any of you have specific examples, where you have issues of specific claims you're hoping to help out with.

Then, if you were able to expedite them, what would this mean to your communities?

Grand Chief Denise Stonefish: I don't know personally, but I do know of the one specific claim in one of our communities, which is the Batchewana First Nation, and the concern there is in regard to the $150 million cap. It's my understanding they believe their claim is worth well more than $150 million.

Mr. Chris Warkentin: Yes, I understand that concern, and that certainly is a legitimate concern. As the legislation points out, this is to deal with issues of lower value. Of course, there will be the current mechanism, and if some of these were brought out, then hopefully we could expedite those on that side as well. But I'm just thinking about issues of smaller claims.

Grand Chief Denise Stonefish: What I was going to say is that there was nothing we could see that clearly indicated where first nations that had claims in excess of $150 million were going to go. Were they going to be channelled into the specific claims process?

Mr. Chris Warkentin: Yes, the legislation specifies that it's only those under $150 million. So the other ones would remain in the current process, so they would have the venues that are currently available for those and the mechanisms that are currently available. But this, I guess, is a situation where those under that amount would have the opportunity to go through this process that would be dealt with within a six-year timeframe. So instead of people looking at years and years, they would have an opportunity; they would be assured that at least within the next six years that would be considered or would be dealt with. It may be dealt with even sooner than that, but it would be that six-year period.

I know in my community there was some relief that finally there would be a mechanism whereby these communities would specifically have the certainty that six years from now they would have some resolution to some of their specific claims, and it was seen as a real move forward. Sometimes these are...I shouldn't say small things, but maybe in terms of the dollar value, we're just talking about into the hundreds of thousands of dollars. These irritants have been in place and really they are impeding a community's ability to move forward, whereas if they have this process, they're able to.

I don't know if you have any specific examples.

● (1720)

The Chair: Perhaps you could keep your comments fairly brief, please.

Ms. Eliza Montour: I can't answer for all 42 of our first nations on what their feelings are going to be. So speaking in general terms, of course, our member nations are going to be happy that the claims process is going to be speeded up. It's going to be a good thing. We need to speed this process up.

I'd also like to make a comment on the fact that not only do we need this tribunal, but we also need that other pillar that was spoken to at Justice at Last. The internal system, the front-end system, has to be revamped too so that we can get those review processes done sooner. We can get the Department of Justice looking at it and saying, here's what we think and here's where we're agreeing with you on the issues that you're putting forward, and here's where we're not agreeing with you. So that process is also fundamental to speeding up the whole system.

So I hope that answers your question generally.

Mr. Chris Warkentin: Yes, I appreciate those comments. Thank you.

The Chair: Thanks, Mr. Warkentin.

That's the end of round two. There is still some interest to ask some questions, so what I'm going to do is give each of the caucuses one more turn, three minutes long, and the order will be Ms. Keeper, Mr. Albrecht, Mr. Lemay, and Ms. Crowder to finish.

So Ms. Keeper, three minutes. I'm going to be tough with the time.

Ms. Tina Keeper: Thanks, Mr. Chair.

I would like to follow up on this consultation question, because it's my understanding that it's the responsibility of the federal government to put in place a consultation process. The language, even within the political accord, talks about the honour of the crown.

I'd just like to go back one step and apologize for some of the dynamics of the committee, interfering with or maybe even insulting our presenters, because that is certainly not my intent, for sure.

When we are talking about the honour of the crown, when we're talking about a fiduciary obligation, when we're talking about a process of reconciliation and partnership and how we want to move forward, I think the legal aspects are really important in that, so that we're not just making these off-the-cuff remarks about what we think consultation should be.

So I would like to ask whether there is any comment you'd like to make on the legal aspects of the duty to consult that have been recommended by the Supreme Court of Canada, and the responsibility of the federal government in that, rather than that being the responsibility of this committee or AFN.

Deputy Grand Chief Glen Hare: We don't have the mandate to speak to that today.

Ms. Tina Keeper: Okay.

Mr. Luke Hunter: I have just a quick answer. I'm not in a position to answer on the issue of consultation. In general terms—I can't speak for my member first nation or my political executive—my understanding is that when we talk about consultation from anything that impacts the welfare of Canadians, be it on first nations...there is a duty to consult regarding anything legislative at all that the government brings forward.

And I think this question of whether or not there was enough consultation on this bill is important. But on that issue, we talked about timing as an issue of doing work in Parliament, and because of the situation we're in with a minority government, I think that comes into play. I think it's the political environment generally.

● (1725)

The Chair: Thank you.

Can we have a really quick answer?

Grand Chief Denise Stonefish: As the grand chief of the association, I do not have the mandate to consult on behalf of my member nations. It's been clearly indicated to me that the duty to consult lies directly with the first nations.

The Chair: Thank you.

Mr. Albrecht, go ahead, please, for three minutes.

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

I'm going to share my time with Mr. Bruinooge. I'll be 30 seconds.

Mr. Hunter, you mentioned in your opening remarks that one of the obstacles in this process is that the judge will make his ruling, and that there are no future obligations. I'm just having trouble understanding that, because my understanding is that the process is actually for trying to settle these outstanding land claims. So how is that an obstacle?

Mr. Luke Hunter: When we are talking purely about money compensation, it's fine, but when we get into land, then it becomes a totally different dynamic.

If you look at the bill under the release and discharge section, what's to prevent the government from saying that we've released our obligation based on a tribunal decision? If I want land—

Mr. Harold Albrecht: But that's the whole point of the bill, I think.

Mr. Luke Hunter: But the thing is that it has no capacity to award—

Mr. Harold Albrecht: I want to pass my time to Mr. Bruinooge.

Thank you.

The Chair: You have a minute and a half, Mr. Bruinooge.

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

Perhaps an overarching synopsis as to what we are trying to do with this bill is that we are trying to change the system. There is a broken system in place right now. We admit that the federal government is the judge and jury on the negotiation of specific claims. This bill is taking that out of the hands of the government and making an independent tribunal that will deliver the results that everyone is hoping for, something that has, for many years, been called for by many first nations leaders.

I think that must be remembered as we go through the process of debating this bill. It's important to hear from witnesses, and I think there has been a lot of good testimony today, which I know will be discussed by our committee members.

I still have to go back to the point that was made earlier by Ms. Keeper in relation to consultation. She used a bunch of words, of course, that I think have a lot of loaded meaning and are taken advantage of by a lot of politicians.

So I ask the question, if the AFN can't say, "We completed consultation", then who can? I think that's a really good question to ask the panel. If the Assembly of First Nations can't say they completed what they believed was consultation, then where does this word "consultation" go from there?

The Chair: I need a very fast answer, if anyone wants to deal with that.

Deputy Grand Chief Glen Hare: It's the government's job to consult, not ours.

The Chair: Okay.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I have heard everything you have said, and I have a very important question to ask all three of you. I am asking you for a very brief reply. Are you asking us to examine Bill C-30 as a reconciliation process or an adversarial process?

[*English*]

Deputy Grand Chief Glen Hare: Yes.

Mr. Marc Lemay: Yes what?

[*Translation*]

Yes to which of the processes?

[*English*]

Ms. Eliza Montour: Yes, reconciliation. That's what we're looking for.

Mr. Luke Hunter: Yes. Reconciliation.

Grand Chief Denise Stonefish: I would have to agree, yes.

[*Translation*]

Mr. Marc Lemay: That considerably changes the way in which we will look at this bill from now on. For me, at least, it changes everything. In fact, a specific claims tribunal is adversarial in that it deals with two opposing views. You are telling us that you want to come to the tribunal in a spirit of reconciliation. That is what I heard.

Thank you very much.

● (1730)

[*English*]

The Chair: Thank you.

Ms. Crowder.

Ms. Jean Crowder: In three minutes it's very difficult to get into any kind of complex issue, so what I would rather do is turn it over to you to use my three minutes to leave us with a final statement from each of you about what you want us to carry away from what was said and heard today.

Maybe we could start with Chief Stonefish.

Grand Chief Denise Stonefish: Again, at the end of my original presentation I indicated that we would like the government to withdraw Bill C-30. Then throughout some of the comments and questions today I indicated that we would like the opportunity to work with this, because in one aspect it is going to be a benefit to the communities.

Again, I state that our biggest concern was the lack of consultation.

Mr. Luke Hunter: I think I outlined my issues about what needs to be in there in order for the majority of the first nations to utilize the tribunal, and then we need to look at the problems that I highlighted in my opening comments. Certainly there has to be a way we can draw our other treaty partner, Ontario, to this process regarding land. That's the heart and soul, I guess, of our first nation —the land and how we utilize resources.

Deputy Grand Chief Glen Hare: Again, for me the timeframe is of grave concern here. We are only here, as I said in the beginning of my opening statement, to enhance this and to work with everyone to strengthen this.

But again, I stress I do have a concern with the timeframes and the time of the year when this is all coming out. Because this impacts the whole country, all the governments, and to do it in such a short time.... We do have that concern. In our leadership we have that concern, and once we meet with the membership at the grassroots level it will really be...you know. I think we need to work together more on the timeframe of how we want to work with something as big as this.

It's good where it's going; it's just that it's going way too fast.

The Chair: With that, I'd like to wrap up the meeting today.

I'd like to thank our witnesses for being here.

We will reconvene on Monday at our regular time.

Thank you. This meeting is adjourned.

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