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Chair

Mr. Barry Devolin

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● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Good afternoon, everyone. I'd like to call the meeting to order. We are here today to continue our hearings regarding Bill C-30.

Committee members will remember that when we started the process of hearings on Bill C-30, we decided that we would start by hearing from the minister, and that's how we kicked off our hearings. Subsequently we have heard from people from umbrella organizations in each of the different provinces. We've heard from British Columbia and Ontario already. Today we'll hear from Saskatchewan and Manitoba. We will continue with this process and hopefully complete all of the provincial groupings before we rise for Easter.

I have a couple of comments for my colleagues. You may recall that initially we had agreed that we were going to sit a bit longer today because of the very large number of witnesses we were going to have. As it turns out, two or three of the Manitoba witnesses were unable to be here today. We still do have representation from Manitoba, but it's a much shorter list. So we will go back to our normal finish time of 5:30.

We are also televised today, so straighten your ties, everyone, and pay attention.

With that, I would like to welcome our three witnesses today from the Federation of Saskatchewan Indian Nations: Chief Lawrence Joseph, Vice-Chief Glen Pratt, and Executive Director Jayme Benson.

Gentlemen, if one or all of you would like to make a brief presentation, we would appreciate that. Questions from committee members will follow.

Chief Joseph.

Chief Lawrence Joseph (Federation of Saskatchewan Indian Nations): Thank you very much, Mr. Chairman, and good afternoon to the honourable members of this standing committee.

I want to bring greetings on behalf of the Saskatchewan first nations chiefs, council members, our senators, our first nations veterans, and our membership.

I'll give you an overview of who we are and what we are. We are probably the oldest and longest-together organization in Canada. This year we are celebrating 61 years of existence as an organization. Call it an advocacy group, if you wish, but it's a treaty organization.

In Saskatchewan, 75 first nations were united in this effort to support Bill C-30. The approximate population of first nations status people is 122,000. I might add also that we do have a very young membership in our first nations population. Our average age is 23.

Some of these things that the Government of Canada is doing are fairly urgent. I'm very pleased to report to the committee that Saskatchewan first nations chiefs are certainly very supportive. We have attached a resolution, dated the middle of February, that fully endorses this and supports the work that was done by the joint task force.

I was very privileged, to say the least, to be part of that task force. One of our technicians, Jayme Benson, was also a member of one of those committees. I was privileged to serve along with our Assembly of First Nations colleagues on the legislation drafting committee.

I might just leave it at that for now, Mr. Chairman, and go to the nitty-gritty, if you wish. You do have copies of our presentation. It is a very short presentation.

I will say to you up front that I personally have served in the government for 30 years and also as a chief for 10 years, and I have never seen this high-level type of commitment from government to actually do something jointly with first nations in a very strategic and structured way. I applaud that. Certainly the political accord that was signed also gives us great hope that there will be work done, futuristic work done, based on mutual respect.

I just wanted to say those words as an opener, Mr. Chairman. If my colleagues here want to say something, I guess this would be the time to do it, with your permission.

The Chair: Thank you.

Vice-Chief Pratt.

Vice-Chief Glen Pratt (Federation of Saskatchewan Indian Nations): Thank you, Mr. Chairman.

Good afternoon to all the members of Parliament here today. It's an honour to be here today to talk about the process—not only about the bill, but as the chief has mentioned, about the process that's happened.

I think many times the federation has come here to speak about a reactive situation to bills that have been passed that have an impact on our treaty rights as well as our communities. I think one of the very important things about this process is the process itself, the joint development of a bill that's going to have a major impact, not only on government but on first nations. If we could create this process across the board for many of the other sectors, we would have a much more efficient system of legislation, where we're actually involved in the drafting of the legislation that also has a great impact on us.

Personally, I think it's a real stepping stone forward in terms of having first nations at the table jointly recommending legislation. I think that in itself allows us to have greater input into the bill itself, rather than always reacting to the bills. It seems that a lot of our communities are left in the dark and having to react to bills and the effect that has had. As a result, that legislation itself is sometimes brought to the Supreme Court of Canada because we haven't had input on it. I think we're setting a good precedent in terms of the duty to consult in some of the cases at the Supreme Court level.

Also, I think in Saskatchewan we have over 95 outstanding claims waiting to be resolved over the last 15 years. As a result, this bill hopefully will give our communities the opportunity to deal with these outstanding claims and be in a position to benefit themselves holistically in terms of their economics, their community, their housing, and many other issues. When money is brought into a community it has a great impact on giving that community new hope of having a better community, and I think that's what we're talking about.

The other issue for us is the whole idea of justice. We're often asked, “What is justice, and what does it mean to first nations?” Ultimately, what we're talking about is something that was wrongfully taken from first nations that has to be corrected in a timely fashion. So ultimately we're talking a little bit about justice as well, justice for first nations, and I think that's an important part of this bill as well.

I'll keep my remarks very brief. Once again, thanks for the opportunity to be here today and say a few words. Thank you very much.

● (1540)

The Chair: Thank you, Vice-Chief Pratt.

Mr. Benson, did you want to add something?

Mr. Jayme Benson (Executive Director, Federation of Saskatchewan Indian Nations): I'll just add a few comments.

Obviously I would just comment on the bill technically. I would have to say that it was jointly developed, and things are a compromise. It doesn't do absolutely everything, but I think it's a big improvement over the current process for specific claims that would fall within the jurisdiction of the tribunal. I think in that sense it's really positive.

A couple of the issues that are really concerns in Saskatchewan are things like delay, and the bill does legislate timeframes to deal with these claims. It's still three years to respond to a claim, but that's much better than the current system, where there are no timeframes. One of the biggest concerns for Saskatchewan bands is the conflict of interest that ultimately it was Canada that decided claims. This bill creates an independent tribunal, which will actually take that and put in an independent body composed of superior court judges.

I think those two aspects alone are a huge improvement over the current process. I think that's, technically at least, why we see a lot of positive in the bill.

The Chair: Thank you for those comments.

We'll go to questions. The first round of questioning will be seven-minute time slots. You may have been here before and be aware of this, but that's a combination of both the asking and the answering of questions. The members will get seven minutes, and I will try to politely interrupt at the end of that period to move on to the next member. Subsequent rounds are five minutes each.

I'd like to begin with Ms. Neville, from the Liberal Party.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you.

Thank you very much for being here.

Chief Joseph, let me thank you on behalf of my colleagues for your participation in the process, the direct participation.

You're all here in support of the bill, and we appreciate that.

There are two questions I wonder if you could speak to. First, could you tell us what it would mean in real terms or give us examples of first nations communities in the province of Saskatchewan? When this bill is implemented, what will it mean for your communities? You identified that there were 95 specific claims. I don't know the value of them, the nature of them, but could you give us a little bit of insight in terms of what it would mean?

And I have a second question, if we have time. You referenced the process of developing the legislation. I wonder if you could speak to the strength of that, as you saw it, and perhaps if there were weaknesses that could be improved upon.

● (1545)

Chief Lawrence Joseph: Thank you for those questions.

Simply put, the process that was there before did not work. The Canadian government, of course, was in a very serious conflict situation. The timeframes were non-existent, and the Indian Claims Commission could not compel them to do anything. It's just very much a flawed system.

There are 95 claims outstanding. I think some of them are as old as 15 years. I think that's one of the oldest ones. When we see that happening...there are levels of frustration and money that could be better spent than fighting the government. We try to work within the parameters of the criteria put before us, but often governments and senior administrators change, and we have to go through the whole thing again. The Department of Justice puts things on hold. It's very frustrating. Now that it's out in the open, at arm's length from government, and independent, I think it's going to move further.

Here is the bottom line. I can speak for the chiefs in Saskatchewan in saying we are tired of depending on government. We are so dependent on government from the womb to the tomb on everything. In order to be self-sufficient, let me say it: we need our land back, to build together industry and to put together opportunities for our people. We can't do that if we're restricted to parcels of land that are often not usable except maybe to build toilets on. Let me just say that.

The number of claims there are going to push ahead that independence for our people, that place where we need to do economic development, and that's the push from Saskatchewan. We are trying to work with government to put an investment on economic development, thereby bringing down the social costs. We're tired of being dependent.

Personally, I am also tired of meetings. Every time we meet with senior-level administrators, all they say to us is, “I don't have the mandate to do this. I don't have the mandate to do this because it's got to come from our bosses, the elected members of Parliament, or some type of legislation.” The beauty of this is that it's actually legislated. No senior-level administrator can come and waste my time and say, “Well, you spent $3,000 to come to Ottawa, but I don't have the mandate to do anything.”

Enough already.

I just want to say that for the 95 claims that are there, there's actually money set aside. The Prime Minister of Canada himself actually came out on June 12 and said, “Justice at last”, and we got hope that this will do it.

In terms of how much money is going to be realized in Saskatchewan, 95 times $100 million is what? I'm not sure. Maybe, Jayme, you have a ballpark figure.

Before I go to my technician, and also the vice-chief, I want to say the process is long overdue. The Prime Minister of Canada admits there is something to be done—not necessarily admitting they stole land, but admitting there is land that's owed to first nation people and that there is outstanding business.

I don't want to marginalize the authority of the Minister of Indian Affairs, but that was coming from the Prime Minister of Canada. It was the Prime Minister of Canada saying we will immediately put together a process based on mutual respect. He actually put together a very senior-level team to sit with very senior-level people from our side, the AFN, and the Department of Justice people. They were very senior people and actually worked together.

Every two weeks we met across Canada. We hammered it out, and we didn't fight; we just worked together based on mutual respect, and I appreciate that. The process that got this suggested bill going is workable because there's political will on both sides.

The other thing regarding the process is that if it's passed—and I hope it is—it's going to mean, as I mentioned before, the that Department of Indian Affairs and the senior-level deputy ministers will have a tool they can use to actually get to work on addressing the outstanding business.

I might add also add, talking about treaty promises, talking about outstanding business, and talking about the spirit of treaties, that if we can do this in specific claims, we can do this in health, education, housing—you name it—and it doesn't have to be threatening to any member of Parliament or any party across Canada, because it's an outstanding debt, and I think this process brings hope to our people in our territories.

● (1550)

I hope that answered your question. If it didn't, I would be open to some suggestions.

Hon. Anita Neville: In part, but you're talking about the process of discussion that took place between the AFN and the government. There have been positive and not so positive comments on it. Can you make any concrete suggestions on how that dialogue and working together might be improved? It's one of the first times in the last few years that has happened. Did it work well, and are there recommendations to make it even better?

Chief Lawrence Joseph: One of the things I might add, Mr. Chairman, is that there was actually will within the committee to say, “Well, we've always done it this way”, from the government side. There were no excuses.

I would like to offer improvements on this, but I have very few. The process that was employed was right from the top. I think three regional chiefs represented AFN, including me, B.C., and Alberta, plus our lawyers. I think the Department of Justice also had some excellent people come out.

The process, the format, and the vehicle that was used were such that timeframes and money were set aside at a senior level to do this. We're used to trying to scrimp and save and find money to go to meetings. Here it was all there. It was done because the Prime Minister of Canada said that it had to be done. Now we're here to support that bill.

On the process involved, I have very little to look at in terms of improving the system, but it was the first time in my 40 years of public service. I have never seen this before.

Thank you.

The Chair: Thank you.

Monsieur Lemay from the Bloc, for seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I liked what you said, Grand Chief; it was very interesting. The committee is used to hearing from people, including native chiefs, who are more often in a confrontational mode rather than a conciliatory one. I realize that you are first and foremost in a conciliation mode. I nevertheless have a few questions.

I studied the bill thoroughly. Some witnesses told us they would rather not have a lone Superior Court judge to hear a case, but rather a group of three people, such as a judge and two assistants. I would like to know what you think about that, and in particular about two other points. The first concerns court fees. The bill says that a tribunal may impose fees, which are called costs. This is stipulated in subsection 12(3), which reads as follows:

> (3) The Tribunal's rules respecting costs shall accord with the rules of the Federal Court, with any modifications that the Tribunal considers appropriate.

So if a member of your band made a claim in Saskatchewan, that person might have to pay court costs.

The bill concerns the federal government and first nations. Subsection 20(6) reads as follows:

> (6) If the Tribunal finds that a province that has been granted party status caused or contributed to the acts or omissions referred to in subsection 14(1) or the loss arising from those acts or omissions, it may award compensation against the province to the extent that the province was at fault in causing or contributing to the loss.

So the court might find that a province is at fault. But what happens when a province has not been granted party status? Could this happen in Saskatchewan? Have you studied this possibility? I would like to know what you think about these three things.

● (1555)

[*English*]

Chief Lawrence Joseph: Thank you.

[*Witness speaks in his native language*]

I'm just kidding you.

Mr. Marc Lemay: *C'est bon ça.* Nobody understands.

Chief Lawrence Joseph: I don't think the interpreter does.

I'll go to the last one, sir, if I may, and we'll give the others to our panel.

It would be our dream to have some of these hearings in Saskatchewan. It would be minimal in cost. We wouldn't have to bring the whole band in; it would be preferable to have a judge deal with our issues right at home. However, whether it's a single judge or a panel of judges, it doesn't matter, as long as the issues are dealt with in a fair manner.

As far as the cost is concerned, again I'll go to the technicians.

With respect to the Province of Saskatchewan, let me go back to December, when they had their throne speech. It gave us a lot of hope, on two fronts. One is that they said the treaty is a living, breathing document. The second is that they are going to be working with us to actually incorporate treaty education and write the regular curricula in schools. That way the myths and misunderstandings as far as treaties are concerned will be wiped away in due time.

The other thing is that the Province of Saskatchewan, under the new premier, has very much committed to working with us on the economic development side. They have created a vehicle called Enterprise Saskatchewan. To that end we are also creating, as a federation, the Saskatchewan First Nations Economic Development Authority, to try to get out of dependency on government and to be self-sustaining in our work. So far the Saskatchewan Chamber of Commerce, the City of Saskatoon, and the City of Regina have welcomed urban reserves.

I'm very confident. I haven't seen anything at all, at least in my term for the past 10 years, where the province is trying to throw curves at us in getting our land back. I haven't seen any situation where the province would want to fight us. I think they're very much looking at supporting us in getting land and also economic development opportunities.

I have not run into any great difficulties, except the duty to consult, which is a decision that was made. If it's applied properly, I think the province will have to come along for the ride.

I don't know if I answered that, but as far as the cost and the other factors go, I think the technician might be able to answer.

Mr. Jayme Benson: I'll try.

On the provincial thing, as I understand the bill, a province can't have awards against it unless at the outset it agrees to be bound by the decisions. So a province has to agree to be granted party status before it can have an award against it. I know that was a concern of ours, that if a province is in, then it's in all the way, but if it chooses not to, then it can't have an award against it. I think that would maybe alleviate some of those concerns.

On the issue of costs, as I understand it the process will be funded, so ultimately first nations that participate in the tribunal process will get funding. If they choose to withdraw before a tribunal decision is granted, as I understand it, costs can be awarded against them by the tribunal as well. I think it would have to sort out federal funding for that.

The other question you asked was interesting, about whether a panel of three would be superior to having one judge. I read some of the transcripts, and I thought a bit about that. I do think in a lot of cases three minds are better than one, but having someone with the ability of a judge sets up a good process. I think in Canada we have respect for the independence of the judiciary and the ability of the people who are on it. One of the most important things will be to assure that first nations, through the Assembly of First Nations, has input into who those judges are. If you select good people, hopefully there will be good results.

Does that answer your questions?

● (1600)

The Chair: Thank you, Mr. Lemay.

Ms. Crowder.

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

And thank you for coming before the committee today.

I have a couple of questions.

One is on the duty to consult that you talked about. I think you're probably well aware that there have been some witnesses before the committee who have some differences with the bill. I go back to the national chiefs assembly in December. My understanding from the national chiefs is that they saw this as an ongoing process so that people could come before the committee and express their concerns or suggested amendments, and that in fact the process that happened was actually not a duty to consult, but rather a facilitated process and dialogue, and that Supreme Court decisions actually say that only the crown can discharge a duty to consult; it can't delegate it out to other companies or whatever.

I'd like you to comment on that.

The second piece I'd like you to comment on is the fact that the tribunal is actually an end result rather than a beginning result. The hope is that negotiation will happen that will actually take a significant number of those specific claims off the table, and they actually won't get to a tribunal.

But the two questions I have on that are whether you have confidence that sufficient resources will go into that negotiation process to actually see that process speeded up. Secondly, the claims that are currently in the system will actually have to be resubmitted. The clock gets set back to zero, and they will then have a three-year period of time in which they can be either negotiated or not and then could possibly end up in a tribunal. I wonder if in your view that will actually help alleviate the backlog, given that, it seems to me, a significant number of people will be disadvantaged because they've already been in the system for 15 years or whatever.

So I wonder if you could comment on those two pieces.

Chief Lawrence Joseph: Mr. Chairman, on the duty to consult, given the nature of the work that was done, as you know, the bill had to be kept secret. It's very difficult when I go back to my region where the chiefs are asking what's happening and I can't tell them. That's the nature, and I think based on the mutual respect of the joint task force, we kept our silence, and they kept their silence. Therefore it was very difficult to go and ask the duty to consult requirements of our chiefs.

But the bottom line is that our chiefs very clearly dating back to 1998, when I was again on a joint task force to try to drum up a better deal with specific claims, have told us unequivocally to go and find a better deal, because this was not working. They told us to get a better deal than what we had so far.

So in Saskatchewan—I can only speak for Saskatchewan—regarding the dialogue that happened, we just gave the highlights of what was going on and the nature of the work that was done, the three committees that were there, the commitment from the Prime Minister: justice at last. All this language helped to actually ease the minds of those people who were thinking, “Well, here goes the government again. They want to draft something and impose it on us.” That didn't happen, fortunately, because we were very careful to articulate that there is a better deal coming. I assured the people that this is something that they've asked for. In Saskatchewan at least, there was no loud requirement or uproar saying that we didn't ask them. That didn't happen in Saskatchewan.

At the conference, the assembly you heard about, at which some of this information was actually on the floor, some people didn't see that there was any consultation. I heard about that. However, having said that, in Saskatchewan and also in some regions across Canada, it was just the failure of the—and I don't want to criticize my colleagues—other organizations to present dialogues where they were needed. There were little resources given to us to do just that, and we did our dialogue the best way we knew how, through the telephone, band meetings, tribal council meetings, and wherever we could, and thereby we actually laid that to rest. So there was no big uproar as far as the requirements under duty to consult go.

But I know there was a contentious point as it relates to claims that are more than $150 million. There's a process for that, and we do support those first nations that are in that situation. As to whether there are sufficient resources to do this work, of course there never are sufficient resources. But compared to the 1998 bill or the joint task force, this is actually money committed by government: $250 million to do this work, to clean up the backlog, but also to give hope to those first nations that have been waiting for 15 years or more.

I'd like to go to maybe either Chief Pratt or Jayme Benson to talk about the resubmitting and all that.

● (1605)

Mr. Jayme Benson: On the resources thing too, the bill doesn't commit any resources. That's not really the purpose of it. It sets the tribunal. Obviously the idea is, if the tribunal works really well, claims will all be settled in negotiation, so you'll hardly have to use it.

But obviously if you're going to deal with the backlog, correspondingly there have to be resources not just for settlement dollars but also for process. I'm actually on a committee where that's under discussion. There is more work. I think the political accord recognized that.

In terms of the clock being reset, I know if you're a first nation, you said, well, I've been waiting 10 years and now I have to wait possibly another three. It's not an ideal situation. A first nation would like to have their claim dealt with as quickly as possible. But I think on the other side you have to recognize that there is an 800-claim or 1,100-claim backlog, depending on our numbers or the federal government numbers. So there is going to have to be some time to at least respond to all of those. At least there are legislated timeframes. It's not perfect, but it's better than what we have.

Ms. Jean Crowder: I just want to come back a bit to the negotiation process. I noticed in your presentation you talked about dispute resolution. Are you talking about mediation there?

Of course, in the past, the federal government had a very poor track record around agreeing to mediation. It was really unclear when the minister came before the committee exactly how this new alternative dispute resolution centre was going to work.

Mr. Jayme Benson: That was actually one of the subcommittees I was on. I do a lot in negotiations. One of the big problems we have is that when there is a dispute, the federal government almost never agrees to even non-binding mediation. At most, we have the Indian Claims Commission facilitating, and that's about it.

My understanding is that this centre will be focused on all areas of alternate dispute resolution up to arbitration, which will not be included. That was an issue. Personally, I would prefer it if they did have that ability, because some issues may be small enough that you don't want to go all the way to the tribunal, if it's a very specific issue. Certainly ADR is a way to help with negotiations and mediation as well.

The Chair: Thank you.

Mr. Bruinooge, for seven minutes.

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

I'd like to thank all of our guests today, especially Chief Lawrence Joseph. I know you've spent a lot of time advocating on behalf of economic development in your region. And having met you a number of times, I know you're quite committed to seeing first nations in Saskatchewan be able to achieve the economic outcomes that we would all like to see.

If I could also go to some of the words you've spoken in relation to the bill, I definitely appreciate your compliments for the way this process has unfolded. There's no question that it has had the support at the highest level. Those negotiations took place over the summer. It culminated in the fall with an excellent bill, which not only you took part in drafting but the national chief did also. There was an endorsement of it through a political accord, which I think speaks to just how much effort was put in by both sides.

I would also like to thank you for clarifying some of the elements of the consultative process that the AFN took part in, which you were a part of. I know that in some of our previous meetings there have been some misunderstandings in relation to that, but I'm glad to see that you've brought it to the table today and clarified your position on that matter.

Going perhaps a little further into some of the details, you mentioned that there were about 95 outstanding specific claims in your region of Saskatchewan. Do you have any idea of what percentage of those claims might be in the range above $150 million?

● (1610)

Chief Lawrence Joseph: Zero.

Is there some? A very small percentage.

Jayme, I don't know, maybe you have some figures.

Mr. Jayme Benson: I think there's a perception out there that when you're talking large claims, you're talking billion-dollar claims. On the $150 million limit, depending on how the tribunal addresses compensation, there's going to be a range of claims in the $100 million to $200 million, which could possibly encompass some.

It will be a minority, but those will be the ones that are just in the bill, out of the bill—that sort of thing. When we're talking about how to address claims over $150 million, I think it's important that there's a fair process there, particularly because there will be claims that are just in there or not. I can't say for certain until you actually do the studies what individual claims are worth.

Most of the claims in Saskatchewan should be covered by this bill.

Mr. Rod Bruinooge: Okay.

Chief Lawrence Joseph: At least the backlog, anyway. I guess that's what I was referring to, the backlog of 95 claims in Saskatchewan. I think a lot of them will fall within the number that is allocated for.... It's the ceiling, I mean. But as for the other ones, we just never know, as they come about.

For Saskatchewan it's a good deal.

Mr. Jayme Benson: The largest one we've settled so far is Kahkewistahaw surrender claim, which is about $94 million to $96 million.

Mr. Rod Bruinooge: Right, okay.

Perhaps I'll just try to communicate some of the logic for not having claims above $150 million in the bill. I think Chief Joseph agreed with this over the summer of negotiations, but perhaps you could put on the record whether or not you agree with this logic.

When the $150-million-and-less claims are removed from the current process of negotiation between the crown and the first nations, it will free up focus for the federal government to spend time just on the largest claims, which are a very small percentage. As such, that will not only make the claims resolution at the low end efficient, but also bring a great degree of efficiency at the high end. I guess that's the logic I've been attempting to communicate.

I'm not sure if you agree with that, Chief Lawrence.

Chief Lawrence Joseph: I would agree with that, with some reservations. But when you look at the majority, I think nationally we're looking at 95%—and that's just a figure I throw out—that would be looked after with this particular bill if it comes about. Thereby, if the bill cannot cover the ones over $150 million, didn't focus on them, I think that's politically sound and certainly something that first nations would like some commitment on. As long as there's a process in place that will address the bigger claims in excess of $150 million, I think that's what they're looking for. Saskatchewan certainly hears the rationale behind that, and Saskatchewan certainly wants to support those first nations in that situation.

What I do agree with is that this bill facilitates closure of long-outstanding business in terms of specific claims, not only as they relate to land, but there are also bands in Saskatchewan that they call rebellious bands, which have some treaty things that were not covered. They were denied treaty payments, annuity payments for instance, for many years because of the allegations that they went with Louis Riel when he was fighting the government at that time. So the allegations have to be tested. Again, I think whatever's going to them will fall under this umbrella.

Overall, sir, in answer to your question, the region of Saskatchewan certainly supports this bill because there's commitment to actually set aside money, commitment to develop legislation, and commitment to get this work under way. The political accord that's tied to this is very futuristic and there's political will in there, and we appreciate that.

● (1615)

Mr. Rod Bruinooge: How much time do I have? One minute, okay.

Perhaps I'll just follow up on what you were saying in relation to Saskatchewan based on your understanding of all of the chiefs, that as far as you know there seems to be broad support for the bill in its current form.

Chief Lawrence Joseph: Yes, sir, there is pretty broad support, because what we had before was basically nothing. I must say, though, that under our treaty promise we try to live according to the laws of the land, but oftentimes we seem to be in litigation after the fact, and that's costly for us. I don't think any of our chiefs in Saskatchewan want to go through that.

This bill gives us hope that there will be negotiations based on mutual respect and realities. It's an admission from our government that there's outstanding business to be dealt with, and if this bill passes—and hopefully it will—it will facilitate those discussions.

It's not perfect, I must say that. I'm not on record as saying we support this 100%, but it's one heck of a lot better than what we had before.

Mr. Rod Bruinooge: Thank you, sir.

The Chair: Thank you.

That's the end of our first round. We're going to go into our second round of questioning. We have 15 minutes left, so I'm going to have time for three five-minute turns.

Mr. Russell, you're first for five minutes.

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

Good afternoon to our witnesses. We're certainly glad to have you here.

I appreciate the work you've done in bringing this bill before this particular committee and before the House of Commons.

I would just make a statement that the duty to consult is a legal duty the government has, and one cannot pick and choose in that particular regard. I would have wished that the government had chosen this course on other pieces of legislation, like the repeal of section 67.

I would also say that I hope the political accord you've signed with the government is going to be much more successful than the Kelowna accord, which the government has cancelled.

I would also like to ask a couple of very pertinent questions.

We can make amendments, or we can suggest amendments, to improve this legislation on the understanding that it is not a perfect piece of legislation. There are some problems with it. It's our time to do that now, not at some future point. If there were one or two amendments you would like to see us put forward, with the cooperation of all members of the committee, what would they be? I'll save this point until last.

I was really struck by your statement, Chief Joseph. You said that you need your land back; you want your land back. But interestingly enough, this particular piece of legislation cannot provide land in terms of awarding compensation.

I understand how fundamental land is to first nations, to Métis, and to Inuit communities and peoples. I would just ask how fundamental that piece is, how problematic it is, given that you can't be awarded land and that you really have to quit claims to certain pieces of land that the minister himself says are now in the hands of third parties. The release provision is necessary in order to clear title to the land. He's saying that we must have this approach in order to clear title to it.

So I would ask, first of all, about the issue of land, and as well, about any amendments.

Chief Lawrence Joseph: Well, not to be facetious, Mr. Chairman, but I think the amendment I would like is that there be no ceiling on any of these claims whatsoever. I think that would be fair and realistic in terms of your national debt to the world. What about your debt to the first nations people? Why should there be a ceiling on anything when you're talking about a debt that has been there since the treaties were signed? I think that would be my first comment. Not to be facetious, but that's where my head is. You have a debt owing in the area of treaties. Promises were made not that long ago, and here we are.

Not to criticize the government, but we as Canadians are helping Afghanistan rebuild their country. Why are we not offering to help first nations people rebuild the people after their demise under the residential school system and so on? I'll just offer that as a comment.

On having the land back, I mean that literally. The treaty land entitlement process was good, in a sense, to a point. It actually had land claims whereby we could actually establish urban reserves and establish agricultural land, land that could lead to our self-sustenance. That's what I'm talking about. With any money we have, as long as there are no restrictions on it—we can't spend the money for this, we can't spend the money for that—we could buy land and actually create businesses and create economic development opportunities. That's what I'm talking about.

As far as we're concerned—and certainly it's affirmed by the superior court decision in Delgamuukw—we did not relinquish or extinguish our ownership or our title to a lot of the land in Saskatchewan, to these lands in Canada. That's what our elders have been talking about for years. We didn't agree to give up this land; we agreed to share. So when we say we want our land back, we're saying, look, Canada is getting some very good benefits from the resources. In Saskatchewan, it's called the Natural Resources Transfer Agreement of 1930. All the resources go to provincial coffers; we get nothing, nothing at all. When we say we want our land back, our resources back, that is what will lead towards self-sustenance. That will lead towards getting our dignity back. That will lead towards treaty promises that were made.

That's what I'm talking about, sir.

● (1620)

Mr. Todd Russell: But how does this bill facilitate your getting land back if you say you have quit claims to certain tracts of land in exchange for cash?

Mr. Jayme Benson: I could actually answer that a bit.

I do a lot of negotiations, and none of the negotiations I've been involved with actually provide for land. It's usually land on a willing buyer and willing seller basis.

The way a negotiation would work is that if a band lost 33,000 acres, as in the case of Kahkewistahaw, the settlement wouldn't give that specific land back. It would give money and allow them to buy land and purchase it up to reserve status. In terms of the tribunal being able to award compensation, if the first nation can take that compensation and purchase land back—that land or other land—I think that would be a good way to do it.

One of the weaknesses right now is the additions to reserve policy, and that's dealt with in the political accord. One of the things that really have to go hand in hand with this legislation is that there has to be a process in place whereby first nations can use their compensation, whether it's awarded through the tribunal or through negotiations, to either purchase the land they lost or purchase other land and transfer it to reserves. Again, the bill has to be looked at in terms of the political accord, and those commitments have to be realized as well.

The Chair: Thank you, Mr. Benson.

Mr. Albrecht, five minutes.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair, and thank you, panel members, for being here today.

I think all Canadians agree that the growth in the backlog of claims is unacceptable. Since 1993 it's grown from 350 to about 800, and that's certainly unacceptable. So I was glad to hear, in your opening statements, a number of phrases that indicate that this is a positive step.

You said this brings hope; you said that a number of times throughout your presentation, and I'm glad to hear that. You said you're tired of being dependent, and you're glad for the focus on economic development opportunities. You went on to say that you've never seen this kind of cooperation in your 40 years of involvement in government work. Those are all very positive comments that really give us hope as a committee that we can move ahead.

I'm wondering if you can comment a bit more on the issue of consultation. Chief Joseph, you indicated that there are 75 first nations groups in Saskatchewan, and you indicated that they're united in their efforts of supporting Bill C-30. As I said earlier, you've been positive in your analysis of the consultation process in general, but I'm sure you've read some of the comments of other chiefs from B.C. and Ontario who have been before this committee within the last few weeks, and their analysis has been less than positive in terms of consultation and opportunity for input. Can you give this committee assurance, as a member of the task force, that a concerted effort was made to engage in consultation with all first nations groups across Canada?

Chief Lawrence Joseph: Mr. Chairman, without any hesitation I would certainly agree with the member that there was effort. In fact, a very public announcement on June 12, 2007, by the Prime Minister of Canada to announce this effort, which is about.... In 60 years nothing has really moved. I think a lot of chiefs in Saskatchewan looked, at the very least, with great anticipation, positive anticipation to the fact that something was going to be done. The fact that the most senior member of government is actually taking this on, is announcing it, standing beside our national chief.... Further to that, there were resources given to each region to actually go about dialogues—not necessarily consultation, but dialogues with first nations people, given the fact, again, that the secrecy of the bill was.... That's the way it operates, I guess. We were told that we couldn't go out and spit out the details, the elements of the agreement, publicly to the media or to any person.

The bottom line is that at the very senior level there was mutual agreement, mutual respect. It wasn't something the government did in a back room and said, “Here, Indians, live with this.” That didn't happen.

Every regional chief—and I think every region has a regional chief—was given an opportunity to go and talk to each chief. We did that in Saskatchewan with technical teams, and we also had Assembly of First Nations lawyers and technicians come out and assist us with that.

As far as dialogue is concerned, it can't be packaged under a duty to consult. But certainly, sir, your comments are dead on when you say there were opportunities given.

● (1625)

Mr. Harold Albrecht: But there wasn't, at the same time, a great degree of autonomy on the part of regional chiefs and groups to engage in differing levels of consultation.

There's one question I would like to follow up on, in that same vein. The groups that previously came before this committee have indicated a few proposed amendments—for example, having a panel of three, including a lay person with legal expertise, on these panels. There was also concern expressed that once a decision was reached, there would be no opportunity for further recourse. From my perspective, that's the whole purpose of this bill, to bring finality, to bring closure, and to bring resolution.

I'm wondering if you could comment on the appropriateness of some of those suggestions regarding the amendments that these other groups have proposed.

Chief Lawrence Joseph: Mr. Chairman, before I go to the vice-chief, let me say I think it's appropriate for every region to.... As I mentioned earlier, no bill is perfect, but it's appropriate for every chief in Canada to offer suggestions for improvement as they pertain to their territory. Overall—and I will be very cautious, as I don't speak for all of Canada—we support this. We say there are amendments that we could propose, but for all intents and purposes, this bill addresses most of our concerns. But it's never perfect.

I want to go to Chief Pratt to expand on the previous question, if I may.

Vice-Chief Glen Pratt: Thank you, Chief.

Thank you, Mr. Chairman.

I want to add a couple of things.

First of all, when the cases on duty to consult came down at the Supreme Court level, the federation moved forward and implemented its own guidelines. We have our own FSIN consultation guidelines, which our chiefs enforce over us.

Secondly, we use a political process in which every chief is representing their members. As a result, if they don't feel they're consulted, then they have the ability to speak up and say they haven't been consulted and they won't vote in favour. We didn't get any of that during the assembly.

I think what it speaks to is the lack of the federal government responding to the duty-to-consult cases. There are no guidelines from the federal government; there are no guidelines from INAC. In the case of legislation we need a quicker and more timely response on duty to consult. The impact on aboriginal rights, on treaty rights, is not only on the land of our treaty rights, but also on the legislation.

I think what people are talking about is what "duty to consult" really means for first nations. Really, that's not defined very well. As a result, the response has been very slow. We're getting into a grey area. Without the guidelines or some joint policy on duty to consult, it's going to spill over into a lot of other areas.

I wanted to make that point. I also want to add one thing on the question—I think it was Mr. Lemay who brought it up— of the cost for the tribunal, but also the cost for the ICC. The Indian Claims Commission has time and again put a lot of effort and work into making recommendations. In most cases those recommendations haven't been followed. We were carrying the ICC, which I believe was fairly supportive of many of the claims, but in fact we weren't listening to them. We were spending a lot of money and really we weren't getting a bang for our buck. I wanted to add that.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Pratt.

The last turn goes to Monsieur Lévesque from the Bloc, for five minutes.

[*Translation*]

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

Welcome, gentlemen. I would like to congratulate you for your dynamism and your sense of responsibility for the advancement of your nations. It's refreshing to see people who truly want to advance. Indeed, we are all familiar with the setbacks you have experienced in the past, and the misunderstandings which occurred when agreements were signed.

I would like to know how many communities and nations your federation represents.

● (1630)

[*English*]

Chief Lawrence Joseph: There are 74 first nations that are signatories to the Federation of Saskatchewan Indian Nations convention. One first nation, by their own choice, want to be independent, but they reap the benefits of the work that is being done.

Across the province of Saskatchewan I believe there are about 133 to 150 first nations communities, reserves, that are occupied. The population off-reserve is anywhere from 50% to 55% urban. So we have first nations people living in urban centres. The number of communities is just a guesstimate; I should have done my homework on this, sir, but I think there are about 133 to 150 actual communities called Indian reserves.

For instance, in the northern part of the province, the La Ronge Indian Band have approximately eight communities where people are living. For Peter Ballantyne first nation, it's the same thing. We have first nations spread across the northern part of the province. We have 75 first nations, but as to actual reserves, we have multi-community reserve bands in the province of Saskatchewan.

[*Translation*]

Mr. Yvon Lévesque: You no doubt were in contact with each of these communities.

In answer to my colleague's question with regard to the fact that there is only one judge, you implied that you would rather see a judge hear claims on the ground in Saskatchewan. In your mind, should this be a judge from Saskatchewan or any judge, as long as this person goes to Saskatchewan?

[*English*]

Chief Lawrence Joseph: I would hope that any judge or any individual who has attained the right to be a judge is honourable and would make their judgments unbiased. And certainly we do have expectations that every judge who is selected will be very responsive and sensitive to our regions.

Ideally, as I mentioned before, sir, it would be somebody who knows the terrain—the politics, the culture, and the traditions of Saskatchewan—who we'd like to see there.

As far as getting in touch with all of the communities is concerned, I think it's never 100%, but certainly we are very fortunate to have 11 tribal councils in the province of Saskatchewan where we can actually bring the chiefs together and give them the dialogue and the information as much as we can. We also have four vice-chiefs who go out in the territories to talk about these things.

But on the issue of dialogue, we are very fortunate. This is one organization in Saskatchewan that is united, with the exception of one band, and we are able to do this.

I think information is powerful. When you give information to chiefs, based on mutual respect, and council members...that's what the Government of Canada showed us when they came to us and offered this. I think it was our duty to pass that on to our communities, and certainly we made our best effort on that.

I don't know if I answered your question, but I understand what you're saying. We do have communication departments and also a way to talk to our chiefs.

I wouldn't be so confident, sitting here, sir, if I didn't have a resolution attached to that.

[*Translation*]

Mr. Yvon Lévesque: I apologize for interrupting. Since I have very little time left and since my colleague would like to ask you an additional question, I will give him time to do so.

Mr. Marc Lemay: I read the resolution of the Federation of Saskatchewan Indian Nations, and I find it very interesting. Given the amount of time we have left, I will ask you one final question.

If you could make one amendment to improve Bill C-30, what would it be?

[*English*]

Chief Lawrence Joseph: I'll go to my technician to answer that one.

● (1635)

Mr. Jayme Benson: Obviously it would be to remove the $150 million cap so that all claims are under the jurisdiction. The biggest weakness of the bill is that there are some claims that will fall outside of it.

So when you're looking at the bill itself, it's good, but it doesn't address everything. I think a commitment to deal fairly with those claims that fall outside of the jurisdiction is really important outside of the bill itself. Certainly those claims should not be treated worse than they are now. There shouldn't be something like technical defences applied to them that aren't applied to claims under $150 million.

So in terms of the bill itself, I think it's reasonably good. I don't think we'd oppose an amendment, say, to a tribunal of three as opposed to one. This is good; that might be better in some ways. The downside would be that if there are three judges per panel, you might have fewer panels, so it may slow down the resolution of the backlog. So it's not something we'd oppose, but....

The jurisdiction is probably, for claims that fall outside, the biggest concern, but that's for another process.

The Chair: Thank you.

Mr. Benson has learned from the committee members to avoid looking at the chair when he's giving his answer. My colleagues have taught him well here, in less than an hour, how to get a little extra time.

But I want to thank our witnesses who have been here today. This has been a very good conversation we've had for a little more than an hour.

The committee will suspend for five minutes so that the Manitoba delegation can come forward.

● _____ (Pause) _____ ●

● (1645)

The Chair: I'd like to call the meeting back to order.

Before we go to our witnesses from Manitoba, I want to remind colleagues that in the next few minutes we will be joined by a group of members of the aboriginal and church leaders tour. You may recall this afternoon that they were introduced by the Speaker in the House at the end of question period.

They have been at a reception between then and now, but they wanted to pop by and say hello to us. They're not on our formal agenda today, but it's my understanding that sometime during the next hour they will be coming in here. They would like to witness part of the committee meeting today while they're in town. At the end of our conversation with our guests from Manitoba, I will formally welcome them here and wish them well in their endeavours.

With that, I'd like to move on to the second panel of our meeting today. As I said earlier, we are working our way around the country dealing with leaders from different umbrella organizations on a province-by-province basis.

This afternoon I'd like to welcome for panel B the Manitoba Keewatinook Ininew Okimowin, Grand Chief Sydney Garrioch, and Louis Harper, legal counsel.

Gentlemen, if you'd like to make a presentation to us at the beginning, then we will move into a round of questioning from our members.

Grand Chief.

Grand Chief Sydney Garrioch (Manitoba Keewatinook Ininew Okimowin): Thank you, Mr. Chair, members of the standing committee.

Tansi, Boozhoo, Edlanet'e, good afternoon.

Before I proceed with the presentation, I want to acknowledge the past chair, the member of Parliament Colin Mayes. We had a good working relationship with him. We are trying our best to continue with the work and to bring out the subject issues whenever possible.

On behalf of the 30 northern Manitoba first nations and the 56,000 first nations citizens represented by the Manitoba Keewatinook Ininew Okimowin, I would like to thank you for the opportunity to do this brief presentation on Bill C-30, the Specific Claims Tribunal Act, on the meaning of the treaties and the honour of the crown, and on the mechanisms needed to resolve first nations' specific claims.

Our forefathers, as representatives of our sovereign nations, entered into treaty arrangements with Her Majesty the Queen based on the recognition of our status as sovereign nations and as holders of aboriginal title to our ancestral lands. The MKO first nations entered Treaty No. 4 in 1874, the Qu'Appelle treaty; Treaty No. 5 in 1875-1910, the Winnipeg treaty; and Treaty No. 6 in 1876, the treaties of Fort Carlton and Fort Pitt; and Treaty No. 10 in 1908.-

Establishing a joint independent process for the resolution of disputes and claims between the treaty signatories is consistent with the terms of treaty and the promises of treaty commissioners. Establishing a joint and independent process for the resolution of disputes and claims is also consistent with upholding the honour and fiduciary duty of the crown. The creation of the joint mechanism to resolve claims arising from broken promises of the treaties is also consistent with a special treaty relationship in contemporary form, reflecting changing events and the evolving needs of our respective nations.

Prior to the tabling of Bill C-30 by the Minister of Indian Affairs and Northern Development on November 27, 2007, the MKO first nations, other first nations, and several committees, inquiries, royal commissions, and joint task forces had repeatedly called for a better process to resolve specific claims that will be jointly arrived at through the mutual consent of first nations and Canada, truly independent of perceived or actual undue influence by the Government of Canada, and effective in resolving claims and in upholding the honour of the crown.

The Manitoba Keewatinook Ininew Okimowin continues to be supportive of the objective of establishing such a process. It is with great regret that MKO must advise this committee that the mechanisms proposed under Bill C-30 will neither be joint, nor independent, nor effective; nor will Bill C-30 uphold the honour of the crown. The MKO does not support the legislation the way it is.

On November 27, 2007, the AFN and INAC entered into a specific claims reform political agreement to address claims-related matters of importance to first nations that are not addressed by Bill C-30. For example, the minister has agreed to review revisions to the additions to reserve policy that would provide for reacquisition and replacement of those lands.

Bill C-30 and the AFN-Canada specific claims reform political agreement do not address the majority of outstanding claims, for example, the Northern Flood Agreement; treaty land entitlement, as well as the north of 60 disputed lands that exist; and they do not address claims-related issues affecting the MKO first nations, such as claims involving Canada related to the delay in implementation of existing treaties and agreements, claims to resource revenue sharing and compensation for infringements of harvesting rights, and outstanding claims arising from the adverse effects of resource development.

● (1650)

Despite the federal and provincial government commitments and the announcement of the Canada specific claims action plan and Canada's reporting in the September 2007 *Public Information Status Report - Specific Claims Branch* that the treaty entitlement shortfall claims of Manitoba first nations had been settled, there continues to be significant delay in the implementation of the Manitoba Treaty Land Entitlement Agreement, particularly due to eligibility issues and the resolution of third party interests.

While the “number of acres transferred” is applied by government as a measurement of progress, MKO asserts that the most relevant indicator is the total number of parcels of land transferred and converted to reserve. For example, out of 450 parcels of land currently selected as of July 2007 under the Manitoba TLE Framework Agreement, at least 260 selections, or more than 60% of all selections, continue to be delayed due to disputes regarding eligibility issues, the resolution of competing and third party interests, and the determination of easements in favour of Manitoba Hydro.

With respect to the agreement with Island Lake Tribal Council first nations, at present, all of the 100,000 acres in crown land entitlement has been converted to reserve. However, very little of the 100,000 acres of land to which the Island Lake first nations are entitled to hold in fee simple, for later conversion to reserve, under the Island Lake Treaty Land Entitlement Agreement have been purchased.

There are two parts to that. One is that they have converted that 100,000; the other 100,000 are still in fee simple and still have to be purchased.

MKO has advised Canada and Manitoba that persistent abuses of crown authority and a refusal by both the federal and provincial governments to identify and resolve issues in a manner consistent with the honour of the crown and in a spirit of good faith and compromise are perhaps the most significant causes of delay in the conversion to reserve lands of the majority of disputed parcels under the Manitoba Treaty Land Entitlement Framework Agreement.

The continuing abuses, delays, and disputes over treaty entitlement lands in Manitoba may in the future become a large number of additional unresolved specific claims.

Now I'll pass it over to Louis Harper, the legal counsel for MKO.

● (1655)

Mr. Louis Harper (Legal Counsel, Manitoba Keewatinook Ininew Okimowin): Good evening, ladies and gentlemen.

Further to our presentation and more specifically to the legislation itself, by settling the specific claims only by payment of moneys and by imposing the release and extinguishment of first nation interests and rights in lands, Bill C-30 will have the effect of extinguishing those interests and rights of first nations. The honour of the crown requires the recognition and the continuance of aboriginal title and rights and treaty rights and demands the replacement and restoration of first nation lands, particularly where such lands were part of the original bargain between Her Majesty the Queen and first nations to reconcile aboriginal title.

In other words, what we're saying in our presentation is that not only should there be compensation if first nations wish to be compensated through monetary means, but the importance is replacement of those lands, that the land is very important and there shouldn't be a continuance of extinguishment of those rights.

On February 6, 2008, the minister advised this committee that the federal government usually doesn't own any land anyway. Usually land is not part of it, he said. However, the 2003 “Resolving Aboriginal Claims” report reveals that of the $1.7 billion and the 3.5 million acres of land in specific claim settlements as of March 31, 2003, the federal government's share was $1.5 billion and 2.5 million acres of land, or 88% in cash and 72% of the total settlement lands. So we say the honour of the crown requires that Bill C-30 be amended to broaden the scope of the tribunal's decisions to include the restoration and the replacement of lands.

The rights and interests of first nations, MKO treaty first nations, in traditional lands and reserve lands also include the cultural, spiritual, social, and economic rights and interests based on our customary law; also the rights and interests arising from aboriginal title, including unresolved aboriginal title, such as air—air is considered an aboriginal title because it was never extinguished—and of course there's that issue with water, as well, that is unresolved treaty business in Manitoba; rights and interests arising from the reconciliation of aboriginal title through the terms of treaties and agreements; rights recognized and affirmed by the Constitution of 1982; beneficial interests under subsection 18(1) of the Indian Act, which are the lands reserved for Indians.

The doctrine of the crown to seek first nation consent is very important when addressing rights in lands and has existed since 1763. It was reflected in the treaty-making process and is reflected in the requirements for surrender under paragraph 39(1)(b) of the Indian Act. First nations hold interests and rights in lands, including those that are recognized and affirmed by section 35 of the Constitution Act of 1982. The courts have established that these rights are held collectively by our first nation communities.

Subclause 21(1) of Bill C-30 represents a prima facie unjustifiable legislative extinguishment of our rights and lands whenever a decision of the tribunal causes the release of all interests and rights to the land unless the citizens of the first nation have first provided their consent to the release and extinguishment of such interest and rights. It is not within the power of Parliament to unilaterally extinguish any of the constitutionally protected rights in lands of first nations without the consent of the holders. And that is our position within the MKO region, that the consent of our people is very important before there is any extinguishment of those rights.

● (1700)

As can also be seen in the specific claims process flow chart, which is appendix B of the December 2006 report of the Senate committee on aboriginal peoples, there is a progression of first nation consent required in the existing specific claims process.

A specific claim can be filed with the minister by a first nation or by a lawyer on behalf of a first nation. A band council resolution is required to accept the minister's offer to negotiate a claim. Consistent with Canada's constitutional doctrine and practice, a membership vote may be required to ratify certain specific claim settlements, particularly if the rights of the first nations are affected by the proposed settlement.

So you can see that throughout history when Canada has dealt with first nations there's been an element of consent, a requisite that people's consent is required before disposition of lands and rights pertaining to land.

The potential for an unjustifiable parliamentary extinguishment of rights in lands through subclause 21(1) of Bill C-30 is not remedied by the voluntary filing by a first nation of a claim with the tribunal. The release of first nation interests and rights in lands can be given effect only after a majority of electors of the first nation provide their consent or assent to the tribunal decision.

That is an important factor and recommendation by MKO, that prior to the filing of the claim to opt for the tribunal there should be a referendum by the first nations to say that they are in agreement to file for the tribunal option.

Also, if it goes through, prior to the decision being rendered by the tribunal they should be seeking that approval by the first nations.

We mention also that there should be consultation with first nations with regard to the whole tribunal process.

● (1705)

The Chair: Mr. Harper, could you just wrap it up in a few minutes, please?

Mr. Louis Harper: Okay.

I don't know if you have our presentation. On page 4 we have the recommendations from MKO.

The first recommendation has to do with the fact that we require clause 21 to be amended to reflect that there be a referendum process by our people. There's a recommendation to address the interests of first nations in restoring and replacing lands, which is very important. Also reflected in the amendment is a provision in the bill itself with regard to the reacquisition of lands and additions to reserve policy.

We are also recommending that clauses 14 and 15 be amended to include within the scope of claims that may be brought before the tribunal "claims arising from delay in the implementation of existing treaties and agreements to which Canada is a party". This relates to the fact that TLE claims have been considered settled claims, but they continue to be an issue in Manitoba in that the implementation of those settlement agreements continues to be delayed in its process.

Also, of course, we want the amendment of subclause 20(1) to include the restoration or replacement of lands.

That concludes the recommendations from MKO. Thank you.

The Chair: Thank you. I appreciate that you have a lot of ideas that you want to put forward and we have a relatively short period of time.

We'll go to questions now. We will have time for one round with seven minutes per person.

Ms. Keeper, from the Liberals.

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

I'd like to thank MKO for presenting today.

In your presentation you made quite a number of recommendations. Are there one or two priority items that you're adamant should be in this bill?

Grand Chief Sydney Garrioch: The first priority item, which isn't written there, is on the consultation process for first nations. It needs to be informed, consulted, and give consent. That's one.

Number two is the referendum. The reserves are owned collectively by the first nations people—the majority. So that needs to be put in place, as well as the process established for that exercise.

Ms. Tina Keeper: Could you give us a little more detail on differentiating between the consultation process you're recommending and a referendum process?

Mr. Louis Harper: As you know from the Supreme Court decision, the duty to consult is very important to us, and I think the decision by the Supreme Court favours first nations in that regard.

On the consultation, from looking at the bill itself...I guess we didn't have the opportunity to review the bill line by line at the regional and local levels. I think that's very important to our people. This is a Supreme Court ruling, and if any legislation infringes on our rights we should be consulted. Certainly this bill will ultimately infringe on our rights.

The other aspect is the replacement of lands. That is so important to our people. We're not talking about fee simple lands replacement. We're talking about protected lands, replacement of those lands that were taken away, and being protected under the Constitution of Canada.

● (1710)

Ms. Tina Keeper: I'd like to continue that thought. This process doesn't have a ratification or referendum process built into it at all. So that ratification or referendum process, which was part of the old specific claims process, was important for that very reason—because of the extinguishment of aboriginal and treaty rights. Is that right?

Mr. Louis Harper: There's a potential for extinguishment of our rights through this process without the due course of involving the very people who are going to be impacted. I think that's why it's important to get their consent prior to releasing or extinguishing those rights to land.

Ms. Tina Keeper: That is the standard process as well, right? I understand it's part of the Indian Act that these types of agreements—for instance, the Northern Flood Agreement—include a ratification process to which you're legally bound.

Mr. Louis Harper: That's very correct. Also in the Indian Act, with regard to surrender of lands, there would a referendum by the people.

Ms. Tina Keeper: On the duty to consult, we just heard from Chief Joseph, who was part of the process. He said it was built into the process that they were not able to share certain information. He found it difficult or challenging at times to not be able to share detailed information with the people in the Saskatchewan region.

We in Manitoba maybe did not have that kind of participation in the process. There was not the ability through that process to always inform the people. It seems that there's inconsistent access to information that doesn't really meet the duty to consult. I'm not sure, I'm just asking.

Mr. Louis Harper: Are you referring to the bill itself and the lack of consultation?

Ms. Tina Keeper: Yes. I mean the process of developing the bill and people being informed about it.

Mr. Louis Harper: At the local level, if you asked an ordinary resident of a reserve they wouldn't understand the bill itself; in fact, they would tell you they didn't know anything about it. That goes to show that there is a lack of consultation.

If you want true consultation with our people, you should do the same thing as you do with the French and translate the wording of the legislation so our people understand what's in there. Not only that, but at our regional level where our role is to advocate for our people, we need to have a chance to go line by line and look at the implications of each of those provisions in the bill. We did not have the opportunity to do that.

The Chair: Thank you, Mr. Harper.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chairman, I have a point of order regarding two things. First, I would like to know whether we will receive the brief from Grand Chief Garrioch, and whether it will be translated.

● (1715)

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Marc Lemay: Second, don't we have this room until 6:00 p. m.?

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Marc Lemay: Couldn't we continue to hear from these witnesses until 6:00 p.m.? Why stop at 5:30 p.m.? In any case, the vote is at 6:30 p.m..

[*English*]

The Chair: First of all, the brief was received today in English only. It will be translated and circulated.

Second, we initially booked the room until 6 o'clock. I anticipate that it's still ours until then. This is being televised. We informed them that we were stopping at 5:30, but we can go later if that's the will of the committee.

Why don't we continue this round. If we want to go a little longer, I'm sure we can do that.

[*Translation*]

Mr. Marc Lemay: Perfect.

Grand Chief, Mr. Harper, thank you. I listened to you carefully through the interpretation. There's one thing I do not understand, but which is very important. Perhaps it was badly explained to you or perhaps I am completely mistaken. Under Bill C-30, which we are presently studying, a first nation must be willing to participate in the process.

Let me explain. Subsection 15(4) reads as follows:

> (4) A first nation may not file a claim if
>
> (a) it is not claiming any compensation;
>
> (b) it is claiming any remedy other than monetary compensation; or
>
> (c) the amount of its claim exceeds the claim limit.

So according to the bill, you are not obliged to participate in the process. In my view, if you do so, you lose the right to claim the land in question. You are asking that sections 14 and 15 be amended so that this right is not lost. However, that is impossible under this bill. I wanted to point that out because it is extremely important.

Regarding section 21, that is something I am familiar with. Indeed, Quebeckers are very familiar with referendums. But why would you want a referendum? If the bill is adopted, no one will force you to participate in the process. However, if you do so, you lose your claim to some of the land. This refers to specific claims.

Mr. Harper, please tell me if I am completely mistaken. Grand chief, if I am totally wrong, I will certainly respect your opinion. I'm all ears.

[*English*]

Grand Chief Sydney Garrioch: Thank you, member of the committee. Let me express two points about your clarification.

First, we want involvement and we want to participate, but sometimes in this process there is little room for us to participate. This exercise in your system is one part, but how many of the members of the committee are willing to consult and come forward in these hearings across Canada in our first nation communities as well? That's another area.

Compensation for land and extinguishment is an area of concern for all of us in northern Manitoba. There is always room to establish a joint process for consultation. That's important for our people to understand. When you talk about compensation, they don't really know too many parts of it. One is monetary compensation, where you are compensated to get access to the land for resource use and resource revenue. There are so many areas that they may want to understand, and the clauses you referred to are not clear.

The other is the referendum. Why do we want to get involved in a referendum? Do they want to go through the process of a tribunal system? They need consent.

● (1720)

[*Translation*]

Mr. Marc Lemay: That's the main issue. Is that what you want? I read the Supreme Court's decisions regarding consultation. I take it for granted that before becoming involved in this type of process, you, Manitoba's first nations, will first have consulted your people. I don't know if that is clear.

[*English*]

Grand Chief Sydney Garrioch: Yes, it's very important to clarify that referendum when we talk about this. There are so many parts to it. When a leader or chief and council have an outstanding claim, and whether it goes to this system, they need consent from their people because of the land issue, and some reference on the section on surrender—whether they're going to get that land back, or they're just going to sell it, extinguish and get a settlement. There are so many parts to that referendum. But when you initiate this tribunal system, you need consent from our people, and the referendum expresses in some form how you go about that with regards to one area, surrender.

So you need the consent before you take it to the system, and we want to make it clear to the standing committee—that first step of the referendum. In any other formal kind of court ruling, you need another referendum either to accept or settle those components that a court may require from the people. It's not only the chief and council, or the leaders themselves, who can make unilateral decisions to accept.

Those are just two points on a referendum. Thank you.

The Chair: Thank you very much.

Before we go to Ms. Crowder, I would like to welcome some guests who have just arrived. Members of the aboriginal and church leaders tour have joined us here this afternoon.

Good afternoon, good evening, and welcome to you. It's kind of foreshadowing, I guess, the Indian Residential Schools Truth and Reconciliation Commission, which we are going to have in Canada in the coming days. I know you are having a busy day here in Ottawa, but we appreciate your being here, particularly David MacDonald, who is with this group and is a former member and minister in this place. I notice you found your way to the coffee urn back there—

Some hon. members: Oh, oh!

The Chair: It was an old habit, but we appreciate your being here.

Just so you can follow along a little bit, we are discussing Bill C-30, which means to establish a Specific Claims Tribunal in Canada. We have been listening to delegations of umbrella organizations from different provinces across Canada. In our first hour today we heard from some leaders from Saskatchewan, and right now we have some leaders from Manitoba who are here and have made presentations, have had questions from Liberal and Bloc members, and now I'd like to go to Jean Crowder, the NDP member on our committee.

Jean, go ahead.

Ms. Jean Crowder: Thanks, Mr. Chair, and thank you, Grand Chief and Mr. Harper, for your presentation today.

I know we have a brief time, but I'm going to ask you to expand a little bit on a couple of the points that you made. I wanted to make a brief comment before I do that.

There's a lot of conversation around what the duty to consult looks like. I think, from my understanding of what Mr. Harper says, we're on the same page on that, in that the crown cannot delegate its duty to consult. It's the responsibility of the crown to consult, and it must do that in good faith with first nations. I think that's an important point, because the exercise the Assembly of First Nations was engaged in was not a duty to consult. It was a dialogue, it was a facilitated process, but it certainly doesn't meet the Supreme Court outlines of what a duty to consult looks like.

I just wanted to make that comment. Perhaps you have some additional comments.

But let me ask about the two other points I wanted you to clarify.

At the outset, Grand Chief, you talked about this bill not meeting the test of independence. I wasn't quite clear what your meaning of that was.

The second piece I'd like you to address—and perhaps Mr. Harper might be able to deal with this—is that in subclause 23(1) it says, "The Tribunal has jurisdiction with respect to a province only if the province is granted party status." I think that's a really important factor. I come, of course, from British Columbia, where it's only been in recent years when the Province of British Columbia has actually agreed to come to the table around treaty and comprehensive land claims. So I wondered if you could comment on your view of that clause of the bill around provincial involvement.

● (1725)

Grand Chief Sydney Garrioch: I'll speak on the first area you wanted clarification on, the independence. What we're identifying here is that we don't want the act or tribunal system to be under the government. We want that process to be independent, away from the system. That's an area that we want to establish if it's going to work in the best interests...or mutually for both, not only for the government but for the first nations as well.

Ms. Jean Crowder: Then in your view does Bill C-30 address that issue of independence, or does there need to be something in here that makes it more arm's length? Certainly the negotiation process isn't arms length; the tribunal may be arm's length, but the negotiation of many claims in theory is supposed to prevent claims from getting to the tribunal, and that's not arm's length.

Grand Chief Sydney Garrioch: Yes, that's what we're trying to point out on that independence issue. The government usually adds a lot of influence to the system of the appointees of the judges, or the federal system, on how to act and deal with these items. So it's very adversarial at times as well, and it's time-consuming to put forward and to deal with these outstanding claims in the most effective way as well. That's what we're trying to point out in that area in one component.

Now, would it work? That is another issue in terms of being effective, and that's another matter to be considering. While we point out the areas, it's not reflected in our presentation.

The other point was the duty to consult?

Ms. Jean Crowder: It was subclause 23(1), the provincial aspect.

Mr. Louis Harper: Regarding the clause you're talking about, I think our first nations have had a long history of dealing with the province with regard to lands. As you know, the treaty land entitlement involved the third party, which is the provincial government. Certainly in this process itself, I think it's inevitable that in some specific claims the province will have to be seen as a party to the process. So I think it's important that they be involved and I think the bill should be amended to be more specific in that intent to involve the province.

Of course there's also mention of the NRTA from the previous presenters, through which lands are to be returned back to the federal government for the benefit of first nations in settling specific claims. That's another reason I think provinces should be involved.

Ms. Jean Crowder: Do I have time, Mr. Chair?

The Chair: You've got two minutes.

Ms. Jean Crowder: I'll just go back to the provincial issue, then. Do you have some suggested amendments? My understanding right now is that if the provinces opt not to be involved, in effect that limits the first nations' ability to come forward and file a specific claim. Are there some suggestions around what can be done around that?

● (1730)

Grand Chief Sydney Garrioch: There is one area of concern that we didn't put in our presentation because of the time issue. We say the 1930 natural resources transfer act is unconstitutional. We have a treaty relationship with the federal government. Our fiduciaries and trustees are the Department of Indian Affairs. They are to look after our interests and the well-being of our people in maintaining and looking after the land. That's one matter.

Now, since Canada put forward this act, the provincial government to some extent has to be involved, because there are some areas where they have already sold the land. They need to fix that component as well, because we are talking about third party interests as well. That also implicates the system, and they need to handle or resolve these issues as well on part of the provincial involvement.

The Chair: Thank you.

Mr. Bruinooge is next, from the Conservative Party.

Mr. Rod Bruinooge: Thank you, Mr. Chair. I would like to first mention that I'm going to split some of my time with Mr. Storseth.

I'd like to thank our witnesses today. Of course, the grand chief hails from my neck of the woods, and I definitely appreciate his being here.

Perhaps I'll start with my initial point on the consultation process. Of course the federal government, in agreement with the AFN, had the consultation process brought about with the Assembly of First Nations, and they did do that, as testimony to us today has indicated, in relation to consulting with the chiefs across the country.

Another point I would like to make is that the Assembly of Manitoba Chiefs' grand chief and the Assembly of Manitoba Chiefs as a group have supported this process as well to deliver the bill that we have before us today. I think it's important to note that there is another body that represents chiefs in Manitoba with an opinion that is different from that of the witnesses today.

Having said that, I respect the right of the grand chief to make his testimony. Of course he represents his people and he is eligible to make these positions.

In relation to a couple of the opinions you've brought forward, specifically in relation to land and reacquisition of reserve lands, which I think was referenced in some of your testimony, this is a point that was raised by other witnesses in the sense that there was some concern that the reacquisition of reserve land couldn't be subject to a specific claim. That is actually incorporated in the bill. In the event that reserve lands that weren't properly allocated are a claim, they could be brought forward.

You are correct in the sense that this tribunal will not be able to deliver in land as a compensation. There's no question that this would be impossible for the Government of Canada to do, in terms of expropriating land and delivering it as part of a settlement. As such, the Assembly of First Nations, in conjunction with the Government of Canada, negotiated on this point to the outcome, which will be a cash allocation. I think this is the best scenario we can have to be able to deliver the outcomes people are looking for.

Perhaps we could move to one particular element of your testimony that I found interesting. I know Mr. Lemay has already touched on this, which is the topic of referendum that you referenced. Perhaps you could tell me a bit more about what you're thinking in relation to having a referendum on the actual outcome of the tribunal, whether it be for or against. Could you talk about how the referendum would be utilized in both those scenarios?

● (1735)

Grand Chief Sydney Garrioch: Let me first clarify the referendum.

I integrated two parts to the referendum. Before a leader goes forward to initiate this tribunal system, he needs consent from his people to go forward and table it before the act. That's one issue. They need that consent. Now turning to the process, the chiefs have to report, consult their people on what stage or level the court system may be at in regard to this land and compensation.

You talked about the acquisition. It may be outside, and I don't know if it can be done, but that's the point we were trying to make. The issue of acquisition of land, to restore that reserve that's outstanding, may be a very complicated system, or it may not be at all.

The other matter is compensation. When you get something monetary, either you release or extinguish or you never ever get access for using your land again. They need that consent. The people collectively have to agree to that ruling, or the system of accepting or approving for the people in the referendum. Those are the two parts of the referendum requirement.

Mr. Rod Bruinooge: I guess my argument would be that a duly elected chief and council should have the right to proceed on behalf of their people with this particular process if they so choose. I think that's the element of becoming an elected chief. You're given that ability to negotiate on behalf of your community. So should a community want to bring about additional rules as to what that community can or cannot do, I think that's reasonable. There's no reason that a community couldn't come up with that type of process on their own.

Do you think that having a referendum could be outside of the legislative process and rather be done at the community level?

Grand Chief Sydney Garrioch: Not knowing the process itself, the way the bill is written is one matter, and however they deal with these matters, the act or the regulation or the policy is another area. It's still unknown how this is going to look.

The governing of this act is another component that's unknown, and again, the process itself with the system here...that's why I talked about that system, the independence and the influence of the government.

The process that we like to see is our customary law, and we have a system in place from our people in our different communities that they do things together, and they pretty well agree. If they cannot agree to the system, they leave it alone for a time being and they go back to it within a year or two years and they start discussing it again. That's the process of our customary law.

With what we have here, certainly some grey areas are unknown, and we want to express that the people very much need to be involved and they need to be consulted. Outside this bill that's proposed, the Indian Act is the supreme governing system, and there is a provision, as we mentioned, in the sections that have to be put to work that overlaps this area.

The Chair: Thank you.

Committee members, Monsieur Lemay has suggested that we stay and use up some more of the time with our witnesses. If that's the will of the committee, what I would suggest—we have about 20 minutes—is that we do a truncated second round, five minutes, one per caucus, and that will take us to the top of the hour as opposed to a whole bunch of three-minute segments. Is that's agreeable?

Some hon. members: Agreed.

The Chair: Okay. So it will be Liberal, Conservative, Bloc, and then NDP.

So five minutes, Mr. Russell.

Mr. Todd Russell: Thank you, Mr. Chair.

I want to thank the witnesses for their time today and for sharing their views on Bill C-30.

The committee itself has a difficult task in front of it, given the many different opinions that have already been expressed by the various witnesses.

We can make amendments to this bill, as you know, or suggest amendments to this bill. Is it your view that you can live with this particular piece of legislation, given its faults, even in terms of process, from your perspective? Can you live with certain amendments in this particular piece of legislation?

● (1740)

Grand Chief Sydney Garrioch: I indicated outright that MKO cannot support the proposed bill as it's written, and even, too, with some amendments that we introduced or recommended, we cannot live with it. We cannot. It's not going to work for us.

Mr. Todd Russell: So even with the amendments you have suggested, you don't feel this is the approach?

Mr. Louis Harper: I think maybe just to elaborate on Grand Chief Garrioch's comment, we do not support this bill the way it is written. We feel it's not broad enough. It's not inclusive of other claims that we have, and if it was, then maybe we would of course go to our people to see whether or not they would support it.

The way it is, the option that a first nation has is like...to use an analogy, you wave a golden carrot and say, come on over, we have some money for your land. This is not acceptable, because land is very important to our people and to lose the land through this option is not acceptable.

So I think inadvertently, if we lose land, at least the minimum requirement should be a referendum to ask the very people who are going to lose the interest in their land—to ask them.

Mr. Todd Russell: I understand you—I hear you—when it comes to that particular view. The first question I raised with the minister when he was in front of us was the whole issue of land and the potential extinguishment or quitting of the claims of land. I fundamentally hear that in your presentation. But I guess we're going to be in a conundrum at this committee in terms of how we go forward if we can't expand certain pieces of this legislation to soften the impacts or the potential impacts.

I often hear, in what you're saying, your own independence as sovereign nations to make your own decisions regarding how things should go forward. Just as the government cannot delegate its responsibility to consult, neither can you abrogate your responsibility to make decisions for your own lives. That's what I'm hearing when you speak, a strong independent voice for your own people. Then we have that juxtaposed against a process with the Assembly of First Nations, which is an umbrella organization representing various interests across the country.

If we as a national government try to propose legislation, how do you propose we go about that differently? It's virtually impossible to negotiate a global or national piece of legislation with bilateral negotiations with each sovereign nation. It would be very difficult to do that. In the interim, what do we do?

The Chair: I'm sorry, but this will have to be a fairly brief answer. I need to keep this round to five minutes.

Mr. Louis Harper: Did you want me to respond to your question?

● (1745)

Mr. Todd Russell: I like listening to this Mr. Harper.

Voices: Oh, oh!

Mr. Louis Harper: With regard to the Assembly of First Nations, we do applaud them for their efforts with regard to trying to resolve and fast-track the specific claims. To have undergone this process, I know they've had difficult times. They've reported that to us in our assemblies. It's not the perfect bill that they had expected, and of course they have this accord in which they will deal with other issues that are not dealt with in the bill.

But what we're saying—I want to repeat this—is that if there were major amendments to the bill, maybe we could live with that. Certainly we're not opposed to resolving the historic claims relating to treaties. This has been outstanding for many years. But I think the message we're trying to give is that in law they talk about buyer beware; if a leader decides to opt for this process, inadvertently he might compromise the land that the first nation would have acquired or the reparation or the land that would have been given back from the previous loss.

The Chair: Thank you very much.

Monsieur Lévesque.

[*Translation*]

Mr. Yvon Lévesque: Thank you, Mr. Chairman. I simply wanted to clarify something with our witnesses before letting my colleague speak.

If I understood your vision of things, under the current process, even before launching a land claim, you would prefer to hold a referendum asking your people for direction. With us it works differently; usually our governments are elected to do something, then they do something else, and then we tell them that we did not elect them to do that. I understand that you want to be clear before you proceed.

[*English*]

Mr. Brian Storseth (Westlock—St. Paul, CPC): On a point of order, Mr. Chair, I would like it to be noted for the record that Monsieur Lévesque is talking about the former Liberal government, not this government.

The Chair: Monsieur Lévesque.

Mr. Yvon Lévesque: That's the best way to disturb people.

[*Translation*]

I will try to pick up where I left off. But seriously, the gentleman is rarely bothered in this way.

I understand your point of view and I appreciate it, because it is very diplomatic. However, I seem to understand that after you have consulted your people first to find out whether you can go ahead, you would like to consult your people a second time to see if they agree. I don't understand that. Under the bill, after you hold your consultations and after appearing before the tribunal, the decision will be final. The process will start.

My parents always taught me—and I also learned this in college—that a bird in the hand is worth two in the bush. Today you have a land claim. The land you live on now is small. You are claiming a greater territory. As I was saying to the departmental official, $150 million is not a lot of money. Today, $200 million is nothing. If you make a claim before the tribunal, you might end up with more land than you would otherwise obtain.

After you respond, my colleague will probably have another question.

[*English*]

Grand Chief Sydney Garrioch: Thank you for an excellent question.

As we indicated, to initiate a claim, this tribunal system is one area of concern that we are expressing. You need consent, plus the people out there need to understand why you want to go through this process and how it will benefit them. They need to understand, as well, whether they'll ever get access or acquisition of land. It's out of question. They need to understand that.

You're going to get something in return. That's the only thing that you will always remember—that's it. It's another issue that needs to be understood by the people, why you need consent, the referendum, because for people who are living today, our land and this process are very important to the future of our children, who we love, the children who should have access to the land that they used to. They may not be able to do that in the future if they settle. They will surrender that piece of land that they have enjoyed in the past.

As well, in this process they may also extinguish the aboriginal title. As we stand currently indicating our position, we have aboriginal title.

Those are very important questions, and I certainly tried very hard to answer that question. It's very significant. Thank you.

● (1750)

The Chair: Mr. Lemay, you have one minute.

[*Translation*]

Mr. Marc Lemay: I will be very brief. I can't wait to read your translated brief because it seems very interesting to me. However, I have to admit that your position is not very clear to me. I will have to read it again. When the bill will be passed, I think you will freely abide by it, although you will realize that some rights will disappear.

So are you asking that the government or another body pay for consultations with all of your nations before beginning the process? Is that correct?

[*English*]

Grand Chief Sydney Garrioch: One of the priorities I mentioned earlier is consultation. We're indicating to the standing committee that it must consult. The first nation has to be consulted.

There are a number of treaties that we signed. On all the treaties that we signed, those people and our first nations are an independent sovereign nation and they have to look at their own first nation. That community setting is one matter that needs to be understood very clearly.

But there are overlapping issues in our communities and our region. There are overlapping traditional areas and lands that we enjoy. No one community can extinguish that portion or parcel of land that we are talking about.

So it is important for the standing committee to understand our position, that if you consult, they need to understand what they're going through and what they accept. This approval process has to be with the people as well. It's not only up to the legislators or the parliamentarians to make a law for us; we need to consent to that law as well.

The Chair: Thank you.

My apologies to Mr. Storseth. He was supposed to be next, and I skipped over him, but we'll put you in there now, Mr. Storseth.

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

I want to thank the witnesses very much for coming forward today. It was an excellent presentation. I do have some questions for you.

To begin with, I'd just like to clarify in my own mind exactly the community or the areas you represent in Manitoba.

Grand Chief Sydney Garrioch: If you have a folder—

Mr. Brian Storseth: I don't have one, but I can see very clearly from that—

Grand Chief Sydney Garrioch: That's the area we're representing, the 30 communities. It's a very large area: Treaty No. 4, Treaty No. 5, Treaty No. 6, and Treaty No. 10. Those are the areas.

Mr. Brian Storseth: Excellent. Thank you very much.

The honourable member for Nanaimo—Cowichan brought forward an excellent point a couple of meetings ago about trust and how it is something that must be there when we're moving forward on any of the issues on this file. I think it's a good step that we have taken as a government. We actually had Chief Lawrence Joseph in here, as you heard before, being very positive about not just the outcome of this legislation but the process in which this legislation took place, the mutual trust and respect that developed along this path. I think it's very important to recognize the political accord that was actually signed. I think the huge benefit there is that it happened at the beginning of an era of government, rather than in the dying, gasping days of the end of a government.

But to stay away from the partisanship, I do want to ask you if you've taken the opportunity to consult with all the treaties and the first nations in which you represent. Have you had the time to consult with them and get feedback from them on what they think of this legislation?

● (1755)

Grand Chief Sydney Garrioch: When MKO first heard about this proposed bill, we did send some briefing notes on the subject matter to inform the first nation leaders of the proposed bill. It's our responsibility to connect the leaders. We don't have the responsibility to consult first nations. It's up to the leaders in their own communities, because those are politics we don't want to get involved in. But we do advise them and guide them and also support them with whatever they require from the political office. That's the purpose of our political office, to provide the technical and legal advice as required or as stated. That's one area. And if it's required, we will consult with them.

We also had a briefing in a number of areas. One is the provincial consultation policy. We provided the first nation leaders that consultation policy, and we advised them not to accept it.

As well, there is a consultation process by the provincial government. We also advised them to work and develop agendas jointly and prepare and understand what's going to be discussed. So they need to know what's on the agenda and the information, as well as what they're going to work on.

Mr. Brian Storseth: You and Mr. Harper have very well laid out your disagreements with this legislation. If this legislation were indeed passed, though, would there be first nations communities within the area you represent that would take advantage of this process and utilize it, do you believe?

Grand Chief Sydney Garrioch: That's what we're recommending. If this legislation is going to move forward, our people and our communities need to be part of the process. I'm not sure what's been established. The process has to be really working for each of our communities, because our communities are at various stages as well on the land issue. They're going forward, and they need to understand this process, and the act itself or the tribunal. If it's going to work for them, they need to understand it and review it in order to make sure they initiate a system.

Mr. Brian Storseth: So then if this does move forward in its current form, you would foresee certain communities or first nations within the area you represent taking advantage of this? As we heard from Chief Lawrence Joseph, this system is far superior to what existed in, I believe, 1998 when it was first presented. You would see that, then?

Grand Chief Sydney Garrioch: In some sense it may be, because, as I indicated, some communities are advanced and progressive. They can deal with these matters because they have the necessary capacity and resources to work with it. Some communities are struggling. They're on a bare line priority-wise to deal with these items and they don't have the necessary resources to work with.

Out of the 30, I'd say 10 are so behind because of resource issues. They don't have the capacity to do priority setting. They're just dealing with the bread-and-butter issues right now to survive and they cannot deal with other matters in the areas of concern.

If we do consult them, maybe a small group of people will come to meet, and that's not consultation. We cannot do a proper consultation with just a small group of people.

The Chair: Thank you.

For the last turn, Ms. Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

Actually, I want to thank my colleague for bringing up the political accord, because I think it's an important thing to discuss.

You touched on independence earlier. One of the elements of ensuring the tribunal is independent is laid out in the political accord, which says that the national chief will be engaged in a process for recommending members of the tribunal. So there's an attempt to achieve independence of the tribunal, but again, it's in the political accord. There's also a piece around reacquisition of land in addition to reserve, which is also in the political accord.

Part of the challenge I see with political accords is that we know in the past—and this is not a partisan comment, because if you go back far enough, I'm sure you will see parties of all political stripes ignoring political accords—the importance of the elements outlined in the political accord relies on the nature of the government. So the question really is this. Is there any assurance or trust that future governments will honour a political accord that's signed by a current government, particularly when it's involved in such important matters?

Secondly, the tribunal is the end of the process. There's a whole bunch of steps before you get to the tribunal, and I'm still not convinced that the tribunal will deal with the large backlog of specific claims that are before the system now. I wonder if you could comment on that.

● (1800)

Grand Chief Sydney Garrioch: First, on the current-day federal government and the political accord, they are engaging in a process—that's one matter—but as for whether first nations in Manitoba will participate in that process itself, I haven't really seen a process established or engagement in the Manitoba region on that political accord. We are waiting to see whether they'll come forward to Manitoba to start consulting on that political accord.

Again, we are very skeptical, from the point of view of MKO, on any political accord. It seems that it changes with the government. They walk away from it, and that's been a past practice. I'm hoping the governments will understand when we do engage. And there's that discussion about the trust in the system. We worry about the government's responsibility. We talk about fiduciary duty as well, the honour of the crown. We want to make sure the government of the day deals with that very element of our discussion here.

With this tribunal system, again, we are very worried it may not work for our first nations in our region. There are so many outstanding issues that are outside of it. We want to make sure our first nations benefit on the land and the resources. As well, we're discussing resource sharing, and not only for today, for the first nations that want to benefit from these outstanding claims we're talking about, but it has to go beyond the generations that are living now. Those who are born now need to benefit, as well as those in the future.

Ms. Jean Crowder: I think Mr. Russell hit the nail on the head a little earlier when he talked about part of the challenge being that we're operating in a philosophy that doesn't recognize a nation-to-nation approach. Different nations have different approaches, and I think that's part of the challenge when we're trying to deal with a bill that is a one-size-fits-all.

Quickly, when you talk about outstanding issues, is it that some of the claims from MKO territories are over $150 million?

Mr. Louis Harper: The claims we're talking about are not necessarily related to specific claims. Mind you, we do have a lot of specific claims in northern Manitoba, but also claims relating to economic development, hydro development in the north. Those claims are outstanding, and certainly they have quite a huge price tag on them. But there are other claims to do with overlapping claims, for example, to Nunavut, the Dene of the north. Their lands were sort of carved out, when they handed in those lands prior.... There are other claims relating to relocation of first nation peoples; they're considered special claims.

● (1805)

The Chair: Thank you. That concludes our questioning for today.

Grand Chief Garrioch and Mr. Harper, thank you very much for being here.

Thanks to committee members.

As a reminder, tomorrow morning there is a subcommittee meeting at 10 a.m. The committee will convene at its regular time on Wednesday afternoon at 3:30 p.m.

Thanks very much. The meeting is adjourned.

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