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Chair

Mr. Barry Devolin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Good afternoon, everybody. Welcome to meeting 18 of the Standing Committee on Aboriginal Affairs and Northern Development. We will be continuing to deal with Bill C-30, an act to establish the specific claims tribunal and to make consequential amendments to other acts.

As committee members will recall, we are receiving witnesses who come from umbrella organizations from different provinces and regions across the country. We have had delegations or individuals here from British Columbia, Ontario, Manitoba, and Saskatchewan. Today we will be hearing from some folks from Quebec, and possibly from Atlantic Canada—I'll get to that in a minute.

Then, on Thursday, we'll be finishing this round, with witnesses from Alberta and the territories.

Before I go to our guests from Quebec and Labrador today, I just want to let people know that our second panel, which was to be the Atlantic Policy Congress of First Nation Chiefs, is unable to make it. They're stuck in Halifax under a blanket of snow.

We were also to have Mr. Paul, from the Union of New Brunswick Indians. Is Mr. Paul here? I don't think he is. If Mr. Paul does not arrive—and I'm presuming he may very well be unavailable because of weather as well—we will add these individuals to the list of those who will be attending on Monday, March 31.

You'll recall that we left one meeting open at the end of this process as a makeup meeting for individuals or delegations who could not come to their allotted meeting. It turns out that was fortuitous, given that, hopefully, we'll be able to get the Atlantic Policy Congress folks here at that time.

I would suggest that we go ahead with panel A. If Mr. Paul arrives in the next hour, we will deal with him today. Obviously it would be less than ideal to have one of the Atlantic witnesses and not the others. On the other hand, it would seem a shame to have Mr. Paul come all the way to Ottawa and then not hear from him. So we will play that one by ear. If he does not arrive, then we will have just the one panel today.

As one more little bit of business, I understand, Monsieur Lemay, that you have a group of guests, and I wonder if you could tell the committee who has joined us here today.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman. Thank you for allowing me to briefly introduce and welcome my guests. There are 31 students from the École nationale d'administration publique du Québec as well as my assistants from my Rouyn-Noranda office. They are working on their masters in public administration and are accompanied by their professor, Mr. Rémy Trudel.

I welcome you, ladies and gentlemen.

[*English*]

The Chair: Thank you.

Thank you for being here today. We've probably broken a whole bunch of rules by introducing people from the audience, but we'll take that chance.

I would like to move on to panel A. From Quebec, we have, from the Assembly of First Nations of Quebec and Labrador, Chief Conrad Polson, from the Timiskaming First Nation; Claude Picard, the director of administration; and Peter Di Gangi, who is a technician from that organization.

Welcome, and thank you for showing up even through all this snow.

If you'd like to make a 10-minute presentation, we'll follow that with questions from committee members. So I turn it over to you, Chief Polson.

Chief Conrad Polson (Timiskaming First Nation, Assembly of First Nations of Quebec and Labrador): *Meegwetch*. Since you're breaking the rules, I'd like to say that I had a bit of a problem getting in the doors here today. The guys gave me a hard time because I'm wearing a Montreal Canadiens watch.

Voices: Oh, oh!

Chief Conrad Polson: I want to thank the committee for inviting us here today. My name is Conrad Polson and I am chief of the Timiskaming First Nation and a member of the Algonquin Nation. Regional Chief Picard could not attend, so he asked me to be here. With me are Claude Picard and Mr. Di Gangi.

We have written a brief that has already been given to you. I will summarize our main comments because I understand the committee wants to focus on questions and answers.

Quebec and Labrador have a unique legal and factual situation. We are in a transition zone between the Royal Proclamation of 1763 and the numbered treaties. There are no historic land surrender treaties, and aboriginal title still exists. Reserves have been set aside in at least five different ways in our region, but not by treaty. Of the landless first nations in Canada, 42% are in Quebec. These five first nations have no reserve lands.

There is an urgent need to reform the specific claims policy. The specific claims policy has never responded fully to our unique legal and factual situation. From an administrative point of view, the current system does not work effectively. The federal government is in a conflict of interest because it is judge and jury. We are encouraged that the current government appears committed to reforming the policy. We are also encouraged that there is all-party support for this effort.

But there are concerns about the process up to this point. The legislation and the political accord were done with the Assembly of First Nations, but the process was secret because of the legislative drafting. Our chiefs first saw the legislation and the political accord at the end of November when they were publicly announced. The timing was not good. There are things being rushed too much, and there seems to be the view that if first nations want to consider the package carefully, somehow they are against it. This is unreasonable.

The AFNQL's role is to provide information and encourage discussions so our members can make informed decisions and give the organization direction. There has not been enough time to carry out legal analysis and get the information to the chiefs and councils to get their comments. It is important for chiefs and councils to consider this package and provide direction on this issue, because the individual first nations are the ones who own these claims and this affects them most directly.

The federal government has a legal duty to consult. This cannot be delegated to another organization. If the government is serious about reforming the specific claims policy, it should be willing to carry out meaningful consultations. This is the best way to build support.

Bill C-30 is an incremental approach to reform. The joint task force recommendations from 1998 called for a completely independent claims process to get rid of the federal conflict of interest once and for all. Bill C-30 removes part of the conflict of interest. It creates a tribunal that can rule on validation and compensation for some claims, but claims will still be with the federal government alone for the first six years. This leaves a lot of room for federal conflict of interest to come into play. The largest claims will be subject to federal conflict of interest. The package is a partial step forward, similar to the incremental reforms that came after Oka in 1990.

We have some specific concerns about parts of Bill C-30. The definitions of what is eligible or ineligible to be a specific claim don't reflect Quebec and Labrador's unique legal and factual situation. Paragraph 14(1)(c) covers claims arising from the crown's provision of reserve lands. It should also cover claims arising from failure to provide reserve lands.

Paragraph 15(1)(f) excludes claims that are based on aboriginal rights or title. This is prejudicial to Quebec and Labrador, since many specific claims in our regions are indirectly connected to title. This is a very important issue for us.

The compensation cap discriminates against first nations that have lost the most by continuing to expose them to the federal conflict of interest. Most specific claims are about land, but the proposed tribunal will not be able to award land.

● (1540)

The bill does not remove the potential for federal-provincial fights over liability for pre-Confederation claims. The federal government should assume responsibility for pre-Confederation breaches.

The Indian Specific Claims Commission has been shut down without finishing its work. The government unilaterally imposed conditions on which claims would be completed by the commission and which files would be shut down. At least two claims from Quebec that were at the commission have been terminated. Now these first nations have no recourse to address their claims, and they are further delayed.

The political accord contains some critical issues that remain unresolved. The assurances in the political accord about reforming the additions to reserve policy are not concrete enough to balance the fact that the tribunal cannot award land. Although the court is supposed to cover things like submission standards for incoming claims, the specific claims branch is already acting unilaterally in trying to impose standards in this area. This is being used to delay the acceptance of incoming claims.

There are so many vague commitments in the accord that it is hard to judge the package as a whole. The accord is not enforceable and is not binding on future governments. Either way, if this package goes ahead, the actions coming out of the political accord need to be more open and less secret. They must actively involve the organizations that are directly involved in the research and development of the specific claims.

None of this will work if enough resources are not allocated. This package is very ambitious and promises to accomplish a lot, but it will cost money. The government says it will set aside $250 million per year for compensation, but there's no commitment for additional human and financial resources either for a specific claims branch or claims research units.

In the past 10 years, actual cutbacks and the effects of inflation have severely reduced capacity within SCB and the CRUs. Improvements cannot come just from increased efficiencies; more money is required to get the system working. There are still concerns about the backlog of claims. There has been a lot of talk about getting rid of the backlog of hundreds of claims, but where is the plan? What concrete measures are in place to address the backlog?

The Chair: Thank you very much.

The first round of questioning will be seven minutes for questions and answers, and that will be followed by a second round of five minutes.

We'll start with Mr. Russell from the Liberal Party.

● (1545)

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

Good afternoon. This certainly is an important matter.

Every time we have witnesses in front of us, we talk about the issue of consultation. At a briefing last week provided by the department, they indicated they believe they have no legal obligation to consult on this particular bill—that's big "C" consultation—arising out of the Supreme Court decision on Haida. They don't believe they have any legal obligation to consult on Bill C-30 because there's no demonstration that it is an infringement upon aboriginal rights and interests or that it causes harm in any way. They also cite the fact that this approach is totally voluntary in the sense that a first nation can choose to enter into this process or they can choose not to.

On those bases, they say they don't have a legal obligation to consult. That doesn't mean to say they won't talk, they won't collaborate, but they don't have a legal duty to consult.

When it comes to this particular bill, I find it very peculiar, because under that rationale they say they have no legal duty to consult on this bill, but they've gone into some kind of collaborative working relationship with AFN. We have other bills before us—the repeal of section 67 and now matrimonial real property—which obviously could have an impact on the rights and interests of first nations, and they've chosen a different path altogether on that.

I want to know what your feeling is on this. Is the department making any sense when they say they don't have a legal duty to consult because it's totally voluntary, that you can either opt into this process or choose not to participate?

Chief Conrad Polson: When you say no "legal obligation to consult", does that mean they're above the law? I'd shoot the question back at you.

Mr. Todd Russell: That's not for me to answer, sir. I'm relating what the department is telling us in briefings.

Nobody is above the law, as far as I can see, particularly the government or officials in this particular capacity, but they take the opinion that they do not have the legal duty to consult on this bill because of the reasons I just outlined. What is your opinion on that?

I haven't gone through it all, of course, but you have a consultations protocol that you've given us. What's the sense from your organization on the department's position on the duty to consult?

[*Translation*]

Mr. Claude Picard (Director of Administration, , Assembly of First Nations of Quebec and Labrador): Mr. Chairman, ladies and gentlemen, good afternoon. Thank you for welcoming us.

I do not think this is the place to enter into a legal debate, as the member was just saying. He was making a distinction between "Consultation" and "consultation", however. The only comment I would have for the committee—and you just mentioned it as well—is that I do not know how many times we have found ourselves before a committee like this one to discuss the issue of consultations. Furthermore, I could say the same thing for the provincial legislative assembly as well.

Is it a moral or a legal obligation to consult? I will not enter into that debate, but I would appreciate not being accused again of wanting to be consulted left, right and centre. You referred to the document that we have included, the Consultation Protocol that was inspired by the First Nations of Quebec and Labrador Sustainable Development Strategy. This protocol is as broad in scope as the sustainable development strategy. It therefore covers all issues related to the territory, to culture, etc.

We attempted to set minimal conditions in order to avoid finding ourselves in a situation where our people would ask the chief where this initiative came from, because they were not consulted. We would find ourselves once again, as was the case with the bill we are discussing today, no doubt with... I'm not searching for an explanation either. If there are discussions to be held between first nations, we will hold them with all of the goodwill in the world, because these are issues that concern first nations among themselves above all.

However, everyone should try and make an effort—I believe we made some effort—to avoid certain situations, and so that the chiefs from Quebec and Labrador will not find themselves at a particular meeting being obliged to comment on a document. Once again, the issue is not to determine the circumstances that have resulted in our being here today. Having said that, we could have talked about other bills, some of which will come before this committee, that have the chiefs wondering when it was that they might have commented on those issues and when their counsel and they themselves might have consulted their people on the issue. The word "consultation" is a very broad term. We tried to do our best to clarify our thinking with this document. We are prepared to tackle it again, but I do not know how many times we have sent this consultation document to the governments we are dealing with.

Personally, as a representative of the First Nations of Quebec and Labrador, I think we have done our part of the work required in order to establish the processes of consultation, but we unfortunately find that it is still not enough.

● (1550)

[*English*]

Mr. Todd Russell: I appreciate your comments. Certainly you've laid out some very specific critiques of this particular bill and how you see it being improved.

Your brief seems to say that there's not a lot in this bill that would be applicable or helpful because of the unique circumstances that exist in the Quebec-Labrador region. Would that generally be the approach you've outlined here?

Mr. Peter Di Gangi (Technician, Assembly of First Nations of Quebec and Labrador): Yes. Having taken a look at the bill, there are a number of aspects to it that of course would apply to Quebec. I think what we're trying to say in the brief is that inadvertently the drafters did not consider carefully enough the situation in Quebec to accommodate the uniqueness of the fact situation.

But if I could just get to one of your earlier comments, about the issue of this being voluntary, I find that a curious approach to take. If you look at it collectively, first nations across the country have been stripped of hundreds of millions of dollars worth of assets that are the subject of specific claims, lawful obligations. The specific claims policy is an attempt to try to negotiate these in good faith. The defendant, which is the federal crown, has devised the policy—in this case, the legislation. If first nations don't like it, they're told it's voluntary, but what is the alternative if you want to get justice at last? The alternative is litigation. I suppose if the federal government was prepared to pay for litigation as an alternative to resolving it inside this legislation, that might be something that first nations would be prepared to look at. But to suggest that it's strictly voluntary, I think is a bit unfair, because it really doesn't take into account either the stated purpose of this initiative or the fact situation that is giving rise to these claims.

Mr. Todd Russell: Thank you very much.

The Chair: Thank you, Mr. Russell.

Monsieur Lemay, from the Bloc, for seven minutes.

[*Translation*]

Mr. Marc Lemay: Thank you for coming. I read your brief carefully and I congratulate you on it. I have no reason to doubt your word when you say in your brief: “[...] we were only able to review the bill for the first time late in November 2007”.

You are proposing interesting enough changes that make me want to ask some questions. They will deal specifically with the Quebec situation, given that I am very sensitive to the situation of first nations in Quebec.

In your brief, you say that you would like to amend section 14(1)(c): “To be clear, this provision should read, “provision of **or failure to provide** reserve land”.” If a first nation was not provided with reserve land, legally speaking it is not a reserve. This bill does not apply to this reserve.

Am I wrong to think that? Is that why you want us to make this amendment? I see that there are five historic first nations who do not have reserve lands. I am willing to consider supporting it, but first of all I need to understand the draft amendment to section 14(1)(c).

● (1555)

[*English*]

Chief Conrad Polson: That is a suggestion for the amendment, for sure. As it's stated in the document, there is something that was overlooked.

[*Translation*]

Mr. Marc Lemay: Are claims currently possible under C-30, for the first nations which were not granted reserve lands?

[*English*]

Mr. Peter Di Gangi: This is one of the questions we had, and that's why we sought the amendment. Our reading of the clause would be that if the crown makes a promise, what they call a unilateral undertaking, there can be a claim based on not honouring that, but it's based on the provision of reserve lands.

In Quebec, we have a situation where the crown may have promised reserve lands, but the reserve lands were never provided. That's where we just want to make sure that those situations would be covered.

[*Translation*]

Mr. Marc Lemay: All right. I understand you perfectly on that point. However, do the five first nations that were promised reserve lands have any documents to that effect? Were they written promises? If that goes back to the reign of Queen Victoria, we have a problem, because she is no longer here.

[*English*]

Mr. Peter Di Gangi: Thank you.

I cannot speak for the factual situation of each of the five first nations. I'm not familiar with all of their facts, but I know that promises have been made to the communities I've worked with, and they're much more recent than that.

[*Translation*]

Mr. Marc Lemay: The question must be put to those in charge in the department. I promise you that I will remember it because it is very interesting. It is a critical point. It is possible, then, that communities would not have any reserve lands but that they would have been promised them. As a result, they should be included in the bill.

I know that you are very careful and that you have done a very good job. If I have enough time, I would like to move on to section 15(1)(f).

Other than the amendments that are already mentioned in your brief, do you intend to send us any further draft amendments? If so, you have until April 20 to do so. We should complete our deliberations by the 20th or the 25th. Do you have any further draft amendments for bill C-30?

[*English*]

Chief Conrad Polson: Yes, definitely. As we stated in our opening remarks, we didn't have time to fully analyze this or even to get a legal analysis. Yes, there will be more amendments when we get directions from the chiefs in Quebec.

[*Translation*]

Mr. Marc Lemay: We have set our schedule and you have until approximately the 20th or the 25th of April to send them to us. I would like to say that to you right now.

Section 15(1) states that: “A first nation may not file with the Tribunal a claim that, [...] (f) is based on, or alleges, aboriginal rights or title; [...]”. That means that you cannot even file a claim. I'm trying to see how I could amend this bill. Could you give me some wording we could use to amend this bill?

You say that It would be safer if paragraph (f) removed the reference to “based on”, or if the exception were qualified with wording such as “claims based solely on aboriginal title”. I have to tell you I do not understand that amendment. Could one of the three of you explain that to me or send me some explanation on the subject later on? The floor is yours.

● (1600)

[*English*]

The Chair: Did you want to make a quick response to that?

Mr. Peter Di Gangi: I could make a quick response. Thank you.

Again, it's a very technical issue relating to the factual situation in Quebec. As we know, the federal government has what it calls the comprehensive claims policy for dealing with ancestral rights or aboriginal rights, and then it has the specific claims policy for dealing with other kinds of claims, and it doesn't like to mix them up. I think the drafters wanted to exclude claims based on aboriginal rights or title because they didn't want to mix up these two policies.

The problem is that this doesn't account for the unique circumstance in Quebec, where you may have legislation that creates a lawful obligation and there might be a specific claim based on that, but because that legislation may be reflecting aboriginal rights, it might be grounds for excluding it under the proposed draft.

That's why we were suggesting that we understand why the federal government might be concerned about that, but that there is a way to accommodate the unique circumstances of Quebec first nations without compromising the comprehensive claims policy.

The Chair: Thank you very much.

Ms. Crowder, from the NDP, for seven minutes, please.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thanks, Mr. Chair, and thank you for coming before the committee today.

I think there were a couple of points in your presentation that I found a bit troubling. I just want to make a quick comment about consultation. Every time we have a piece of legislation before this committee, the issue of consultation is raised, as Mr. Russell points out.

I would argue—and this is not a partisan remark, because there have been successive governments that have failed to work with first nations to develop a consultation policy—that there seems to be a fundamental philosophical difference around lack of recognition of nation-to-nation status, as I've said before. I would argue, and I think many of the witnesses have argued, that appearing before a committee does not constitute consultation. What happened with the Assembly of First Nations was an effort to get input, but in no way can it be deemed to be consultation, and the federal government, as you pointed out, cannot delegate its duty to consult. We don't have the terms of reference, but my understanding is that the Assembly of First Nations was asked to facilitate a dialogue, which hardly constitutes consultation. I just wanted to make that comment.

I want to come back to your comment about the fact that some first nations have had their specific claims process shut down. We've heard this from other nations as well. When I go back to the transitional clause that's in the legislation, my understanding of it is that there was going to be a period of time for claims in transition. I'm surprised that we're already hearing of nations that have had their claims rejected or not considered for negotiation when there have been no guidelines set out and the bill hasn't even come into effect.

When he came to the committee, we raised with the minister the issue of how backlogs were going to be dealt with. Now, if one of the ways for dealing with backlogs is to reject claims at the outset and to tell first nations that they have to resubmit their claims once the bill is passed, that hardly seems like a fair and reasonable way to deal with backlogs. When the minister replied to the committee on the issue of dealing with the backlogs—because, depending on whose numbers you use, there are 800 or 900 or 1,200 specific claims in the system—he mentioned that 50% of those claims were small claims. We've heard some different points of view on that.

In your view, what needs to be in place to deal with the substantial backlog? If we're just going to have people get back into the line-up, they're going to face an additional three to six years before they're even going to be considered. So what, in your view, has to be done to deal with the backlog?

Chief Conrad Polson: Well, for one thing, as the Quebec region, we would like to sit down and study this bill and definitely look for more solutions and find out how we can make changes to deal with that backlog. But we haven't had the time to work with this document. As I mentioned earlier, we didn't even have a chance to have a proper legal analysis of it or to have it studied. We came here with our documents based on the work we've been doing in the last couple of months. But until we sit down to really look at what can be proposed or amended or suggested, I can't even answer that one today.

● (1605)

Ms. Jean Crowder: I guess part of the concern that we've heard expressed, which I certainly share, is that we have nations who have been in the system for 10 or 15 years, or whatever, and to have to face another possible delay of more than six years doesn't seem fair or reasonable.

The minister in his response has made some big references to the government taking measures to ensure necessary resources will be in place, but there is no commitment to resources, there is no commitment to timelines, there's no commitment to the amount of resources, and there's no commitment to providing support to the first nations in terms of the resources they need. So I have to admit that I don't have a great degree of comfort in using this as a mechanism to reduce a backlog.

Chief Conrad Polson: That's definitely a concern at my community level, because we did have a claim that was sent back to us; this bill is not even in effect yet or not even law, but our claim was sent back to us. It seems that in other parts of the country they're settling claims that were submitted under the same criteria we submitted ours, but ours was returned and others are being settled.

Ms. Jean Crowder: We recently had a case in B.C. where a claim was turned back as well.

How much time do I still have? Two minutes? Great.

I just want a quick comment on the political accord. I agree with your comments that the problem with the political accord is that there is no commitment for future governments to honour the accord. We've seen histories of that already, where political accords were not honoured by governments that were elected.

What would you like to see with the political accord? Would you like to see it entrenched in legislation?

Chief Conrad Polson: First of all, as we mentioned, we were very encouraged to see that all parties support finding solutions to this file. I guess what we need to see is sincerity in really dealing with this issue. It's been ongoing for many years. Can it be added into the political accord? Is it going to be binding? There has to be a serious commitment from all parties.

Ms. Jean Crowder: The problem with political accords is that they really rely on subsequent governments to honour them, because they're not binding. We saw that with the political accord signed in 2005 that led to Kelowna. We saw that with the political accord on the residential schools settlement and the apologies.

This may have been written in good faith, but there's no guarantee that future governments will actually continue to see it through. So that's a problem.

Chief Conrad Polson: Yes.

Ms. Jean Crowder: Okay.

Really quickly, in the case of the files you talked about that have already received letters rejecting them, were they given any recourse, or were they just told to wait until the outcome of this bill?

Chief Conrad Polson: That's basically what it was.

Ms. Jean Crowder: Thank you.

The Chair: Thank you.

The last person in the first round, from the Conservative Party, is Mr. Bruinooge. You have seven minutes.

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

I appreciate all the witnesses who've come before us today. Clearly, you've brought a lot of good testimony to our committee, and I'm very excited to take your recommendations as we continue with the work we're doing. As everyone knows, this is a very important bill.

In the previous rendition of the way the Government of Canada dealt with specific claims, many argued that we were in fact the judge and jury and final arbiter of all things that had to do with specific claims. So there was a massive call for us to remove that conflict of interest, and thankfully, our government has proceeded with this bill. After what has turned out to be quite a fruitful consultation with the national chief and the Assembly of First Nations, we have a bill before us today.

Some testimony has indicated that there could be improvements to all bills before this House, so I'm glad to hear that you've brought forward a number of recommendations. I'm especially pleased to read in your conclusions that Bill C-30 represents a significant and important improvement over Bill C-6, which was introduced by the previous Liberal government. We believe that the modifications suggested, with further clarification, will help it become further strengthened. I'm also glad that you're suggesting to this committee that it continue its all-party support of the initiative so that we do not lose this opportunity, as you've written in your conclusion. We clearly have a lot of common ground, and I appreciate the testimony you've provided so far.

One area, though, on which I would like to continue the discussion is in the section on page 4 of your brief on the provision of reserved lands. It is in relation to paragraph 14(1)(c). You talk about how the provision of reserve lands, including unilateral undertakings, might not account for or properly deal with specific first nations that don't currently have reserve land but were perhaps promised reserve land at previous times in history.

This is the current language within the bill, which we've already talked about:

> a breach of a legal obligation arising from the Crown's provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation

In defence of the drafting, it is felt by the government that those situations you've referred to would be covered under this particular section. So if you could give me more testimony as to why you don't think that's the case, that would be appreciated.

● (1610)

Mr. Peter Di Gangi: There are a couple of reasons why we thought it would be important to be a bit more precise and explicit in the legislation. One is that this is legislation, and once it is adopted it is very hard to turn the clock back or to amend it. It's probably a good idea to try to get it as right as possible.

The other thing to keep in mind is that although we certainly do appreciate this government's and the all-party commitment to this bill in resolving these issues, once you get into negotiations, the federal government will try to do its best to minimize its obligations and try to reject where possible. It's not all fuzzy, warm stuff. So it's important to make sure that if there are concerns about how the legislation may be interpreted, those concerns are addressed so that all the possibilities are taken into account.

Our feeling was that there may be a chance, with the wording as it is, to say, "Well, since your community never was provided with reserve lands, you can't avail yourself of this legislation." We thought a way of addressing that would be to say, "either for the provision or the non-provision of reserve lands"—just to be safe and to take things into account.

Mr. Rod Bruinooge: Okay.

Moving on to an area that has come up in other situations, from other witnesses in other testimony that we've received, in relation to the cap of $150 million, I see in your brief you mention that there may be as many as four specific claims in your province that could be over $150 million. One argument that I've presented to other witnesses to consider was that when all of the smaller claims were removed from the system, taken out of the system and put into an independent hand, the Government of Canada would have a much greater opportunity to focus with the senior decision-makers on the specific claims that are of that magnitude—above $150 million. As such, not only will there be efficiency brought to the smaller claims—the $5 million, $10 million, and $20 million ones—but the larger ones will then also be freed up from the massive backlog and be put in front of the decision-makers.

Would you concur with that logic? Do you see that as being a good argument?

● (1615)

Chief Conrad Polson: How many years are you looking at to clear up the backlog on small specific claims? If we say there are 800 that are below $150 million and there are 100 above, how many years will it be before you get to the other 100 claims? It might take us maybe another century, I don't know.

That's where there is an issue with that cap. There has to be some parallel system set up for the claims above $150 million.

Mr. Rod Bruinooge: In theory, they would be able to operate in a parallel way. The smaller claims would go into the new body, the tribunal, which would be independent, and then the government of the day would be able to negotiate the larger claims as they arise.

Chief Conrad Polson: Maybe I misunderstood something there, but what you're saying is the $250 million a year will settle the small ones. How long will that take for the 800 or so claims? Then the other 100, as I said, will have to wait until those are settled. There has to be a system to clear up the ones that are above $150 million at the same time.

I don't know if I'm explaining it right.

Mr. Rod Bruinooge: I hear what you're saying. There has to be a will to settle those claims. There's no question about that.

Chief Conrad Polson: Exactly, and in a timely manner.

Mr. Rod Bruinooge: Thanks.

The Chair: Thank you, Mr. Bruinooge.

We're now starting the second round. This is a five-minute round.

The first questioner, from the Liberal caucus, is Mr. St. Denis.

Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.): Thank you, Mr. Chair.

Thank you, Chief, for being here with your delegation.

I have a northern Ontario riding with a very large number of first nations, so I really appreciate your testimony today.

I notice you made reference to the addition to reserve, or, as it's sometimes known, return to reserve lands. I know it's not in the bill, but when the government made its press release on this bill, they mentioned that work was to commence on the return to reserves. Actually, you mentioned in your brief that there are no concrete details.

Since the writing of this presentation, have you had any indication at all on the addition to reserves piece that is to follow?

I know I have a couple of first nations for whom this is very important—it's at the bottom of page 7 of your presentation. I'm thinking of Mississaugi First Nation, between Sudbury and the Soo.

If you don't have anything to add to your comments here, that's fine. No? Okay.

Well, it's a very important piece, and the government did mention that it would follow this up with first nations in future consultations.

I'll move to the issue of resources. First nations don't usually have extra money around to do the research to support their claims, and the first nations are using limited resources to do detailed historical research that is often beyond their ability. I know in the case of Wikwemikong Unceded Indian Reserve on Manitoulin Island, they've been dealing with a couple of claims for a long time.

Do you feel some comfort, any comfort, that going forward under the new regime you will have access to the resources you need to properly present and support your cases?

Chief Conrad Polson: That's a good question.

We haven't been given any indication that there were going to be any additional resources to be able to address these issues. But going back to the ATR, we have an additions to reserve claim submitted in that process and we haven't heard anything back on it yet. It has been almost four years now that we've had no feedback on that file, and it is causing a lot of problems with our neighbours. But as to additional resources, we haven't heard anything concrete coming from that either.

Mr. Brent St. Denis: And is it your experience, either in your own community or others in the area of your association, that you end up often using dollars and human resources that should be used elsewhere to support your legitimate claims? Are you robbing Peter to pay Paul, as they sometimes say, to support your legitimate claims?

● (1620)

Chief Conrad Polson: It happens. Yes, definitely, you have to use other resources.

We can go on with that one forever, because there's a lack of resources in all areas.

Mr. Brent St. Denis: Thank you. I just want to make that point.

Mr. Chair, could I let my colleague Mr. Tonks have the remaining moment or two of my time?

The Chair: Yes, you may. There's just over a minute left.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you.

There are two parts to the process: there's the minister and the claimants who are part of a negotiation, and then there's a judicial process with the tribunal.

Perhaps I don't know the full application of the legislation, Bill C-30, but could you tell me, if there is a difference in terms of a settlement, who adjudicates? Is there any appeal process that kicks in? Are you satisfied with the way it has been written?

Chief Conrad Polson: Pete is more technical than I am.

Mr. Alan Tonks: And if there's no appeal process, should there be?

Mr. Peter Di Gangi: This is one area where I have to admit we'd like to have more opportunity to study the options for appeal. My understanding is that once a claim is accepted for submission, Indian Affairs and Northern Development Canada would have it for three years to be able to decide on whether or not they're going to accept it for negotiation. So they could say after two years and eleven months they accept it, and then they get another three years to negotiate. If you don't reach a negotiated settlement after the end of that second three-year period, my understanding is that it would go to the tribunal and the tribunal would carry out its hearings.

On the issue of appeal, my understanding is that once it's at the tribunal, that's it; their say is final. I suspect, though, if they made errors in law, that might be appealable, but again, it's one area I haven't had enough time to look at closely, and we haven't had enough time to consult properly with other technicians to be able to be clear and provide an alternative if we feel it isn't sufficient.

The Chair: Thank you.

Mr. Albrecht, five minutes.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair, and thank you to the witnesses for coming today.

I was privileged to be at the press conference when the minister and the chief of the Assembly of First Nations were here, and they stood shoulder to shoulder committed to working to address this unacceptable level of backlogs of roughly 800 specific claims. So I think we're all committed to moving ahead, as your brief indicates.

It's my understanding that the AFN was charged with the responsibility of at least entering into...if not consultation, at least having discussions with first nations groups across Canada. I wonder if you could do two things: first, describe for me the process of discussion that took place in that period between June and now, or especially between June and November when the bill was released; and second, which groups are you representing from Quebec? Does the AFNQL represent all first nations groups, the Inuit and the Council of Cree? Which groups are represented?

[*Translation*]

Mr. Claude Picard: Thank you for your question.

We rarely use the word “represents”. Since the AFN brings together the 605 Indian chiefs of Canada, the AFNQL invites the 43 men and women who are responsible for acting as first nations chiefs on the territory of Quebec and Labrador.

The concept of representation is not really the focus of what we do. For example, the mandate given to the chief of the AFNQL or the national chief is clear. Where there is no specific mandate, the concept of representation does not exist, if you understand what I mean. The AFNQL, in Quebec and Labrador, is headed solely by the chiefs. It's an organization that is led by its grassroots.

● (1625)

[*English*]

Mr. Harold Albrecht: Thank you.

Could you clarify for me, did consultation or discussions take place with the various first nations groups within Quebec?

Chief Conrad Polson: At the press conference in June 2007 with the national chief and the Minister of Indian Affairs, I understood at that time that this document would be tabled in September, but I guess over the summer months other things happened and they took precedence over the drafting of this bill. When it was finally set, it was given near the end of November. The AFN didn't have adequate time to be able to consult everybody on the issue, given that there was a delay over the summer months. So, no, they didn't have the opportunity or the time to meet with all the regions and the communities to go over this legislation.

Mr. Harold Albrecht: I'll take a different approach for my next question, and that is related to your concern about the specific judicial or legal implications of the province of Quebec and the land claims there. I wonder, are you familiar with the fact that at least 18 Superior Court judges will be supplied for this tribunal, and that certainly some of those should have some expertise in dealing with issues specific to Quebec? Is that still a concern for you, knowing that fact?

Chief Conrad Polson: Definitely, I hope, for sure, they know what they'll be getting involved in. Like I said, we didn't have a chance to have our own legal analysis of the document. Until we have that done, then definitely we'll look at what the next steps are.

Mr. Harold Albrecht: So at this point you're supportive of moving ahead, as long as we have a little further time for input and possible amendments to this bill.

What we have now is certainly unacceptable, with the increasing number of backlogged cases. Are you committed to continue moving ahead with the process, with further discussions?

Chief Conrad Polson: Definitely, we want to move ahead with the specific claims process. We have to set up a clear and agreeable process that is going to fit everybody's unique situation.

Mr. Harold Albrecht: Do I still have some time?

The Chair: You still have some time.

Mr. Harold Albrecht: I'll wait until the next round.

The Chair: Thank you.

Before I go to Monsieur Lévesque, I would just like to let the committee members know that Mr. Darrell Paul, from the Union of New Brunswick Indians, has arrived. So we will be continuing with our second panel today as initially scheduled.

What we're going to do is the last turn. We'll go to Mr. Lévesque, from the Bloc, in the first round. We will take a brief five-minute recess, and then we will reconvene with Mr. Paul.

Monsieur Lévesque, I want to say happy birthday to you. I understand this is a special day. You have five minutes.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): The same to you, Mr. Chair.

Gentlemen, welcome.

I saw on page 6 of your documents that the first part of the negotiation, before the court stage, worries you because you consider that the government is in conflict of interest. We would like to hear your suggestions in this regard because you are the ones who will be dealing with the government. In addition, we may be prepared to respond to your claims, if we can find a way to do so. Perhaps you feel that $150 million is not enough. People have mentioned that on several occasions. Once again, we would like to hear your suggestions as to what amount you would find reasonable.

What struck me, and this is something you did not mention in your report, is that section 22 of the bill states:

> 22(1) If the Tribunal's decision of an issue in relation to a specific claim might, in its opinion, significantly affect the interest of a province, first nation or person, the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be affected.
>
> (2) Failure to provide notice does not invalidate any decision of the Tribunal.

Section 23(1) states:

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

It may make a decision concerning the responsibility of the federal government, but it cannot make a decision concerning a party who is not there. Neither can it tell someone to go and see a particular party. It can say so but there is no obligation. Did you look at that? Does this provision bother you at all?

● (1630)

[*English*]

Mr. Peter Di Gangi: The issue of federal-provincial responsibility for claims has been a big problem through the years, as you know, particularly in areas of pre-Confederation, where the claims arose prior to Confederation in Quebec, the Atlantic, Ontario, and parts of B.C., in particular.

We realize that the federal government is constrained because of its constitutional powers and because of the division of powers between the province and the federal government in this area, and that of course it's only by consent that the provinces can be involved. That's understood.

I think what we tried to do in the brief was to say that if there are disputes about responsibility for issues before Confederation, the federal government should simply cover the costs of the breach, and if it has a problem with the provinces later, then it can resolve that later, but if the claim is against the crown, the federal crown should resolve the claim.

I'm not sure if that answers your question, sir.

[*Translation*]

Mr. Yvon Lévesque: Aside from that, if the claim was brought after Confederation, the judge may decide that the federal government is only responsible for 50% of your claim. We're talking about a single judge who makes a decision that is not subject to appeal. A province, a municipality or an individual may be responsible, but there is nothing forcing them to bear the responsibility. What happens if these authorities assumed responsibility for only 50% of your claim? Do you have a recommendation to make to ensure that the judge takes possession of the remaining 50% in some way?

[*English*]

Mr. Peter Di Gangi: That would be difficult to do without having the jurisdiction to be able to do so. According to the way this bill is set out, I don't see the tribunal having that kind of authority.

It's a big unanswered question, absolutely.

The Chair: Thank you, Monsieur Lévesque.

That brings our first panel to an end for today. I want to thank our witnesses for being here.

We will suspend for about five minutes so that we can bring the next witness forward.

● _____ (Pause) _____ ●

● (1640)

The Chair: Could I ask committee members to return to their seats, please?

We'll carry on with our second panel for today.

Mr. Rod Bruinooge: On a point of order, Mr. Chair, I'd like to wish both you and Mr. Lévesque a great happy birthday.

Some hon. members: Hear, hear!

The Chair: Thank you, Mr. Bruinooge.

For those viewers at home who don't know what's going on here, Monsieur Lévesque and I both have a birthday today. I was going to say that we're sharing a happy anniversary together, but I wasn't sure how, between the English and the French, that would get altered.

There's a little-known rule in Parliament that if two or more members of a committee have a birthday on the same day, we get a cake. We got this very nice cake, and I want to thank the staff for organizing the birthday cake.

It's really quiet here now, because everyone's mouth is full.

I'd like to reconvene for our second panel today. As I said earlier, our witnesses from the Atlantic Policy Congress of First Nation Chiefs were unable to make it. They're stuck in the snow.

I'm happy to say that Darrell Paul, the executive director of the Union of New Brunswick Indians, managed to find at least one flight that was running to Ottawa today and is here with us.

Mr. Paul, what we'd like to ask you to do is make an opening statement, if you would. That will be followed by a round of questioning from committee members. I anticipate that with the time we have left we'll have enough time for one round of questioning.

Mr. Paul, the floor is yours.

Mr. Darrell Paul (Executive Director, Union of New Brunswick Indians): Thank you. As I was introduced, my name is Darrell Paul. I'm with the Union of New Brunswick Indians.

First of all, I want to say that it's a pleasure to be here before you to make this presentation on behalf of the aboriginal people of New Brunswick. Let me say up front that we are in favour of this legislation and encourage you to have it passed and adopted into law. It is a significant move forward from the status quo.

There are many positive aspects to this bill. It is an independent tribunal that we've never had before; it can hear claims that go up to $150 million, far more than any previously proposed; it now puts a timeline of three years in which Indian and Northern Affairs Canada must respond to a claim; and AFN and Canada signed a political agreement as a companion piece to this legislation.

As you know, the land claims process only came into being in the early seventies, when I first started working in this area. I have spent the past 30 years being frustrated by a system for settling land claims that just did not get the job done.

I want to give you some idea of just how frustrating the system has been. There are specific claims in Atlantic Canada, and practically every one has taken several years to be accepted by INAC. There are cases where it has taken five, six, and seven years just to have a claim rejected, meaning it's been sitting that many years with Justice deciding whether or not a claim is valid, and in most cases it was rejected.

One of the biggest bottlenecks is that the Department of Justice gives an opinion to INAC on any claim submitted. This has been a problem. For example, several years after a claim has been submitted, there is a legal opinion rejecting our claim. The door is then shut on our claim unless further research indicates otherwise. At this point, it is very difficult to prove a valid claim to INAC unless we take it to the courts, and that would be very expensive to do. This is the result of INAC taking on the role of judge and jury and the final decision resting with them. In other words, we're at their mercy.

The establishment of an Indian Claims Commission has not been much help to us either because a decision made at that level was not a binding one. Should the ICC decide against us on a claim, INAC seemed pleased about it. On the other hand, if the ICC made a decision in our favour, it was ignored because the ICC could only recommend.

The courts are the only recourse we have, and that would be very costly because the bands do not have the financial resources to go to court.

When we apply to have a claim accepted for negotiation, INAC requires us to submit a legal opinion on our claim to them. Then, after they get Justice to give them a legal opinion on our claim, they refuse to share it with us, claiming that it is privileged. If their legal opinion is privileged, then why isn't our legal opinion privileged as well? The requirement that we submit a legal opinion with our claim as a precondition should be disallowed, whether or not the claim may be valid.

The negotiation process has been particularly frustrating. It takes years to try to move these claims forward—10, 15, 18 years. After it has been accepted, some claims have been in the system for 15 to 25 years and are still not resolved. If we are dealing with a claim that has been rejected and we have had to gather further evidence and do even more research, it adds even more years to the protracted process.

This act, Bill C-30, now before Parliament, is the latest attempt to resolve the specific claims problems that face us. I believe it is the best attempt so far.

● (1645)

The AFN has worked hard on our behalf to get the legislation. It has dialogued with first nations and first nations organizations to ensure that what goes forward is generally acceptable to most of our people, and it is. There are several reasons why it is better than anything we have had before.

This is a legislated approach, which, so far, is a better approach than the policy that existed before. It is not necessarily perfect; however, it provides for a truly independent third party to deal with our specific land claims. Despite this, we have some suggested improvements to put forward. There are five suggestions I want to put forward concerning this tribunal, which may help to improve what is being set up here.

First, there needs to be an overall policy approach that makes the process less intimidating and as informal as possible. Right now the tribunal will be mandated to look like and operate like a superior court of law. As I said earlier, that is good, but if there were provision for the tribunal to have a group of elders from across the country—call them an advisory council of elders—one of them could sit with the judge to hear the case and advise him during the hearing. Then, as a decision is being made, it should make it easier on any aboriginal people participating, such as community elders who are there to give evidence. There is already a provision for an advisory council to advise the tribunal on the drawing up of the rules and procedures. There should be a provision to have aboriginal representation on that advisory council as well.

Second, the bill provides for an appeal by any party, but the appeal must go to the Federal Court of Appeal, and presumably it may go further on leave to appeal to the Supreme Court of Canada. Although that specific provision is not mentioned in the legislation, maybe it should be, to ensure that the Supreme Court of Canada has jurisdiction to hear such a case. The Federal Court has a trial division and an appeal division. The National Parole Board has a trial level of hearing and an appeal level. I believe the Tax Court of Canada has trial and appeal levels. There is no reason this tribunal could not also have an appeal level built into it, so that the first level of appeal would be internal and made up of three judges and come before the Federal Court of Appeal and a more formal judicial process. Such a provision would make for a quicker, more informal, and less intimidating appeal process, which could also benefit from the advice of elders, who should advise the appeal judges.

Third is the issue of cost. The court has the right to order the crown to pay the cost of bringing a matter to court, and has done so in the past in order to ensure a more level playing field, especially in regard to some aboriginal cases. This legislation should provide that the crown automatically pay all costs for the parties before it, rather than awarding costs to one or other of the parties after the fact. There are provisions to ensure that frivolous matters will not go to the tribunal. If there is a dispute as to what is covered by costs or the amount of the costs, that can be argued before the tribunal and settled by the tribunal.

Fourth is the issue of the jurisdiction of the tribunal. At present it seems to be limited to issues dealing with land or assets, and aboriginal and treaty rights are excluded. This is going to be a problem. For example, we have had the right in New Brunswick to harvest wood on crown land for personal use. Now if we are denied this treaty right in some way, we can only go to the regular court of redress, or if there is a dispute as to what is an aboriginal right and how that right can be exercised, again we must go to the court. Going to court is just too expensive, and most bands cannot afford to do it; therefore justice is denied us.

This problem also applies to landless bands such as the Passamaquoddy of New Brunswick, who are not only landless but are also unrecognized in Canada. Here is a group of aboriginal people living in Canada who are recognized as status Indians in the United States of America, and their people have reserves in the U.S.A., but they live and work in Canada and are not recognized here and therefore have no land here, even though they have claims to land here in Canada.

● (1650)

They have the right to have their status recognized by Canada and the right to fight for land based on their traditional lands, because they are signatories to our treaties.

If you feel this matter of dealing with issues that are not provided for in the mandate of the tribunal is too complex to make an amendment to the legislation right now, then add a provision to have a committee study it over the next year or two and come back with recommendations within a certain timeframe.

Fifth, there needs to be an adequate and meaningful follow-up on the commitments contained in the political accord, such as a clear, workable, timely, and funded process. This must include a meaningful process for dealing with claims over $150 million and must ensure that there's proper and complete funding. In particular, there needs to be funding provided for those first nations that need to carry out research for negotiations on a specific claim.

In conclusion, we certainly appreciate the opportunity to make this presentation to you. We recommend the passing of this legislation and hope you will give serious consideration to our suggestions.

We are prepared now to answer any questions you may have.

Thank you.

● (1655)

The Chair: Thank you, Mr. Paul.

We will have time for one round of questioning, with seven minutes for each. We will begin with the Liberal Party and Mr. Russell.

Mr. Todd Russell: Good afternoon, sir, and welcome.

I certainly enjoyed your presentation. It was very practically oriented, outlining some of the strengths of the legislation, some of its weaknesses, and also recommendations about where it can be enhanced.

Your views are not always consistent with those of some of your brothers and sisters across the country, and that's part of what we will have to wrestle with as a committee as we go forward with this particular piece of legislation.

I want to come back to a couple of issues you raised. I heard your frustration with the current claims process. I would suppose it's partly with some specific claims and also with comprehensive claims —I believe there are some comprehensive claims being looked at in New Brunswick as well? I certainly have heard this from you.

You said the Department of Justice was often an impediment, in terms of the advice they have given to Indian Affairs. I would only say that I don't think that's going to be different under this particular piece of legislation. Justice will have a significant impact, I believe, on whether they suggest a claim will be accepted for negotiation by the Minister of Indian Affairs. I don't believe that sort of balance or that collaborative approach between Justice and Indian Affairs will change under this.

Indian Affairs has up to three years to accept a claim for negotiation, once you present it, and then another three years to negotiate it, or maybe you can agree to go to a tribunal. I don't believe Justice is necessarily taken out of the equation here just because we have this piece of legislation; I doubt it very much. So we have all this upfront stuff—Justice, Indian Affairs for three years, negotiations for three years.

Have you any indication what the plans are to make sure the first part of the process is well funded, well resourced, that there will be changes in the system existing right now that will facilitate the potentially six first years of assessment and negotiation? Has any of that been indicated to you?

The minister has been very vague on what is being done internally to accommodate this particular piece of legislation if it is approved. Have you people any idea what might be happening?

Mr. Darrell Paul: We don't. I guess how it's going to be funded is something that needs to discussed, and any decision to fund these processes will probably be up for discussion—and consultation, if you want to add that.

I haven't heard anything along that line, but I would think the government, Indian Affairs, would provide funding to carry out this type of work, because we can't afford to do it. We don't have the funding; it's not there. It's no good to have the legislation in place to accommodate these claims if there's no funding to go along with it; then the legislation is useless.

Mr. Todd Russell: That's exactly what I was getting at. I'm talking about this both from an INAC-Justice perspective and from the first nations' perspective.

The other issue, about the possibility of—well, under this legislation there is really no appeal; once a single judge makes a decision, everybody is bound by that particular decision. Some of the information we've received says that's consistent with superior court judge rulings and that type of thing.

How vital is an appeal process to you?

● (1700)

Mr. Darrell Paul: As with any other decision, whether it's on land claims or on a point of law concerning business or on anything else that is facing the legal or justice system in the courts, there should be an appeal process. If one person, one judge makes a decision and cuts it off and that's it, you can't open it any more, that's not being fair.

As I mentioned in my presentation, there are other courts that have the appeal process built in. It's there for the benefit of those who are not happy with a decision.

Of course, mind you, we've been happy for the last 500 years with a lot of the decisions, so a matter of maybe two or three or six years isn't going to matter a whole lot.

I think it would be unfair, and the playing field would not be a level one, if the process were to go in such a way that when the judge makes a decision, that's it, you have no other recourse. I think it's unfair to us, and I'm sure you would get the same type of answer from most, if not all, of my colleagues that a process wherein we cannot make an appeal because we're not happy, for good reason, with the decision that comes down is not a fair one.

Mr. Todd Russell: Concerning the Passamaquoddy—I don't know a lot about that particular people—what you're saying is that this legislation would have no applicability for them whatsoever.

Mr. Darrell Paul: That's exactly right, because they're not recognized as status Indians in Canada.

I'm not sure what happened, but I know that many years ago the Passamaquoddy lived in New Brunswick. A lot of them have moved into the neighbouring state of Maine. At the time when aboriginal people were given status, band numbers, they weren't around. That happened in 1951, when a list of people was compiled by the department. I think it gave people an opportunity of six months to agree whether individuals were Indians or not. After that time period went by, if there was nobody for or against, then whoever was on the list got to be status Indians. But in the case of the Passamaquoddy, they weren't in the area when all this was going on.

If I might add to what I said when I made my presentation, those people are signatories to the treaties, which are, as you know, valid and binding treaties—the Supreme Court said so—and those people should and must be recognized as status Indians.

The Chair: Thank you, Mr. Russell and Mr. Paul.

Monsieur Lemay, s'il vous plaît.

[*Translation*]

Mr. Marc Lemay: Thank you Mr. Paul, for having braved the storm. Your comments are well chosen, but I have a problem that I would like to share with you. Through the process set out in Bill C-30, we sought to curtail court proceedings. That is why we asked that the decisions be final and not subject to appeal, except in the case where the judge makes a serious error, as stipulated in section 28 of the Federal Courts Act.

I find your position problematic, because you want to ask both the Federal Court and the Supreme Court for the right to appeal. With all due respect, I do not trust the government. If a right to appeal is granted, that means that the government can also appeal a ruling. You are not the only potential claimants. God knows that the federal government has the means to appeal to the Federal Court and the Supreme Court, and that a specific claim can go on for 15 or 20 years. That is why I am asking you to show me why these rulings should not be final and why they should be subject to appeal. That would mean that a case could go to Federal Court and then on to the Supreme Court.

What is your request based on? Do you maintain that the right to appeal to higher courts is absolutely necessary?

● (1705)

[*English*]

Mr. Darrell Paul: Going back to specific claims we've been dealing with, as I mentioned earlier, INAC and Justice have always acted as the judge and jury in a lot of these claims. We've waited as long as seven years—eight years in one case I know—just to give an opinion, and that was a negative one. I don't know whether Justice was that busy that they couldn't give an opinion on a matter within a reasonable time. Six or eight years is not a reasonable time. When that decision was made by Justice, Indian Affairs took that as being written in stone; you can't change it.

I would like to see an appeal period added to this legislation. Again, the reason is that judges can be wrong. They're human. Just like all of us around the table, they make mistakes. They're not perfect. It has been proven over time that they've been wrong in making decisions. I don't see this matter any differently than any other court, whether it's the federal, provincial, or Supreme Court. The Supreme Court is the highest you can go, that's true. When the Supreme Court makes a decision, that's it, whether I'm on the receiving end or somebody else is on the other end. In any court, somebody has to win and somebody has to lose.

I think we're prepared to take these matters as high as possible. I know it's going to cost a lot of money. But in some cases maybe things can be negotiated without going to a higher level; everybody negotiates and everybody is happy.

[*Translation*]

Mr. Marc Lemay: I have trouble agreeing with you, and I'll tell you why. If a ruling worth $10 or $15 million is handed down in your favour, and the government decides, for financial reasons, to appeal this ruling, that will delay everything. However you know that you are right.

I don't know about you, but I see Bill C-30 more as a reconciliation process than as an adversarial process or a fight in court. In my opinion, it bodes well for reconciliation. I don't know if you agree. It should be stated that the government must be ready to go to court and that you must be ready too. Both parties must be accompanied by mediation specialists, or else it will go on for another 10 years. That's why there are currently 788 unsettled claims.

I am not prompting you to revisit your position, but perhaps you should analyze it again. In your opinion, does Bill C-30 represent a reconciliation process, or an adversarial process?

[*English*]

Mr. Darrell Paul: Well, it can be both, I guess, depending on how you look at it. Again, I have to go back to my original response, that I don't think that's the proper way to look at it, in my view. If we lose a decision by the tribunal, then I think we should have extended the courtesy to appeal that decision. Mind you, it can go the other way as well. I think if you go to court, that's a chance people take. Some people take a big chance; for others, the chances are not as great. So regardless of what it is or what case you bring before the courts, I think it's only fair that an appeal process should be there.

Now, mind you, in this legislation we're not expecting the court to decide for every claim we bring before it. And it's not going to happen. Nothing turns out 100%. So this is the way I look at it. Even though the possibility is there that if it's ruled in our favour and the government decides to appeal it and wins its appeal, well, that's a chance we all take.

● (1710)

The Chair: Thank you, Mr. Paul.

Ms. Crowder, for seven minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

Thanks, Mr. Paul, for coming before the committee today. I appreciate your thoughtful presentation.

I have a couple of questions for you.

Unfortunately, just because timelines are outlined and legislation doesn't necessarily mean governments of any political stripe actually meet those timelines, there really aren't any consequences for failure to meet the timelines. This has come up a number of times, and I wonder if you would comment on it.

We know there are a significant number of claims already in the system. When it comes to the bill being passed, the clock essentially is going to be reset to zero for the claims that are in the system. I just fail to see how the system is going to deal with the 800, 900, or 1,200 claims, depending on whose numbers you want to use, that are currently there in the system. I just can't see our meeting that six-year timeframe—three years to negotiate and then an additional three years to get it to the tribunal. I just don't know how that's going to be accomplished.

The answers the minister has provided are very vague: a recognition that some additional resources are required, but no real commitment to them; a recognition that some of these claims will be able to be grouped, but no analysis of the numbers and the resources that are required; no analysis of the resources that will come to first nations to help them out with their research; and no analysis of what's going to be required for first nations that are required to resubmit. I agree there are some positive good steps in this legislation, but I just don't see legislation, in and of itself, clearing the backlog.

I wonder if you would comment on that.

Mr. Darrell Paul: Well, I agree with you. I can't see in that short time how all these things can be addressed. As I pointed out earlier, this has been building up over time. Claims have been neglected. Just as an example, we have some claims in the system that we're waiting for Justice to give an opinion on, which I don't think is fair. I don't think it's right. I think the time that's been spent on these claims has been very little as far as Justice is concerned. And then after five, six, seven, eight years, that claim is rejected because of something ridiculous that doesn't even make sense. These are the frustrations we face.

I will get back to your question about how the timelines in this legislation are going to address all these outstanding claims. We estimated that on the claims that are in the system now, under the present system, it would take something like 500 or 600 years to solve them all. Well, as crazy as it might sound, that's reality. And they've only been settling something to the tune of maybe...I remember for some cases they might have settled a dozen in a year. Then there are more claims going into the system.

So you're right. I agree there's no way to address all of those outstanding claims in such a short period of time.

On turning the clock back to zero, if by turning the clock back to zero you mean that all these claims are going to be forgotten or are going to be just shoved aside and they're not going to be considered any more—

Ms. Jean Crowder: They're going to be in the line-up again, once the legislation has passed. So you can have claims that have been around for 15 years, as you rightly pointed out, that will basically get set back to zero.

Mr. Darrell Paul: Yes, that's true. I have to agree. I don't know how they're going to resolve those outstanding claims in the timeframe in the legislation.

● (1715)

Ms. Jean Crowder: Could I ask you a really quick question about your notion of having the elders involved?

When I looked at the political accord, there was a joint submission to the advisory committee of the tribunal in respect of the tribunal rules. There's going to be an advisory committee to the tribunal in terms of selection and rules and whatnot. So my understanding of what you're saying is that you would actually see a much broader role for an elder to sit with a judge throughout the process.

Mr. Darrell Paul: Not only a broader role, but also, as you know, the superior courts have decided in a lot of cases that oral history is acceptable.

Ms. Jean Crowder: And it should be.

Mr. Darrell Paul: And it should be.

So the elders, we feel, could play a tremendous role in contributing their knowledge on these issues.

Ms. Jean Crowder: That would seem to make a lot of sense. So there could be a panel of elders who would be available to the justices on the tribunal, and these elders would be selected based on region and could provide some advice and support to the people who are coming before the tribunal. That would seem to make a lot of sense.

Mr. Darrell Paul: Yes, exactly.

Ms. Jean Crowder: I wanted to come back for a minute to the issue of landless bands. You talked about the Passamaquoddy, and of course we have cases all over the country of landless bands. In my own riding, the Lyackson are a band without land.

Unfortunately, as you're probably well aware, there are many places in British Columbia that don't have treaties, period, so those bands wouldn't even be eligible in many cases to come through a specific claims process. But for the Lubicon and the Passamaquoddy, because there's no ability to award land in this legislation, what kind of process would you like to see some of these landless bands have access to? You suggested there needed to be some sort of study to take a look at how additions to land could be incorporated into the specific claims process, but as a parallel process. Is that my understanding?

Mr. Darrell Paul: Not quite. What I was alluding to was the fact that the Passamaquoddy are denied...or are not even recognized as Indians, despite being signatories to the treaties signed by the British crown in the 1700s and earlier. These people are being ignored, and we felt they should be recognized. We're supporting them to have that recognition.

As far as land is concerned, they do have traditional territories, and we feel those lands should be allotted to these people.

Ms. Jean Crowder: So in terms of this particular piece of the legislation, it would need some amendment to allow for—

Mr. Darrell Paul: It would need amendment, but I don't think I'm really suggesting that. I'm simply suggesting or giving you an example of how things have evolved, where people and their claims have been forgotten. So this would fall pretty much under a comprehensive claim, rather than a specific claim.

The Chair: Thank you, Mr. Paul.

The last questioner in this first round is Mr. Albrecht, for seven minutes.

Mr. Harold Albrecht: Mr. Chair, thank you. I'd just like to begin this part of my time, and then I'll hand it over to my colleague, Mr. Storseth.

I just want to comment on and reply to a statement that Ms. Crowder made in regard to resetting the clock to zero. I think that's a misinterpretation of what this bill does. This bill is an alternative to the current methods being used. If a group is five minutes or two weeks or three months away from resolving a claim, they certainly don't have to answer to this stream of negotiations and/or the tribunal. So I think we need to keep that in mind. This is totally voluntary on the part of the first nations group to enter this method for resolving their claims.

Thank you, Mr. Chair.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Now that we have that straight, Mr. Chair, I want to thank Mr. Paul very much for coming today. The weather is much noted in your arrival here today.

I do want to ask you a couple of questions on the process. You stated that you're emphatically behind this legislation, as you see it as a step forward from the status quo of the past.

I should say, Mr. Chair, that any time I have left over I'll be splitting with my colleague from Peace River.

We had Chief Lawrence Joseph here from the Federation of Saskatchewan Indian Nations, representing 75 first nations and approximately 122,000 first nations status people. He has also been on this file for about 30 years, as you have. He had some very interesting things to say. I will paraphrase his statement that he had personally served in government for 30 years, and also as chief for 10 years, and had never seen this type of high-level commitment from the government to actually do something jointly with first nations in a strategic and structured way. And his vice-chief, Glen Pratt, said, "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."

Do you agree with these statements, Mr. Paul?

● (1720)

Mr. Darrell Paul: Yes, I do.

Mr. Brian Storseth: Do you believe the process undertaken by the joint task force, AFN, and government has been an adequate process to bring this legislation forward?

Mr. Darrell Paul: I think it has. And I would like to add, maybe for everyone's benefit, that it's a lot better than what was there before. It's a big improvement.

Mr. Brian Storseth: I agree. And I think that's one of the big things that—

Mr. Darrell Paul: Mind you, it's not perfect, as I pointed out. I think there's room there for improvement. We're of the opinion that it is workable and that there could be some amendments made to it that we feel would not cause a whole lot of pain on the part of the government.

Mr. Brian Storseth: I thank you for the time you took to bring forward some suggestions for the legislation. You noted five particular amendments that you would like to see. Obviously I'm not going to respond to those right here today, but we'll definitely make sure the government bureaucracy has an opportunity to get you some answers, if that's what you would like.

In supporting this bill and this legislation, recognizing the fact that it is moving in a positive step forward, would you suggest that we as a committee should be helping to expedite this through quickly, rather than letting it languish through the committee process for another two or three months?

Mr. Darrell Paul: Well, I really can't answer you on that one. I'm really not able to give you a definite answer on that one. That would be something that I would have to take back and discuss with those in authority.

Mr. Brian Storseth: All right, fair enough.

I have one more quick question that I would like to ask you in regard to the court process. I'll make just a couple of points.

One, I take note that Mr. Lemay says he doesn't trust the government, yet he's arguing for the government's legislation as is.

The other point is that Ms. Crowder talks about trust an awful lot, and I think she's right on that when it comes to political accords. It was taken note by Chief Lawrence Joseph—I can quote him on this, and quote others who've come before us—that this government actually went to the process of actually signing its political accord before it sent out the press release on it, which is a step in the right direction.

In your 30 years, have you seen such high-level address and impact from the government on this? As Chief Joseph brought up several times, the Prime Minister himself was one of the movers of this. Have you seen that in this file in your 30 years?

Mr. Darrell Paul: No, I haven't.

Mr. Brian Storseth: Thank you.

I'll give the rest of my time to Mr. Warkentin.

The Chair: You have a minute, Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you very much. I'll take what I can get.

Thank you, Mr. Paul, for coming and being our witness. As my colleague Brian Storseth mentioned, it's something for you to travel here today. Many of us were travelling over the weekend, and we know the nightmare out there at the airports.

You've had an opportunity to look at this legislation. I always like to ask the participants who come to testify before us for their personal feelings in terms of the ramifications for their own communities. Some people talked at some length with regard to moving from a confrontational approach to a point of negotiation.

I'm wondering if you could give us any examples of where the specific claims legislation might assist the people that you know of—for instance, the firsthand situations where an expedited process, or a process where people know the time limit is a maximum of six years, would significantly impact the communities that you are aware of.

Mr. Darrell Paul: I'll give you a couple of examples.

The timeframe of six years is a lot sooner than 25 years. With the first nation I come from, there was a land claim that was validated for negotiation in November 1984. I have to fault the department for why it has taken so long.

I'll quickly tell you why. When the file is handed over to the negotiators, they always have a lawyer from Justice sitting in, and I don't know why. After everything is all set to negotiate, then the negotiator decides to take a job someplace else. It takes another eight or nine months for that new negotiator to view the file, so that sets it back almost a year. If things get nicely started and it is the Justice lawyer's turn to either take a job somewhere else or go into private practice, then they have to appoint a new Justice lawyer. He has to take almost a year to familiarize himself with the file.

In this case, there have been at least seven negotiators and eight Justice lawyers, who I know of. You look at the time spent by these individuals. That settlement was finally just reached this past month—since 1984. That gives you an example of how sloppy these things have been. That's just one example.

● (1725)

The Chair: Thank you, Mr. Paul.

That brings our questioning to an end for today. I want to thank you for coming to Ottawa and sharing your views with us and answering our questions.

Committee members, we will reconvene on Wednesday, when we will hear from witnesses from Alberta and the territories.

Thank you very much.

This meeting is adjourned.

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