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Chair

Mr. Barry Devolin

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● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Order, please.

Welcome to the 19th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. We will be continuing today with our hearings regarding Bill C-30, An Act to establish the Specific Claims Tribunal and to make consequential amendments to other Acts.

We have been hearing from umbrella organizations and groups from provinces and regions across the country. We have come to the final meeting in this round. We will hear today from folks from Alberta and from the Territories.

I have a couple of quick housekeeping items for committee members. We will have bells today at 5:15, so our meeting will be about 15 minutes short of our normal time. I would suggest that we get going now. I could—or I will—bring panel A to a conclusion at 4:25, we can suspend briefly, and we can be back with our second panel by 4:30, finishing by 5:15.

Monsieur Lemay, did you have something to say?

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chair, I will have some questions for the witnesses. But, as we have to meet representatives from the Yukon, instead of interrupting the session, the chief and the people accompanying him could join the panel. That would avoid the need to interrupt the session and we could sit until 5:15 p.m. We could find room for them.

It always takes five or ten minutes before the session gets going again. We could simply ask the first witnesses to make room for their colleagues from the Yukon when they arrive.

[*English*]

The Chair: That's an interesting point. I don't think the people from the Yukon are here yet, but maybe that's something to consider in the future, particularly when we have relatively small delegations, as we do today.

But I don't see the Yukon folks here yet, and—

[*Translation*]

Mr. Marc Lemay: They are scheduled to appear at 4:30 p.m. So they should be here by about 4:15 p.m. We could ask them to join us right away rather than interrupt the session. That is what I respectfully suggest to you.

[*English*]

The Chair: Well, let's get started. I think you've made a good general point. The other way to do this—really quickly—is that when we suspend, committee members can just sit tight in their seats until we get the second panellists. Usually it's the committee members going for refreshments that slows us down.

At any rate, I'd like to welcome, in the order they are listed here, the four representatives from Alberta: Jim Big Plume, director; Ron Lameman, chief executive officer from the confederation of Treaty No. 6; Ron Maurice, legal counsel from the Tsuu T'ina Nation; and Grand Chief Stanley Lagrelle.

Welcome. As I said to you before the committee meeting started, typically we have a delegation make a 10-minute presentation, followed by questions and answers from the members. If more than one of you would like speak, and you go over that 10 minutes, a little bit is okay; after that it starts to cut into the questioning period.

Who would like to begin?

Mr. Jim Big Plume (Director, Tsuu T'ina Nation Land Claims, Alberta First Nations Treaty 6, 7 and 8): I'll begin today. Thank you, Mr. Chairman.

My name is Jim Big Plume. I am the research director for land claims for Tsuu T'ina First Nation. Just as a matter of internal housekeeping for ourselves, Tsuu T'ina Nation is located across the street from the city of Calgary, literally.

On the presentation that was forwarded to your offices, I'm going to assume some of the committee members have had time to look over the document and therefore would allow us to try to expedite this exercise as quickly as possible in our presentation. I recognize your time is limited, and we will do what we can to respect that.

I would like to start with a quote of Lord Denning on the aboriginal and treaty rights of first nations in R. v. Secretary of State for Foreign and Commonwealth Affairs. The quote reads:

> ...their rights and freedoms have been guaranteed to them by the Crown.... No parliament should do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada so long as the sun rises and the rivers flow. That promise must never be broken.

The chiefs of Treaties 6, 7, and 8 of Alberta appreciate the opportunity to express our views on Canada's proposed legislation to establish a Specific Claims Tribunal. The intended purpose of the new legislation, as far as our understanding is concerned, is to expedite the fair and just resolution of first nations' outstanding specific claims against the crown.

When the first nations of the treaty areas of Alberta entered into treaty with the crown in the late 19th century, these discussions proceeded on a nation-to-nation basis and the treaty relationship was founded on trust and mutual respect. However, it was not long after the ink dried on the treaties that the crown began to betray our trust by violating the treaties and denying us our lands and resources. This breach of trust and betrayal still resonates among our people today, and it makes it difficult for us to move forward until the grievances of the past are addressed and adequate reparations are made in the interests of justice.

This bill is important to first nations because it represents an opportunity for the Government of Canada to create a process that is fair, just, and expeditious in the settlement of our claims. Many, if not all, first nations that are signatories to the various treaties can attest to the widely held frustration with the current specific claims process. Since the time the treaties were made, many first nations were under consistent pressure and coercion to surrender and sell their lands and territories so that those lands and territories could be opened up for settlement and developed by non-indigenous people.

As a result, the crown violated the terms of the treaty and breached its fiduciary duties to protect the lands, territories, and resources of the first nations. Thus, the honour of the crown has not been maintained with respect to the implementation of the treaties. This is only one example of the types of historical grievances that have been asserted by first nations under the current specific claims policy.

Under the current claims policy, first nations are frustrated because only a small number of claims have been fulfilled. As well, this has affected the management of the first nations funds, lands, resources, and other assets. After a first nations submits a claim to the specific claims process, the first nation has to wait a number of years for the claim to be researched, for a legal review to be completed, in order that it may be accepted for negotiation, despite comprehensive and extensive submissions by the first nation. As a result, many of these claims remain outstanding and bogged down in the current process. This is a graphic illustration of the problems inherent to the current specific claims policy and process.

● (1540)

The current process is patently unfair. Years of delay in the resolution of claims is unacceptable. During these years there's little, if anything, that first nations can do to speed up the process. First, a first nation must show all of our cards and disclose our entire case in an effort to satisfy the Department of Justice. The Department of Justice reviews the claim, and this person is in an inherent conflict of interest because he or she sits as judge, jury, and defendant on the validity of claims made against the crown. It is hardly surprising that when a claim is rejected a first nation will reject the Department of Justice's legal opinion, because it is based on one party's narrow and partisan view of the law and facts.

In the end, first nations are left with the task of having to wait indefinitely to determine if the crown will accept their claims for negotiation or if they have to go to court. Waiting for a response to first nations' claims could take many years. During the interim, we continue to lose our elders with each passing day. It is tragic that many of our elders will never see the day when our history is vindicated and justice is done for the crown's breaches of obligations to our ancestors. This real sense of grievance and injustice is compounded by the fact that we have lost important evidence and aspects of our oral history and traditions, which set out the first nations' accounting of how we lost our lands.

Although the backlog of claims continues to grow, the crown has not allocated necessary financial and human resources to address it. To its credit, the Harper government and former Minister of Indian Affairs Jim Prentice did not seek to continue the existing flawed process. Instead, the government heard the concerns expressed by many first nations across the country. It agreed to undertake a further review of the claims process and returned to the table with representatives from the AFN to address some of the major shortcomings of Bill C-6, which was passed by Parliament but never proclaimed as law.

As a side note to all of this, Tsuu T'ina First Nation was one of the tribes that made a presentation of our concerns with Bill C-6 to the Senate committee.

It is against this backdrop that Prime Minister Harper and the Conservative government have introduced new legislation to establish the Specifics Claims Tribunal and to make improvements in the process to expedite the just resolution of our claims.

With that introduction, the chiefs of Treaties 6, 7, and 8 offer the following brief comments, concerns, and proposed recommendations for amendments to Bill C-30. This is not an exhaustive summary, but it reflects the most important issues of concern from the respective treaty areas of Alberta.

We have serious concerns with particular aspects of the legislation, and we want those concerns to be addressed. We acknowledge that Bill C-30 represents a substantial improvement over the current process and past efforts at amendments such as Bill C-6. We therefore offer our general support for Bill C-30.

In our first discussions with the chiefs of Treaties 6, 7, and 8, the most glaring issue brought forward was the issue of consultation, or I should say “improper consultation”. We recognize that at certain points in our lives time does not permit people to represent their concerns. But for the tribes of Treaties 6, 7, and 8, the most pressing concern is the hasty introduction of this legislation. Canada has not provided sufficient opportunity to engage in consultation with first nations to seek their input and address specific concerns they might have with the proposed legislation before it is enacted.

In December 2007, this concern was brought forward to the group in front of you today. Although information was being passed back and forth since the summer of 2007, there was not a lot of information brought forward to the chief. As legal counsels and technicians, we need to provide our chief and councils with a more comprehensive review of what was being processed or promoted in Parliament.

There are legal and moral obligations on the part of the crown to ensure proper consultation. These obligations arise not only from domestic law but also from international normative instruments, some of which Canada is signatory to and others that Canada played an active role in drafting.

● (1545)

Mr. Chairman, at this point I would like to pass the floor to my friend, legal counsel Ron Maurice, who will provide us with the remainder of the presentation.

The Chair: Mr. Maurice, we're just a little over 10 minutes now, but please make your presentation.

Mr. Ron Maurice (Legal Counsel, Tsuu T'ina Nation, Alberta First Nations Treaty 6, 7 and 8): Thank you.

Jim referred to me as “my friend”. It sounds like we're in court.

I want to preface my comments by saying that I have been a student of process, this process in particular, for about 17 years. Prior to going into private practice in Calgary, I was with the Indian Commission of Ontario as a facilitator on land claims negotiations between the governments of Canada, the province, and first nations. After that I was involved in some 66 public inquiries with the Indian Claims Commission as their senior counsel. I've seen these types of claims both from a substantive point of view and from a procedural standpoint, and I have had the advantage of seeing what does and doesn't work.

The one thing I want to emphasize is that while there are some criticisms of the bill, I think the overwhelming feeling is that this bill, on the whole, is a very good thing. This will lead to some very positive results. It should expedite the fair and just resolution of these long-outstanding land claims. There is certainly room for improvement, and we would encourage the government to consider the recommendations we made in this document with that in mind.

I want to cover a couple of the key points.

I really do feel there is a sense of urgency in seeing that this legislation passes. There have been many emanations of the bill, going back to the 1960s, that have fallen by the wayside as a result of changes in government and the like. I would hate to see that happen again, so we are stressing the importance of pressing forward and moving this along. Again, it's not a perfect bill, but it provides a very solid foundation for the resolution of these claims.

The key positive aspects start with the fundamental principle that you have established an independent tribunal with the binding decision-making ability to resolve issues and disputes over the liability of the crown as well as compensation issues. I think that's extremely important, because it will provide access to justice for first nations where negotiations aren't working very well. I think that works very well for both parties in the sense that it provides some rigour for the process. It provides the opportunity for a more informed assessment of each other's risks and the ability to use that as a driver for a good faith settlement negotiation. I think that's important. Where's there's real risk, there's an informed decision-making process on both sides of the table.

The other key aspect is the ability to award up to $150 million per claim, which will allow the vast majority of specific claims to be resolved under this process. If that's coupled with a separate political accord, where the government is serious and committed to the resolution of those much larger claims, then I think we have the makings for a good process.

The other part, of course, is the timeframe for a response and the opportunity to take a look at how it's working and to improve upon it as we go forward.

With respect to the areas for improvement, I would highlight—and I'll be very quick, so we can permit some questions—that the bill provides for claims to be dealt with on their merits. I think it's extremely important that the legislation expressly recognizes that limitation statutes and technical defences would not apply to the claims that fall within the mandate of the tribunal. I think that's an excellent principle. It allows for these claims to be dealt with on their merits, based on the facts and the law, not hiding behind technical defences.

I would propose that this committee consider an amendment that would provide for the extension of that principle to these types of claims to be resolved in the courts as well. This would provide a further avenue for the resolution of these claims, again on their merits, and in particular for those that fall outside the four corners of the mandate of the specific claims tribunal. For example, if those claims that exceed $150 million could be addressed by the courts on their merits without the application of limitation periods, I think that would be a very good step in that direction.

● (1550)

On the comment about the $150 million cap, we would propose some consideration be given for amendment that would permit claims over the cap to be dealt with either through binding arbitration or perhaps even by the Federal Court on a reference with respect to issues of compensation alone. That would provide another avenue for the resolution of those issues.

Finally, the appointment process. Under the current bill the Governor in Council would pretty much have carte blanche to determine who should be appointed to sit as adjudicators on this tribunal. We would propose that in order for this new tribunal to have legitimacy in the eyes of first nations and in order for it to be perceived as being fair and impartial, something has to be done to address what would appear to be complete control by one party to appoint the adjudicators to the tribunal. Perhaps even a screening process leading up to the appointments by the Governor in Council would go a long way toward addressing those types of concerns or perceptions of potential bias on the part of the people who will be clothed with the heavy responsibility of adjudicating these claims.

● (1555)

The Chair: Thank you very much. Your opening statement is complete.

Members, we're going to have time for one round of seven minutes per caucus. If you want to share the time, you may do so.

From the Liberal Party, Mr. Russell is first.

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

Good afternoon to each of you.

Mr. Maurice, it's good to see you again. We've met at a number of different forums.

I haven't had a chance to go through your brief in a lot of detail, but I've listened to your oral presentation. Some of the points are quite intriguing. I'll raise a couple.

First, I want to address the point I've been addressing with most witnesses. Most presentations and most witnesses say they haven't been consulted. We have brought this up as well with the government. In briefings from the department, they say they have no legal obligation to consult on this particular bill, primarily because it's voluntary and you can either choose to be a part of this process or not. Second, on its face, because it's voluntary, there's no impairment or potential impairment to people's rights or damage to one's interest. Maybe I could get a quick comment on that.

Then I want to go to page 6, where you talk about section 15 and the filing of a claim, how it's supposed to be filed, how it's going to be accepted, and not claiming anything other than compensation and that type of thing. You can't seek any remedy other than monetary, and it can't exceed $150 million. You're saying the tribunal should be able to not necessarily make an offer or order, but be able to make a determination that certain lands are owed to the claimant, the aboriginal group or organization. Is that right?

It seems you have a similar point when it comes to the claim limit. Maybe the tribunal cannot say or order the government to pay you more than $150 million, but the tribunal could make a finding that you're owed more than $150 million.

Those are very interesting concepts that are not specifically addressed within this bill. They would go beyond what this bill is now proposing.

On those particular points, if we amended it in some way to allow this to happen, does it comply with the interests that have been outlined here, that is, the speedy resolution of outstanding specific claims?

You can correct me if I'm wrong on those two different points around section 15 and the section concerning the cap limits. They're very interesting proposals.

Mr. Ron Maurice: Maybe I'll start with the point on consultation first.

First of all, on substance, usually there's never enough time to fully and adequately engage every community on these issues. What we see here is really a balancing act in terms of the efforts to pass the legislation, to get it through, but also to permit some input from first nations that are obviously going to be affected by it. But I do take the point that, because the process is voluntary, it will only impact upon those communities that decide to opt into it, that decide to pursue their claims through this process, and I think that is an important point.

The general rule with administrative tribunals as well, as a matter of law, is that they are not like courts in the sense that they create binding precedents. In fact, tribunals have the freedom to depart from their own precedent. If they make a decision in one case, they could very well, on a subsequent case, even though it's very similar, decide to pursue it in a very different direction and decide that perhaps, based on different arguments, different factual considerations, they're not bound by their previous ruling. So that's an important part of this as well.

Could there have been more time? Yes, ideally that would be wonderful, but when balanced against the need to see this legislation passed and to have access to an independent tribunal, I think the vast majority of people would say they support the bill, that they would like to see it go forward.

On the other point, in terms of the limits on the authority of the tribunal, first of all, on treaty land entitlement claims, I think it would be helpful if the mandate were clarified so that the tribunal did in fact have the ability to make a finding on the determination of what a land entitlement of a first nation is, for example. That would permit, in many cases, that claim to be resolved, then, with the involvement of the appropriate province. In some cases there are natural resources transfer agreements that have other obligations on the prairie provinces to fulfill the treaty obligations of the federal crown. So that could trigger, then, the requirement of the provinces to provide land.

Alternatively, the issue could still be addressed by giving the tribunal the authority to grant an order of compensation in lieu of land, specifically. I think that's really what's contemplated by the bill, but it's not entirely clear to me whether, say, a treaty land entitlement claim would fall four-square within the mandate of the tribunal. I think that's an area that could be clarified.

In terms of the compensation limit, yes, we are proposing, really, something that would be different from what's contemplated under the current bill. What we were proposing was that the tribunal could, in effect, make a determination, a decision, on the question of liability, but not on compensation. If it were to exceed its mandate beyond the $150 million, that issue of compensation could be referred to, say, the Federal Court, for a determination of what compensation is owed as a matter of lawful obligation.

● (1600)

The Chair: Thank you. That's it.

Monsieur Lemay, for seven minutes, please.

[*Translation*]

Mr. Marc Lemay: Thank you for being here today.

A number of things concern me. I would have liked more time to ask you more questions. I must say, to you and to the others here today, that if you have submitted a brief and if it has been translated in time, you can assume that we have read it and are ready to ask you questions.

Having said that at the outset, I will say that I do not agree with you with respect to section 25. You wrote, and I quote:

> Section 25 provides that a First Nation or other person may be granted leave to intervene in matters before the Tribunal. It is our view that third parties should not be permitted to be granted intervener status given that the Tribunal does not have any power to order a third party to pay compensation...

I do not agree with you because that is exactly what sections 22 and 23 of the bill provide for.

Maybe I am missing something, but if a lawsuit affects a province, it can intervene, it can be a party to the lawsuit and a decision can be rendered. I am not at all in favour of amending section 25 unless you can prove to me—and you are going to have a hard time doing it—that provinces cannot be parties to a lawsuit. They are parties to a lawsuit, should they wish to be, under sections 22 and 23 of the bill.

I am going to say everything all at once, so if you have any comments, you can make them in the time I have left.

There is a problem with one thing. On page 3, in the English version, the paragraph heading is "Power of the Tribunal to make binding decisions". The second paragraph starts: "We support the fundamental principle...the Tribunal must have the power to make binding decisions with respect to the nature..." I totally agree with that. That is why we are supporting this bill; its decisions must be binding.

But the middle of the following paragraph is a problem for me. I will read it slowly so that you can find it. It is on page 4, and begins as follows:

> Given that the Indian Claims Commission will be dissolved, it is recommended that Canada consider the creation of the new ADR Centre...

Where do you get the idea that the Indian Claims Commission will be dissolved? I do not see that anywhere in the bill. Could you please tell me where you see it? It is the first I have heard of it. Perhaps you have information that the government has given to you but not to us. I see no reason for abolishing that commission at all. If you are telling me that the government has said that it plans to, we will have to talk.

Now here is the other question. I have a little difficulty with this. I have been a lawyer with the Quebec Bar for 30 years, and the judiciary is not consulted when a judge is appointed. I have a little trouble seeing why First Nations should be consulted when a judge is nominated and appointed. I am not talking about the nomination of the person who heads the Tribunal, I am talking about the person who acts as judge. The minister assured us that there would be criteria. We spoke to the Minister of Justiceat a meeting of another committee and he assured us that there would be criteria to make sure that judges who preside over these courts would be competent, meaning that they would be familiar with aboriginal law. That is my third point and I am going to leave it there so that you have the time to respond. Why do First Nations absolutely have to be consulted before judges are appointed?

● (1605)

[*English*]

The Chair: You have about two minutes for your answer.

Mr. Ron Maurice: Okay, I'll see if I can do this justice within the limited time.

First of all, let me address the binding decisions. My understanding is that the Indian Claims Commission's inquiry function will be dissolved. They might focus more on dispute resolution, providing facilitation or mediation services from time to time. I'm not absolutely clear on this. I don't have all the details of how that provision got into the draft. But that's my understanding. I believe an order in council has already been passed, basically suspending any further public inquiries under that portion of the commission's mandate. I think this was done with a view to avoiding an overlap of authorities between the commission and the new tribunal, if it's established.

As for the appointment process, you compared it with the Quebec bar's not being consulted when a judge is appointed in the province. That is certainly the norm. This isn't an ordinary dispute, though. It involves first nations' aboriginal and treaty rights, which are protected under the Constitution and involve the crown as the defendant. It's different in the sense that a judge, when appointed, typically presides over a variety of civil disputes, primarily between citizens. This is a unique situation in which the crown finds itself in an inherent conflict of interest.

This is more about trying to ensure that the appointment process is managed so that first nations know that people who are appointed to preside over these important claims are impartial, fair, and knowledgeable enough to assist in the resolution of these issues. As long as the perception is that the process is fair and transparent, and that the people appointed take their responsibility seriously, then I think first nations will view this as being a legitimate body that can effectively resolve those disputes.

● (1610)

The Chair: They'll have confidence to bring their claims forward.

Mr. Ron Maurice: I want to make another point about clause 25, the interplay between intervenor and party. If a province, for example, were to opt in and to say it had an interest and would like to participate and be bound by the decision, then I think that's fair game. I would say it should also apply to third parties. But third parties would have to have a vested interest in the outcome, would have to agree to be bound by the decision, and would have to recognize an obligation to pay compensation. Otherwise, the deck would be stacked against first nations. So in the interest of a level playing field, those parties should not be given intervenor status in this process unless they are there as a full party and participant.

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

I apologize for being late. As you can see, I have some additional challenges in terms of getting around, but I did have your brief in advance and was able to take a look at it.

I actually want to follow up on Mr. Lemay's point around the ICC. My understanding as well is that the inquiry piece will end as of December 31, 2008, due to an order in council.

I want to touch on the mediation piece because I notice in your brief that you talk about the fact that mediation can be another alternative. The details around what that process could look like are really vague. What I know is that in the past, with various governments, it needed consent of both parties in order to use mediation as a tool, and in the past, generally speaking, in most cases the federal government has refused to participate in the mediation process.

I'd like you to comment on that.

The second piece I'd like you to comment on is around the appointment process. We've had other witnesses who suggested that it would be appropriate to certainly have first nations involved in the appointment process for the judges who would be part of the tribunal, but there has also been the suggestion that perhaps there could be a panel of elders who would be selected to sit with the judges as well and to provide some advice and guidance along that process.

I'd like you to comment on that piece.

On the third piece I'd like you to comment on, I would agree that this legislation is necessary due to the incredible backlogs and the number of years that people have been waiting. My problem is that I don't necessarily see that this legislation will deal with the backlog.

So that my colleagues are clear, I'm talking about people who voluntarily choose to participate in the process who have already been in the process. At the time that they re-engage, their claim status will be reset to zero, and if they don't voluntarily choose, really their only option is to go to litigation. If we have a significant number of claims that are already in the lineup and have been in the lineup for a number of years, I'm not clear that this process is necessarily going to deal with the backlog.

I wonder if you could comment on those issues.

Mr. Ron Maurice: Sure. I'd like to address the point about mediation and the backlog and ask one of the other panel participants if they'd like to speak to a very unique and positive recommendation that a panel of elders could perhaps even assist in this process.

First of all, on the mediation and ADR, yes, historically it has actually been very difficult to get the crown to voluntarily participate in mediation. In fact, usually when they do participate, it's under the express condition that this isn't mediation, this is only facilitation. This person has a very limited mandate or they are not to weigh in on issues of substance, etc. I think all of that will go by the wayside, though, as soon as a tribunal with the ability to make that binding decision is introduced.

As I said, that really provides rigour for both parties to undertake an informed assessment of their own risks in terms of going in front of the tribunal. It's no accident that 95% of all civil actions settle prior to trial. They tend to settle on the courtroom steps when everyone is looking at the prospect of a winner-take-all scenario. It's really that risk that drives settlement negotiations. It keeps everyone honest. It gives everyone a reason to settle.

Ms. Jean Crowder: Are you suggesting the existence of the tribunal would encourage people to mediate before they got to the tribunal, then?

● (1615)

Mr. Ron Maurice: That's exactly what I'm saying. As I have put it, if you create the monster, if you give that tribunal the authority to make binding decisions, people take a step back and they'll go to the precipice and say, look, can we resolve this by agreement? There's always a better way. Now, if you have an opportunity to bring in skilled facilitators and mediators, they will create those opportunities and find those opportunities for a common ground and resolution between the parties. I really do think that just having that decision point as a driver for settlement negotiations will make this process work.

On the backlog, it's a very similar type of reasoning there as well. I think there is a really positive recommendation or principle embraced in the legislation of a three-year response to a claim. Mr. Big Plume can attest to this. We just recently received a response on a claim involving the Tsuu T'ina, which was submitted in 1995, and we've been promised year after year that we'd receive a response. We finally got it. It is 13 years, and now we have the response. At least they have something, right? That's not an atypical situation, either. I have many files. There is another one that was submitted in 1985 on which there is still no response today. I have another one submitted in 1997—still no response on that one. This is endemic.

By having a three-year window where the crown has to say it either accepts the claim or rejects it, I think that's good either way, as long as it's going to bring it to a head.

Ms. Jean Crowder: The only problem is that we have seen other cases where the government doesn't respond. I'm not talking about the Conservatives. I don't care which political party it is; no government responds in a timely manner. This will just kick it into the tribunal if they don't respond within the three years. Then the tribunal won't actually have a timeframe.

Mr. Ron Maurice: Fair enough. I think there will be some resource issues there about how the tribunal manages that workload. We may be creating a new problem by shifting the backlog. Like an elephant swallowing a basketball, it won't go over to the tribunal; it will be locked up there.

I hope that doesn't happen. I assume the crown is sincere in its interest to resolve these claims and try to respond as quickly as they can within the three-year timeframe. In fact, within the specific claims branch they're already responding to this legislation before it has even been passed. I'm seeing a more concerted effort by the branch to respond in a timely manner to these claims. They're obviously still working out the kinks, but I see this as a positive step, at the very least.

Ms. Jean Crowder: We've heard about some different experiences of people now being told they've been turned down, so that's also happening.

You said that some of the other panellists might have some comments on the elders.

Mr. Jim Big Plume: Yes. From the first nations perspective of respect for elders, we have our own internal judicial system that involves our elders to a great degree. We rely on our elders for their experience and wisdom. That is why I believe a lot of other tribes and parties prior to our presentation indicated that we would like to see our elders involved in the selection of judges, and that type of thing. Any case brought forward by a first nation would have elders included in the entire process.

Our elders are traditionally recognized as our leaders. Our chiefs and councils rely and depend on our elders very much. When a chief and council members are inexperienced in certain matters, they take their concerns to the elders and ask them for their valued judgment on how to resolve certain issues. We have that within our own court system now in Tsuu T'ina specifically. We also have that in the provincial court systems for criminal court cases and traffic court. Elders are allowed to participate not only in the recommendations for any applicable resolution to certain cases, but also in recommendations on how certain cases can be brought to the forefront in a manner that doesn't prejudice the individual, but assists in bringing forward a judgment that is practical for all the parties involved.

For demonstration purposes, when an elder is involved in a criminal case not a lot of things are considered by either party. They may not know the background, the history, or the circumstances behind the event that has taken place leading up to looking for a recommendation or assessment to bring resolution to the issue.

We would really like the committee to consider the incorporation of elders, to whatever level might be granted, within the legislation so they can participate fully. It's just a matter of traditional law. It's a matter of respect that there are people who have experienced more than we have. I'll be one of the first to admit that.

● (1620)

The Chair: Sir, if you could wrap it up quickly, I would appreciate it.

Mr. Jim Big Plume: I've been very reliant on my elders to be part of the process of getting claims validated. It's our experience as first nation people that our elders are included in everything we do. We would not appreciate our elders not being included in something like this.

The Chair: Thank you very much. I apologize for interrupting.

Last, from the Conservative Party, we have Mr. Bruinooge for seven minutes.

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

I would like to thank the Alberta delegation for a really great presentation that I'm sure you pulled together on short notice. I know that this committee process doesn't allow for a lot of time to come up with a presentation, so I want to thank you for a very well thought-out presentation. Congratulations, Chief Big Plume, to your delegation.

I'd like to ask you about some of the statements you made on how the bill is a strong improvement over Bill C-6. There seems to be some agreement, between what you said and what the government's position is, that massive systemic reform is required in this area. If there's anything our government appreciates doing, it's fixing the system.

Could you give a bit more testimony, Chief Big Plume, on the difference between what we're proposing and the previous broken system?

Mr. Jim Big Plume: Thank you.

Again, I will need to mention, for the record, that I am not the chief. In fact, my cousin, Chief Sandford Big Plume, might be offended if I came into Parliament announcing myself as the chief.

But thank you for the question.

The improvements we see include things such as this. In Bill C-6, there was a cap allowed of only, I believe, $7 million to $10 million. We, as first nations in Alberta, recognize that Alberta is one of the wealthiest provinces in all of this country. For that particular piece of legislation, Bill C-6, to be passed and that particular issue of compensation to be capped at $7 million to $10 million would not have worked for any of the first nations. In fact, we may have found, quite nationally, that a lot of the cases would have been in Federal Court by now, clogging up that system. That was the vast improvement we saw in the current bill being promoted today, Bill C-30, where the cap has now been raised to $150 million.

Now, it has been suggested in our presentation, in certain areas, that we're still unsatisfied with the fact that there has been a cap put on the claims of Treaties 6, 7, and 8, in consideration of the economic status of Alberta at this point in time, in consideration of the losses that the first nations have experienced since the time of the signing of treaties. But we also recognize that there needs to be a cooperative effort by all parties in order to bring resolution to these issues that, I suppose, we both have an appreciation for.

As a good example, as my legal counsel pointed out, we ourselves have a claim on a reservoir of water that supplies Calgary with 80% of its water needs. We have been working vigorously with the City of Calgary to try to bring a resolution together that is beneficial for both parties. Through the current process there's too much uncertainty that the claim, as it has been put forward, would not gain or have the recognition we hoped it might have.

My colleagues Chief Lagrelle and chief executive officer Ron Lameman can attest too that there are a number of outstanding claims and issues in northern Alberta. We have the oil sands, the tar sands. We have all kinds of water problems that are being forecast in the forecast that's been done by our elders, and these forecasts are very, very concerning.

As for the cap of $150 million being placed here, although we look at it as an improvement from Bill C-6, we still do not feel it is adequate. But then again, we still feel there's a definite need to assist in bringing this current legislation being promoted to fruition, on the basis that we all live in this land, we all need to share this land, and we all need to recognize that we need to move on.

I've been working as director for land claims for Tsuu T'ina for almost 20 years. When I started I had black hair. And yes, it's been exhausting; it's been frustrating. It's been an exercise, to say the least, that has caused a lot of wear and tear on our people, especially our elders. I mentioned in my opening comments that we have lost a lot of elders, unfortunately. I wish I was exaggerating, but we have lost approximately 50% of our elders on Tsuu T'ina in the past five years. There were very informed elders who were...in fact, one was with the people involved with treaty discussions. He was 107 years old. So we've lost that.

● (1625)

I guess to capsulize, the Tsuu T'ina First Nation first took the opportunity to bring this presentation and concern to you so that we might be able to voice our opinions on this. When this was brought to the other tribes in Alberta, they readily adopted the presentation before you and concurred with everything that has been said in the document. Unfortunately some of those people who were part of the informal committee, if you will, could not make it here today from the other treaty areas and therefore their opinions, which are also valid, have been contained and held in the document.

The other area for improvement that we see is, of course, that issue of consultation. Again, I realize that we all have our respective jobs. We have a life outside of this building, and circumstances at times do not permit proper consultation. We have done our utmost as technicians to bring the concerns that we see to the attention of our chief and councils respectively, and to our elders.

Basically we support the legislation, but we still say there's room for improvement. But that's a general comment to anything in life, and nothing will ever be perfect. If we lived in a perfect world.... As my grandfather used to say, if everybody thought the same way they'd all have married my grandmother.

Some hon. members: Oh, oh!

● (1630)

The Chair: Thank you.

Mr. Jim Big Plume: Is that good enough for you?

The Chair: That seems an appropriate end point.

I appreciate your being here today. I apologize for hurrying things a little bit, but since we have a hard deadline at 5:15, every extra minute we spend here is a minute less we have with our territorial group. Thank you very much.

I would ask members not to wander off too far, as we're going to turn the table over as quickly as possible.

We will suspend for one minute.

● _____ (Pause) _____ ●

The Chair: We will get going, if I can get my colleagues to come back to their seats. I'm rushing everyone a little bit today, but when the bells start ringing at 5:15, we will be adjourning. So I would like to get going so that we have a good questioning round.

For our second panel today, I'd like to welcome Chief Mark Wedge and David Joe, who is a technical adviser, from the Council of Yukon First Nations. Gentlemen, if you'd like to make a presentation, I would appreciate it if you could keep it to 10 minutes, and then we will have one abbreviated round of questioning.

Chief Wedge, you may proceed.

● (1635)

Chief Mark Wedge (Carcross / Tagish First Nation, Council of Yukon First Nations): Good afternoon, honourable members, ladies and gentlemen.

It's an honour to come to present on behalf of the Council of Yukon First Nations. I'd like to ensure that you have a basic understanding of our constitutional circumstances with respect to comprehensive claims and the specific claims policy in Canada.

In 1973 the Yukon first nations successfully petitioned the Government of Canada to commence modern-day treaty negotiations, and on August 8, 1973, the then Minister of Indian Affairs, the Honourable Jean Chrétien, announced the first comprehensive claims policy immediately following our petition to the Supreme Court of Canada decision on the Calder case. Really, it was the foresight of the elders that moved us forward to anchor those claims. Currently in the Yukon we have 14 first nations; 11 of those 14 first nations have self-government and modern day treaties, and three of them do not.

I will touch on some brief components that are important to bring forward regarding the Yukon in relation to the specific claims policy. In 1973 when the Yukon first nations proceeded to negotiate the claims that started the specific claims policy, they did it under what's referred to as the Umbrella Final Agreement. The UFA is often the way it's referred to. After that, each of the first nations negotiated treaties, so we have 11 of those first nations negotiated treaties.

There weren't a lot of reserves in the Yukon. There were summer reserves, because some of our areas overlap the Yukon borders; they go into B.C. So those are areas where we still have ongoing negotiations for treaties. Some of our self-governing first nations have reserves in B.C., such as the Teslin Tlingit Council. Some of them have reserves in B.C. that aren't yet finalized, such as the Kaska.

So when we look at this, it's not just the Yukon, it's also some of the B.C. things. We look at the proposed legislation and we see there are ways we can deal with that in terms of B.C. participating.

I think people understand that the treaty part of the agreements is protected under section 35 of the Constitution. Our self-government agreements don't enjoy that same constitutional protection. Under our self-government agreements we've reserved some of our reserve lands, our lands set aside that are under self-government; they give us certain self-governing powers to assert in those areas. So it's a complication that I think people need to understand.

One of the things that are important about this—and actually I'll leave it, and Dave can maybe touch on it a little later with some questions—is that the current specific claims policy does not simply limit the crown's obligation to wrongful surrender of reserve lands within the meaning of the Indian Act. Recently we went through some reviews of the implementation of these agreements, and we're finding some technical differences. We don't fall under the same Indian Act policies and we're moving outside that box. So we find ourselves in this area where section 91(24) lands and these types of lands become a more complicated issue, because we have referred to a certain amount of land.

So in this brief you'll see a section that talks about how those lands are set up. In the interests of time, I'm not going to get too involved in that.

I would like to talk about how the Bill C-30 issues relate to the Yukon.

In our past submissions we supported the adjudicated powers and independent tribunal. We think that's very good: participation in and representation on the tribunal, increasing the monetary cap for compensation, consideration of time-limited opportunities to file specific claims, more enlightened specific claims policy to reflect evolving common law principles such as honour of the crown, and consideration of exemption of monetary rewards from tax and own-source revenue offsets.

● (1640)

Generally, the Council of Yukon First Nations supports the idea of the approach adopted in Bill C-30 in setting up a tribunal. Our first nation has three specific claims, and in the past it's been hard to get those claims moving forward. So we think it's very important to move to that quasi-judicial tribunal, and we think that's a big step forward.

One of the things that are important, and I know it's been touched on before, is first nations adjudication. In the Yukon we're beginning to look at administration-of-justice agreements. We're starting to set up tribunals. We're starting to look at how our administration-of-justice agreements will be integrated with judicial matters in Canada and the Yukon.

We want to look at how to integrate the adjudicators, especially, as we gain experience. For example, we have somebody here who has over 35 or 40 years of judicial experience and has done a number of things. These are the people who should be considered to sit in these areas. You need to look at that. That's an important thing we looked at.

The bill also defines the term “first nation”. A first nation can only be a claimant for filing a claim at the tribunal. In the Yukon there are three Yukon first nations that are still bands under the meaning of the Indian Act, as I talked about earlier. They've not entered into land claims agreements. There are 11 first nations that fit the term “a group of persons that was a band within the meaning of paragraph (a), that is no longer a band by virtue of an Act or agreement mentioned in the schedule, and has not released its right to bring a specific claim”.

Under the Champagne and Aishihik First Nations Final Agreement, for example, there are seven reserves that are not released but that must have been accepted for negotiation prior to March 31, 1994, by the Minister of Indian Affairs and Northern Development. Three of the seven specific claims have been accepted. However, granting the authority to the minister to determine the validity of the other specific claims within a limited time release is problematic.

Even if the first nation is successful in maintaining that the release was not effective, the issue becomes whether the compensation is land, as visualized under the final agreement, or monetary compensation, as stated in Bill C-30. Clause 4 ensures that Bill C-30 is the paramount legislation in the event of a conflict or inconsistency. In more recent Yukon final agreements, land is considered part of any settlement. However, I suspect that all first nations with land claims agreements would have similar definitional issues.

I want to spend a bit of time on this. One of the areas that are important for us is that first nations are a growing citizen base, one of the fastest growing in Canada. In the past there may have been infringements and things like that, and often it was the taking away of lands. Land is an important part that should be considered in terms of compensation or settlement, because land bases, especially around these areas, are important for our citizen bases to grow.

We've had some successes in advancing some of these issues, but I think this is an important part when we start talking about the legislation. Looking at land is a possible way to start accommodating these specific claims.

Clause 14 sets out the grounds for a specific claim. Paragraph 14(1)(a) contemplates claims for “a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown”.

Clearly, this only applies to historic treaties, as a first nation cannot file a specific claim for a land claim agreement entered into after December 31, 1973. Canada announced this comprehensive claim policy in August 1973. To my knowledge, it's virtually impossible to negotiate a treaty within four months, and therefore, subclause 14(1) appears to apply only to historic treaties and not to modern land claim agreements. That's important, especially for those three first nations in the Yukon that don't have modern-day treaties.

Paragraphs 14(1)(c) to 14(1)(f) refer only to reserve lands, and although the term is undefined under Bill C-30, it becomes clear that aboriginal title lands under Delgamuukw are excluded, as paragraph 15(1)(f) ensures that such a claim cannot be filed as it would be “based on, or alleges, aboriginal rights or title”.

● (1645)

This is an important consideration for all Yukon first nations, as our form of land tenure retains aboriginal title to our settlement lands. It is especially important for those first nations without final agreements, as aboriginal title is still retained on any claimed reserve lands. I think this is very important in terms of the aboriginal title, as we've pointed out.

The monetary cap is set at $150 million per specific claim, and we support the limit placed upon the award under clause 20 of the bill. That's an important thing. We think it's an improvement, as has been pointed out.

Finally, Bill C-30 does not exempt any monetary compensation from taxation. However, Indian Act bands are generally exempt under the terms of the Indian Act. If first nations with modern treaties are able to avoid the legislative bars and are successful in obtaining monetary compensation, then the compensation received may be treated as own-source revenue and therefore can be used as a component of offsets for the purpose of its financial transfer agreements. As these are legacy and/or heritage funds, if paid, these funds should not be taxed as principal payments or on interest, and should not be used as offsets in financial transfer agreements.

Basically what this amounts to is that with our agreement, because our citizens are now taxable and we share taxes, we have offsets. What we're saying about these specific claims is that because they're for these past areas, consideration should be given that these are not taxable or used as offsets against the expenditure bases we're using. I think that's an important consideration that we want to put forward.

In conclusion, I have tried to briefly set out the unique constitutional status of the Yukon first nations that may relate to the specific claims. I've also set out some general concerns and suggested potential solutions to remedy these concerns.

Again, I want to thank the standing committee for hearing us. What we're saying overall is that we need to move ahead, because what's happening is that we're depending on specific claims and some of these past things to build our early childhood education centres. We don't have enough compensation or infrastructure, and we're depending on some of these things to build some of the infrastructure we need to get there. We'd like to have other means to do that.

So we do have some specific claims, a number of them in the Yukon. We support the process to move it ahead and try to get it passed. We know there are going to be improvements generally. We're in support of it, and want it to somehow get to the top of the list. But how do you do that? Can you apply here and get that done?

Thank you. That's all I wanted to say.

The Chair: Thank you very much.

We have a little less than half an hour. We have time for one seven-minute round of questions. I'm going to give you a warning when there's a minute left, and I'm going to cut people off at seven minutes. I encourage my colleagues not to use up five or six minutes of the time creating a long list of questions, because I will restrict it to seven minutes.

For the Liberal Party, Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you. We could go a few minutes after the bells, since it's right next door.

Thank you for that point about own-source revenues. That's good; I haven't heard that before. We'll be making sure the minister and the department clarify that they wouldn't deduct that.

Mostly I want to use my time just to give you more time to finish, and to thank you for coming from the riding farthest away from Ottawa. I'll give you about five questions, but you can answer whatever you want.

First, is there anything you want to add, David Joe or Chief Wedge?

Second, you're supporting a tribunal. A tribunal always sounds like three people. I wonder if you have any concerns that it's only one person, and that one person has a binding decision with no appeal. What if the one person doesn't like you?

Third, do you want to comment on the implementation of justice in your comprehensive claims? As you know, we signed a deal saying you can have this, and now.... In your particular first nation, is it going well with your child welfare legislation and, even more importantly, with the Teslin Tlingit Council? I think they may have been waiting over a decade, and it must be awfully frustrating. We signed a deal, and they're still trying to get it through.

Four, I think the cross-border claims with B.C. may be problematic. Is that a problem? Are we not making any progress because it's cross-border?

Last, I think the biggest issue you have in the Yukon is the nine-year review and the implementation of that. You may want to make some comments on that.

You can use the rest of the seven minutes for whatever you want.

Mr. David Joe (As an Individual): Well, perhaps I can speak to two of your questions, Mr. Bagnell.

The first one deals with the issue of superior courts.

The administration of justice agreements that we have currently do not anticipate the appointment of the adjudicators that we have as superior court judge appointees. This is certainly an outstanding concern that we have with Canada. But simply put, many of our law-making capacities fall into the area of superior courts, like wills and estates, so that if Chief Wedge and his people, for example, decided to pass a law in respect of wills and estates, then the adjudication of those laws still would have to go to the superior court. Our hope and desire was that our appointees, through our administration of justice systems and processes, would certainly enable the appointment of first nation peacemakers or judges who would have superior-like law-making capacities. We didn't think that there should be a necessary bar to that type of appointment, notwithstanding all of the issues with respect to section 96 superior court judge appointees by Canada, etc. We think there are ways around that, given the paramountcy of the entrenchment of the agreements under our treaties in that regard. So that was one concern.

In terms of the cross-border issues, the release clauses that the chief spoke to are applicable in the Yukon territory only. Notwithstanding the fact that for the Indian bands that used to exist before...all of the rights and titles of those Indian bands are now vested in a first nation that is created by virtue of the treaties and the agreements that exist. So what happens is that to the extent that the Teslin Tlingit Indian Band used to own reserve lands in B.C., all of the rights, titles, and interests that used to vest in the Teslin Tlingit Indian Band now vest in the Teslin Tlingit Council. So they've adopted all of the powers that currently exist, and there's nothing within the Yukon final agreements or the Yukon treaties that would vitiate any of their claims into B.C., either a specific claim or a comprehensive claim.

● (1650)

Chief Mark Wedge: One of the comments was about the tribunal being one person. I mean, obviously it would be great if there were more.

What I think is important is that what's being proposed is better than the way it was before. Do you know what I mean? It's not the best. We use circles, we use consensus, we use restorative justice models. We're building these processes into our administration of justice agreements. So of course that's what we would like to see reflected in some of the things, that these kinds of processes are there. However, that being said, a tribunal of one person is better than what was there.

I think it's important, and I want to touch on it because, really, we're moving ahead. We want to work with Canada, with the legislation. We've spent 30 years negotiating. We know that where we start from is not where we intend to end up. There are reviews that are built into these things. We would like to think that the community would look at these things and start having confidence as we build our judicial structures. We're using family councils and some of our self-governing legislation to move forward. We think that as we build this capacity and experience, this legislation will start taking that into account and start looking at how we would draw these into it. So it is a very important area.

Regarding the cross-border issue, just to touch on it, we are in the B.C. summit—our first nation is, Teslin is, a number of us are—so we're still negotiating treaty processes. It's very difficult, because what we're tending to do is to try to negotiate treaties on one hand and implement these other agreements on the other hand. But what's happening is that there's no movement. It would be great if Canada somehow could get some movement, because these are important areas that we need to work on. We're not even to the point of saying, how do we identify what those specific claims are that are related there?

The last point I'll just touch on is that we've recently gone through this nine-year review. I met many of you, actually, when we came down to do it, and I really appreciate your taking the time to receive us. What I think is important is that this legislation starts helping us, as first nations, to move forward better, because we seem to be moving forward at different levels, talking about administration of justice, doing these types of things. I think the nine-year review says that as governments, we need to be looked at differently and we need to start implementing the agreements adequately. And looking at resources is important, right? Gradually what we would like to see is that these flow into the Bill C-30 amendments and the review that will come about.

● (1655)

The Chair: Thank you very much, Chief Wedge.

Monsieur Lévesque, sept minutes.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, gentlemen, for having travelled to us to give your point of view.

As you are no doubt aware, the tribunal's decisions will not allow land claims to be settled, but it will be able to award sums of money. Prior consultation is always relevant when legislative provisions involving aboriginal groups are evaluated. In his speech at second reading, on December 4, 2007, the minister described the bill as an example of the spirit of cooperation that must be shown in order to guarantee the success of a new way of dispute resolution. This new way of resolving disputes will affect hundreds of First Nations communities whose claims have not yet been settled.

Last February 6, at this committee, the minister told us that it was his impression that the bill would find significant support among First Nations. I do not know if the consultation happens just when the bill is being tabled or whether you were consulted as it was being developed.

To what extent was your working group consulted and were your regional member groups involved? Can you also tell me if your organization or the communities it represents were asked to contribute to those consultations?

[*English*]

Chief Mark Wedge: I'll start with the second question.

We are involved. AFN did come to the Yukon to present some of the things. As leaders, we did go in and review what was done. We did participate in the Assembly of First Nations. So to that degree, we have had consultation. I know our technical people have also had input into some of the processes, and they have both followed and participated in the AFN process, to get that into the current legislation. So I think that was important.

In terms of no land and what not, we understand that. When we first started in 1969 and the white paper came forward, they really wanted to do away with the Indian Act. We said it wouldn't be fair. It went to the Supreme Court, which said there were rights that needed to be addressed. We very much see that, and we keep evolving.

If you look at the injustice, these were lands that were traditionally occupied by our peoples, and through the building of a series of self-governments, a lot of those lands were lost. Gradually we're starting to negotiate them back. In our Yukon agreements we fought very hard to get a non-extinguishment clause, meaning our rights are not extinguished. Somewhere Canada and our first nations...these rights are up here. Every municipality, every government in Canada, has the ability to expand their lands. As it currently sits, we don't. And it's not fair; it's not just.

We know that at some point, in our coming and speaking here, fairness and justice will be seen. We will have the opportunity to say that it does make sense to expand these lands, especially if we're a fast-growing population base. It's not in this legislation, but with good governance and proper leadership, we believe we will get to those places where it will be viewed in that manner.

That's why we keep coming. It's important. We know it's not perfect, but every little step is important. We are people. We are nations. We will build land bases. We will do this in a good way. We recognize that it's not in there, but maybe in the future it will be.

● (1700)

[*Translation*]

Mr. Yvon Lévesque: I am going to share a part of my time with my colleague Mr. Lemay.

Mr. Marc Lemay: At this committee, we have received representatives of First Nations communities in provinces, but this is the first time that we have had representatives from a territory, the Yukon, of course, being a territory rather than a province.

I am very pleased to have this opportunity. I would like to know how things are with the Yukon government. Do you have agreements and discussions? How can Bill C-30 fit with your land claims and with the discussions with the Yukon government and your communities?

[*English*]

Mr. David Joe: If I could, I would very quickly add to that.

In the Yukon, it's true that we have a territory. The Yukon Territory is a delegate of Canada. Canada has created the Yukon Territory by passage of a federal statute to give the territory law-making capacities and control of our land and resources.

Now, the assumption we make is that for the purpose of Bill C-30, An Act to establish the Specific Claims Tribunal and to make consequential amendments to other Acts when they use the word “province”...under the Interpretation Act a province includes territories for the purposes of making the bill apply to them. So in that respect, we assume Yukon is caught by the terms of the Interpretation Act. Even if it isn't, certainly given the fact that Yukon is a delegate of Canada, Canada could instruct it under the terms of the Yukon Act to comply with the wishes of the federal crown.

So we assume that's how there is that degree of consistency in that process.

The Chair: Thank you very much.

Ms. Crowder, seven minutes.

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

And thank you very much to our witnesses for making the trip.

I have a couple of brief questions and then I've a more expanded one.

I just want to be clear about my understanding that when we're talking about the tribunal makeup, you are suggesting that the definition needs to be expanded to include people from the Yukon who have that kind of experience. I heard you say peacemakers. So that's one kind of brief question.

The second piece of it is this. When you were talking about the first nations claimant definition under clause 2, were you suggesting there are some nations in the Yukon that would be specifically excluded from using the specific claims process under this bill? I wasn't clear from what you were saying.

Maybe you could start with those two, and if I have enough time I'll ask another one.

Mr. David Joe: I'll answer your second question first. It's obvious that before you become a claimant you have to fit within the defined term, and part of the defined term is the extent that you have not released your rights within any land claims. So every claimant would have to demonstrate that they have not surrendered or released their rights to file a specific claim.

The example Chief Wedge gave is exactly that point. For Champagne and Aishihik—that is where I am from—we have exempted seven specific claims, three of which have been accepted. So those claims are ongoing. We assume that, if they are not settled, these claims can be contemplated within the construct of Bill C-30. For the other four claims, the question becomes whether or not those claims are released under the way in which we define a claimant. It's unclear to us if indeed that is the case. We would like to assume indeed that it is not the case, that it is indeed pursuable or advanceable to allow first nations to continue to file those particular claims. I think that's a question of debate in the future, because it's obvious you're going to have to jump through that hoop to prove you are an eligible claimant.

With respect to your first question—

Ms. Jean Crowder: I'm sorry, Mr. Joe, is there a specific amendment, then, that could be suggested? I'm not suggesting you propose it now, but is there an amendment that needs to happen in clause 2 then?

● (1705)

Mr. David Joe: Yes, I think if it's the intention of the crown or Canada to include those claims that may have been released because the period of time has passed, and if we have access to that, then the question becomes, which act is paramount? Are the treaty relief sections paramount, or are the provisions of access under Bill C-30? We'd like to think that's an open question at this point in time.

In terms of the makeup of the tribunal, it is our hope and desire that.... What we basically have is a tribunal that is made up of superior court judge appointees. As our brief submits, I dare say that if you were look across Canada, there may be one or two first nations citizens who are indeed superior court judge appointees, and none are from the Yukon Territory. For us to get some degree of credence or acceptability when we file these claims on the issue that we just spoke about—whether or not you are indeed a claimant—and given the fact that, hopefully, our appointees can be just as impartial in reviewing the administration of Bill C-30, as currently defined, as other appointees, we want to have that ability as well.

Therefore, there should be no bars with respect to our appointments, given that we meet certain minimum standards that are acceptable. We think that is a fair approach.

Ms. Jean Crowder: Again, it would require an amendment on the way the appointments are done, although part of that is outlined in the political accord as well. But there are two pieces to this, the political accord and the clause in the bill that deals with the tribunals.

Mr. David Joe: Yes.

Ms. Jean Crowder: Really quickly, you may have heard me ask earlier about mediation. I wonder if you have some comments about mediation, given that I know there's probably been experience with the federal government turning down an opportunity for mediation, which has typically been their track record. I don't know that specifically, but it has typically been the federal government's track record not to engage in mediation.

I wonder if you can see a useful place for that.

Chief Mark Wedge: I think mediation is wonderful. As a matter of fact, most of our structures are built around consensual approaches and these types of things. I think it makes a lot more sense; I think you can get more creative solutions, and I think you get more agreeable solutions when you look at them.

Whether it's mediation or other processes, such as dispute resolution processes.... It's not just about mediation. We use circle processes, and we've developed some of these processes where we have actually identified what issues can be dealt with and creative solutions for them.

Our experience in the negotiating process is that Canada has said that it has used principle-based negotiations. The difficulty is that this is not necessarily so, from our experience. That's understandable, because you have a large organization that has a hard time shifting to some of those issues. But this is an opportunity where you could actually build in something like this, where you could start using some of the processes that are used, such as the peacemaking circles, and these types of things. Our administration of justice is beginning to use these models of looking at identifying and addressing issues.

So I think it would be great if you could put these areas in there. This is an important area.

Ms. Jean Crowder: So you have models and some examples that could be built upon to be effective.

Thank you.

The Chair: The last questioner is Mr. Albrecht from the Conservative Party.

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

I want to thank both of you for appearing here today.

My understanding is that you're generally supportive of Bill C-30 and the matters it addresses. I think that's good news, considering the large number of outstanding claims we have across the country, and especially when we consider that the average processing time is in the neighbourhood of 13 years. Hopefully this will be an improvement on that.

I'm wondering if you could outline for us the number of specific claims that are under review currently in the Yukon. Maybe you said that, and I missed it, in your earlier remarks.

Mr. David Joe: I think we have between about 15 to 30 specific claims currently outstanding.

Mr. Harold Albrecht: Fifteen to 30?

Mr. David Joe: That's an approximation, yes.

Mr. Harold Albrecht: I don't expect you to have specific numbers, but could you give us an idea as to how long some of those claims have been in process to this point? Have some of them been in the process for a lengthy periods of time, or are they more recent? Maybe, as well, what magnitude of claims are we looking at?

● (1710)

Mr. David Joe: In terms of time, some certainly have been outstanding since about 1974. I know other claims that I have worked on certainly have exceeded the 10-year timeframe. The magnitude of claims, from a monetary-compensation perspective, certainly would not exceed the cap, I do not believe, that is currently contained in Bill C-30.

Mr. Harold Albrecht: I believe I heard you say in your presentation that you were supportive of that measure within the bill, the $150 million cap, probably partly because you don't have any claims beyond that. But if you had claims beyond that—and I'm sure you've talked to some of your colleagues who have claims in excess of the $150 million—do you still feel that the $150 million cap is a good idea in terms of addressing those claims that are under $150 million and allowing the other claims to proceed in the manner they're dealt with now, by cabinet?

Chief Mark Wedge: In terms of some of the specific claims, the cap is reasonable. There are other areas where they're under comprehensive claims. That is a different process. I don't want to get the two mixed up, because there are some comprehensive claims that fall into a different category. But generally with respect to the specific claims we're looking at, I'm not aware of any that potentially may exceed that. We would like them to, but....

Mr. David Joe: Well, I think implicitly under the current construct of the act, there is a black hole. What happens if there is a specific claim that exceeds the amount of the monetary cap in the Yukon? Is that still a valid claim? We don't know the answer to that question at this point in time, but the vacuum that may exist is indeed a concern to us, because all of the defences that are not allowed to be used by the crown that are currently contained in Bill C-30 outside of the cap limit—many of the time constraints for filing a claim—may become a defence that the crown or Canada wishes to use in any claims that exceed that particular cap. And that is indeed a concern to us, both in terms of the construct or the category of that particular claim and the fact that they may be barred in that fashion.

Mr. Harold Albrecht: I want to change gears a little to the issue of consultation.

I remember very clearly in June of last year standing in the room next door with the Minister of Indian Affairs, Chief Fontaine, and the Prime Minister, when the specific claims action plan was announced. And then in November 2007, Minister Strahl and Chief Fontaine, together, signed the political agreement that accompanies this specific claims reform.

Since that time, we've also had a joint press conference in which Chief Fontaine stated, “The collaborative process engaged between the Assembly of First Nations and the Government of Canada to reform the specific claims process was efficient and effective...”.

Now, since that time, we've also had a number witnesses appear before this committee to give their input. From your perspective, do you feel that the efforts of consultation, discussion, dialogue—however we want to describe that—have been adequate? Have you had opportunity for input on your part? Have the people you represent been adequately represented?

If you could answer some of those questions, I would appreciate it.

Chief Mark Wedge: As I pointed out, we have participated. We have talked with the Assembly of First Nations; we've come to some of the meetings to address some of those areas. Whether it has been adequate is a big question.

As I pointed out, yes, there are areas for a lot of improvement. We've pointed out that there could be amendments—maybe we see some of them—but given where we've come from, it's an important step. We're very much of the idea that we have to move these things along. There are things we would like to see in here, as I say, that could improve it, but considering where we've come from, it's very important.

So that's why we're supporting it. It's an important step forward. It may not be quite where we want it to be, but it's an important step forward.

Mr. Harold Albrecht: I understand that you didn't have access to the actual bill in the consultation process, but you were aware of some of the general principles that were going to be put forward in the bill, and some of your people participated in the task force. One of the things we're hearing repeatedly is that this $150 million cap may be inappropriate. I'm wondering if you could respond to how frequently that was raised by your colleagues representing other first nations groups.

● (1715)

Chief Mark Wedge: I know that with the leadership where we were at, it was discussed, knowing that nobody wants to see those kinds of caps on it, but at the same point in time, I have to reiterate that when we looked at it in the Yukon, we realized that we have to move forward. In our presentation to different areas, we want to be respectful of other first nations that will exceed that cap. We don't want to have any impact on them, but what is important is that we need to move ahead. That's why we've said we've looked at it and we're willing to move ahead with that.

Mr. Harold Albrecht: I think at the beginning of your presentation you said that we should make this our number one priority.

The Chair: Thank you, Mr. Albrecht. That concludes almost on time.

I want to thank the witnesses.

For committee members, very quickly, when we return after the break, on March 31 we'll be having our makeup meeting. At this point we have confirmed representation from the AFN regional chiefs from B.C. and Alberta, and the Algonquin Nation Secretariat. There are 10 other outstanding invitations that haven't been responded to. We hope some, but not all, of them will be here on that day.

Thank you very much.

The meeting is adjourned.

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