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Chair

Mr. Barry Devolin

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● (1530)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): I'd like to call to order meeting number 20 of the Standing Committee on Aboriginal Affairs and Northern Development. We are continuing with our witnesses dealing with Bill C-30, an act to establish the Specific Claims Tribunal and to make consequential amendments to other acts.

I'm starting right on time today because we have many witnesses and a limited amount of time. I ask my colleagues on the committee for two indulgences: first, keep to the clock when it gets to the questioning round; and secondly, we are scheduled to end at 5:30, but we all have bells at 6:15, so if we go a little beyond 5:30, I'll do my best to have everybody out of here before 6 o'clock. Again, that will get to the questioning round.

For the witnesses, both those who are already at the table and those who are coming up in the second panel, I want to welcome you. As you may know, we're towards the end of this round of hearings, and today's meeting was to be able to get all the people who couldn't come to earlier meetings. It's a bit like the airlines. You invite 150 people to sit on a 130-seat plane, hoping they don't all show up. What has happened today is we've had many people who've expressed a desire to come to the committee, so we are a little busier than usual. As such, I implore you to keep your remarks brief. We've held many meetings, so we've covered many of the basics of the bill. I would hope that you could please come to the point quickly when you're making your presentations. That will allow us some time for questions and answers, and hopefully at that time you'll have an opportunity to follow up on some of the issues that committee members may have a particular interest in.

Today we have four groups on panel A. The first group is from the Assembly of First Nations: Regional Chief Shawn Atleo, and Roger Jones, legal counsel. The second group is from the First Nations Summit: Grand Chief Edward John, and Grand Chief Ken Malloway, who I presume is not here yet, but I see the seat. As an individual, we have Tony Penikett. Thank you for being here. Finally, we have the Atlantic Policy Congress of First Nation Chiefs Secretariat, Chief Lawrence Paul and Chief Noah Augustine.

Thank you all very much for being here. I thank you in advance for keeping your remarks brief.

I'd like to start with the Assembly of First Nations, Mr. Atleo, if you'd like to begin.

Mr. Shawn Atleo (Regional Chief, British Columbia, Assembly of First Nations): Thank you, Mr. Chairman.

Thanks to the committee for the invitation to appear. I've been in this town a week, and I certainly hope there is a seat for me on the plane west this evening.

[*Witness speaks in his native language*].

Those are just a few words in my language to acknowledge the territories of the Algonquin peoples.

As regional chief for British Columbia with the Assembly of First Nations, I'm here in my capacity as task force co-chair with respect to this bill. I've carried this work out along with my colleague, the co-chair, Mr. Bruce Carson, from the Prime Minister's Office. It was Mr. Carson and I who had responsibility. I was appointed by the national chief to carry this work out and I oversaw the process that culminated in the development of this legislation.

I'm very pleased to say that this bill represents what I feel is the best effort at achieving consensus on what a specific claims tribunal should look like, its mandate, its operations, and how to ensure that it evolves properly.

Rather than highlight the key elements of the legislation in my time here today, what I wish to do is focus my comments on the process that was used to develop the bill and the political agreement.

First, I want to talk about the task force process. The commencement of this joint process began with the development of the terms of reference and the elaboration of a work plan. Following the announcement, we were very pleased that the national chief was able to stand with the Prime Minister and former minister in this area, Mr. Prentice, to announce that the parties were going to work on this together.

An important first step agreed to by the parties was to use certain foundational pieces to develop the bill. One of these important pieces to note was the joint task force that was struck, I believe, in 1997. They produced a report and in fact a model bill. So while we were moving through this, there were many in our communities who were suggesting it felt like we'd been here before. There was this notion in the winter of 1997 that we would have a bill in 1998. So it's important for us all to be aware of the developments that have led us to this point.

Two other major pieces were the Specific Claims Resolution Act, which I know you've discussed or had interventions about here, and importantly the December 2006 Senate report called *Negotiation or Confrontation: It's Canada's Choice*, submitted by Senator St. Germain.

Of course the backdrop to this is knowing the history of the development towards this work, which has been noted at committee here: that it predates the Calder decision of 1973. So a tremendous amount of effort and work has been done by our people over the years.

In addition, the reforms, of course, that were set out in *Justice at Last* served as a blueprint for the federal officials. So having noted that we didn't begin with a clean slate, we nevertheless understood and, as the national chief did, embraced an opportunity to work on this together. From there we've developed an outline of the proposed bill and worked jointly based on consensus to put details to the outline.

There were a number of issues that could not be addressed in the legislation or that were beyond the federal mandate that was set out in *Justice at Last*. In order to facilitate consensus on these issues, the national chief and Minister Strahl concluded a companion political agreement, which commits the Assembly of First Nations and Canada to resolve outstanding issues.

This was a really important moment that the national chief would sign on to this agreement, recognizing that we are going to embrace a joint exercise with respect to this legislation but that many other issues, which I'll get to, we could not deal with.

The bill and the companion political agreement reflect the entire consensus reached on this important issue, and they must be read together. The joint task force process, it should be noted, concluded our last meeting just this last Friday.

● (1535)

The existence of a political-level committee, the joint task force, was to oversee the work of a technical-level legislative working group and other working groups. This was very instrumental in facilitating consensus. In other words, not to have any disconnect between the important professional and officials-level work going on, there needed to be a strong link with the political process. So as a member of the joint task force, I want to make it clear that I really endorse the process that we undertook to develop this legislation and political agreement.

Before moving to wrap my presentation up, I really would be remiss if I didn't comment on the process that led to first nations participation in the joint task force process. In my opinion, this is really about relationships between first nations and the government.

In March 2005 the first nations leadership adopted a report entitled “Our Nations, Our Governments: Choosing our Own Paths”. This report was based on a committee that I chaired. The report was co-authored by me and David Nahwegahbow. The report was a culmination of national first nations dialogue about first nations government, treaties implementation, and the resolution of claims, both specific and comprehensive. There is a wealth of information and good ideas contained in the report. Two very important principles captured by the work on the specific claims tribunal consistent with the report are that policy and legislative development by the crown affecting first nations should be done jointly and by consensus, and that certain institutional development, as in the case of the specific claims tribunal, was required to assist the process of reconciliation.

In May 2005, following this, the first nations and the crown entered into a political accord and committed the parties to work together jointly on an agreed upon agenda, which included specific claims. For the Assembly of First Nations, this report from 2005 and political accord provide for us the guide for joint development of the bill with the crown, and this led us to be able to accept the invitation from the Prime Minister and Minister Prentice to engage in this exercise.

The joint task force process that saw the Assembly of First Nations and Canada jointly engage in legislative drafting and policy development is exactly what is envisioned in the political accord on the recognition and implementation of first nation governments, and needs to be replicated in other policy areas. The mandate and the support for the Assembly of First Nations to continue our work based on that effort was refreshed in mandate by resolution by the chiefs this last year.

In other words, from a process standpoint, joint engagement in drafting has worked very well and is a milestone that must be built upon.

In moving forward, on reform of the specific claims process, there are a few remaining issues that are not yet resolved. However, we have a commitment from the federal government to continue discussions to resolve these outstanding issues, all of which are set out in the political agreement. As long as the commitments these two documents embody are lived up to by the government—in particular, the commitments embodied in the political agreement—we feel that the work that was carried out as a part of this joint process stands as a work in progress model for how first nations should be engaged in issues that have the potential to affect us.

I want to make clear my expression of strong support for Bill C-30, the political agreement. As I indicated at the outset, in my view this is really about relationships between first nations and the government, and I suggest strongly again that the process that we've used must apply in other policy and legislative work. Work such as the treaty conference we had very recently in Saskatoon must continue, and work on claims over $150 million that are outside of the cap are going to be very key.

My last comment is that at the joint task force meeting this last Friday I got a sense of a strong expression of political will on the part of the government, and we would encourage our respective principals, the national chief and the minister, to get on with the important work as quickly as possible. It should not wait for the full process to be concluded, because this is about us working together and it's about us bridging gaps of misunderstanding.

Thank you very much, Mr. Chairman.

● (1540)

The Chair: Thank you, Mr. Atleo.

Now I'd like to ask Grand Chief Edward John to take the floor, please.

Grand Chief Edward John (First Nations Summit): Thank you, Mr. Chair.

[*Witness speaks in his native language*]

In my language I wanted to begin by acknowledging our relationship with the Algonquin people on whose ancestral lands we meet today.

Thank you for the privilege to speak to you about Bill C-30. I am an elected member of the executive of the First Nations Summit in B. C., whose primary mandate is the resolution of the land question through negotiations.

I want to cover a number of areas: the process my colleague just referred to, the development of Bill C-30; standards for assessing first nations and crown relations; some of the provisions of Bill C-30; and then I have a couple of recommendations to make.

For us there is no question about the urgent need for a process independent of the parties to resolve the hundreds of grievances by first nations against the crown, which are commonly referred to as "specific claims". In fact, a significant number of these claims arise in British Columbia. For example, there are probably in excess of 500 rights-of-way through Indian reserves, with an estimated value of $100 million. I'm not sure anyone has talked about that.

We were in the negotiating room with representatives of the Assembly of First Nations and Canada when the arrangement to proceed to Bill C-30 was agreed to. We saw this on that date as an important development, and certainly with the bill where it is right now we continue to see that as an important development. We welcome the effort and extend our thanks to AFN and to the AFN and Canada joint task force in collaborating to develop Bill C-30.

Standards for developing first nations and crown relations are historical. Even the modern-day pattern of crown conduct relating to first nations' interests is replete with unilateral, arbitrary, and self-serving policies, laws, and practices for and on behalf of the crown in the various interests it represents, including the public interest.

Minister Strahl's submission to this committee on February 6 was optimistic. He made two comments that are relevant here on this bill. He stated that the bill "carefully balances the interests of first nations and all Canadians". The other point was on the task force that was established to oversee the development of Bill C-30. His overall assessment was that the result will be balanced and fair to everyone.

Given the history of B.C. first nations relations with the crown in negotiations and litigation, our assessment is more guarded. When we have the legal positions and arguments of crown lawyers at the initial establishment in the processes of the tribunal we believe we'll be in a better position to determine the issues of balance and fairness.

We have not seen in our history any instance when the federal crown has ever supported or intervened in support of first nations in any litigation involving aboriginal rights, aboriginal title to lands, territories, and resources, or in disputes with the provincial crown and/or third party interests. This is despite the fact that it has a fiduciary obligation to first nations people.

In fact, in our extensive examination of crown pleadings and legal arguments, the pattern of conduct is always the same: to deny the aboriginal people's existence and force them to prove that they do exist in their aboriginal territories, and to deny the existence of aboriginal rights and aboriginal title, notwithstanding that section 35 of Canada's Constitution recognizes and affirms aboriginal and treaty rights. This pattern must be assessed in light of emerging standards in the courts and internationally.

The courts have set a number of important principles that we think are standards we should judge this against. One is the crown's fiduciary obligation and duties to aboriginal peoples. Second is the honour of the crown not to engage in sharp dealings with aboriginal peoples. Third is the obligation of the crown to conduct negotiations in good faith. Fourth is that where legislation is being developed that concerns or impacts the rights of aboriginal peoples, the courts have made it clear that the consent of the aboriginal people is an important criterion in determining the adequacy of the legal duty of the crown to consult.

● (1545)

Recently, on September 13, the United Nations adopted the Declaration on the Rights of Indigenous Peoples. Article 43 talks about the "minimum standards for the survival, dignity and the well-being of the indigenous peoples of the world", and that is the intent behind the declaration.

I wanted to briefly touch on preambular paragraphs 6 and 8 in the declaration, as well as articles 27, 29, 30, and 40. These are the declarations that address some of these issues.

Preambular paragraph 6 talks about concern that indigenous peoples have suffered from historic injustices, colonization, and dispossession of their lands, territories, resources. And it goes on.

Article 40:

> Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.

Article 38:

> States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

One of those ends includes, in article 27:

> States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and...tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, rights, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 29:

> Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which...have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

And that last sentence is an important one, the notion of "free, prior and informed consent" in matters relating to the use or the taking of lands from indigenous peoples.

Bill C-30 and the joint process through which it was developed goes some distance in meeting the new international standards and those set by the courts.

The first recommendation—and I agree with my colleague, Regional Chief Shawn Atleo—is that this process should be seen as an ongoing new mechanism for engaging first nations people in the development of legislation in the future.

Bill C-30 is an important development. The tribunal will be provided with powers to resolve the many hundreds of specific claims. The bill, however, contains extensive limitations on the crown's liability, risk, and exposure. It contains limitations on the scope of compensation—for example, monetary only, with a cap of $150 million and the ability of the crown to award monetary compensation at its discretion in installments. And fourthly, there are critical limitations on the valuation principles to determine compensation amounts. Is this a barrier to support for the bill? No. I think that this bill will have to be reviewed, once it's approved, in five years to determine the adequacy of the standards that are set within the bill.

There is a big concern around the cap, $150 million. There are communities that will lose the ability to have their claims adjudicated. A good example of that is the Okanagan Band. The recommendation here is that if there is to be some consideration for an amendment to lift the cap, that would be appropriate. If it's not possible to lift the cap, then there needs to be a strong political will and a strong signal from the government that these claims will be dealt with fairly and equitably.

Thank you.

● (1550)

The Chair: Thank you very much.

Thanks for being on time, everyone.

I'm trying to give people kind of a two-minute or a one-minute warning. If I don't catch you before a minute, I'll quickly intervene.

When you started, when you were speaking in your native language, I thought I caught a “Go, Canucks, Go!” in there somewhere, but I wasn't sure.

Grand Chief Edward John: Yes, you're absolutely right. They won last night, 6-2, so we're rooting for them tomorrow.

The Chair: All right. Thank you.

Mr. Penikett.

Mr. Tony Penikett (As an Individual): Thank you, Mr. Chair.

I speak as a private citizen with a long interest in treaty issues.

I want to compliment the government on demonstrating the political will to proceed with this initiative, Bill C-30. I also want to compliment Minister Prentice and Minister Strahl on the joint drafting initiative with the Assembly of First Nations.

However, I wish that Parliament would take more seriously the joint nomination option and the larger issue of truly independent tribunals for implementation problems around treaties generally, not just specific claims issues. For example, Canada has negotiated in northern Canada over the last three decades treaties that constitute great nation-building achievements for this country, but, sad to say, every one of those agreements has generated implementation issues. Even INAC deputy minister Michael Wernick conceded that implementation remains a problem when he told the Senate Standing Committee on Aboriginal Peoples on February 12, “As a department, there is only so much that we can unilaterally accomplish in the fulfillment of the terms of implementation without the full participation of our colleagues right across the government.”

In 1999 Miguel Alfonso Martinez, United Nations special rapporteur on treaties, found that the great disappointment of treaty-making since colonial times has been the colonial governments' consistent failure to faithfully implement what had been agreed to in negotiations with first nations. “States with significant indigenous populations should establish a special jurisdiction to deal exclusively with indigenous issues”—Martinez said that in proposing that indigenous and non-indigenous equality was essential for truly independent adjudicative bodies. This is not a totally new idea. In the 1704 case of Mohegan Indians v. Connecticut in appeals to the Privy Council from the American plantations, England's Attorney General supported the creation of a permanent third party court to hear treaty implementation matters.

As the royal proclamation was forgotten for a long time in this country and ignored for a hundred years in B.C., that principle has been forgotten. But in 1975 New Zealand established the Treaty of Waitangi tribunal to hear issues arising from the 1840s treaty between Britain and the Maori. This body has an equal number of Maori and non-Maori commissioners, and may hold bilingual hearings.

It is important to remember throughout these discussions that treaties are covenants between two parties. In Canada, disputes between treaty signatories are adjudicated ultimately by courts appointed by only one of the parties. Parliamentarians, especially in 2008, might find reason to ask if this is fair.

As a mediator, I might argue that mediators and arbitrators could be more effective and efficient than any highly structured tribunal. But as we all know from Nunavut implementation issues, the federal finance department, for example, refuses to participate in arbitration processes, even those provided for in a constitutionally protected treaty. So in this case, arbitrators may not be an option.

However, I would submit that there are certainly enough first nation lawyers in Canada to fill all the seats on a bipartite body structured like a labour relations board, or for example a tripartite body like the B.C. Treaty Commission. So there is no good reason why a Canada and first nations joint appointment process, or at the very least a joint nomination process, could not work. Yes, I would concede that would create a precedent, but to my mind, as someone who has a long interest in these questions, it would not be a bad one.

Thank you.

● (1555)

The Chair: Thank you very much for your presentation and brevity.

Now, from the Atlantic Policy Congress of First Nation Chiefs Secretariat, Chief Lawrence Paul, please...or whoever.

Chief Noah Augustine (Metepenagiag First Nation, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): I'll go first.

Thank you for having me here today. My name is Noah Augustine, Chief of Metepenagiag Mi'kmaq First Nation in Miramichi, New Brunswick. I'm also the co-chair for the Atlantic Policy Congress of First Nation Chiefs Secretariat along with my colleague here, Chief Lawrence Paul. We're going to break up our time, and I'll take the first part. Just give me a little notice when it's my time.

The Atlantic Policy Congress of First Nation Chiefs has been in existence since 1992 and represents 37 Mi'kmaq, Maliseet, Innu, and Passamaquoddy first nation communities in the Atlantic and Quebec regions. It has a mandate to research, analyze, and develop alternatives to federal policies affecting its member communities.

With respect to our position, our chiefs generally support Bill C-30 in its current form. As you are aware, there has been very limited progress to date in resolving specific claims, and fundamental reform and action are long overdue.

One of the primary objections we have had is Canada's continued involvement in the claims process, which we view as an inherent conflict of interest because Canada alone decides on the validity of claims made against itself. Our chiefs strongly support the creation of a fair and independent tribunal that is empowered to review ministerial decisions and make binding decisions regarding long-standing claims between first nations and the Government of Canada in a timely and cost-effective manner.

Although we feel there are many positive aspects to Bill C-30, there are some outstanding issues we feel must be addressed. We have six primary concerns. I'll outline three of them, and my colleague will address the last three.

The first concern is with regard to commitments made in the political agreement between the AFN and the Government of Canada. It is our understanding that Bill C-30 and the political agreement will work in tandem. Issues that fall outside the scope of the new legislation will be dealt with in the political agreement. We stress the need for adequate and meaningful follow-up by the Government of Canada on the commitments expressed to the AFN in the political agreement—i.e., a clear, workable, timely, and funded process. This includes all issues identified in the political agreements. They are specifically, first, establishing an appropriate and equally fair process for dealing with claims over the $150 million cap; second, creation of an oversight committee; and third, a commitment to joint reform of the federal additions to reserve policy.

We are pleased to hear that the definition of “specific claims” will include reserve creation claims as well, as confirmed in a letter from the Minister of Indian Affairs to the AFN B.C. regional chief dated November 26, 2007.

The second concern is on the appointment of judges to the tribunal. Clause 6 of the bill requires that the tribunal be made up of Superior Court judges who will be chosen from a roster maintained by the federal cabinet. In our view, it is crucial that some members of the tribunal be of first nation descent in order to better reflect the traditional legal systems, cultures, languages, and general and practical knowledge of issues facing first nations in Canada. The requirement in the bill that the members must be Superior Court judges may preclude participation by first nation judges due to the potentially very limited number, if any, on the roster in Canada.

The federal cabinet should have the authority to also consider another pool of first nation people as candidates who have either judicial—i.e., provincial—or adjudicative experience. It is hoped the roster will grow in the future to eventually include first nation Superior Court judges. However, it is our understanding that there are very few, if any, now in Canada.

Related to this, we are pleased to see the political agreement reflect a commitment by the Government of Canada that first nations will have input via the AFN with respect to the selection of individuals recommended to serve on the tribunal.

Our third concern is related to the unfair cap on monetary compensation. The monetary cap on compensation that the tribunal can award for damages should be increased or removed altogether. There could be many claims that are altogether excluded from this process due to the unfair monetary cap. This could lead to lengthy and costly litigation. We understand the vast majority of claims fall below the cap; however, it is unfair and unjustifiable that some first nations will be exempt from and not benefit from this expedited and independent process simply because of the amount claimed for compensation.

● (1600)

Before I pass it on to my colleague here, Chief Paul, I just wanted to add that as chief of Metepenagiag, I've also served as the chief negotiator with respect to our land claims, and recently we resolved two claims we had bundled into one. In that claim we had surrendered 160 acres of land, but in return we had a clause in there that provided us with the option to purchase 300 acres of land.

I just want to stress to this committee the significance of opportunity that is here, if we can speed up this process with the claims, with respect to economic development in first nations communities. In New Brunswick, in conjunction with negotiating a provincial sales tax agreement whereby 95% of all those provincial sales tax dollars come back to the first nation community on any economic activity on first nation lands—and that's why the addition to reserve policy is so important—accessing new lands under our land claims process has served as a crucial economic tool for us. I just wanted to stress to the committee here the significance that we have in terms of the economic development of first nations communities.

Thank you.

The Chair: Thank you.

Chief Paul, your colleague stole a couple of your minutes, but Mr. Penikett has a couple to offer you, so you have five minutes.

● (1605)

Chief Lawrence Paul (Millbrook First Nation, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): Okay, thank you, Chair.

There's a lack of alternatives to monetary compensation. The Mi'kmaq, Maliseet, Innu, and Passamaquoddy people have had very strong traditional, social, economic, and cultural connections to their traditional territories. Our connection to our lands defines who we are as indigenous peoples. The bill does not grant the tribunal the option of awarding lands as part of the compensation package to a first nation. We believe this is critical, and we support the inclusion of alternative remedies as outlined in the political agreement. First nations should have the option of acquiring back the traditional land they claim or obtaining new land.

On the operation of the tribunal process, we have some concerns regarding the lack of details in the bill about the tribunal process itself. While it is assumed that most of these details will be worked out through regulations, and we recognize the need for the tribunal to have some flexibility and authority to deal with certain matters, we ask whether there's enough guidance in the bill to ensure that the tribunal does not adopt the same adversarial approach, which we are only too familiar with.

Related to this, first nations have in the past expressed concerns about inadequate research capabilities and insufficient funding to participate in the process. At a minimum, sufficient and independent funding must be committed by the Government of Canada to support first nations research and negotiation efforts as well as any other costs related to participating in the tribunal process.

There's a lack of ability to compel the provinces to participate. The tribunal does not have the ability to compel a province to participate in this process. A province must agree to become a party to this process before it is subject to the tribunal's jurisdiction.

We are concerned that a first nation would have to sue a province in order to obtain settlement of an outstanding claim. This is contrary to the spirit of the legislation, which is to address all specific claims under $150 million in a fair, independent, expedited manner. The Government of Canada must identify options to compel provincial involvement in the tribunal process, where it is warranted, as an alternative to the courts in resolving many of these long-standing claims.

In closing, as I mentioned at the outset, it's our position that we generally support Bill C-30 in its current form. However, our expression of support for this bill is subject only to the Government of Canada fully addressing all the outstanding issues committed to in the political agreement.

The Minister of Indian Affairs, when he introduced the bill to this committee, stated that the bill and the accompanying political agreement are the result of a collaborative approach between the Government of Canada and the Assembly of First Nations. We recognize that a political commitment to try to address change does not necessarily translate into actual change. However, we aim to hold the minister and the Government of Canada accountable to these commitments through our continued work and support of the Assembly of First Nations.

We wish to thank the committee for giving us this opportunity to express our views regarding Bill C-30, and we strongly urge you to seriously consider the issues we have raised regarding this bill.

Welálin. Thank you.

The Chair: Thank you, sir.

Thanks to all the witnesses.

Committee members, we will have time for a single seven-minute round this afternoon. So if any of you want to split the time with your friends, just be mindful of that. I will give a one-minute warning when we get to six minutes. I will be strict on the seven minutes today, and I ask your cooperation.

To begin, from the Liberal Party, Ms. Anita Neville, please.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thanks very much, Mr. Chair. I will be spliting my time, I hope, with my colleague to my left here.

Let me thank you all for coming here today and for the substance and quality of your presentations.

Among you, you've all raised the various issues we've been looking at in this bill. I understand the will of everyone to proceed with this legislation. We, on our part, understand the importance of moving forward with it. Having said that, you've talked about the cap, the tribunal, provincial involvement, and the political accord. The cap is something we have heard much about. I'd like your comments on a number of things, but I'm time-limited. I'd like your comments on the cap and whether the process used—that is, the tribunal for settlements under $150 million—would or could apply to settlements over $150 million, with the understanding that it would go to cabinet.

Then my other question is this. What do you expect in the long term from the political accord? What are your hopes for it? Do you believe that the outstanding issues you've identified or are hanging loose will be addressed through the political accord?

Chief John, perhaps you'll start. My colleague says to choose one person, and I'm looking at you.

● (1610)

Grand Chief Edward John: Thank you.

On your specific question about the cap, whether or not the tribunal can make decisions and then take this matter to cabinet, I hadn't actually thought about that. I think it's an interesting scenario.

As it stands, we all know that if you're seeking compensation at a value of less than $150 million, you have access to the tribunal. For anything else, you have no access. From the evidence we heard—or I heard—from the minister, there are six to twenty claims that fall within the category of claims over $150 million. We have a very important one that I mentioned at the closing of my presentation, from the Okanagan Band. We also have the pre-Confederation Douglas claims up in the Sto:lo territory at the mouth of the Fraser River. Those are really important claims. What happens to those particular claims? And what happens if the government decides that those claims are not acceptable for negotiations?

They did accept the Okanagan claim for negotiations and walked away from those negotiations, leaving the community unsure what it should do. That leaves the courts as the only option.

My hope is that the political accord becomes a living and breathing document during the initial five-year term of this tribunal. It should be perhaps revisited and renegotiated at the conclusion of the five years, when the bill has been reviewed as well.

Hon. Anita Neville: Thank you.

Does anyone else want to comment?

Mr. Tony Penikett: If I may, I'd just like to comment on a matter of general policy. A former Deputy Minister of Indian Affairs, going back to the years of the Mulroney government, Mr. Harry Swain, has commented that one of the absurdities we have in public policy is that we have capped the costs of settlements by way of cabinet mandates or legislation like this, but we're quite willing to make unlimited expenditures on negotiations. It seems to me that in the long run that is not a sustainable policy. I would agree with Mr. Swain.

Hon. Anita Neville: Thank you.

Mr. Shawn Atleo: Mr. Chair, if I may, just very quickly, I want to comment on the question about the longer term.

One thing I would note is that this effort concluded in about five or six months. We understand that legislative efforts often take a longer time period, usually in the range of 15 or 18 months. We've got more than 600 first nations communities across this country, and the effort to reform this area has been under way, as we all know by now, since the late 1960s. I think what's important here is what I said at the outset, and it goes to your question about the long-term effort and the important challenges a committee like yours has to find a way to work together in resolving and reconciling issues that have been outstanding. This one in particular came into sharp focus around the year I was born. We can do much better, and that's the point here.

So I really appreciate that question. It's really critical that what has been laid out in this accord—that there be active and aggressive, assertive, and constructive engagement—be on an ongoing, regular basis. This should be, as Grand Chief John suggests, just the beginning. So I wanted to support that comment.

The Chair: Mr. Russell, you have about a minute and a half.

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

I do appreciate your comments about the relationship you have with the federal government. When we were on the seas my father said always be very cognizant when you're following something like a bright light in foggy weather; you can get into more trouble than you can shake a stick at.

I remind you of the Declaration on the Rights of Indigenous People, which was rejected; the forcing through of the repeal of section 67; the cancellation of the Kelowna accord; maybe two national days of action that are going to be in three years; and now we have matrimonial real property, which is coming to the House without any type of process that's been outlined with regard to this particular legislation.

Our committee can make amendments to this particular piece of legislation. If you have one amendment that we could make, what would it be?

● (1615)

The Chair: You have 30 seconds in total.

Grand Chief Edward John: The one amendment would be the removal of the cap.

Mr. Tony Penikett: I think a modest amendment would be to go to a joint nomination process for the tribunal.

The Chair: Thank you.

Next we have Monsieur Lemay, from the Bloc.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I will take your word for it, Mr. Penikett. I have a bit of a problem with your proposal. I'd like to hear Mr. Atleo's views on this subject later.

Grand Chief Augustine and Mr. Paul said the same thing. Frankly, I can't see how we can have a joint commission to appoint judges. Either we go with Superior Court judges with all of the powers conferred about such justices, pursuant to the Judges Act, or tomorrow morning, certain members of the bar will want to take part in the appointment process, or omens' groups will want to be involved in the appointment of matrimonial court judges. That's the potential problem I see. You are not the first to testify before the committee.

I'd like to hear your views on this matter, Mr. Atleo. I have read Bill C-30. Pursuant to this bill, we would be moving from a conciliatory process to a somewhat more adversarial process. In essence, when ones goes before the Superior Court, one is involved in an adversarial process.

I am happy to be able to get Mr. Atleo's opinion. Why did you decide to recommend to first nations that they agree to a adversarial process before Superior Court judges? In particular, are all first nations in agreement on a process that automatically excludes joint appointment commissions?

[*English*]

Mr. Roger Jones (Legal Counsel, Assembly of First Nations): Thank you, Monsieur Lemay.

I have been requested by Regional Chief Atleo to respond to this, given that it's a highly technical issue that you raise.

First of all, the issue about the joint appointment is something that in fact was fully discussed in the task force. The task force members representing the Assembly of First Nations encouraged the joint appointment process, because it's something that had been reflected in the efforts of the previous joint task force and also in the development of the Specific Claims Resolution Act.

There is a distinction in recognizing that perhaps first nations ought to have a role in the appointment of judges and adjudicators, because the law coming from the Supreme Court of Canada says that for reconciliation to be achieved between the crown and the rights of first nations people, the perspectives of first nations peoples and their laws and their traditions have to be a part of the solution. And who better than first nations people can apply that in the instance of resolving disputes between the crown and first nations people? So there is a distinction with respect to other groups that might be claiming the same ability with respect to joint appointments.

The other issue that has come up in the course of this examination is with respect to the use of judges in this process. One of the things we understand—not that we're advocating the government's position here, but we fully understand it—is that years ago the Canadian Human Rights Tribunal ordered Ottawa to pay $5 billion in back pay with respect to pay equity. That sent a chill through this town with respect to whether or not the government was willing to acquiesce to the jurisdiction of a tribunal to resolve disputes that potentially had significant financial implications. Five billion dollars is a lot of money, and of course the government at the time—and subsequent to that, probably—is not willing to risk giving a blank cheque to a tribunal to make that kind of monetary award. That's what we understand to be the reason for putting a cap on tribunal awards.

Secondly, they don't trust tribunal members who don't necessarily have legal training to resolve these kinds of disputes; hence the requirement for appointing sitting members of the judiciary to these positions, presumably to act more responsibly.

● (1620)

The Chair: Thank you.

You have just a little over a minute, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: What we are hearing is very important. I would simply like to add one thing. From the moment the Superior Court is involved—and I served on that court for 30 years—a process is called into question.

I drew Minister Nicholson's attention to a problem when he appeared before the Standing Committee on Justice and Human Rights. I served on that committee when it was examining Bill C-31 respecting the appointment of judges. At this point in time, superior court judges are not ready to hear cases pursuant to Bill C-30. This is where first nations will have an important role to play. If we adopt the bill as it is currently worded, judges will most certainly be sitting superior court justices with the experience of non-native people. That is a debate that first nations will have to have. That is the choice they made.

As for the $150 million figure, I agree with you that the reference to this amount should be deleted completely. Superior court judges are empowered to hand down rulings involving substantially more than $150 million.

[*English*]

The Chair: Thank you, Monsieur Lemay.

Ms. Crowder, from the NDP.

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

Thank you all for coming before the committee.

I have three questions, and I'm going to ask all three of them and let you fill in the time. I'll try to be fairly quick about them.

The first has to do with the appointment process. I want to come back to this, because it seems that the political agreement specifies that the chief will be engaged in a process for recommending members. So it actually relates not to the appointments but to recommendations. I would like you to comment on that. One of the suggestions that has come to us from other panellists is that perhaps elder advisers might be a good solution to balancing off some of the judge's non-aboriginal experience. I'm wondering if you could comment.

Secondly, in the transitional provisions under sections 42 and 43, my understanding is that some of the claims currently before the system are very long-standing. I pulled one sheet and some go back to 1991, 1998, 1987. In this transitional procedure, if people voluntarily choose to participate, will it in effect see the clock reset to zero for them once the bill comes into effect? I wonder if you could comment. It seems this would severely disadvantage a number of people who've had claims in the system for years and years. This is a technical issue that will probably have to go to Roger.

The third question I have relates to mediation. When the minister came before the committee, he talked about an evolving mediation role for the ICC. But it's unclear whether there would be more credence given to this mediation process than is currently given by various governments.

I'll turn it over to you.

● (1625)

The Chair: Would you like to start?

Mr. Roger Jones: First of all, with respect to the mediation process, there is obviously more work to be done with respect to what a new Indian Claims Commission will look like, given that the one in operation now is essentially coming to a conclusion at the end of the year.

The other important issue, and this relates partly to the question by member Lemay, is that parties need to work together to develop rules of procedure for the tribunal. They need to make it less adversarial and to ensure that there's a case management component in the tribunal. This could take advantage of a new Indian Claims Commission, allowing parties to try to resolve their differences even before a determination is made by the tribunal. The political agreement commits the parties to work together on the development of the rules of procedure for the tribunal, so as to make it much more user-friendly and less adversarial.

With respect to the clock, there was discussion about how many of the claims have been in the process for a long time. Apparently, some have actually proceeded to the Indian Claims Commission and are awaiting some kind of report. It would be unfair to put everyone back to square one, where they'd have to line up for access to the tribunal. There is an understanding that the work on the political agreement needs to recognize that some claimants have been processed previously. Reports may have been issued, or some may be awaiting reports. There has to be a way to facilitate access to the tribunal for parties who have already been waiting for a long time. There should be a system of priorities governing the order of proceedings before the tribunal.

I believe Regional Chief Atleo has comments.

Mr. Shawn Atleo: I appreciate your raising the notion of the elders. One way to describe our elders is that they're our authority, our moral authority. What this effort, albeit, with its imperfections, given that people, after all, were involved, is really alluding to is the potential—and this is why I keep reiterating this issue of relationships and why the involvement of elders would be particularly compelling—to facilitate further bridging of the misunderstanding gap that has led business like this to go unconcluded for so long. It's the reason why an effort must be commended, when a current generation is prepared to step forward and suggest that we need to find the best possible manner to resolve decades-old issues that none of us around this table created. That has to be recognized.

That's why I keep reiterating that, notwithstanding your important comments, Mr. Lemay, around the conflict that we see in the way some of these mechanisms work, this is exactly the point we need to work to overcome. This is only alluding to the potential for that to be the case.

In particular, I want to acknowledge and appreciate that the elders carry the knowledge of the historic treaties, inform us, instruct us, guide us, and to have a role is something that would be very compelling, I think, among our people.

The Chair: I see that Grand Chief John and Mr. Penikett want to give a brief comment.

Grand Chief Edward John: Thank you.

I have a couple of points on the appointment process. I would hope that the tribunal doesn't become a mini-superior court. It shouldn't be as adversarial as.... It has an option; there's a process. I think the crown and first nations as well need to ensure that the process is fair and that the issues are dealt with in an equitable way.

The bill provides in clause 12 for the development of specific "rules governing...practice and procedures". The recommendation I had at the end of my presentation, which unfortunately I didn't get to during the initial comments but which I would like to recommend, is that first nation claimant groups should be involved in the process to establish a tribunal's practice and procedural rules. I think this is a place where your recommendation or suggestion to bring in advisers to the process would be extremely helpful overall.

Mr. Lemay talked about a completely adversarial process. That's part of the reason that I referred to the Declaration on the Rights of Indigenous People, particularly article 27, talking about the establishment of "a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and...tenure systems".

I would expect that the practice and procedures of the tribunal should incorporate that and consider how to incorporate these ideas into its practices, into the procedures that it establishes.

Thank you.

● (1630)

The Chair: Mr. Penikett, briefly.

Mr. Tony Penikett: Very briefly, Mr. Chair, I would say the great advantage of mediation tools, which are not widely used in the treaty process or any aboriginal government negotiations, is that you can involve self-design in the processes, so some of the advantages that have been talked about by the chiefs here can be incorporated.

One of the problems with the dispute resolution chapters in most of the treaties negotiated in the last 30 years is that they don't work. They don't work, I submit, because the dispute resolution processes were not tested during negotiations. That's a problem.

By happy chance, the British Columbia Treaty Commission process, though, has two government appointees, two first nation appointees, and a chair, who can come from any one of those parties. It is designed to wind up when it finishes the negotiating process in B.C. Maybe that's a hundred years from now—we don't know—but in the interim it is actually fairly well-designed. If Parliament and others, the three parties, wanted to give it an adjudicative process in the implementation of treaties around there, I don't think you would necessarily need judges.

But I would say this to Monsieur Lemay: it is correct, of course, that it lacks judicial independence now, which of course is the advantage of the court system.

The Chair: Thank you very much.

The last questioner today is Mr. Bruinooge, from the Conservative Party.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair. I may be splitting some of my time with Mr. Albrecht.

I would like to thank all of the witnesses today for some great testimony. We've had excellent witnesses throughout this process, and I'd like to commend you all today.

The last week has been an exciting time for us as a government. As I look at the political accord that we actually did sign with the AFN, one part of that accord has actually been fulfilled in terms of the treaty conference that occurred last week in Saskatoon. This was something that was promised in the accord and delivered last week. I took part in that conference, and it was an exciting opportunity to hear many of the suggestions and issues from many of the treaty chiefs across our country.

The question I'd like to start with, though, is in part in relation to some of the misinformation that is perhaps being put into the record by some of my colleagues opposite. There is, I think, a lot of sentiment that suggests that a cap is somehow a bad thing. The argument I've been making all along is that by having a cap of $150 million, it allows for not only the tribunal to focus on the great number of smaller claims that exist, but also allows for the federal government to be able to put its focus on the very large claims. And not only that, but by removing the cap, one could argue that the large claims might eat up the entire $250 million that has been allotted to this tribunal, and none of the smaller claims would in fact get resolved, and, again, we would be in the same situation we are right now with nearly 1,000 claims.

Mr. Atleo, would you concur that this type of logic works well within this concept of having a cap, of course, provided that there is the political will to resolve the larger outstanding claims?

● (1635)

Mr. Shawn Atleo: Thank you.

I think my colleague Roger made reference to our role within the joint task force. What we understood the government to arrive at with the mandate and under the leadership of the national chief is we agreed to engage with that understanding, that the cap was part of the government mandate, that we were going to work on a bill that was with first nations that were within the cap, and that it all the more, then, became important that we arrived at a political accord.

In other words, the notion here is that we're talking about a significant backlog, which I think we all understand and which I think Canadians need to understand, of close to 1,000 claims outstanding across this country.

So it shouldn't just be about dealing with the backlog. It should be about this notion of not leaving anyone behind. That's why it's important to hear the interventions of communities that do want to raise issues, that do want to suggest the issue of the cap. While as a task force co-chair I'm comfortable and, as I've already expressed, support where we've arrived at, it's all the more important that a committee like this really works together on addressing what I feel so strongly is our country's number one social justice issue.

This gets us moving forward. It requires in the political accord a commitment to making sure that those who are not within the cap are not forgotten. We have to remain committed to that. I mentioned earlier in my comments, when I concluded them, that it felt to me there was a strong expression of political will. I would hope that our respective principals would strike up the necessary working group and get on with the important job of making sure that indeed no one gets left behind.

Hopefully that responds to your question.

Mr. Rod Bruinooge: I appreciate that, Mr. Atleo.

Do you feel that the collaboration you received from our government was adequate in this process?

Mr. Shawn Atleo: I think this was really, in many ways, unprecedented. A new mark is being set. We've learned a lot. I would welcome the opportunity to have the kinds of conversations that would allow us to be instructed about how to improve efforts. I said earlier, we did in five or six months with over 600 communities.... For us in British Columbia, as one example, the day that this bill became public and was tabled was the very day that the B.C. chiefs were meeting. So you can appreciate that from that time period to here is a very short period of time.

I think that we need to develop a shared notion going forward of what a full and appropriate constructive engagement looks like. I think if we have results here, then we should build on that. An example is the differences that there might be between first nations and government about what constitutes consultation. I don't think it is helpful to us to have an environment within which there are differing opinions about what that means. Now, many first nations will also say we've been working on this thing for decades, and it is absolutely critical that we deal with the backlog.

Again, I hope that responds to the question you're suggesting. I'll repeat, we need to improve on, strengthen, and grow out or build on this process.

Mr. Rod Bruinooge: You agree it was a good constructive process that you've entered into with the government on this.

Going further than that, after we consulted with the AFN to deliver this landmark legislation, we of course entered into the political accord in which we've already been able to achieve some results in relation to the treaty conference, as I mentioned in my last statement. Also, in that political accord we reference how the appointment of the judges will be done in consultation with the national chief.

Mr. Atleo, do you believe that approach will work for your organization?

Mr. Shawn Atleo: Again, this comes back to earlier interventions. At the joint task force on the appointment process, the responsibilities of the minister, the inability of a federal ministerial authority in these areas, and the mandate upon which the government was coming to us was made clear to us.

As I said in my earlier statements, this is what I would suggest is the best consensus to arrive at, in that we have the national chief able to have a say and other concepts being brought forward, like the involvement of elders. Clearly, this is stemming from the need for us to be full partners.

We need to continue working on the relationship side of this, where we are coming from based on existing title and treaty rights in this country. As other members have suggested, we could be applying these kinds of concepts to other initiatives and improving based on this collaborative and constructive engagement exercise.

● (1640)

The Chair: Thank you very much, Mr. Atleo and Mr. Bruinooge.

That concludes this first panel.

Before I suspend for a minute to change witnesses, I would like to thank the witnesses for being here. I'm not going to be able to come down to thank you personally because I need to get things rolling again here in a couple of minutes, but I thank you very much.

I'll suspend for two minutes for the new witnesses.

● _____ (Pause) _____ ●

● (1645)

The Chair: If I could have my colleagues and the witnesses take their seats, please, I'd like to get going on the second panel. I appreciate that we're trying to do this very quickly today.

I would like to proceed with the next panel today dealing with Bill C-30. I'm aware these hearings are being televised. I'm never sure how much background to give our home audience. Surely there's something else on television this afternoon.

In our second panel this afternoon we again have four delegations. From the Assembly of First Nations from Alberta, we have Chief Wilton Littlechild and Chief Charles Weaselhead. As the second group, we have Rick Simon appearing as a regional chief from Nova Scotia and Newfoundland and Labrador. The third presentation is from the Algonquin Nation Secretariat, Grand Chief Norman Young, Chief Harry St. Denis, and Peter Di Gangi. Finally, but not least, from the Southern Chiefs in Manitoba, Grand Chief Morris Swan Shannacappo, and Carl Braun.

I think many of you were here when we started an hour ago. I'm going to ask each of the delegations to make a presentation of ten minutes or less. I will try to catch your eye with a two-minute warning. If I don't, I'll verbally give you a one-minute warning, but I will stop it at ten minutes. Then we will move on for a round of questioning.

I would like to begin with the Assembly of First Nations from Alberta, with Chief Wilton Littlechild.

Chief Wilton Littlechild (Regional Chief, Alberta, Assembly of First Nations): Thank you very much, Mr. Chairman, for the invitation to join you in your study of proposed Bill C-30. It's certainly an honour for me to have this opportunity to participate and offer some brief comments from the perspective of a joint task force member.

At the outset, I want to thank National Chief Fontaine for his confidence in allowing me to serve with Regional Chief Atleo and Regional Chief Joseph on this very important legislative initiative. While tribute belongs to all task force and working group members and staff, for the record I want to acknowledge the outstanding work of our co-chairs, Mr. Bruce Carson and Chief Atleo. After 60 years of effort by many people, we now have in front of us Bill C-30. I think it's a tribute to their effective chairmanship.

Over several meetings you have heard excellent witnesses with views on the best way forward and the next step in our collective desire for justice at last. Please allow me to add my voice to the calls for an improved system for the resolution of claims. I also had the honour to serve on a previous committee as a member of the 34th Parliament for five years. My comments will be based on that experience as well.

My first remark is a personal observation on the parliamentary process. While serving on several committees, it was always my belief that indigenous issues and matters affecting first nations directly ought to be and could be dealt with in a non-partisan manner. Realizing the traditional procedures in both chambers, this is probably just a dream. Nevertheless, the approach of a joint task force with participation from the Prime Minister's Office, the Department of Indian Affairs, the Department of Justice, and the Assembly of First Nations in drafting legislation presented a new model for an effective way forward.

This partnership with representatives from the crown renewed my belief, because of the successful collaboration with members, that it is a model worth considering for future legislative initiatives. Together with other creative working models, like ex-officio members on your committee, the likelihood of success for adoption of legislation that will be accepted by first nations is greatly increased.

Secondly, on the method of work, while the suggestions above can still be improved based on our recent experience, allow me to recommend possible areas of improvement. The legislative drafting could begin earlier, with consideration of principles or even local community-drafted legislative proposals as a basis for discussion. Direct and meaningful participation by first nations representatives at the outset could lead to win-win outcomes.

While I respect that not everyone may agree with this method of work, it is worth some study. Some may argue that parliamentary rules of procedure and legislative drafting do not allow this. I would argue that it may be time to change the rules. It is my view that some of the criticism about lack of consultation was due to the short timelines and the need for confidentiality in the legislative drafting.

Third, it is still my firm belief that the United Nations declaration is a partnership framework that is a solution. As a declaration of good will, it offers us a basis for building better relations. Indeed, in the implementation of Bill C-30 we should be guided by the UN declaration's terms of reference—for example, articles 19, 28, and 32.

In the interest of time I'll only quote article 19:

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them

● (1650)

As you know, on March 7 the United Nations Committee on the Elimination of Racial Discrimination called on the United States to apply the UN Declaration on the Rights of Indigenous Peoples. I quote from their report:

> ...the Committee finally recommends that the declaration be used to interpret the State party's obligations under the Convention relating to indigenous peoples.

As a previous witness, Chief Ed John, referenced in other articles, it underscores the value of the UN declaration in going forward.

Fourthly, the method of work that produced Bill C-30 is a very important first step in our journey that gives the United Nations second international decade theme, the theme being partnerships for action and dignity. The method of work, in my view, gives that theme real meaning.

Our elders advised years ago.... [*Witness speaks in his native language*]

If someone is going to make law that will affect your life directly, it's better for you to be there to speak for yourself. In that connection, I was very honoured to serve on the joint task force and to see the words of our leaders being put into action.

Mr. Chairman, we should not fear success—success like the recent treaty conference in Saskatoon member Bruinooge just referred to. It was a good first implementation of the political accord signed by Minister Strahl and National Chief Fontaine. For all the good reasons that previous witnesses have stated, I support the work of a joint task force as our best effort, given the mandates we had in jointly drafting Bill C-30. We can build on the strengths as we go forward.

In closing, I join the voices who have called on the adoption of legislation to establish an independent tribunal that ensures impartiality and fairness, greater transparency, and faster resolution of claims in a way that restores confidence and once again builds better relations among our peoples. We can indeed move forward together in a spirit of partnership and put our joint energies into building a better future.

Thank you very much, Mr. Chairman.

● (1655)

The Chair: Thank you, Chief.

We've used about eight minutes.

Chief Weaselhead also wanted to make a comment.

Chief Charles Weaselhead (Blood Tribe, Assembly of First Nations): Thank you very much.

I want to begin by acknowledging the standing committee for giving me the opportunity to speak on our behalf from Alberta, and more specifically from the Blood Tribe, or Kainai.

My name is Chief Charles Weaselhead. I'm the chief for the Blood Tribe. I'm also the grand chief for Treaty No. 7 in our southern Alberta territory.

The submission on Bill C-30 by the Blood Tribe, or Kainai, to the standing committee on aboriginal peoples was given to Bonnie Charron on March 7, 2008. Due to time constraints, the Blood Tribe will not go through the entire submission. Instead, we'll share with the standing committee an executive summary that highlights important aspects of the original submission. The executive summary touches briefly on the historical and cultural context of the Blood Tribe and the contemporary Blood Tribe. It also identifies the relationship with Canada, identifies the concerns with Bill C-30, and provides seven recommendations to the standing committee.

The tribal principles that govern the Blood Tribe's actions are articulated in the elders declaration that we refer to as *Kainayssini*. The declaration is a recording of what the elders understand to be the purpose of our existence at Kainai. *Kainayssini* sets out the tribal system and guiding principles for the protection and preservation of that system, and lays out a practical guide as to what must be done presently and in the future to ensure our survival. We must maintain the foundations of our existence, including our land, our language, our culture, and our political, economic, and social rights.

The Blood Tribe, or Kainai, is located in southern Alberta on the Blood reserve, the largest Indian reserve in Canada. With just under 520 square miles, it has a population of over 10,000 members.

The Blood Tribe's historical relationship with Canada is rooted in Treaty No. 7, which was entered into between the parties, on a nation-to-nation basis, on September 22, 1877. The treaty is a solemn and binding agreement that exists in perpetuity. By Treaty No. 7 we agreed to share our lands with the British crown, except for specifically reserved areas that are kept for our exclusive use. Therefore, we retain the same legal and political status we had when we entered into Treaty No. 7. Specifically, we retain the right to be self-governed, and our leadership continues to be the governing body of our Blood people.

From this honour duty flows the duty to consult whenever any legislation has the potential to affect our aboriginal and treaty rights, such rights being constitutionally entrenched in subsection 35(1) of the Constitution Act of 1982. The duty to consult may in turn require accommodation on the part of Canada and our consent. Treaty No. 7 created certain obligations on the part of Canada. In particular, Canada is required to act with honour in all of its dealing with the Blood Tribe.

In regard to Bill C-30, the Specific Claims Tribunal Act, the purpose of this act is to establish the specific claims tribunal, the mandate of which is to decide issues of validity and compensation relating to specific claims of first nations. The Blood Tribe has a number of concerns with regard to Bill C-30, and we set them out here. It is pointed out that this submission does not constitute consultation but sets out our concerns with the proposed legislation.

First, with regard to treaty rights and the duty to consult, the Blood Tribe, one of the largest stakeholders, was not consulted in the discussions leading up to and during the drafting of the proposed legislation. The duty to consult is the duty to consult with the holders of that right—that is, first nation governments that represent their members and communities, not national or regional first nation organizations. Specifically, the Blood Tribe represents itself. It is not represented by any other body, and expects to be consulted with.

Item two is non-derogation. Bill C-30 does not—

● (1700)

The Chair: Excuse me, sir, but we're at a little over 14 minutes now. All of the members have your brief. If you could quickly touch on the points and wrap up, I would appreciate that.

Chief Charles Weaselhead: With regard to non-derogation, tribunal membership, and appointments, although the protocol agreement between the minister and the national chief in relation to specific claims reform provides that the national chief of the AFN will be engaged in the process for recommending members to the tribunal, we question why this is not provided for in the proposed legislation.

I will skip functions, power, and duties of the tribunal.

On specific claims, the bill does not address any of the inherent problems in the current specific claims process.

I'll go to item 7, which is very important to us, which is claim limit and the process for larger claims. The tribunal shall not award total compensation in excess of $150 million. This limit fails to take into account those specific claims that are larger than $150 million. The bill is silent with respect to a process for handling those claims. It is simply inadequate for Canada to suggest that since those claims are less numerous than the claims under $150 million, no legislative process needs to be created. Instead, a process is reportedly going to be worked out through the protocol agreement between the minister and the national chief. Protocol agreements are not binding. This is very problematic for the Blood Tribe, particularly in relation to, but not necessarily limited to, our big claim, which falls outside the maximum claim limit.

What process will be developed to handle that claim or any other claim in excess of that amount? Who will develop that process? Since it is the Blood Tribe's claim and not the AFN's claim, it is imperative that the Blood Tribe be involved in any discussions related to setting up a process to deal with those claims. It is the Blood Tribe's understanding that the federal government will earmark $250 million per year for payments authorized by the tribunal and for payments resulting from negotiated settlements. This will be an insufficient amount of money if there are several large claims, even if each falls below the $150 million cap.

Thank you very much, Chair.

The Chair: Thank you.

Now for our second presentation, we'll go to Rick Simon.

Mr. Rick Simon (Regional Chief, Nova Scotia and Newfoundland and Labrador, Assembly of First Nations): Thank you, Mr. Chair. It's an honour for me to be here this afternoon in front of the standing committee, listening to the presentations on Bill C-30.

The joint process to develop Bill C-30 and the political agreement, as many others have reiterated before me, has been a very positive experience in working with the Government of Canada. I believe strongly that the relationship between former minister Jim Prentice and National Chief Phil Fontaine in working on the claims commission in the past has been instrumental in making this happen. I want to acknowledge that, as well as the work that my colleague Shawn Atleo, as well as Mr. Bruce Carson from the Prime Minister's Office, put into this. Very clearly, it had to be very, very high-level work to bring us to this point having an opportunity to talk about an actual bill. So in my view, like that of many others before me, it's unprecedented and has to be acknowledged.

We support the bill and the political agreement in its current form as a substantial improvement over the status quo, and over any other previous attempt to address this issue. I've been a regional chief since 1994, and for part of that time I worked with the Atlantic chiefs, who made their presentation earlier. I was a former member of that joint task force back then. I sat in on a number of committee meetings across the country, trying to do the same work we're talking about here today.

To see and to have the ability to actually put some legislation in place that speaks to the things we had issues with, like the government being the judge and jury, has been quite interesting to see happening.

Bill C-30 is not about trying to fix all of the inadequacies of the specific claims policy or process. There are inadequacies in the specific claims policy and process overall. The matters addressed in the companion political agreement are intended to address related policy and process issues.

My colleagues from the Atlantic chiefs, Chief Noah Augustine and Chief Lawrence Paul, under the banner of the Atlantic Policy Congress, spoke to that earlier about how we as the Atlantic region plan to keep the government's feet to the fire in relation to this political agreement.

Like you, Mr. Bruinooge, I was at that treaty conference last week. Being one of the first components of the political accord, it's very good that it happened. I was very excited to be there and was very happy to make a presentation on behalf of some of the issues we have in relation to treaty in the Atlantic region.

At the same time, I've been at many treaty conferences in the past. Hopefully, unlike last week's, this isn't going to be sitting on my shelf collecting dust; we hope to see the political accord as a means to implement this. It's very important that we show we can do that.

The process used to develop the bill and the political agreement establishes a high-water mark that needs to be replicated in other policy areas. I think we have a real opportunity here to move forward in a number of other areas, as a means to engage us very clearly at the highest level, between the government and the Assembly of First Nations. So I see this as a real opportunity.

In addition to the joint drafting with Canada, the Assembly of First Nations has been engaged in information sharing and dialogue with first nations in the regions. We have striven to support this regionally to the best of our abilities.

● (1705)

In Nova Scotia, we did it through the two tribal councils, one being the Union of Nova Scotia Indians, and the other being the Confederacy of Mainland Mi'kmaq. Prior to the assembly coming in and giving them an overview of what the bill was, they were both adamant. In fact, they made us sign papers saying it was not consultation. We signed them. We told them that consultation is the Government of Canada's job, not ours. We were there and we were supportive of this effort, but at the end of the day, if there's more consultation to be done, that rests with the government, not with us.

So there are many positive things to be learned from this process, including the need to engage first nations directly and within a timeframe that is reasonable. As you're aware, the bill was introduced, I believe, on November 27. By the time we had a chance to analyze it, to try to do some regional sessions and sit down as the chiefs of Canada by December 11, it was a very tight timeframe. It's very challenging.

While we strongly support this bill in its current form without amendments, this should not preclude others from suggesting amendments. That's a basic democratic premise to anybody, and first nations as well. So we're not here to say that everything is perfect, by any means, but we're definitely supportive of the work that has brought it to this stage.

The real priority with respect to implementing this bill and the political agreement must be in living up to the commitments that these embody. Therefore, it's important to fully implement the undertakings and the joint process outlined in the political agreement in a timely fashion. A fair and independent tribunal that can make binding decisions has absolutely gone way beyond some of the work that's been done in the past, and I have to acknowledge that. What I would like to see from here on in is, is this bill implemented?

We understand that Parliament has a role to play. Ultimately, as the first nations, we really don't care who the government is that implements it. We just want to see this bill implemented, because there has been so much work done and it's gone so far beyond where we've been in the past.

With that, thank you very much.

● (1710)

The Chair: Thank you, Mr. Simon.

The next presentation is from the Algonquin Nation Secretariat. Will we have one or two speakers?

Grand Chief Norman Young (Algonquin Nation Secretariat): I'm going to share with Chief St. Denis.

The Chair: All right.

Grand Chief Norman Young: *Kwe*. Hello.

[*Translation*]

Good day, committee members. We are pleased to appear today to speak to Bill C-30. We understand that time is at a premium, so we will table a report containing detailed comments, and provide you with highlights.

The Algonquin Nation Secretariat (ANS) is a tribal council representing three Algonquin First nations whose territory lies in Northwestern Quebec and Northeastern Ontario: Barriere Lake, Timiskaming, and Wolf Lake. Each of our members has very different fact situations, with a variety of potential claims under the specific claims policy. None of our members has signed a land cession treaty, meaning that we still possess aboriginal title to our traditional territory, the basis for a comprehensive claim.

The Committee wants to know if the proposed bill will effectively address the existing conflict of interest found in the current process, and if it is better than the status quo. The Committee also wants to know whether the federal government's proposals will address the backlog of over 800 claims.

In general, if the bill is passed, it will be an improvement, but there are a number of key issues which leave lingering doubts and concerns. We want to provide the Committee with some examples of our experiences since *Justice at Last* was announced, and where improvements are needed. We strongly support the amendments to Bill C-30 which the Assembly of First Nations of Quebec and Labrador recommended to your Committee on March 10 last. Our members are directly affected by the proposed definition of what is, and what is not, an eligible claim, and we want to stress the importance of these proposed amendments. Further details are provided in our brief.

One of the objectives of specific claims reform has been to do away with federal conflicts of interest. Despite being the guilty party, it also controls the policy, process and funding. Bill C-30 goes part way towards dealing with this, by creating a tribunal to hear some types of claims.

However, claims will still be subject to conflicts of interest at the front end, prior to the federal government's acceptance of a claims submission, and for another six years after that. And the biggest claims will still be exposed to conflicts of interest throughout the process.

As we explained in our brief, these conflicts of interest are real and they have a direct impact on the management of our claims. Regardless of the benefits of the proposed tribunal, we remain concerned about the potential for abuse and lack of accountability at the front end of the claims process. We justify this concern by the way Wolf Lake and Timiskaming's claims have been treated since *Justice at Last* was announced.

● (1715)

[*English*]

The Chair: You're at five minutes.

Chief Harry St. Denis (Wolf Lake First Nation, Algonquin Nation Secretariat): In the case of both first nations, since June of 2007 the federal government has acted unilaterally and arbitrarily by changing the agreed upon approach to resolve our members' claims, without consultation and without our consent.

For Wolf Lake, this has meant removing them from the claims commission process and shutting down the commission, leaving us with no forum if Bill C-30 does not pass. For Timiskaming, this involves the apparent breach of a signed agreement that had been mandated by band council resolution. In both cases, these actions by the federal government have set back our members' efforts to have their claims resolved and have shaken our confidence in the process.

There is a lack of accountability and transparency in the way these things have been done. We cannot get answers or justification from SCB's actions. Without satisfactory answers, we consider SCB's conduct to be in bad faith. This kind of behaviour is of concern, and we ask if the committee can do anything to assist us in this regard, either by making appropriate inquiries or by mentioning these cases in your report.

All of this is in contrast to our experience with Bill C-6, which, for the record, we opposed. At that time, federal officials consulted with our members and provided assurances that the first nation claimant would decide whether to proceed under the new proposed legislation or stick with the process they were already in. We have seen no such effort to constructively engage our members this time around.

Since June of 2007, the Department of Indian Affairs could have used its dealings with first nations claimants to build support for its new approach by showing us how the changes will actually benefit our members. We would welcome the opportunity to work cooperatively with SCB in any way. Unfortunately, this has not happened, and instead, by its actions, SCB has done the opposite.

We agree that there is an urgent need to improve the existing policy and process. Certainly Bill C-30 is an improvement over Bill C-6, but many of the key unresolved issues have been put off to the political accord, and the commitments contained in that political accord remain as vague today as they were when they were announced in November 2007. We heard the federal government saying “trust us”, but this is a difficult proposition, given our most recent experience.

Once adopted, the bill will become law, but there is nothing to compel implementation of the political accord. We are not against reform of specific claims, but we do have legitimate concerns and questions, which have yet to be answered in a satisfactory way. If the bill does proceed, perhaps Parliament or this committee could play some kind of oversight role to monitor the federal government's handling of the transition, paying special attention to the front end of the process where the federal conflict of interest will remain alive and well.

One other important point is that whether Bill C-30 becomes law or not, the lack of resources within the federal government and on the first nations side must be addressed. Under the current framework, there are simply not enough resources to get rid of the backlog and support increased activity and negotiations. By the same token, the large agenda proposed by the federal government in connection with Bill C-30 cannot succeed without significant additional resources for both federal and first nations sides.

I would just like to comment briefly on one specific section of the bill as it applies directly to the Wolf Lake First Nation. Section 14 of the bill gives a definition of a specific claim. Paragraph 14(1)(c) says a claim may be filed with the tribunal for

> 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....

● (1720)

The Wolf Lake First Nation is one of five historic first nations in Quebec that do not have reserve lands set aside under the Indian Act for their use and benefit. So in our case, there was no provision of reserve lands. The wording in that section does not take our fact situation into account. This should be corrected by an amendment such as the one that was already proposed by the AFNQL in their submission, and it could read "referring to provision of or failure to provide reserve lands" instead of it just saying "or the provision of reserve lands".

That's it.

The Chair: Thank you very much, gentlemen.

Our final presentation is from Manitoba's Southern Chiefs' Organization. I believe Grand Chief Shannacappo will begin.

Grand Chief Morris Swan Shannacappo (Southern Chiefs' Organization): Thank you. I want to offer you a gift of tobacco for hearing our presentation.

[*Witness speaks in his native language*]

Good afternoon, ladies and gentlemen. I thank you for the time you've given us here. My English nickname is Morris Swan Shannacappo. My Indian name is Good Sounding One, so I'm going to try to make things sound good for you this afternoon.

I want to thank you for hearing our people, for letting us come here to present. You heard some of the past that was involved here, Bill C-6, that we also opposed. Today I went through a short ceremony by offering you ceremonial tobacco for having us here to present. We do things by custom and tradition, much as Canada's laws were perceived and done, all by custom and tradition.

First of all, I want to say I represent 36 first nations in Manitoba, Treaties 1 to 5. I do not purport to represent their treaties' positions from Treaty 1 to Treaty 5, but I am also a spokesperson for Treaty 4 in the province of Manitoba. There are seven Treaty 4 in Manitoba, and the remainder of the 34 first nations in Treaty 4 are in Saskatchewan

In 1880 Alexander Morris, then the lieutenant-governor of the province of Manitoba, authored *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*. The book, well known by all students of history, contains copies of the treaties concluded between 1850 in Ontario and 1877 in Alberta, and also includes firsthand accounts by the treaty commissioners as well as the reports to government about the treaties.

Lieutenant-Governor Morris was passionate about the importance of fulfilling those treaties and the reason to fulfill them. The closing words of his book deserve repeating, and I quote them verbatim:

> ...let us have a wise and paternal Government faithfully carrying out the provisions of our treaties, and doing its utmost to help and elevate the Indian population, who have been cast upon our care, and we will have peace, progress, and concord among them in the North-West; and instead of the Indian melting away, as one of them in older Canada tersely put it, "as snow before the sun," we will see our Indian population, loyal subjects of the Crown, happy, prosperous and self-sustaining, and Canada will be enabled to feel, that in a truly patriotic spirit, our country has done its duty by the red men of the North-West, and thereby to herself. So may it be.

Some 127 years later, on September 12, 2007, the Honourable Jim Prentice, in a press release entitled "Specific Claims: Justice at Last", explained that in a general sense, first nations specific claims arise from the failure of the federal government to live up to its legal obligations originating with historic treaties. The Indian Act or other formal agreements between first nations and the crown—Lieutenant-Governor Morris had it right in 1880. The purpose of these treaties is to ensure aboriginal and first nation Canadians are happy, prosperous, and self-sustaining.

The reconciliation thus called for by the courts and by many of the enlightened in our society is in honouring these treaty commitments in their totality, not to the limited degree the present Canadian government feels it is prepared to afford. The sad truth is that you parliamentarians are being wilfully blind if you believe anything short of a complete and honourable fulfillment of every aspect of the treaties will result in the reconciliation you seek, which we first nations and Canadians deserve.

The treaties include promises related to land, including a large number of outstanding land entitlements and to other important and tangible promises, such as education, health, and the preservation of our culture, all of which must be honoured if we are to achieve Morris's vision of a happy, prosperous, self-sustaining people.

Still today, right across Canada, the ownership of land controlled by Indian people is 0.04%. That's not even half of one percent. When we look at the province of Manitoba, we control 0.04%.

While I do not pretend there are not some very important financial promises with the historic treaties, as you could call them, to us they are treaties. They just need to be shined up a bit. Maybe they were assigned historically, but they're still alive and well and present today.

● (1725)

It is clear to any first nation person, and it should be also clear to you, that the most important features of the treaties are the promises relating to land, the preservation of our way of life, and the right to use the bounty of those lands to maintain, sustain, and nourish our people and our political institutions as well as our languages and our culture.

In Manitoba there are literally tens of thousands of acres of land that are due, under Treaties 1 through 5 and under the 1997 treaty land entitlement agreement that Canada is a party to. A vast amount of this land has been identified by the entitlement first nations but has not been converted to reserve for a variety of what we say are invalid excuses. We should be able to access the specific claims process to secure declaratory or injunctive relief compelling Canada to do what it is obligated to do under the treaties and the 1997 treaty land entitlement agreement.

As presently drafted, even if we could get in the door to have the claim heard, all we can secure under the present specific claims wording is a money judgment, in exchange for which our rights to the very land in question would be extinguished by legislative fiat under subclause 21(1). To make matters worse, the extinguishment comes without the normal protections currently in the Indian Act that require a referendum process before interests in land can be surrendered.

The bill has been drafted completely within the paradigm of the colonizer, and it is another example of how the colonizer continues to invite us to further perpetuate our colonization. When you knowingly shoot your own foot off, does it hurt any less? Won't your foot still be gone?

Restricting the specific claims process to monetary awards, paragraph 20(1)(a), when so much of our treaty claims involve lands and resources, is unfair. To restrict those monetary awards to pecuniary losses only, item 20(1)(d)(ii), as opposed to losses for such things as education, culture, and language, the very things the treaties were designed to protect, is unfair. To cap those awards to $150 million, paragraph 20(1)(b), is unfair. To further reduce the value of those awards by forcing first nations with similar claims arising from the same fact situations to share that limited pie, subclause 20(5), is unfair. Any restriction by legislative fiat at all on what the treaty right would otherwise entitle the claimant to is contrary to the honour of the crown.

As a group, our people are poor. We suffer from unemployment, poor education, and poor health. We are owed much, but we have not been allowed to partake in the bounty of this country, as originally intended by our treaties. We agreed to share; we did not agree to impoverish ourselves.

In a word, we are hungry. We are starving from the lack of justice. We suffer from a poverty of options, and our children are committing suicide or partaking in other activities that are not normal within our culture and our people.

My fear, as a leader, for my people is that we'll sell our right to the proper share of the bounty due to us in exchange for some food to limit starvation—any food today, in fact.

The future right to eat as a king in the finest restaurant is meaningless when you are starving right now. It doesn't take much imagination to know what the hungry person is literally forced to do to survive. He sells his rights for a slice of bread and some water. Is that justice? Is that the honourable fulfillment of an obligation? No one here would suggest it is.

Why, then, are many celebrating the specific claims legislation? I can only think of those of my brothers who support it, so desperately hungry for something that they will take a slice of bread; they will take anything and with a smile.

I stand before you determined, undeterred. I know who I am as Anishinabe. I am Anishinabe from top to bottom and business all in between. I stand before you, telling you here there'll be no true reconciliation until the treaties are honoured in their entirety and we learn to do business as equals.

There will be no peace, no solution to what I've heard called the Indian problem. The truth is that I heard it's never been an Indian problem. In reality it's a Canadian problem, one that Canada must own up to and properly redress.

● (1730)

The current legislation offers false hope in that regard, in that it is disguised opportunity for us to colonize ourselves. The oppressed are invited to become their own oppressor.

Other speakers have expressed their concern that the tribunal will not be sufficiently independent, such that justice will not be done, but will only be seen to be done. For example, in terms of the appointment process, under the current bill it is effectively the federal cabinet alone that has the right to decide who should be appointed to sit as adjudicators on this tribunal. I remind you that we made treaty with the Queen on a nation-to-nation basis, and that the Queen's representatives continue to perpetuate the myth that they alone can govern our traditional lands and natural resources.

The Chair: Can you just wrap up, please?

Grand Chief Morris Swan Shannacappo: Okay.

I didn't intend my comments to personally attack the honesty and integrity of any individual jurist; however, we must remember that judges within Canada are nurtured by and a product of the very legal system that has oppressed my people for hundreds of years.

I'm not afraid to have eminent foreign jurists—and there are a lot of them to be found through the offices of the United Nations—to sit in judgment of my rights and the rights of Canada. On that note, it troubles me that Canada voted against, and chooses not to implement, the United Nations Declaration on the Rights of Indigenous Peoples. The declaration of rights was viewed as acceptable and appropriate by the vast majority of countries on these problems.

There were only four countries in the world that voted against the declaration; Canada was one of the four. That demonstrates to me that Canada, as a country, was not able to accept as reasonable what the rest of the world sees as reasonable.

In essence, we are asking for international intervention, or international participation, to be able to talk in areas of the land when we come to butt heads and not have any movement. I think the Maoris have certainly had some success within their own country in honouring the treaties that were written and in sharing in the bounty of the land as well.

Those are some of the things that we would like to bring to the table here.

Thank you.

The Chair: Thank you very much.

Again I say to all the witnesses that I apologize for pushing you through the time today, but we do have a vote to get to. Typically we end our meeting at 5:30, and a couple of my colleagues have to leave at this time because they have other commitments. The balance of us are happy to stay, and we're going to have one round of questioning of six minutes. That should get us done by around six o'clock.

I'd like to start with the Liberal Party. Ms. Keeper, please go ahead.

● (1735)

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

I'd like to thank all the presenters for today's presentations.

What is clear is that there is a difference of opinion about how we should proceed with this specific claims legislation.

I'm sharing my time with the member for Nunavut.

We've heard about lack of consultation. Mr. Simon said that is the obligation of the federal government. We've heard about the backlog. We've heard about the extinguishment legislation. In fact, in terms of the AFN, one of their documents does make a specific reference to the fact that in this legislation it is very clear on the whole issue of the land that the federal government is discharging its obligation as a good and prudent fiduciary in imposing extinguishment.

How do we move forward? How do we reconcile the UN Declaration on the Rights of Indigenous Peoples with a particular piece of legislation that does call for extinguishment? It's just that we're hearing so many presentations. Some people oppose it; some people feel we should move forward with amendments; some people feel we should move swiftly through this process to make sure it moves through the legislative process.

I'd like to ask, from the different perspectives, what you think about that whole requirement of extinguishment.

The Chair: We have about three and a half minutes, so if several members want to answer, I'd ask you to keep it brief.

Ms. Tina Keeper: I will ask Mr. Simon and Mr. Littlechild to respond.

Chief Wilton Littlechild: There were several questions there, Mr. Chairman. Let me try to address some of them and then refer to my colleague, Chief Simon.

On the issue of consultation, I think it's very important to reflect on the previous witness's suggestion that we need to define what we mean by “consultation” very carefully. In my view, for example, if you juxtapose it to the UN declaration—as an example, article 19—we have guidelines there as to what it could mean.

If you reflect on the past 60 years, would it not be argued that over 60 years there has been a lot of consultation? Wouldn't the previous forms of draft legislation have included a lot of consultation, although using a different process, as I was alluding to? The issue of consultation is really a spectrum, in my view, from a low level of activity that simply could be correspondence or telephone calls or private discussions to the very end extent, which calls for prior and informed consent.

Within that scope of activity, we have several guidelines that we can refer to as to when is it that we have consulted enough to be able to move forward with legislation like this.

With regard to the extinguishment question—and I apologize for referring to international references, but that's been my arena for the last 30 years—there are a couple of international treaty-body decisions that call on Canada not to use extinguishment policy anymore. That's one view; the second part of it, of course, is “unless there's consent” by the first nation or the indigenous nation involved in the negotiating process. They do consent to extinguish title in some cases, based on fair and independent negotiations, and I think that's also one perspective.

I guess what I'm saying is that there's a whole spectrum of considerations. What happens, as I think you know, when you have a committee like this that invites public dialogue, is that you're going to get a lot of different views, and we need to balance those views to guide us in going forward.

● (1740)

Mr. Rick Simon: The comment I would make in relation to my discussion around this notion of consultation is specific to the region that I represent, Nova Scotia.

As you're aware, in Nova Scotia we are engaged in treaty and aboriginal title negotiations under the “made in Nova Scotia“ process. Within that process we have what we refer to as an umbrella agreement. Many times in the past we have had little snippets of paper dragged into court from the Department of Fisheries and Oceans or the Department of Indian Affairs, using this whole notion of consultation and “we spoke to you”. Under this umbrella agreement, there's a political agreement between the federal and provincial governments that any discussions we have under that umbrella will not be thrown into the courts, assuming our “made in Nova Scotia” process negotiations go nowhere and we end up back in the courts.

So we're very clear and very adamant that anything in relation to consultation needs to be clearly called that. And it's not the Assembly of First Nations' role; this is the Government of Canada's bill, and it's their job. If they choose to go out on consultations with this, then they have to go through the processes within our region that they have agreed to.

The Chair: Mr. St. Denis promised me he'd be very short.

Chief Harry St. Denis: Just on the issue of some people believing we should move this really quickly, personally I don't believe that may be the most prudent approach. I think it's more important that we get it right than that it be rushed through Parliament.

The bill, if it has all-party support, which is what everybody is hearing here, should still, even if there's an election, survive, in our view. I think it's more important to get it right than to move it through Parliament too swiftly.

The Chair: Thank you, sir.

Monsieur Lemay, for six minutes.

[*Translation*]

Mr. Marc Lemay: I will catch the ball that Chief St. Denis has thrown on the fly. I would say to him that if elections were held tomorrow morning, under the Standing Orders of the House of Commons, this bill would die on the *Order Paper* if it was not passed. The situation is urgent, but we are not necessarily facing an emergency. I'm not trying to make a political statement. Maybe there will not be elections tomorrow morning, but what we want first and foremost is to hear the views of first nations.

I understood what Chief Littlechild said. I cannot say if this is the perception of the grand chiefs who are here today, but if passed, this bill will provide for the creation of a special claims tribunal, which is not a mandatory process. If this bill were passed tomorrow morning, you, the chiefs, would not be required to use this process for your special claims. You could continue to use the old process. However, you need to understand that that might take longer.

I have only one question for you, and I ask it because you come from all provinces. What course of action do you recommend that we follow in dealing with the provinces? Some of you lay claim to provincial lands. What are we to do if the provinces do not want to be a part of this special claims process? Do you see a way of resolving this dilemma? Should we amend the bill so that provinces are required to participate from the start of the claims process? What would you suggest we do? I didn't hear anyone talk about this today. Maybe I'm wrong, but I do not recall hearing anyone speak to this subject, either in English or in French.

● (1745)

[*English*]

Grand Chief Morris Swan Shannacappo: I guess what we are recommending is to definitely try to build on the process and go ahead with it. But when it comes to what I spoke on and the relation of treaty, I don't have a treaty with Manitoba. I don't even have a treaty with Canada. I have a treaty with the crown in right of Canada. So I'd like to involve my original treaty partners that signed the Constitution back to Canada or repatriated it, because that's who should also be sitting at this table.

As far as the province goes, there's a lot of unfinished treaty business in the area of resources, mineral rights. All that has to be talked about yet, because we didn't give up that right to anybody, and in our eyes, the province certainly doesn't own any of that. The province to us is just another corporation and that's how we view it and that's how we were taught to view it by our elders, by our legal people, and on the international level as well.

The Chair: You have two minutes.

Chief Charles Weaselhead: Thank you.

In my mind, I don't think we're going to come up with perfect legislation. I clearly don't have any answers for you if you're asking for recommendations on what the next step is.

I believe the Blood Tribe and two other nations were involved in what we refer to as the FNOGMMA, the oil and gas and moneys management legislation—First Nations Oil and Gas and Moneys Management Act. It's an opt-in clause, opt-in legislation for most first nations, if they wish to do so in that regard.

We're very clear in our mind what consultation is all about. We're going through that same issue with the Province of Alberta in that regard. I think I want to echo the comments that Chief Littlechild said. Perhaps there needs to be a mutual understanding of what consultation is all about and perhaps at that time we can at least make the best effort in coming up with a piece of legislation that is going to be a framework legislation and perhaps is not going to fit for everybody, but the bare essentials of that framework on legislation can meet needs with that.

I want to also acknowledge what Chief Shannacappo has said. Our mandate comes from our communities, our elders, and our Creator, so we are very strong in our positions about our treaty and our inherent rights.

Thank you.

The Chair: Thanks.

I think Chief St. Denis has something to say.

Chief Harry St. Denis: Yes. On whether the province should be compelled to provide the lands, in a situation like Wolf Lake, because it is a claim for reserve lands, the federal government should compel the provinces to release the lands that have been negotiated with the federal crown.

The Chair: Thank you.

Ms. Crowder from the NDP is next, for six minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

I want to thank all the witnesses for taking the time to appear before us today.

My questions will be directed to Chief St. Denis, Chief Norman Young, and Chief Swan Shannacappo.

I want to acknowledge Chief Littlechild and Grand Chief Ed John for bringing in the UN declaration on indigenous rights, because I think it sets an important context. Even though Canada didn't sign on, the language around it is important in terms of fairness, justice, prompt decision-making, and those kinds of things. A couple of the issues you both identified speak to some of that. I think you've nailed it in terms of the resources that are going to be available to first nations in coming to the table, in both specific claims and treaties.

I had raised issues around resources required to address the backlog of specific claims, and unfortunately the answer that came back to us in a letter from the minister was really vague. There were some assurances that resources would be assigned—Department of Justice—but there are no concrete measures on how the current backlog would be addressed and how resources would come to first nations.

On the backlog, I've raised this a number of times, and I think it's really important to get people's input on this. The transitional clause outlined in clause 42 of the legislation for first nations who choose to engage in the specific claims process resets the clock to zero. So people who have been in the process for a number of years and eligible for the process really end up back at zero after all that work. The existing process will close as of December 31, 2008, and will no longer be available to people. So people will have two choices, the way I understand it: they can go to litigation, or they can come back into this process and have the clock reset to zero.

I wonder if you could comment on what else needs to be considered in the transitional period for people who are eligible for a specific claims process. I know that doesn't address some of your other issues around land claims and where you're not eligible.

● (1750)

Chief Harry St. Denis: I would like Pete Di Gangi to respond on behalf of our tribal council.

Mr. Peter Di Gangi (Director, Algonquin Nation Secretariat): Again, this is something I've been trying to take a close look at to see what the legislation says in terms of people who have claims submitted, wherever they may be. I can't really speak in general terms, except for the communities I work for and what we've looked at for them.

In Wolf Lake's case—again, more detail is provided in the brief—they submitted their claim in 1996. Around 2000, they went to the Indian Claims Commission. They started out with an inquiry. They went to mediation. Then in the fall of 2006, their inquiry was to be resumed. They were slated to go to an inquiry this year, but a decision was made by the government that they weren't sufficiently advanced in the inquiry process, so they have to sit out now.

It will probably take them about a year before the legislation is passed, then they're going to have to sit out another year, because there are the six months plus another six months. They're probably going to have to wait about two years to get to the tribunal, having been in the system since 1996. There's no telling how long the lineup will be once they get to the tribunal. So in Wolf Lake's situation, they've actually been set back a couple of years. They would be in the full inquiry process as we speak, but they were pulled out of it. They were never really told why or asked about it. They were just told that they were out. That's with respect to Wolf Lake.

With respect to Timiskaming, one of the problems we face is the issue of submission guidelines. That's covered under section 16 of the act, I believe. It gives the minister the discretion to prepare minimum standards for submission guidelines. What we've found is that since "Justice at Last" was announced, the specific claims branch has been trying to unilaterally impose new submission guidelines, without any discussion, that contravene the signed agreement the specific claims branch signed with our tribal council on claims submissions.

The Chair: You have one minute.

Mr. Peter Di Gangi: With regard to that community, there is probably about five years' worth of research and development on claims that has all gone sideways now. And we haven't been able to get any assurances in terms of what it means for the development of those claims.

On the one hand, I can be specific. But again, there are a lot of vague items that have yet to be clarified that would help us all see a bit more clearly.

The Chair: Thank you.

There are about 20 seconds left, if anyone else has a quick comment.

Go ahead, Mr. Braun.

● (1755)

Mr. Carl Braun (Southern Chiefs' Organization): Thank you, Mr. Chair.

As executive director of the treaty land entitlement committee, I'm directly involved in implementing settled claims. I use that word loosely, the term "settled". From a first nations perspective, we like to use the word "settled" after the land has been returned and after all the obligations have been met.

The Manitoba framework agreement was signed in 1997. Currently we have 469 parcels of land that have been selected, and those go towards satisfying the 1.1 million acres. Of the 469 parcels, 54 have been converted. So we've been in operation for about 11 years, and we are 11% complete. This is, right now, on behalf of the signatory 15 first nations. I wanted to share that with the committee.

We have a lot of work to do. When you speak to claims, that, in my mind, is phase one, possibly, as a validation of a claim. There's a lot of work to do in phase two, as well, and then onward to development of the lands and management, and so on.

I just wanted to bring those numbers to light.

Thank you.

The Chair: Thank you. I appreciate that.

The last questioner is Mr. Storseth, from the Conservative Party. You have six minutes, sir.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, ladies and gentlemen.

As per usual at these committee meetings, it's nice to see you after a two-week break. Some things never change.

First of all, I want to thank the committee members for coming forward on some very interesting testimony today with some very good insights. I think it's very important that we set the record straight, though, on some of these issues.

This is not resetting the clock to zero. As far as I can tell from my reading of the legislation, what it does is give a voluntary option to first nations communities to go into a different system, from a system that we all agree needs to be changed. It eliminates the conflict of interest. It's going to speed up the process. This is something where we're constantly trying to fight some of the myths that are trying to be perpetuated from the other side.

I want to say hello to a fellow Albertan, Chief Littlechild, a former member of Parliament. It's good to have your input on this, not only as a former member of Parliament and a chief from Alberta, but also as one of the joint task force members.

Mr. Littlechild, we've heard from many witnesses in the past. We had Chief Lawrence Joseph here from Saskatchewan, who I believe represents about 75 first nations and over 122,000 first nation status people. I'll give one of the quotes from his testimony:

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

He continues:

> I personally have served in the government for 30 years and also as a chief for 10 years, and I have never seen this high-level type of commitment from government to actually do something jointly with first nations in a very strategic and structured way.

His vice-chief, Mr. Glen Pratt, went on to say:

> 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.

I think these are very important points. Mr. Simon has mentioned some of the same issues. All these people have gone forward in advocating that the bill move forward in its current form.

There are some aspects to the political agreement that need to be implemented that are outside the scope of this bill, but would you agree that this legislation needs to go forward in its current form and that it is groundbreaking and very important legislation for first nation people as well as the Government of Canada?

That was a mouthful, so I'll give you a second.

Chief Wilton Littlechild: Thank you very much.

Let me preface my answer to your question in this way. Unlike the federation in Saskatchewan, in Alberta we have Treaties 6, 7, and 8, wherein there is a protocol of respect so that we respect chiefs like Chief Weaselhead to speak for themselves on issues like this. Consequently, at the national assembly you will have seen that the Alberta chiefs abstained from the vote. Consequently, in my intervention today, I specifically addressed you as a joint task force member. From that perspective, I of course support the work of the task force and the resulting proposal that you have in front of you. It would be wrong for me to come back and start criticizing the work that we've put a lot of effort into. So, yes, I do support it.

That said, if you as a committee find there's something that improves the bill from the perspective of first nations, I can't say to you don't do it, because that is, of course, your prerogative.

I see this as a process. The process I was involved with I said could be improved at the front end. Now we've turned the bill over to you and it's your process. As I said, if you find something there from the witness testimony that strengthens it from a first nations perspective, I can't say to you don't do it. It's a dilemma for me as well, but from the joint task force and its membership, I have to say that I support it.

● (1800)

The Chair: You have one minute.

Mr. Brian Storseth: Thank you very much.

Chief Weaselhead, I'd like to give you a chance to comment as well. I'd like to ask you a couple of specific questions, though I'll ask them all at once and ask you to keep the answers short so that we can get more in.

We all agree here that changes are needed in the process and in the system. I know that in your brief you outlined some specific things you would like to see changed, but do you agree that 80% of the claims will be speeded up through this process, leaving the larger claims to go through the same system? Do you agree that the $150 million will allow at least 80% of our claims to be speeded up?

Do you also agree that making this an independent process is a step forward and a step in the right direction?

Finally, do you also believe two more things—that this will speed up the process for these specific claims, and that the mandate to have a five-year review is also an important aspect of this?

I know you voiced some criticisms before, but to these questions I'd like to hear your response.

The Chair: Chief Weaselhead, you will have the final word.

Chief Charles Weaselhead: Thank you very much.

In my mind, I do agree that the process will be speeded up for the majority of the claims, and more specifically for the small claims. I agree with that.

I also just want to echo what Chief Littlechild said. In general I support the bill moving forward, too, but there's the opportunity for us to be able to continue the process of discussions in regard to some specific changes that perhaps can be introduced. In my mind...I'm speaking on my behalf in regard to a big claim, for example; on a couple of occasions former Minister of Indian Affairs Jim Prentice spoke to me and said that big claims will go through a special cabinet mandate, but we don't see that as part of the legislation that's going to be binding as well.

From observations and from talking with other first nations and listening to other first nations in general, as I've said, I believe the process will help the majority of first nations people. Perhaps some first nations have some specific matters that still need to be addressed, and you've heard that around the table in the first panel and in the second panel, so if there's the opportunity to make amendments and the process can change as we move along so that we build on some of the issues and concerns that have been expressed before the committee, I think it's important to reiterate those concerns as well.

Thank you.

The Chair: Thank you very much.

On behalf of all my committee colleagues, I'd like to thank the witnesses, both from this second panel and from the first one. We've had a very good conversation and discussion today. As I said, I appreciate your keeping your remarks brief and helping me keep on time. Thank you very much.

The meeting is adjourned.

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