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Chair

Mr. Barry Devolin

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● (1535)

[*English*]

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

Good afternoon, everyone. Welcome to the 22nd meeting of the House of Commons Standing Committee on Aboriginal Affairs and Northern Development. Today we are continuing with our hearings dealing with Bill C-30, an act to establish the specific claims tribunal and to make consequential amendments to other acts.

Before I get to the witnesses today, I would like to welcome to our committee a new member, Rob Clarke, from Saskatchewan.

Some hon. members: Hear, hear.

The Chair: Rob was recently elected from...I won't even try the name; I'll just say northern Saskatchewan. We welcome you.

Would you like to say hello?

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Well, I'd like to thank everyone for greeting me here. It's an honour being here today.

I'm of first nations descent. I'm from Muskeg Lake First Nation. That's my home reserve.

I've very excited about working with this committee and representing first nations, but my main focus is working as a team together. I'm looking forward to that. With my RCMP background I see it as a team effort; we've all got to work together to get the job done.

Thank you again, and let's get at it.

The Chair: Thank you. Let's hope that's the way it stays.

We have two groups of witnesses today. The first group I'll introduce in a minute. The second group will be appearing by video conference; Bill Erasmus and François Paulette from the Assembly of First Nations will be at 4:30 p.m., so we will take a short break between the two sessions because they'll need to get the teleconferencing set up properly.

For the first hour today, we are pleased to have Gordon Peeling and Pierre Gratton from the Mining Association of Canada. Welcome, gentlemen. If you would like to take ten minutes to make a presentation, we will follow that with a round of questions.

Go ahead, Mr. Peeling.

Mr. Gordon Peeling (President and Chief Executive Officer, Mining Association of Canada): Thank you, Mr. Chairman.

[*Translation*]

My name is Gordon Peeling and I am the President and Chief Executive Officer of the Mining Association of Canada.

[*English*]

With me is Pierre Gratton, the vice-president of sustainable development.

It's our pleasure to be here to talk about Bill C-30, the specific claims tribunal act. The Mining Association of Canada supports Bill C-30 and the accompanying political agreement between the Government of Canada and the Assembly of First Nations.

I would like to commend the government and the Assembly of First Nations for the development of the bill and the political agreement. We encourage the government to bolster this kind of approach with first nations in the spirit of garnering further constructive dialogue and tangible results.

The mining industry offers major opportunities for first nations peoples. We are making a significant contribution to aboriginal employment, business development, and growing education and skills levels, creating opportunities for all aboriginal peoples, but there is much more our sector can do with the right public policy framework.

Bill C-30 and the political agreement represent a positive step forward, but the federal government must complement this initiative with an effective implementation plan and progress in other areas.

With respect to our industry and first nations, Inuit, and Métis peoples, here are some of the facts.

Mining is the largest industrial employer of aboriginal peoples. We double the national average. And while some mines have aboriginal workforces that are 30% to 40% aboriginal, some are even higher than that. And these are good-paying jobs. The average income of aboriginal people in mining is twice the national aboriginal average. Aboriginal business procurement is also high. In just five years, for example, Diavik Diamond Mines purchased over $1 billion in goods and services from aboriginal-owned businesses. Cameco and Syncrude have also achieved this billion-dollar milestone, albeit in a longer timeframe.

This is what is happening, but let us also look at the future. There are 1,200 aboriginal communities that are located within 200 kilometres of producing mines and 2,100 exploration properties across Canada. For our industry, facing a major human resource shortage, and in a period of tremendous growth, first nations are critical to our future. First nations youth represent the fastest-growing population in Canada. By working to enhance access to training and education, the mining industry can complement federal investments in these areas. We can also be a critical partner in the economic and social development of first nations communities, but many hurdles remain.

Mining and exploration increasingly takes place on traditional aboriginal lands. In many parts of Canada land claims remain unsettled. In these circumstances it is much more difficult for industry to negotiate agreements with aboriginal communities, to navigate the regulatory process, and to advance new projects.

At times these underlying conditions undermine our ability to come to agreements, to partner and to develop together. Not surprisingly, for many first nations, respect and recognition of their rights and secure tenure are preconditions for their support for and interest in natural resource development on their traditional lands. We need only look at the pipeline negotiations and some recent controversies between first nations communities and exploration projects to see what can happen when rights are not recognized and land claims are not settled.

No one—not first nations, not industry, and not governments—benefits from the conflicts such as we have seen. What is in the collective interests of the first nations in the minerals industry are the kinds of industry-aboriginal collaboration and agreements we see involving mine development, such as Diavik in the Northwest Territories, Voisey's Bay in Newfoundland and Labrador, with the oil sands miners in Alberta, Cameco in Saskatchewan, at the Victor and Musselwhite mines in Ontario, and at many other operations across Canada. These outcomes are achieved through dialogue and respect, not through the courts and not through conflict, as was unfortunately the case recently in a dispute between the KI First Nation and mineral explorer Platinex.

We encourage the government to acknowledge the rights and interests that first nations have and to move forward on this basis, and Bill C-30 is a huge step in that direction, which will in actual fact improve the process. We can no longer delay. We need action on land claims and we need it now.

The Specific Claims Tribunal Act is a good step for resolving specific claims. It holds the promise of accelerating the resolution of specific claims, and with adequate investments and the timely and effective implementation of the political agreement, real progress can be made. But don't think this means the job is done. Comprehensive land claims not addressed by this bill can take and are taking decades to settle. In areas of high mineral interest, such as the Northwest Territories, the settlement of comprehensive land claims is urgent. Major claims such as the Dehcho and Akaticho require resolution.

● (1540)

Let me also touch on a related issue, the crown's duty to consult. While our industry recognizes that it is good practice to consult and accommodate aboriginal communities, industry actions are not a proxy for the crown. Exploration and mining projects have been held up or jeopardized because the crown has been found to not have fulfilled its consultation duties.

Supreme Court of Canada decisions have been clear about the crown's role in consulting with aboriginal peoples where rights may be infringed. We need government to do their duty, to clarify and implement its consultation obligations, and thus provide industry and first nations with certainty with respect to resource development.

We at the Mining Association of Canada recognize that we must also do our part. Our board has adopted a draft policy that lays out the industry's commitments toward aboriginal peoples through our award-winning TSM initiative, or towards sustainable mining initiative. We are currently consulting on this policy with first nations, Inuit, and Métis communities and organizations across this country.

We have been aided in our work by a national advisory panel that includes representatives from the Assembly of First Nations, Inuit organizations and Métis organizations, organized labour, the Canadian Environmental Network, mining municipalities, and the financial sector. A primary focus of the panel's work over the past few years has been on aboriginal relations.

As well, as many of you who participated in last year's Mining Day on the Hill would know, MAC signed a letter of intent with the Assembly of First Nations to enter into a partnership to address issues of mutual concern. The letter of intent will lead to a memorandum of understanding between the two organizations, and will contribute to increased first nations participation in Canada's mining industry. We have both targeted June of this year to finalize those discussions on the memorandum of understanding.

The letter of intent was initiated in part to respond to the AFN's corporate challenge program, which creates partnerships with corporate Canada to increase investments, procurement, and employment opportunities for first nations, and with the MOU will serve to strengthen MAC's towards sustainable mining initiative.

This new partnership would have been inconceivable for both our organizations a decade ago. It shows how times have changed and how we are changing. We need governments to change with us.

In conclusion, I want to reaffirm our support for Bill C-30 and the political agreement. The establishment of a specific claims tribunal through Bill C-30 and a commitment by the government to address the items outlined in the accompanying political agreement are, in our view, a step in the right direction—an absolutely essential step. They represent an important precedent for future legislative and policy initiatives. We urge its speedy passage without our losing sight of the many other important issues that I have raised with you today, some of which can come through the political agreement.

Thank you very much. Merci.

The Chair: Thank you, Mr. Peeling.

We're going to begin a round of questioning, seven minutes to each of the caucuses. The first questioner is from the Liberal Party.

Mr. Valley, you have seven minutes.

Mr. Roger Valley (Kenora, Lib.): Thank you for allowing me to be part of this today. I did serve on this committee before, for 18 months, but after the last election I moved to veterans affairs. It's good to be back here.

Thank you for coming today.

Mr. Peeling, I want to thank you for your March 17 press release that mentions an issue that you've already brought up here today. That's the ongoing dispute between Kitchenuhmaykoosib Inninuwug and Platinex. I want to read a couple of your words at the end here, that these outcomes "are achieved through dialogue and respect, not the courts". I wish that were the case with Platinex.

I'd just ask you to elaborate a little bit on the difficulties that are going on there. Your association has probably a lot to say about how we can improve these things. This dispute that you mentioned, and that I've just brought up from your press release, has the ability to blow everything out of proportion and make it very difficult for us to move forward.

The Chair: Perhaps I can interrupt for a moment, Mr. Valley.

As you know, the topic of our discussion today is Bill C-30. I am certainly in the habit of giving wide range to committee members in terms of what they want to talk about, but I'd also like to say to the witness that we invited you here today to talk specifically about Bill C-30, and would appreciate certainly if you could answer any questions to do with that. If there are questions that are not to do with Bill C-30, you are certainly under no obligation to deal with those. And if that is the case, then we can move on.

● (1545)

Mr. Roger Valley: Well, thank you, Mr. Chairman, but he brought up the issue. It definitely relates to Bill C-30. These are land claims that need to be dealt with. Bill C-30 is not going to move at any rate, with any great speed, until everybody works together.

The Chair: I appreciate that. I said I wasn't disallowing the question, but I just wanted to say to the witness that if he feels that the questions go beyond dealing with Bill C-30, he's not obliged to answer them.

Mr. Roger Valley: Okay, fair enough.

Mr. Gordon Peeling: I'll make a very general comment.

Part of the work we're doing as an association, namely the aboriginal relations piece—and community outreach is one of the major aspects of our "Towards Sustainable Mining" initiative— will be part of that. It is to ensure that when we enter onto the land for the first time, we have already consulted with first nations, Inuit, or Métis, whoever may be the important proprietor or have the land claim or traditional use of that area.

Bill C-30, by removing a lot of these concerns and resolving them quickly with respect to the specific claims, helps to remove those problem areas. So if we do our job properly because the government has done its job properly, and these issues have been resolved between first nations and the government, it makes it easier for us to do our job. What we see happening from time to time is that because there is an aggrieved party, we become somewhat the ham in the sandwich. We become the lever for raising an issue with the federal government.

That may not be the specific instance in this case. But the reality is in a settled situation, if we do our job properly in consulting, and the industry does its job properly in consulting, then these issues that resort to the courts don't apply. But as far as the need for the government to consult goes, there are a lot of laws on the books that have been on the books for many years prior to Supreme Court decisions. I think all governments are struggling at both levels, whether it's provincial, territorial, or federal, with finalizing how they will approach the discharge of the responsibility of the crown to consult. If there is a perception that the duty to consult has not been discharged appropriately, then we can get into very difficult situations.

As I mentioned, and first nations will certainly remind us, we are not a proxy for the crown. We cannot discharge the crown's responsibility and duty to consult, at least not in the appropriate terms. We have a different duty and requirement to consult that is not at that same level.

So my sense of Bill C-30 in this regard is that if we resolve these issues in a timely way, we are less and less likely to get caught in situations like those of Platinex and the KI First Nation. The present situation has resolved none of the issues that are at the heart of this.

Mr. Roger Valley: I would go so far as to say that the present situation makes everyone's job that much more difficult, as we try to get Bill C-30, and we try to look at it through clearer light.

Is Platinex a member of your association? Do you know?

Mr. Gordon Peeling: No, it is not.

Mr. Roger Valley: You mentioned earlier—and I'm going to touch on that quickly—the Musselwhite labour agreements that do provide a lot of employment. You mentioned you have a large component of first nations who work for you. With all due respect, the Musselwhite agreements were great at the start, but we don't have the ability to make them carry on and go further. So again, it brings everything back into question as to how much consultation or how much action on land claims is actually going to take place, because a lot of them feel that action on land claims without consultation or community involvement or agreement is going to be very difficult.

So what would be your impression of the consultation part, or the duty to consult at the point it is right now?

Mr. Gordon Peeling: I think that we as an industry are concerned that the government does not have a coherent policy across all departments on how it will discharge its duty to consult. It's true at the federal level; it's true at the provincial level.

We understand that policy guidance is coming forward, and I know that probably certain parts of the government have a very strong sense of how they have to discharge that responsibility. When you're talking to Department of Fisheries and Oceans officials over fish habitat issues and so on, what is their duty to consult, and how do they discharge it appropriately?

This is where I think additional guidance is required. It's something the industry has asked for, but we're not the only ones, obviously. It also helps us to understand the framework within which we have to operate. It lessens the chance that our issues and the opportunity we might identify through exploration or development gets diverted by a need and an opportunity.

I don't blame first nations at all. If there's an opportunity to raise their issue, and development is the lever to raise it, particularly for something that may have been outstanding for many years, if not decades, then they will do so. But it puts us in a not very enviable position.

For our part, with regard to sustainable mining, we are trying to make our processes of best practice in consultation and work with first nations consistent across our industry. I can only talk about 30 full-producing members of our association and another 40 companies that provide services to our industry, but even there we need to make them consistent across our membership. And that's one of our duties and challenges. It's what we hope to do with the Assembly of First Nations in that partnership.

We are not at a perfect state, either, in this process. As I said, Bill C-30 can help all parties move towards a much more positive outcome.

● (1550)

The Chair: Thank you.

We're out of time. Do you have a quick comment, Mr. Gratton?

Mr. Pierre Gratton (Vice-President, Public Affairs and Communications, Mining Association of Canada): This is from a slightly different angle. I'll touch on it, because your next witnesses are from the Northwest Territories. For example, in the NWT, in the current context, without clarity on the duty to consult, what our industry is facing increasingly is a multiplicity of different consultation protocols from different communities, and that is extremely difficult to get your head around. I'm going to this community; what is it that they expect versus the community I just saw a hundred kilometres away?

Because there isn't any kind of consistency, it's making things extremely complex and extremely uncertain, especially for the exploration community. Again, it's all created by the fact that the crown has not yet figured out exactly what it's doing with respect to consultation and accommodation.

The Chair: Thank you, sir.

Next is Monsieur Lemay, from the Bloc, for seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I am very familiar with the Mining Association of Canada as my colleague hails from the riding of Abitibi—James Bay—Nunavik—Eeyou and I am from Abitibi—Témiscamingue which is home to a great many mining and aboriginal communities.

The Mining Association of Canada is a national organization involved in exploration. I am especially interested in exploration. In order for a mine to be developed and exploited, exploration activities must first take place.

I do not wish to get into the legal details of consultations within the meaning of the Supreme Court. However, if a prospector engages in exploration on land which is being claimed by or which is the focus of talks with aboriginals, is the community consulted before entry into their territory to determine if any ore is present?

[*English*]

Mr. Gordon Peeling: First of all, the exploration side of the industry is organized through the Prospectors and Developers Association of Canada. My members tend to be in the production. We often buy properties after the exploration stage, although many of our members will also be in the exploration business.

Once you have filed claims before entry—and in some jurisdictions that can be done electronically, through map staking as opposed to physically being on the ground—usually at that point you will want to consult with the the first nations communities about where you're going to be, the nature of the work you're going to undertake, concerns they might have about trapping, cultural activities, and traditional use of the areas. It should absolutely be as early in the process as possible.

The Prospectors and Developers Association of Canada has an electronic database called “e3”, which is environmental excellence in exploration. It has a whole section on consultation with communities as early in the process as you can possibly do it without giving away confidential information prior to staking—where someone else may take the ground ahead of you.

● (1555)

[*Translation*]

Mr. Marc Lemay: I knew quite a bit about the Mining Association of Canada. You sent me a fairly substantial number of documents. I hope that everyone here at the table has had an opportunity to read them so that we do not cover the same ground. Two documents in particular caught my attention: a press release dated March 20, 2008 regarding the famous case that I do not wish to discuss in detail, and a letter of intent dated November 20, 2007 which I find quite intriguing.

What authority do you have over your colleagues? I know that Xstrata and Canadian Coppers, for example, are members of your association. Are they obligated to abide by this document in order to belong to the Mining Association of Canada?

[*English*]

Mr. Gordon Peeling: Yes, they do. That is a document that is intended to lead to a memorandum of understanding. We have produced, collectively, *Towards Sustainable Mining*, which also relates to our relations with first nations, Inuit, and Métis. As part of our initiative, we have community outreach and dialogue. That's a mandatory element of membership in the Mining Association of Canada. So this in fact will bind us, as an association, and our members, to work together.

For a larger body of the industry we have produced information toolkits with the federal government and the Prospectors and Developers Association, to put communities in a much more knowledgeable position to negotiate and consult with the industry about the implications of exploration.

[*Translation*]

Mr. Marc Lemay: Clearly, you have an interest in this. The Mining Association of Canada carries out exploration activities, in particular mineral exploration. Therefore, a great deal of money is at stake. We want to hear the truth, not fairytales.

Once exploration activities are completed and enormous potential mineral reserves have been found at a given site, what steps do you take next, and what steps should you take to involve the first nations community or the province or municipality concerned? In Quebec in particular, mining operations may be of concern to certain municipalities. Do all parties meet to work out an agreement or to set priorities?

Mr. Pierre Gratton: The agreement negotiated between a mining company and a first nation is of a business nature.

Mr. Marc Lemay: In other words, both parties negotiate a contract.

Mr. Pierre Gratton: In Quebec, for example, Goldcorp and the Cree are currently in contract negotiations.

Mr. Marc Lemay: I see.

Mr. Pierre Gratton: There is no mine as of yet, only a potential mine. Stornoway Diamond Corporation is also negotiating a possible diamond mining operation with the Cree. The Cree have 30 years of experience in such matters. They know very well what to do.

Mr. Marc Lemay: They have experience at the negotiating table.

● (1600)

Mr. Pierre Gratton: It is much more difficult if they have not had any experience dealing in the past with the mining sector or with others. In some ways, it is easier in the James Bay area because land claim issues have been resolved. Furthermore, the community has experience with and is knowledgeable about these matters.

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Thank you very much.

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

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

Thank you very much for appearing before us today. I appreciate both your statement and some of the material that my colleagues have referred to.

As you rightly pointed out on the situation with KI and Platinex, Platinex is not a member of your organization; and arguably, I'm not sure Bill C-30 would have resolved some of the difficulties with Platinex, because it seems that the province has a substantial role to play.

That leads me into the question I want to talk about. There are a couple of pieces in the legislation. One is that the provincial governments will only voluntarily participate in this process. So in the situation around KI and what not, if a specific claim were involved, if a province chose not to come to the table, they wouldn't be a player.

But the second piece is that in subclause 22(1), which is about notice to others—and I'm sure you don't have this down chapter and verse, so I'll read it to you—it says:

> If the Tribunal's decision of an issue in relation to a specific claim might, in its opinion, significantly affect the interests of a province, First Nation or person, the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be affected.

I'm not entirely clear from that section whether a company whose interests might be affected by the specific claim would be able to make application, but in your view, do you see circumstances where mining companies might want to make interventions at a specific claims tribunal process?

Mr. Gordon Peeling: That's a very good question. I can certainly see where other first nations, particularly in an area of overlap or abutment, might want to enter into the process. In terms of how specific claims might play out with respect to existing actors on the land, I would hope there might be some space for their views to be heard, but I don't think we envisage that as a significant part of this.

Like you, I have some concerns about the voluntary side of the provincial engagement in this, because in many instances and at the heart of the KI issue is whether the provincial government has discharged its responsibilities correctly through its permitting system. So that is perhaps a flaw that might get addressed in the longer run in this process, because I would certainly like to see the provinces engaged and at the table in this where they have responsibilities to discharge.

For new projects where we have specific impact benefit agreements, socioeconomic agreements with first nations, Inuit, and Métis communities, I wouldn't see this being an issue, but when you retrofit into areas with long-standing operations that may ultimately be affected in some way, I would think that if some party's rights are impinged in a decision, there would be an opportunity to be heard.

Ms. Jean Crowder: In your presentation, I think you raised a couple of good points. One was around adequate resources, and of course, through this process, it has not been clear around resources. I'm not going to ask you to comment on governments putting resources in, because that's clearly outside of your mandate, but it is an issue, because one of the things we know is that this process could still take substantial periods of time. The minister and the parties have up to six years, and then it could go to the tribunal. It could go to the tribunal earlier, but there are no deadlines for the tribunal. So we're anticipating that there could be an expedited process, but without adequate resources and perhaps some guidelines around timelines for the tribunal, it might just shift the burden of work from one organization to another.

Could you comment on specific areas where you see that Bill C-30 will expedite a process that could mean more clarity around involvement with the mining industry, if there are actual specifics in this piece of legislation?

● (1605)

Mr. Gordon Peeling: Let me come at this sort of in the way we've been looking at Bill C-30. Our membership has not brought instances of specific claims that are an impediment to agreements so far. Our desire in the longer run is that if this could be an expedited process to deal with the backlog of specific claims, and in a world of limited resources at the federal level it would create more space to deal with the major claims, then that's really where we will start deriving a benefit.

Ms. Jean Crowder: Which could be years down the road.

Mr. Gordon Peeling: It could be years down the road, absolutely. Unfortunately many of these have been with us for years. We would hope that in certain instances—and Voisey's Bay is an example where a very large economic development brought people to the table to settle a claim—it would be nice if we could have large economic developments drive some of this process. But you really want it to go on its own accord, because there are rights at issue here, claims that need to be settled. Our hope is that by being more efficient in one area you free up resources elsewhere to deal with these other major claims.

Ms. Jean Crowder: This is, very quickly, on the consultation piece. Again, you've rightly identified a failure on the federal government level to develop, and you cannot delegate the responsibility from the crown. In your consultation process I noticed you listed a whole list of people, but I didn't see the federal government. Have they at all expressed an interest in the process you're going through?

Mr. Gordon Peeling: I'll say a few words, and Pierre might add to it.

Absolutely, first of all the agreements that we enter into have also become part and parcel of the environmental assessment process, which, quite frankly, I think is more of a sustainable development. We now have this social aspect of these agreements being literally essential to an environmental assessment outcome before governments will sign off. There is very strong support from government in a general sense for what we're doing. That's why we have partnered with the federal government to produce information for first nations communities to understand our industry better, so that they are in a more knowledgeable position to negotiate and enter into consultations with us on a knowledgeable basis. We're not there to take advantage of them. We're there to partner with them in opportunities.

The Chair: Thank you, Ms. Crowder and Mr. Peeling.

We now go to the Conservative Party. Mr. Albrecht, you have seven minutes.

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

Thank you both for being here today.

Looking at the letter of intent, and your news release between the Mining Association of Canada and AFN, and years of experience, it's obvious you have modelled in many ways this idea of collaboration and working with first nations people in terms of trying to find some common ground, if we can use that term. I'm referring to your news release where you talk about collaborating and months of discussion between the two organizations. Chief Fontaine indicates that first nations and the mining community are natural partners and goes on to talk about true collaboration. You've indicated that it's the largest private sector employer of aboriginal people. I think we all agree around this table that to advance economic opportunities for first nations people it's certainly win-win for everybody involved.

I would like to ask a question on your first point in your letter of intent, where it refers to the fact that you're jointly advocating to the federal government for a clear, effective, appropriate federal consultation policy. At this committee we've discussed the issue of consultation many times. My question comes down to the idea of developing a policy for consistency as to what consultation is.

Is it realistic that the federal government, or any other organization for that matter, will get unanimity in terms of agreeing on what constitutes adequate consultation? I would be interested in your thoughts. As I said earlier, you've obviously done something right, and it's working. I'm not sure if you would call it consultation or collaboration or what statement you would like to make on that.

Thank you.

● (1610)

Mr. Gordon Peeling: Let me speak from the ideal, and then I'll give you the metric to tell you whether the government in actual fact has got to an appropriate level of policy on consultation.

First of all, the government has to come at this from the point of view that it needs to have a consistent policy. The Supreme Court requires that the government discharge its consultation requirement in honour of the crown. The government clearly must have some view as to how it will discharge that responsibility. Its challenge is how to take that view and make it consistent across all the actors of government that will come into contact in some way with aboriginal communities across this country. It's our understanding that the government is in the process, with legal advice, of preparing that sort of consultation policy. You will know whether it works by how often you end up in court.

Our problem is that the government may think it's discharging its responsibilities appropriately and we may be acting with an investment on the basis that indeed the government has done so. We may spend millions of dollars on an environmental assessment process, only to find out that someone is taking the government to court over not having discharged its responsibilities appropriately.

That's the frustrating part, because costs build. It makes it a very difficult situation for the business community, not to say the aggrieved party that feels responsibilities haven't been discharged appropriately. I think the government has to operate from the point of view that it can do this in a manner that will meet the test of the courts.

Unfortunately, the courts have not given a lot of direction as to what would necessarily constitute appropriate consultation, and that has made it a bit more difficult for the government. But we get caught as the ham in the sandwich when the government fails or is perceived to have failed in its duties, and that's the difficult part, from our point of view.

Mr. Harold Albrecht: Thank you.

On the timeframes indicated within Bill C-30—the three and three—and then hopefully to the tribunal for a fairly speedy resolution, do you see this as a move forward for the mining industry in providing some sense of certainty as to whether they can move ahead on exploring certain pieces of property?

Mr. Gordon Peeling: Absolutely. We're very much in favour of timelines. You have a front-end part of this process to get a claim to an appropriate level before it can enter into the tribunal process. There's a period before that when there are negotiations and discussions before one party or both decide that it should go to a tribunal process.

I think that is all positive. We are strong advocates of having reasonable timelines in the regulatory system, but reasonable timelines can only be met if there are adequate resources to meet them. If there are not adequate resources they serve no one's interest and timelines are a bit of a chimera. So to come back to an earlier point that I perhaps didn't respond to as well as I might have, adequate resources have to go with this process.

Mr. Harold Albrecht: But given adequate resources, are these timelines realistic?

Mr. Gordon Peeling: They're realistic and a positive step. The other very positive thing about this is that with the five-year review you have a very quick check as to how well this is working in real terms and whether there are significant changes. Five years will pass very quickly in this process, and I think it's always important to have a five-year opener on legislation in these sorts of processes.

Mr. Harold Albrecht: A number of witnesses who have appeared before our committee have suggested certain amendments to Bill C-30, such as removing the cap or adding some elders to the tribunal. Do you suggest it's important that the committee and Parliament move this bill ahead quickly and implement it, rather than risk getting bogged down in endless amendments?

● (1615)

Mr. Gordon Peeling: Our preference obviously is to move quickly. With a five-year review, you'll have ways in the future to fix any inadequacies that people may perceive once it is fully operating. But our view is to get it up and running.

Mr. Harold Albrecht: Thank you.

The Chair: Thank you, Mr. Albrecht.

That completes the first round. We have time for a couple of questioners in the second round, so to the Liberal caucus for five minutes.

Mr. Russell, go ahead.

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

Thank you for being here. It's certainly a different perspective from some of the witnesses we've had, in terms of looking as a third party from the outside and seeing what impact that can have on your particular industry.

I note that when you made a comment—and you may correct me—you said that there aren't many small specific claims that you know of that are having an impact on your industry right now. Is that what you said?

Mr. Gordon Peeling: That's right.

Mr. Todd Russell: But you said you wanted to clear up that backlog in such a manner that you can get at the larger claims. Are you talking about the larger specific claims, or are we talking about comprehensive claims?

Mr. Gordon Peeling: I mean comprehensive claims, and larger land claims, and things beyond the $150 million limit. But that political agreement will deal with some of that.

Mr. Todd Russell: Yes, because this particular bill caps it at $150 million, so when you say you want to get resolution of those larger claims, you're talking about the claims greater than the $150 million?

Mr. Gordon Peeling: And I'm talking about comprehensive claims. I'm not sure what level they would come in at.

Mr. Todd Russell: Some may make it in under the $150 million; some may make it over the $150 million.

I guess the underlying premise here is that you want certainty as an industry, and you want clarity as an industry, in terms of not only larger specific claims, but comprehensive claims. I totally agree with you on comprehensive claims, that in fact we may have to look at some kind of process that not only talks about comprehensive claims in terms of resolving the outstanding ones—in terms of accepting them for negotiation and then going into negotiations—but there's a lot of talk about the implementation of comprehensive claims. Many times, even once a treaty is signed, the parties are bogged down in ongoing litigation about exactly what a clause means, or was intended to mean, and that type of thing. So I understand the need for clarity.

I just want to come back to your industry itself. In terms of the respectful relationship your organization is trying to engender between the mining industry and the minerals industry and aboriginal groups, it seems like one of the most problematic areas we have is the actual staking of claims, because there's a sense—and maybe I'm wrong—in the industry that the level of participation prior to staking is far less than the engagement they would have with an aboriginal community after staking claims.

What we have is a system where you can actually go in on the computer, as you said, and for a credit card that has a good limit on it, you can start staking out claims all over the map. Before you know it, a company—maybe one of your partners in this—has 200, 300, or 400 claims staked over aboriginal lands, or disputed lands in some cases, and even over lands that have been settled under treaty. For instance, I look at the Labrador Inuit in Labrador, the Métis in Labrador, the Innu Nation.

What kind of reasonableness test do you use in terms of your industry, in terms of the staking of claims? Because a lot of your Canadian mineral association people do stake claims, and you see it as part of the mining process.

Mr. Gordon Peeling: Most of our members would be staking claims around existing mine sites that would tend to have agreements. It's the junior exploration companies—which I don't represent and which I really can't speak for—where what you describe is often the case. They're small companies and they have limited resources to consult. But even there, their own guidelines in the e3 process, the environmental excellence in exploration, is also made available to aboriginal communities, and aboriginal communities should be using that document and demanding the performance that is described in e3 for any company that may enter on to their lands, staking or otherwise. Often there's a level of exploration that takes place on a reconnaissance level, where you've not necessarily staked specific ground yet.

We've even had consultations with government geoscientists from the Geological Survey of Canada about their need to consult. Even from a government science point of view, they need to talk to communities and consult with communities before they go on the lands. One of the Platinex issues is the surprise factor for a community suddenly realizing that somebody is out there drilling in basically their backyard, and they had no idea.

● (1620)

Mr. Todd Russell: Absolutely. Thank you.

The Chair: Thank you very much.

Before I go to Mr. Clarke, I'll just remind committee members that we invited the PDAC, and unfortunately they were unable to come. In hindsight, I think we were right to invite them, and it's too bad they aren't here, because I think some of these questions would have been interesting to put to the Prospectors and Developers Association.

Mr. Clarke, you have five minutes.

Mr. Rob Clarke: This will only take about a minute.

This is to the Mining Association of Canada. You mentioned consultation as a whole. You indicated that law cases coming up from civil suits hamper your exploration needs. Has your association considered, in consultation with first nations, speaking with elected officials—which you mostly do, I believe?

Do you also seek the opinions of the membership?

My rationale, from what I've seen in the past, is that band memberships of first nations reserves criticize not being consulted.

Has your organization thought about taking that approach?

Mr. Gordon Peeling: When we look at community consultation at a company level.... Clearly, you have to talk to the existing political structure in the community; you need to also consult the elders; you need to consult the community broadly. It's almost at three levels. Particularly if the activity is substantive, you need to consult the community widely. It isn't just talking to the chief or the band council; it really is much more than that.

Out in the area where you want to operate, there may be traplines and there may be other activities that not all of the community is aware of. You need to cast this net as widely as you possibly can.

Mr. Pierre Gratton: I want to add to this point to illustrate, too, how the industry has been evolving, it's becoming increasingly commonplace now for companies to have on staff community liaison officers who actually come from the communities where they're operating.

They're the go-between, in a sense. They have to be careful sometimes; they don't want to be perceived by their community as having been co-opted. They play a very important role, because they know from their community's perspective, and can provide the company with advice on, how to go about talking to and working with the elders, the political chiefs, the women in the community, and the youth, and they know how to do it in such a way that it's not going to go against community norms. That's becoming an increasingly strategically important role within the mining industry.

You're seeing it more and more. At first I saw it in larger companies like Diavik, those engaged in some of the bigger projects. There's a little project in northern Ontario at Lac-des-Îles, a palladium mine, and they have a community relations officer now from the community. It's becoming very commonplace.

If I may, I also want to pick up on another point that was raised a few times about the fact that this bill is dealing with specific claims. While the specific claims are not the primary concern of the industry—it's around the larger, comprehensive claims—in the experience of working with first nations, there's a big difference when you go into a community that doesn't have pre-existing grievances with the federal government on anything. It's a lot easier to sit down, in practice, with communities like that. Being able to deal with these more expeditiously helps us get to a point where you have a much more hospitable environment to negotiate with. So there are other less tangible but nevertheless meaningful benefits that come from this.

● (1625)

The Chair: Thank you.

For the last turn, it's Monsieur Lévesque from the Bloc, for five minutes.

[*Translation*]

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

Thank you, gentlemen, for joining us.

As you know, I represent a region where most claims have been settled. That goes for land claims as well as general claims. This is a well accepted principle in James Bay and in Nunavik, which has a regional government.

You stated that the industry was engaged in consultations. When you carry out a project exclusively in a given community, do you consult with your members or with first nations?

[*English*]

Mr. Gordon Peeling: There are consultations at that level, and as you probably are aware with the example of Raglan, there are consultations at the Makivik Corporation level that cover a wide range of communities right across northern Quebec, literally from Val D'or over to Nain, over in Labrador.

When you get to that level.... We tend not to create new communities, so we look for that workforce to come from existing communities, and they might be within a 200-kilometre radius. It might be even beyond that in some circumstances, depending on the size of the operation, the opportunity that presents itself. Consequently, you would negotiate agreements with those communities, and maybe training requirements to create a body of educated specialists who could be employed by the mine site. You may identify business opportunities; the operation would work to see entrepreneurial and business spinoffs in the communities, etc.

It is quite a broad net at times, or it can be quite focused, depending. It's all regionally specific, really. There's not one way to describe this.

[*Translation*]

Mr. Yvon Lévesque: You say that you hold consultations of some kind, depending on the territory involved. For example, last week, Makivik Corporation received a nice cheque from Xstrata.

When one community is recognized and another is not, how much time to you spend trying to work out an agreement with them?

[*English*]

Mr. Gordon Peeling: Again, it all comes down to the specific needs of the communities. There may be no difference in either case. The negotiation that we would have would be an interest-based one where both parties want to take advantage of the economic opportunity that is there: job creation, business development, investment opportunity, partnership, revenue flows to communities, revenue flows to business. That interest-based negotiation is likely to be a bit more focused in a settled-claim area, but it will depend on what the community needs are at the end of the day.

These agreements, from our side, always have to be respectful of and driven by the community needs. They are very different in every part of this country. And that is often a challenge for us, because you can't say I've done it here, so I can just go do it there and it's going to be very easy. Well, the reality is that it may not. It may end up taking two or three years to get to an agreement in some areas, just because the community may find itself having a very difficult time focusing and getting a community view, consensus, on how it wants to translate a need into specific demands with the company.

● (1630)

The Chair: Thank you very much.

This concludes our first panel today. I'd like to thank my colleagues for their questions, and I'd like to thank our witnesses, Mr. Peeling and Mr. Gratton, for appearing before us today. We've appreciated your input.

We are going to take about a five-minute break now so that we can get the video-conferencing equipment set up for our second panel.

● (Pause) ●

● (1635)

The Chair: I would ask members to take their seats.

Good afternoon, Mr. Paulette and Mr. Erasmus. Can you hear us?

Chief Bill Erasmus (Regional Chief, Northwest Territories, Assembly of First Nations): Yes, we can. Can you hear us?

The Chair: We can.

My name is Barry Devolin, and I'm the chair of the committee. We would like to welcome you today.

This is meeting number 22 that we're holding regarding Bill C-30, an act to establish the Specific Claims Tribunal. We have heard from many witnesses over the past few weeks, and we are approaching the end of our hearings. We really appreciate that you gentlemen could make yourselves available today.

We will give you about ten minutes to make a presentation. I'm not sure whether one of you will present for the whole ten minutes or whether you will split that. I will leave the two of you to arm wrestle over the time.

After you've done your presentation, we will do a round of questions. I think we will probably only have time for one round of questions of seven minutes today. This is the first time I have chaired a meeting with a video conference, so I am hoping this will go well.

Gentlemen, if you could introduce yourselves first and then make your presentation, it would be greatly appreciated.

Chief Bill Erasmus: Okay. Thank you, again.

My name is Bill Erasmus. I'm the Dene national chief for the Dene in the Northwest Territories. We constitute 30 communities, ranging from Fort Smith in the south, to Aklavik on the Arctic coast. I'm also the regional chief for the Assembly of First Nations.

Thank you for the invitation to appear before your committee. As you're aware, the work leading up to Bill C-30 has happened over the years. In the early 1990s I was co-chair of the joint task force that originally started working on preparing a bill for the legislature. So I have some background and some sharing that I can do from that perspective.

I'm very pleased to see that over time we're at a point now where the bill is being prepared to come forward, and there's the political agreement that reads with it.

In the Northwest Territories we constitute about two percent of the specific claims that have come forward so far. That is because our people are at different tables. Some people have participated at comprehensive claims negotiations, some at self-government tables, others at treaty talks, and I think people have confidence in those particular tables. Very few specific claims have come forward.

It's fair to say that if those particular tables do not bear fruit, we would have many more specific claims that would come forward. So I think it's fair to make that comment.

As I mentioned earlier, we're pleased that the legislation is coming forward. We know we couldn't get everything in the bill, and the understanding is that the political agreement that comes with it has to be read in conjunction with the legislation. We want to insist that the political agreement be left as open-ended as possible, so that as we go along and as we learn from this experience we can add more to it. So I think that's important.

Over the years we have looked for an independent process, one that takes away from Canada being the judge and jury. I think this legislation goes far in developing that.

I was fortunate to be at the United Nations when the UN declaration on indigenous people's rights was passed in September. I think we can say that this process works within the meaning of that UN declaration, and that gives support to the whole process.

Again, this develops a new relationship between ourselves and Canada, and we're very hopeful this is a positive move. I think this legislation and the process involved is leading to a new relationship, and I think it can be extended with other practices when dealing with other legislation.

Now, I know my time is short. I want to make two comments, and I'm speaking in support of the legislation. If you were to make amendments, there would be two areas that I would suggest you look at. One area is a huge concern.

● (1640)

From the beginning, the whole process was not about money. It was about land. Our people would very much prefer to have land included in the process so that they are able to have access to lands they either lost or are no longer with them.

The other one is the big claims, and I'm sure you've probably heard this from other people. We are very concerned about the cap for claims that are over $150 million. Many of these people have waited a long time. We're talking of legal obligations on behalf of the crown. These are not situations in which you are giving to people who are not deserving.

We would much prefer that these larger claims be included in the overall package.

Thank you, Mr. Chairman.

I'll give time to Mr. Paulette now.

● (1645)

[*Translation*]

Mr. François Paulette (Northwest Territories representative on the Chiefs Committee on Claims, Assembly of First Nations): [*Editor's note: The witness speaks in his own language.*]

[*English*]

I wanted to say my name is François Paulette. I'm a former chief. In the 1970s I became a chief when I was 21 years old. Around 1980, I resigned. I've been a regional chief. I've been involved with a number of treaty and aboriginal rights discussions north of the 60th parallel. I've been involved in the Indian Brotherhood, the Dene Nation, the Berger inquiry....

I just want to say I was involved in a court case, Paulette et al. v. The Queen. I claimed we had prior ownership of territory in the Northwest Territories of over 450,000 square miles of land. That milestone ruling opened a lot of doors for us in the discussion of how to settle outstanding claims north of 60.

I'm from the Treaty 8 area. I've also been involved with the Bourque commission, the constitutional development in the Northwest Territories. I've also been involved with the renewal commission of the AFN and I still continue to advise and work with the national chiefs.

Quite recently I've also been helping protect areas of the Dene north of 60, particularly the national park on the east arm of Great Slave Lake. I've been attending a lot of international conferences dealing with the environment and the protection of Mother Earth.

I've also been involved in this joint task force from the beginning. I must say that from where it's been to where it's at today, there've been a lot of compromises on the way, and we're dealing with legislation before us that may not meet where we left off with the joint task force report in the late 1990s. Treaties 8 and 11 in the Northwest Territories address very specifically that we were involved in non-extinguishment and non-surrender treaties by peace and friendship, that we are to live side by side. Also, people today, when we talk about our land, that's what we talk about. When we say this in my language, it means we cannot really put a price tag on this land we are talking about.

Land is foremost in importance to us. It's the centre of our civilization and our existence. North of 60, as you know, a lot of exploration goes on, and the first thing these big companies that come here want is land. Canada leased them permits to look for these rich resources north of 60.

I want to go back to the national chiefs issue. In Bill C-30 you talk about cash only. I think that really deviates from our principle of talking about land. There's a cap of $150 million. If there is a cap on that and we go over that, what are the options? What are the alternatives? One of the foremost for us is land. We need to go there. We need to be honest and up front, because this discussion on legislation is dealing with parts of treaties.

The other thing I must add is that provincial participation in this process is not there, and that will definitely create a lot of..... Particularly land needs to be addressed up front, because people south of the 60th parallel have to deal with provinces. Since NRTA 1930, the transfer of land has been in the hands of the province, and many times the provinces have a tough time surrendering these rich resources in their territory. So we need to look at that.

● (1650)

I also wanted to say that today we're going through Bill C-30, but if we had the political will, if Canada had the political will, we probably would have dealt with all these outstanding claims. But we're having to resort to legislation to review these outstanding claims.

With that, I just want to thank the committee for listening. I know that we have a very short time here. I want to thank you all for listening to me.

The Chair: Thank you very much, gentlemen.

There are a couple of things before we begin questions.

It is my understanding that the translation will work through the system. If there is a question put in French, what you will hear through your microphone at that end will be the English translation. If that does not happen, just give us a wave and we can have one of the translators come to the table and do the translation that way. That's the first thing.

The second thing, if you notice, is that we actually have some snacks here at our meeting today. Unfortunately, we cannot share them with you. The bad news is that they will be virtual snacks. The good news is that the calories are virtual as well today, for you. So you have that advantage over us.

We will have time for one round of questions. The first turn goes to the Liberal Party.

Ms. Keeper, you have seven minutes.

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

I'd like to thank Mr. Erasmus and Mr. Paulette for participating and for being frank.

There has been a recurring concern by first nations that have participated as witnesses about the extinguishment and release of rights to the land. Because so many specific claims are based on the illegal disposition of reserve lands, I actually have two questions about that for you. One has to do with the process itself.

If a claim is rejected for negotiation, it can then be put forward for tribunal process consideration. But the process says that the minister has three years to decide whether to accept or reject a claim. If there is no response from the minister after three years, then it is deemed rejected and there is the opportunity to take it to the tribunal.

Do you feel that there is too much power in the hands of the minister in terms of this whole issue of the land? It seems to me that it puts in the minister's hands the power to decide which claims are going to be negotiated with a possible settlement of land and which claims are going to be deemed rejected and have to go to the tribunal for monetary compensation only. That's one question: Do you feel that there's too much power in the hands of the minister in that regard? And do you have a suggested amendment on the issue of the land and this concern about extinguishment? Those are my two questions.

Mr. François Paulette: I will speak to the land issue first.

I settled an outstanding claim for my first nation band. The discussion always is around land, because land is the most important. It's our economic future, it's our way of life, our Dene *chanie*, our culture at hand, that's there. To put it very simply, land was here first; money came after. The money is going to be gone, and land is going to still be here. If we were going to buy land, then land would become very valuable, and people will start to jack up the prices and so on. The Indians are going to be buying land and they're getting all this money. So I think we need to be open.

On the question of the minister, I think if we're going to be creating this tribunal, at the end of the day, the tribunals should be the ones that make the decision.

● (1655)

Chief Bill Erasmus: I would just add that in terms of the land, I think if you were to look at an amendment, the onus has to be on the federal government.

When the original land transactions took place, they were with the crown in right of Canada, and not with the provinces. Canada, within this exercise, has to take the lead.

They are now saying that the provinces are a third party. That might not be the case in the Northwest Territories and Yukon and Nunavut, but in other parts of the country it leaves our people in a very precarious situation.

So I think the way to do it is to put the onus on the federal government to take the lead with their section 91 powers over section 92 powers. That's what I would encourage, as well as leaving the door open so that people are able to select lands. And again, as Mr. Paulette said earlier, if the will is there, then we can get creative in developing that.

In terms of whether the minister has too much power, I think one of the things the joint task force was trying to do was to take us out of the minister's hands as much as possible. The fact that you have a tribunal suggests that the minister will either respond very quickly or will take action and move more quickly on the claims. In other words, you'll have fewer situations in which the minister will remain silent and have it go to the tribunal, because they really don't want it to go to the tribunal.

Thank you.

Ms. Tina Keeper: Thank you.

My concern is that we have seen this government put these immigration law changes within the budget bill that's currently before us. And again, there is that scope of power for the minister to make unilateral decisions. I hadn't even thought of this until I saw what happened with the budget bill.

When I thought about this whole process through which, if the minister does not respond within that three-year period then it is deemed rejected, my concern was that then the minister can basically decide which ones he responds to for negotiation. I understand what you're saying, that the hope is that this would expedite the negotiation process and the number of claims going through the negotiations process.

There may be an opportunity for an abuse of power if they choose which ones not to respond to, which are then deemed rejected and are not up for negotiation towards resolution in terms of land but are only up for resolution through monetary compensation. That was my concern.

Chief Bill Erasmus: We agree with you. As you probably heard other people present, there were compromises when drafting the bill, and that was one of them. We're trying to take as much authority as possible away from the minister through the process.

Ms. Tina Keeper: Thank you.

May I ask one more quick question? It concerns the clause in the bill that says a third party cannot force a province to the table. You talked about the section 91 powers over section 92 powers. Could you just clarify that?

● (1700)

Chief Bill Erasmus: What I was referring to was that the Canadian Constitution is based on a set of authorities, and the federal government's powers under section 91 generally override section 92 powers.

If you were talking about a family, the federal government would be the parent, and the province would be the child. Especially in the case of going back to dealing with lands and indigenous peoples, it was always handled by the federal government. It was never the province until very recently.

So I think because this is not a normal Canadian case—for example, you're not dealing with Canadians per se, but rather with first nations in a different relationship with Canada and a different relationship within the meaning of the Constitution—I think you can build a special case that says the province needs to be involved at a level as though they were the crown, because that's how they got the lands. And they need to deal with the indigenous peoples in a fair and just manner, consistent with the UN declaration, which talks about redress.

Ms. Tina Keeper: Thank you very much.

The Chair: Thank you.

Next is Mr. Lemay, from the Bloc, for seven minutes.

[*Translation*]

Mr. Marc Lemay: I was startled when I heard Mr. Paulette speak. I have also just heard Mr. Erasmus talk about the provinces' obligations.

Do you have in mind an amendment to clause 22 of Bill C-30? I will let you talk because I sense that you are heading in that direction.

Subclause 22(1) states the following:

> 22. (1) If the Tribunal's decision of an issue in relation to a specific claim might, in its opinion, significantly affect the interests of a province, First Nation or person, [...]

The drafters of the bill forgot to include the territories, the fact that a territory could be involved, but we can come back to that later.

> [...] the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be affected.

I have a very specific question for you. Do you see some way that clause 22 could be strengthened? You mentioned the importance of involving a province in the settlement process. Do you see some way of strengthening clause 22 and if so, what would that be?

[*English*]

Chief Bill Erasmus: As I was suggesting earlier, I think we can recognize the authority of the province as it is today, but at the same time, because we're dealing with such a sensitive issue as indigenous lands, Canada ought to take the lead and compel the province to come to the table as if it were the Crown. That would be what I prefer.

In terms of specific language to this, I think we might be prepared to help you look at how you might want to redraft it. At the onset we weren't suggesting specific amendments, but if you were to make amendments, we would be open to talking to you. We have more comments here.

Mr. François Paulette: I want to add, particularly to land and the treaties.... I'll talk to Treaty 8 and the crown. It's between these two parties that treaties were made. Now, if we are going to do negotiations, these two parties can still ask a third party, which is the province, to come to the table, because these are issues related to treaties—land in particular. That would be another way to do it.

● (1705)

[*Translation*]

Mr. Marc Lemay: That is an interesting solution. However, I did not catch everything you said.

Do you agree with the composition of this tribunal? As I recall, pursuant to clause 6, the tribunal shall consist of superior court judges with final decision-making authority.

[*English*]

Chief Bill Erasmus: I think the fact that they are Superior Court judges has brought concern on our part, because there are very few first nation or indigenous peoples who have Superior Court appointments. On the fact that it's a final decision, I think we've always been okay with final decisions, because you want the tribunal to have binding authority, which is something that can be on par with a minister. To date, the authority has always been with the minister, and that's been part of the problem.

You want a tribunal that's fair, that's representative of the Canadian population. It may not be representative, because our people don't have the standing to sit on that committee. That's been a concern we've had all along.

I think that answers your question.

[*Translation*]

Mr. Marc Lemay: Yes and no.

I am interested in getting your opinion on subclause 12(2). The tribunal may indeed consist of sitting superior court judges, but a committee could help the tribunal establish a certain number of rules. For example, the tribunal could hear the views of elders. We know that such views are conveyed verbally in many instances.

I was wondering if subclause 12(2) could give first nations some fundamental influence over decision-making or the hearings of the specific claims tribunal.

[*English*]

Chief Bill Erasmus: Yes, that's true, it is possible. I think there are a number of factors at play. One is that you assume that the judges who are sitting on the tribunal are going to be fair and they're going to be listening to advice, and they are a body separate from the government of the day. So that does make sense.

We would also encourage at your level to have the influence to make sure first nations peoples are, in fact, appointed at the Supreme Court level. So there are a number of things that are going to have to happen over the next number of years.

Mr. François Paulette: I just wanted to add to that. If an elders council is created, then the rules of that council need to be explicit. I say that because I was involved in a court case, the Benoit taxation case, which I was an expert witness at. The appeal judge in his ruling said that François Paulette, first, was not mandated to talk about taxes, and second, was not an elder. So is it the judge who is deciding who's an elder? I think that needs to be very clear. If we're going to put an advisory council or an elders council together, the rules need to be explicit.

● (1710)

The Chair: Thank you very much.

From the NDP, Mr. Masse is here. You have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you for having me here. I give regrets on behalf of Jean Crowder. She's actually speaking in the House of Commons right now about the UN declaration and the debate that's going on.

Mr. Erasmus and Mr. Paulette, thank you very much for your testimony.

Mr. Erasmus, you made two points with regard to potential amendments. One was about the claims cap, and the second was about the process—about land, not money. Could you maybe expand on those two elements for the committee?

Chief Bill Erasmus: As you're aware, probably the biggest issue between first nations people and the crown is that land is at issue. There's a huge myth within the Canadian system that our people extinguished our rights to land; that somehow, without being defeated or conquered in war or by the military, we gave up all our lands and our rights to the crown. That's a myth that's been out there until very recently and that is beginning to turn around. Mr. Paulette talked about the court case he was involved in during the early seventies, which was a big part of turning the myth around, and also the Frank Calder case in British Columbia.

What our people really need and want is to have their original lands within their ownership so that they have a sound land base and can then develop their economy, their families, their nationhood, etc. They need the land base in order to survive. Money is necessary, of course, to function, but in most instances it's not the answer.

In terms of the larger claims.... Really, we shouldn't look at the question before us in terms of big or small claims; they're all important. A small piece of land is just as important as a large piece of land, depending on the peoples involved. For example, you're going to find people with different economies. There will be hunters and gatherers who have a certain attachment to the land; you'll have fishermen who are after lands they may have lost; you'll have people living along rivers, people in mountains, and so on. When you try to put a value to the claims, they come out to a dollar factor, and I think they should all be seen equally.

As I mentioned earlier, there are outstanding legal obligations on the part of the crown. There are more than 1,200 different claims before the government right now, and many of these have been sitting there for a long time. A cap is seen by many people as one way of continuing to keep the process under the control of the federal government .

With the huge surplus we have and good will, I think if you dealt with the cap differently, we could make a lot more progress. In the long run it will help all of us, because the sooner you deal with these claims, the more stability you'll have in our communities, and we can move forward.

● (1715)

Mr. Brian Masse: Thank you.

I want to move on to the discussion we've been having with regard to the three years and the timeframes, and to get your opinion on that. If the minister has three years to make a decision and then subsequently, if it's positive, another three years, how do you both feel about that timeframe and whether or not there should be adjustments or amendments made to that timeframe itself?

Mr. François Paulette: I want to go back to my own negotiation. It took a number of years just to come to the table, and if there had been a cap in that case, I'd probably still be back there. It took a lot of pressing and a lot of lobbying to bring the claim forward so that Canada could deal with it.

There are a lot of unfortunate first nations that don't have the kinds of resources needed and the knowledge of how to lobby in 10 Wellington Street and in Parliament, so they're falling behind. The minister picks and chooses who he wants to deal with.

The other case I want to point out is one in Grande Cache. There are six first nations whose claim has been on the table now for many years. They have a land base around Jasper Park and at Grande Cache, and they haven't been seen to be going forward on that.

So yes, if there's an assessment of the three years, then I think you should look at that.

The Chair: Thank you.

And now for the last questioner, from the Conservative Party, Mr. Albrecht.

Mr. Harold Albrecht: Thank you to Mr. Paulette and Chief Erasmus for taking time to be with us today.

Chief Erasmus, you mentioned in your opening statement that you serve as a regional chief for the AFN and that you've had many years of involvement, not only in this particular initiative, but also in previous attempts to address the specific claims issue. You indicated you're happy to see the bill before us.

As you would be aware, the Government of Canada not only consulted with the Assembly of First Nations, but also asked the Assembly of First Nations to engage in consultation with regional first nations groups. It is my understanding that these groups have provided input and have actually been directly involved in the drafting of the bill. As you would know, the process indicated in the preamble as well as in clause 5 is an entirely voluntary process. The preamble reads: “the right of First Nations to choose and have access to a specific claims tribunal”. Clause 5 reads: “This Act affects the rights of a First Nation only if the First Nation chooses to file a specific claim with the Tribunal...”.

I think it's important too that those two points are on the record.

As it relates to some of the amendments you have suggested—and we've actually heard from other witnesses as well on some suggestions for amendments—you mentioned the issue of land not being allowed to be awarded and that it's only a monetary award. You're also concerned about the $150 million cap as it relates to specific claims settlement by the tribunal. Are you concerned that if we were to back up and go into opening this up to some amendments that we may in fact lose the progress we've made to this point? You indicated the number of years it's been in process already. I'm wondering if you could comment on that.

Chief Bill Erasmus: Thank you.

First of all, yes, the Assembly of First Nations have been involved. We don't go so far as to suggest that the process was one of consultation. We did participate. We didn't get nearly as much involvement as we would have liked from people across the country. There are, as you know, over 630 first nations, and that's a lot of people to bring to the table. This process is much better than most of the processes we've had before us.

I'm sorry, I didn't write the last question down. Can you repeat it, please?

● (1720)

Mr. Harold Albrecht: My concern would be if we open this process up to a number of potential amendments. If you were concerned we didn't have adequate consultation to arrive at this point when Assembly of First Nations groups were actually involved in the drafting of the bill, if amendments are proposed, would we not need to go back to these groups and also include them in the amendments? That would, in my opinion, lengthen the process—who knows for how long. In that process we could end up losing the good progress we've made to come to what we have now. There is a five-year review mechanism in place. It would be my feeling that if we get this in place it would in fact make it much better than what we currently have.

The other point I made earlier is that it is totally a voluntary process. My big concern is on the lengthening of the possible adoption of this bill. It's my feeling that we need to move expeditiously to get it in place for the interests of all first nations and all Canadians.

Chief Bill Erasmus: Thank you.

Well, in my comments I wasn't directly suggesting that you make amendments. I was careful to say that in the event that you were open to amendments, those were the two areas I would suggest you look at.

Of course there's the danger of a lengthy process, especially with the sensitive nature of government as it is in a minority situation. The legislation may not get passed. It may die on the order paper.

That was partly why I was suggesting that the federal government needs to take the lead when dealing with the province and to develop creative ways so that the province is open to providing lands within the system.

We know that if a first nation is granted compensation in terms of money, it can then go to the province. I think the federal government could have a large part in convincing the province that it ought to open up lands when that happens. I was making suggestions to that effect.

In terms of the bigger claims, I think to some degree you may have some discretion on the part of the minister as to which agreements to deal with and what amounts of money. There's nothing stopping cabinet, for example, from using the authority it has to deal with larger claims and moving quickly on them.

Thank you.

Mr. François Paulette: I just want to make comments on that.

I'm a first nation member living on the land. So who I'm speaking to right now, this audience, is the government. I don't segregate Conservatives, Liberals, NDP, and the Bloc. You are there, responsible MPs, in Parliament.

We are first nations, making a pitch that Parliament, that Canada, make the wisest and the best decision it could make affecting first nations for the future and the rest of Canadians, who you are speaking to.

I just want to put it in that perspective.

● (1725)

Mr. Harold Albrecht: From my perspective, I would totally agree that we want to make the best decisions for all Canadians, and specifically in this case for those first nations communities that do in fact have outstanding specific claims. However, my concern, as I said earlier, is that it will lengthen the amendment process, but secondly, if we remove the $150 million cap, that that in fact could do two things. It could slow the process down, but also use up the $250 million or large portions of the $250 million that's available to settle these specific land claims.

So it's my view that if we leave that cap there, we will speed up the process of the specific claims under that, and cabinet, as you pointed out, still has the authority to deal with the claims that are above the $150 million, and in the process both streams of claims will be expedited.

Thank you very much.

The Chair: Thank you very much, gentlemen.

That brings this part of our meeting to a close for today. Thank you for your time, your statements, and the answers to our questions. You are an important part of our deliberations.

For the rest of the committee, there's one little bit of business I would like to discuss with you before we go. On Wednesday this week, we have another large group of witnesses, as we did last week. My suggestion, if members are willing, is that we extend our meeting by half an hour, until six o'clock, so that we can hear two panels and hear from witnesses.

The two meetings next week are not a problem.

[*Translation*]

Mr. Marc Lemay: I believe we have a vote scheduled for 5:30 p. m. Wednesday. I do not have a problem with extending the meeting until 6 p.m. if there is no vote. That is fine with me.

[*English*]

The Chair: Okay. Well, if there is a vote, we'll be forced to do it within our normal time. But we have several groups and we could run out of time, just as we did last week. It's the questioners who don't get their time.

At any rate, that concludes our meeting for today.

We stand adjourned.

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