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Chair

Mr. Barry Devolin

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● (1530)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Good afternoon, everyone. I would like to welcome you to the 24th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we will be continuing with our hearings regarding Bill C-30, An Act to establish the Specific Claims Tribunal and to make consequential amendments to other Acts.

We have a very full house here today, so welcome to all of you, both our large number of witnesses as well as those in the room today. I only point that out because there are actually people at home watching this on television and they can't see that part of the room to know that we have a full house here today.

We have the Iroquois caucus here today, and we will begin with six presentations from this group, limited to 10 minutes each. We have two hours, so we need to be done at 5:30. I'm going to restrict those presentations to 10 minutes, and I would ask for your cooperation in that regard. I'll give you a one-minute warning. When you start your presentation, at one point I will just say, "one minute left", and that gives you an idea of your time so you can wrap it up. I only ask that because following those six presentations, which will take a little over an hour, we will have a round of questioning, and I know that many of the committee members would like to have the opportunity to ask questions. Depending on how long it takes us to get to that point, we'll adjust to determine whether we have time for one round of questioning or whether we have time for possibly two rounds. We'll cross that bridge when we come to it.

First, we are going to get a presentation from Chief Bill Montour on behalf of the entire group. There are 10 minutes for that presentation. Following that, we'll have a second presentation from the Six Nations of the Grand River, which will also be given by Chief Montour.

I will give you 10 minutes, and if you finish your first presentation before that, then I'll just make that point and we'll carry on to the second one as well. With that, welcome, Chief Montour. You have 10 minutes.

Chief Bill Montour (Six Nations of the Grand River): Thank you, Mr. Chair and honourable members of the Standing Committee on Aboriginal Affairs. *Sekon, skano*!

Before I start, I would like to acknowledge that Grand Chief Steven Bonspille from Kanesatake is with the witnesses. He didn't get a chance to get his name on the list. I just wanted to make that point.

My colleague chiefs have asked me to make this statement on behalf of the caucus.

In prehistoric times, the Iroquois formed a confederacy to assure peace, unity, and cooperation among five nations. We are referred to as the Five Nations Confederacy and then the Six Nations or the Iroquois Confederacy.

Our original homelands stretch from the Niagara region in the west as far as Quebec City in the east. Our people are still living in many communities throughout our territory. We still carry on intercommunity trade as we always have. The Iroquois Confederacy is both a military and a sovereign political ally of the British and the Americans. We've never given up our sovereignty, nor have we willingly ceded our land and territories. We still hold and exercise our original rights and freedoms.

Kahnawake, Kanesatake, Akwesasne, Tyendinaga, Wahta, Six Nations of the Grand River, and Oneida of the Thames are the communities of the Iroquois Confederacy. Although we are separated by distance, we recognize that we are one people who share a common identity, common responsibilities, and our own system of law and government. Among our member communities, we have four of the five largest reserves in Canada. The elected councils of our communities have united in a political forum known as the Iroquois Caucus, and we represent the interests of our combined population of more than 60,000 people.

We have tried to have our issues and views presented through other processes and organizations. This has not worked for us. We have decided that now and in the future we will represent ourselves at all regional, national, and international levels and speak on our own behalf. As one people, we will have no other organization represent us or speak for us without our express consent, including the Assembly of First Nations.

Any agreement they enter into cannot be binding on us without our consent. As original nations of this continent, we have always maintained that we are nations within the meaning of international law and have never given up this status. As far back as the League of Nations, the forerunner of the United Nations, we have sent delegations asserting our sovereignty and imploring the crown to live up to its treaties with us.

Our relationship is with the crown and is governed by the Two Row Wampum, one of the oldest treaties in North America. It is interpreted to mean that in the same way as two rows do not intersect, our respective governments also agreed not to interfere with each other. The purpose was to establish and maintain peace and friendship within our nations. The Two Row defines our relationship by recognizing that we are equal but separate nations, and that forms the basis of all our treaties and agreements that followed.

We have continued to adhere to the relationship because it is our responsibility. We teach our children about responsibility because they will inherit this responsibility after we're gone and because peace is always desirable over a state of conflict, and friendship is a desired societal goal. But we find that Canada, which is responsible for this relationship on behalf of the crown, does not honour the agreements made by its forebears.

Rather than approaching the issue as allies and seeking a peaceful resolve, we are too often faced with unilateral decisions directed to us on how the issues will be handled. As a result, we find ourselves faced with the prospect of constant conflict.

Our treaties with the crown are vastly different from the so-called numbered treaties with Canada. Our pre-Confederation treaties are of governance, sharing, honour, and respect between the crown and the Iroquois, but they do not include extinguishment of our title.

Let it be understood that settlements resulting from any process will not include any release of our lands, and no amount of money can replace our children's future in our lands.

Our original relationship is represented by the Two Row Wampum for the purposes of establishing peace and friendship between us. The occupations, protests, and even armed conflict that has been occurring and continues to occur in our communities over land issues and claims is inconsistent with the intent of our relationship. It is a continual state of conflict that neither of us desire. As a result, we want this bill to be withdrawn.

● (1535)

We recommend developing a fair process based on our original relationship with the crown, a process whereby reconciling our interests would achieve peaceful and more acceptable resolutions for settling grievances. We are prepared to work with the federal government in developing such a process.

I have a summary of recommendations. I'll read two of them, and my colleague chiefs will jump in after me.

Recommendation number one is that a fair process be developed based on our original relationship with the crown, a process in which reconciling our interests could achieve peaceful and more acceptable resolutions to settling grievances. The Iroquois Caucus is prepared to work with the federal government in developing such a process.

Recommendation number two is that Canada withdraw this bill until a full and inclusive consultation has taken place with all affected aboriginal nations through a process jointly designed with them and adequately funded.

I'd ask my colleague, Chief Randall Phillips, to carry on.

Chief Randall Phillips (Oneida Nation of the Thames): Thank you.

Thank you, Bill.

Recommendation number three is that the scope of claims be expanded to include all legal obligations arising from the fiduciary relationship and the honour of the crown, including pre-Confederation treaties.

Recommendation number four, is that Canada's perceived conflict of interest be removed through the creation of a truly independent mechanism that would report directly to Parliament and aboriginal nations and partially provide funding resources to first nations.

Recommendation number five is that aboriginal nations be provided adequate funding grants to enable them to pursue their claims and to create a more equitable and just process.

Recommendation number six is that Canada not be exempted from punitive or exemplary damages.

I'll pass the next on to Chief Thompson.

● (1540)

Grand Chief Tim Thompson (Mohawk Council of Akwesasne): Recommendation number seven is that compensation criteria ensure aboriginal nations are not discriminated against by the application of the Musqueam court decision.

Recommendation number eight is that where aboriginal title has not been seated, access to and use of land by the aboriginal nations be included in the settlement agreement.

Recommendation number nine is that the extinguishment clause be removed from the requirement of all legislation and agreements.

I'll now turn to R. Donald.

Chief R. Donald Maracle (Band No. 38, Mohawks of the Bay of Quinte): Recommendation number 11 is that an independent panel consist of at least three judges.

Recommendation number 12 is that at least one judge of the tribunal be an aboriginal judge.

Recommendation number 13 is that funding be decided and provided by an independent body.

Recommendation number 14 is that a special process for large claims be developed jointly with aboriginal nations and be implemented as soon as possible.

Grand Chief Mike Delisle (Mohawk Council of Kahnawake): Recommendation number 15 is that the Iroquois Caucus members have a specific exemption clause in the legislation until the large claims process is established.

Recommendation number 16 is that all elements of the political accord be included in the legislation.

And finally, recommendation 17 is that the cap on settlements be removed.

The Chair: Thank you very much for that initial presentation from all of you on behalf of your umbrella organization.

I would like now to move to the first of five presentations that will be made by the individual delegations.

From the Six Nations of the Grand River, Chief Bill Montour, go ahead again, please, for 10 minutes.

Chief Bill Montour: Again I want to thank you for the opportunity to appear before you. My time is short, so I'll cut to the chase.

As I said, my name is Bill Montour, and I'm the elected chief of the Six Nations of the Grand River. We are located in southwest Ontario, just west of Hamilton. Six Nations is the largest first nation in Canada, with a total population of over 22,000 citizens.

We have fewer than 5% of our original land holdings, as promised by the Haldimand Treaty of 1784. That translates to fewer than 46,000 acres of the approximately 950,000 acres promised by the crown to win our alliance with Britain throughout the revolutionary wars of independence with the Americas.

This number is significant, because, as you can well see, the difference in these numbers indicates the volume of the so-called land claims, with many years of compensation requiring redress. Today's value of this land in southern Ontario makes many of our documented rights to the land outside the scope of the financial cap contained in Bill C-30. Therefore, creative solutions will have to be implemented if the honour of the crown is to be maintained and our treaties fulfilled.

On November 2, 1796, 36 Mohawk, Oneida, Seneca, Onondaga, and Cayuga Indian chiefs authorized Joseph Brant to surrender in trust to the crown four blocks of land containing 302,907 acres for the purpose of establishing an annuity for the perpetual care and benefit of the Six Nations.

This was secured by 999-year mortgages between 1798 and 1811, but covered only a portion of the lands as identified. Continuous revenues from the mortgaged lands are no longer deposited to the Six Nations trust funds, nor have proper mortgages been entered into for all the lands placed in trust with the crown.

In 1796, funds were treatied to secure our perpetual care and maintenance and to ensure our education needs, our health care needs, our social program needs, and our housing and infrastructure needs are met to our standards.

We are supportive of the Iroquois Caucus brief to this committee, but I would also like to make or reinforce a few key points.

One, the duty to consult was not met with this bill. The duty to consult rests with the crown, and Six Nations was not consulted. This duty cannot be delegated to others, such as the Assembly of First Nations. The Assembly of First Nations did not consult, nor was it their responsibility to consult. The duty is to consult the rights holders, which means our Six Nations government, not organizations. I also understand the AFN was forbidden by the federal government to share what they were working on.

Two, this bill violates our treaties with the crown, in particular the Gus-Wen-Tah, or Two Row, Treaty, where we agreed to not interfere with each other's affairs. Once again the federal government is trying to impose legislation on us. This must stop.

Three, Six Nations is engaged in important and sensitive negotiations over lands in dispute at Caledonia and other parts of our treaty territory along the Grand River. We have been given a verbal assurance that this legislation will not apply to these negotiations, and we have even been given the assurance that we will receive a letter to that effect. However, we believe a letter will likely be overruled by this legislation. Therefore, we want an exemption from this legislation specific to Six Nations to be inserted in this legislation.

Four, we would also like to see the protections contemplated in this bill transferred to the federal mandates and negotiators who are negotiating large claims settlements with Six Nations, such as time limits and removal of technical defences.

Five, lands must be on the table for negotiation. Six Nations of the Grand River's view is that lands must be returned to the Iroquois Nation equivalent to the same standing as held by the Haldimand Treaty or as specified by Six Nations.

Six, settlements must mean certainty for both the crown and Six Nations. We don't want you going back on your word or the intentions of written agreements, as practised by crown agents in the past. At the same time, we do not want to see any extinguishment of our rights and interests to the lands in question. We can be very specific about what rights all parties are to receive. Extinguishment was never contemplated in our land dealings. We leased land, often through the crown, as income for Six Nations and for perpetual care and maintenance of our territory and people. In specific areas we welcomed people to share our territory upon leasehold conditions and under terms conducive to our title to the lands being maintained and continuous ownership.

● (1545)

I want to make a final comment on terminology and why this issue is important to us. Our attempts to obtain justice over our land rights issues have been termed land claims by the Canadian government. This term is wrong, and a new term should be found. We suggest, perhaps, first nations lands reparations. We are not making a claim of land. If there is any doubt about who owns the land, for an incomplete or an illegal transaction, any doubt must fall on the side of the first nations. It reverts to the Six Nations.

The reason for these land reparations is important because they represent the potential to fulfill intended purposes of land transactions, again, the perpetual care and maintenance of our nation. They represent a way to provide economic development and to generate revenue to make our communities self-sufficient. We need these resources through just settlements to fill the current funding gaps on so many issues important to our community, such as the provision of clean, safe water; the protection of our languages, cultures, traditions, ceremonies; and the protection of our environment. All these things are necessary for the perpetual care and maintenance of our people. That is why these just settlements must include more than cash. They must include the return of our lands and resources, which we had never intended to part with. They must include justice.

Nia:wen. Thank you very much.

The Chair: Thank you very much, Chief Montour.

Next, from the Oneida Nation of the Thames, I believe Martin Powless will be beginning the presentation.

Chief Randall Phillips: If I could, Mr. Chair, my name is Chief Randall Phillips. I will be doing most of the presentation. I have invited a councillor and elder from our community, Olive Elm, and she will also be doing part of the presentation.

The Chair: Thank you very much for that.

We look forward to this, Mrs. Elm.

● (1550)

Chief Randall Phillips: [*Witness speaks in the Oneida language*]

Good afternoon. I want to thank everybody for the opportunity to present our views on this bill to this committee.

First of all, I want to start by saying that I'm the elected chief of our community. I say “elected”, and I make that distinction for two reasons. Our community is involved with a traditional style of governance. We still have titleholders and clan mothers within our community. I make that distinction to one, respect them, and two, to make it clear that there is a distinction with regard to this notion of governance. So I put that as a preamble in terms of my statements, Mr. Chair.

The Oneida Nation of the Thames generally supports the submission of the Iroquois Caucus in its concerns about the proposed act to create a specific claims tribunal, Bill C-30. For example, we support the assertions that the Gus-Wen-Tah, or Two Row Wampum, is an ancient treaty right of all Iroquois communities and that Bill C-30 is in direct breach of this; that the Assembly of First Nations has no authority to represent our nations or our communities; that the federal duty to consult has not been met; that the tribunal, as proposed, is not independent; that land should be a part of the specific claims settlements; and that imposing Bill C-30 is a direct breach of and a purported extinguishment of our existing section 35 rights.

Our ancestors immigrated to Canada circa 1840. The Oneida Nation of the Thames was not granted any lands in Canada; rather, we purchased our settlement territory with our own funds. These funds were placed in trust, with the Indian department of the day, to purchase several tracts of land for the use and benefit of the Oneida Nation of the Thames people. Consequently, many of our specific claims deal with the land itself. We have outstanding issues with Canada as to whether we've received as much land as we paid for and whether we paid for certain tracts of land twice.

Our territory is not whole. There are conspicuous absences of land in the territory that we purchased. There are also issues of regaining the land that was once part of our purchased territory that has been lost to taxes or fraud by government agents. Our elders recount stories that indicate our land holdings once extended far beyond the currently recognized Oneida Nation of the Thames boundaries. Therefore, the provisions in clause 20, which refer to monetary compensation only, are simply not acceptable to the Oneida Nation of the Thames.

Entitlement to land we rightfully paid for will always be a contention of the Oneida Nation of the Thames, regardless of what legislation is passed by Canada. The right to manage our own lands has been a hallmark of our internal jurisdiction of the Oneida Nation of the Thames since we came to Canada in 1840.

Currently, the Oneida Nation of the Thames exercises inherent jurisdiction over internal matters such as land transfers, probate of estates, approving wills, and appointing executors and administrators of estates. Our jurisdiction originates from an 1840 order in council, which is outside the relevant Indian Act sections, and reads:

> Under the circumstances represented of a number of Indians coming into the Province possessed of means to purchase land, the Council do not think the Government is under any obligation to interfere with their affairs any more than in the case of ordinary immigrants; and the state of civilization to which they are said to have attained makes it, in the opinion of the Council, advisable to leave them to their own discretion in the management of their property....

Let me repeat that: it's “advisable to leave them to their own discretion in the management of their property”.

> ...but they should receive when they require it, the advice, counsel and protection of the Indian Department and of the Government, so as to insure the success of the Settlement as far as possible.

That's an order in council granted August 14, 1840.

The Oneida Nation of the Thames has continuously exercised this internal jurisdiction and has operated our custom landholding system for the past 170 years in reliance of our rights, as is stated in this order in council.

Bill C-30, if implemented as proposed, would amount to a unilateral extinguishment of our rights arising from that order in council. Why? Because clause 4 of that bill states that the act will prevail when there is a “conflict between this Act and any other Act of Parliament”.

Oneida has a *sui generis* relationship with Canada when it comes to our land holdings and our rights to our territorial base. Passing this legislation amounts to a unilateral back-door constitutional amendment, because it eliminates or amends our section 35 rights under the Constitution Act of 1982.

● (1555)

The Oneida Nation of the Thames demands that the federal government enter into negotiations immediately with our nation to reaffirm our ancient and existing rights with respect to our internal management of our lands, which has always been outside of the Indian Act.

There are some specific issues that we have with Bill C-30, and I'd like to focus on those.

Clause 3 gives the tribunal the power to determine the validity of claims, as well as to decide the amount, if any, of compensation that is owed related to those claims. This is not an independent tribunal by any stretch of the imagination. If you look at the combined effects of clauses 3, 11, 14, 19, 20, and 35 of the bill, what you have is one party of Canada appointing the judge and jury who will be deciding the cases against themselves. This is an affront to the principles of natural justice. There is no judicial independence. We submit that this type of scheme would only bring the administration of justice into disrepute. This process is fundamentally flawed. Maybe there might be some role for the tribunal and its expertise to determine what is fair compensation after there's been a determination of the validity of the claim, but to have the same body determine both is unacceptable.

Clause 5, when viewed in conjunction with clauses 34 and 35, creates a very real disincentive for first nations to file with the tribunal because, in effect, if the tribunal denies your claim, automatically the government is released from any liability or any damages that may have been payable arising from the facts surrounding the claim in the first place. This renders first nations rights and appeals useless and redundant.

Under clause 13, the tribunal may hear evidence with respect to cultural diversity, but they cannot award any amount for the head under this claim of subparagraph 20(1)(d)(ii), which deals with losses of a spiritual or cultural nature.

Subclause 13(2) demands repayment of the moneys provided to the claimant first nations after a successful claim. This is offensive. Why should we have to pay for something that is Canada's fiduciary obligation and their duty to protect—our lands and our rights upon those lands? We agreed to be accountable, but this clawback provision is unacceptable.

First nations already must deal with the ridiculous bureaucratic red tape for grossly inadequate funding. This inherently limits what research we can conduct, and thereby compromises our properly preparing claims. Funding should be provided to first nations with no strings attached. This government has unlimited resources. By contrast, we have very little.

Clause 23 is flawed, because the province must consent to be bound by the terms of the decision of the tribunal. Provinces will never consent to be bound. They are the ones that first nations oftentimes have claims against due to the divisions of power in the BNA Act.

The limits placed on the amount and the award are arbitrary and unreasonable. The ability for the crown to take up to five years to pay under clause 36 is discriminatory, as all other court judgments are fully payable immediately.

In summary, the overall flavour of the bill is one of reconciliation —

The Chair: One minute.

Chief Randall Phillips: —which we hear a lot of from the crown. Maybe the principles of compensation and restitution for first nations losses should be guiding this process. Once those have been addressed, then possibly we could move forward in a form of reconciliation.

The Oneida Nation of the Thames has never been adequately consulted with regard to the potential effects this draft legislation may have on our lands and our rights on those lands. Nobody, including the Assembly of First Nations, has been given the mandate to agree to this legislation on behalf of the Oneida Nation of the Thames or to negotiate what should be included in there.

The Oneida Nation of the Thames does not support this legislation. We will not consent to waiving our existing rights just so that we can have a claim considered by this process and the tribunal.

There's also a conspicuous absence of a non-derogation clause. We feel this is because it is an explicit attempt to extinguish rights under section 35 of the Constitution Act.

The Oneida Nation of the Thames should be negotiating directly with the federal government to resolve our outstanding land entitlement issues. In our case, any amount of money simply will not suffice. Getting the lands we rightfully paid for 170 years ago is our primary objective.

In conclusion, I'd like to finish with our recommendation in the language.

● (1600)

Mrs. Olive Elm (Councillor, Oneida Nation of the Thames): [*Witness speaks in the Oneida language*]

Chief Randall Phillips: Thank you, Mr. Chair.

The Chair: Thank you very much, Chief Phillips, and thank you, Mrs. Elm.

Next are the Mohawks of the Bay of Quinte, and I believe Chief Donald Maracle will be making a presentation. You have 10 minutes, sir.

Chief R. Donald Maracle: *Sge:no swa:gwego*, hello, *bonjour*. Greetings from the Mohawks of the Bay of Quinte to the members of the House of Commons gathered here.

Mohawks of the Bay of Quinte are part of the Mohawk Nation within the Six Nations Confederacy. We are one of the Six Nations communities associated with the Iroquois Caucus and we are members of the Association of Iroquois and Allied Indians.

The Tyendinaga Mohawk territory is located eight miles east of Belleville and 50 miles west of Kingston. Our membership is 7,724. We have an on-reserve population of 2,093. Our community has the third largest membership of aboriginal communities in Ontario, and we are the sixth largest native community in Canada.

My research assistant will read our history.

Mrs. Lisa Maracle (Researcher, Mohawks of the Bay of Quinte): Our ancestors were military allies of the British crown during the American Revolution, as well as in many previous wars between England and France. One of the many promises made to our ancestors was that our homeland villages would be restored at the end of the revolutionary war. However, when the war ended with the signing of the 1783 Treaty of Paris, our homelands were given up by Britain to the American rebel forces. In recompense for the loss of the homeland villages, and in recognition of their faithful military alliance with the British crown, our ancestors were to select any of the unsettled lands in Upper Canada. As a result of this crown promise, lands on the north shore of Lake Ontario were selected for settlement. These lands were not unknown to our ancestors as they were part of a vast northern territory controlled by the Six Nations Confederacy prior to the Royal Proclamation of 1763.

Our ancestors arrived on the shores of the Bay of Quinte on May 22, 1784, only to find that many Loyalist families were already squatting on the lands promised previously by the crown. The Bay of Quinte is the birthplace of Dekanawideh the Peacemaker, who brought the original Five Nations Iroquois Confederacy under a constitution of peace in the 12th century. When the Tuscarora were adopted into the confederacy around 1722, our people became known as the Six Nations Confederacy.

After nine years of reminding the crown of promises made at the close of the war, the Six Nations were granted a smaller tract of land, about the size of a township—approximately 92,700 acres—on the Bay of Quinte. We received a deed to this land known as the Simcoe Deed, or Treaty 3 1/2. This document is dated April 1, 1793.

Not long after we set up our village, many United Empire Loyalists came into the area. Within a span of 23 years, from 1820 to 1843, two-thirds of our treaty land base was lost as the government made provisions to accommodate settler families. Today we have approximately 18,000 acres left of our treaty land base.

Chief R. Donald Maracle: On our concerns with the proposed legislation, when we were informed about the development of new legislation to replace the specific claims policy and we heard the AFN was going to be involved in drafting the legislation, we anticipated a draft piece of legislation that would address the concerns of first nations and that we would be consulted adequately because we would be affected by the legislation.

We were disappointed to see that the legislation was introduced into the House of Commons prior to consultation. Instead, we are expected to provide a reactionary response to an already introduced bill, with no guarantee that our concerns will be considered. We were further surprised to find out that the AFN was not able to discuss the proposed legislation with first nations prior to it being introduced. Both Canada and the AFN failed to consult with first nations in any meaningful way prior to introducing this legislation in the House.

After the fact, we find that the proposed legislation resolves many of the federal government's administrative difficulties with the current policy, but does very little to address the title interests of first nations. We have major concerns with this proposed legislation as it stands.

After reviewing the proposed legislation, we reiterate and support all of the comments that were previously presented by the Iroquois Caucus. We offer the following comments on specific aspects of the proposed legislation that fail to address the needs and interests of our community. This submission does not constitute consultation, but outlines our concerns with the proposed legislation.

On conflict of interest, Canada has stated that this proposed legislation gets rid of the conflict of interest that exists with the current specific claims policy. In our view, the conflict of interest still prevails. Canada, through the Department of Indian Affairs, will still determine the validity of a claim and whether it will be accepted for negotiation or not, based on a legal opinion from the Department of Justice Canada. If the claim is not accepted or it is rejected, under the proposed legislation a first nation will have the option of going to the tribunal. At the tribunal, a first nation's claim will be heard by a Superior Court judge who has been selected by the Department of Justice Canada and appointed by Canada. Given that Canada will retain control of the claim submission process and the appointment of judges, the conflict of interest has not been rectified.

Next is the lack of land as compensation—only monetary compensation. Our biggest concern with the proposed bill is that the lack of restoration of land as a form of compensation is not there. This legislation as it stands only provides monetary compensation, not land. This is an infringement on our rights under the Simcoe Deed, or Treaty 3 1/2, which is a constitutionally protected right under Canada's Constitution in section 35.

Our specific treaty states:

> And that in case any Person other than the Chiefs, Warriors, Women and People of the said Six Nations shall under pretence of any such Title as aforesaid presume to possess or occupy the said District or Territory or any part or parcel thereof that it shall and may be lawful for Us, our Heirs and Successors at any time hereafter to enter upon the Lands so occupied and possessed by any other Person or Persons other than the said Chiefs, Warriors, Women and People of the Six Nations and them the said Intruders thereof and therefrom wholly to dispossess and evict and to resume the same to Ourselves, Our Heirs and Successors.

This means that the crown or its heirs have a fiduciary duty to dispossess trespassers from our land. These treaty provisions embody the special relationship between the Mohawks and the British crown as military allies, and cannot be forgotten by subsequent layers of legislation.

The current specific claims policy under “outstanding business” has a provision for land under compensation. Paragraph 3)(i) states:

> 3)(i) Where a claimant band can establish that certain of its reserve lands were never lawfully surrendered, or otherwise taken under legal authority, the band shall be compensated either by the return of these lands or by payment of the current, unimproved value of the lands.

> (ii) compensation may include an amount based on the loss of use of the lands in question, where it can be established that the claimants did in fact suffer such a loss. In every case the loss shall be the net loss.

● (1605)

The experience of the Mohawks of the Bay of Quinte with the specific claims policy is that Canada's negotiators tend to turn a blind eye to the land compensation component of the policy. Canada's negotiators instead follow an unwritten policy of monetary compensation only, and then advise first nations that they can use the settlement moneys to purchase lands on a willing seller, willing buyer basis. Rather than recognize the fiduciary role to the treaty provisions of protecting the land, the crown has instead followed a course of action toward extinguishment of aboriginal title. The establishment of a tribunal to address monetary compensation only further ignores the treaty relationship that exists between our community and Canada.

The only mandate we have from our community in negotiating land claims is to have the land returned to our growing population and to seek compensation for the loss of use of that land.

Under the proposed legislation, monetary compensation is set at a maximum of $150 million. This is a combination of current market value compensation and loss-of-use compensation. No amount of money can entice us to surrender our lands.

● (1610)

The Chair: You have one minute remaining.

Chief R. Donald Maracle: Money does not address the crown's responsibilities to our treaty, nor is it addressing the growing need for restoration of our land base for generations to come.

The tribunal will not look at land claims over $150 million. Given the fact that our community has less than 20% of its treaty land left, with approximately 75,000 acres under potential claim, it is doubtful that our claims will fit into this process, especially when taking into account third-party developments on the claim area.

On the issue of forced extinguishment, the legislation requires first nations to surrender all interest in or rights to the land and resources upon the settlement of a claim. The clause is also an infringement of our treaty rights under the Simcoe Deed, Treaty 3 1/2, which outlines how lands are to be disposed of. It reads as follows:

> Provided always nevertheless that if at any time the said Chiefs, Warriors, Women and People of the said Six Nations should be inclined to dispose of and Surrender their Use and Interest in the said District or Territory, the same shall be purchased only for Us in our name at some Public Meeting or Assembly of the Chiefs, Warriors and People of the said Six Nations to be held for that purpose by the Governor or Person Administering Our Government in Our Province of Upper Canada.

The Chair: We're at 10 minutes, and we have your presentation. It will form part of the record even if you do not have the opportunity to present it all. If you'd like to summarize before ending, if there are a couple of critical points you would like to make, please do so.

Chief R. Donald Maracle: We reiterate the comments that have been made by some of the previous chiefs, particularly in regard to one judge being appointed. We find that's totally unacceptable.

The political accords oftentimes are not lived up to by the Government of Canada. A good example is the Kelowna accord. So we don't put too much stock in political accords. But the reality is that Canada has lawful obligations to protect our title to land. That obligation has been around since 1713, with the passing of the Treaty of Utrecht. The crown is to be a protector of Six Nations lands and has failed to do so. Our lands have experienced a lot of fraud and alienation, and as a result the crown should be purchasing land to settle these claims. Canada buys land for a lot of other purposes, and Canada should include the purchasing of lands directly by Canada itself to settle claims.

The Chair: Thank you very much, Chief.

One of the most difficult parts of this job is to sometimes have to limit presentations. I know you've travelled to be here in Ottawa today, and we appreciate listening to you. As I said, for those of you who provided us with a written copy of the presentation, that is part of the record. I know that members of the committee have either read it already or will read it.

Thank you very much.

The next presentation is from Grand Chief Tim Thompson from the Mohawk Council of Akwesasne. You have 10 minutes, sir.

Grand Chief Tim Thompson: Thank you.

Ladies and gentlemen, members of the Standing Committee on Aboriginal Affairs, first nations communities, chiefs, and councillors, my name is Tim Thompson. I am Grand Chief for the Mohawks of Akwesasne, a community of approximately 12,000 Mohawks who reside on ancient aboriginal territory along the St. Lawrence River.

Akwesasne has a unique geographical and political location between the countries of Canada and the U.S. and the provinces of Ontario and Quebec and New York state. Our community has been involved in several land claims with Canada over many years. Some of our claims are very large. Some are currently being negotiated. Some are being litigated. Some have been in the process for more than 30 years. Some have been rejected. And there will definitely be some Akwesasne claims that will be impacted by this legislation.

We come to the standing committee because we have not been consulted on the new Specific Claims Tribunal, Bill C-30, and we want to bring our concerns forward on this impending legislation.

We believe that the first of many shortcomings surrounding the new bill is the lack of direct consultation with first nations communities. AFN does not represent the Mohawks of Akwesasne. We are a member of the Independent First Nations of Ontario and the Iroquois Caucus, neither of which have had meaningful consultation in this process. Some very important issues, such as claims over $150 million and some additions to reserve issues, have not yet been resolved, even though Canada and the AFN recognize that there are many unresolved issues with regard to this new legislation and have proposed that these concerns will be negotiated through political agreements with AFN.

Without a consultation process, communities like Akwesasne will have no part in the building of legislation that will ultimately affect them. Akwesasne, therefore, does not know the future outcome of some very important issues, if in fact we will be consulted, or if the issues will be resolved to our benefit.

At present, Canada has aligned itself with the Assembly of First Nations as the main counterpoint to the negotiations to move Bill C-30 through Parliament. Akwesasne considers this very political approach to consultation with first nations inadequate. For important legislation such as this, which will impact the relationship of the crown and first nations for decades, real and meaningful consultation must be held with all first nations.

Canadian courts have stressed that negotiation is preferable to litigation to resolve aboriginal claims. The Specific Claims Tribunal will create a new level of litigation in claims, with many of the disadvantages of the court. For example, the political nature of the claims permits them to address flexibility. The tribunal, in contrast, would only be able to offer cash. The political nature of negotiations allows communities to have real control over the outcomes. The tribunal would give increased authority to the lawyers. In court, if you make a statement of claim and the statement of defence raises new issues, you have a right to reply. With the new tribunal, you have no right to bring the evidence to rebut the grounds of the rejection of your claim. It appears to us that the tribunal has a more limited range of processes and remedies available to it than the Indian Claims Commission did.

The present Indian Claims Commission has worked hard to establish a reputation for impartiality. We worry that the new tribunal will be seen as Canada's attempt to replace an impartial body with one that will be more favourable to the federal government's position. One of the most significant issues is the makeup of the tribunal. Currently, Bill C-30 proposes that Canada will appoint Superior Court judges, of which only one will hear any particular claim. We do not believe that decisions on claims should fall to just one judge. Additionally, the selection and appointment process for the members of the tribunal is not reassuring. It is only in the political agreement, not the legislation, that consultation with AFN regarding the recommendation of judges to the tribunal is proposed.

Depending on the makeup of the tribunal, it might provide federal claims officials and negotiators with an incentive to reject claims or have negotiations break down, as the tribunal could be seen as pro-federal rather than impartial.

Bill C-30 will also create a more structured approach to specific claims, which will have the effect of providing very little flexibility to the tribunal to address the unique and complex circumstances that have created the claims in the first place.

The new act provides for monetary settlement only. Other creative solutions or options, which may be more reasonable, productive, practical, or restorative, will not be entertained.

● (1615)

Most claims are about land. The fact that the tribunal can only award cash means it would not be able to address many claims in a way that would satisfy the claimants. The fact that the courts can deliver land at least more often than the federal system will promote litigation. Bill C-30 will completely eliminate the ability of first nations to bring any discussions or studies relating to the social, cultural, and spiritual connection to the land as part of the negotiating process to settle a specific claim. Bill C-30 clearly makes this a non-negotiable issue.

The political agreement states that:

> ...resolving claims is a legal and moral obligation, and recognizing the cultural, spiritual, social and economic significance to a First Nation of recovering or replacing land that was unlawfully taken.

The words are beautiful, but they fall far short of one important component. They do not allow for the discussion or negotiation regarding injuries to culture that are associated with loss of land. First nations know the impacts of injury to culture that have occurred with loss of land. This obvious injury should not be ignored.

The new legislation proposes to exclude claims in excess of $150 million. This exclusion is something the AFN proposes to address through a political agreement. Meanwhile, its exclusion will allow government officials to coerce first nations to artificially devalue their claims to fit the current criteria. With a cap on the size of the claim that the tribunal can address, federal negotiators will be tempted to collapse negotiations on large claims knowing they have nowhere else to go, while there will be pressure on first nations to accept less than fair value for their claims to bring them under the cap if a claim goes to the tribunal. The presence of the tribunal as a process for settling smaller claims will be accentuated as a further excuse for avoiding settlement of larger claims.

The larger claims represent the greatest benefit for first nations and the greatest accumulated debt on the part of the federal government. However, with a limited annual budget and a fascination with statistics, Canada prefers to resolve smaller claims. If the tribunal is not able to address the larger claims, these larger claims will be further deferred and become even less likely to be resolved. With the cabinet looking at these claims, it surely shows there would be no transparency about the decisions that are made, as these decisions will be made behind closed doors.

With the Iroquois Caucus, many of our claims are above $150 million. When Canada says there are 20 claims in excess of $150 million, sitting at the table are probably 16 of those claims.

One major obstacle to settling specific claims is the lack of clarity in Canadian law. Currently, only the courts can clarify the law, but litigation is currently being discouraged. Unless the rules and practices governing the claims process, including those proposed for the tribunal, are clarified and expanded, claims will remain unresolved.

Bill C-30 also appears to place into legislation the retroactive surrender of lands originally taken illegally as a consequence of settling a specific claim and receiving compensation. There will be no future options available on this point if this legislation is passed by Parliament.

In conclusion, I would like to say that the AFN is not a first nation and does not speak for all first nations in Canada. Akwesasne wishes to make it abundantly clear that support by the AFN does not translate into acceptance of the specific claims bill, Bill C-30, by the first nations who are affected by this bill. It is important that Canada honour its obligation to first nations communities to consult with them regarding the legislation that will affect their claims and their future.

Before I end, we make the following recommendations:

A bona fide consultation process must occur with full participation of first nations communities.

Revisit the terms of reference, capacity, authority, and remedies available to the tribunal.

The make-up of the tribunal should be composed of a variety of disciplines and should include first nations members.

The tribunal should be a three-member panel, one being a Superior Court justice and the other two members representing other related disciplines appropriate to the circumstances of the specific claims, all having an equal voice.

The settlement solutions available to the tribunal should include land, financial, and other creative components in a manner that will satisfy the parties.

● (1620)

There should be consultation with first nations to ensure that the political agreement provides for the discussion on restorative justice with regard to injury to culture associated with the land.

There should be consultation with first nations to ensure that the political agreement provides for the discussion on claims above $150 million.

Consultation with first nations should occur to ensure that the political agreement provides for clarity in the rules and practices that are used in the settlement claim.

Consultation with first nations should occur to ensure the political agreement provides for discussions on options regarding the surrender component of claim settlements.

With that, I thank you. *Nia:wen*.

The Chair: Thank you, Grand Chief Thompson.

And now for the fifth presentation, from the Mohawk Council of Kahnawake, Grand Chief Mike Delisle.

You have 10 minutes, sir.

Grand Chief Mike Delisle: Thank you, Mr. Chairman.

Before I begin, I'd like to acknowledge the panel here today, as well as the other chiefs and councillors who are here with our sister communities, our elders, and the elder who has given me the opportunity to speak for us today on behalf of the people of Kahnawake.

I'm Grand Chief Mike Delisle Junior. Greetings from the Mohawk community of Kahnawake, near Montreal.

We are a community that has a significant place in the history of this country since before European contact. Kahnawake itself has contributed to the establishment of the communities of Huronne-Lorette-Wendake, near Quebec City; Kanesatake at Oka, Quebec; Akwesasne near Cornwall, Ontario; Wahta near Bala, Ontario; and Nipissing near Sturgeon Falls, Ontario. We can trace some of our descendants to Manitoulin Island, Ontario, and the Michel Band in Alberta.

The Mohawks of Kahnawake have been central to the founding of this country of Canada, and a relationship exists between our peoples that can be traced to the relationship formed in pre-Confederation treaties. Peace, honour, and respect are our governing principles, and our relationship with Canada is based upon these founding principles. We take our crown treaties and our relationship very seriously, and we are bound by the mutual promises made by the crown and by our people. Our treaties are not the numbered treaties of Canada.

We have asked, and we are called before you, to comment on the proposed Bill C-30. This has been on our minds since the tabling of the proposed legislation. We present the following concerns for your consideration.

There has been lack of broad consultation on the proposed legislation. The fact that the Assembly of First Nations has collaborated with the Government of Canada in this enterprise does not automatically mean that all Indian organizations or communities are in agreement with this most important and significant piece of legislation, since many communities are not represented by the organization known as the Assembly of First Nations. The fact that four Assembly of First Nations regional chiefs—all westerners—and officials have worked hand in hand with the Prime Minister's office and the Department of Indian Affairs to draft this legislation does not mean that all communities across this country have been consulted and/or agree with this legislation. In fact, your committee has heard from one of the drafters of Bill C-30, Chief Lawrence Joseph, that no consultation on the development of the content of the bill occurred.

There are communities, like Kahnawake, that do not form part of the AFN structure. There is a national perception that the AFN represents all aboriginal communities, and there is advance celebration hailing the cooperative nature of the drafting of the legislation. There is a perception that all dissension on the issue of specific claims has been dissolved through the auspices and involvement of the AFN in the drafting of this legislation. We state for the record today that this is not so.

The community of Kahnawake is fully able to negotiate and enter into agreements without the assistance or approval of the AFN, and we will not be tripped up by the agreements and legislation that the national organization has entered into without our approval or support. Agreement with this proposed legislation requires the full agreement and consent of the full council of Kahnawake and other first nations councils, not just a few chiefs in a closed meeting of the AFN. Kahnawake has a serious obligation to look at this legislation so as to avoid further conflicts with the Canadian people.

While many Mohawk communities have grievances well over the proposed $150 million cap, the federal policies that are intrinsic to specific claims have the possibility of becoming the law and therefore the power to overshadow negotiations of larger special grievances.

We believe this legislation would have the effect of tying the hands of the federal negotiators on possible win-win outcomes of negotiations. Such measures will leave our communities dissatisfied with any proposed settlement. This is not relationship building. It is most important to keep in mind that the Iroquoian communities in the eastern region of Canada, and particularly Kahnawake, have important grievances that have relevance, particularly with the British crown, from 1760 onward. Our community wishes to be treated fairly, and the honour of the crown demands that our lands be protected as promised.

Removing the large-value grievances from the application of the tribunal process does not remove the impact of the legislation of these policies made into law. We believe there will be an impact through the legislation of what was once policy and that there will be a major effect on the larger grievances.

When Kahnawake proposes new or creative solutions on our grievances, we don't want to hear from federal negotiators that their hands are tied by this legislation.

While no amendments to proposed Bill C-30 are acceptable, here are issues embedded in the proposed legislation that concern us.

● (1625)

Bill C-30 proposes to make a law that will legislate all of the shortcomings of the current federal specific claims policy and Canada's approach to limit negotiations. It will offer inadequate monetary-only settlements for lands that have a great social, cultural, and spiritual connection for the Mohawks of Kahnawake. Money is not the solution here for us: we want land.

Such legislation will likely impact all stages of the specific claims process, including larger claims valued over $150 million that need separate cabinet authority, which should include a resolution of those grievances outside the specific claims policy and which is inadequate to deal with special grievances.

The proposed law would leave very little flexibility for the tribunal to address the uniqueness and complexities of historical land grievances submissions.

Example: The proposed bill will limit the compensation for a settlement to monetary values and limit options like return of land or other considerations that could be explored for resolutions. Furthermore, the bill should not permit Canada to download the responsibility for settling with the first nations their valid land grievances to third parties, including the provinces, which cannot opt not to take part in the tribunal's proceedings and decision. The bill proposes the crown would pay compensation only to the extent of their actions.

The Mohawks of Kahnawake do not agree that as a consequence of receiving compensation, all of our interests in these lands must be released to Canada, and in that process the third parties' interests become retroactively validated to when the land was taken, which the Mohawks of Kahnawake believe would be unconstitutional.

Why do we think this is unconstitutional? The royal proclamation requires lands to be alienated only to the crown through its approval at public community meetings specifically for that purpose. The Constitution says we have protections for our territories. Our treaties with the crown say the same thing. The Constitution affirms my people's rights, and if the Government of Canada has a fiduciary obligation to protect our land, then how is that function served?

What is being asked, then? Is this first nation giving up their right to their territories, to third parties in a roundabout way or indirectly? How is it that the proposed Bill C-30 can ask my community to validate third-party rights over the rights of my own people? I believe this legislation would be an end run around the royal proclamation.

Again, to simplify, lands can only go to the crown by referendum of the whole community. If the Constitution recognizes or affirms our rights, then we question the objectives of this proposed law, where a third party suddenly is positioned in advance of our ancestral rights to the lands. We have other treaties stating that the crown promises to protect us in our lands, and this proposed law does not do this. It has the effect of superseding your Constitution indirectly. If you are not able to circumvent the Constitution or cannot do directly what you seek, then you cannot do this indirectly through this legislation.

In fact, the 1982 specific claims policy allows return of lands, cash compensation, and other considerations. To be more detailed once again, the specific claims policy is problematic, yet Canada plans to legislate a more encompassing requirement for release of all interests in the lands that were illegally taken from our communities when the policy does not require release of all interest in alienated land. It is the interpretation of the Indian Act surrender clause that does. So legislation putting into law more restrictions is not conducive to settlement.

Finally, the crown, as well as the independent tribunal process, should promote reconciliation with particular emphasis on our historic and continuing relationship with the crown. So it would be more appropriate to have the tribunal composed of individuals from a variety of disciplines and backgrounds, including first nations individuals, not just Superior Court judges solely appointed by the crown.

Again, Canada has a legal obligation to consult all first nations that could be impacted by Bill C-30. Considering that the requirement of retroactive release of all interests in favour of third parties does impact first nations, this should trigger the obligation. In fact, all first nations should be made aware of all proposed legislation and what the impact may mean for our communities. Consultation is a requirement that we see in extensive, ongoing discussions on claims, yet the requirement seems one-sided, since we are rushing this proposed legislation—a lack of consultation from the crown side.

The Mohawk Council of Kahnawake does not agree with the AFN's endorsement of Bill C-30, and Canada's consultation with the AFN is not sufficient or acceptable, especially in consideration of my community's treaty history and current history, where confrontations have occurred generated by a lack of consultation.

● (1630)

The Mohawks of Kahnawake also cannot support that the AFN can represent us in the political agreement, which was signed by the AFN national chief and the Minister of Indian Affairs, on claims issues not addressed in Bill C-30.

Lack of consultation is a breach of Canada's legal obligation and further tarnishes the honour of the crown. If you continue with the bill as is, without wider consultation, it would be a significant defect in your legislative process and could promote challenges to the legislation.

In summary, the Mohawks of Kahnawake recommend that Canada be reminded of its constitutional obligations and not be allowed to propose legislation to do indirectly what they cannot do directly on the issue of first nations lands.

The Mohawks of Kahnawake recommend that the standing committee inform Parliament that Bill C-30 is flawed, that it is not ready to move forward, that no amendments will make Bill C-30 acceptable, and that Bill C-30 be withdrawn,

The Mohawks of Kahnawake recommend that the standing committee inform Parliament that any future specialized tribunal developed pursuant to a bill must be truly representative of first nations involvement, with a broader mandate and greater flexibility to address different steps in the resolution process and to take into account the wide variety of contexts.

The Mohawks of Kahnawake are fully prepared to engage in consultation, developing a fair process with alternate approaches to resolving larger and smaller land grievances.

We also recommend a principled approach that addresses our mutual concerns and furthers our relationship.This should be the basis for resolving grievances.

Thank you, Mr. Chairman and committee members. Subject to any comments or questions, this is the presentation for the Mohawks of Kahnawake on this important proposed legislation. In the spirit of co-existence, we thank you.

Tho niawenake.

● (1635)

The Chair: Thank you very much, Grand Chief Delisle.

That completes our presentations. Now we will begin with the questioning. The first round is seven minutes each, and I will begin with the Liberal Party.

Ms. Neville.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much for being here today. Thank you very much for the thought and the work that has gone into your presentation. It's certainly been a very powerful presentation. So many questions are coming out of your presentation—and I have talked with some of you beforehand.

You raise the issue of the duty to consult, and you certainly have your concerns about the process that was undertaken between the government and the Assembly of First Nations. In the best of worlds, how would you see a consultation process on this issue taking place?

I open that up to whoever would like to respond.

The Chair: Those of you who would like to respond, just give me an indication.

Chief Montour.

Chief Bill Montour: I would suggest the Government of Canada contact our community and ask what our consultation protocol is in any areas where legislation is going to be proposed that's going to affect us.

The Chair: Thank you, sir.

Chief Phillips.

Chief Randall Phillips: Yes, thank you, Mr. Chair.

To me, the answer is simple. It's that we already have a traditional governance that had signed treaties here. Those are the people we're talking to; those are the people this government should sit down and try to deal with to resolve these issues.

The Chair: Thank you.

Chief Maracle.

Chief R. Donald Maracle: Get away from the idea that one shoe will fit all feet. Numerous pieces of legislation could be involved that are culturally appropriate to the first nation that's involved. For example, the Iroquois communities may need a very specific process, and I think our experts should be involved in jointly drafting the legislation with the government. There should be an opportunity before that draft report is tabled in the House of Commons for it to be discussed in our communities with our people.

The Chair: Thank you, sir.

Grand Chief Thompson.

Grand Chief Tim Thompson: I concur with Chief Maracle. If you want real consultation, then bring the hearings to the first nations communities. Hear it directly. Hear what we have to say in our communities.

The Chair: Grand Chief Delisle, did you have anything to add?

Grand Chief Mike Delisle: I concur with everything that's been said, but also stop using the Assembly of First Nations as the sole authority, as the only source of information. As we've stated here today, and other people who are not with us here today have stated nationally, they don't speak on our behalf. The duty to consult rests with the crown. So it needs to be taken seriously by the Government of Canada, who should not be using just the secretariat body of AFN.

The Chair: Thank you.

Ms. Keeper, you have just a little under four minutes left.

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

I would like to thank our presenters. It was an excellent presentation, and it was certainly an important one in that the AFN has been in a joint process with Canada to write this piece of legislation.

Many of the issues you raised, the points you raised around the tribunal's jurisdiction, a broad release of rights, and the lack of consultation...from your perspective, all these issues have been raised numerous times at this table. I believe, though, Grand Chief Thompson made a statement in which he said there are 16 of the 20 large claims....

Is that correct?

● (1640)

Grand Chief Tim Thompson: There are a number of them sitting at this table today. Canada says there are 20, and there are probably 10 or 12, maybe more than that, from this community that are large claims. I know Akwesasne is one of them.

Ms. Tina Keeper: Okay. On that point, I'd like to ask all of you to comment on a presentation that was made here by the Canadian Bar Association.

One of the things they said is:

> A peculiar aspect of the bill is what seems to be a rather arbitrary limit on the Tribunal's monetary jurisdiction.

It goes on to say:

> This limit could also operate to preclude the Tribunal from adjudicating ancient, historic claims which are relatively straightforward in nature, but simply because of the time elapsed are now expensive to settle. This is an inappropriate restriction.

Could you comment on whether you think that's a fair statement or whether you think it's pertinent for us to look at this in terms of the context of the large claims and in terms of the context of the jurisdiction of the tribunal?

The Chair: Mr. Monture.

Mr. Philip Monture (Lands Researcher, Six Nations of the Grand River): Thank you so much.

As far as the size of the claims is concerned, there are many that are going to be beyond the $120 million, and that's where we have to come with creative solutions for that.

Bringing forward these amounts, we're going to be eliminated. We're not going to be able to be one of the shoes that fits all the feet here. We're just not going to fit.

I think what's happened is we're going to miss the boat here, and the only way to get the attention of the government after that point, if the honour of the crown is not going to be upheld and come to the table freely...we're going to have to get in people's faces. This promotes the far more negative aspect of unsettled claims, which we want to avoid.

Just to give you a very small example, on Caledonia itself, $50 million has been spent and not one thing has been settled, and we're nowhere near settlement. It's very, very unfortunate. When this was tabled in 1988, Canada sat on it and sat on it and sat on it. That's their resolution. They were afraid to face the reality of it, and that's where we are today. It's unfortunate, but that's the way it is.

The Chair: Thank you.

Chief Phillips, did you have anything to add?

Chief Randall Phillips: Thank you, Mr. Chair.

In response to your question, I think what we're looking at is that the tribunal itself is inappropriate. So with regard to this notion that the limitations or restrictions on what authorities the tribunal does have could be tinkered with, we're suggesting that it's not independent. There are too many flaws in it. So the answer from Oneida is no, there's nothing that could be done in terms of correcting the tribunal to address those issues.

Thank you.

The Chair: Chief Maracle.

Chief R. Donald Maracle: The tribunal cannot exercise the rights of our people. The right to decide to alienate property rests with our people. That can't be exercised by any other party, including the tribunal.

A large number of claims would be affecting our community. We have 13 different alienations. The legality of many of them are questionable.

Also, the crown cannot legislate away its fiduciary responsibility to our people to protect our land from fraud and trespass, and it's the fraud and trespass that we're trying to correct. We're simply asking Canada to approach the parties that are occupying the land that we hold valid legal title to, to see if they would sell that land to the crown so that the crown could do the honourable thing and return that land to our people.

The Chair: Grand Chief Thompson.

Grand Chief Tim Thompson: I think I made myself clear earlier that with the claims going forward, those over $150 million going to cabinet, there's no transparency. Will there be consultations with individual first nations, or will the cabinet make a decision behind closed doors outright with no consultation with the first nations? That's a big issue for us.

The Chair: Finally, Grand Chief Delisle.

Grand Chief Mike Delisle: Thank you.

How is it fundamentally different when we put in a specific claim now that the scope and amount is determined, if not predetermined, by a body in Indian claims versus what would happen through a tribunal, as it's prescribed within the law—the bill we're talking about, once we've passed it into law? I hate to answer with a question, but how do you put a price on an acre or a hectare of tax-free land?

● (1645)

The Chair: Thank you, sir.

That completes this round.

Next, Monsieur Lemay from the Bloc Québécois. You have seven minutes, sir.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Good day.

I have listened carefully to your answers and I have read your submissions closely. I would have about 2,494,000 questions for you, but I likely will not have time to get to all of them. I will try to go slowly.

I have read this document and as I understand it, in nearly one quarter of the province of Ontario, the government needs to sit down and negotiate with the Six Nations in southern Ontario, something it has not done since 1793, if I am not mistaken.

Do you really believe that the claims of the Six Nations can be settled through Bill C-30? The government has not even been able to resolve the Caledonia standoff. Do you think a bill can resolve a problem that has been 200 years in the making? I read the brief submitted by the Iroquois Caucus and found it very interesting. The following is stated:

> The federal government has asked the question who can they consult with if not AFN. The simple answer is they can consult and obtain the consent with the same government they signed treaties with—the 80 First Nations across Canada...

I have a problem with that statement. Do you really see consulting with those who signed the treaties as genuine consultation, given that the government does not even respect the treaties it has signed? Would this not be akin to investing in an endless process?

I realize that I have only seven minutes and I want to allow you time to respond. We are not here to engage in politics, but rather to have a friendly discussion. The federal government decided to recognize the Quebec nation and we know what that has accomplished.

You occupied the land long before we did. How can we ensure that successive governments respect your rights so that we can avoid other Caledonias in the months ahead? What is the solution? The government believed that Bill C-30 was the solution.

From what I understand—and you need not reiterate your position—as far as the Iroquois are concerned, Bill C-30 will be of absolutely no use until such time as the government does not sit down and negotiate with them. What then is the solution to this dilemma?

I wish you the best of luck. You will need it to answer the question.

[*English*]

The Chair: Thank you.

Once again I'll start on the left, with Chief Montour.

Chief Bill Montour: In terms of what we see as a settlement for the Six Nations of the Grand River, in 1794 the Haldimand Tract, six miles on either side of the Grand River from mouth to source, was made our land. Those lands were put there for our perpetual care and maintenance, meaning those lands have to look after the seventh generation from my day on and from their day on. That's what we believe in.

Our point is that we would like to sit down with Canada to start looking at the mortgages of the 302,000 acres I alluded to before. And there are a bunch of leases called Joseph Brant leases on which we, in addition to the province of Ontario, should be getting some revenue back. There are lands and claims at the south side going into Lake Erie where lands were surrendered but never sold. There were moneys taken by the crown trustees and used for various projects, like the Welland Canal and the Grand River Navigation Company. Our chiefs of that day had no idea what was going on with our money.

So Canada has to come and sit down with us to look at our perpetual care and maintenance, because there's no reason in my mind that I have to come to Ottawa and beg for a water plant when that should be there, based on that ancient agreement.

● (1650)

The Chair: Thank you.

Chief Phillips, do you have something to say?

Chief Randall Phillips: Yes, thank you, Mr. Chair.

Difficult question; I appreciate it. I don't think I need to take as much time as the member wants me to take to answer it, but I'm going to repeat what I said earlier.

To resolve these things you must go back and deal with the bodies that originally signed the treaties. Is that labour intensive? Possibly. Is that seemingly overwhelming? Possibly. But these things can't be fast-tracked, and I think this is what you're trying to do with the legislation. You're trying to move it forward, get it fast-tracked. But some of these issues you cannot put on that train. You need to sit down and do it specifically, community by community, nation by nation, to help resolve these things. There's no other alternative in terms of actually doing that work.

We talked about this notion that it could go on forever and ever and ever. This is quite possible. But what we're trying to talk about here and reinforce is the notion that there's the honour of the crown. There's an honour of the crown in terms of trying to establish good faith in negotiations and discussions with this, and if those things occur, then these processes could be sped up a lot quicker.

The Chair: Thank you, sir.

Chief Maracle.

Chief R. Donald Maracle: The solution is really a treaty land repatriation process that recognizes the crown's lawful obligation to correct the mistakes it has caused and the injury it has caused our people.

I don't think we can ignore the passion that is in our young people. They see that our land base is totally inadequate to meet the needs for a prosperous future for our people. Many of the people who were added to our band list with the passage of Bill C-31 do not own land. Our membership tripled with the passage of that legislation with inadequate consultation. So there's a passion and a fervour among our young people about our future, and they want the right to have the use and benefit of what rightly belongs to them under our treaty.

It is recognized that there are non-native people there, but perhaps there could be some sort of permit of occupation on a temporary basis there. The terms and conditions of that permit of occupation would be prescribed by our people so there would be some benefit for the use of our land during this transition period.

The Chair: Thank you, sir.

Grand Chief Thompson.

Grand Chief Tim Thompson: I think number one would be an exemption in the process for the Iroquois communities; give us a separate process. What process? We'd have to think about that and sit down as the Iroquois Caucus and discuss that.

The Chair: Grand Chief Delisle.

Grand Chief Mike Delisle: Just to follow through on the comments of my fellow chief, Chief Phillips, there have to be enough resources in Canada and in Quebec to be able to deal with these issues head on. It took the federal government more than a decade to understand first and then realize the wrongs it did through a large specific claim, which they say it is—a longstanding grievance is what we say it is—for 300 years. If it took the federal government, in all its glory, authority, and responsibility, more than 10 years to understand and appreciate that, there's no way any tribunal, any process, can't take into consideration long-term implementation.

We're not going anywhere. We don't believe our neighbours are going anywhere, but to put adequate resources.... Instead of it going into the bureaucracy of the Department of Indian Affairs, I think it would definitely help every first nation across Canada—600-plus—to sit down with somebody to discuss the honour of the crown, which is what our hope is and what our specific grievance is right now. It should be principle-based and include somebody on the other side of the table who agrees and acknowledges and has a direct line of communication with the people who can make law for this country, for the honour of the crown.

● (1655)

The Chair: Thank you, sir.

Next we have Ms. Crowder from the NDP.

You have seven minutes.

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

I want to thank you for coming before the committee with some very well-prepared documents. Unlike Mr. Lemay, I probably have more questions than you have time for.

Part of it is that you have identified a real challenge in that this is a fundamental issue of rights and title. As well, there is the fact that this particular piece of legislation doesn't recognize the differences in process from coast to coast to coast, whether they are under a proclamation of 1763 or the numbered treaties. As I told some of you this morning, I come from a province in which, largely, there are no treaties, and that's presenting challenges.

In your presentations there were a couple of points I want to touch on. As we know, this legislation doesn't define a number of areas. For example, clause 16 talks about things like a reasonable minimum standard for a claim to come forward, but that is not defined in the legislation. The transitional pieces are not defined in such a way that there's any assurance it will actually do away with the specific claims backlog.

Chief Montour touched on this verbal assurance that a negotiation that is in process will continue. Last week the Okanagan band talked about a letter of comfort they received, which poorly defined how their additions to reserve process would go forward. The political agreement itself is vague and ill defined.

I wonder if you could offer some suggestions. One of the things Kahnawake identified was a beefed-up mediation process, a negotiation process, an alternative dispute resolution process. A number of other witnesses have come forward with the same suggestion as a way to move this forward in a more respectful way. I wonder if you could comment, first of all, on how some of the vagaries of this legislation could be locked down, and on negotiation, mediation, or alternative dispute resolution as another option.

The Chair: Chief Montour.

Chief Bill Montour: The Six Nations position is that this piece of legislation can't do anything for us. That's why we're requesting it be withdrawn.

Thank you.

The Chair: Chief Phillips.

Chief Randall Phillips: Thank you, Mr. Chair.

The position of the Oneida Nation of the Thames is that this particular bill will be useless in terms of resolving any of our issues with respect to claims, and it should be withdrawn. I don't think that another independent body doing alternative dispute resolution is warranted. It just adds to the complexity of the bill. Again, instead of trying to remove it for its flaws, we're applying band-aids to it to try to improve it. So another ADR process would not be appropriate, in my mind.

Thank you.

The Chair: Thank you, sir.

Chief Maracle.

Chief R. Donald Maracle: We view the existing bill as being unconstitutional in that it doesn't meet the standards of the royal proclamation on how the crown acquires title. It has to be with the informed consent of our people. Our people do not wish to surrender any more land to the crown. Already we don't have enough land to accommodate our population. It's also a breach of our Treaty 3 1/2, the Simcoe Deed. The legislation should be withdrawn.

The Chair: Thank you, sir.

Grand Chief Thompson.

Grand Chief Tim Thompson: I also agree with the other members, my fellow chiefs. It should be withdrawn. There is no process. We have to sit here together and discuss it directly.

The Chair: Grand Chief Delisle.

Grand Chief Mike Delisle: I agree as well, not to restate everything that's been said. My community, decades ago, said not another inch. So we're not looking for amendments to this. It needs to be withdrawn.

The Chair: Thank you, sir.

Chief Maracle, did you want to add something?

Chief R. Donald Maracle: Another point is that we believe the bill violates the equality provisions under the charter. Cash compensation should not always be forced on the Indian, where the title to the land goes to the non-Indian. We believe that's a form of discrimination on the grounds of race. I just want to make that observation.

● (1700)

The Chair: Thanks.

Ms. Crowder, you still have time.

Ms. Jean Crowder: Again, to come back to section 35 rights, I've heard you say that this is a constitutional issue. If this bill were to proceed, do you see that there could be constitutional challenges coming forward?

The Chair: I think Ms. Zachary Deom wanted to say something.

Mrs. Christine Zachary Deom (Mohawk Council of Kahnawake): We're saying constitutional invalidities because this seems to be an end run around something that should be done a certain way—and I think all of you are acquainted with the certain ways.

We have crown treaties, the 1760 Treaty of Oswegatchie, recognized by the Supreme Court in Sioui, and we've also got the Great Peace of Montreal, the treaty signed in 1701. We've got many treaties. These treaties speak to protection of our lands, and these were incorporated. The language is a lot similar when you come to 1867 and the royal proclamation. They're similar in that they say in order for lands to be alienated there's a certain requirement. Suddenly it's as though everybody is blind to this and now it can be done simply through Bill C-30. That doesn't make sense to me.

On another matter, if I might just add, you were talking about consultation. Just recently, last week I think it was, you signed the UN Declaration on the Rights of Indigenous Peoples.

Ms. Jean Crowder: The House of Commons passed a motion, but the government to date has refused to acknowledge that it's a legitimate—

Mrs. Christine Zachary Deom: In spite of the vote?

Ms. Jean Crowder: The majority of the House of Commons, the opposition parties, felt the government should sign on to that, but the Conservative government has failed to agree, so we haven't, unfortunately, signed on.

Mrs. Christine Zachary Deom: In spite of a majority vote for it?

Ms. Jean Crowder: That's right.

Mrs. Christine Zachary Deom: That's very interesting.

It's very interesting for me, from this perspective, that in there, in article 19, it says that:

> 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.

Today we've told you we think this will affect us and we maintain that position.

Thanks.

Ms. Jean Crowder: Thank you.

The Chair: Grand Chief Delisle, did you have comments?

No.

Chief Phillips.

Chief Randall Phillips: Thank you, Mr. Chair.

I think going back to what the question was, would there be challenges if this were passed, since we don't accept the bill on its face, since it's not going to provide us with any benefit, then I would say, yes, there will be challenges. We've said there are provisions within that legislation that undermine our constitutional rights under section 35, plain and simple. I don't know how else we can put that in there.

Going back to Ms. Crowder's question with regard to whether there's another process in terms of trying to deal with this, I said go back and talk to the treaties, talk to the people you've dealt with on the treaties, and I'll repeat that. I say that because these treaties weren't documents that were made overnight. There was time, there was consideration, there was proper representation. It took an awfully long time for people to understand what was going on, how to deal with that, before they agreed to sign off on anything. What we're trying to do now is to replicate a treaty process in two days, three days. Again, I don't think that's the right kind of mindset to take to this approach.

If we're going to resolve these issues, which did not occur overnight, they will not be resolved overnight. But if there is no movement in terms of trying to replicate that other process, whereby these issues were dealt with, then we're going to continue to see the debates we're having right now with respect to any movement on any government legislation.

Thank you.

The Chair: Thank you.

Are there any further comments?

No.

With that, we'll go to the last questioner from the Conservative Party.

Mr. Bruinooge, you have seven minutes.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair. Perhaps I might not be the last questioner. We might have another round.

I appreciate all the testimony today from the members who have come before us from your various nations. I appreciate, of course, in a democracy that we always have the opportunity to sometimes agree and other times to disagree.

Perhaps one particular point of testimony that I'll maybe ask a few questions on is just going back to Chief Phillips, to some of his testimony. You mentioned the tribunal we're proposing is inappropriate, and you went on with some commentary. I just want to speak a little towards why I believe the existing status quo is inappropriate.

We have situations where specific claims that are being put forward by first nations come to the government, and the government, as it currently stands, can either acknowledge those claims or not. As such, the Government of Canada is the judge and jury on these claims. Many have said through the years, and I agree, that this is an unacceptable, inappropriate situation. This specific claims commission came forward, but of course it did not have any binding elements to it...when it would rule. It would bring forward recommendations to the Government of Canada, but the Government of Canada again being judge and jury simply might choose not to proceed with those recommendations of the commission. However, the new tribunal, which is being proposed through this legislation, would be an entity all to itself, which would actually have the opportunity to create binding settlements and actually deliver real dollars towards these specific claims.

So it takes it out of the hands of the federal government, which many first nations have argued have a bias, whether it be to protect the public purse or to protect itself from lawsuit. So it's this very legislation that in my opinion is trying to set aside the inappropriate status quo.

My question for you would be this. In light of the fact that we have an inappropriate status quo, where the Government of Canada is judge and jury, do you believe this process, though perhaps not perfect, is in fact a departure from the status quo? Due to the fact that it is only voluntary, it can't be, at the very least, seen as a bad departure from the status quo. I would argue it's a good departure. I just want to hear your feedback on what I've said.

● (1705)

The Chair: Chief Monture, would you like to begin?

Mr. Rod Bruinooge: Actually, I was directing my question to Chief Phillips.

The Chair: Pardon me.

Chief Phillips.

Chief Randall Phillips: Thank you, Mr. Chair. I'm going to give a quick response and then I'm going to see whether or not my counterpart here can add something of a more technical background.

One of the things I did say about the inappropriateness of the tribunal was based on the objection that we don't think it's independent to begin with. I would question whether or not the new tribunal or the new process that's being suggested is any departure from what did exist, and I'll tell you why I say that.

At the beginning, at the front end, there's still a determination by the government of whether or not this is a valid claim. So that's the process that exists right now. Even though you might put the process in a three-year timeframe, where negotiations can go back and forth, the tribunal could come in and say, "Okay, let's determine what it is." The tribunal again could determine the validity of this. So again, it might seem like it's an independent process, but it really is not.

Does it speed things up? Sure, I think that's the approach the government has taken, and I think that's what the proponents of the legislation continue to announce—it will speed things up.

Where I said it was inappropriate, it was certainly inappropriate for our community. Any kind of beefing up or using that tribunal would simply not be appropriate in that fashion.

So does it beat the status quo? Again, I think there are incidences right now where the status quo doesn't change at all.

And I certainly do appreciate your comments with regard to the idea to agree to disagree. But I really don't see this as any real improvement with regard to the process right now. I don't see that it's going to be resolved in first nations favour down the line. I still think the process is directed towards the federal government and the advantage is to the federal government.

● (1710)

Mr. Rod Bruinooge: Perhaps I can ask another question, Chief Phillips.

You mentioned in your last statement that because the government could decide whether or not a specific claim was valid or not, nothing would change. The federal government can continue to state whether or not it feels a specific claim is valid when it's negotiating with the first nation, but when it writes a letter to the first nation saying it doesn't feel a specific claim is valid, that's when the first nation can go to this independent tribunal and independent judge.

You can debate whether or not judges in our country are independent, but I think for the most part they are. In theory, that is the case. We've seen many rulings across the country that surely don't go in favour of the federal government. So at that point you would have an independent judge who would rule on whether or not a specific claim was eligible.

I guess I would argue a bit with you on that point, in the sense that once the Government of Canada doesn't feel a specific claims is eligible for further negotiation, that's the whole point of this process. It allows you to then take it to the next level, and within that process there will be a result. The legislation itself guarantees a result either way.

My next question follows up on the voluntary nature of this process. Due to the fact that your community doesn't need to engage in this process, do you feel it should be made available to committees across the country that want to take part in the process?

Chief Randall Phillips: I'd like to give a partial response to some of the earlier questions and then ask Martin to conclude on that.

On how this bill was moved forward, I suggest that the crafters of the bill were careful to address those types of things in its design—to put it in a flavour that makes it seem like it's moving forward. But I think there are some very carefully worded clauses in there that accomplish quite the opposite. We'll just have to wait to see how that goes.

I'm going to pass the microphone to Martin to address some of the other concerns.

Thank you.

Mr. Martin Powless (Lands and Estates Administrator, Oneida Nation of the Thames): Thank you, Chair.

I'll try to answer one of the question asked previously. Do we think it's a bad departure from the status quo? I think it is, because right now we would at least have the right of appeal on two separate levels after the determination of validity at the court of first instance, but this eliminates that. Whatever the tribunal says about validity, it solidifies our rights and takes away our rights of appeal. So I don't think it's any better than the status quo. The question back would be, would Canada agree to have a truly independent outside third party determine the validity of these claims? I think that's what we're looking for.

We can't get over the fact that the judges are appointed by Canada. So if we had a truly independent party determining at least that part of it, maybe the tribunal people could come in later to help assess what compensation was fair, because they have the knowledge and background of the history and other awards in Canada. But I don't think the same person should do the validity and the compensation determination.

I would like to see a process where neither Canada nor any of its judges have any stake in determining the validity. Then I think it would be an improvement over the status quo. We can't speak for other nations, but we don't think it's an improvement.

The Chair: Thank you very much.

That completes the first round of seven minutes. We have time to begin a second round, but I'm not sure if we'll be able to complete it.

Ms. Karetak-Lindell, you have five minutes.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): Thank you.

I'm a little confused to begin with, but my question is more on some of the statements you have made on pre-Confederation treaties. I understand that's a totally different area, versus a lot of the other unsettled claims across the country.

Going on the same premise that, yes, one shoe does not fit everyone, I'm wondering why you would not allow this legislation to go through to deal with the ones who can take advantage of it, the ones where the shoe sort of fits, especially for B.C. or some other areas of the country where they feel they can work within this legislation. Then try to convince the government that there should be another process for maybe pre-Confederation claims. Is that an option? As you say, some people said you would ask for an exception for your claims.

Having said that, there's also the fact that it's a voluntary process. So in order to try to facilitate some movement on some files, wouldn't you want to see this go through to take care of some of those other claims, on the premise that this would not prejudice your claims, not only your claims but these types of claims?

● (1715)

The Chair: Chief Montour, would you like to start?

Chief Bill Montour: If we can have certainty that other claims under $150 million, or wherever there are claims in the numbered treaty areas and in B.C., will not jeopardize our position, be our guest. But from the Six Nations point of view, any act that asks us to accept dollars for land rights settlement and then in turn asks us for certainty that we'll cede, surrender forever, is repugnant.

Our community has stated very clearly that we will not sell another teaspoonful of land.

Thank you.

The Chair: Chief Phillips.

Chief Randall Phillips: Thank you very much, Mr. Chair.

I have a really quick response. I certainly cannot speak for the other communities and say whether or not this is an advantage for them to move forward. I only suspect that if I had the opportunity to explain to them what our concerns are with the bill, they might look at it differently.

That's my only comment with respect to that.

Going back in terms of how we talk about these things, I want to reiterate what we said earlier, at the beginning of the Iroquois Caucus. It said that we have a treaty relationship called the Two Row Wampum, or Gus-Wen-Tah, which extends to us in terms of other first nations communities too, telling them what's good for them and what's not good for them.

I can appreciate your questioning us in that regard, but as you are here, we are here as representatives of the Iroquoian community and this is what we're looking at here. So I can't or won't speak on behalf of any other community in terms of whether or not this is an advantage or a disadvantage for them.

I don't know what they were told. We came here very clearly and told you that there was no consultation across this country, so maybe the reason they're suspecting it's a good thing for them is because of the same lack of consultation and the same lack of understanding of the threats that we see.

Thank you.

The Chair: Chief Maracle.

Chief R. Donald Maracle: The bill will work for some communities. The communities it will work for should be in a specific schedule that applies to their communities, and it should be up to the local government of each community to decide whether they want this legislation to affect their community.

It doesn't matter whether there's a treaty right that's pre-Confederation, because the treaty was alive and well prior to Confederation, and the same terms and conditions apply and were alive and well after Confederation. Treaty 3 1/2, for example, which was made in 1793, was alive in 1793 and had a beneficial effect for our people, and the same beneficial effect is alive in 2008.

We have an obligation to protect our treaty rights and to make sure that our treaty rights are not infringed upon or abrogated or extinguished or diminished. This bill does that. It doesn't accomplish the goal of our people, which is land reparation for our traditional lands, regaining control of our traditional lands. It doesn't meet the goals and aspirations of our young people. So there needs to be a treaty process.

Since the government has always avoided honouring the treaties and upholding its fiduciary obligations, there is no process yet in place in Canada to do that. It could become the only game in town. If you want to settle land claims, Canada may only be willing to talk about money and not about the return of the land. That's the part that's silent, and that's the part that is threatening about this legislation, that it will become the only game in town.

The other thing is that there is no provision in the bill for a non-derogation or a non-abrogation clause. It makes us question whether our treaty rights are being infringed upon through this legislation and if the intent of the government of the day is to do that.

So if communities want this legislation to apply to them, it should be a decision of the community, and those communities should be named in a separate schedule. But it should not be a law of general application.

● (1720)

The Chair: Thank you.

Grand Chief Thompson, did you have something?

Grand Chief Tim Thompson: I concur with Chief Montour with regard to certainty. There should also be certainty that there is an exemption for our first nations and certainty that there's another process and that the first nations are directly involved in making that process.

The Chair: Thank you.

Grand Chief Delisle, did you have anything to add?

Grand Chief Mike Delisle: I also concur. I think Chief Montour said it very well.

To give an example, you talked about timing and timeliness and how quickly this may resolve some things. I know the status quo is extremely frustrating for many communities right now.

We submitted one about 10 years ago, and the response from the then negotiator was, “We should have an answer for you by January, or at the latest, February”. They just didn't tell us what year. We're still waiting.

The Chair: Thank you, sir.

I think we're going to have time for two more turns. We'll have Mr. Albrecht and then the Bloc.

Mr. Albrecht, you have five minutes, please.

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

I want to thank each of the witnesses for the time they've invested today.

In the consultation or talks today, whatever you want to determine this is, we've focused primarily on the tribunal aspect of Bill C-30, and we've overlooked the possibility of negotiations occurring prior to going to the tribunal. I think it's quite possible that in that negotiation phase, because of the eventuality of the tribunal, there may in fact be productive discussions leading to creative solutions that could possibly lead to settlements other than cash settlements. That's one point I would like to make, and maybe you could respond to that.

The second one has been mentioned briefly, which is that this whole process is voluntary. It's mentioned clearly in the preamble, and again in clause 5 of the bill, that the process is a voluntary process.

It's clear to me that Bill C-30 was designed to address the very severe problem of the number of backlogged specific claims cases. This has been a problem for decades. The current system is obviously failing all of us. It's failing first nations people as well as other Canadians—all Canadians. So this is an attempt to move ahead on a process that will help the entire country resolve outstanding claims. That's what all of us around this table want. I believe that's what everybody in this room wants: to move ahead.

Would you rather continue with the status quo? Some groups have come here and said they need amendments. But at the end of the day, they said they would rather have the bill in its current form than risk an amendment that would possibly bog down the entire system. So would you rather live with the current system, with its more than 800 backlog cases?

Second, in terms of the cap of $150 million, it's my feeling that if we remove the large percentage of claims that are within the system now, the smaller claims, it would allow the bigger claims to get more attention from the department so that these could in fact be settled.

Would you care to respond to those questions?

The Chair: Thank you, Mr. Albrecht.

I'll start with Mr. Monture.

Mr. Philip Monture: Thank you.

I don't know where this great will to sit down and negotiate in good faith is coming from all of a sudden. We've been at this for a long time. We appeared before the standing committee, Chief Bill Monture and I, on February 21, 1991. Obviously, some of you are too young to even know that, especially the ladies on my right.

If there's an extinguishment in place, I don't care what bill you put in, it just isn't going to cut it. It will not cut it in our community, period. It has to be changed. There have to be good faith negotiations. I totally agree with you that Canada's specific claims policy is a failure. There's no doubt. We were in there for 20-some years and all we did was stockpile validated land rights, claims that have been validated. We have one on the table right now we're trying to harness.

There have to be creative solutions. There cannot be extinguishment of our children's rights on those lands. That's where it is.

Thank you.

● (1725)

The Chair: Thank you, Mr. Monture.

Fortunately, Mr. Monture, when you're sitting at a round table, all the ladies are on your right.

Chief Phillips, did you have something to add?

Chief Randall Phillips: Thank you very much, Mr. Chair.

Quickly, in terms of that response, there seems to be some assumption that the process is worth saving now. What's stopping this backlog of 800 claims? It's certainly not first nations communities; it's the honour of the government. So when it comes to those types of things, in terms of whether you change the system or not, the honour of the government, the honour of the crown, still needs to be there.

The backlog can be easily done regardless of what system you have in place. The reason it's changing is because the other one simply didn't work and there were too many controls by government to backlog the process. So I think the government needs to look inward in terms of trying to move these things forward.

Thank you.

The Chair: Thank you, sir.

Chief Maracle.

Chief R. Donald Maracle: The first statement in the current policy talks about the return of the land as compensation. If we want to make that happen.... The government is very apprehensive about beginning a process to do that. If we simply ask Canada to go and approach the parties to buy the land, to see if they're willing to sell their interest to Canada, that shouldn't be a complicated process. Canada is unwilling to do that for some reason or other. They can advise land for all kinds of purposes in this country. Canada should be buying land to settle claims.

At the tribunal, we've heard loud and clear from all the chiefs here today that we're looking at regaining control of the land to satisfy the needs of our growing populations. The tribunal doesn't talk about the return of the land; it's strictly money. Extinguishment is not in our best interests for our future, so we can't endorse a policy that is about getting a land claim validated and then surrendering it to the government for cash. That does not meet the goals and aspirations of our communities.

The Chair: Thank you, sir.

Grand Chief Thompson.

Grand Chief Tim Thompson: The government can't even get the consultation right and now they want to talk negotiation? Come on, give me a break here.

The Chair: Grand Chief Delisle.

Grand Chief Mike Delisle: You mentioned something interesting. I don't consider this consultation. I would expect my brothers and sisters to agree with me. Once we've gone to second reading and recognized this as the aboriginal standing committee specific to this issue, it's a little late, in terms of consultation.

We've already stated, again, for the record today, that we're not looking for amendments to this, or interim solutions. It needs to be scrapped. If we are talking to the people here representing the honour of the crown, that message needs to be sent loud and clear back to the government.

My confrere, Ms. Zachary Deom, mentioned earlier the UN declaration. It's an embarrassment, to be honest, at this point. If we're going to be talking independence, then I would suggest that if we want Canada to live up to its honour, let's jointly appoint somebody from the international venue to overlook some of these larger grievances, as well as specifics—that we've been alienated from our lands for so long now.

The Chair: Thank you, sir.

Now, Monsieur Lemay, if you have one quick question, we have a couple of minutes.

[*Translation*]

Mr. Marc Lemay: I will be very brief.

As you will have noticed, ladies and gentlemen, several of us have joined forces in an effort to divide you. At least I noticed this.

I have observed one more thing. I urge you to reread carefully subclause 34(2) of the proposed legislation:

> 34(2) Subject to subsection (1), the Tribunal's decisions are final and conclusive between the parties in all proceedings in any court or tribunal arising out of the same or substantially the same facts and are not subject to review.

Obviously, this would apply if you go before this tribunal.

If ever the bill were adopted, do you not believe—and all of you are surrounded by lawyers—that because of the principle of jurisprudence, the decisions of the tribunal would, whether you like it or not, apply to you in any future negotiations?

● (1730)

[*English*]

The Chair: Thank you.

Would anyone like to make a brief reply to Monsieur Lemay's commentary? No?

Well, Monsieur Lemay, you got the last word.

With that, I must conclude this meeting. I want to thank all of our witnesses and all of the other guests for being here today. We appreciate you coming to Ottawa and making your presentations today. Your ideas and views will be carefully considered.

We stand adjourned.

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