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Chair

Mr. Barry Devolin

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● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Good afternoon, ladies and gentlemen. Welcome to meeting 25 of the Standing Committee on Aboriginal Affairs and Northern Development.

We will be concluding our hearings today on Bill C-30, an act to establish the Specific Claims Tribunal and to make consequential amendments to other acts.

Before we start our business with our witnesses, I want to remind committee members that we will have bells today at 5:30 for votes, and we do have a small amount of committee business to look after. At about 5:15 I'll try to bring the main part of our meeting to a conclusion so we can deal with our committee business prior to 5:30.

Having said that, I'd like to welcome the witnesses today from the Assembly of First Nations: National Chief Phil Fontaine—welcome, sir; Bryan Schwartz, legal counsel; and Candice Metallic and Tonio Sadik, policy analysts and legal advisers.

We'll ask you to make a presentation, about ten minutes long, and then we will begin rounds of questioning.

Chief Fontaine, we look forward to your presentation.

Chief Phil Fontaine (National Chief, Assembly of First Nations): Thank you, Mr. Chairman.

We want to express our thanks to the committee for extending an invitation to the Assembly of First Nations to speak to this committee on a very important matter.

Before I proceed with my formal presentation I would like to extend a very warm welcome to the newest member of this committee, Mr. Clarke. It's good to see you.

On behalf of the Assembly of First Nations, I thank the chair and members of this committee for the invitation to appear before you.

As you know, the Assembly of First Nations is the national first nations organization, representing over 633 first nation communities in Canada. First nations leadership as well as the Assembly of First Nations leadership are democratically elected. Our organization derives its mandate and its instructions from the chiefs who meet in regular assembly gatherings. We represent all first nations people, whether they live on reserve or off, regardless of gender.

Throughout the novel process that led to the formation of Bill C-30, we were consistent and clear with the federal government on one important point: that while we would respect their political process and all that it entailed, the government must reciprocate and respect ours. It was in this spirit that I requested to appear at the end of your hearings. I wanted to ensure that all first nation representatives who wished to submit testimony before you could do so freely and unencumbered by the position taken by the Assembly of First Nations, particularly since we were directly involved in the development of Bill C-30.

If individual first nations have expressed a desire for amendments to the legislation, that is their prerogative. This should not be construed as dissent, but rather as democracy at work. The Assembly of First Nations fully respects the voices and opinions of chiefs and first nations peoples in every part of the country.

As I prepared for this presentation, I reflected on the long history of active engagement that we've had on this issue with successive governments. Throughout your deliberations I urge you to be mindful that the ultimate objective of Bill C-30 is to improve the specific claims resolution system in Canada. The current process is fraught with conflict of interest, inordinate delays. It lacks critical independence and is underfunded. All of this has resulted in an enormous backlog of over 1,000 unresolved claims. An effective system must be fair, independent, efficient, expeditious, and well resourced. While no system will ever be perfect, I suggest to you that Bill C-30, together with the political agreement, satisfies the elements of an effective system and will bring about much-needed change that we have worked many years to achieve.

Prior to the establishment of the Indian Specific Claims Commission in the early 1990s, the Assembly of First Nations had been active in trying to improve the federal system that deals with the resolution of specific claims. In 1996 Canada initiated a joint task force process. This process was effective in bringing together regional representatives to make recommendations with respect to the existing system, culminating in a proposal for the adoption of a model bill that would create an improved system based on key recommendations that included:

(1) The elimination of Canada's conflict of interest through an independent legislative mechanism;

(2) The establishment of a commission to facilitate negotiations;

(3) The establishment of a tribunal to resolve disputes in cases of failed negotiations with the authority to make binding decisions;

(4) Independent funding for first nations research and negotiations; and

(5) A joint review after five years, to include consideration of outstanding matters such as lawful obligations arising from aboriginal rights.

● (1540)

Unfortunately, the report that was issued in 1998 was never implemented. In the intervening period, we've seen other attempts to address problems with the current system, most notably the Specific Claims Resolution Act, Bill C-6, and subsequent attempts to improve that legislation.

In December 2006 the Senate Committee on Aboriginal Peoples released its report on specific claims, entitled *Negotiation or Confrontation: It's Canada's Choice*. This groundbreaking Senate report represented an important element in enabling the then Minister of Indian Affairs, the Honourable Jim Prentice, to advance significant reforms related to specific claims.

It must be stressed that the Assembly of First Nations was not involved in establishing the parameters of the plan to develop this legislation. We were, however, subsequently invited to participate in the announcement last June and to collaborate with Canada to jointly develop legislation based on the parameters set out in *Justice at Last*, Canada's proposal to reform the specific claims system.

While the process that ensued should be seen as a success in the context of this initiative, this success has not defined a new approach or relationship when it comes to law and policy development in other areas that are important to first nation communities and our citizens.

I want to talk a bit about the engagement with the Assembly of First Nations.

Bill C-30 represents a tremendous collaborative effort between first nations and the federal government at achieving agreement on the design, composition, and mandate of an independent specific claims tribunal. The successful elements of this mutual development were, first, that the legislative drafting process incorporated interests that had already been identified as critical to its success, mainly through work that had been conducted over many years, including the work of the 1998 joint task force report. From this standpoint, the main thrust of this initiative embodied a shared objective.

The second element was that a shared objective, the approach that was used to advance this initiative, involved constructive collaboration and cooperation. It included AFN representation at all levels and was guided by both a senior political forum and a senior technical committee.

We have always maintained that meaningful upfront engagement with first nations is more efficient and effective than unilateral top-down imposed processes. Bill C-30 and the political agreement are examples of this. In fact, despite the various proposals for amendments, the majority of witnesses who have appeared before you have admitted that this bill will improve the claims resolution system.

The Assembly of First Nations has extensive experience in facilitating first nation and crown discussions on law and policy change, which I note is distinct from federal legal obligations to consult with first nations on matters affecting our rights and interests.

It is clear through case law and through our clearly stated position that the Assembly of First Nations cannot serve as the crown's agent to conduct consultations, nor as a replacement for direct consultations with first nations. However, our proven track record in advocacy, communications, and analysis supports both the crown and first nations efforts to consult effectively.

This said, the AFN has never committed to undertake the government's responsibility to consult with first nations about Bill C-30. That remains a federal legal responsibility. Rather, we undertook to ensure that the perspective of first nations was central to the legislative drafting process and to help inform first nations, to engage our citizens in dialogue on the contents of the bill and the political agreement.

● (1545)

We have made every effort to live up to our obligations while respecting the federal government's repeated insistence on the confidentiality of the discussions. While respecting the concern with confidentiality, we did everything in our power to get information to our people. We provided updates to first nations people as often as we could during the process, again fully respecting the government's need for confidentiality.

Once the legislation was publicly available, we conducted an intensive national campaign to inform our people about this. We visited virtually every region in Canada in what was less than a two-week window of opportunity, and we mailed out a comprehensive summary of our accomplishments on the very day that the legislation became public.

First nations were calling for more information and engagement throughout our collaboration with the government, but we respected the conditions that had been placed on this process. We have honoured our commitment to confidentiality, no less than we expect the members of this committee to honour the right of first nations to appear before this committee and to propose amendments. This does not mean that things have gone wrong. Quite simply, it is an indication that things have gone right.

No legislation or public policy will ever address all the concerns or issues of the people it affects. However, by involving our people in this development and allowing the diverse first nations interests to be heard, the government will have utilized the ingredients for a more positive outcome.

It has been our experience—and this is borne out in the process resulting in the Specific Claims Tribunal Act—that joint policy and legislative development processes are the best means for reaching sustainable, accountable, and innovative development on issues that directly affect our people. We encourage the government, and indeed all parties in the House, to learn from the success of this process and to apply it to other policy areas in which our rights and interests are affected—for example, safe drinking water, the apology to first nation survivors of the Indian residential school experience, and the OAS draft declaration on the rights of indigenous peoples, to cite just three examples.

However, to date we have been unable to replicate the very successful collaborative process of Bill C-30 in other policy areas, such as matrimonial real property, the repeal of section 67 in the Canadian Human Rights Act, and the Fisheries Act renewal.

It is unfortunate and regrettable that as of yet we have not been able to forge an open, ongoing, reliable, stable relationship with the current government that meaningfully reflects and respects the government-to-government relationship between first nations and the government. We see this as a missed opportunity.

Admittedly, Bill C-30 has not addressed all the inadequacies of the specific claims policy or process. However, these inadequacies were to some degree non-negotiable, because they fell outside the legislative framework that was provided to us as set out in the *Justice at Last* mandate.

I am getting close to the end, Mr. Chair. Sorry.

The shortcomings of the federal mandate led to the creation of the political agreement. It is very important that this signed agreement and the commitments therein be implemented in the spirit in which they were entered into. The political agreement, along with subclause 41(1), which provides for a five-year legislative review and report process, are mechanisms by which the range of proposed amendments may be addressed.

It is very important to keep in mind that the ultimate objective of this initiative is to resolve and settle claims faster and more fairly than the current system will allow. We must end 60 years of unsuccessful attempts and look to create a system that will effectively reduce these debts that are bogging down both Canadian and first nations economies.

The bottom line is that a new, independent tribunal with powers that bind the parties to a maximum value of $150 million, in tandem with further commitments embodied in the companion political agreement, will indeed make a significant difference in improving the process and in expediting claims resolution. Therefore, it is very important to seize this historic opportunity to pass this legislation and to ensure that the federal government fully implements the undertakings and joint process outlined in the political agreement.

● (1550)

While first nations have proposed some thoughtful and potentially beneficial amendments, the Assembly of First Nations is prepared to accept Bill C-30 and the companion political agreement based on the significant improvements they embody. The corresponding commitment of this government is to live up to each and every undertaking it has made therein.

The Assembly of First Nations is fully committed to cooperative, collaborative, and constructive engagement, and we trust that the Government of Canada is as well. That is our true path to progress on this and the many other issues that require our collective energy and efforts.

I want to make one final comment here before I turn it back to you, Mr. Chairman. By the way, I really appreciate your giving me a bit of extra time.

When we began this process, including when I stood before the country with the Right Honourable Prime Minister Stephen Harper and the then Minister of Indian Affairs Jim Prentice, we gave a commitment that we would undertake a collaborative process with the government. We committed ourselves to this process. We wanted to achieve success. We wanted something that would be a vast improvement over what we have now. We gave our word. We never intended to retreat from our word, and there should have been no question about our commitment from any quarter. Our commitment was real. Our word was true, and this is what we brought to the process—no more.

Thank you.

● (1555)

The Chair: Thank you very much, National Chief Fontaine. We appreciate the presentation you have made today. This is an important subject, and we appreciate the efforts that you and the AFN have made in this process to date.

We'll begin our questioning now. The first turn goes to Ms. Neville from the Liberal Party.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chair.

Thank you, National Chief, for appearing here today. I'm glad that you were able to come at the conclusion of the hearings, because you certainly brought it all together.

I have a number of questions that I'd like to ask.

You talked about the shortcomings of the original mandate. I wonder if you could speak to that a little further. Professor Schwartz appeared before the committee a few weeks ago. He basically maintained that the bill as we have it is a compromise—you didn't have everything you wished in it, and neither did the government. We've heard from a number of communities about concerns with the $150-million cap and with the absence of the land question in the negotiations. The process of consultation has been criticized in regard to confidentiality, and you spoke about that today.

Could you tell us the shortcomings of the mandate? While you've said that you would like the bill passed as it is, are there improvements based on others' testimony that might be included?

Chief Phil Fontaine: First of all, I would make the point, Mr. Chairman, that the shortcomings I referred to should not be taken as a criticism on what we were able to achieve here. I mean, we understood going into the process that we wouldn't be able to achieve perfection in this collaborative undertaking. We knew where we thought it would have been better, but we understood and accepted the constraints that were imposed on the process.

Take, for example, the appointments process. There's an established process for appointments of judges. There's an important interest that's not represented in the amended structure and process, and given our past experience, we thought that it made good sense to come to the Assembly of First Nations to ask for our views on what we would consider appropriate appointments. But that is not in the cards, so we accept, with some regret, of course, this deficiency.

You referred to the threshold of $150 million. We understood that this would be viewed as an impediment by a number of claimant groups, but there again, we accepted that we weren't going to be able to resolve this through this process because we knew that if we were successful in an amendment, it would have to go back to cabinet, and given the timing issue, we were concerned that we would run out of time. As I indicated in my prepared text, we see this as a vast improvement over the existing system, and we just want it to proceed. As I did in my prepared text, I would urge the committee here to do right by our people and proceed with the task at hand.

● (1600)

Hon. Anita Neville: Let me follow up on the consultation process.

You spoke about confidentiality and the guidelines you were under. We have heard a number of times from communities that they do not regard the collaboration and discussion that went on between the AFN and the government as being a consultation. In the best of all possible worlds, how could that consultation process have been improved? Would it have made it a lengthier process? Would that have been to your advantage?

It's the consultation I'm concerned about.

Chief Phil Fontaine: I remind the committee of the point I made in my opening statement on the issue of consultation, that in fact the duty to consult is a legal requirement that rests with the government, and we would never suggest...in fact, we can't assume this responsibility from the government.

That being said, we absolutely believe that on any and every issue that affects the rights and interests of our people—whether we're talking about land development, exploration, mining, things of that nature—there's a legal requirement, and that must remain the responsibility of the government. But of course we make every effort to ensure that the views and opinions of our people are considered integral to any process. In this case, we are constrained by time. Timing was a major issue, and we couldn't reach out to our communities in the way that we felt was important and necessary. Indeed, if we had had a longer process, we would have had to ensure that we had the capacity to consult with our people.

And when I say “consult”, I'm talking about an internal process within our own organizations, our own institutions, our own system. I'm not talking about the legal requirement that rests with the federal government. Clearly, timing was a major issue. We didn't have the resources to do a more extensive process of public information to ensure that we were able to reach all of the people who needed to know and understand this legislation.

The Chair: Thank you.

Mr. Lemay, from the Bloc, you have seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

National Chief, we will leave you time. We will reset the stopwatch to zero. It is very important for the National Chief to understand.

● (1605)

[*English*]

The Chair: I'm very generous, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: I know that you are very generous, Mr. Chair; I have never doubted that. It is your parliamentary secretary who concerns me.

National Chief, thank you for being here. Throughout the long process of studying Bill C-30, rarely has it happened—though it has—that the First Nations who come to testify have taken issue with the government. It is rare, I have to say. Several First Nations have criticized the Assembly of First Nations, of which you are the National Chief, for not having consulted them.

Here is what concerns me. I am going to ask the question directly. This past Monday, we heard from the Iroquois people, and before that, the Algonquin and other First Nations. Everyone said that they had not been consulted by your association on Bill C-30.

Have all the First Nations that you represent been consulted? That is my first question.

Secondly, the Nations that have come to testify—those who are in favour of the bill, of course—have said that the $150 million limit must be increased.

How was the $150 million established? Was that done by the Assembly of First Nations? By the government? How did you arrive at the $150 million limit that appears in the bill?

My final question deals with the composition of the tribunal. I know that First Nations very much like the process of reconciliation, but Bill C-30 will be an adversarial process. I like to read a lot at the moment, and I have read a number of Supreme Court decision on the Métis, which have nothing to do with you just yet. Do the First Nations that you represent find the composition of the panel to be acceptable?

I will give you all my remaining time to answer these question, especially the first, which interest me greatly.

[*English*]

Chief Phil Fontaine: Mr. Chairman, I made the point as clearly as I could on the matter of consultation. We make a very concerted effort to consult with our people on any and every issue. On this particular issue, you have to remember, we're dealing with a matter that's been 60 years in the making. There have been many and varied attempts by different governments to resolve this issue, and in each attempt there's been some discussion and consultation with our people.

I mentioned that in 1998 we came forward with the joint task force report. Up to that point, that was the best example we could point to of a joint undertaking between government and us. The result of that work, I believe, reflected as accurately as possible what we felt and believed was necessary to bring about a fair and just resolution of the many outstanding claims in the country. That particular undertaking was based on extensive discussions and consultation with our people.

When we were offered an opportunity to do something better, to improve what was on the table at that point—I'm referring to Bill C-6, which was never brought into force, because it didn't reflect the work of this joint task force, and it's good that it wasn't brought into force—we accepted the challenge that was put to us by the government.

We understood that it was not going to address every single issue or concern that had been advanced over the years by various claimant groups. For example, the particular legislation doesn't deal with treaty rights. It doesn't deal with land. It deals with financial compensation, and there's been a threshold included of $150 million. We were comfortable with the offer. We knew that the parameters advanced by the government would, in the main, be acceptable to most claimant groups.

In those areas the legislation would not address specifically, such as large claims, for example, we insisted on another parallel commitment to deal with those issues on the part of the federal government. When you put the two together, we felt it represented the best interests of claimant groups in different parts of the country.

I make the point again: We just didn't have time to do the kind of consultation a number of witnesses have suggested. I don't know if the outcome would have been any different from what we have now if we'd had more time, given what we were presented with. This is a vast improvement over what we have now. I'm pleased to support Bill C-30. There's no question about my support for the bill.

● (1610)

The Chair: Thank you.

Ms. Crowder, from the NDP, you have seven minutes.

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

Thank you, National Chief, for coming before us today. I really appreciate your reminder that the process that happened with the Assembly of First Nations was around facilitating dialogue, but in no way is it to be construed as contracting out the duty to consult. I think it's a good reminder to all of us that it is the crown's responsibility around duty to consult, and this is certainly a good process but cannot be construed as fulfilling the duty to consult on the government's part. So I really appreciate that clarification.

There are a couple of points that I wonder if you could address. In an analysis—again this information is available on the department's website—a substantial number of claims are in the loop already. It seems to me there needs to be a radical increase in resources. I know this is outside of the Assembly of First Nations' purview.

Another important piece of what you've talked about is political agreement. I wonder if you could talk a little about the steps that need to be in place to ensure that political agreement moves forward. I know there's a good deal of good faith, but as I'm sure you're aware, I've spoken about the fact that political agreements in the past have been disregarded by governments of various stripes. What in your view needs to happen to make sure that moves forward?

When Professor Schwartz came before the committee he talked about oversight. I wonder if you have some views about the kind of oversight role this committee or another body might play prior to the five-year review, because I think the devil is truly in the details. I think everybody would like to see this process move forward, and I wonder if you have some thoughts on that.

● (1615)

Chief Phil Fontaine: In our view, the political agreement that's parallel to the legislation is based on goodwill on the part of the government and us. As I said, we understood going into this process that the legislation would not be able to address all the issues and concerns of various claimant groups. I've noted the fact that this legislation doesn't deal with treaties and it doesn't deal with land. And I've noted a few others.

There are a number of large claims before Canada. No one really knows the precise number of these large claims that are over the threshold number of $150 million. The numbers vary. I've heard it's as low as six and as many as twenty. There could be more; we don't know.

One of the things I didn't note is that we need the capacity to do the required research into these matters. The existing system and this current process don't provide the kind of support we need to ensure that these matters are addressed appropriately with the sufficient resources to do the kind of research that is needed.

Once this comes into effect and this whole matter becomes operational—but even before this, because in my view the political agreement kicks in immediately—it would be very helpful if we put to the test whether the political agreement can address those issues around large claims.

In terms of the oversight, in the undertaking the minister and I agreed to, we submitted that a liaison and an oversight committee or similar body are needed. That is still an outstanding matter. We need to get our heads around this operational issue to make sure it is in place and operational when the bill comes into force.

This committee serves as an oversight committee on all issues. I don't know if there's anything that would be required beyond what you do now. If you have a particular suggestion you would care to advance on this matter, we would be interested.

Ms. Jean Crowder: I think your comment that it would actually be a demonstration of good faith if a large claim that was currently in the system could start wending its way through a process was very good.

Quickly, with respect to elders, I know there are a couple of places where elders could be inserted into this process, and I wonder if you have some thoughts around that.

Chief Phil Fontaine: In everything we do, whether we're talking about the fair and just resolution of claims, whether we're talking about education or about any matter of great importance to first nations people, we refer to elders. These must be considered as integral to any process. In this case, absolutely, it's going to be very important. For example, in the proposed truth and reconciliation commission there will be provision—at least we hope there will be provision—for a survivors committee that will advise the yet-to-be-appointed commission, the chief commissioner and the other two commissioners. This committee will be made up primarily of elders. They will have an integral and ongoing role during the course of the work of the truth and reconciliation commission. This is one example of how and where elders can play an important role.

In this case, in terms of the tribunal we would suggest that elders can play an effective and integral role in terms of the history, particularly as it relates to oral history. We would hope this would be addressed fairly.

● (1620)

The Chair: Thank you, Ms. Crowder and Chief Fontaine.

Next, from the Conservative Party, Mr. Bruinooge. You have seven minutes.

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

Of course, thank you, National Chief, for your appearance today and your testimony. It's been a couple of weeks since we last saw each other. When we did it was in Saskatoon at the treaty conference, which I think was a very well-attended and well-received event, which of course was part of the political agreement we signed with the AFN last year. So I definitely appreciated your words at that time as well.

National Chief, this process with the organization you lead has been a very fruitful one for our government and I believe also for your organization. As I've said before at this committee, I have in the past always embraced issues that have taken on important systemic reforms, so I do hone in on that part of your testimony today, where you talk about this being a very important systemic reform. You, perhaps better than anyone here in the room, appreciate how previous specific claims that were dealt with by the Government of Canada would have to be immediately—before they could even start—treated as a valid claim. That alone was the bone of contention by so many first nations, in the sense that the Government of Canada was both judge and jury, and in the end could also set aside recommendations from the Specific Claims Commission that exists today.

Maybe I could just get you to comment firstly on your appreciation or your sense of the negotiated process that you took part in with our government, and whether or not you felt it was a good process. And also perhaps you could comment a bit on how substantive a systemic reform this is. Is it as large as I'm suggesting? Is it as big a system of reform as we hoped it would be for all first nations people?

Chief Phil Fontaine: There was considerable risk on the part of the two parties in this important undertaking—on the part of the federal government and of the Assembly of First Nations—and it had to do with trust.

We came into the process determined to achieve success. We were dealing with an issue that had befuddled successive governments over 60 years, and we had just experienced what we thought would be a good outcome in the joint task force report of 1998. After extensive consultation, we thought we had the kind of package that would enable the government to rule out the kind of system that would radically change the way specific claims were addressed.

You all know around this room that we were very disappointed because Bill C-6 had fallen far short of what is needed. At the initial meeting, where we talked about how this whole process would roll out, and when we talked about the roles and responsibilities of both parties to the process and how first nations would be engaged in the process, we were satisfied with the assurances we received from the government.

Did we achieve all we set out to achieve in this process? I believe we did. That's why I'm here this afternoon to say that the Assembly of First Nations supports Bill C-30 and that we want Parliament to endorse the bill: because it represents, in our view, the best efforts through this collaborative effort and undertaking. What we have before the country, but more specifically to first nations.... I think we have a good package. I'm very pleased with the good work that went into this process.

Is it going to make a difference? Absolutely, it will make a huge difference. The $2.5 billion that has been committed over ten years represents, I believe, a very important commitment. And we're not talking just about money, as I said; it really goes beyond that. It's about telling first nations people that their rights and interests are just as important as the rights and interests of others.

We finally, I believe, have the kind of process and system that all of us can support. Put it to the test. We have a five-year period. We will be able to review the work and the outcome of the work that will go into this process and will be able to determine together whether improvements are needed. I trust that when we come to that point and all of us agree that there are obvious shortcomings and deficiencies in the system, we will have the political will to bring about appropriate amendments and changes to the system to make it even more effective and more fair and more just.

● (1625)

The Chair: Thank you.

That concludes our first round. The second round will be of five minutes.

First is Ms. Keeper, from the Liberal Party.

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

I'd like to thank National Chief Fontaine for being here today. It has been a lengthy process, and we've heard from many witnesses.

I would like to ask you two questions. We have heard concerns from many of our witnesses around the land issue. Arising from this process, of course, through the tribunal is the settlement solely of monetary compensation. One of the concerns that was raised is that claimant groups that may be seeking land settlement may be forced into this process through the process that would deem them rejected.

The Canadian Bar Association has raised the matter that there is trepidation that this whole pattern or doctrine of deemed rejections that it found under the ICC may emerge, and they raised the question of what would be in place to deal with those. In that regard, they also made a statement that there was no independent body to review ministerial decisions to reject claims and to make decisions binding on the federal government. That is a concern we heard around the monetary compensation.

I would also like to ask you one other question, and this is regarding the trust and good faith. You raised the matter today in terms of the process we saw on the MRP, where we failed to have a piece of legislation that moved forward, reflected the consultation, no consultation on Bill C-21, and in fact that this government did choose not to participate in the duty to consult on the development of this Bill C-30. So how is it that you reconcile the good faith of this government, which did not sign the UN declaration either?

So I would like to ask those two questions.

● (1630)

Chief Phil Fontaine: As I noted in response to Mr. Bruinooge's question, I'll repeat the same point I made: that there was considerable risk for both sides and it was very clear right from the start that success was going to be very much dependent on trust. We were prepared to trust the government that we'd be able to achieve success only if—I point out—we were fully engaged in the process, including crafting the legislation, to ensure that all our interests were reflected in the legislation, given the parameters.

I'm pleased with the outcome. We believe it's a good bill. It's a vast improvement over the existing system. Will it make a huge difference in the lives of first nations people? Absolutely. Is it a perfect piece of legislation? It isn't. Does it have deficiencies? Yes. Will the political agreement address all the deficiencies? We hope that the political agreement—and there's no reason at this point not to believe that the political agreement will be set aside for any reason—represents a very important undertaking on the part of government. We all know about the political agreement. So if the government were to decide it was going to walk away from the political agreement, it would be a very difficult decision for the government to take.

I'm convinced it will not take that decision. I'm prepared to give it the benefit of the doubt, because, as I said, I came into the process with trust and belief in the goodwill that was necessary to achieve success here.

As far as the issue of land is concerned, we understand that this particular bill and legislation doesn't deal with land, and that's been an ongoing concern for claimant groups, but we trust that the compensation will enable claimant groups to make up whatever shortfall their claims represent.

The Chair: Thank you.

Next is Mr. Albrecht, from the Conservative Party, for five minutes.

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

Thank you, Chief Fontaine and all the witnesses, for being here today.

I was privileged to be at the meeting in June when Prime Minister Harper and Minister Prentice and you, Chief Fontaine, were present, and I certainly consider that a very historic moment. Let me say, from my perspective, and I think I speak for all my colleagues on this side, there never was a question about your commitment or the commitment of AFN to follow through on the commitments that were made that day.

I think all of us around this table agree that our ultimate objective is to improve the specific claims processes you've outlined. You indicated a number of times today that Bill C-30 is not perfect, but that it has elements of an effective system. I just want to reiterate some of the statements you used. You said there was a tremendous collaborative effort; that there was constructive collaboration and cooperation; that it involved first nations people at all levels; and you said that no legislation will address all the concerns of all the people affected. Yet in spite of all those caveats, today you are pretty clear in your urging of this committee to move forward with this legislation as soon as possible. I'm sure you're aware of some of the suggested amendments by other first nations groups that were here. Is it because of the five-year review and the marked improvements that are here that you can so forcefully urge us to move ahead expeditiously with this?

● (1635)

Chief Phil Fontaine: I would make the point, first of all, that we would never deny the opportunity or the right of first nations to present their own views, their own takes, their own opinions on any work as reflected in this legislation. We would be completely offside on that. That's why I made the point in my presentation that we have to respect the right of all to state their position on any given legislation such as this one.

The five-year review process is very, very important, because it will give us an opportunity to pause and reflect on the work leading up to the review period. I made the point earlier. I trust that the goodwill that was present in this process will also be there when the time comes to give very careful review of this process, this system, and the outcomes, and figure out together that if improvements are needed, those improvements will be brought into place.

We also have the political agreement. That represents the word of the government—and ours, of course. Clearly, the obligation and responsibility rests with the government to make sure their commitment as reflected in the political agreement will be honoured. Only time will tell if that will occur. Here again, I make the point that it's all about trust.

Mr. Harold Albrecht: I want to come back to the point about land for a minute as well. I think it's important that we clarify that the issue of whether or not land can be awarded rests with the first nations group as to whether or not they want to enter this process. If they still wanted to continue negotiations, that avenue would still be open to them, in my understanding. In addition to that, with the political agreement that accompanies Bill C-30, there is a possibility for a first nations group that has been awarded monetary compensation to use that to purchase land that then could be added to a reserve.

Could you clarify that for us, please?

Chief Phil Fontaine: I'm going to ask Mr. Schwartz to respond to that question, sir.

Professor Bryan Schwartz (Legal Counsel, Assembly of First Nations): The Assembly of First Nations proposed what the federal government accepted and is now clause 5 of the bill. It provides that participation is strictly voluntary. The rights of no first nation are affected unless it chooses to participate. In a recent session, someone asked why anyone would object to a voluntary provision that helps a lot of people. The response was that there would likely be no objections as long as there was assurance that rights would be protected.

Clause 5 provides that assurance. The Assembly of First Nations also secured a political agreement. That political agreement recognizes the cultural, spiritual, and economic importance of being in a position to replace or reacquire lost land. There is no guarantee, but the importance of being able to do this is recognized. There's a commitment on the part of Canada to review the policy on additions to reserve with a view to making it easier to achieve. It has often been difficult in the past. There's an immediate commitment to give priority to additions to reserve in the context of claims.

To be clear, any first nation within the jurisdiction can file a claim, can pursue the process as long as it wants. It's never required to put itself in a situation where it's facing an award that would extinguish its right. It's an option, but first nations that don't want to be put in this position are not required by participation in the process to go to the last step.

● (1640)

The Chair: Thank you, Mr. Schwartz.

[*Translation*]

Mr. Roy, from the Bloc Québécois, you have five minutes.

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): Chief Fontaine, thank you for being here, as well as your team.

In your remarks, I noticed an element that seems to me to be important. You often say that we must show good will, that this is all about trust and that we must tell First Nations people that their rights are just as important as the rights of all the other citizens of Canada and of Quebec.

But one point suggests to us that you do not trust the government as much as you seem to be saying. You said that at the time the consultations on aboriginal claims began, the Fisheries Act, over 100 years old, was renewed and that you seem not to have been consulted, at least sufficiently so, on the amendments to the Fisheries Act.

We know that this is extremely important for First Nations from the west coast, the east coast, the centre or the north. I sat on the Committee on Fisheries and Oceans for five years. I saw everything that happened on the west coast in connection with the Fisheries Act, which is extremely difficult to apply.

That was your example. Does that mean that you trust the government only in this present process? You said that this process poses no problem but that the federal government does not automatically think to consult First Nations on matters that concern them, including the Fisheries Act.

Did I understand your message on the subject correctly?

[*English*]

Chief Phil Fontaine: I certainly don't want to give mixed messages or leave you with the wrong impression.

The questions that were posed and that I responded to here have to do specifically with Bill C-30. And I described how we entered into the process, the fact that we had to bring some trust to the process, and that there was goodwill in the process on the part of both sides.

Trust and goodwill and the success that resulted from ensuring that we were an integral part of this collaborative process—because that's what it was—ensured that this would be successful, or as successful as we could make it. That's why I come here, certain that this will bring about the kinds of changes that first nations have been seeking for a long, long time. I said 60 years. It's beyond 60 years, but 60 years is when government started making an effort to resolve these land matters.

In terms of other issues, and the role of the Assembly of First Nations in these other issues, and whether I'm satisfied that the government has treated us fairly in terms of addressing those issues, that's a different proposition. That's an entirely different question. I mentioned matrimonial real property, the repeal of section 67, fisheries, water, the United Nations Declaration on the Rights of Indigenous Peoples, the current work related to the Organization of American States and the declaration of aboriginal peoples in that regard. I could list a whole number of issues where I have been really disappointed and bothered by the approach taken by the government.

First of all, the Assembly of First Nations is a legitimate political organization. It represents distinct peoples with rights that are unique to them. We are as legitimate as you are, representing the BQ; as you are, representing the NDP; as you are, representing the Liberal Party; and as you are, representing the government. We're not less than you. We shouldn't be treated less than you. We're important to Canada. Our issues are important to Canada. The fair and just resolution of our issues is important to Canada.

Because we represent distinct peoples with unique rights, with interests to the land that are different from any other Canadian, you can't expect us to come here and do your bidding for you, the government. You should trust that when we have something to say, our position and our statements have as much validity as your statements, your words, and your positions. We can't be treated any less than that.

We've demonstrated that when we're treated with respect, with integrity, with appropriate goodwill, we achieve success. But governments can't pick and choose on what issues they're going to treat us with respect. It doesn't work that way. That is why I was very concerned when there was a suggestion that the fact that we had asked to be last here was somehow demonstrating our lack of confidence in our work. How could that be? I couldn't come here and criticize our work, because it is ours. The outcome before you, the piece of legislation before you, is a direct result of our joint efforts.

● (1645)

I just wanted to make sure today that whatever I had to say didn't take away from the good work that went into this piece of legislation, because it is indeed good work and it will bring about some real improvements, positive improvements to our communities.

On other issues, as I said, I'm so disappointed. I've committed myself to working with this government, making every effort to establish a good, respectful relationship with the government, and through the process of an effective, respectful relationship convince them that our agenda should be theirs as well. We shouldn't be treated as an afterthought. Our views shouldn't be disregarded. We want to make a difference in the lives of the people I represent. We have some huge challenges, and I have some very serious concerns about some of the issues where the interests of first nations people have been completely disregarded.

For example, the suggestion that we're against the human rights of women is a complete fabrication. We are for human rights for all our people. The suggestion was that because we wanted a three-year delay in the legislation, BillC-21, this meant that we were not prepared to extend protection to the most vulnerable in our community. All we were trying to do there was make sure that our interests were treated the same as you treat your own interests. Governments that have greater capacity than we will ever have at this point were given three years to ready themselves for the charter, when the charter came into force. We were offered six months. So when we pushed for greater time, we were accused of undermining the human rights of women. That isn't so.

I appear here before you deeply committed, as are all the people I work with, to the human rights of all our people.

Think of this for a moment. There are approximately over 100 women chiefs in Canada. There are approximately 800 women councillors. Do you think those people are against the human rights of women? Of course not. Absolutely not.

● (1650)

The Chair: Thank you, Chief Fontaine.

Next is Mr. Clarke, from the Conservative Party. You have five minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Chief.

As a committee, we're sitting here today, and I'm excited. We're going to see something here for our generation get completed in regard to land claims. For first nations peoples, I feel it's been long overdue. The 800 or more claims need to be resolved for our future generations.

Chief, thank you very much for coming here. It's an honour being able to sit here on this committee.

The one question I have is basically the amendment to remove the $150-million cap, which could lead to the tribunal using most of its budget on just a few cases while doing nothing to remove the backlog of these claims. I'm wondering what you think of this.

Chief Phil Fontaine: I made the point earlier, and I'll make it again. The political agreement is designed to deal with the large claims, those over $150 million. We've been assured that each of these claims will be addressed case by case and that the decision to deal with these large claims will ultimately be made by cabinet. We accepted the undertaking we were provided with by the federal officials we were involved with in this process, and I have seen no reason, up to this point, to convince me that the commitment in the political agreement will not stand. So I believe that what we have before us, the legislation, Bill C-30, together with the political agreement, will enable us to deal with the vast majority of specific claims in the country.

Mr. Rob Clarke: Thank you.

The Chair: Next we have Ms. Crowder, from the NDP. You have five minutes.

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

Having been through this process now, and seeing the number of issues that are facing aboriginal communities, and the numbers of opportunities there are to build on this process—and you did mention time and resources—I wonder if you have some thoughts about how this process could be improved for future legislation, or legislation currently in the loop that could use some assistance in terms of making it more reflective of the needs of the communities.

Chief Phil Fontaine: Bryan?

Prof. Bryan Schwartz: A lot of things went right in this process, which I think the national chief has said could be usefully deployed to other issues.

If you just look at the track record, according to the national chief's record, if you don't consult with the AFN the process goes off the rails; you get a lot of objections. On the other hand, you have this signal success with Bill C-60. Some people thought it could have been a lot better, but there was very strong support expressed. I think the bill has stood up very well to very rigorous scrutiny by witnesses in this committee.

What went right was there were intensive technical negotiations and support for that, and high-level political oversight of those technical discussions, so that when there were difficulties and you needed political direction, you could get it. We had Mr. Bruce Carson from the Prime Minister's Office engaged with Vice-Chief Atleo, so there was always a political connection to make sure that the technical process was in touch with the political realities and could get instructions as needed.

The national chief indicated that some parts of this process could have been a little bit more successful. We needed just a little more time, once the bill was ready, to go out and explain it to communities and get feedback. The Assembly of First Nations has indicated on a number of occasions that more resources would have been useful to engage in regional consultations.

But the basic framework of negotiating in partnership, of having both political oversight and intensive discussions—they may be improving that a bit by more resourcing for regional and community discussions to make sure there's no possible disconnect between that table and what's happening in the communities—seems to be a formula for success.

Not only can you compare it with other processes, but you can compare it with earlier exercises in specific claims. The joint task force report worked well because it was that engagement; Bill C-6 went way off the rails because the federal government discontinued consultations. In terms of Bill C-30, there's partnership from beginning to end, after *Justice at Last* was announced, and now we've achieved that point, which we believe is very successful.

● (1655)

Ms. Jean Crowder: In terms of the voluntary nature in this bill, the way I see it is that people can choose to participate in this process, but if they don't, litigation is their option. Is that accurate?

A voice: Yes.

Ms. Jean Crowder: National Chief, when we were talking about the larger claims, you talked about capacity for research and sufficient resources to take a look at what's involved there. Were you talking about that in the context of the political agreement?

Chief Phil Fontaine: That is, but you have to look at it in the context of all things.

One of the serious shortcomings in the current system is that we don't have the capacity or the resources to undertake the kind of research required to bring the claims forward. That's always been a huge problem, and it remains a big problem.

For example, I made the point about oral history. People know the things that are wrong. They know their land. They know what has happened to their land, in the cases where land was either taken or stolen outright or sold off by government. They're well aware of this. But you have to be able to document your case in order to bring it forward. As I said, if you don't have the resources to do that, that kind of issue will languish and will remain problematic for a long time.

We have to figure out a way of ensuring there is research capability in our communities, and we're talking here about making sure there's money.

The Chair: Thank you.

Next, from the Conservative Party, is Mr. Warkentin, for five minutes.

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chair.

Thank you, Chief, for coming this afternoon. We appreciate your coming and your testimony on this and the matters you've brought to the table today.

I have the opportunity of representing some of the people you represent as well. I have a number of aboriginal communities in my riding, and throughout the northern part of Alberta I'm in contact on a regular basis with some of our chiefs and the different people from within the aboriginal communities, both on reserve and off reserve.

I've actually had the opportunity to work with a number of members from these communities who are quite excited about this bill. Actually we had some people from Alberta who testified before our committee, including former member of Parliament Willie Littlechild, who was also involved in this process. He brought his perspective to the table as well.

There's no question that communities are excited about this. This is only one of the pieces of the puzzle that need to come together to ensure that development can go forward. That's really, I guess, my perspective.

What I've been able to witness and see is that the communities within my riding that have had the opportunity and the ability and the leadership to develop their resources and the flexibility to do that have been the ones that have been able to grow and develop and serve their community and the members the best.

This bill has an impact on the ability of these communities to move forward. I think that, more than ever in our history, time is of the essence, as we're seeing so many opportunities missed by many of these communities because they're dealing with specific claims or claims that, if not resolved, lead to a missed opportunity to either develop or to be able to take advantage of something.

I'm wondering if you could just speak in terms of the timeframe that you would see being acceptable as we move forward. I know there are processes that we as members all have to appreciate and all have to undertake and work towards. I'm wondering if in your mind you have a perspective as to at what point this legislation would be able to be implemented.

● (1700)

Chief Phil Fontaine: When we first were offered this opportunity, our understanding was that we would be able to bring this into force fairly quickly. So we were dealing with a very short timeframe. That impacted on our ability to engage our community to the extent that would have been, I suppose, better for a number of our communities. But I also made the point earlier that what we have here is the result of years and years of hard work on the part of many people. It's not as if this emerged out of a vacuum. It had a very strong base, a very good foundation in the elements of the legislation, including an independent tribunal able to make binding decisions, judges sitting on the tribunal, $2.5 billion over ten years, and a review period that kicks in after five years. This had all of the elements of success.

We thought we would finally be able to bring about a fair and just resolution to the many outstanding claims. This is, I believe, an important point. We didn't look at this as.... And here I'm referring to claims in isolation. We were talking about an opportunity not just to settle these claims but to revitalize first nations economies in many parts of the country. If you take the $2.5 billion over ten years, the leverage factor is just enormous. So we're talking about bringing about some major changes that will benefit and improve the lives of our people, and also benefit—

Mr. Chris Warkentin: Yes, there's no question. And I do appreciate your efforts in terms of moving forward and the involvement you had at the forefront. I'm certain we will appreciate and reflect that as we work through our deliberations as well.

The Chair: Thank you, Mr. Warkentin. Sorry to cut you off.

In terms of a bit of housekeeping, that completes our second round. We have a bit more time, so if I cut this down to four minutes, I can give the Liberals, the government, and the Bloc one more turn.

Perhaps you could please just ask one question, and then we can get one answer and we can move through this.

Ms. Keeper.

Ms. Tina Keeper: National Chief, when you referenced an oversight committee, could you elaborate on what you think the role of that committee may be or how it may be a part of this process?

● (1705)

Chief Phil Fontaine: I'm going to ask Candice Metallic to respond to your question.

Ms. Candice Metallic (Legal Advisor, Assembly of First Nations): Thank you.

The political agreement has a provision in it for the establishment of a joint liaison committee, where there would be appointments from both the federal government as well as the Assembly of First Nations and the national chief. The purpose of that committee is to oversee the work that's contained in the political agreement, similar to the joint task force, to ensure that there's movement on the very critical issues that are contained in the political agreement. The political agreement contains matters that fall outside the scope of the legislation but are nonetheless very important to ensure that the system responds adequately and appropriately to the legislation.

Once that committee is up and running, it's contemplated that we'll meet at least a couple of times a year to review and assess the work that's being done by the various working groups that have been established under the political agreement.

Ms. Tina Keeper: And that political agreement as well is initiated once the bill receives royal assent? Is that a timeframe?

Ms. Candice Metallic: That is correct. It's contingent on the passage of the bill. But that said, we have initiated some work that is going to be required in any event. There has been some preliminary work that has been undertaken. Officially, yes, it does, it comes into effect once the bill has been passed.

Ms. Tina Keeper: As the tribunal gets to set its own processes in terms of how it operates, will there be any relationship between that oversight committee and the tribunal mechanisms?

Ms. Candice Metallic: There are some preliminary discussions at the moment about the development of the rules for the committee. The legislation itself contains a provision for the establishment of an advisory committee specific to the tribunal. So the joint liaison and oversight committee, as contemplated in the political agreement, will oversee the work in the agreement, which contains a development of rules for the tribunal.

Ms. Tina Keeper: Thank you.

The Chair: Thank you.

Mr. Bruinooge, you have four minutes, or less.

Mr. Rod Bruinooge: Thank you, Mr. Chair. I'll try to be brief.

I definitely appreciate, National Chief, your testimony today. I think it's really galvanized much of the opinion here in relation to the process you entered into with the government and with the bill that was generated. I of course would like to acknowledge the support and work that Professor Schwartz put in. Of course, I am biased; he's from Manitoba, and I have to commend him on that fact.

Ms. Tina Keeper: So is the national chief.

Mr. Rod Bruinooge: He is too, of course. I know that.

In terms of this bill, it will bring a lot of benefit to Manitoba, and we have a number of first nations communities that are going to see, I think, a lot of benefit come from this.

National Chief, there is support among the parties for this, despite the fact that they like to take shots at the parliamentary secretary on occasion. I believe it will pass. I guess my question to you would be this. In light of the fact that we are in a minority context and this government doesn't necessarily have the opportunity to govern right through till the fixed election date, would it be your suggestion that we act promptly, as this could get set aside and of course die on the order paper should an election occur?

Chief Phil Fontaine: Well, let me make the point here. In fact this is also in response to the previous question.

We are as anxious as you are—and when I say “you are”, I'm talking about the committee and Parliament—to have this bill passed. Our hope is that this work will be completed and that the bill will be passed before the May break. We are quite anxious to get this work done.

Just to underline my point, the May break would be a good target date for the passing of this bill.

The Chair: Thank you.

I also notice that Manitoba seems to be very well represented—possibly over-represented, some might suggest, but at the minimum very well represented.

Monsieur Lemay.

● (1710)

[*Translation*]

Mr. Marc Lemay: In this case, we are not surely talking about the claims in Quebec, because there are a number. I would like two bills to come into effect quickly: C-30 and especially C-21. I would like that to be the case, but we will have to ask them.

We are going to start clause-by-clause study on April 30. Say that everything goes well and that it is passed before the break in May. Are there any present agreements or negotiations on the establishment of the tribunal?

I had the opportunity to sit on the justice committee which studied Bill C-31 on the appointment of judges. Bill C-30 will be applied by Superior Court judges. Now, I am not sure—and I will choose my words carefully—that they know aboriginal law well enough to apply this bill, assuming that it is passed. And I think that it will be passed quickly.

Is work being done so that judges are prepared for when this bill comes into effect?

[*English*]

Prof. Bryan Schwartz: As we understand it, the Interpretation Act permits certain steps to be taken to get people ready for a bill before it becomes operative. That time can be used to make sure the expertise and the guidance is in place. The business of preparing committee rules so the committee operates expeditiously and so takes into account cultural diversity can begin almost immediately. Similarly, the discreet consultations between the federal government and the AFN to make sure the folks who are appointed to the tribunal are suitable could commence quickly. We're hoping some of these discussions will commence almost immediately, and others could commence once royal assent has been given.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Thank you.

This concludes our session today with representatives from the AFN.

Committee members, please don't go far, because when we adjourn we're going to suspend for a couple of minutes and then we go back in camera.

I would ask those of you not associated with the committee to clear the room fairly quickly.

National Chief Fontaine and the rest of the delegation, thank you very much.

We stand suspended for a couple of minutes.

[*Proceedings continue in camera*]

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