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Chair

Mr. Bruce Stanton

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● (0905)

[*Translation*]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Good morning, ladies and gentlemen.

This is the 10th meeting of the Standing Committee on Indian Affairs and Northern Development. This morning, we have on the agenda Bill C-5, an Act to amend the Indian Oil and Gas Act.

[*English*]

This morning we welcome our witnesses for consideration of Bill C-5, amendments to the Indian Oil and Gas Act.

We'll start with Chief Bruce Labelle from the Chiniki First Nation. Second will be Chief Clifford Poucette from the Wesley First Nation. Then we'll hear from Chief David Bearspaw from the Bearspaw First Nation.

Chiefs, we welcome you to our committee this morning. We're delighted that you could take the time to join us here on relatively short notice.

We normally provide 10 minutes for each presentation. With your agreement, and seeing that we only have one hour, I suggest you keep your opening remarks to about seven minutes each so we'll be through them in about 20 minutes. Then we will go to questions from members.

We'll start with Chief Labelle for seven minutes.

Chief Bruce Labelle (Chief, Chiniki First Nation): [*Witness speaks in his native language*]

Thank you, Mr. Chairman, for inviting us to appear before your committee today. We apologize that we were not able to appear before you last week. The timing was just too tight.

We do acknowledge that the Stoney Nakoda Nations have been directly involved in the consultations that Indian Oil and Gas Canada has been carrying out over the past two years with the Indian Resource Council. Mr. Snow, who is with us here today, has been our representative, and Chief Poucette, my fellow chief, is on the board of the IRC.

Those discussions, however, dealt only with the general principles behind the bill, not the details. We did not see the actual text of Bill C-5 until it was tabled in the House of Commons in February. We then immediately instructed our legal counsel to review Bill C-5 and to advise us in regard to it.

Our legal counsel then wrote to the committee on February 19, 2009. We would ask that this letter, our response to the minister—a clause-by-clause overview of the bill—be accepted as the submission of the Stoney Nakoda Nations.

We suggest that the committee request from the minister the correspondence and materials from the Indian Resource Council, and its joint technical committee, with respect to the issues that were identified and the specific amendments that were requested by the IRC at that time. Once this is reviewed, it will be clear that the issues we are raising are unresolved issues from the IRC process, not new issues, as has been suggested.

We are not proposing amendments designed to derail or to force a restarting of the process. We believe our proposed amendments to Bill C-5 are the conclusion of the consultation process started by the IOGC and the Indian Resource Council, not the beginning of a new process.

We were also disappointed to see that in the backgrounder and the speaking notes that accompanied Bill C-5, there was no mention whatsoever of the many lawsuits that have been brought by the major oil- and gas-producing first nations. We also have difficulty, from time to time, in obtaining information from Indian Oil and Gas Canada. But they should have advised you of the eight, at least, such lawsuits brought against the Government of Canada . The Supreme Court of Canada, two weeks ago, ruled in regard to only one small part of two of these lawsuits. The oil and gas royalty issues are still being litigated by the Stoney Nations and other first nations.

The amendments we are proposing would have the effect of facilitating resolutions of these issues, one way or another. And our proposed amendments would also conceivably save the Canadian taxpayer from having to pay out more money for royalty moneys that the IOGC has failed to collect .

● (0910)

Thank you for your time. Chief Poucette would now like to say a few words.

Ish nish. Thank you.

The Chair: Thank you, Chief Labelle.

Chief Poucette.

Chief Clifford Poucette (Chief, Wesley First Nation): [*Witness speaks in his native language*]

Thank you and good day, Mr. Chair.

I would echo the words of Chief Labelle in expressing our thanks for your inviting us here today.

I wish to say a few words about Canada's trust and fiduciary obligations to our first nations.

We do not object, in principle, to federal laws incorporating some of Alberta's oil and gas laws. However, Alberta's laws were not designed to address first nations issues, nor does the Government of Alberta feel it is its responsibility to assume Canada's trust and fiduciary obligations towards the Stoney Nakoda Nation.

To attempt to simply adopt Alberta's law with nothing further would therefore result in the abdication of Canada's obligations to us. We have therefore proposed an amendment that would insure that these obligations of Her Majesty continue.

I would like to read our proposed amendment:

> 4.2(8) In respect of an act or omission occurring in the exercise of a power or the performance of a duty by a provincial official or body under laws of a province that are incorporated by the regulations, the Minister's fiduciary and trust obligations to First Nations will continue as though the Minister has exercised a like power or performed a like duty.

I would ask you to give serious consideration to this proposed amendment.

Thank you for taking the time to hear me today.

Chief Bearspaw, the only one of us who does not have a French-Canadian last name, wishes to say a few words.

Thank you.

The Chair: Thank you, Chief Poucette.

Now, Chief Bearspaw.

Chief David Bearspaw (Chief, Bearspaw First Nation): Thank you, Chairman.

Good morning, ladies and gentlemen. It's an honour to be speaking in front of you today.

I'm going to start by saying a few words in my own language.

[*Witness speaks in his native language*]

I would like to address the impact of Bill C-5 in terms of economic development and employment for the members of my first nation.

We met with Minister Strahl last July, in Calgary. He told us at that time that his priority is economic development and education. That is the same priority my great-great-great-grandfather had when he signed Treaty No. 7 in 1877. However, Bill C-5 does not appear to do much to support the minister's priority.

Specifically, Bill C-5 contains a definition for “exploitation” of oil and gas. This definition reflects a crown policy that the downstream operations, such as refining and processing, are to be excluded from the Indian Oil and Gas Act. It is from these downstream operations where most of the value-added benefits to my people will come, yet these downstream possibilities have been excluded from Bill C-5.

Why is that? We would ask that you consider an amendment to the definition of “exploitation” of oil and gas. We have provided draft wording in this regard, on page 2 of our clause-by-clause review, which was previously distributed to you.

Again, we wish to thank you in our language, “*ish nish*”. And we would like to invite each of you to the Stoney Nakoda Resort, where you can provide an economic stimulus to our people by gambling away your hard-earned money.

Voices: Oh, oh!

Chief David Bearspaw:*Ish nish*.

● (0915)

The Chair: Thank you, Chief Bearspaw.

I have a soft spot in my heart for resorts, because that's been the foundation of our family business for several generations. It's kind of you to offer that.

[*Translation*]

Now we'll go to questions by members. Let's start with Mr. Russell.

[*English*]

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

Good morning to each of the chiefs and to Mr. Snow, who I had the pleasure of meeting with a few days ago.

In terms of the invitation, I would say that particular invitation provides as much stimulus as many of the things that have been announced in the budget. We may have to take you up on that as we go forward.

An hon. member: Why don't you read it?

Mr. Todd Russell: My colleagues across the way always are a bit touchy when we mention anything of a critical nature.

To get back to the bill itself, it seems, in speaking with Mr. Snow and some of your representatives, and listening to you this morning, that there are particular aspects of the bill you are disappointed with. But I get the sense that you are dissatisfied with the performance of Indian Oil and Gas Canada or with the performance of the federal government generally in living up to its current responsibilities, and that you are looking for greater assurances that in fact IOGC or the federal government will exercise its responsibility, fiduciary duty, in a much more respectful manner going forward.

Is that a fair statement generally? Is that what I'm hearing you say?

Chief Clifford Poucette: Yes, I guess that's where we're going. You're correct.

Mr. Todd Russell: As I understand as well, you're not playing with the fundamental issue, though, of the trustee relationship with the federal government. You want to maintain that sort of trustee relationship where the federal government, or IOGC as an agency of the federal government, still has that fundamental responsibility. You're not toying with that fundamental relationship. Is that right?

Chief Clifford Poucette: I will confer with my legal counsel on that question.

Yes, we do like the trust and fiduciary responsibilities.

Mr. Todd Russell: While you want to maintain that fundamental relationship, you do want to exercise a certain power. The power, for instance, is to cancel a lease if royalties aren't paid. You want that power because you feel the government won't exercise it. Is that right?

● (0920)

Chief Clifford Poucette: Yes.

Mr. Todd Russell: I'm in a bit of a conundrum. You want the trustee relationship, but you also don't necessarily believe it's all working well. In some regards you want to opt out of it in the sense... to make that very fundamental decision around who has the power to cancel a lease.

From a technical perspective—maybe your lawyers will come to the table—if in fact we made that amendment, and I'm not sure if it would be in order or not, who would then be liable? Let's say a lease was cancelled by the first nation if the power was granted by the amendment under this act, and the company had a problem with that. Who would they then sue? Who would assume the liabilities, or where would the liabilities fall if that took place?

I'm just trying to get at the root of where we're at.

Chief Clifford Poucette: I'll refer that to my advisor, Mr. Snow.

Mr. John Snow (Member, Wesley First Nation): Thank you, Chairman.

First of all, I would like to thank the committee for providing time for the Stoney Nakoda Nations to make the presentation and make issues known.

This month is a very significant month in first nation history. This was the month, 40 years ago, that we first delivered the red paper in Ottawa, and I think it's quite poignant that we're still here 40 years later debating and dealing with a lot of these issues.

I make observation that we are concerned with our rights and we are concerned with the impact on our interests of these changes, and therefore it's critical that we understand each of these scenarios as they come forward. As you have indicated, Mr. Russell, we have a number of issues that are outstanding, and this is one of the reasons we need to look at this so carefully. There are trust and fiduciary issues that are ongoing. I don't think we have a problem with a fundamental trust and fiduciary relationship. We'd like to see that strengthened, if anything else.

The conundrum we find ourselves in is how do you as an institution—I'm throwing the question out there—regulate yet provide a trust or fiduciary responsibility? Those are two different things, and we've always had that discussion with the crown. You're either one or the other, and to do both is difficult at the best of times.

So I think we find ourselves in a variety of these conundrums, as you would say, and therefore we need to have careful consideration. I also would like to ask the legal counsel for some comment on that, because I think it would be appropriate at this time.

Doug Rae, I'd like to ask you to comment on that as well.

The Chair: Members, it's perfectly fine to have counsel answer on a technical question of that sort.

Mr. Rae.

Mr. Douglas Rae (Lawyer, Chiniki First Nation, Stoney Nakoda First Nations): Thank you, Mr. Chairman.

To answer your question, sir, you first must appreciate that oil and gas on the Stoney reserves and the oil and gas leases on the Stoney reserves are assets, not liabilities. So it's highly unlikely that an operator would allow a lease to go into default. But if that were to happen, simply the Government of Canada—as owner of the reserves, as owner of the resources, as owner of the oil and gas—would have the entire interest in the oil and gas, not simply the royalty interest. So to put a lease in default would result in a great benefit to the Stoney Nations, *if* that were to happen.

Does that answer your question, sir?

Mr. Todd Russell: Not really, but....

The Chair: Unfortunately, Mr. Russell, we are out of time. Perhaps you want to follow up on that in the next round.

[*Translation*]

Now we'll go to Mr. Lemay, for seven minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman. I'm going to let you pick up your headphones because I believe we're going to address the legal issue.

Thank you, chief. I am very much interested in the defence of your lands. First of all, I would like to know exactly where they are located.

That's a good question, isn't it?

● (0925)

[*English*]

Mr. John Snow: We are located 45 miles west of the city of Calgary, in the foothills, and the main reserve that we are located in is Morley, Alberta. We also have two other reserves, the Bighorn Indian Reserve in the area of Rocky Mountain House, as well as the Eden Valley Indian Reserve in the Turner Valley area.

So we have three reserves. We're the only first nation having three reserves traversing the eastern slopes of the Rockies. It's about 150 miles between each reserve, so we're interspersed. We are the only first nation like that in the country.

Thank you, Mr. Chair.

[*Translation*]

Mr. Marc Lemay: When oil was discovered there, the reserves were already established. So oil was discovered on your aboriginal lands.

At first, did you take part not only in the discovery, of course, but more particularly in the harvesting of that resource?

[*English*]

Mr. John Snow: Mr. Chairman, thank you for the questions.

Some of the first wells were discovered in that area in 1928, preceding any type of regulator or institution. So we were not involved yet, even though there were activities happening on our lands. If you go today to the IOGC, you will see some pictures on their wall from 1928. Those are actual drilling rigs from 1928 that were drilled on Stoney lands.

Apart from that, and to follow up with supplementary point on your question, yes, oil was discovered in Turner Valley. It was not regulated properly. In fact it was burned off and wasted. There is a fire there that has never been put out, but still goes on. They call it “hell's half acre”, and it's part of the history of Turner Valley right now. We're not far from there.

So activities occurred without our involvement and, in many instances, there was much wastage. That's a bit of the history.

[*Translation*]

Mr. Marc Lemay: For how many years have your communities been consulted on oil and gas exploitation on your reserves, on your ancestral lands?

[*English*]

Mr. John Snow: I can answer that in a general way, Mr. Chairman.

Our communities were initially approached when the activity began in Morley, and that would have been in the late sixties, or 1968-69. At that time, they had created a group called Indian Minerals West, which eventually became Indian Oil and Gas Canada.

So the consultations began formally with producing first nations like the Stoneys in and around the late sixties and early seventies.

[*Translation*]

Mr. Marc Lemay: This next question may perhaps be off topic. Nevertheless, the 1988 Winter Olympic Games were held in Canmore, on your lands. I was there. You were involved in the organization of the 1988 Olympic Games.

I want to know whether the amendments you are proposing today will result in more control than is currently exercised by the Indian Oil and Gas Canada Co-Management Board of Directors? What would change, fundamentally, if we agreed to all the amendments? Would there be more control?

[*English*]

Mr. John Snow: At this time I'd like to ask legal counsel to answer that in part, but I'm thinking and hoping that what we're doing is helping to clarify part of the process and part of the relationship. That's what we would like to do through these amendments.

As we were saying, we don't want to derail or diminish or replace the bill. At this time, we're looking for clarity, because with all the resources that were spent on this project, we need to ensure that we have clarity. If you look at the definitional aspect of some of the issues that are arising, whether it's oil, operators, or contracts, there are many definitions across many jurisdictions. Because it's not clear, it leaves room for uncertainty for first nations, for government, and for the oil industry.

So if we just had clarity, I think it would better for us.

● (0930)

[*Translation*]

Mr. Marc Lemay: I have a problem. I'm going to explain it to you. I'm going to tell you why I have this problem.

It seems to me—your legal counsel can correct me if necessary—that you're going this far into the details in an attempt to close so many doors that, if we put that in the act, when it could be in the regulatory power... There is a difference between the act and the regulations. In the case of the act, you have to come here to amend it, whereas it's much easier in the case of regulations.

I have some serious questions. Why wouldn't we try instead to include your draft amendments in the regulations under the act instead of trying to amend the act?

[*English*]

The Chair: A brief response, please.

Mr. Douglas Rae: Mr. Chairman, we would prefer that the details be enshrined in the bill, not in the regulations. We'd prefer an open debate on the statute itself.

Regulations, it is true, can be amended very easily—perhaps too easily, from the point of view of the first nations of Stoney Nakoda First Nations. These are fundamental issues dealing with millions of dollars in royalty moneys payable to the first nations. Through past experience, we know that regulation-making power has not always resulted in beneficial regulations for the first nations.

So you're quite correct; we would prefer that the details, as much as possible, be enshrined in the statute itself, not in the regulations.

The Chair: We will go now to Ms. Crowder, for seven minutes.

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

I want to thank the chiefs, Mr. Snow, and Mr. Rae for coming before the committee. I think it's important that you are here in person to talk about the issues that you think need to be raised in the context of this particular piece of legislation.

I want to touch on two things. If I have time, I'll come back to a third question.

In your proposed amendments, you talk about the differences between the Canada Petroleum Resources Act and what is included in the bill. I think it's an unfortunate statement that the Government of Canada looks at royalties for itself in one way, and then treats first nations completely differently.

This is one proposed amendment: “5.2 (1) The Minister may, at any time, assess the royalty, interest or penalties”, and so on. I wonder if you could just briefly touch on the difference between the CPRA and what is proposed in Bill C-5. I don't know, it may be technical; keep it simple for us non-lawyers.

Mr. Douglas Rae: The comparison with the Canada Petroleum Resources Act is a valid one. In that statute, Canada is dealing with its own royalties. Listed in considerable detail—in the statute itself, by the way, not in the regulations—are the powers of the minister when royalties are underpaid or when another default takes place in the lease. Bill C-5, as it currently is worded, has nothing in that regard at all. It's entirely left up to the regulation-making power.

We're simply pointing out that what is good for Canada under the Canada Petroleum Resources Act should be good for Canada on behalf of the first nations in Bill C-5.

Ms. Jean Crowder: That would seem to be an absolutely reasonable approach. If Canada treats the money that comes to its own coffers as a source of revenues so carefully, it would seem reasonable that, in a trust relationship, on behalf of first nations, it would also ensure the same kind of activity.

Do you have sense of why there is this difference?

● (0935)

Mr. Douglas Rae: No.

Ms. Jean Crowder: It just seems to me that it's a continuation of our relationship that does not respect the full entitlement of first nations to resources on their own territories. That's just a comment.

I want to stay with the royalties for a moment. A letter was sent on behalf of the Stoney Nakoda Nations on February 19. It talks about—as you referenced in your presentation—the following:

> Just last year the Canadian taxpayer was forced to pay royalties that Canada, through Indian Oil and Gas Canada, declined to collect, for reasons unknown, from the oil and gas producers on Stoney Nakoda lands. The Canadian taxpayer has thus subsidized these oil and gas producers on Indian reserve lands.

Then there was the news story about the trust policy that hurts reserves in the Samson and Ermineskin first nations. It's a slightly different issue, but the Supreme Court ruled on the fact that the Indian Act applied in terms of the investment of that trust. Even though we know that the government earned far more on that money, they paid the first nations at a different rate. Essentially, my understanding of what the ruling said is that even though it may not have been fair, it complied under the Indian Act, so they had to rule against the nations.

So we have two issues here. We have a responsibility on behalf of the government that does not invest the money and pay the first nations the full money that they actually earn on that money. We also have a case where the Government of Canada actually pays the royalties on behalf of an oil and gas company that, to my understanding, defaults.

I wonder if you could comment, in layman's terms, on what specifically needs to change around the payment of these royalties.

Mr. Douglas Rae: What needs to change is that the laws applicable to the calculation and payment of royalties should be in force to the full amount. The Stoney Nations don't feel that has been done in the past.

The example of the TOPGAS situation, which we enclosed with our letter, is just one example of that, in our view. And the proposed amendments that we're putting before you are designed to ensure that 100% of the royalties are paid in the future.

Ms. Jean Crowder: Do I still have time?

[*Translation*]

The Chair: You still have two minutes.

[*English*]

Ms. Jean Crowder: In your presentations, Chief, you mentioned that there are at least eight outstanding law cases that you're aware of. Can you tell me roughly what kinds of issues are in those cases? Is it again around royalties?

Mr. Douglas Rae: Yes, primarily.

Ms. Jean Crowder: I assume that there's a range of issues in those cases, around the royalty payments, but it sounds like the underlying theme must be that the government is not.... And this is not directed at the Conservatives. This is Conservatives and Liberals. This is not the current government. *C'est la même chose*; it doesn't matter which one is in power.

It's a long-standing issue around the fact that the government has not lived up to its fiduciary responsibility around payment of royalties in a variety of forms. I know it's difficult to summarize eight law cases.

Mr. Douglas Rae: Yes, you're quite correct. The problem is that this royalty calculation provided for under the present Indian Oil and Gas Act is very complicated. It's a function of volumes and price. There are a lot of issues in regard to this calculation.

You're quite right; the claims made in these various lawsuits are not new ones. They're not directed at the present government. As a matter of fact, most of them started under the former government. This is a long-standing issue.

We're not suggesting that it's necessarily an easy issue, but they have been going on a long time and they require a resolution. We simply think that this is the time, with some of the amendments that we're proposing, that a resolution of these outstanding royalty issues can be facilitated.

● (0940)

Ms. Jean Crowder: In terms of settling royalties, is there an interim step before they actually have to end up in litigation to solve this?

Mr. Douglas Rae: Well, this relates to the question that Mr. Russell asked, too, in terms of liability. The current reality is that if there is a dispute over royalties, everybody is thrown into the pot. The Stoney Nations and other first nations have been defendants in lawsuits for royalties allegedly overpaid by producers to Canada, and vice versa. So you have very complex litigation involving all three parties.

The Chair: That's it, Mr. Rae. Sorry, but we are out of time; pardon me.

We have to move on now to Mr. Duncan, for seven minutes.

Mr. John Duncan (Vancouver Island North, CPC): Thank you, Chair.

Thank you to the chiefs for attending this morning.

Chief Bearspaw, I have stayed at your resort, and it was very fine indeed. Thank you.

I want to go where Mr. Russell went, on this fiduciary duty, because I think it's key to what we're looking at here.

I received a letter, which was sent on February 19, talking about an amendment to Bill C-5 that would confer powers to first nations that are currently done on their behalf by IOGC. This would include applying to the cancellation of oil and gas leases due to non-payment of royalties or in cases of non-compliance with terms and conditions of a lease.

When IOGC officials appeared before the committee on March 3, the committee heard that first nations were consulted and involved in the decision-making process leading to the cancellation of a lease. As recently as November 28, they proceeded to cancel a lease. We had chiefs and councils involved in every step with IOGC before the final decision on cancellation, but the decision remained with IOGC acting as a manager or regulator—a trustee.

We heard last week from IOGC that they do not have a mandate from their membership of chiefs and councils to entertain any changes that would have the potential to alter the fiduciary relationship, duties, and responsibilities of the crown. Since that February 19 letter, we now seem to have an altered position from yours. You're now seeking an amendment that would empower the first nation to direct the minister to cancel the lease. It now appears you're suggesting the decision to cancel would belong to the first nation, yet the responsibility and consequences of that decision would remain with the minister.

I think we need some clarification. Are you suggesting that first nations be given the unilateral decision to cancel the lease with no responsibilities or consequences? That is my first question.

Second, if that is indeed what you were seeking, then why would you not pursue it under the umbrella of the First Nations Oil and Gas and Moneys Management Act rather than under this legislation?

Mr. Douglas Rae: Mr. Chairman, if I could answer the first part of the question, I'll leave the second part to the chiefs.

We don't think we are changing our position. We originally provided a proposal whereby the first nation itself could put a lease into default.

We're realists. We've read your committee deliberations in the minutes of the past few weeks. The second refinement of that proposal simply provided that if that's not acceptable then the first nation could direct the minister to put the lease into default.

In regard to the first nations getting involved in what is otherwise the minister's or Indian Oil and Gas business, I would reiterate that with most of this litigation we're referring to, the first nations are already involved. The Samson and Ermineskin first nations—a portion of their lawsuit was the subject matter of the Supreme Court decision—themselves are being sued by oil companies for alleged overpayments of royalties. That's under the current act. They're already part of the mix.

The issue of who is liable is already quite complex, and I don't think any of the amendments we're proposing would in any way muddy the waters in that regard. I think they would in fact clarify it.

● (0945)

The Chair: Mr. Snow.

Mr. John Snow: Thank you, Mr. Chairman.

Also, when we initially embarked on our TOPGAS litigation, we had gone to the department. We went to IOGC and asked them to pursue it. At that time, we heard back that the Stoneys themselves have to pursue it. There was an unclear process at that point. These are going to keep recurring. These are the reasons why we want to take a closer look at the impact of a lot of these changes.

Speaking to the second question, dealing with FNOGMMA and why first nations are not taking that, I don't know of any at this point who have accepted the process. They have to do it either through referendum or BCR, and at this point none of them have undertaken those pieces of legislation.

It has always been the position of the chiefs, if I recall from the AGMs; they have said that we need to reserve our right to decide, and whether we participate in optional legislation, the optional nature, our ability to participate through referendum, BCRs, is our decision. So they've always kind of maintained that. That's their jurisdiction.

Thank you for your questions.

The Chair: You have about thirty seconds, Mr. Duncan.

Mr. John Duncan: I think every time we ask about the fiduciary relationship, we get an answer that relates to royalties. We're trying to separate those two issues, because the fiduciary relationship is key to this whole document. I believe that's what Mr. Russell was trying to get at. That's what I'm trying to get at.

I don't believe you've answered that question. You keep going back to the royalty question. I think you should be cognizant that we're seeking clarification on that. There will be further questions from people. Maybe they want to pursue it some more.

Thank you.

The Chair: Thank you, Mr. Duncan, and thank you, Mr. Snow and Mr. Rae.

We're going to proceed to Monsieur Bélanger. We're in the second round now, questions for five minutes.

Monsieur Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

Just so that we perhaps are helped in our role here as legislators, I would like the government to provide me and members of the committee with the rationale as to why, in their view, these amendments should not be adopted. I'm hoping we can go beyond procedures. Let's have some substantives so that when we get to them....

I'm not quite giving notice here, Mr. Chairman, that I might move these, but I would hope that in the exercise we're going to be engaging in the week after next, once we get to the clause-by-clause, these amendments as they've been presented to us could be addressed on a substantive front. I'm quite prepared to be convinced that they shouldn't be, but on the other hand, I would need that convincing.

I just give notice, so to speak, that I may be moving these, so that we get that rationale. I understand that some of these may be on a procedural front beyond the scope, or maybe not; we'd have to argue that at the time. So that's just to *entrer en matière*.

There's one area I have brought up that Monsieur Labelle mentioned here, and I'd like to use whatever little time I've got to explore. My concern as a legislator is that this bill would encompass all the provincial laws and regulations. And the notion that the Government of Canada has a constitutional obligation—way and beyond the fiduciary ones—vis-à-vis first nations doesn't necessarily translate in provincial law. And provincial law may not have been prepared and written and conceived with the constitutional obligations of the Government of Canada via-à-vis aboriginal nations, when they were preparing laws about how to handle their oil and gas resources.

So how can we reconcile the two? Is the government asking us as legislators to put on a blindfold and say, yes, we'll trust that all provincial regulations, all provincial laws, will treat aboriginal rights appropriately?

Perhaps you would comment on that, please.

● (0950)

Mr. John Snow: Thank you, Mr. Chair.

I think it's difficult for the province to identify and know the interests of first nations. They have their own interests at heart. They're not able to understand this fiduciary relationship, and we're running into problems with that right now in the oil and gas sector. We've attended some hearings with the ERCB, the Energy Resources Conservation Board, which is a provincial regulator in Alberta. They are unable to appreciate some of our interests and some of our arguments.

Hon. Mauril Bélanger: In the next few days, could you send us some documentation on that? I need some examples.

Mr. John Snow: I'll ask Mr. Rae to comment on that.

Mr. Douglas Rae: Yes, sir, at your request, we certainly can provide you some examples.

You raise a very good point. Conceptually incorporating provincial laws makes a lot of sense. The material provided with Bill C-5 is the template upon which the bill is being proposed. The problem is that the Province of Alberta in its statutes, and particularly the Alberta Energy Resources Conservation Board in its enabling statute, say absolutely nothing about first nations, let alone any obligations—trust, fiduciary, treaty, or otherwise, or any of those under section 35 of the Constitution Act. That board has absolutely no mandate to do anything in consideration of first nations rights.

Hon. Mauril Bélanger: What would you recommend as a remedy, therefore, to this notion that we incorporate, by virtue of this bill, all provincial laws and regulations relating to oil and gas when dealing with aboriginal lands that have oil and gas? What would the remedy be—to not do it, or to do something else, or to add something to make sure that the constitutional rights are protected?

Mr. Douglas Rae: The Alberta Oil and Gas Conservation Act, as an example, contains probably 150 sections. It's a voluminous statute. To incorporate it holus-bolus, without further ado, I don't think would work. Provisions can be incorporated. Certainly many of them are, in one way or the other, already. But they must be incorporated with one eye on modifying them to address first nations issues.

You asked what our druthers would be. Canada itself is an accomplished regulator. The National Energy Board is one of the most respected regulators in the world. Our initial position was why does Canada look to provincial regulators when its own regulator is perfectly capable, in our view, of regulating on-reserve lines?

The Chair: Thank you, Mr. Bélanger.

Now we go to Mr. Rickford, for five minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for coming here today.

I have a couple of quick questions that I hope will get yes or no answers. Then I have ones that perhaps you can expound on.

I want to get a sense of the history here in terms of your involvement with this whole process leading up to this legislation. This would be everything up to February 19, when we received this letter from your legal counsel. My understanding is that your committee has participated in around 20 to 22 meetings with IOGC. Would that be accurate?

Mr. John Snow: We have many meetings with IOGC. It would depend. We have a Stoney oil and gas committee. There are many different groups that interact with different levels of government.

● (0955)

Mr. Greg Rickford: I'm speaking about the Indian Oil and Gas Canada co-management board meetings.

Mr. John Snow: Chief Clifford is a board member there, so he would have a better idea on that. And maybe Doug is aware of some of the board meeting schedules.

Mr. Greg Rickford: So you're not sure if it's maybe 20 or 22 meetings that you've chaired, or for some of them co-chaired?

Chief Clifford Poucette: No.

Mr. Greg Rickford: Then would it be fair to say...?

I'm sorry, go ahead.

Mr. John Snow: Sorry to interrupt.

I don't think you're the chairman, either.

Chief Clifford Poucette: No, I'm not the chairman, either.

Mr. Greg Rickford: Did you co-chair any of those meetings? No?

Mr. John Snow: Former Chief Wesley was a co-chair about four or five years ago, I believe.

Mr. Greg Rickford: Okay.

How would you characterize your participation, or the role of the Stoney First Nations, in all of this? Would you say that, at the very least, you've had numerous, ample opportunity—at the Indian Resource Council, at AGMs, tribal council meetings, and various symposiums—to participate consultatively, if not having direct impact on, what this legislation might look like?

Mr. John Snow: The involvement with the Indian Resource Council and IOGC in this process has been one of review. Usually we receive documentation, draft notices or draft legislation, and then we're asked to review that, but that's usually at a later date. You make it sound like we're involved in the creating of agendas and these sorts of things. A lot of our input or participation has been responding to a lot of things that are coming at us.

Mr. Greg Rickford: Would you agree or disagree, then, that Stoney First Nations appears to have played a significant leading role in facilitating the modernization of the Indian Oil and Gas Act? Would you agree with that statement?

Mr. John Snow: I may have a problem with that statement, because there are other first nations that can say that. Siksika First Nation is a leader. White Bear First Nation is a leader. There are others, including Horse Lake.

The FNOGMMA bands, essentially, are the leading bands right now.

Mr. Greg Rickford: Do you recall having met with the IOGC in late January for some discussions?

Chief Clifford Poucette: No.

Mr. Greg Rickford: And none of the other chiefs, or John...?

Chief Clifford Poucette: No. I'm the only one on the board, so....

Mr. Greg Rickford: So the IOGC didn't meet with the Stoney consultation committee in late January?

Mr. John Snow: That would have been one of our other committees. We have a consultation team. They are not represented here today. That team has been mandated by the chief and council of the three first nations to deal with preliminary legislation, policies and whatnot, coming down from the province. That team has also been recognized to meet with IOGC. At that time, they wanted to meet.

Mr. Greg Rickford: So is the Stoney oil and gas committee there as well?

Mr. John Snow: The Stoney oil and gas committee met with them at a later date.

Mr. Greg Rickford: That might have been on the 29th. There were a couple of days there, I believe.

Mr. John Snow: Yes.

Mr. Greg Rickford: Were there any concerns, to your knowledge, raised around the provisions of Bill C-5?

Mr. John Snow: The meetings at that time were information meetings. We met with Mr. Dan Stojanowski and Mr. John Dempsey. Those were information sessions. They were to be coming back in the spring, I believe, to receive our comments, which we had identified to be in March, April. We have not met yet.

Mr. Greg Rickford: These concerns are substantive. Did you not, informationally at least, raise some of those concerns at those meetings?

I'm interested in hearing from the chiefs.

The Chair: Mr. Rickford, we're a little over time here right now.

A brief response would be great, Mr. Snow.

Mr. John Snow: Over the period that we have been involved—I became involved in 1999—a lot of these issues were recurring and we had been bringing them up before in previous administrations. When we did prepare a package, that crystallized when the legislation was introduced.

● (1000)

The Chair: Thank you, Mr. Snow.

Members, we started somewhat late so we are going to take one more question, which will go to either Monsieur Lévesque or Monsieur Lemay.

Monsieur Lévesque, vous disposez de cinq minutes.

[*Translation*]

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

Thank you for coming to meet with us, gentlemen. Since my legal knowledge is limited to industrial relations, you'll understand why I'm occasionally a bit lost.

I respect you as a nation and as human beings, and I also respect your claims. On the other hand, I notice that you occasionally say that the land belongs to every human being when that suits you.

I know that the Canadian government is responsible for trans-Canada highways. Every other highway built between the various communities is built by the respective provinces. With respect to hospital care and education, everything comes under provincial jurisdiction.

Today, you've just said that you would like it if the provinces no longer had a say about the resources on your lands. I know they are on first nation lands, but they are also part of a province and a provincial territory. What I understand from that is that this could take revenue that these raw materials could generate away from the provinces.

In my riding, for example, two-thirds of the population lives around James Bay. These people are Cree. Had it not been for the province's clear-sightedness, the Cree would not have had rights until last year, when Canada agreed to acknowledge the rights acquired under the James Bay Agreement. The Cree nevertheless had a 30-year agreement with the province before signing an agreement with the federal government on operating rights, royalties and so on.

I wonder whether that's what you are contemplating, that is to say eliminating the province from your agreements and negotiating solely with Canada.

I have another question, since I only have five minutes and that's not very long. You're currently claiming extraction, production, storage, distribution, processing and refining of products.

How does that work for you right now? Do you have refineries in your communities? If so, how did you manage to get them? I'll let you answer because we don't have a lot of time.

[*English*]

Mr. John Snow: Thank you, Mr. Chairman.

I'll deal with your second question on the refining first. There are operations that have been instituted on the reserve. In our instance, we've had a plant that was put up. It was commissioned, then decommissioned, and it was later removed. There is some contamination there so we have to try to clean that up. These things are happening as we go forward and we're not involved.

Just for clarity, could you just rephrase your first question again? You had mentioned a first item. I wanted to revisit your first question.

[*Translation*]

Mr. Yvon Lévesque: I mentioned at the outset that I don't understand in some respects when you say you want to exclude the provinces from your negotiations. Unless I'm mistaken, you want to negotiate directly with the federal government without the province concerned being able to share in the profits generated.

[*English*]

Mr. John Snow: Thank you, Mr. Chairman, that helps me.

I think each first nation is different. Some of them are willing to deal with the province, therefore they do tripartite agreements. One example may be the social services delivery, such as child welfare, education, some of these others. If they have a tripartite agreement then they're in full approval and in favour of proceeding. But that's only if they have participation and the ability to decide for themselves.

We can't speak in a general manner, but if there's tripartite involvement, they have no problems. Where they see problems is if there are bilateral agreements, between federal and provincial, deciding on their rights, and it impacts them. That's when there are problems, and concerns arise.

● (1005)

The Chair: Thank you, Mr. Snow.

That will conclude this round.

I just have one question for clarification, if I could, for the chiefs and/or their representatives.

You had put forward a fairly thorough schedule of amendments, some 22 amendments in all. During the course of your presentation this morning, you made note of some specific amendments.

Is this a complete package and you want the committee to consider all of these, or are there some specific amendments that you give priority to? I'm not sure that was clear in the course of your discussion.

Mr. Douglas Rae: If I may, Mr. Chairman, in the materials that were provided to you, there was a one-page summary of four proposed amendments, I believe.

The Chair: Correct.

Mr. Douglas Rae: You're quite correct that in the accompanying chart, there were additional amendments.

The Chair: Correct.

Mr. Douglas Rae: Those two document comprise all the amendments we're proposing.

I might add that there is nothing in the chart that the Stoney Nations did not also put forward over the past year through the Indian Resource Council. So none of those amendments in the chart are new at all. Those were part of the Indian Resource Council process.

The Chair: But are you saying that the four listed on the one-page summary—amendments A, 2, 5, and 6—are your proposed priority amendments?

Mr. Douglas Rae: Yes.

The Chair: Thank you.

Chiefs, I appreciate your time here today. I would also note, before we take a brief suspension of our meeting and go to the next hour, that you might be interested to know, considering the over-representation of aboriginal people in World War II, that this was the room in which the war cabinet of the government of the day held their deliberations. So the decisions were taken in this room. I just wanted to pass that along for your benefit.

Members, we'll suspend for a few moments to get our next witnesses to the table and then we'll resume right after that.

Thank you.

● (1005)

(Pause)

● (1015)

The Chair: Members, we're pleased to welcome back Strater Crowfoot, the executive director of IOGC; Mr. John Dempsey, the director of policy at IOGC; and Mr. Karl Jacques, the senior counsel for the agency.

Members, at this point, we only have 45 minutes left in our time slot here this morning. I'm going to suggest that we proceed to questions, unless our witnesses have anything specific they want to address at the outset. If the committee is in agreement, we'll go to questions; and in light of the shortage of time, I'm going to suggest that we go just with five-minute questions, if we can.

We will start off with Mr. Bagnell, for five minutes.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Because time is short, I want to get down to the meat of the matter. I think the primary amendment is giving the first nation the ability to cancel leases, or the option to direct the minister to cancel leases. Considering the poor performance of the government to date in cancelling leases, which has cost the taxpayers a lot of money, it doesn't seem that the first nation could do any worse a job. In fact, it's on their land, and they're already being sued.

First of all, which of these two amendments would you prefer, if you had to have one of them? And second, would there be any problem if the committee added an amendment to that effect?

Mr. Karl Jacques (Senior Counsel, Department of Indian Affairs and Northern Development): I'm sorry, which two amendments are you talking about?

Hon. Larry Bagnell: The amendment about giving the first nation the ability to cancel leases, or the amendment about their modification.

Mr. Karl Jacques: The one that directs the minister?

Hon. Larry Bagnell: Yes. Which of those two would you prefer, if you had to have one or the other?

Second of all, what's wrong with the concept, considering that the government hasn't been doing a good job, and the first nation has been sued a number of times anyway, so it's not going to affect their liability? And if there's a chill on the oil and gas industry, who cares? It's the first nation that loses the money. They're not going to go around suing people indiscriminately if it's going to cost them money.

Mr. Karl Jacques: From the outset, I'd like to say that I'm not in a position to talk about any modifications that could be accepted. That's not my role; it's a policy decision.

The cancellation of leases, I think, has been touched upon this morning in terms of the fiduciary obligation. The problem is that we don't know what the shift of responsibility would be then. While the crown does have the responsibility of managing oil and gas, it would not have any power as to when the first nation would decide to cancel a lease. What is the crown's liability then? Because of fiduciary obligations, the crown would probably still be on the hook. So without having any kind of mechanism making the crown not liable for that, this wouldn't clarify any of the powers or any of the relationships between first nations and the crown.

Directing the minister would also be the same thing. Basically, the minister would be obligated to act when a first nation decides to. So I think the end result would probably be the same.

Hon. Larry Bagnell: If you had to choose between the two, though, which would you choose?

Mr. Karl Jacques: Well, I can't make that choice. I think the end result would be the same.

Hon. Larry Bagnell: Do you want to comment?

Mr. John Dempsey (Director, Policy, Indian Oil and Gas Canada, Department of Indian Affairs and Northern Development): Perhaps I could add some clarity to that.

We've been having consultations with first nations, as you heard, for about 10 years now. One of the overriding concerns we've heard from each and every first nation throughout this process has been this: don't change the fiduciary relationship; don't try to offload your responsibilities to the provinces. We keep hearing that over and over, and we've tried to craft a bill here that respects that preference of first nations.

This proposed change, in our view, would change that fiduciary obligation. It would shift it from Canada to a first nation, as they'd be making the decision to cancel a lease or to direct the minister to do so. They would still have some sort of obligation that would shift from Canada to them as a first nation.

So from our perspective, the great majority of first nations across Canada haven't asked for that. In fact, they've told us just the opposite: they don't want it.

● (1020)

Hon. Larry Bagnell: They told you they don't want the ability to cancel a lease if they're not getting paid?

Mr. John Dempsey: They told us they don't want the fiduciary obligation or the responsibility that comes with any decisions made by a first nation, yes.

Mr. Strater Crowfoot (Executive Director, Indian Oil and Gas Canada, Department of Indian Affairs and Northern Development): If I could just add to your opening statement there, we do cancel leases. It's a process that we take very seriously. We work, as was said before, with first nations chiefs and councils, and if it's decided that we have to cancel a lease, then we will act to cancel a lease.

Hon. Larry Bagnell: There are hundreds and hundreds of examples of where the Government of Canada has delegated responsibilities, programs, and services to first nations, and I don't think it's ever left the Government of Canada on the hook for liability. Those all work very well, very fine, and I can't imagine first nations not being in favour of that. Obviously, we have one...this would just be another example of that here. It certainly wouldn't reduce the federal government's fiduciary responsibility in other respects, but it would give the first nation an ability to be involved in that.

Mr. Strater Crowfoot: To add to that comment, if there are changes proposed and it's going to go forward, then consultation will have to take place with the other 130 first nations who were involved in this process.

[*Translation*]

The Chair: Thank you very much.

We'll now go to Mr. Lemay.

You have five minutes.

Mr. Marc Lemay: Have I understood correctly? In fact, is my interpretation correct when I say that a large portion of the amendments are proposed by the communities because they would like to see elements in the act that would be found in the regulatory power?

In other words, you so much want to shut down all the possibilities, really all the possibilities, that you are putting these provisions directly in the act. So there's no more room for regulations, and that complicates or would complicate the process for amending or enforcing what the first nations would like to have in future.

Mr. Karl Jacques: Indeed, I understand from a number of their complaints that most of the provisions should appear in the act, should be clarified instead of being subject to regulations. As the regulations are not yet defined, we definitely don't know what will happen.

However, with a bill for which all the stages are well determined, the result would probably be what we want. I think that the model you are referring to is:

[*English*]

the Canada Petroleum Resources Act.

[*Translation*]

I don't have the title in French. In that case, for the same results, this mechanism is in the act.

Nevertheless, it's understood that, with the existing regulatory power, there are certain things they would perhaps like to transfer to the bill as such.

Mr. Marc Lemay: From the government, we've received the department's answer to the seven questions asked. Have you looked at them?

Mr. Karl Jacques: Seven questions, yes.

● (1025)

Mr. Marc Lemay: And there were the government's answers on this point. We received them on March 6. I don't know whether you've looked at them. This concerned the department's answers to the seven questions asked.

I'm trying to understand. If I understand the government's position —and you'll correct me if I'm mistaken—none of the proposed amendments should appear in the act because, otherwise, that would complicate it. That's what I understand. Do you understand the same thing as I do?

Mr. Karl Jacques: If I may be permitted, I believe there is more than that. It's not just the fact of complicating the act; it's more that it wasn't provided for at the outset.

The bill concerns the government's management resources. Some amendments, like the cancellation of contracts by the first nations, do not appear in this scheme, if you will. So there are some things that lie solely outside the regulatory power.

Mr. Marc Lemay: I have a few problems as well. We've been given a series of amendments, and there are four main amendments on which we should decide. I admit I'm having a bit of difficulty.

I'm going to put my question to Mr. Crowfoot or to Mr. Dempsey, or even to you, Mr. Jacques.

How can we reassure the Stoney Nakoda First Nations? How can we ensure that the royalties will be paid to them, that those first nations will get what they're entitled to? How can we assure them without undermining the entire bill?

[*English*]

Mr. Strater Crowfoot: Let me answer that, maybe in two parts.

The process to modernize the Indian Oil and Gas Act started back in 1999. The drafting and the negotiations took place with the IRC, with the oil- and gas-producing first nations. Our process has been a joint drafting process all along. We feel there was a lot of compromise, a lot of discussion back and forth, in what we have before you today with the proposed Indian Oil and Gas Act.

In regard to royalties, we have a system in place. We require companies to pay a certain percentage, like 90%...accurate, on the 25th of every month. Then, as time goes on, we're able to verify the production data and the prices and so forth to come up with what's owed to the first nations.

We are quite certain that what is being paid today, in terms of what is due from the companies in terms of royalties, the bands are getting. In a lot of cases, the bands negotiate the royalties structure with the company. They are involved in that process.

[*Translation*]

The Chair: Thank you, Mr. Lemay.

Mr. Marc Lemay: Thank you.

The Chair: Now we'll go to Ms. Jean Crowder.

[*English*]

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

Thank you for coming back before the committee.

I think the crux of what we've been hearing is concern around royalties, so I want to follow up on what Monsieur Lemay was talking about.

The February 20 letter from Rae and Company that came to the committee talks about the full amount of the royalties owing to the Stoney Nakoda; the Canadian taxpayer ended up paying the royalties rather than the oil and gas company.

Can you comment on that? And is it a common practice that Canadian taxpayers actually end up paying royalties?

Mr. Strater Crowfoot: No, that's not a common practice, Madam Crowder.

What was referred to by the Stoneys was an issue of payments that were allowed back in the eighties that the Stoneys felt should be disallowed. It was an industry practice. At the time, the IOGC officials felt they shouldn't pursue having these deductions removed. The Stoneys went to court to argue that these deductions were inappropriate. The court affirmed that the portions that were disallowed should have been paid.

That's only with regard to this matter called TOPGAS and OMAC. TOPGAS is taker-pay, and OMAC refers to administration and marketing charges.

Ms. Jean Crowder: So you're saying this is an isolated situation?

Mr. Strater Crowfoot: Yes, it is.

Ms. Jean Crowder: I heard you say that part of the concern with the amendments was not wanting to see responsibilities being off-loaded and whatnot. I don't have all of the detail on it, but I understand in the Hobbema case the federal government has done whatever it needs to do to say the first nations should be on the hook around the royalties.

Can you tell me a bit more about that? It sounds like the government is actually backing away and making sure that the responsibility is being off-loaded to first nations.

Mr. Strater Crowfoot: The Buffalo case, I guess, is...there are different facets of it. What was argued was the moneys portion, or how the money was managed.

In terms of the oil and gas, we're still responsible for all the collection of royalties on behalf of the four bands in Hobbema. We do the audits. We reconcile the payments and ensure that what is owed by the companies to the first nations is paid. Then they're deposited into the different trust accounts.

● (1030)

Ms. Jean Crowder: So you're saying it's an issue over the trust accounts, not the collection of the royalties.

Mr. Strater Crowfoot: It's the issue of how the money is managed.

Ms. Jean Crowder: How the money is managed by whom?

Mr. Strater Crowfoot: After it's collected and put into the trust accounts.

Ms. Jean Crowder: You're talking about how the money is managed by the federal government.

Mr. Strater Crowfoot: Right. And our mandate is to do the collection and deposit it into the different trust accounts. Then our responsibility basically is completed.

Mr. John Dempsey: It's not managed through the Indian Oil and Gas Act; it's managed through section 64 of the Indian Act.

Ms. Jean Crowder: Yes, I understand that.

What's the situation then about the third party in that particular case? Again, I don't have the legal case before me, but my understanding is that the first nations could be liable in this particular case because the federal government has applied for status there.

Mr. Strater Crowfoot: We're liable for the royalties, the verification of those royalties, and then the deposit of those royalties into the different trust accounts. That's our responsibility.

Ms. Jean Crowder: That's your responsibility. So other questions around this really need to go to Indian and Northern Affairs, because it's under the Indian Act and not under IOGC.

In terms of the Hobbema case, you've done everything you needed to do and your obligations are fulfilled.

Mr. Strater Crowfoot: The collection of royalties is our responsibility. We fulfill that, yes. That hasn't been shifted.

Ms. Jean Crowder: I just want to touch on the consultation process, because I know that this has come up. Stoney Nakoda has provided us with some fairly detailed notes on the number of times they've raised issues in this process around the Indian Oil and Gas Act.

When we talked about it at the last committee meeting, I went back to the communications and outreach. Subsequently, of course, I took a second look at it and realized that nowhere in this communication document does it actually say that people agreed with the legislation. It says they agreed to support the process. It's a matter of language.

Did Stoney Nakoda and other nations actually agree to the draft legislation—not the process, but the draft legislation?

Mr. Strater Crowfoot: John Dempsey has been involved right from the start in the drafting of the legislation. But as I said, this process has been joint drafting with the first nations. There's been, I guess, compromise and concurrence with what was brought forward today.

Ms. Jean Crowder: We have documents from Stoney Nakoda that demonstrate that a year ago they submitted substantial numbers of amendments on what had been drafted at that point. Those drafts subsequently changed, but again, they submitted more amendments.

The Chair: You're out of time, Ms. Crowder, I'm sorry.

Give a brief response, please.

Mr. Strater Crowfoot: There are other first nations that brought forward issues as well, and they were all discussed with the group—not only Stoneys, but other first nations—and this is what they agreed to put forward.

The Chair: We'll go to Mr. Clarke for five minutes.

Mr. Clarke.

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

Thank you very much for attending here today.

I have a number of points that were raised by the chiefs this morning. Perhaps you could provide some comments or observations on the following.

First, I'd like to get some clarification. What were the linkages between the lawsuits such as the TOPGAS and Victor Buffalo and the proposed amendments?

Mr. John Dempsey: We have added into Bill C-5 a federal limitation period that was as a result of the TOPGAS lawsuit. It was found in that lawsuit that because there was no limitation period, the courts applied the provincial limitation period. In that case, I believe it was four years at the time in the province of Alberta; they recently lowered that down to two years. We thought that was not long enough in the regime we deal with, so we proposed a ten-year limitation period.

Originally it was proposed to seven years, actually, but through the work of the IRC it was put back to ten years.

Mr. Rob Clarke: Does Bill C-5 give the powers to adopt provincial statutes from Alberta?

Mr. Karl Jacques: Yes, it does. Actually, it does through the regulations in proposed section 4.1 of the bill.

This power is to incorporate laws of a province. But as you will notice, there are quite a few subjects on which regulations could made—there's (a) to (z). The incorporation by reference that is permitted is restricted to only certain areas—something like six of those subject matters. So saying that it's going to incorporate all of the laws of the province is not correct. Only some of those can be incorporated in the areas that have been specified, and that specification is in proposed subsection 4.2(1) of the bill.

Incorporation by reference does not off-load the responsibility of the province. Actually, incorporation by reference is a drafting technique. It only says it permits someone to take laws that are already adopted and written somewhere, and adopt them as if they were their own. So it's still the government making those regulations, but you're not going to see them in that form because they'll be published in the *Alberta Gazette*, as they are now, in Alberta.

It doesn't mean the federal government has the power to do everything that's permitted under provincial law either. These are regulatory powers, so the regulatory safeguards are still there, which means that it's still delegated legislation. We have to go through all of the legislation and see whether the incorporated sections or laws fit under the powers that are enumerated here.

There is also the power to adapt, and if you do that, you incorporate everything without having to make some adaptations to the reality of the situation, in this case.

Finally, because it's the Governor in Council, they can amend any of the regulations incorporating...or they could decide to repeal them, because the Governor in Council is making those regulations. If incorporation by reference does happen, that simply means these are still Canadian or government laws or regulations.

● (1035)

The Chair: You have one minute left, Mr. Clarke.

Mr. Rob Clarke: Thank you.

Would one of you be able to comment on these definitions: downstream, refineries, exploitation?

Mr. Karl Jacques: Refining is basically something that's downstream. It's not the recovery of oil and gas resources. It's basically processing or selling. These are under provincial jurisdiction, under section 92 of the Constitution.

Trying to incorporate this would change the whole scheme of it. FNCIDA might be used for that kind of process.

Changing the definition in here would probably change the whole scope of the act. Basically, the definition is about taking resources, and not necessarily about the processing or refining of those resources.

The Chair: *D'accord. Merci.*

Now we'll have Monsieur Bélanger.

[*Translation*]

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

I want to go back to the discussion that Mr. Clarke started. Here's my concern, Messrs. Jacques, Crowfoot and Dempsey.

With this bill, are we opening the door to the possibility of unequal treatment? You've just confirmed that various provinces may have different acts and different regulations. You're asking legislators to give the executive the authority to incorporate, by regulation, all these acts and all this provincial regulation. Are we thus opening the door to possible unequal treatment?

Mr. Karl Jacques: No. The Supreme Court of Canada has previously held that incorporating these kinds of situations for the purpose of harmonizing statutes would not create a distinction from province to province. The purpose is to harmonize legislation with existing legislation in each of the provinces, and that does not create any distinction.

● (1040)

Hon. Mauril Bélanger: The purpose is to harmonize the act with that of each province. Can you conceive of any situations in which an act in a province would not be the same as in another?

Mr. Karl Jacques: Yes, absolutely. The Supreme Court of Canada has held that there is no justification for having these rules because the acts differ from province to province, and it is also entirely possible, through federal legislation, to harmonize the system in place for each of those provinces.

Hon. Mauril Bélanger: Good, that's it, but by harmonizing the act with that of a province, can we create an equality between provinces, thus between aboriginal communities?

Mr. Karl Jacques: The result would be that we would apply to Saskatchewan, for example, the laws in force in Alberta. That could also cause a problem. However, it could be done that way, but the purpose is not to incorporate the laws of a province in another.

Hon. Mauril Bélanger: You're confirming my fear.

Mr. Karl Jacques: Which one?

Hon. Mauril Bélanger: By passing this act, with the delegated authority we're giving to the executive, we're opening the door to unequal treatment between provinces.

Mr. Karl Jacques: That's already the case for automobile traffic, for example. All the laws that apply in national parks are laws that apply in every province. It's obvious that, necessarily—

Hon. Mauril Bélanger: Yes, but here I'm talking about a federal area of jurisdiction or responsibility with regard to aboriginal peoples.

Mr. Karl Jacques: I'm not sure I understand what the distinction would be. In fact, it's simply a system for putting resource management in place to harmonize the act with that of the province in which the reserve is located.

L'hon. Mauril Bélanger: You're confirming my fears. So I'm going to come back to this once we've done the clause-by-clause consideration of the bill.

Also, in the bill, is there anything that requires the government to provide a periodic report on the incorporation of provincial acts and regulations?

I haven't seen any. Is there an annual or biennial periodic report through which the Government of Canada reports to the Parliament of Canada on regulations that have been incorporated under this act?

Mr. Karl Jacques: There is no such publication report or account to be made—

Hon. Mauril Bélanger: But do you believe that—

Mr. Karl Jacques: —but these regulations have to be published in the *Gazette*.

[*English*]

Hon. Mauril Bélanger: Mr. Chairman, as a legislator, what I'm hearing here is that I'll be expected to keep track of all the publications, of all the regulations in the *Canada Gazette* and in provincial gazettes, as opposed to asking the executive to come periodically—every year or two—and report to the legislator, to the Parliament of Canada, saying, “Here are the provincial regulations and the laws that we've incorporated in the application of Bill C-5, whatever it will be called, by virtue of the powers delegated to the executive by this law.”

Wouldn't it be appropriate to have a requirement for a periodic reporting to Parliament of the application of these provisions?

Mr. Strater Crowfoot: I guess that could be a process. I want to emphasize that we're not taking all provincial authorities or powers. Certain aspects of them, where we're silent—

Hon. Mauril Bélanger: From (a) to (z).

Mr. Strater Crowfoot: No, no, just certain parts of the environment and conservation. So we'll be applying those.

Each province is different. Our goal is to make sure that the first nation in that province is competitive. We want to have a regime where it's different from the provinces and first nations.

Hon. Mauril Bélanger: And I might ask the government, Mr. Chairman, to consider the possibility of crafting such an amendment for the bill that would require this periodic accounting to Parliament of the application of the delegated authority that's being requested here.

The Chair: I think the question has been put.

I'm sorry, Mr. Jacques, we have to continue on.

We will now go to Mr. Payne, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chairman.

Thank you, gentlemen, for appearing today.

I have a couple of questions.

First of all, the previous witnesses from Stoney First Nations indicated that there were issues regarding royalties on first nations. I'm wondering if you can help me out in terms of what involvement first nations had with the negotiations of royalty rates.

● (1045)

Mr. Strater Crowfoot: I'll respond to that.

When land is available on first nations, we work with chief and council to post those lands. We get interest from the companies, then we sit down with the first nation and the company. Usually the first nation is involved in the negotiation of the royalties, the bonuses, and then some of the terms of the lease. Usually first nations look for including some work provisions, employment provisions in the lease.

So they're involved quite heavily in those aspects of the drafting of the lease.

Mr. LaVar Payne: In terms of those negotiations, I'm assuming those take place over a period of time.

Mr. Strater Crowfoot: Yes.

Mr. LaVar Payne: Do they come fairly quickly?

Mr. Strater Crowfoot: It depends on the first nation, the area that's available, how badly the company wants it, and what's going on, of course, around the reserve.

Mr. LaVar Payne: And that would apply to all the first nations?

Mr. Strater Crowfoot: Yes.

Mr. LaVar Payne: Okay.

My second question is on how Bill C-5 would enhance the environmental laws for drilling on first nations land for oil and gas.

Mr. John Dempsey: I think the environmental protection area is quite important to this bill. Right now the existing Indian Oil and Gas Act and regulations contain extremely limited requirements in the area of environmental protection, such as abandonment of wells, reclamation of wells, remediation of well sites.

We rely right now on a contractual arrangement between IOGC and oil and gas companies. The problem is that the contractual arrangement is hard to enforce, and in many cases we don't know which body is to be enforcing that, because we use a mix of provincial and federal laws in there. So what Bill C-5 does is it gives us the ability to make federal laws in the regulations that address those important areas of reclamation of well sites, remediation, the whole environmental protection side of things.

Mr. LaVar Payne: Okay.

What's happening around such things as well abandonments? I'm sure there must be some cases where we've already seen that happen on first nations land.

Mr. John Dempsey: Well abandonment is an issue right now for Indian Oil and Gas Canada. As I said, we don't have a good, strong set of laws in place under the existing regime. Under Bill C-5 we have the ability to make regulations that would give us a wide range of federal tools to ensure that companies abandon well sites properly, to ensure that they have liabilities that would go on forever just in case there are some problems with the abandonment process they've done.

Mr. LaVar Payne: That would appear to me to be a really important piece of Bill C-5, to ensure the safety and, obviously, appropriate environmental protection on first nations land.

Mr. Strater Crowfoot: Yes, and also, I think, with the provinces....

For example, in Alberta, they have an orphan well fund. If it cannot be identified who owns a well, they would come in on the reserve and use that fund to properly abandon the well. So this is a case where it's good we're working closely with provincial authorities.

We have an example in Ontario right now; there are a few wells that are seeping oil and some product to the surface. It's on first nations land, but right now the province is saying it's a federal responsibility. So we're trying to work out with the provinces the proper abandonment of these wells, working with the provincial jurisdictions.

Mr. LaVar Payne: Thank you.

The Chair: You still have 30 seconds left, Mr. Payne, if you want them. No?

We'll carry on then to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Bélanger raised a subject that I would like to clarify. If I read the bill as it currently stands and I check the definitions in clause 2, which concerns first nation lands, we're going to clarify this immediately—we agree on the fact that this bill applies solely to lands located on reserves.

[*English*]

Mr. Strater Crowfoot: Yes.

[*Translation*]

Mr. Marc Lemay: It only applies if we find oil, if there is exploitation on lands located on reserves. I had a concern and I wanted to ask you the question.

What do we do in the case of lands claimed for the purpose of inclusion in reserve lands or lands that we call ancestral lands? That has to happen. Are there currently any such cases? Would the act apply in those cases?

● (1050)

[*English*]

Mr. Strater Crowfoot: I'll answer that.

Our current legislation applies to only reserve lands that have been surrendered or designated for oil and gas administration. There are a number of lands that are involved in land claims or TLE processes—that's treaty land entitlement processes—where the first nation can gain ownership of those lands, have them transferred and become Indian first nation lands or reserve lands, and at the same time be designated for our oil and gas administration. Then we would have jurisdiction. Other than that, we have no jurisdiction off-reserve, on ancestral lands, or on other lands that are claimed by first nations if they're not reserve lands.

[*Translation*]

Mr. Marc Lemay: You answered in part.

Nevertheless, from the moment the first nation obtains those lands, which are part of the reserve lands, which will become reserve lands, the act applies. Have I correctly understood?

[*English*]

Mr. Strater Crowfoot: Yes. For example, if the land is through a treaty land entitlement process, that land becomes part of reserve lands. In that process is a vote by the membership to accept the land as reserve lands, but also there's a designation for oil and gas administration in that vote. When that occurs, then that would give us the authority to administer those oil and gas resources on that particular piece of land.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Now we'll go to Mr. Albrecht for five minutes.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair, and thank you to all of you for being here today.

Minister Strahl, and you as well, Mr. Crowfoot, have indicated a number of times that this has been an ongoing process for roughly 10 years, and in that process the first nations that have oil-producing and gas-producing potential have been included. What we have here today is a series of agreements among the various parties to come to a resolution as to a way forward.

I wonder if you could just give me some examples as to some of the proposals that the Stoney Nakoda First Nations have made in that process over the last number of years. Can you give us some examples of some of their ideas that are incorporated into Bill C-5? I think we all understand that we never all get exactly everything we request, so I think it would be helpful for us to hear examples of how they have been accommodated.

Mr. Strater Crowfoot: There've been a number of times we've had discussions in this process—various chiefs and councils, oil and gas technicians, legal counsels. In fact, through some of the work through the Stoneys and their legal counsel, there have been at least four amendments that have found their way into this amendment that have come from the Stoney First Nation and their legal counsel.

Clause 2, “Definitions”, found their way in: proposed sections 4.1, 4.2, and 5.1; and also the retention of subsection 6(1), where the minister shall consult with first nations. Those are examples of recommendations from the Stoney First Nation that have found their way into the bill.

Mr. Harold Albrecht: One of the other concerns that I think we see in the amendments that are proposed now, the additional amendments—we have also heard this a number of times—is that somehow possibly first nations groups may be excluded from the downstream economic opportunities that might be out there. To me, that seems like a legitimate concern that I would raise as well.

The suggestion has been made by a number of our committee members that possibly those concerns could be addressed in the development of the regulations. Obviously, then, the question becomes this: will first nations actually be involved in the drafting of the regulations, and if so, how?

Mr. John Dempsey: On the downstream aspect of oil and gas operations, the bill is quite specific that it relates to exploration and exploitation of oil and gas only. Those downstream operations, such as refining, as you heard earlier, are important to some first nations. And there are other areas that aren't really captured by the scope of this bill.

The First Nations Commercial and Industrial Development Act was developed, in part, to give first nations the ability to go into those types of ventures, be they mining of crude bitumen, the establishment of a refinery, and so on. But the Indian Oil and Gas Act was never meant to have that broad a scope.

On the development of the regulations, we do have a process in place right now that has started with first nations. It's a continuation of the joint process that you've been hearing about and that has been going on for 10 years. We have several committees set up with the Indian Resource Council. We have several symposia planned for the next 12 months.

I think all parties who have been involved in this agree that the real work comes now, that the real work comes on the regulations. The act was merely an umbrella piece of legislation to set out some high-level authorities, but the details or processes—the details of some of the royalty issues you've been hearing about—will be worked out in the regulations.

I'll give you an example. In the bill itself right now, we've built in many processes related to royalties that aren't currently in the Indian Oil and Gas Act, such as powers around reserving a royalty, the assessment process of a royalty, and the clarification of pricing schemes, of royalty deductions, of royalty in-kind proposals, of the circumstances to waive a royalty, and of interest on a royalty. Those types of things aren't currently in the existing regime that we operate under, but we've put them into Bill C-5 so that we can make clear regulations on these areas with first nations in the future.

● (1055)

Mr. Harold Albrecht: Just to summarize this, it seems clear to me that with all of the negotiations that have occurred and all of the issues you have already addressed here in your recent statement, it really is important for this committee to get moving on this; and the first nations are asking for us to move on this. So in the interest of not only resolving some of the outstanding issues that have been going on for 10-plus years, but also in the interest of moving forward for economic opportunity for first nations communities, it's critical that we move with this as quickly as possible. And then, as you said, the hard work begins.

Thank you.

The Chair: We have time for a brief question from Madam Crowder. Then we'll have to wrap this up.

Ms. Jean Crowder: I asked the Stoney Nakoda the same question. The Government of Canada treats its own royalties differently from the way it's treating the royalties of first nations. So why wouldn't the CPRA legislation have been used as a benchmark for Bill C-5?

Mr. John Dempsey: The CPRA is a good piece of legislation. It was reviewed in our process to develop Bill C-5. The issues that were raised at this table were in relation to the assessment and reassessment process that's in the CPRA, which we have built into Bill C-5—but in the development of regulations as opposed to putting the process in the act itself.

The issue of cancelling a lease was also raised. In the CPRA they have a process in the legislation itself to cancel a lease. In Bill C-5, that'll be developed in the regulations. But it's all federal law; it will all be addressed in the development of regulations.

Ms. Jean Crowder: I'm sorry, but that doesn't tell me why the legislation isn't equivalent. Why is one in the legislation, and the other going to be built in regulations?

Mr. John Dempsey: When the Minister of Indian Affairs and Northern Development was here last week, he talked about a continuous change process. That process was developed jointly with first nations, so we could make regulations that would be looked at and amended on a continuous basis, rather than waiting 30 to 35 years to amend the regulations again.

So the approach that was agreed with first nations was that we would put a lot of these process-type issues into regulations, so that we would have an open forum with first nations for years to come where we could address and re-address these, as opposed to going back through the legislative process.

The Chair: Members, before we wrap up here, we have one administrative matter to deal with.

I'd first like to thank the witnesses for coming. The members will be interested to know that Mr. Dempsey and Mr. Jacques will be with us—but Mr. Crowfoot, I don't believe so—for our clause-by-clause consideration of these amendments at our next meeting.

So thank you for coming today. It's a good segue into our next meeting.

On the administrative matters, members, we've been asked to see if we would be interested in joining a delegation from Australia. The president of the senate of Australia is coming on a visit on the 21st and 22nd of April, at the invitation of Speaker Kinsella. The delegation includes both senators and members of the Australian parliament, and they are interested in meeting with our committee to hear our thoughts and to discuss the issues, especially relating to the health of aboriginal people and the gap between aboriginal and non-aboriginal peoples' health, and also on issues of aboriginal governance.

So we have some options there. The 21st is a Tuesday. We could have the delegation here as part of our regular meeting on that Tuesday morning, if the timing works out. Or we could hold a special committee meeting and reception for them. I'm really looking for some expression of interest on that. Or, if you'd like, I can just go ahead and make up what I think would work well for all committee members and have a social time and a time to exchange some views on those two issues.

● (1100)

Hon. Mauril Bélanger: Just for clarification, Mr. Chairman, are you suggesting we use that morning's committee?

The Chair: That's an option; or, if it's your wish, we could set aside a special time for that.

Hon. Mauril Bélanger: I'd be amenable, Mr. Chairman—though I haven't spoken with others about this—to use that particular meeting for this. These occasions are valuable, and I certainly would have no objection personally to doing that.

The Chair: Is there consensus on that?

So it wouldn't be the normal course of a meeting vis-à-vis questioning witnesses. We would hope to have more of an exchange of views between members and the delegation at that meeting, if that's....

That's agreeable? Okay. We'll try to set that up.

Perhaps immediately after the 11 o'clock hour, if you could set aside some additional time, we'll perhaps have some food and join with the delegation for a brief reception as well.

If that's agreeable, then we'll proceed on that basis.

That's all I have by way of administrative matters. Our next meeting will be the Tuesday following the constituent week, the 24th of March, when we'll proceed with clause-by-clause consideration of the bill.

Merci beaucoup and bonne journée.

This meeting is adjourned.

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