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# Standing Committee on Aboriginal Affairs and Northern Development

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**EVIDENCE**

## Thursday, October 1, 2009

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## Chair

**Mr. Bruce Stanton**

# Standing Committee on Aboriginal Affairs and Northern Development

**Thursday, October 1, 2009**

● (1105)

[*English*]

**The Clerk of the Committee (Mr. Graeme Truelove):** Good morning, honourable members of the committee. I see a quorum. We can now proceed to the election of the chair. I am ready to receive motions to that effect.

**Mr. LaVar Payne (Medicine Hat, CPC):** I would like to nominate Bruce Stanton for chair.

**The Clerk:** It has been moved by Mr. Payne that Mr. Stanton be elected chair of the committee. Are there any further motions?

Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

**The Clerk:** Mr. Stanton is the duly elected chair of the committee.

Before inviting Mr. Stanton to take the chair, if the committee wishes, it can now proceed to the election of vice-chairs.

Are there any motions for the election of vice-chair?

**Hon. Larry Bagnell (Yukon, Lib.):** I would like to move that Todd Russell be vice-chair.

**The Clerk:** It has been moved by Mr. Bagnell that Mr. Russell be elected as vice-chair. Are there any further motions?

Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

**The Clerk:** I declare Mr. Russell vice-chair of the committee.

I can also receive motions for a second vice-chair.

Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** I nominate Ms. Jean Crowder.

**The Clerk:** Mr. Lemay nominates Ms. Crowder.

Do I hear other motions?

[*English*]

Is it the pleasure of the committee to adopt the motion?

(Motion agreed to)

**The Clerk:** I declare Ms. Crowder vice-chair of the committee.

I will invite Mr. Stanton to take the chair.

**The Chair (Mr. Bruce Stanton (Simcoe North, CPC)):** First of all, thank you very much for your confidence in the chair for yet another session. My congratulations go to the two vice-chairs for our committee, Jean and Todd.

*D'accord.* Members, this is a little bit awkward for our committee, because your subcommittee met in the previously constituted form approximately two weeks ago on September 15 to consider committee business going forward into the fall session. With this in mind, what we would like to do, if the committee is agreeable, is receive the subcommittee report on the work plan for this fall.

I would remind members that we are still in public. If it's the wish of the committee, we can go in camera for this committee discussion. My own view is that there's nothing on this agenda that would necessitate that. We would have to vacate the room and so on. So if the committee is okay, we will proceed in public for the consideration of committee business. Agreed? Okay.

The report has been circulated and the principal issue for our subcommittee discussion was the consideration of business for the fall session.

You will see in the report that we have proposed that we undertake four meetings/briefings on four different topics, which are in front of you there, to hear from the newly elected chiefs of both the AFN and NWAC. I shouldn't say both; it's three organizations, each of which has newly elected leaders: AFN, the Native Women's Association of Canada, and the Congress of Aboriginal Peoples. That would be one meeting.

The second would be a briefing on the issue of child and welfare services and, in particular, the action plan that had been commented on, and the government response given to the committee on public accounts.

Third, this was brought forward by Monsieur Bélanger with regard to the issue of the honour of the crown, and that would be a one-meeting briefing. I'll have some updates to talk about that when the time comes.

Then a briefing on the issue arising from the court challenge brought by McIvor in respect to Bill C-31 and the issues around Indian status.

Those were the four topics. After those four, briefings would be held, and we would then proceed to a more comprehensive study on the topic of northern economic development, specifically to hear from witnesses on the issues they believe are confronting the country with respect to obstacles or barriers to the advancement of economic development in the north, with a view to establishing a set of recommendations for policies and programs for the government to consider with respect to improving and advancing those issues in the north. That study would proceed from the time after we finished the four briefings.

The one exception would be that on the issue of the honour of the crown, we had asked noted author Timothy McCabe to appear on that issue. He was unavailable to meet in the timeframe we had set out, so we would like to call him back, I hope in middle to late November, but at a time that suits him.

Monsieur Bélanger.

● (1110)

[*Translation*]

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Does that mean that we would still receive the departmental briefing in October and then have a second session with Mr. McKay?

[*English*]

**The Chair:** In fact, at this point we're just considering having the department officials, Justice and the department, so both departments would be here, *oui.*

[*Translation*]

**Hon. Mauril Bélanger:** Thank you.

[*English*]

**The Chair:** That would be the plan, in essence, so is there any discussion on the work plan?

Mr. Bagnell.

**Hon. Larry Bagnell:** Yes, I move we accept it, including the study on northern economic development, but I just wanted to ask a question for clarification.

On the first meeting, and this was not specific, I assume the committee wasn't specifying any particular topic. These new people could give their views on anything they wanted?

**The Chair:** Yes. This is on northern economic—

**Hon. Larry Bagnell:** No, no, number one, the briefing from the newly elected chiefs. That wasn't on any of these particular topics. It was on their views.

**The Chair:** Absolutely. These are new leaders in their respective areas of aboriginal people, and this is an invitation to them to come and give us their take on what lies in front of them and their organizations. It's more informative, but the subcommittee felt it was highly appropriate to do that, especially considering that all within the space of about two months we have three new leaders. Understood?

**Hon. Mauril Bélanger:** Mr. Chairman, I don't want to cause any difficulties here. But in terms of the appropriate protocol of meeting with them, are we going to meet the three of them simultaneously or are they going to be subsequent? If so, we may wish to consider an hour each at least. That would mean a three-hour meeting or having two meetings.

**The Chair:** One of the advantages we have now with our time slot from 11 a.m. to 1 p.m. is that there are no committees meeting immediately after us at one o'clock. We could effectively have a three-hour meeting and run right through to QP on that day. You're absolutely right, it would certainly be appropriate to have an hour for each.

At this point, maybe I should ask the clerk, is NWAC confirmed at this point? They're confirmed for that Thursday. We could do three hours, one hour each, and go from eleven until two o'clock.

● (1115)

**Hon. Mauril Bélanger:** Which day?

**The Chair:** That would be the Tuesday, October 6.

[*Translation*]

**Mr. Marc Lemay:** You said Tuesday?

**The Chair:** Yes.

[*English*]

**Hon. Mauril Bélanger:** You're asking us to go for three hours on Tuesday?

**The Chair:** It could be done that way.

Monsieur Lemay and Ms. Crowder.

[*Translation*]

**Mr. Marc Lemay:** Mr. Chair, of course I have nothing against meetings, but we need to make a decision quickly. You talked about a three-hour meeting on Tuesday October 6. Is that confirmed? I already had something else on my agenda at 1:15 p.m.

However, if you tell me for sure that the meeting will last three hours, then I will make the necessary changes. I do feel that it is a priority to hear from these people. I agree with Mauril: it only makes sense to hear from each of them for one hour.

[*English*]

**The Chair:** Okay.

To respond to Monsieur Lemay, it's entirely possible that we could do that. If the committee so agrees today, that's the way we'll do it. They are all confirmed for that time, for the Tuesday.

Can I just ask, then, is it agreeable that we go to two o'clock? Okay.

Mr. Duncan.

**Mr. John Duncan (Vancouver Island North, CPC):** It's conceivable that we will not have a meeting on Tuesday, October 6, is it not?

**The Chair:** You raise the point in respect to the clerk's schedule, because half of the Tuesday and Thursday committees will be having their elections. In fact, we had the clerk here from the agriculture committee, and our clerk will be helping the election of the chair of the agriculture committee on Tuesday, but it is at a different time. So there is no conflict with Tuesday's meeting.

**Mr. John Duncan:** So Tuesday's meeting is on?

**The Chair:** It is on, *oui.*

**Mr. John Duncan:** Three hours?

**The Chair:** Three hours.

Ms. Crowder, go ahead.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** I have a conflict at one o'clock. I would need to see if somebody else could chair the meeting for me. I have a meeting that I chair at one o'clock.

Is everybody else in agreement with going from one o'clock to two o'clock?

**The Chair:** It seems that way.

**Ms. Jean Crowder:** Okay. Let me see what I can do.

I did have another point, though.

**The Chair:** Proceed.

**Ms. Jean Crowder:** Could we have a bigger room? If these national leaders are coming, there will be other people who are interested in sitting in to witness, so we need a bigger room. I hear Mr. Lemay saying it will be televised, and I think that's a great idea.

**The Chair:** I think that would be appropriate. We'll do our best to get a larger room and have the meeting televised.

Agreed? Okay. We'll go ahead with that, then.

To summarize, I didn't see any other points being raised in terms of Mr. Bagnell's motion that we adopt the subcommittee report as given and reported here today. That would essentially leave us with today's business, which would be the briefing on the Indian status and the McIvor ruling. It will have us Tuesday, October 6, with the presentations from the three newly elected leaders running from 11 a. m. to 2 p.m., televised. That would have us coming back on the Thursday of next week. We'll have representatives from the Department of Justice and the Department of Indian and Northern Affairs on the issue of the honour to crown. That's Thursday, October 8.

**Hon. Mauril Bélanger:** October 8?

**The Chair:** Yes, October 8.

When we come back on the first Tuesday after Thanksgiving, October 20, it will be the issue of the action plan on child and family services, and we will again have representatives from the Department of Indian and Northern Affairs. I believe the briefing materials on that particular topic may even have been circulated already. That meeting will be on Tuesday, October 20.

Commencing on Thursday, October 22, we will proceed with the study on northern economic development. I'd also like to point out that on that topic you will have circulated to you a document that proposes some fairly broad or sweeping categories for potential witnesses; we'll be seeking your advice and suggestions about specific witnesses.

We will also schedule time for committee business to consider the travel component of this study. It will involve one trip, of four days probably, to do the Whitehorse and Yellowknife component of the trip, and a second trip to Iqaluit. That trip will likely be in November. You all realize this will have to go to the Liaison Committee. Before that happens, we're going to consider it ourselves with an expense proposal as well.

Mr. Bagnell and Monsieur Lemay.

Mr. Bagnell.

● (1120)

**Hon. Larry Bagnell:** That's good.

I have two points. One is that I assume the topics we're going to look at with the witnesses are formed by the discussions we had previously with them. That's why we had them.

[*Translation*]

**The Chair:** That's right.

[*English*]

**Hon. Larry Bagnell:** Secondly, on the trip you just mentioned, I would suggest that the Whitehorse-Yellowknife portion also include Inuvik. There is a flight from Whitehorse to Inuvik, because there's a lot of oil and gas there. The Inuit development corporations, the Gwich'in development corporations, are all in Inuvik. And then there's a flight from Inuvik to Yellowknife. So it's technically not hard to do that at a fairly reasonable price.

**The Chair:** Those are considerations we'll then look at. The clerk's office has in fact crunched some numbers and we'll be able to look at them. We'll schedule a meeting with one of the briefings coming up in the next few days. In the next few meetings, we'll put some time aside for committee business to look specifically at that question.

Monsieur Lemay.

**Hon. Larry Bagnell:** I'm sorry, I just want to continue.

**Mr. Marc Lemay:** Okay, go ahead.

**Hon. Larry Bagnell:** Because we're dealing with northern economic development, I think it would be much appreciated by northerners if we used northern airlines. All of those places, once you get to Vancouver or Calgary or Edmonton, can be reached by northern airlines, and also by Air Canada and WestJet. But I think northerners would appreciate our using the northern airlines because we're then helping northern economic development—and they are no more expensive.

**The Chair:** Okay. I was going to say that we are under some constraint. There has been a protocol not to exceed the $100,000 mark. I know the whips have been fairly insistent on that, so we're going to do our best to fit within that cost framework.

Monsieur Lemay.

[*Translation*]

**Mr. Marc Lemay:** If I understood correctly, we'll be returning to Iqaluit.

**The Chair:** No, that will be for another trip.

**Mr. Marc Lemay:** And then we'll go to Iqaluit.

**The Chair:** Yes.

**Mr. Marc Lemay:** Why?

[*English*]

**The Chair:** We can't accomplish it in the same week.

[*Translation*]

**Mr. Marc Lemay:** We already went to Iqaluit.

**The Chair:** I understand. In fact, it was the committee's first trip during the 39th Parliament.

[*English*]

was for SINED only, the renewal of the SINED program, as I understand it. This is going to be a broader, more sweeping investigation, and the leadership from Nunavut also welcomed this look. This is the first time, by the way, that a House committee has been charged with this kind of study in the north, from what we can see.

[*Translation*]

**Mr. Marc Lemay:** That's fine.

I don't want to reveal any secrets here, but what about my recommendation to the subcommittee that we should perhaps go directly to Baker Lake? There is an economic agreement between a mining company, which will be developing a major project, the Meadowbank project, and the First Nations and Inuit. I was wondering if we could include that stop. The clerk could check whether that could be done.

It would be very interesting because it is a genuine economic development project that is being carried out in that community, in partnership with the Inuit. I don't want to belabour the point, but it's something that could be looked at.

[*English*]

**The Chair:** This is something we can consider. From my recollection, we understood that once we begin to look at locations outside of the three northern territories, where does one end with that? We have other examples across the north where there are overlapping treaties—in Ontario and Labrador—so we need to set some boundaries on it. Perhaps this is something we can consider at our next subcommittee meeting.

● (1125)

[*Translation*]

**Mr. Marc Lemay:** Thank you.

[*English*]

**The Chair:** Mary has just advised me that you'll be receiving the various categories of witnesses and some examples of individual organizations that would fit within those categories. Keep in mind that 80% of this study will be conducted through hearing from witnesses in Ottawa. This is probably a 20-plus meeting study, so most of it will be done here in Ottawa. When we're in the north, we will need to give preference to those organizations for which it's less practical to come here or that don't have the capacity to come here.

I will suggest to members that in order to use our time to the best advantage in the north we will have a very full schedule, and we'll be looking at some fairly lengthy days of meetings.

Is there anything else on the northern economic development study?

We have witnesses here today on the briefing of McIvor and the issues around Indian status. If it's okay with the committee, we'll now proceed to hear our briefing from departmental officials.

We have with us Caroline Davis, assistant deputy minister, resolution and individual affairs sector. We also have Mr. Martin Reiher, senior counsel, Indian and Northern Affairs Canada, for the Department of Justice on this same question.

Welcome to both of you, and thank you for accommodating our somewhat uncertain schedule today. I appreciate your taking the time to join us. As you're no doubt familiar, we'll begin with a brief presentation of up to 10 minutes and then take questions from members.

Two written presentations are being handed out right now. In advance of this meeting you were also circulated documents on the Supreme Court decision itself, as well as the discussion paper on McIvor and issues pertaining to Bill C-31.

[*Translation*]

Mr. Lévesque.

**Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** May I have them?

**The Chair:** You don't have them yet?

[*English*]

They're coming.

[*Translation*]

Ms. Davis, go ahead.

[*English*]

**Ms. Caroline Davis (Assistant Deputy Minister, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development):** Thank you very much for inviting us today.

Several months ago, it now seems, on June 16, I had the opportunity, along with my colleague Pamela McCurry, who is the senior assistant deputy minister of policy and strategic direction at INAC, to provide parliamentarians with a presentation on what the McIvor court decision is about and what significance it will have for Indian registration. I'm here today to provide you with an update on what the Government of Canada has been doing since that point to respond to the McIvor decision.

I'm accompanied by Martin Reiher, a senior counsel with the Department of Justice. He works in the aboriginal affairs portfolio and is familiar with the McIvor case. He has some remarks that will give you an update on matters related to the McIvor litigation.

Before I get into details about what the government has been doing, I would like to provide the committee members with a short description of what the McIvor case was about, when the decision was rendered, and so on, as useful background information.

● (1130)

[*Translation*]

On April 6, 2009, the Court of Appeal for B.C. ruled in the McIvor case that two subsections of the Indian Act's registration provisions are invalid under the Charter of Rights and Freedoms. The plaintiffs, Sharon McIvor and her son, had been seeking full equality to the registration treatment given under the Indian Act to her brother and her brother's children.

The court's decision dealt with some, but not all, registration entitlements. It did not touch on membership entitlements, or any other aspect of the Indian Act, such as reserve lands or governance. The court did not order a particular remedy, but to give time for Parliament to develop one, the court suspended the effect of its ruling for 12 months.

The remedy that is needed to meet the court's decision, and to bring the Indian Act into compliance with the charter, will require a legislative amendment. We need to ensure that the inequality identified by the Court of Appeal is addressed and that people who lost Indian status because of marriage before 1985, as well as their descendants, are treated fairly.

We have only until April 6, 2010, to have a legislative amendment to the Indian Act in place, before the suspension expires. If that deadline passes with no amendment in place, the process of registration would be cast into doubt in BC. And our view is that although the decision applies only in BC, we need to amend the Indian Act because it is federal legislation and we want to have the same rules apply across the country.

[*English*]

As announced by Minister Strahl on June 2, the Government of Canada has accepted the ruling of the Court of Appeal for British Columbia. It has been determined that the best way for the government to respect the ruling of the court and also to avoid the legislative void in B.C. that would occur if nothing were done by next April 6 would be to introduce a rather narrow amendment to the Indian Act that would respond specifically to the charter breaches that the court identified.

We are aware that there are a number of broader issues related to the question of membership and registration and that many aboriginal people and others find that the Indian Act is quite outdated and in need of an overhaul. However, we know that reaching a consensus on what should be done would take a long time and would need extensive discussion among those who would be most affected by such an undertaking. So the decision has been made to concentrate at this time just on complying with the court's decision on McIvor and developing a legislative amendment to the Indian Act to respond to the decision.

On August 24, Minister Strahl made a formal announcement that the government would develop the legislative amendment, and on the same day INAC launched an engagement process with the release of a public discussion paper on the department's Internet site. People are invited to read the discussion paper to learn about the government's plans to move forward, and then to provide feedback to the department. A special e-mail address has been set up to receive the comments, and of course people can continue to send correspondence to the department through the regular mail.

The government is organizing a series of regional engagement sessions with various first nation organizations and other aboriginal groups to provide information directly to them about the McIvor decision and to solicit their comments about the government's proposed legislative approach. To date there have been a few sessions, and we are working to ensure that there will be at least one in each geographical region of Canada, for a total of perhaps 15 sessions altogether. Technical briefings with the national aboriginal organizations have also taken place.

The engagement process will close on November 13, 2009, to give us time to analyze the input that we've received and to try to reflect it in our work before a bill to amend the act is introduced in Parliament.

And as you well know—and I hope I'm not being disrespectful here—the process of legislative change can sometimes be quite long and perhaps unpredictable. So if we are to meet the April 6, 2010, deadline for a legislative amendment, we recognize that time needs to be provided for parliamentary review and passage of the legislation and also for our own internal processes to take place before the legislation can be introduced. On this point, the timeframe really is quite tight, and I hope that will go some way to explaining why the engagement process is not going to be as long as some people may have hoped.

● (1135)

[*Translation*]

I'd like to talk for a moment about the implications of the McIvor decision. Demographic research is still ongoing to determine how many people may be newly entitled to registration as a result, and while preliminary indications were between 20,000 and 40,000, we now believe it will be more in the neighbourhood of 40,000 people.

Of course there will be budgetary implications associated with these potential new registrants, primarily involving health benefits and post-secondary education assistance.

As I end my presentation, I would like to conclude by saying that, if all goes as we planned, the government will be tabling legislation well in advance of next April in the interest of avoiding a legislative vacuum in British Columbia.

I will now invite my colleague Martin Reiher from the Department of Justice to say a few words on the decision of the Court of Appeal.

Thank you very much.

[*English*]

**The Chair:** Go ahead, Mr. Reiher.

[*Translation*]

**Mr. Martin Reiher (Senior Counsel, Operations and Programs Section, Department of Justice):** Thank you, Mr. Chair.

I understand that the committee expressed the wish to receive a summary of the McIvor decision handed down by the British Columbia Court of Appeal and of its impact.

[*English*]

My brief remarks will provide a summary of the British Columbia Court of Appeal decision, and I will say a few words on the impact of this decision, and of course will welcome questions afterwards.

What is the claim? Mrs. McIvor claims—and continues to claim in the Supreme Court, as she has sought leave to appeal—that she does not have the same ability to transmit Indian status to her grandchild as her brother does. Mr. Grismer, her son, claims he does not have the same ability to transmit Indian status to his children as does his male cousin.

To assist in my presentation, I have prepared a little chart that was just distributed. I would suggest committee members take a look at the chart.

**The Chair:** Could you hold that thought for a moment, Mr. Reiher?

Was this sent by e-mail? Do members have it? I have one here as well.

Does anyone else want one that you could share, perhaps?

**Mr. Martin Reiher:** Thank you, Mr. Chairman.

[*Translation*]

**The Chair:** Go ahead.

[*English*]

**Mr. Martin Reiher:** On the left-hand side, you will see the situation of the plaintiffs before and after the enactment of Bill C-31, which is the common name of the amendments that were adopted in 1985 regarding registration and membership. On the right-hand side of the chart, you see the situation of the comparative group for the purpose of the section 15 analysis.

For the purpose of its analysis under section 15, the Court of Appeal of British Columbia accepts the comparative group proposed by the plaintiffs and compares Mr. Grismer's ability to transmit status to his children with that of people born prior to April 17, 1985; of Indian men who were married to non-Indian women. If you refer to the chart—that would be the box on the bottom on the left-hand side—you will note that after Bill C-31, because Mr. Grismer has one parent who is a registered Indian, he is registered under subsection 6(2), and the children he has with a non-Indian wife are not entitled to registration. In comparison, his cousin, the son of the brother of Mrs. McIvor, was entitled to registration before 1985 and is entitled after Bill C-31 under paragraph 6(1)(a), and the child he has with a non-Indian partner is entitled to registration. So the court concludes that there is a distinction in the ability of Mr. Grismer to transmit status to his children compared with that of his cousin.

That differential treatment is based on the gender of Mrs. McIvor, which is a ground enumerated in section 15 of the charter, and this is considered to be discriminatory under the charter because Bill-31, as the court says, perpetuated at least in a small way the discriminatory attitudes of the past.

As you know, when legislation is found to infringe a provision of the charter, it can still be phased in, if it can be justified in a free and democratic society, under section 1 of the charter. The Supreme Court has developed a four-part test under section 1 that requires the analysis of four questions. The first question is whether there are objectives for the legislation that are pressing and substantial. The second question is whether there is a rational connection between the legislation and the objectives. Third, does the legislation minimally impair the charter right at stake? Last, is the deleterious effect of the charter breach outweighed by the salutary effect of legislation?

Under the first part of this test, the government had put forward five objectives for Bill C-31: to remove sexual discrimination; to restore status to those who had lost it under discriminatory provisions in the past; the third principle, that no one should lose or gain entitlement as a result of marriage; the fourth, that acquired rights should be preserved; and fifth, that first nations should be able to determine their own membership.

Of those principles or objectives, the court found that the objective of preserving existing rights was especially important for the case at bar. As part of its analysis, the court determined that the goal of Bill C-31 was to create a new non-discriminatory regime based on the need to have more than one Indian grandparent to qualify as status Indian. The court accepted that goal as a valid one and examined the provision of Bill C-31 against that backdrop.

The court concluded that it would have been anomalous to give Mr. Grismer's children status under the new regime, because they have only one Indian grandparent. On the other hand, the court acknowledged that some members of the comparative group qualify as status Indians in the new regime even if they have only one Indian grandparent, namely those affected by the double mother rule prior to 1985. I will come to the double mother rule in a few seconds, briefly.

The court stated that this anomaly would have been justified by the pressing and substantial objective of preserving existing rights if Bill C-31 had only preserved the rights as they existed. Where Bill C-31 failed, in the court's view, is at the minimal impairment stage of section 1 analysis: instead of preserving the rights of those affected by the double mother rule, it improved their situation.

● (1140)

Before Bill C-31 in 1985, the grandchild would have lost status at age 21 because of the double mother rule. The double mother rule was enacted in 1951. It specified that if a child had an Inuit father but had a mother and a grandmother who were non-Indians at birth and who gained status upon marriage, that child would lose status at 21 years of age. That was the situation before 1985.

After Bill C-31, children who had lost status under the previous system were entitled to be reinstated under paragraph 6(1)(c), paragraph 6(1)(f), or subsection 6(2) of the Indian Act, depending on whether his mother was or was not an Indian. In any event, the grandchild is entitled to registration.

In comparison, the children of Jacob Grismer are not entitled to registration. With respect to the transmission of status, Bill C-31 further eroded the rights of Mr. Grismer and his group.

To quote the court at paragraph 140:

> Had the 1985 legislation merely preserved the right of children of persons in the comparator group to Indian status until the age of 21, the government could rely on preservation of vested rights as being neatly tailored to the pressing and substantial objective under s. 1. Such legislation would have minimally impaired Mr. Grismer's right to equality. Instead, the 1985 legislation appears to have given a further advantage to an already advantaged group...

To conclude the summary, the court found that the Indian Act provisions are gender neutral and non-discriminatory on a going forward basis, but that the transition rules between the old and the new regime created an inequality. Bill C-31 granted entitlement to Indian status to persons affected by the double mother rule—persons who had only one parent who was an Indian at birth prior to 1985 and who had only one grandparent who was Indian at birth, but only where that grandparent was a man. The proposed amendment responds to this inequality. It is to grant entitlement to persons in the same situation, but where the grandparent is a woman.

I have a few words on the impact of the decision. The Court of Appeal has declared paragraphs 6(1)(a) and 6(1)(c) invalid but has suspended its declaration for one year. This means that until April 6, 2010, it is the status quo. Section 6 remains in force with no modification. At the end of the suspension period, if there is no amendment in place, paragraphs 6(1)(a) and 6(1)(c) will be virtually erased from the statute book, as if they had never existed in British Columbia. This would prevent the registrar from using these provisions to register individuals from British Columbia or affiliated with traditional Indian bands. However, it is important to note that anyone registered as of April 6, 2010, will remain registered and entitled to benefits associated with registration, unless that person is removed from the register for other reasons.

That concludes my remarks on the Court of Appeal for British Columbia decision and its impact, and I would welcome questions.

● (1145)

**The Chair:** *Merci monsieur Reiher et madame Davis*.

We are going to proceed to questions from members. We will begin with Mr. Russell for the Liberal Party.

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

I thank both of you for your presentations.

I have to say I'm not totally clear on how all this filters down. I guess the nuts and bolts of it is that a couple of sections of the Indian Act have been struck down by the B.C. Court of Appeal. That's going to allow more people to register pending new legislation, and it could impact anywhere from 20,000 to 40,000 people, according to the government's estimates.

I'm not sure even this legislation is going to cure everything. It seems that we have Bill C-31, and it is challenged; then we will have whatever bill this is, and it may be challenged—that sort of thing.

I want to ask a question about the process. I understand it is sensitive to the timeframes you have because the court has ordered that certain things happen by a certain date, which is April 6 of next year.

What has the response been to the engagement process? You used the word “engagement” as opposed to “consultation”. I guess they have different connotations within the government. Why has the government chosen to go with “engagement” rather than “consultation”? Do you believe they have an obligation to consult?

Is this raising some angst within the aboriginal community, particularly among those most affected? What has the response been to the engagement process so far? If you want to have it concluded by November, and 15 regional meetings have to take place, we're talking about a month for all this to happen, for you to compile it and to bring it back. In view of the draft legislation, because I'm sure somebody's working on legislation while this is happening—it doesn't seem to be that one is going to happen after the other—how much confidence can people have in this particular process?

● (1150)

**Ms. Caroline Davis:** Perhaps I could take that in a couple of pieces.

On the engagement, you're absolutely right, we're using the word “engagement” and not “consultation”. “Consultation” has connotations of a proposal that might affect aboriginal rights or title. The Indian Act registration provisions are not related to that kind of topic. We have explained to everybody that this is an engagement session. Similarly, the people we've met with have said that they wish it to be noted that they have not been consulted. We're very careful to keep ourselves very clear on that.

On the preliminary results so far, with the e-mail system first, we've had somewhere around 25 e-mails so far that have been quite supportive of the discussion paper and the approach the government wishes to take to eliminate this discrimination.

On the sessions we have had so far with people in regions of the country, we've either held them or we've scheduled them in the Atlantic, Quebec, Alberta, British Columbia, and the Northwest Territories. We have set ourselves a goal of continuing that and essentially meeting with groups that wish to meet us. I think I mentioned in the opening remarks that we've also made a point of making sure the national aboriginal organizations get a chance to go through the discussion paper with us.

On the kind of discussion that has happened, certainly the aboriginal groups have been at pains to point out to us that in this legislation we should not be affecting treaty rights, aboriginal rights, or title of any kind and that the amendments to the act certainly do not address broader problems that have been expressed with the Indian Act.

I'll give one example of that. There is the rule now that if there are two generations that marry out, the next generation does not have Indian status. Certainly that affects communities where there is a high rate of marriage out, primarily ones that are close to cities, where people leave the reserve, go and work in the city, and form partnerships that are not based within the community.

There has also been comment that these amendments will not address the provisions in the Indian Act that enable first nations to determine their own membership. The Indian Act entitles people to benefits. I mentioned the two prime ones being post-secondary education and the first nations/Inuit health benefits. It sees membership and really belonging to a community as very separate from those financial relationships that are determined by the Indian Act. A lot of first nations have pointed out that they would prefer to have the ability to determine their own membership.

The government has obviously been aware that this would be likely to happen. While we've not yet taken any concrete steps to try to address these broader issues, it certainly hasn't been ruled out in the future. What we would like to do is bring forward this amendment and have Parliament discuss it carefully with a view to making sure there is not a void in the legislation, so that we really can continue to make certain our decisions on registration in British Columbia after the April deadline.

I hope that helps to answer those two points you've made.

● (1155)

**Mr. Todd Russell:** Very quickly, because there are numerous questions, why is the government only looking at the financial implications of two programs when the government obviously delivers a hell of a lot more programming or services for primarily status Indian people? Even if you tie the two together, these programs and status, practically speaking.... If you look on INAC's website on any given program or any given service, they do tie into status, particularly on reserve. The program implications must be far greater than just two specifics, like PSSP and FNIHB.

**The Chair:** Give a brief response if you can, Madam Davis.

**Ms. Caroline Davis:** Those two programs are absolutely necessary to have status. You also need to have status and live on a reserve for entitlement to some of the other programs, such as housing. So it becomes a little more complicated when you start to cost out those implications. As I've indicated, if there are some 25,000 to 40,000 new Indians registered as a result of the amendment, it's not necessarily clear yet how many will take up residency on reserve. It's more difficult to predict that.

**The Chair:** Okay. We'll have to leave it at that.

[*Translation*]

We will now go to Mr. Lemay.

You have seven minutes.

**Mr. Marc Lemay:** Mr. Chair, this is an extremely important legal issue. Since the McIvor decision, numerous provincial bars have been studying this question. I worked with the Quebec Bar on the McIvor decision and there is an Aboriginal Bar committee working on it as well. These are very specific questions.

Certain crucial dates were included in the Indian Act, and these provisions cannot be amended. I would like to know, because this is the starting point, if anyone who said they were could be an Indian before September 4, 1951. And please answer slowly.

**Mr. Martin Reiher:** On September 4, 1951, an act was adopted, under which the Indian Register was created. New criteria were adopted to determine what we now call Indian status.

**Mr. Marc Lemay:** I apologize for interrupting. They have been enshrined in the act since September 4, 1951, is that right?

**Mr. Martin Reiher:** That's right.

**Mr. Marc Lemay:** So that's what we must use as a basis to establish who is an Indian and who is not or who will obtain Indian status.

**Mr. Martin Reiher:** For the administrative purposes of what we call Indian status, that is indeed correct.

**Mr. Marc Lemay:** So, if a group, association or individual tells us today that they should have been registered in 1927, 1932 or 1940, but that they did not comply with the provisions of the act of September 4, 1951, then there is nothing they can do.

**Mr. Martin Reiher:** To a certain extent, and once again, this is for administrative purposes, you are right.

Prior to 1951, going back to the 1850s, legislative provisions established who could be considered an Indian in order to be entitled to reserve lands and certain benefits stipulated in the act. In 1951, when the Indian Register was created, since this register was new, everyone whose name was on the lists, including the treaty and band lists, were allowed to be included in the register. All of these lists were recorded and people were allowed to challenge their inclusion or the inclusion of other people. At that time, we sort of crystallized a group of people who, in future, would be considered Indians.

● (1200)

**Mr. Marc Lemay:** You have just uttered the most important words of your speech, they being "we... crystallized". I am not sure how this is translated in English, but these are the same words used in the Supreme Court's rulings. When things are crystallized, it is almost as though things remain frozen at a specific moment in time.

I am going to take a giant leap back into history. In 1985, Bill C-31 was introduced, so on and so forth.

Today, things are not so clear to me. You are seeking to amend subsection 6(2) in order to—pardon the expression—put a Band-Aid on a wound that is likely to get worse. This is exactly why you want to include any person in the situation of the child mentioned in (b). Mr. Chair, this is extremely important, so allow me to read the following:

> (b) Whose children born of that marriage had the grandchild with a non-Indian after September 4, 1951 [...]

If I understand correctly, those who were not "crystallized" in 1951 would be included today, on condition that they were born after 1951.

**Mr. Martin Reiher:** The amendment, as provided for under subsection 6(1) would grant status to any person whose mother lost status due to marrying a non-Indian. This is conditional upon the person having their own children after 1951. Obviously, this concerns children born after 1951.

**Mr. Marc Lemay:** However, once again, things are going to be "crystallized".

**Mr. Martin Reiher:** I don't see how things are "crystallized" in this particular case.

**Mr. Marc Lemay:** We are talking about children born after 1951. This would, as I see it, include the grandmother, grandchildren, and then there would be a cutoff.

**Mr. Martin Reiher:** Then, at that point, current rules under the Indian Act would apply. Therefore, there is not necessarily a cutoff. It depends on the identity of the other parent. For example, if a child who is registered under subsection 6(2) later on has a child with a status Indian, be it under subsections 6(1) or 6(2), the child would be registered under subsection 6(1). That is where it starts off again.

**Mr. Marc Lemay:** However, if an off-reserve aboriginal marries a white woman—and here we are lighting on the whole debate about off-reserve aboriginals who live in the cities—and has children with a white woman, the children cannot obtain status.

**Mr. Martin Reiher:** According to the current rules, following two generations of exogamous marriages, meaning a marriage between an Indian and a non-Indian persons, the following generation loses status.

**Mr. Marc Lemay:** And it is clear?

**Mr. Martin Reiher:** Yes.

**Mr. Marc Lemay:** Hundreds of individuals identify themselves as Métis and feel they are entitled to aboriginal rights. Yet this is not true. Some have practically no rights.

**Mr. Martin Reiher:** As I told you, for administrative reasons, the federal government has adopted rules that allow a person to be registered as an Indian. Certain individuals or groups of people claim to have aboriginal ancestry and would like to exercise the rights that stem from this.

**Mr. Marc Lemay:** But with that—

**The Chair:** Mr. Lemay—

**Mr. Marc Lemay:** I will come back to that later.

**The Chair:** Your time is up.

**Mr. Marc Lemay:** Don't go so fast.

[*English*]

**The Chair:** I hope everybody understands this. It is not an easy concept to grasp.

Let's go to Madam Crowder.

● (1205)

**Ms. Jean Crowder:** I have a couple of quick legal questions to start with. My understanding is that in some cases there can be leave to ask the courts for an extension of the deadline. Is that accurate? So although there's a deadline of April, you could ask for an extension.

**Mr. Martin Reiher:** It is possible to obtain an extension of the suspension period from the court of appeal, but it has to be justified.

**Ms. Jean Crowder:** On the fact that Ms. McIvor has sought leave to appeal, I don't know if the government has filed a cross appeal or will file a cross appeal if the leave to appeal is granted. If the leave to appeal is granted, will that suspend the legislative process?

**Ms. Caroline Davis:** Yes. If the leave to appeal is granted, we would then ask for a suspension to allow the appeal to wind its way through the courts. We would then work with the decision of the Supreme Court.

**Ms. Jean Crowder:** I'm not a lawyer, so does the government have to file the cross appeal once the leave to appeal is granted, or does it file its cross appeal in advance? I understand the government has signalled an intention to file a cross appeal if the leave to appeal is granted.

**Mr. Martin Reiher:** The government is opposed to the leave application of Madam McIvor and Mr. Grismer and, at the same time, has sought a conditional leave to appeal.

**Ms. Jean Crowder:** So it's conditional upon the leave to appeal being granted.

**Mr. Martin Reiher:** Right. In other words, if the Supreme Court decides to hear the matter, the government has asked the court to also allow the government to present its own arguments.

**Ms. Jean Crowder:** So the cross appeal simply means that the government is able to present its own arguments.

**Mr. Martin Reiher:** That's right.

**Ms. Jean Crowder:** Let's say the legislation is not put in place, there's no leave to appeal, and you proceed with the legislation. If the legislation is not passed by that date in April, how can a piece of federal legislation apply differently to different provinces? My understanding is that it would not apply to B.C. How can it apply differently across provincial jurisdictions?

**Mr. Martin Reiher:** Because provincial courts do not have extraterritorial jurisdiction. They have jurisdiction only within their own province.

**Ms. Jean Crowder:** So we would have different applications in the country?

**Mr. Martin Reiher:** Right.

**Ms. Jean Crowder:** That would be a bit problematic.

**Mr. Martin Reiher:** Yes.

**Ms. Jean Crowder:** With regard to the numbers, you've now revised the numbers up to 40,000. How did you come about estimating those numbers? I believe at the briefing in June the department indicated that because of various people losing status or not understanding their ability to regain status as of 1985, there may be people out there who are simply not aware that there was an ability for them to regain status.

How did you come up with 40,000?

**Ms. Caroline Davis:** Well, we hired an expert in demographics, and we've also done some detailed work with the registry of Indian status. So we're now a bit more comfortable with that number, but it's certainly not the final figure. As you mentioned, people who have lost status in the past.... 1951 was quite a long time ago. Over that period people have lost touch, and when they read about the decision and start hearing about it again, they may revive their interest in becoming Indians. We know only about the people who are actually in the registry right now, and we can take a guess about their children, who may not be Indians in the registry, but we still have information about them. We can use that for the demographic information. But for the people who are further remote, it's harder to say. We've been working away on estimates of that.

**Ms. Jean Crowder:** Out of curiosity, when you answered Mr. Russell's question you said you had e-mails from 25 who had been supportive. Is that the total number of e-mails received or have there been ones that were not supportive?

**Ms. Caroline Davis:** It was 25 last week, and I think the majority of them have been supportive.

**Ms. Jean Crowder:** So that's the total number of e-mails you received as of last week.

**Ms. Caroline Davis:** I'm sure that number will continue to grow as we do more of the regional engagement sessions.

● (1210)

**Ms. Jean Crowder:** You've acknowledged in your presentation that this is a very narrow response to the B.C. court's decision, and I think there's pretty widespread acknowledgement that there are some very serious problems. You mentioned the second-generation cut-off. My understanding is that there are other court cases wending their way through the system about various matters around status.

Are you going to go piecemeal, so as each court decision comes through and finds that the practice is discriminatory, we'll then have another piece of legislation? Why aren't we proceeding with that extensive work?

**Ms. Caroline Davis:** The level of risk involved in the McIvor decision—it's a decision that's here right now; we need to deal with it—is higher than the pending legislation, which is still going through the courts. I have to come back to the point made about the possibility of a legislative void and how difficult that would be administratively and also for the people involved. I think it's advisable to address the issue before us right now.

**Ms. Jean Crowder:** How many court cases are you aware of going through the system that are dealing with...?

**Ms. Caroline Davis:** I think there are about four or five.

**Ms. Jean Crowder:** The discussion paper of changes to the Indian Act affecting Indian registration and band membership talks about the impact of such an amendment, and there is a paragraph that talks about the fact that.... I'm sorry, the pages aren't numbered or I'd give you the page number.

**Hon. Mauril Bélanger:** They are.

**Ms. Jean Crowder:** Oh, I have the photocopy. It's where I made my notes.

It talks about the fact that the direct impact on first nations communities may be limited in such areas as demand for on-reserve housing and services. There's a lot of controversy over that, because what we have heard from first nations communities is that after Bill C-31 came into effect in 1985, there were many people who simply could not return to reserves because there were huge waiting lists.

**The Chair:** Ms. Crowder, could you please wrap up, because you're out of time.

**Ms. Jean Crowder:** Okay.

It's just that I think that statement is inaccurate. I don't think you can presume that there wouldn't be impact on housing. The simple fact of the matter is there isn't enough housing now, so even if people wanted to return they couldn't.

I wonder if I could have a quick comment on that.

**The Chair:** Go ahead. A brief response would be fine.

**Ms. Caroline Davis:** We certainly would accept that comment from a parliamentarian.

**The Chair:** I have just a brief interjection here before I go to the next speaker. Ms. Crowder raised the point here with respect to the leave to appeal to the Supreme Court. Could you just go over that again for the benefit of members. Maybe it's just me. But because Ms. McIvor announced in June that she was going to apply to appeal the B.C. Court of Appeal decision, what impact does that have on the deadline in April, or does it have any impact whatsoever?

Could you go over that again just so we understand the implications of that appeal and the cross appeal by the government?

**Ms. Caroline Davis:** Well currently the decision of the court is the British Columbia decision, so that is the one that will take effect in April. Now, if the leave to appeal is accepted by the Supreme Court—

**The Chair:** When would we likely know that?

**Ms. Caroline Davis:** It would probably be within two to three months. Well, most likely it would be before the April deadline.

**The Chair:** Okay. Carry on.

**Ms. Caroline Davis:** At that point we would then have an indication that the court decision is now under review by the Supreme Court, and at that point we would most likely file an application to have the B.C. court decision stayed during the appeal process. The Indian Act, as it is right now, would continue until the end of the Supreme Court's deliberations.

**The Chair:** And it would effectively render the deadline moot until such time as the Supreme Court has made a ruling on the McIvor question.

**Ms. Caroline Davis:** Yes.

**The Chair:** Okay, understood.

Let's go to Mr. Duncan for seven minutes, followed by Mr. Bélanger. Go ahead, Mr. Duncan.

**Mr. John Duncan:** Thank you very much.

It's on days like this that I appreciate the fact that those who advised me to pursue a legal option in my career were unsuccessful.

That was for you, Mr. Lemay.

● (1215)

**Mr. Marc Lemay:** I understand.

**Mr. John Duncan:** If the leave to appeal to the Supreme Court is unsuccessful, what is the practical implication after April 6, 2010? In other words, what does this do to the registration process?

**Ms. Caroline Davis:** It essentially means that for people who are applying to register, we would not have an administrative basis for taking a decision on their applications. The possible implications of that, you could envisage, if it's allowed to extend over an extensive period of time, would be that parents whose children are born who would be entitled to status we might not be able to register. And that would mean that over time the entitlements to medical benefits would disappear.

It's a complicated issue, and for Health Canada, certainly, we would be discussing very carefully with them exactly what would happen with benefits as of April. I would certainly hope we can find a way so that we don't have children who need medical attention and where their benefits are going to come from is questionable. That is one thing the government needs to very carefully consider before we get to that date, and we are doing that.

**Mr. John Duncan:** Are all of those implications strictly for the province of British Columbia?

**Ms. Caroline Davis:** That's correct, yes.

**Mr. John Duncan:** Would everything remain the same everywhere else?

**Ms. Caroline Davis:** Yes.

**Mr. John Duncan:** But it would only take another.... Somebody could quite readily trigger action in one of the other jurisdictions that could very quickly change that circumstance.

**Ms. Caroline Davis:** Well, they could, and certainly if somebody was excluded, if somebody in British Columbia did not get registration and thought they should, I think they could also start to raise legal actions as well. So we could get into very complicated litigious situations quite quickly.

**Mr. John Duncan:** Going backwards a bit, why did the government not implement the decision of the B.C. Supreme Court but instead appealed that decision to the Court of Appeal of British Columbia?

**Ms. Caroline Davis:** That was the step before where we are right now.

The thing was that the court didn't give us time to address the implications, unlike this, where we've had a year between the time the court decision was rendered and the time it becomes effective. The trial judge at the Supreme Court level didn't do that, so we would have immediately been in a difficult situation.

Frankly, to me, reading it—and like you, I'm not a lawyer—it was a less clear decision, and we would have needed to be sure that we were developing a remedy that was accurate towards the decision rendered.

It also seemed to reach further back in time and didn't limit itself to, as Martin explained, the transitional arrangements between 1951, the old act, and the 1985 act. It really went much further back and seemed to imply that we would need to register descendants of any woman who married out.

So the government really believed that the court's decisions relating to applying the charter in a retrospective manner shouldn't be allowed to stand, the point there being that the transition that happened in 1985 was after the charter came into effect. So we felt that the decision that came this time was a clearer and more appropriate administrative decision for us to be able to follow.

**Mr. John Duncan:** How much time do I have?

**The Chair:** You have two minutes.

**Mr. John Duncan:** Very quickly, then, can you give an indication of how many interdepartmental meetings have gone on in terms of trying to cost the implications for the federal government?

● (1220)

**Ms. Caroline Davis:** Yes. Those kinds of meetings are continuing right now. After the engagement process is completed and we've done our synthesis of the comments we've received, we will be proceeding to obtain cabinet approval for the amendment that will be proposed in Parliament. So as part of that process we do need to work with other government departments that are affected to make sure that the costing of the decision is appropriate. Those discussions have started and obviously will be continuing up until that point.

**Mr. John Duncan:** Okay, that concludes my questioning.

[*Translation*]

**The Chair:** Thank you, Mr. Duncan.

We will now begin our second round. I will hand the floor over to Mr. Lemay... I beg your pardon, it is Mr. Bélanger's turn.

**Mr. Marc Lemay:** Don't get confused!

**The Chair:** You have five minutes.

**Hon. Mauril Bélanger:** Thank you, Mr. Chair.

My questions are mainly for Mr. Duncan, rather than the other witnesses.

I want to make sure I'm being listened to.

First and foremost, may we know what the government's intentions are regarding the tabling of any bill that seeks to comply with the ruling of the British Columbia Court of Appeal? I do not expect Mr. Duncan to have an immediate answer, but I feel that it would be important for us to know, by our next meeting perhaps, exactly what kind of timeline the government has set out for the tabling of a piece of proposed legislation.

Next, what other jurisdictions, appeals or cases are similar to this one? Have they led to a similar ruling as the one handed down by the British Columbia Court of Appeal? What stages are these various cases at?

Ms. Davis, you made reference to a study carried out by an expert, and that revealed that possibly up to 40,000 citizens could be given status. Is that figure for all of Canada? If so, how many would be in British Columbia?

My last question is for you and Mr. Duncan. If the Supreme Court were to refuse an appeal, and if no bill were to be adopted, what does the government have planned to protect the persons who would find themselves in a legislative void, and Ms. Davis will provide us with their number?

Thank you.

**The Chair:** Ms. Davis.

[*English*]

**Ms. Caroline Davis:** On the question for me about other jurisdictions and other cases, what I think we would suggest is that we provide you with that information in writing as a follow-up. I haven't brought it with me today and I don't want to mislead you possibly.

**The Chair:** On the other questions?

**Ms. Caroline Davis:** On the timetable I would defer to Mr. Duncan, but certainly as we approach the April date, we can talk to you further about our plans for making sure nobody falls into this legal void.

**Hon. Mauril Bélanger:** How many people will be affected in B. C.? We have 40,000 identified in Canada.

**Ms. Caroline Davis:** We have 40,000 altogether. We'd have to take a look at that and bring that back.

**Hon. Mauril Bélanger:** Is that study a document you're prepared to share with the committee?

**Ms. Caroline Davis:** It isn't completed yet, but is still being worked on.

**Hon. Mauril Bélanger:** And once it's completed?

**Ms. Caroline Davis:** Once it's completed, we could certainly.... It will be background information that I believe we could provide to the committee, yes.

**Hon. Mauril Bélanger:** Will you undertake to do that?

**Ms. Caroline Davis:** I could undertake to do that, yes.

**Hon. Mauril Bélanger:** Thank you.

Mr. Duncan, are there any hopes of getting a sense of the timetable the government has in mind?

**Mr. John Duncan:** You know how government works; you've been there.

● (1225)

**Hon. Mauril Bélanger:** I don't know how your government works. That's why I'm asking.

**An hon. member:** Oh, come on!

**Mr. John Duncan:** The government and senior bureaucracy work on a similar timetable to when you were there, Mauril. There are so many things to take into account, I don't even think it's realistic to ask the kind of question you're asking and to expect detail on it.

**Hon. Mauril Bélanger:** Mr. Chairman, since I've been put on the spot here about knowing how governments work, I do know. And I do know there are legislative agendas prepared by cabinet with very serious timeframes as to when documents come to cabinet for approval for tabling of legislation in the House. I understand Mr. Duncan may not want to answer and may not know the answer. I respect that too.

My question was not to start any political posturing. Rather, it was to ask, is there a timetable the government has in mind to introduce legislation? Pure and simple.

**Mr. John Duncan:** That's probably a good question for your house leader to ask our house leader; that would be an appropriate venue for that.

I have never been asked that question in a public forum before. I'll certainly follow up on your question, but I don't think that's generally put into the public domain until things are much clearer.

**Hon. Mauril Bélanger:** Mr. Chairman, with all due respect, we know there is legislation required before April 6, 2010.

**Mr. John Duncan:** Just hang on a second.

**The Chair:** Mr. Bélanger, what we have in front of us here, what we've been given today, is in fact a timetable. The departmental representatives have indicated that the timetable is prior to April 2010. The engagement process is set to run until November 13, if I recall, and the indication is that legislation will be forthcoming on a priority basis. But as to dates and specifics, I don't know.

Mine are much like Mr. Duncan's comments. The parliamentary secretary is unable to quantify a timeframe around legislative scheduling.

**Hon. Mauril Bélanger:** I'll make it simple, Mr. Chairman. Can we expect legislation before the House before the end of this calendar year?

**The Chair:** We really don't know, and I don't know that we're in a position, nor is the department nor the parliamentary secretary, to answer that, except with what we've heard today.

The looming deadline is April. House leaders have to take into account the process and time that it takes to move bills through the House and the Senate to get bills passed with royal assent before the deadline.

We're over time now, and we are now going to the government.

**Mr. John Duncan:** We have no further questions.

[*Translation*]

**The Chair:** Mr. Lemay, you have five minutes.

[*English*]

**Mr. Marc Lemay:** I can ask for many minutes.

[*Translation*]

Based on my experience, I would be very surprised if the Supreme Court refused to hear this extremely important case. With all due respect to my colleague, I believe that this debate must be held as a matter of national interest.

If I understood correctly, Ms. Davis, you are saying that the government would automatically request that the Supreme Court, or the British Columbia Court of Appeal suspend the application, up until the Supreme Court has made its ruling.

[*English*]

**Ms. Caroline Davis:** That's right.

[*Translation*]

**Mr. Marc Lemay:** If I understand correctly, we are fine. However, I wonder if it would not be in your interest to have the matter resolved right away. I understand that the Canadian government will object to the request made by Ms. McIvor to the Supreme Court. I do not know what the arguments are, as I have not yet read what the government will be submitting. This litigation is based on section 15 of the Charter.

Do you not believe that even your own project may be defeated or challenged under section 15? Do you have any reassurances? This is a good legal question, is it not?

● (1230)

**Mr. Martin Reiher:** The decision to not encourage the Supreme Court to make a ruling on the matter and to not appeal it was based on the government's belief that it will be able to proceed. There are many reasons that justify this decision.

**Mr. Marc Lemay:** As for the rest, is it not in your interest to move ahead? Do you believe that your proposed amendments will stand up to section 15 of the charter? Do you have any information on that?

**Mr. Martin Reiher:** When a bill is tabled in Parliament, all departments make an effort to make sure that they are consistent with the charter, among others. We proceed in the same manner for the case at hand. We believe that what has been proposed addresses the inequality that was pointed out by the British Columbia Court of Appeal.

**Mr. Marc Lemay:** What is the most recent news about the very expensive registries that were set up in certain communities so that people would be able to register their own citizens and their own aboriginals? Will the government respect the decisions made by these communities, or challenge them? Will they allow communities to continue moving ahead?

**Mr. Martin Reiher:** With respect to the Indian Registry, you are right: in most communities, if not all, there are registry administrators who apply the same rules as the main registrar. As concerns registration of persons born on a reserve, for example, the rules under the Indian Act are applied in a very straightforward manner, exactly the same way as a registrar would apply them.

With respect to band membership, rules can vary. In some cases, the first nations have taken control of membership rules. Right now, the first nations may establish their own rules and have their own system. Their system will remain intact, and the amendments should not have an impact.

**Mr. Marc Lemay:** Okay, thank you.

Do I have any time left?

**The Chair:** Yes, just under 30 seconds.

**Mr. Marc Lemay:** Please give them to Ms. Crowder.

**The Chair:** Ms. Crowder.

[*English*]

**Ms. Jean Crowder:** I wanted to follow up on the line of questioning Monsieur Lemay started around the membership lists. I think there is some confusion out there.

I'm understanding you to say that where there is membership code in place, this particular amendment doesn't apply unless it's part of their membership code.

**Mr. Martin Reiher:** That's correct. The amendment will include rules mainly for registration but also for membership. The goal is to disrupt the membership as little as possible.

**Ms. Jean Crowder:** It's on page 8. You've indicated that 230 bands have their own membership codes. Can you tell me what the difference is between what the government considers status in those bands and the membership numbers? Do you have that information? My understanding is that a band could have people they designated as members, but because the government doesn't recognize the status, there's not funding at the same level, right? That government only funds based on who they recognize as status, not who the band recognizes as members.

**Ms. Caroline Davis:** That's true. To your question, do we know what the membership codes are. We know some of them.

**Ms. Jean Crowder:** Actually—I'm sorry—my question wasn't, do you know what the membership codes are? It was, do you have the difference in numbers between the number of people bands recognize as members under their codes and what the government recognizes as registered status people in that same band?

**Ms. Caroline Davis:** No, we wouldn't have that; we just have the information that's in the registry.

**Ms. Jean Crowder:** Right. So you do know what the registry numbers are?

**Ms. Caroline Davis:** Yes. Just to explain a bit further, at the time that a membership code is adopted by a first nation, we would know how many people they have as registered Indians, and so we could look at the membership code and decide how many people are likely to become members—we couldn't be certain. As time goes on and moves further away from the day that the membership code was adopted by the first nation, there's a chance that the difference would become wider.

We don't collect information; it's the first nation's membership code.

● (1235)

**Ms. Jean Crowder:** Still on page 8, you've indicated that your numbers could indicate an increase of about 3% to 5% in the existing status population. I want to come back to my comment around housing and, in this document, the comment that there wasn't a significant impact—that's in 1985. If there is a projected 3% to 5% increase, would that mean a 3% to 5% increase in the budget for status? Is that part of your impact analysis?

**Ms. Caroline Davis:** We are looking at a range of costing possibilities and would be presenting to the government various options about how they might like to implement this. All those discussions have yet to happen. Certainly there would be some careful decisions about what should be put in the spending estimates as a result of this decision.

**Ms. Jean Crowder:** I touched on the need of an overhaul, and in your presentation you mentioned that.... It sounds as though there's no current firm plan in place to look at the overhaul. Is this overhaul on the agenda at all? You and I have had the discussion before about the second-generation cut-off and the impact it's having on communities, and there are any number of other issues. Thinking about an overhaul and putting a plan in place are two different things. Is it on the agenda at all?

**Ms. Caroline Davis:** It really depends on whether a consensus were to emerge about how it could possibly be done. I think I mentioned in my opening statements that there would be various differing opinions about the impact of this, and I think we're a way off yet from reaching a point where it becomes important and on everybody's agenda.

**Ms. Jean Crowder:** Concerning the regional engagements, I think you mentioned a number—15 roughly—

**Ms. Caroline Davis:** Yes.

**Ms. Jean Crowder:** —and are there more planned?

**Ms. Caroline Davis:** Yes. We've done five, and there are more planned.

**Ms. Jean Crowder:** How is the information...? Is it by invitation, or is there a broad invitation that goes out to have people attend?

**Ms. Caroline Davis:** We're in touch with regional aboriginal organizations; the First Nations Summit in British Columbia, as an example. Through our regional offices, we have been in contact with those organizations. Who they invite to the sessions is really their own decision.

**Ms. Jean Crowder:** So it's the regional aboriginal organizations that are doing the invitations to the sessions?

**Ms. Caroline Davis:** Yes.

**Ms. Jean Crowder:** Are friendship centres included in this?

**Ms. Caroline Davis:** Yes, we have been working with the friendship centre movement as well, and it's important that they receive the same information.

**Ms. Jean Crowder:** Yes, because of course they're often servicing the urban aboriginal area, where there isn't necessarily another formal organization that represents them.

**Ms. Caroline Davis:** Yes, exactly, and aboriginal people in the cities would find it harder to get this information, as well.

**Ms. Jean Crowder:** Okay, thank you.

**The Chair:** That finishes it off.

Are there other questions from members at this point? I have one question I would like to ask, following along on a similar line to the one Madame Crowder posed.

Is this what I heard from Monsieur Reiher: the principle that a community has the right to determine its own membership? I suppose there are treaty rights in place that would allow the same.

Can you speak to how you would reconcile the gaps or differences —or are there are any gaps or differences?—when a community imposes its own membership? Is it done, for example, with the sanction of the department? How do you reconcile a difference, if there is one, between what your registry provides and is defined in law and what the band chooses to proceed with in defining the membership question?

**Mr. Martin Reiher:** Maybe I can give some clarification on what we're talking about here in terms of membership.

Since 1985, the Indian Act has allowed bands, first nations, to take over control of their membership. In order to do that, they have to ask their members for a vote, and there has to be a majority vote. Then they have to submit membership rules, adopt membership rules for that purpose. And these membership codes then apply for the determination of membership. That is all allowed by the Indian Act.

There are provisions in the Indian Act for membership for those bands that choose not to take over control of their membership. So there are two sets of rules, if you will.

What is proposed for these amendments is that membership entitlement, for those bands that have not taken over control of membership, would follow under the same rules that currently exist for these bands. With respect to the bands that have decided to take over control of membership, their own code would determine whether the new status Indian would be entitled to membership or not.

● (1240)

**The Chair:** But in the latter case, provided they followed the process that was prescribed, that in turn would be amply recognized by the act. But there's a default position if they make the choice not to proceed in that direction. The act covers them in the usual way, as prescribed by the act. Okay, I just needed to understand.

Is there another question?

Mr. Bagnell.

**Hon. Larry Bagnell:** I'm just following up on that same topic.

Some self-governing chiefs have argued that because there are more memberships now in their community than there are status Indians allowed by the act, their government—now that it's a government—is required to provide a number of services to its members. They're getting a lot of grief because some of these programs are transferred to those self-governing nations, but there aren't moneys transferred for the ones that are not status, of course, and so they have to provide a service to more people than they're getting money for.

Have you heard of that problem? And second of all, are you trying to grapple with it?

**Ms. Caroline Davis:** No, that would really be outside my area of expertise, and it would be more into the part of the department that's responsible for implementing the self-government agreements, Mr. Bagnell.

Just very briefly, when there is a self-government agreement, it's always accompanied by a financial agreement that supports the objectives of the new government, and so it's a process of negotiations. Really here, it's not related to the Indian Act particularly, so it becomes not something that I'm busy with.

**The Chair:** Okay.

Well clearly, members, this is an area we're going to have to follow very closely over the next few months to see what transpires. Members may want to revisit this, depending on how events unfold. As we've heard, we may also have some legislation in front of us, in fact, as this session proceeds.

There being no other questions or comments, I'd like to thank our two department officials for coming and helping us with this rather complex issue, and I thank members for their questions.

We will see you back on Tuesday, actually, hopefully in one of the larger rooms, either the Railway Room or Reading Room as the case may be, for presentations from 11 a.m. to 2 p.m. from our newly elected aboriginal leaders.

Thank you very much. *Bonne fin de semaine*.

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