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Chair

Mr. Bruce Stanton

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● (0900)

[*Translation*]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Members, guests and witnesses, especially Minister Strahl, good morning. This is the seventh meeting of the Standing Committee on Aboriginal Affairs and Northern Development. I will review today's agenda.

[*English*]

This morning we welcome Minister Strahl, the Minister of Indian Affairs and Northern Development.

Members, this is our first meeting pursuant to the order of reference given March 29, 2010, *project de loi C-3*, an act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in McIvor v. Canada, Registrar of Indian and Northern Affairs.

Members, we have a short period of time with Minister Strahl. He's made his schedule available. We appreciate your patience in the time change here this morning as well. We're going to start right away with Minister Strahl.

Minister, I understand we have until approximately 9:40 or so. Is that correct?

We'll do our best through your opening presentation and then we'll go directly to questions from members.

You have the floor.

Hon. Chuck Strahl (Minister of Indian Affairs and Northern Development): Thank you very much, Mr. Chairman.

It's a pleasure to appear before you again. This is twice in one month. I don't want to wear out my welcome, but it is good to be back to speak in support of Bill C-3, the Gender Equity in Indian Registration Act.

The officials with me are Roy Gray, director of strategic initiatives and operational policy; Brenda Kustra, director general, governance branch; and Martin Reiher, senior counsel.

I'd be pleased to respond to questions following my formal remarks. I know there are a lot of technical questions on this, which you can put to the officials as well.

[*Translation*]

Bill C-3 proposes to amend the Indian Act and to eliminate a case of gender discrimination. To appreciate the logic behind the proposed legislation, however, we must first understand the problem Bill C-3 aims to fix.

[*English*]

Last year, the Court of Appeal for British Columbia issued a decision in McIvor v. Canada. The ruling required the Government of Canada to amend certain registration provisions of the Indian Act that the court identified as unconstitutional, as they were inconsistent with the equality provision of the Charter of Rights and Freedoms.

The court suspended the effect of its declaration until April 6 of this year. In other words, if no solution is in place at that time, paragraphs 6(1)(a) and 6(1)(c) of the Indian Act, dealing with an individual's entitlement to registration for Indian status will, for all intents and purposes, cease to exist in the province of British Columbia. This would create uncertainty, and most importantly, this legislative cap would prevent the registration of individuals associated with British Columbia bands.

Even though we've sought an extension on the implementation of the Court of Appeal for British Columbia's decision in McIvor v. Canada, we must continue to work toward resolving this issue as quickly as possible. We've asked for this extension. They could rule on that as early as today, or later on today, but it shouldn't be perceived as an opportunity to delay the process of Bill C-3, as this bill will rectify a long-standing case of gender discrimination. The longer it's left hanging out there, the more embarrassing and more discriminatory it becomes.

I want to emphasize that Bill C-3 offers a solution to the specific issues identified by the court, by amending the Indian Act to eliminate the language that gives rise to the gender discrimination identified in section 6. At the same time, issues that we raised during the engagement process last fall surrounding things like registration, membership, and citizenship are very complex and there's no consensus on them. We know that broader reform of these matters cannot be developed overnight. It certainly can't be developed in isolation, and it certainly can't be developed without the input of aboriginal people themselves.

Mr. Chair, as committee members are aware, I've announced that over the next few months we will be setting up a separate exploratory process to gain further insight into these issues, as was requested by many first nations during the consultative and engagement process. These matters will be explored through a joint process, to be developed in conjunction with various national aboriginal organizations and with the participation of first nations and other aboriginal groups and individuals across the country.

Mr. Chair, the impact of this bill will be important. We expect some 45,000 people to be newly entitled to register as status Indians. In anticipation of this influx of requests, the Indian registration program has developed an implementation strategy to efficiently deal with the new applications for registration under the Indian Act, in accordance with their proposed amendments.

The Government of Canada is also carefully examining the program and financial impacts associated with the implementation of the bill. An internal financial impact working group has been established to examine all the costs associated with the implementation of the proposed legislation.

The legislation now before us proposes to change the provision used to confer Indian status on the children of women such as Ms. McIvor. Instead of subsection 6(2), these children would acquire status through subsection 6(1). This would eliminate the gender-based discrimination identified by the court.

Mr. Chair, as I mentioned earlier, it's also important to recognize that Bill C-3 offers a solution to the specific issues identified by the court, and does so in a tightly focused fashion in order to respect the deadline established by the court. We can all appreciate the need to act quickly, I think, to respond to the court's ruling and to provide new entitlement to registration in a timely way.

The separate exploratory process will allow for an exploration of broader concerns brought forward during the engagement process last fall. As I mentioned earlier, these issues are complex. There's a diversity of views among first nations on them. For this reason, we'll be undertaking a collaborative process with the national aboriginal organizations to plan, organize, and implement forums and activities that will focus on gathering information and identifying broader issues for discussion. The exploratory process itself will be inclusive and will encourage the participation of aboriginal organizations, groups, individuals, and other interested parties at the national, regional, and community levels.

It's important to note that I don't have any intention to predetermine the range of activities that will be carried out in partnership with the national organizations. What we hope to do over the next few weeks is meet with these organizations.

● (0905)

We've already started those meetings to discuss and plan those activities that will take place over the coming years and that we hope will involve the participation of a wide range of aboriginal groups and individuals. I'm confident that the exploratory process will provide the opportunity for a comprehensive discussion and assessment of those broader issues. Again, that work needs to be done separately, I believe, from the legislation itself. This allows us to focus our attention on the legislation now before us and the solution it offers to the specific concerns identified by the Court of Appeal in British Columbia.

I'm convinced that's the best way forward. As parliamentarians, we know the importance being placed on us by the Court of Appeal of British Columbia to provide a legislative solution to a recognized case of gender discrimination. It's a compact piece of legislation, and it's my hope that Bill C-3 can make swift progress through Parliament and deal with that discrimination as quickly as possible.

[*Translation*]

The proposed legislation has much to recommend it: it proposes a timely and direct response to the ruling of the Court of Appeal of British Columbia. In addition, it eliminates a cause of gender discrimination.

In essence, Bill C-3 represents a progressive step by a country committed to the ideals of justice and equality.

[*English*]

Merci. Thank you.

The Chair: Thank you very much, Mr. Minister.

Now we'll go directly to questions. Members, where normally we have a minister, we're allowed a bit of room here in terms of manoeuvring, but in that we only have a short period of time, I would ask that we need to stay on the orders of the day because of the timelines here. It's important.

So let's go to Madame Neville, who will be our first questioner for seven minutes.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much, and thank you, Minister, for being here today. I appreciate the opportunity to hear from you.

You talk about this over and over again, that it's a very complex issue, and I think those of us who have looked at it and looked at the royal commission charts and your own department's analysis would agree that it's a very complex issue. I have a number of questions, some coming out of the language you used in your presentation this morning. I'll save some of the others for the officials after you leave.

I guess what I'm most concerned about is that Bill C-31, when originally passed, was hailed as the answer, and we know there were significant unintended consequences. Have you and your department done a comprehensive analysis of the consequences of the legislation as you're presenting it today? If so, could you speak to it, and could we see it?

● (0910)

Hon. Chuck Strahl: The officials may want to talk about the comprehensiveness of the analysis, but certainly one of the things we did do is engage a demographic expert to tell us, first of all, how many people may be affected by this. It's a bit of a guessing game because these people haven't been identified. There's no list or roster of these people. You're taking some guesswork in here. But rather than just do guesswork from the point of view of the Registrar of Indians or the department, we did hire an expert to do a demographic analysis. This person has some expertise in the area and came up with some rough numbers as to the number of people who could be affected.

The difficulty in all of the analysis I've seen at least to date and what people are unsure of is that this is going to be an application-driven process. People are going to have to apply to get their status. So although there's potentially, say, 45,000, give or take, we don't know how many of them will apply. If they apply, how many of them will say that having applied, they'd like to become a member of the local first nation, join their membership roster? It's one thing to get status; it's another thing to get membership. Then, of course, there is more than one type of membership. There are those who use the Indian Act membership system and those who have a custom code local membership. So they determine their own roster of people who are there. Even at that, what will be the impact on some of the more general programs like the non-insured health benefits, for example, versus those benefits and things they may get if they're a member of the reserve? Furthermore, they may decide to move back to the reserve.

So all of those things are up in the air, and it has made it very difficult to do an analysis of exactly what the impact will be until we see how some of those things work out.

Hon. Anita Neville: I'm not trying to be argumentative at all, but what I want to know is this. Have you taken a figure, and have you done an analysis, based on that figure, of the impact on government?

The other comment I'm hearing is that the interpretation, as you're putting it forward, is a very narrow interpretation. I'm struck by the language you have in here—"tightly focused"—and I'm really concerned that there are consequences that will create additional issues both for government and for communities.

Before you answer, let me just get my other question in. I'm struck by your language again in here. You talk about "exploratory process", "engagement process". Is that what you would call a consultation process? Or do you see that as something different?

Hon. Chuck Strahl: You're right in that the language is important because it always means different things to different people, so we do try to use consistent language.

When we fanned out across the country over the last year, we held a dozen or so different meetings. We met both with technical people in the first nations communities and more broadly right across the country with different groups on an almost province-by-province way to try to get input on it and so on. This is one of those times when I think we just have to admit that there is no consensus out there on the bigger, broader issues.

The reason it's tightly focused is that we're just trying to deal with the Court of Appeal's case and what they told us to do. They were pretty specific on what we should do. We have to respond to that. The courts have decided on that. I think it's pretty obviously a gender discrimination issue.

But I freely admit that there are many other issues out there. The trouble is, as soon as we start to say, "Well, we'll do this and then fix several other things in the act and we'll toss in some other things that we heard on our travels", right away there is no consensus. There is a lot of agreement that we have to fix gender discrimination, and you can find a pretty broad consensus on that, and the courts have ordered us to do that anyway, but when it comes to many of the other issues.... For example, when I was in Saskatchewan, the FSIN said, "We have a citizenship act that we think you should incorporate." So I said to the AFN, "Well, is the citizenship act the position of the AFN nationally? Is that the position?" They said, "No, that's Saskatchewan's position."

● (0915)

Hon. Anita Neville: I understand that.

Hon. Chuck Strahl: We'd talk to a women's group and they'd say, "Well, there's another issue here", and then you'd go back to another group and they'd say, "Well, that's their position, but it's not ours."

I think what we should do is try to fix the gender discrimination issue. Internally, we have a group of experts, which I mentioned in my last appearance here—I can give you the names again—to try to figure out the financial impacts on the government, which are still somewhat unknown but certainly knowable. And we're going to have a study on that internal group and then use the exploratory process to try to see if there is a consensus on some of the other issues, including some of the unintended consequences you mention.

But my sense is that if we keep it narrow, the unintended consequences will be minimized and this will just make it, for better or worse, at least the same for men and women, which is at least something we can't say right now.

The Chair: Okay.

[*Translation*]

Thank you, Ms. Neville.

Mr. Lemay, you may take the floor. You have seven minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you for being here, Mr. Minister. You are accompanied by people who are probably very competent when it comes to the inclusion of aboriginal communities.

There is consensus of sorts here on Bill C-3. I don't think that many people will question the merits of this bill. I say this with all due respect. I feel that this is a good bill that is aimed at resolving an issue brought up by the Court of Appeal of British Columbia and that is making the government get involved.

However, I feel that there is a problem with what you said. Quebec's Aboriginal communities have told me that Bill C-3, which seeks to resolve the problem caused by section 6 of the Act, does not settle the issue of belonging to the community. I will elaborate on this point. If Bill C-3 passes—and I believe that it will pass without many amendments because it meets a need—there will be a problem with reintegrating Aboriginals into reserves with their own membership codes. Authorities are saying that even if Ms. Jane Doe or her children are granted Registered Indian status, people will not accept them in their communities.

Could we add to Bill C-3 a provision that would make it possible to integrate membership codes that already exist? I am mainly referring to the Abenakis of Odanak and several other communities that already have membership codes. This is my first and probably most important question.

You have formed a panel of experts to examine an issue. I would like to know the names of the experts and their qualifications. I would especially like to have in writing the mandate that the Minister has given the panel. If we were familiar with the mandate, we would perhaps be better able to respond to those who will appear before us to answer the first question I asked you.

So, there it is, Mr. Minister. I would like to remind you that my first question is important.

Hon. Chuck Strahl: I agree with you, it is very important. It is also very difficult and complex, and opinions on the subject vary.

● (0920)

[*English*]

For example, there are 800,000 aboriginal people in Canada who have Indian status. About 480,000 of them belong to section 11 bands. When you acquire status or have status, you automatically become members of those bands.

There are 297,000 first nations who belong to section 10 bands. Those are people who have their own membership lists. They don't come to us to ask permission. They make their own membership lists. Membership is not based on status; it's based on that community's desire of who can be a member.

[*Translation*]

Mr. Marc Lemay: You say that these lists were not based on Registered Indians status. What were they based on? What is the internal code of a band based on? Is it not based on a section of the Act?

[*English*]

Hon. Chuck Strahl: Yes, the section 10 bands have their own internal codes, if you will, for who can be a band member. So it is possible in some bands not to be a status Indian but to have membership in the band. For example, they may say that if somebody marries someone else without status, they are still a member of the band. They have no status and can't take a status card and ask for non-insured health benefits, for example. It may not be possible. However, in the same way, just because you have a status card, it doesn't give you a free ticket into that community. The community, under section 10, has its own membership list, and they maintain that list. They don't talk to us about it.

You can imagine the complexity of this. I think it would be very difficult to legislate this. It's almost evenly split, right? Somebody says that if you get status you can become a member of my band. An almost equal number say that if you get status that has nothing to do with my band membership.

If we were to try to legislate that in this bill or even at a future date, you can see the difficulty and complexity, where somebody says, “My band membership”—my band citizenship, as many first nations call it—“in my nation is not determined by Ottawa; it is determined by us.” They say, “Don't mess with our citizenship.” That's why the Saskatchewan first nations and the Anishinabe first nations, and many others, have developed their own codes that their communities are comfortable with. That's why status does not equal membership, and I don't think a lot of people out in the world know that. It's just one of the many complexities involved. I'm afraid that if we opened this up in this bill, it would be a nightmare. We wouldn't have this bill solved in our lifetime, I think.

However, it needs to be part of the exploratory process, because people say that with membership come other privileges, such as access to housing and other programs. So it's darned important, but so important that to put it into this bill would require you to hear witnesses for a year. Even then, you would probably have two sides on the issue.

[*Translation*]

The Chair: Thank you, Mr. Lemay.

Ms. Crowder, you have seven minutes.

[*English*]

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair, and thank you, Minister, for coming.

I echo others' support for this legislation because it's in response to a court decision. However, I think we are being challenged by the fact that we're seeing piecemeal amendments to the Indian Act in response to court decisions.

Just as we saw with Bill C-31 in 1985, I think all of us are very nervous about unintended consequences. I was reviewing some of the impacts of Bill C-31. I know that you're well aware of them, but what we're hearing from people are some of the same concerns they had with Bill C-31 regarding increased financial pressure on first nations. I know there is a working group addressing that, but as you know, even today first nations are still struggling with the unintended consequences of some of the financial pressures. Bill C-31 created huge divisions within communities, and again, I know you're aware of those. The most serious unintended consequence of Bill C-31 was the second generation cut-off rule, leading to what some people are calling legislated assimilation. So I think a lot of us are really anxious about some possible unintended consequences from this bill.

However, there are a couple of other issues I would like you to address. One is the issue around resources. I was reviewing a paper, the “First Nations Registration (Status) and Membership Research Report” from July 2008. It was by the joint AFN-INAC technical working group. They raised some issues around program funding and community cohesion in their research report. They indicated that because of the differences in citizenship and status, which you've already referred to, bands who have their own citizenship codes and allow people without status to become band members are penalized financially, because they provide housing and other services to people who they agree have citizenship but may not have status.

In the case before us, we know that resources are becoming a huge issue. There are two questions. People may regain status, and you have a working group looking at resources around that, but status people may have relatives who are not status Indians who come and live with them. So what kind of approach are you taking to that?

The second question I have for you is around the exploratory process. I think many of us applauded the work of Wendy Grant-John on the matrimonial real property process. However, when her report came forward, many of the recommendations were not included in the matrimonial real property bill, which I understand has been retabled in the Senate.

What degree of comfort will the people involved in this exploratory process have that the government will actually incorporate their recommendations, if they come to some consensus and their recommendations are brought forward?

● (0925)

Hon. Chuck Strahl: That's a fair question.

The reason we called it an exploratory process, at least at this stage, is because we're being pretty open-ended as to what it might look like. Even to design the process itself, I'm being open-ended. If I said, here we go, we have three months, we're going to have 10 town hall meetings and that's the end of it—I'm not doing any of that because clearly there's a bunch of issues on the table, these meetings have already started to take place, and they'll continue.... Even the design of the exploratory process itself is now part of the discussions we're having. We're having pre-discussion discussions, in other words, to try to get it as right as we can. Even then, my guess is that all of us, including first nations groups, are going to be careful as to how much we're going to commit to in this process. For example, if they say there seems to be a consensus moving out there that we should all move to section 11 bands, there are going to be others who say, “Over my dead body.” They're not going to say, “Whatever you agree to in the end, we're in.” They're going to be careful on this. This is at the core of being a first nation or aboriginal group and community.

My guess is that at this stage, at least, they're going to say they want to hear from everybody and see if there's a consensus. While maybe not on everything, maybe there are some good key consensus things we can come to. But even in first nations communities they're being careful. I'm sure you'll talk to the NAOs and hear that they've not signing on a dotted line saying, “At the end of this process, if you see a consensus, we're all in.”

Of all the things I've talked to, citizenship for a first nation is one of the most tightly held rights. They say, “The last thing we want is Ottawa mucking in my citizenship.”

Ms. Jean Crowder: That's reasonable, because many nations hold a nation-to-nation belief, so for them citizenship is fundamental. But then the funding issue becomes a huge problem.

Hon. Chuck Strahl: I only used that because it points to how, on all sides of the discussion, people at the onset of the exploratory talks are going to have difficulty saying that at the end of the exploratory talks they have all signed on, that whatever is said or decided, they're all in.

Ms. Jean Crowder: Can you touch on the funding? I'm probably running out of time here.

Hon. Chuck Strahl: First, I didn't answer Monsieur Lemay's question. Officials are happy to talk about the committee. I mentioned who was on there, but we can certainly get that in written form as well and describe the kinds of issues they're dealing with. By all means, we can get into that later or at the next question.

The funding issue is obviously an important one, but it's based on a bunch of other what ifs that we don't know at this stage. If there are 45,000 people—just pick a number—then 45,000 are going to acquire status. How many of those are going to want to move back to the reserve?

● (0930)

Ms. Jean Crowder: But it's not even that, because people are eligible for non-insured health benefits and post-secondary assistance even if they live off reserve. There's the on-reserve, off-reserve issue. There's a broader funding issue even if they don't live on reserve, which is a huge problem because of housing wait lists.

Hon. Chuck Strahl: I think those are some of the easier questions to answer, which is part of what this panel has been set up to do. Of course, it involves much more than our department. Our department handles some of it, but the health department delivers the others. So the health department is involved in this, and there are the experts, such as the financial experts, but also people who can make sure the process is complete, who don't miss any of the unintended consequences, and that will allow us to put some numbers to this.

I feel badly in that it's hard to say that it's cut and dried and here it is, because of all the uncertainties. That's why the bill itself is one thing, but understandably, both the exploratory process and this internal committee has much work to do in order to show exactly what may happen. Even then, it won't be options. It'll be, if this happens, this is the consequence; however, if this happens, this is the consequence. They're going to have to lay out for us what may be the consequences, because there are so many variables that will follow this bill.

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

Now let's go to Mr. Duncan for seven minutes.

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

Good morning, Minister.

My question is quite simple. We know there will be a vacuum in the law if this bill is not through by April 6, and that's very unlikely. I just wondered if you could explain the consequences for the period of time after that.

Hon. Chuck Strahl: Thank you.

Of course, I appreciate the efforts of members of this committee in the House to get this bill to committee and to deal with it as quickly as possible. I appreciate that, and I appreciate your words about understanding the importance of the bill. And of course we're responding to a court order.

I think I mentioned this the last time I was here, but just to confirm it, we've also applied to the court for an extension. I don't know if they'll give it to us, but they can see that we've tabled the legislation. I think every good faith measure has been taken to try to get this done as quickly as possible. They may or may not grant us an extension. That's up to the court.

If no extension is granted on the suspension of the application of the court ruling, what that means is that the decision of the Court of Appeal in British Columbia only applies in British Columbia. In other words, it won't apply right across the country. This will only apply in British Columbia. So the coming into force of the invalidity of that section would mean that no new registrations could be made in British Columbia.

Now it's important to reassure people that this does not affect anyone who has status. Anyone who has status maintains status. The rest of the country isn't affected at all. It's business as usual in nine provinces and in the territories. And people who have to renew their cards or their status in British Columbia aren't affected. They'll be able to renew. Who it affects are those people in the subsections 6(1) and 6(2) categories, and it would only apply, again, in British Columbia.

Obviously, it's not ideal, but it's not the end of the world if we take a couple of weeks to get this done. Again, just to assure people, no person with Indian status in the country will lose status. No one will. That's just to assure people, because there are rumours out there.

The other provinces won't be affected at all. What you've been used to dealing with is exactly what you'll deal with post-April 6. Within British Columbia itself, if they don't grant an extension, it will only apply to that very narrow group of people who fit into the court's ruling itself.

Overall, it's not good, because it perpetuates the gender inequity. But I think if we can get this through fairly quickly, the number of people who are going to be affected will be affected only for weeks, a couple of weeks maybe, or however long it takes, and only in the one province. It's serious, but it's not a crisis. It's not as if people are not going to be able to get their status cards or need to worry about their current status. That's not the impact. But obviously, I think it's important that we try to deal with the court ruling on an important charter issue as quickly as possible.

● (0935)

Mr. John Duncan: Thank you for that.

In the Speech from the Throne there was a commitment to further protect the rights of aboriginal people, particularly women, living on reserve. I think what we've just tabled as the government in the Senate is an example of that. Perhaps you could describe that situation as well.

Hon. Chuck Strahl: Right.

It is another rights bill, if you will. It tries to be consistent with the recommendations, and admonitions even, that we've had from both national and international rights groups who see this as a real gap in the Canadian legislative system. Currently there are no provisions for real property rights, if you will, on reserves in the case of a marriage breakdown or a partnership breakdown.

Most Canadians take it pretty much for granted now. We've gone through the evolution of the Divorce Act and the consequences of many, many, many court rulings that have kind of honed what happens in the unfortunate dissolution of a marriage or a long-term relationship.

But on reserve there's no such protection. The Indian Act is silent on that, so depending on the local traditions or depending on almost the whim...across the country, people are treated in different ways following that breakup. So in some cases, it may be a very peaceful and equitable distribution of those assets. Somebody says, “I've got $50,000 sunk into this home and assets and everything from furniture to you name it, and it's half mine,” and everyone agrees. If everybody agrees, the world's a very peaceful place. But what happens, unfortunately, when there's acrimony or if there isn't any goodwill between the partners, then it's just.... You know, it could go any way.

What usually happens, unfortunately—far too often, as we see in society generally—is aboriginal women and children come out on the short end of that. There's no way to enforce a distribution of those real property assets. So if you come home and the lock is changed on the front door, who do you go to? Normally, in society at large, you'd say that if you had to—if it was going to be nasty like this—you would go to the court and get the court to make a ruling of some sort. But on reserves there is no provision to deal with that. So you're completely at the whim of the person changing the lock. That means that often—not always but often—that's the women, and usually women are the caretakers of the children as well, and that means women and children, in my opinion, are disproportionately affected.

So my hope is that the bill will get a good hearing and will become law. I think an important consideration in that is that it addresses the principle, but it also is very respectful of the fact that first nations, if in that bill, will have the right—and I would encourage them—to develop their own matrimonial property laws that will apply to their nation. Then they don't have to check with us and this committee or me and my department. They just put those laws and rules in place and those become the effective rules in that community. So it's respectful of first nation authority, but it makes sure that we don't have a gap on reserves.

The Chair: Thank you, Mr. Duncan.

This would be an appropriate time to.... We have finished our first round. We'll take the second round after the minister leaves.

I understand you have to get to another committee meeting, and we do appreciate you giving us, on rather short notice, this time slot this morning, Minister.

We'll take just a very brief recess, members, and then we'll come back and continue the regular questioning into the second and third rounds. Okay?

We will suspend.

● (0935)

(Pause)

● (0940)

The Chair: Let's continue, members.

I'd ask everyone to make their way back to the table.

It was perhaps a little premature to ask everyone to come back. I didn't realize that at least a third of our panel was getting refreshments at the back, but all the better. We'll keep going, because we have another hour and 15 minutes to continue.

At this time, I'd like to properly introduce the representatives we have from the Department of Indian Affairs and Northern Development. I welcome back Mr. Martin Reiher, senior counsel. He's actually, I should say, with the Department of Justice. Good to see you back, Mr. Reiher.

We also have, from INAC, Roy Gray, director of the resolution and individual affairs sector. Mr. Gray has been in front of us before as well. Welcome back.

We have Brenda Kustra, director general of governance for the department.

We'll continue, as I said before, into our second rounds and for as many rounds as we can get in before we wrap up at 11.

Let's go to Mr. Bagnell. We're on five-minute questions and answers now.

Mr. Bagnell, go ahead.

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

And thank you for being here. I'm very supportive of the bill, and I know you've done good work.

I have just a few questions about costs.

I do have a message, not for you but for the minister. I thought he'd be here for the whole hour.

I was kind of disgusted yesterday. He mentioned in the emergency debate that the fiscal position of the government was important in denying the thousands of aboriginal people who were crying for an extension of the healing foundation. That would have been $350 million. Yesterday, out of the blue, the government came out with $400 million for Haiti. It's great that they could come up with that, but if they could come up with that, it would be easy to get another $350 million.

My first question is on the costs of this bill. Because this plan has been in place for months, I assume you did some initial estimates. I know the minister said there are a bunch of what ifs and many varieties of things that could happen, but I assume someone did a rough estimate. All things being equal, if it applied to all of Canada—which court cases would probably end up doing—roughly, and if there were forty-five or however many thousands of people, and the simple parts of this bill were just added up...was there ever an estimate, a ballpark figure, of what the total costs might be?

● (0945)

Mr. Roy Gray (Director, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): We don't have any numbers at this time. It would really be premature to talk about numbers because of all of the criteria that Minister Strahl referenced. We have a ballpark figure that's been generated by Mr. Clatworthy, who is, admittedly, a recognized expert.

Hon. Larry Bagnell: Which was what?

Mr. Roy Gray: He's a recognized expert.

Hon. Larry Bagnell: Sorry, what was the figure, though?

Mr. Roy Gray: Oh, the figure. We have around 45,000 population.

Hon. Larry Bagnell: Okay. Assume there were 45,000. Roughly, what do you spend right now, on average, per status Indian? What does it cost the federal government?

Mr. Roy Gray: I don't have that information at my fingertips.

Hon. Larry Bagnell: You could get it, though, right, pretty easily?

Mr. Roy Gray: Yes, I imagine that's available publicly through departmental reporting.

Hon. Larry Bagnell: Could you get that back to the committee, please?

Mr. Roy Gray: Yes. The total—

Hon. Larry Bagnell: It's the average amount spent on a status Indian in Canada right now by the federal government.

Mr. Roy Gray: You mean spent by the federal government.

Hon. Larry Bagnell: Yes. Then we could extrapolate to the 45,000. And that'll be great when you get that back to committee.

My second question is related. In this year's main estimates, how much was put in to cover these costs? Obviously, there are going to be significant costs to the federal government.

Mr. Roy Gray: Do you mean this year's main estimates' costs in relation to this bill?

Hon. Larry Bagnell: Yes. All of a sudden, if you're going to have more status Indians, you will have to pay health care costs; you'll have to pay for post-secondary education. There are all sorts of ramifications, so obviously the government, when it's doing its budget and estimates, is going to have to put money in to pay for this.

Mr. Roy Gray: To my knowledge, that's not in the main estimates at this point.

Hon. Larry Bagnell: Okay.

Is it safe to assume, then, that because the federal government pays for certain things for status Indians, such as certain parts of health care, dental care, post-secondary...? There are some things they reimburse the provinces and territories for when those provinces and territories provide that service. This bill, then, will mean some relief, actually, to the provinces and territories, will it not, because certain people whom they are now paying for, they would not be paying for?

Mr. Roy Gray: It's really, in my view, premature to answer that kind of question.

Hon. Larry Bagnell: So you're saying you don't know...if a status Indian is provided services by the federal government that are otherwise provided by the province...if that person wasn't status.... You don't even know that?

Mr. Roy Gray: If you're talking about offsets or provincial savings or what have you, what I'm saying is, is this an on-reserve or off-reserve population? In the context of the population growth that's going to come into play as a result of this bill, it's really premature to talk about those kinds of issues.

Hon. Larry Bagnell: Can you get back to the committee on that?

Mr. Roy Gray: What is the specific question?

Hon. Larry Bagnell: Right now, the federal government pays certain things for status Indians. Regardless of the results of this bill, there are going to be some more status Indians. In some of these cases, the provincial governments would otherwise pay those costs. Obviously, there's going to be a savings to the provincial or territorial governments, so I'd just like some more detail from the department once they do an analysis of that.

The Chair: Thank you, Mr. Bagnell.

Let's go to Mr. Rickford.

[*Translation*]

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

I have two questions to ask. The first is somewhat technical. I would just like to know whether people may lose their status if the Indian Act is amended.

Mr. Roy Gray: No.

Mr. Greg Rickford: My other questions are about the exploratory process. Could you give us a more in-depth explanation of this process? Why is it in place? Could you provide us with some of the issues that could be addressed during the process?

I have to say that this is easier in French. I have commented less and asked my questions in quick succession!

● (0950)

Ms. Brenda Kustra (Director General, Governance Branch, Department of Indian Affairs and Northern Development): Thank you for your questions.

First...

[*English*]

as the minister had indicated, the elements of the exploratory process are very important as we go forward.

First of all, we want to work in partnership with the national aboriginal organizations to design the process. We don't have a preconceived idea of what the process will involve. We do want it to be very inclusive and to be able to gather the views of first nations individuals, community leaders, and organizations, right across the country, because everybody does have a different perspective on what status membership and citizenship mean.

We also want to have a process that uses a wide variety of activities and technologies to gather the information. We know that youth across the country are very plugged into the electronic world, so we're hoping to be able to design some elements of the process that will provide them with a good opportunity to share their views with us.

We also want to start the process early. As the minister indicated, we have had preliminary discussions with the organizations to actually get together to design the process, so hopefully that will take place in a very short period of time. Then, throughout a number of months, different activities will unfold. It will give everybody an opportunity to gather the information and then try to determine what the next steps might be, based on all the information gathered.

On your question with respect to why we should go ahead with the exploratory process, as the minister indicated, Bill C-3 specifically responds to the Court of Appeal decision in British Columbia, so it has a very narrow focus on two sections of the Indian Act that were determined to be unconstitutional. Many other issues around status membership and citizenship were raised in the engagement process that my colleague, Roy Gray, and his team, conducted over the fall last year. The exploratory process is a way for people who express views during that process, as well as many others across the country, to offer their ideas. It's a forum whereby everybody can listen and people can be heard. There will be opportunities for everybody to share their views.

Your third question was with respect to the kinds of questions that may be asked. I think as we move forward with the organizations to design the process, and depending on the kinds of activities that take place—if there are workshops or town halls—there may be questions developed that would be posed to the participants in those events, but we do not have a preconceived roster of questions that we want answers to. It really is about a dialogue.

Merci.

Mr. Greg Rickford: That's it.

[*Translation*]

The Chair: I would like to congratulate you on your French. Well done.

[*English*]

Now let's go back to Monsieur Lemay.

[*Translation*]

Mr. Lemay, you have five minutes.

Mr. Marc Lemay: Mr. Gray and Ms. Kustra, there is something I would like to know. You are in charge of registering people requesting Indians status, right? Is this your responsibility?

Mr. Roy Gray: No, it is the responsibility of my colleague.

Mr. Marc Lemay: Then I will hold on to my questions until your colleague comes to the committee. We will ask him to appear before us.

There is an issue I started talking to the Minister about earlier. You may well implement an exploratory process to find solutions to the membership issue, but how will you reconcile everything involved? Aboriginal nations will tell you that they are their own masters and that they discuss their issues nation to nation. Just look at what happened with the Mohawks. How will you reconcile everything? Is it the working groups's mandate to try to reconcile this matter with the Mohawks, who claim to want no part of this, but only to continue to evict whomever they want from their territory?

I asked for the mandate in writing to understand it properly. I understand that you are supposed to resolve a single issue that was raised by the Court of Appeal of British Columbia, but how will you meet the expectations of those saying that they want their membership code to be part of Bill C-3?

● (0955)

[*English*]

Mr. Roy Gray: I'll clarify one point and then turn it over to my colleague.

On the point about the mandate of the working group, I think we were talking about the financial working group, which is a different group or process from the exploratory process. I just wanted to make that clarification.

Ms. Brenda Kustra: The reconciliation on membership is a subject that I'm sure will be discussed in the exploratory process. There are many communities across the country that are very welcoming to new members, and others who would prefer to keep their membership as per their existing membership code.

I assume, because of the wide variety of views on this subject, it will be a controversial discussion. There will be pressure on first nations that are currently in control of their membership to perhaps change their membership code.

[*Translation*]

Mr. Marc Lemay: I do not mean to interrupt, but I would like to finish my question. Will the exploratory process take place at the same time as our meetings for considering Bill C-3? Also, do you expect that, during the exploratory process, we will adopt Bill C-3 without amendments?

[*English*]

Ms. Brenda Kustra: I would certainly not prejudge the will of the House and Parliament on the passage of Bill C-3. But I can say that it is our intention to begin the exploratory process while the debate continues on Bill C-3. That is a commitment that the minister has made.

We hope to be able to have our initial discussions with the national aboriginal organizations very early in April and start the design of the process and the activities that will unfold over a period of time. We want to do that very much in parallel with the movement of the legislation through Parliament.

[*Translation*]

Mr. Marc Lemay: Thank you.

The Chair: Thank you, Mr. Lemay.

We now go to Mr. Holder.

[*English*]

Welcome to our committee. You have five minutes.

Mr. Ed Holder (London West, CPC): Thank you very much, Mr. Chair. It's my privilege to be here.

I must tell you that as a first-time attendee to this committee I'm extremely impressed by the decorum and tenor of the questions, the quality of it, and the willingness of all members to work towards a positive solution in this. My compliments to members opposite and on this side as well, and to you, Chair, obviously.

I thank our guests for attending today. I have a couple of questions, if I might, just to help me understand more clearly the steps of the process.

One of the things the minister spoke about was the issue of the extension being requested after April 6.

I'm trying to understand. We were mandated to have this in place. It looks like, as has been indicated earlier, that the timeframe is going to be pretty tough to get through from a legislative standpoint. I need to understand better. If that doesn't happen, are we somehow either in contempt of this requirement or would we be shown not to be doing our due diligence? Could you just explain what the implication of that is, if in fact we don't reach our deadline as required?

● (1000)

Mr. Martin Reiher (Senior Counsel, Operations and Programs Section, Department of Justice): Thank you, Mr. Chair. This is an excellent question.

In fact, on March 9, the Government of Canada has sought an extension of the suspension of the declaration of invalidity that the British Columbia Court of Appeal issued on April 9, 2009. We don't know at this time what the decision will be on this motion.

If there is no extension of the suspension period beyond April 6, 2010, this means that the declaration of invalidity will become effective. The result of this is that paragraphs 6(1)(a) and (c) will become invalid, which means, according to section 52 of the Constitution Act of 1982, they cease to exist. So there would be a gap in the registration rule applicable in British Columbia. This means that there could be no new registration of individuals affiliated with bands in British Columbia from that time on until there is replacement legislation.

Mr. Ed Holder: I get a sense from all sides that this replacement legislation, which is what we're reviewing today, is going to have some priority to get it through. Presuming that comes through some time in late April or possibly May—and I don't know the answer to that, and I'm sure you don't—when that is done.... I have a question. We've talked in terms of up to 45,000 individuals being affected by this. That's your best estimate at this stage. I'm told that for those individuals to receive status, it has to go through an application process. Do you have any sense of that uptake?

I guess as a second part of that, how are you enabling or supporting that process of application? That is to say, when the legislation is done, we're then in compliance, so how will you in fact advise those individuals who have the right to apply for status? How will you guide, advise, direct, advertise, and promote?

Mr. Roy Gray: Mr. Chair, I can take that question.

The minister alluded to the fact that the department is developing a strategy to deal with this influx, or potential influx, of applications for status. We're not in a position today to say exactly how long that process will take, nor can we really predict exactly how many applications will come in.

Presumably, there will be more applications than there will be people entitled. There will also be a proactive communications strategy that will explain who will be potentially entitled and who will not be. That information will be broadly distributed.

Mr. Ed Holder: Mr. Gray, thank you.

I thought I heard you say that there will be more applications than people entitled. Or do you mean it the other way? There won't be as many applications as—

Mr. Roy Gray: No, what I meant was this. The thinking is that there will likely be more applications than people who are ultimately entitled to status.

Mr. Ed Holder: In fact, you might imagine that there will be even more than the 45,000.

Mr. Roy Gray: There may very well be. That's right.

Mr. Ed Holder: I think it comes back to my colleague, the member opposite, who asked the question about the financial implications. Quite frankly, we can't know because we don't know what that uptake is going to be.

Mr. Roy Gray: That's right, exactly.

At this point in time, what we have is demographic projections. Obviously, what is going to drive the financial implications is the actual number of people who are entitled.

Mr. Ed Holder: Thank you very much. I appreciate that.

The Chair: Thank you, Mr. Holder and Mr. Gray.

Now we're going to go to Ms. Crowder, who will be followed by Mr. Clarke. Then we'll go back to Ms. Neville.

Go ahead, Ms. Crowder, for five minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

I want to thank the departments for coming before us.

We just got the briefing binder this morning, so I am presuming that if we have more technical questions after today, we can get the department back if needed.

I have two questions. One is a technical one and one is a resource issue.

On the resource issue, could you answer two questions? First, will resources be provided for the NAOs for the exploratory process?

The second question is around resources. On December 6, 1986, the *Ottawa Citizen* ran a story about the impact on the department. They indicated that the government had officers working two shifts a day who were adding more than 500 people per week to the country's official Indian population. The system became swamped with more than 38,000 applications seeking status for more than 76,000 people.

What plans have you put in place within the department to handle the volume of applications that could potentially come in?

● (1005)

Mr. Roy Gray: As I mentioned, a strategy is under development to address the influx of applications. It's going to involve the creation of a new team of people—I don't know if the exact number has been determined—who will focus specifically on the applications of people who will be newly entitled.

Ms. Jean Crowder: Then you will be adding people and resources in order to process the applications.

Mr. Roy Gray: Yes.

Ms. Jean Crowder: I asked also about resources for the exploratory process.

Ms. Brenda Kustra: With respect to the resourcing for the national aboriginal organizations' participation in the exploratory process, yes, that is anticipated, and it will be one of the things we'll be discussing with the organizations when we meet with them in early April.

Ms. Jean Crowder: You are saying they will get resources.

Ms. Brenda Kustra: Yes.

Ms. Jean Crowder: You mentioned in your previous response that there was a proactive communication strategy. Will that go out in multiple languages—Cree, Ojibwa, Coast Salish, Halkomelem?

Mr. Roy Gray: I don't know the answer to that today. That's something I can certainly take back to our communications people.

Ms. Jean Crowder: I ask because in some communities, English or French is not a first language. We're actually talking about people who could be older, so their primary language of communication may be their....

Mr. Roy Gray: I should say as well that part of our engagement on that would be with the Indian registration administrators who work in the communities. They would be targeted with information. They would have information that they presumably would be able to provide to the people in the communities.

Ms. Jean Crowder: Can I go back for a second? You indicated that additional resources would be added; we know that in the previous budget there is essentially a spending freeze across government departments, so how will you accommodate that? I'm hoping that it won't have to come out of some other resources within the department.

Mr. Roy Gray: It may very well have to, at this point.

Ms. Jean Crowder: So we may rob Peter to pay Paul.

Mr. Roy Gray: I don't know exactly where those resources will be coming from.

Ms. Jean Crowder: That might be a good question for us to get back to you on, then.

On a really technical matter, proposed subparagraph 6(1)(c.1)(iii) reads:

> (iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985

The parliamentary research folks did a really good analysis on this, but I wonder if you could walk us through it. My understanding is that this clause.... A couple of other discriminatory practices are already in the Indian Act. For example, the Wabanaki had raised an issue about registration. Prior to 1985, illegitimate daughters of an Indian father and a non-Indian mother were not registered, but illegitimate sons of an Indian father and a non-Indian mother were registered. I'm presuming this proposed subparagraph doesn't deal with that particular issue, and I presume it also—

The Chair: We don't have too much time, so if we want an explanation....

Ms. Jean Crowder: Okay.

Also, in the case of the non-identified paternity of the father, I am assuming that this particular technical....

Mr. Martin Reiher: Thank you for the question.

Those who worked on the drafting of this bill acknowledge that this is not easy to read, so I'm happy to have the opportunity to walk you through the conditions.

It is difficult to read because, as was said before, we were working with very technical legislation already. It was put in place before 1951, but then it was significantly reworked in 1951, with the creation of the Indian registry.

At that time, very complex rules for inclusions and exclusions were created. These rules were amended from time to time, adding layers of complexity. With this amendment we are still amending this complex system. We want to make sure we do not affect other parts of the system by adding this new entitlement, which is why we want to be very focused with the amendment. We are describing the persons covered by the new entitlement very precisely.

There are four conditions. The first condition is that the individual who will see the registration category change from subsection 6(2) to paragraph 6(1)(c.1) has to have a mother who married a non-Indian and lost Indian status because of that prior to 1985.

The second condition—

● (1010)

The Chair: I'm going to hold you there for a moment, Mr. Reiher.

We're over time. However, because of the nature of this question, I'm going to let Mr. Reiher finish. It is a very important part of the topic we're discussing.

Please, go ahead. I just wanted to let them know that I'm aware we're over time.

Mr. Martin Reiher: Thank you, Mr. Chair.

The second question is that the father of that person has to be a non-Indian.

The third condition, which is the one you identified, includes two conditions. The person has to have been born after the mother married the non-Indian. Why? Because if the individual was born before, that person is already entitled. We don't want to cover that situation. The person has to be born after the mother lost status upon marrying out.

Can that person be born anytime after that? It depends. It depends on whether the parents married or did not marry each other prior to 1985. If there was a marriage between the parents before 1985, then the person may be born at any time. If there was no marriage between the two parents before 1985, then the individual has to have been born before 1985. Why is this? Because in 1985, marriage ceased to play any role in registration.

When you compare the situation in the female line with the male line, we have to be careful not to grant an entitlement under subsection 6(1) in the female line. In the similar situation in the male line there would be an entitlement under subsection 6(2), which is why we have this. If you look at the male line, an individual who is born after 1985 and whose parents never married before 1985 is entitled under subsection 6(2). If we don't want reverse discrimination, we have to include this very specific condition.

The Chair: Okay.

Mr. Martin Reiher: There is a fourth condition that I can come back to later on.

The Chair: Do you want to speak to it now? Let's go ahead, please.

Mr. Martin Reiher: Sure. The fourth and last condition is that the individual who is covered by the new entitlement has to have had a child with a non-Indian after September 4, 1951. This was the time of the creation of the Indian registry and the inclusion of a number of complex rules, including the double mother rule, which was at issue in the McIvor decision.

This bill is responding to the McIvor decision, which is why there is the same limit applied here.

I think this answers the question.

The Chair: Okay, thank you very much.

Members, there will be a quiz immediately following the committee meeting.

Voices: Oh, oh!

The Chair: Now, let's go to Mr. Clarke and then we'll come back to Ms. Neville.

Please go ahead, Mr. Clarke.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair, and thank you to the witnesses for coming in today.

When travelling throughout the northern riding of Desnethé—Missinippi—Churchill River and talking to the constituents, especially first nations reserves in Saskatchewan, probably as a whole, they have a real concern about the McIvor decision and how it's going to affect their band memberships.

First, in regard to the memberships that are handled by the department, what are the benefits to the membership going to be if it is handled by the department? Secondly, what are the benefits for an individual band holding the privilege of administering their membership lists? What's the difference there, and what are the benefits?

● (1015)

Mr. Roy Gray: Mr. Chair, in terms of the band members, the benefits would be the same whether it's a situation where the department controls the membership or where the first nation controls the membership. Benefits of band membership include such things as housing, the right to live on the reserve, and, significantly, the right to participate in voting for chiefs and councils.

I'm sorry, what was your second question?

Mr. Rob Clarke: In regard to the bands, or specifically the first nations reserves, what would be the benefits of them administering the...?

Mr. Roy Gray: I suppose the real benefit for bands is that they're able to determine who has those rights within their communities. Who has the right to reserve in the community. Who has the right to participate in votes and other community business? It allows for that sort of self-determination.

Mr. Rob Clarke: How much time do I have?

The Chair: You have three minutes left.

Mr. Rob Clarke: Super.

If the bands control their membership lists, how will the entitlement of membership be determined by those first nations reserves?

Mr. Roy Gray: If a band controls its own membership lists, it would have in place its own code or rules, and the determination is based on those rules. As the minister mentioned, the department has no involvement in the administration of those rules. It's up to the first nation.

Mr. Rob Clarke: So with the McIvor decision, if someone wants to come forward and say to a band, "I do qualify," and then the band makes the determination that the person doesn't, what types of repercussions will the person have who wants to be included in the membership?

Mr. Roy Gray: I guess they would have to engage with the first nation, with the band. The department wouldn't be involved in that. What will happen is that people who are newly entitled as a result of this amendment will be newly entitled to Indian status, and in situations where the department controls the membership of the first nation under section 11 of the Indian Act, those people will automatically be entitled to band membership in the first nation with which they would be affiliated through their ancestry.

In the case where the first nation controls its own membership, it is dependent on the membership code of the first nation.

The Chair: Ms. Kustra, did you want to get in on that as well?

Ms. Brenda Kustra: Yes. I'd like to add a few comments.

Where a first nation controls its membership and an individual has regained status but is not accepted to a first nation because of the membership code, that individual will have a right to appeal that decision to the Canadian Human Rights Commission as of June 2011, pursuant to Bill C-21, which contained the changes to the Canadian Human Rights Act. So the Canadian Human Rights Act will be applicable to first nations governments as of June 2011.

Mr. Rob Clarke: Thank you. That's why I wondered what was going on.

The Chair: Thank you, Mr. Clarke.

Now let's go to Ms. Neville.

Hon. Anita Neville: Thank you.

Before I ask my questions, Mr. Gray, is it possible to get copies of the demographic projections the department has made, as well as some overview of the communications strategy the department will be undertaking?

Mr. Roy Gray: The demographic study is available on the departmental website. We could certainly get copies to you.

● (1020)

The Chair: Just as a point of clarification, we do have it in the briefing binder. I just wanted to point that out.

Hon. Anita Neville: I haven't looked through it. All right. I'm sorry.

The Chair: Not at all.

Mr. Roy Gray: In terms of the strategy, again, I would suggest looking at the website. There's a lot of information on the website.

Hon. Anita Neville: That leads me into my next question, to Ms. Kustra. You talk about the exploratory process. I guess my question to you is, why is that the term that's being used, as opposed to a consultation process, and what are the differences as you see them?

Ms. Brenda Kustra: Thank you for that question. The words "exploratory process" are really very important because we are exploring the views of individuals, organizations, leaders, about the subject matters of status, membership, and citizenship. The Government of Canada at this point does not have any preconceived ideas about where these discussions will end up; neither do the national aboriginal organizations, because of the wide variety of views on the subject matters the minister referred to. So we really are entering into a dialogue to learn more about the views of people across the country on these subjects, and then we will be able to take stock of all the information we've gathered and look at where that might lead us in the future.

That's different from consultation, because we are not consulting on any specific solution to any of these other issues. Madame Crowder spoke about unstated paternity and other issues with respect to other illegitimate heirs. Those are subject matters that will likely be discussed in the exploratory process, but we don't have a preconceived idea of a solution as to how we will fix that. That's something we want to hear the views on from folks across the country, on how they see it unfolding in the future.

Hon. Anita Neville: Would you see the exploratory process as preliminary to a consultative process or in lieu of a consultative process? I go back to two processes you may or may not have been involved in. One is the Wendy Grant-John process, when Ms. Grant-John went out across the country on MRP. One of the overriding concerns she heard from the communities was there had not been enough of a consultative process, particularly on the ground, in the communities, with the people most directly affected.

Then I go back some years ago to the original governance act. What reminded me of it was when you talked about the technology and young people using technology, and at that time I think people thought they were quite innovative in the use of technology and online consultation, for lack of a better word.

My concern is that while all of this might be fine and good, we're really missing the essence of what a real consultative process is on this. I understand times change, technologies change, etc., but I'm trying to get some clarity as to what this is all about.

Ms. Brenda Kustra: Thank you very much for that question.

First of all, we do not see the engagement process as a substitute for consultation. It's not in lieu of consultation. It very much is the first step of what will likely be a fairly long process because of the complexities around status, membership, and citizenship, and the variety of views across the country. I think that's a very important distinction to make upfront.

With respect to the use of technologies in the gathering of information, we're looking to a wide variety of processes to gather this information, and we're hoping to get some very good advice from the national aboriginal organizations in terms of how best to engage people. It will not solely be an electronic exchange. There will probably be a wide variety of activities, of events, etc., to gather this information. Again, it is not a consultation, it's a process of gathering information in order for all parties to determine what next steps they may wish to recommend or what consensus they may reach, just in keeping with some of the minister's comments earlier.

● (1025)

The Chair: Okay, we're finished, unfortunately.

Thanks, Ms. Neville.

Now let's go to Mr. Payne. If you have a short question, and there is some time left, I may fill in the other part of that five minutes.

Go ahead, Mr. Payne.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chair. I will keep it short.

The Chair: You are under no limits here. If you want to keep the floor, that's fine too.

Mr. LaVar Payne: I just want to thank the officials, first of all, for coming out today.

This is definitely a very complex issue. Briefly, could you review for me what will happen to those individuals in B.C. if Bill C-3 does not go through by April 6?

Second, I understand that the 45,000 is for across Canada. I'm wondering what the demographics are for B.C. alone.

Mr. Roy Gray: If the court decision comes into force on April 6, there will be an inability to register people affiliated with first nations in British Columbia.

Over the last couple of years, there have been about 2,500 to 3,000 people from B.C. registered per annum. That gives you some idea of the scope. Again, no one will lose status, as the minister mentioned.

In terms of the 45,000, we don't have an analysis, at this point, of a regional breakdown. The 45,000 is national.

Mr. LaVar Payne: Thank you.

Go ahead, Mr. Chair, please.

The Chair: Thanks, Mr. Payne.

On the issue of there being this lapse to April 6, can you confirm that when Bill C-3 is enacted, it will be retroactive to whatever date?

Mr. Martin Reiher: Bill C-3 would come into force upon the declaration of the Governor in Council, and that can be retroactive to April 5, which is the day before the declaration of equity would become effective.

The Chair: While we await the court's decision on an extension, if you will, regardless, the bill will cover this from April 7 forward.

Just to follow up with Mr. Gray, there were a couple of questions raised, Mr. Gray, with respect to the cost and the contingencies. As a follow-up—the department has been very good in the past about getting back to us on members' questions—could you just outline what sorts of contingencies are in place in anticipation of what this might be from a cost and administrative perspective? That would be important to our discussion.

I have one final question for Mr. Reiher. We're aware, of course, that there are other challenges under way with respect to this topic. I wonder if you could comment on the degree.

We know, as a point of background, that this bill is very focused with respect to the McIvor decision or the McIvor claim. There are some other issues. Could you point us to what areas it won't solve, just so we're aware that it is not going to be a complete fix, nor is it anticipated to be? Could you comment on that?

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

I am aware of about 14 active cases currently challenging section 6 of the Indian Act, which states the registration provision. To date, two issues have been mentioned. One was raised by the Wabanaki Nation, which had to do with a difference in treatment between brothers and sisters born to unmarried parents before 1985. This is one example of an issue that is not dealt with by this bill.

Also, there is what is referred to as the unstated paternity issue, which actually flows from the fact that in order to register an individual, the registrar needs to know information about the parents. When information is not known about the father, the registrar cannot determine that the father is an Indian, which automatically means that if the mother is an Indian, there is one Indian parent. If the registrar doesn't know the information about the father, the registrar cannot conclude that there are two Indian parents. Therefore, there is one Indian parent, which results in either registration of the child under subsection 6(2), if the mother is registered under subsection 6 (1), or the loss of registration.

This bill is a focused response to the McIvor decision, which raised essentially what is known sometimes as the cousins issue. It does not change the existing legislation with respect to the unstated paternity issue.

● (1030)

The Chair: Would you also say, though...? Clearly, this is addressing, in a substantial way, the unexpected outcomes of Bill C-31 in terms of the discrimination between the female and male line or lineage.

Mr. Martin Reiher: Thank you, Mr. Chair. This is an important question.

The British Columbia Court of Appeal acknowledged that, despite the active litigation launched over the past 25 years, Bill C-31 in 1985 was a bona fide attempt to remove discrimination from the Indian Act. The Court of Appeal acknowledged that a certain number of distinctions between the male and the female line continue to exist, but the Court of Appeal of British Columbia was prepared to consider these distinctions as justified under section 1 of the charter in a free and democratic society, given that these are distinctions flowing from an old regime only and are transitional in nature.

There was only one element the Court of Appeal found to be contrary to section 15 of the charter and discriminatory, because it did not only flow from the old regime, and that is the enhancement of the ability to transmit status of fathers of persons affected by the old double mother rule.

The Chair: Very good.

I have Mr. Holder.... Well, we're kind of out of order. Are there any more questions from the Bloc? Okay.

We'll go to Mr. Holder, Ms. Crowder, and then Mr. Bagnell.

Go ahead, Mr. Holder, a follow-up question.

Mr. Ed Holder: Thank you very much, Mr. Chair.

Yes, this is just a follow-up question.

Obviously, Bill C-3 is in response to various allegations that the Indian Act discriminates on the basis of gender, notwithstanding the fact that in 1985, from my reading, various amendments were made to the Indian Act. From what I understand, this court case is the first that has now been decided.

So does Bill C-3 remove all aspects of gender inequality to the Indian Act?

Mr. Martin Reiher: Thank you for this question.

Again, this is a very focused answer to the McIvor decision, given the limited time we had to develop legislation in response to the British Columbia Court of Appeal decision of April 9, 2009. There are other issues that have been raised in litigation that are not dealt with by this bill at this time. Depending on subsequent court decisions, obviously, the government might have to consider how to respond to these other decisions. In addition, as was mentioned before, the exploratory process is also an opportunity to raise and discuss these issues.

Mr. Ed Holder: As a supplementary, then, if I may, just to clarify, Mr. Reiher, if this deals specifically with the McIvor circumstance, and therefore circumstances in British Columbia, are you saying it does not extend beyond that, notwithstanding the fact that we're referring to a very specific case?

Mr. Martin Reiher: Thank you.

It's an important clarification, Mr. Chair.

The decision of the British Columbia Court of Appeal applies in British Columbia only, but the registration system is a national system, and the legislation that corrects that response to the McIvor decision will apply nationally. So the new entitlement will be available to all eligible persons in Canada.

Mr. Ed Holder: I appreciate that clarification.

It really comes back, then, to Ms. Kustra's comments.

On the basis that this extends across the country, does Bill C-3 have jurisdictional priority over bands in terms of any potential discrimination internally?

● (1035)

Mr. Martin Reiher: What Bill C-3 does in terms of membership is protect existing entitlement. If someone was entitled to be a member of a band before the coming into force of Bill C-3, that person will continue to be entitled after the coming into force of Bill C-3. However, it respects the authority of first nations to adopt and amend their membership codes. So the protection for membership entitlement is subject to membership codes of first nations.

This bill establishes certain entitlements. As was mentioned before, persons who feel they have been deprived of their entitlement in a discriminatory fashion have the opportunity to announce challenges—

Mr. Ed Holder: To the Human Rights Commission.

Mr. Martin Reiher: Yes, section 67 of the Canadian Human Rights Act was repealed in June 2008. There is, therefore, an ability to deal with provisions of the Indian Act and decisions made under the Indian Act. This ability obviously is suspended until June 2011 with respect to first nations governments because there is a transition period allowing them to prepare for this.

Mr. Ed Holder: I appreciate the clarification.

Thank you, Chair.

The Chair: Thank you, Mr. Holder.

Now we'll go to Ms. Crowder.

Ms. Jean Crowder: I have just two questions.

I want to clarify a number. Did I understand you to say that there are approximately 40 cases around status and membership before the courts?

Mr. Martin Reiher: There are 14 cases.

Ms. Jean Crowder: Okay. I thought you said 40.

Essentially, with 14 cases, we could then be dealing with a number of one-off pieces of legislation if the courts rule in favour of the litigant. This issue was raised in previous pieces of legislation that have been before us, that we are piecemeal amending the Indian Act.

If there are 14 cases before the courts right now, which may or may not be ruled in favour, we could be looking at a series of pieces of legislation. Is there any attempt to take a more comprehensive look?

Ms. Brenda Kustra: There are a couple of ways to answer that question.

First of all, through the exploratory process, it is likely that the other issues that are driving these 14 cases will be brought forward and discussed, and people will potentially be looking for solutions and opportunities to find a broader solution as opposed to a one-off solution.

Ms. Jean Crowder: I understand you can't presume the outcome, but is there at least a willingness on the government's part to take a look at not piecemealing this if it works through the exploratory process?

Ms. Brenda Kustra: Yes, absolutely. The broader the changes contemplated to the Indian Act, the more difficult it is to reach consensus to bring those changes forward. So that certainly is a challenge we face.

Ms. Jean Crowder: I just want to come back to a question again around resources and status versus membership. I know it's complicated.

I was again looking at this paper of July 2008, the "First Nations Registration (Status) and Membership Research Report", which is raising some issues around funding. This paper indicated that prior to 2001, funding was done based on status. But in a footnote here, it says:

> In 2001, INAC authorities for on-reserve programming began to shift toward residency-based funding.

It's important in terms of the McIvor decision. When we're talking about funding on reserve, is it currently solely based on status, or does some of the membership code allow for funding that is not just status, based on residency?

Ms. Brenda Kustra: There are many programs that are delivered by first nations governments to their members, to their citizens, and by the Government of Canada through various government departments. It's hard to make a generalization; however, there are certain programs that are only applicable to individuals who actually live in the community—

Ms. Jean Crowder: Whether they're status or not.

Ms. Brenda Kustra: —whether they're status or not.

Ms. Jean Crowder: Okay.

Ms. Brenda Kustra: There are other programs whose benefits are applicable if you are a status Indian, no matter where you live, such as non-insured health benefits. So there's a very broad range of eligibility.

Many programs are also driven by needs assessment, such as the social assistance programs. So it's very complicated in terms of trying to give a fairly simple answer to the question, because of all the programs.

● (1040)

Ms. Jean Crowder: Is there any way that information can be provided? It does have an impact on bands' abilities to manage, and it may have an impact on bands' willingness to admit a status person to their existing membership. Is it possible to have some sort of summary of that?

Ms. Brenda Kustra: We could look at providing a list of the programs that the Department of Indian Affairs delivers or provides resources for and the criteria that are used to support those programs.

Ms. Jean Crowder: That would be really helpful, because many times questions come before us around the issue of status versus membership and how bands are disadvantaged depending on what they've accepted on that question, and whether or not they've taken control of their own membership code. I know it's complicated, but it would be helpful.

Thank you.

Thank you, Mr. Chair.

Ms. Brenda Kustra: The other qualification to that, which I think is important, is that depending on the kind of funding arrangement a first nation has with the Government of Canada, there are certain flexibilities afforded to the first nation's government to make decisions. So while the Government of Canada and the Department of Indian Affairs may provide resources based on a certain formula or certain criteria, in some cases the nation does have the flexibility to use those resources in different ways. So as we think about how this information might be interpreted, this would be how we resource the community, but how the community chooses to resources its members, its citizens, etc., may be somewhat different.

Ms. Jean Crowder: Great. Thank you.

The Chair: Okay.

Just while we're on that topic, our research analyst drew my attention to the fact that you did provide a similar report on this very topic to the Standing Committee on Aboriginal People in the Senate several months ago. So perhaps without your having to redo the work, it might already be there for you. It would be very helpful for Ms. Crowder's question.

Are there any other questions from government members? No?

We'll go to Mr. Bagnell, then, for a final question, and then we just have a very short piece of committee business, and then we'll wrap up.

Mr. Bagnell.

Hon. Larry Bagnell: I just have one question, but for each of you.

This decision came out a year ago and now we're at the eleventh hour. Obviously, over that year, you've done lots of consultation on this bill as you drafted it.

Could you just let the committee know what concerns have been raised about this bill, as it stands, by the people you've talked to but we haven't talked to?

Mr. Roy Gray: I can speak to that, Mr. Chair, because I manage the engagement process with first nations and aboriginal organizations.

As the minister indicated, we travelled across the country and spoke to a number of folks, and I can say there were really no comments relating to the substance of the bill that we heard. Rather, we heard of other issues, such as unstated paternity, and many other issues related to citizenship and membership were brought to the fore. To be frank, people said, well, this is a short process. Our response to that was, we need to respond to this court decision that is coming into force on April 6, 2010.

The comments we heard, as I mentioned, were really directed to broader issues, and that's what has informed the decision to engage in the exploratory process.

Hon. Larry Bagnell: When did that exploration, this consultation process across the country, start?

Mr. Roy Gray: The process was announced at the end of last August, and we basically went from September through to November 13. First of all, we provided technical briefings to senior officials of national aboriginal organizations, and then we did three meetings in partnership with those national organizations, and then 12 regional meetings.

Hon. Larry Bagnell: Mr. Reiher, there were no concerns raised with the Department of Justice?

● (1045)

Mr. Martin Reiher: I did not participate in the engagement process.

Hon. Larry Bagnell: No, I mean concerns that were maybe raised with other federal departments, or anyone else.

Mr. Martin Reiher: No specific concerns were raised with the Department of Justice.

Hon. Larry Bagnell: Thank you.

The Chair: Thank you, Mr. Bagnell.

Before we adjourn, I just want to let members know that we're going to look very closely at trying to change our normal meeting slot for Thursdays, by moving it earlier in the day. I'm going to proceed on the basis that it will ideally be in the 11 o'clock to 1 o'clock spot, but if we can, sometimes the meetings will be at 9 o'clock. I know that some members, particularly of this committee, come from the other end of the country, and this will allow them to get back home earlier.

I will say, however, that this may mean we may not have our first choice of meeting room, but I get a sense from talking to members that it would be less of a concern than getting an earlier spot. So we're going to proceed on that basis.

Is there a question, Mr. Rickford?

Mr. Greg Rickford: Mr. Chair, just on a note of caution, I and a couple of other members have other committee meetings then. For example, one of mine starts at 11 o'clock every Thursday, so it might be useful to take an inventory of who—

The Chair: You have a conflict at 11 o'clock?

Mr. LaVar Payne: I do.

Mr. Greg Rickford: Certainly, I'm available from 9 to 11, and I'd be over the moon at that time, but, okay.

Some hon. members: Oh, oh!

The Chair: All right, let us do our best and see what we can come up with.

Hon. Anita Neville: Are we staying on the Thursday, though, as my conflicts are on Monday and Wednesday?

The Chair: Yes, it would still be on the Thursday.

Mr. Marc Lemay: Thursday, 9 to 11.

The Chair: Okay. Thank you for your input on that.

[*Translation*]

The meeting is adjourned.

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