House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 009 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, April 15, 2010

Chair

Mr. Bruce Stanton

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● (1530)

[*Translation*]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Good afternoon, ladies and gentlemen members, witnesses and guests.

We are starting the ninth meeting of the Standing Committee on Aboriginal Affairs and Northern Development. On the agenda, pursuant to the Order of Reference of Monday, March 29, 2010, we are considering Bill 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).

[*English*]

This afternoon, ladies and gentlemen, we welcome our continuing consideration of Bill C-3.

We welcome the Regional Chief of the Assembly of First Nations for British Columbia, Chief Jody Wilson-Raybould. With her is Karen Campbell, who is the senior policy analyst, strategic policy, planning and law.

You've probably done this before, so you know the drill.

Have you done it before?

Chief Jody Wilson-Raybould (Regional Chief, British Columbia, Assembly of First Nations): Mr. Chair, I haven't done it before, but I am a quick learner.

The Chair: The first time: well, this is good.

The way it works is that we start off with a ten-minute presentation from you. After that initial presentation we go to questions from members. The first round will be seven minutes, and that's seven minutes for the questions and the answers. We always encourage everybody to keep their questions and answers succinct.

We do simultaneous interpretation of what is said. If you can keep the pace of your remarks to a good, moderate pace, not too quick, that is always helpful.

Let's begin with you, Chief Wilson-Raybould. You have the floor for ten minutes.

Chief Jody Wilson-Raybould: Thank you, Mr. Chair.

On behalf of the Assembly of First Nations, I would like to thank you, Chair, and the members of the committee for welcoming me here today to speak on behalf of Bill C-3.

I would like to acknowledge Karen Campbell, who is from our offices, and acknowledge as well the national chief and my fellow colleague, Regional Chief Guy Lonechild.

I'll briefly introduce myself. My name is Puglaas—Jody Wilson-Raybould—and I come from the Musgamagw Tsawataineuk people of northern Vancouver Island. I am registered under subsection 6(1) of the Indian Act, and I am a member of the We Wai Kai Nation, formerly known as the Cape Mudge Indian Band. I am on council for my home first nation and I am the regional chief for the AFN from British Columbia. For the AFN I co-lead the portfolio on supporting first nations governments, and within that portfolio is the subset of citizenship and nation building.

I know this committee has already heard a lot of the background information with respect to McIvor, and I was pleased to see that Sharon herself appeared here two days ago, so I won't go over that background information. What I wish to provide to the committee today are some general observations on what it means to belong to a first nations community and a vision for the future of first nations that goes beyond the determination of status and membership under the Indian Act to one that recognizes the authority of our first nations across Canada to determine our own citizenship and our rights and responsibilities from that citizenship.

Since the original trial decision in McIvor, I have heard from a number of first nations people, both men and women, who are genuinely excited about the prospect of becoming registered under the Indian Act as a result of the proposed amendments. At one level this is about correcting discrimination, but at a more fundamental level it is about belonging and about association with a group. For policy-makers and administrators, the issue of increasing members might be viewed simply in terms of budget pressures, service provision, and access to resources; at its core, however, this is about community, and this is powerful. Our people are our greatest resource.

As it was in the 1980s regarding Bill C-31, it is a shame that the debate over registration sometimes solely becomes focused on scarce and limited financial resources and tax exemptions rather than the benefits of inclusiveness and self-determination.

In British Columbia, as in other parts of the country, our nations are developing our own models of citizenship. The nation decides who is a part of that nation, who is a citizen, notwithstanding the legacy of the Indian Act and membership. In the context of modern claims, the determination of citizenship is a fundamental conversation that results in the collective setting the rules and the individual electing to be a citizen or not. Citizens are beneficiaries of treaties and can participate in the political institutions created through the treaty or agreement, but—and more importantly, for the collective—in exchange they are subject to the obligations of citizenship.

In announcing the proposed amendments to the Indian Act, Minister Strahl also announced an exploratory process centred around registration, membership, and citizenship issues. I congratulate the minister on this initial step and commitment, but we can go further.

A discussion of citizenship within the broad context of nation building would be evidence of a fundamental shift in the relationship between our nations and the crown, consistent with the spirit of intent of our historic treaties, and necessary to conclude modern land claims arrangements with nations that enjoy unextinguished aboriginal title and rights. It reflects the beginning of a healthier and more mature relationship between our peoples and the crown, not only with respect to the determination of citizenship outside of the Indian Act, but also to govern through our own institutions of government, with appropriate jurisdiction and authority outside of the Indian Act. This discussion necessitates going beyond exploration and information-gathering on a wide range of issues.

There are many opportunities for first nations in this country, but there are necessary prerequisites before our nations will fully realize these opportunities.

First and foremost, there is a need for appropriate governance, which includes, of course, the determination of citizenship. There is also a need for fair access to lands and resources so that our first nations economies will be viable, with adequate own-source revenue generation, power to support critical aspects of our governance, and the provision of programs and services.

● (1535)

In addition to appropriate governance and lands and resource settlements, we of course need well-educated and healthy citizens. Our citizens, perhaps more than any other Canadians, are required to participate in decision-making around our own very existence and future.

Given the colonial legacy with Canada and before significant and fundamental change can occur in our communities, there is a requirement for public votes and referendums. To put it another way, to become fully decolonized we need to vote in favour of change, so we need a citizenry that can not only participate in the workforce and become active contributors to our own society and Canadian society generally, but also a citizenry that can engage in a serious conversation about social change and be part of that change. Ultimately, it will be our people's recognition of themselves as citizens of their nations and not as Indian Act registrants or members of bands that will mark the transformation of our nations.

This, of course, poses many challenges, not the least from those leaders and those in our communities who have internalized the Indian Act's identity and are overshadowed by the administrative determinism established through this colonial ordinance. Stated another way, for some first nations people, their identity has become intertwined with the colonial definition of “Indian” under the law-invested statutory rights.

Turning to Bill C-3, the AFN supports any amendments to the Indian Act that would rid it of discrimination. Discrimination in any nature or form is not acceptable, this notwithstanding that many of the chiefs and the communities they represent have not gone through the process to establish citizenship rules beyond the Indian Act or Indian Act membership codes, and are very concerned about the potential financial implications of implementing Bill C-3.

It will be essential that adequate resources be made available to first nations to avoid any further hardship in first nations communities and for our citizens, regardless of where they reside. There must be a realistic picture regarding additional funding requirements on the ground.

The McIvor case was started by our people. Sharon was supported by our people, and we continue to support the efforts of all our people to end discrimination wherever it may be found. I am fully aware that other witnesses before me have called to end all discrimination that exists under the Indian Act and would like the committee to broaden the scope of the bill. We support these aspirations. I am also advised that any expansion of the bill's purpose to go beyond addressing gender discrimination would probably require a new bill to be introduced, thereby delaying the rectification of gender discrimination. At the very least, if the committee is not able to go beyond gender discrimination issues in this bill, this committee, I respectfully submit, should assure itself that the amendments are being made to address all gender discrimination issues in the Indian Act and not just those applied in the case of Sharon McIvor.

In closing, long-term solutions do not lie in further tinkering with the Indian Act. Our nations have an inherent right to determine who is and who is not a citizen of our nation in accordance with our own laws, customs, and traditions. This is fundamental to self-governance. The real and ultimate solution to addressing ongoing discrimination in the Indian Act lies with full recognition of first nations' jurisdiction over our own citizenship. The contribution that will be made by our full citizenry, when legally recognized through appropriate citizenship processes and in part supported by interim legislation such as Bill C-3, will be profound. While some registrants or citizens of our nations may be somewhat apprehensive to return, and in some cases may initially be made to feel unwelcome by those who have an interest to exclude them, we must not forget that we are family. We will have connections and we have potential for making great contributions to our nations.

● (1540)

The excitement in the eyes of those who identify with being part of our nations but who, through no fault of their own, have been excluded legally from their inheritance is empowering, and it is a sign of better times to come as our nations take full control of our lives and our future. It starts with determining who we are.

Finally, Parliament is in a unique position to work in partnership with first nations to undertake a comprehensive review of the Indian Act and its related policies and regulations, to examine their intrusion into first nations jurisdiction, and to put forward mechanisms for recognition of, and staged and supported implementation of, first nations jurisdiction. We hope that you will support this critical work of supporting first nations governments.

I will end as I began: this is part of a broader process that we recommend around indigenous nation building and rebuilding.

Thank you for your time. *Gilakasla*.

I would happy to answer questions from the committee. Thank you.

[*Translation*]

The Chair: Thank you.

We will now go to questions by members.

Mr. Russell, you have seven minutes.

[*English*]

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

Good afternoon, Chief Wilson-Raybould, and Ms. Campbell. I also want to acknowledge the national chief, who is with us today.

Chief Lonechild, it's good to have you with us as well, and of course all of those who are listening in.

When I listened to your comments, certainly I found little to disagree with, but I'd like to clarify a number of points that you raised.

Do you feel that Bill C-3 adequately responds to the McIvor decision at the B.C. Court of Appeal? I think our first bit of business is to make sure that the government has adequately responded to that particular decision.

In your view, after having had a look at it—and believe me, I'm no lawyer, and all these different categories sometimes can get a bit challenging—and from your analysis of it, does the bill that we have in front of us adequately respond to the B.C. Court of Appeal's decision?

Chief Jody Wilson-Raybould: Thank you for the question. I am a lawyer, and looking at the complexities of legislation, I can certainly relate to the way you're feeling.

In terms of adequately responding to the specific circumstances with respect to Sharon McIvor, this bill addresses that aspect specifically. What this bill does not do is address other Indian Act gender inequities that go beyond the specific circumstances of Sharon McIvor and Sharon McIvor's grandchildren.

● (1545)

Mr. Todd Russell: What I hear you saying, what I've heard other witnesses say, what I'm reading in some of the literature, and what I believe even the government itself may acknowledge, is that gender discrimination will continue to exist under the Indian Act, even with the passage of Bill C-3. Is that a fair statement to make?

Chief Jody Wilson-Raybould: That's an absolutely fair statement to make. Gender discrimination will continue to exist.

Mr. Todd Russell: Any reasonable person—I suppose we pretend that we're reasonable most of the time—would say that we have to take steps to address that gender inequity, at least while the Indian Act is still in its present form, because it will be the law of the land for some time.

The proposition has been made, and I've made it myself, that we could address it through the existing Bill C-3. There also seems to be some opinion that we may not be able to address it through Bill C-3 because we would expand the scope of the bill, and therefore it would be ruled out of order if we brought in an amendment strategy. We're not sure, but that has been the contention.

Would you suggest that the government be proactive in identifying and understanding that there is additional gender discrimination, or sex discrimination, and that the government should be proactive in introducing other legislation to address the other inequities or inequalities that exist under the current Indian Act? I'm not suggesting that we dispose of Bill C-3 while waiting for something else, but that we could deal with Bill C-3, and the government could be proactive in introducing additional legislation.

Would you agree that we could go that particular route? And that's on the Indian Act itself; I'll get to the exploratory process a little bit later.

● (1550)

Chief Jody Wilson-Raybould: Thank you for that question.

With respect to discrimination in any form, I do not agree with it whatsoever. I believe it would be the position of any reasonable person, as you say, to eradicate discrimination wherever and whenever possible in today's age.

While I see the remedy of gender discrimination with respect to Sharon McIvor, there are several other places where the Indian Act discriminates by virtue of gender. I believe that this is an opportunity for Parliament, for the government, to within the scope of this bill rectify that gender inequity.

This is not to say that there are not other inequities that occur within the Indian Act that may arguably be outside the scope of this bill, but with respect to gender discrimination, I believe this is an opportunity to do just what you suggest.

Mr. Todd Russell: Yes. I think most of us would agree that we shouldn't have to wait another 20 or 25 years consuming another generation to get from Bill C-31 in 1985, to Bill C-3 in 2010, to some other bill 25 years from now.

In terms of the exploratory process, I understand that much of your comment was taken up with issues of self-determination, self-government—i.e., we shall determine who we are, we know who we are, we just want the means to be able to determine that in our own fashion. And I certainly agree with that.

These exploratory talks.... Very interestingly, I watched a documentary, *Talking Around the Table*, just last night, which featured Chief Wilson. I'm sure you're very familiar with him.

At any rate, I think it was a lesson to me. I mean, substantive talks were offered at that particular time: three first ministers' conferences with all the premiers, the Prime Minister, Trudeau at the time, and then Mr. Mulroney. But at the end of the day, many would say that they didn't advance that far.

How confident are you that these exploratory talks are going to shed more light or to imbue the process with something that's deliverable for first nations people? What would it take, in your view, for these to work? What would the process look like? What kind of resources would you require? You know—

The Chair: You're out of time, Mr. Russell. You have a fairly important question there, so you have maybe 40 seconds or so for answer before we go to the next speaker.

Chief Jody Wilson-Raybould: Thank you, Mr. Chair.

The documentary was *Dancing Around the Table*, and thank you, that was my father, Bill Wilson.

With respect to the exploratory process, while, as I said in my statement, I applaud Minister Strahl for advancing this process, I believe we are at a time in our history as aboriginal and first nations people that we need to go beyond exploration and information-gathering to the point where we are actually empowering our first nations communities on the ground to determine for themselves how best they want to move forward.

Yes, that requires an enormous amount of time, likely—most definitely, actually—beyond the one-year period, and actually investing in the communities, hearing from the communities on the ground.

How can the government can support that? Well, they can—

The Chair: Sorry, that's time.

[*Translation*]

Thank you.

Mr. Lemay, you have seven minutes.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I'm going to speak to Chief Wilson-Raybould.

Grand Chief, thank you for being here with us. I agree with my colleague in recognizing Grand Chief Atleo and Chief Lonechild.

As you will see, I am very precise. I'm speaking to the lawyer. We have begun our proceedings, and I will ask you to examine one point. I don't need an answer today. I'm also speaking to Grand Chief Atleo, who I know will listen closely.

This is a draft amendment that we are going to try to introduce. I would like paragraph 6(1)(*a*) to be amended to read: "or if that person was born prior to April 17, 1985 and was a direct descendant of such and such a person."

In my opinion, and I'm not the only one to think this, that is the only way to prevent the perpetuation of the discrimination you suffer and will continue to suffer if Bill C-3 is passed in its present form. I would like you to consider this amendment, to look at it and to send your comments to the committee. I already know that the government will probably not agree because this may go too far, but we can debate that here amongst ourselves. I would like to know whether the First Nations would be satisfied with that amendment. That was my first comment.

Furthermore, I don't believe—and I say this sincerely—in the exploratory process they want to put in place. In 20 years, this still will not be resolved. I would like you to talk to me about possible amendments. I'm not saying they can be introduced immediately.

Discrimination and registration are two completely separate things. I think we can address discrimination, or at least in part. However, with regard to registration, section 11 of the Indian Act should be amended. I would like to hear your comments on that subject. I think we can do part of the job with section 6, but as for section 11, that is to say registration... I don't think we need to explain section 11 to you. That concerns the power of the communities to register their members.

I would like to have your comments on that subject.

● (1555)

[*English*]

Chief Jody Wilson-Raybould: Thank you for the questions.

With respect to the proposed amendment to paragraph 6(1)(a) that you suggest, I recognize that this is the amendment put forward by Sharon McIvor herself to remedy the situation before the days of 1985 and to provide paragraph 6(1)(a) status to those people who come before that date.

With respect to your question around the exploratory process and whether or not this will take another 20 years, I believe that we are in a time of real opportunity and that the opportunities presenting themselves now are different from the opportunities that presented themselves 20 years ago. We have enormous opportunity in terms of first nations, and our opportunities have been provided to us from previous leaders who provided victories in court, at the negotiation table, and otherwise. I certainly believe that an exploratory process, or actually going beyond an exploratory process, is a fundamental engagement with communities on the ground. That is what needs to happen, and it needs to be driven by first nations themselves—not dictated to first nations from the outside, but actually created by first nations themselves.

With respect to status and discrimination, I recognize your comment around the ability to eliminate discrimination within the Indian Act. I alluded to this somewhat in my comments. There is a clear distinction between status and the ability—that's a colloquial term—to be registered under the Indian Act and have membership or citizenship within a first nations community. The lines with respect to those two trains of thought have become blurred, and that distinction needs to be made clear. Being registered as an Indian under the Indian Act does not equate to identity or identity with respect to a specific nation. Membership or citizenship within a specific nation will be determined based upon our own inherent authority or inherent right to determine who we are and our own identity, as recognized in the UN Declaration on the Rights of Indigenous Peoples and as recognized or presented in the promise of article 35.

I hope that answers your question.

[*Translation*]

Mr. Marc Lemay: Very well, you've responded on the exploratory process very well. What interests me, I'm going to tell you honestly—and it isn't that I don't like you. I wouldn't want us to come back in a year or two and say that we are still at the exploratory process stage.

If possible, I would like you to give us—we don't need an answer today—a guide or guidelines for implementing the exploratory process. If we have to put it in the act, we will. However, can you tell us what you think are the major principles so that a process such as the one the minister wants to trigger can move forward and be conclusive?

[*English*]

Chief Jody Wilson-Raybould: Thank you for the important question.

As I indicated somewhat, and will elaborate on now, an exploratory process that will be impactful or actually create change must be rooted in the communities, and it must recognize that the communities or the first nations across this country are distinct, just as they are similar in certain circumstances. It needs to be at the initiation of first nations communities, and the first nations communities need to see the benefit in initiating, expanding on, and harnessing that discussion. If it's not driven by the first nations communities, it simply will not work.

[*Translation*]

The Chair: Thank you, Mr. Lemay.

Mr. Marc Lemay: Already! I'm entitled to three minutes.

The Chair: Yes, and you even had 40 seconds more.

[*English*]

Now we'll go to Ms. Leslie, for seven minutes.

● (1600)

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Thank you very much, to both of you, for appearing here today. It's very helpful.

My name is Megan Leslie. I am the member of Parliament for Halifax, which is on Mi'kmaq territory. *Pjilsa'si*. Welcome.

I will continue along the line of the discussion you were having with Mr. Lemay. You said in your opening statement that you are supportive of any amendments to get rid of discrimination in the act, and I think we could all be supportive of that.

We have had some contact with different first nations. They have said that, yes, the federal government had engagement sessions for the amendments to this act with groups or individuals or native organizations, but the duty to consult is about a consultation with rights holders. These first nation governments said that this duty to consult means the federal government actually needs to consult with first nations governments. There has been a little bit of pressure that maybe we shouldn't even be looking at the changes, as adequate or inadequate as they are.

What are your thoughts on that?

Chief Jody Wilson-Raybould: Thank you for the question.

I recognize that there is a divergence of opinion among first nations leadership and first nations generally across the country. As I indicated in my statement, I believe that any discrimination should be eradicated in this day and age.

The question of consultation is somewhat difficult for me to address, because there is some assumption that there is a need for consultation to amend the Indian Act. I'm not saying there isn't, but as a lawyer, I look at consultation and accommodation in the legal context of aboriginal title and rights. In this case, with respect to the government changing the Indian Act, there is also a form of consultation. The Indian Act is an antiquated piece of legislation. It certainly is complicated, and there are varying degrees with respect to engagement with first nations on issues that seek to amend it.

There have been a lot of changes to the Indian Act over the years. Making fundamental changes, which are driven by first nations, to enter into a treaty or to negotiate a self-government arrangement requires a referendum within a community. In this particular case, with respect to Bill C-3 to get rid of discrimination, there is a different form of consultation.

I recognize that there have been engagements across the country with respect to Bill C-3 and citizenship, but the broader and more important discussion that the first nations leadership across the country has raised is around that citizenship issue and how to be respectful of first nations ability to determine for themselves who they are and who their citizens will be.

Ms. Megan Leslie: That's very useful. Thank you.

In a letter to parliamentarians from the national chief earlier this month, he mentioned that current rules for registration are leading to a rapid decline and ultimate extinguishment of eligibility for Indian status. I wonder if you can shed some light for us on what this means for communities that rely on federal funding for services and programs where the eligibility is status.

Chief Jody Wilson-Raybould: Thank you for the question.

In terms of extinguishment, I want to make sure I have your question right with regard to the current rules for registration. Are you referring to the future generational cut-off?

Ms. Megan Leslie: I believe so, under subclause 6(2).

● (1605)

Chief Jody Wilson-Raybould: Right. The second generation cut-off that will ultimately result is not something that will be addressed within the scope of this particular bill. I certainly recognize that as a result of Bill C-3 in its current form, there is going to be an influx of potential persons who are eligible to be registered. The government has indicated or estimated that there will be in the range of 45,000.

That certainly can—and will, as it did in 1985—pose problems for first nations communities that have to administer programs and services to their citizens. As I said in my opening comments, I have said, and we at the Assembly of First Nations and our chiefs have said clearly, that there is a need to ensure there are adequate resources to enable our first nations communities to address the potential influx of new registrants resulting from the bill in its current form or the potential influx of people resulting from an amendment to the bill.

Ms. Megan Leslie: Do you have examples, even anecdotal, of how your members had to deal with those requests back with Bill C-31? What did it look like?

Chief Jody Wilson-Raybould: I'm kind of dating myself a little bit in that in 1985 I was 14, but in my home community, where I'm on council, we are having dialogue and discussions around the potential influx of people who are coming in. The persons who worked within our communities at the time were somewhat inundated by applicants coming back, though some communities weren't at all.

I would maybe look to my colleague, Karen, to reflect a little bit on the reality of 1985 in a more articulate way than I'm doing right now.

Ms. Karen Campbell (Senior Policy Analyst, Strategic Policy, Planning and Law, Assembly of First Nations): Just very briefly, and likely not any more articulately, in terms of the additional need—this was addressed and read into the record on Tuesday as well—around rapid increases in registration, there were calls on registration clerks and those individuals at both the community and the government level at the time to be working around the clock. Backlogs still exist right now, and there are individuals who aren't able to fully access their rights because of the backlog in registration and the inability to respond to it.

In terms of direct programs and services at the community level, in many communities—certainly not all, because the situation does differ across the country—there are large draws particularly on housing and infrastructure, and that's where the real crunch came down. Budgets for funding of post-secondary education in particular were also looked at, as were those for the kinds of services that are offered directly in the community.

Ms. Megan Leslie: Thanks to you both.

The Chair: Thank you very much, Ms. Leslie and both witnesses.

Members, we're going over by about a minute on each of these. I'm trying to apportion out the time as well as I can so that we all get the same amount.

We're going to go to Mr. Duncan. We'll have time for only another two slots, with two three-minute questions and answers after that.

Let's go to Mr. Duncan.

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

Welcome, Chief Wilson-Raybould—I'm used to calling you Jody, of course—and Karen.

Chief Jody Wilson-Raybould: You can call me Jody.

Mr. John Duncan: I think we all recognize that this is a complicated picture. I was struck by a couple of things you said. You said something along the lines that you should think of yourselves as citizens rather than as Indian Act registrants. There's some confusion between registration and membership, and you focused quite a bit on governance and how changes on that front would be very critical.

I'd like to reassure you that the government does recognize that governance and capacity are directions that are vitally important. We want to get there too. Doing so is in everybody's best interests.

Specific to Bill C-3, I think it's important I get on the record that Bill C-3, of course, would not preclude further legislation. At the same time, I heard you loud and clear when you said that long-term solutions do not lie in further tinkering with the Indian Act. That puts us in quite a dilemma here, in a sense, because Bill C-3 is designed to address a very specific case, the McIvor case.

We know there are further legal actions dealing with registration that are in the system, but I'm also struck that we have negotiated agreements between the Government of Canada and first nations in various parts of Canada. Many of those were with first nations that obviously had significant governance and capacity. That's why they were involved in those discussions. Sometimes “significant” would be an understatement; “very well capacitated” might be better. Whenever we have those agreements, they tend to include as one of the provisions the fact that only those people who fit into the Indian Act registration classifications are eligible for membership or citizenship.

In order to square the circle here, to get to where you would like to get, is not passage of Bill C-3 and adoption of the exploratory process a reasonable and practical direction to try to move us forward?

● (1610)

Chief Jody Wilson-Raybould: Thank you, Mr. Duncan—or John, as I've come to call you—for the question.

Mr. John Duncan: You may call me John anytime. You know that.

Chief Jody Wilson-Raybould: This is a really important question, and one that I hope I'll be able to provide an answer to that makes clear the distinction between what you're asking—between Bill C-3 and the exploratory process.

I do not necessarily see the two as existing in isolation. I view Bill C-3 and the amendments to the Indian Act and the rectification of discrimination as it is right now, and potentially as it could be to rectify all gender discrimination, as a step forward certainly. I do recognize and applaud the government's commitment to engage in an exploratory process around the issue of citizenship.

Again I have to go back to my comments that citizenship and status are not related. They are fundamentally different. As you reference with respect to modern arrangements or modern agreements that have been negotiated by first nations, yes, within a chapter there is a provision that welcomes as members those persons who are eligible to be registered under the Indian Act within their agreement that has been negotiated in a modern context.

That's not to say that the recognition, or that clause in the agreement, will not be dispensed with or disbanded when our nations are on this process of nation-building and becoming more self-governing and implementing their agreement in a really meaningful way on the ground that acknowledges where their citizens want to go, that the requirement of having the recognition of people eligible to be registered as a requirement for eligibility to benefit from a treaty or otherwise will dissipate and it will not need to exist anymore because our nations are on that path, as you reference, with respect to developing our own systems of governance and becoming self-determining. That, in my opinion, goes well beyond any determination of who and what one is under a piece of legislation.

● (1615)

Mr. John Duncan: Thank you. I think that was a comprehensive question and a comprehensive answer.

I would like to mention two other initiatives that are somewhat related to this whole question of discrimination.

We amended the Canadian Human Rights Act, and as of June of next year, that act will apply to all Canadians equally. It used to exclude, of course, first nations people living on reserve. For the Government of Canada to pass that legislation, there was a lot of resistance.

We also have the matrimonial property rights initiative, which has now been put before the Senate. The Senate will be dealing with that at committee, I assume, and once again, that's a question of a vacuum in the law.

We met resistance on both of these bills, but they are there to end discrimination.

The Chair: Could you perhaps get your question in?

Mr. John Duncan: Can you offer comment as to how we as a federal government can get past these kinds of obstacles?

Chief Jody Wilson-Raybould: Thank you, Mr. Chair. I understand that we are in a time crunch.

To be brief, and to assist government in getting beyond, whether it be MRP or whether it be the repeal of section 67, actually engage in the dialogue on first nations jurisdiction and advance, where appropriate, legislation that recognizes that jurisdiction, whether it be in an exploratory process, or, as our chiefs have called for, through a special parliamentary committee, to look at these issues in a really fundamental way on the ground that are reflective of our communities and where our communities want to go.

The Chair: Thank you very much for the brevity of that response.

We have four minutes or so for the last two questions. We'll go to Mr. Russell and then Mr. Dreeshen. Then we'll have to wrap up, and we'll suspend briefly before our next hour.

Mr. Russell, go ahead.

Mr. Todd Russell: Thank you, Mr. Chair.

Just to follow up, when it comes to Bill C-3, we have projections from Mr. Clatworthy, who has been hired by the department, on the impacts of roughly 45,000, and on how they are dispersed between on-reserve and off-reserve. I'm just wondering whether the AFN has done any analysis on that, so that we could have a comparator. I'm not doubting his numbers, but it would be nice to see if there was a comparator.

Chief Jody Wilson-Raybould: Karen can correct me if I'm wrong, but no, we haven't done that substantive analysis. Doing that analysis requires going into a community to understand the particular circumstances of that community. That's a long process, but it's an important process.

I can speak on behalf of my own first nation. We are a nation of some 930 members, and the implications, as a result of Bill C-3 in its current form, are that more than 500 people would be coming back into our community. I'm not questioning those numbers except from my perspective as a council person in my own community, knowing that we are facing a potentially large number of registrants. That's not a bad thing. They simply need to be provided for in an appropriate way.

Mr. Todd Russell: When I asked government officials about whether they had done projections on, for instance, costs—it's not always the most savoury type of discussion, but it's a realistic one, isn't it—they hadn't done them for long- or short-term health benefits, post-secondary education, or the implications for communities when it comes to providing services or housing. So the government really needs to get on with doing its work, even in light of Bill C-3.

On the exploratory process again, you don't like the word exploratory. I believe I heard you say you think we've done enough of this exploration, so where would you like to see it go?

Sometimes people see this talk we're often engaged in as a way to deflect dealing head-on with some very crucial issues. I mean, it might be nice to explore, to talk for two years, but at the end of that, people need to see something delivered at their community level as well. What do you see being delivered at the end of this process?

I'm not that confident in this process, let me tell you that. I'd have to see a hell of a lot more meat on the bones before I'd give the government a thumbs-up on this.

At any rate, I'd like to see what your vision for this process might look like.

● (1620)

Chief Jody Wilson-Raybould: Thank you for the question.

We are in a time when there is a need to have true engagement, true engagement at the community level. That certainly can be supported by our governments, both provincial and federal, and it needs to be supported in that way, by way of providing resources and engaging in a joint process to develop some form of terms of reference.

However, in order for an engagement process to be successful, it needs to be driven at the community level by the community members, and it needs to be out of self-interest to advance our nations in terms of nation-building, in terms of building our own governance and getting out from under the Indian Act to where we are self-determining and self-governing.

I believe this is an enormous opportunity for the government to support this endeavour. It will take time. It will take resources. Most importantly, it needs to be supported, and supported at the community level, driven by our own individual nations and what is appropriate for them.

Mr. Todd Russell: Thank you very much.

The Chair: Thank you, Mr. Russell.

Now let's go to our last questioner, which will be Mr. Dreeshen for four minutes.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much.

It's great to be able to speak with you here today.

I think it's important, first of all, that our committee hear that Bill C-3 indeed will be addressing the McIvor case. This is, I think, one aspect of it, but again the major discussion seems to be, right now, about where we're going in the future as far as the exploratory process is concerned.

You had mentioned earlier how it was so important that this be rooted in the community. That perhaps comes from Megan's questions earlier, when she talked about consensus. I'd like to go back to what John was talking about, regarding some of the resistance that is sometimes felt.

I wonder if you could start by explaining the mechanisms the AFN has to get consensus among its various aboriginal communities.

Chief Jody Wilson-Raybould: As members of this committee know, the AFN represents 630-plus first nations communities through our national chief and our regional chiefs. In terms of developing consensus, I don't think anybody would dispute eradicating, with respect to Bill C-3, the discrimination.

Also, I don't think there is a first nations community across this country that would dispute an acknowledgement of their inherent right to determine what's best for their communities and to be provided with the mechanisms, legislative or otherwise, to actually move down that process of nation building, to determine for oneself, as an autonomous nation, what is most appropriate based on their cultural traditions and values for their own individual community. The Assembly of First Nations, in terms of *that* dialogue, I believe would be all for it.

Mr. Earl Dreeshen: Are there any aspects of the Indian Act that create problems as far as gaining consensus is concerned?

Chief Jody Wilson-Raybould: I'm not sure what you mean. Could you rephrase that?

Mr. Earl Dreeshen: I'm wondering whether there are any aspects of what is already there that make it difficult for communities to perhaps work together with another community, because they feel that in order to manage what is happening in their own community, there could be problems with another community. That's what I'm asking.

Chief Jody Wilson-Raybould: In terms of the Indian Act and the administration of programs and services, at a fundamental level it has to do with resources. Of course there are inadequate resources in order for our nations to engage our community and provide those programs and services. As with any nation, community, or society, when money is involved, it becomes problematic.

With respect to nations and moving beyond the Indian Act, the Indian Act determines for our nations what they do, what they will move forward. From the time we're born until the time we die, somebody determines for us. The movement beyond that is for us to be provided the opportunity to determine for ourselves the most appropriate way to manage our governments and resources and to be provided the opportunity to be able to settle the land question, to have proper implementation of our historic treaties, and to be self-governing and self-determining over those lands, which includes developing an economy that is sustainable, that gets us out from under being reliant upon somebody other than our own communities to move that forward.

● (1625)

Mr. Earl Dreeshen: Would such an economy be able to manage the influx of the people, then, who were to come into your communities?

Chief Jody Wilson-Raybould: I believe it would at some point. It's not going to happen overnight. I think our people are our greatest resource and we should not shy away from the reality of having people come back into our communities to propel our governments and our nations forward. The more resources—in this case, human resources—that we have will enable our economies to develop in a sustainable way that is reflective of the reality and needs of those people.

The Chair: Thank you, Mr. Dreeshen.

I would note also to Chief Wilson-Raybould that the national chief was able to spend some time with us here this afternoon. I wonder if you could convey our thanks to him.

I see Chief Lonechild here as well. It's good to see you back.

It's always a pleasure to have the guidance of your organization on the matters that we as members are discussing around how to advance the quality of life and aspirations of aboriginal people across the country. You're extremely helpful in terms of the work of this group that you see assembled here this afternoon.

We'll leave it at that.

Members, we'll suspend for about three minutes while we change to the next block of witnesses and you have the opportunity to bid our guests goodbye.

● _____ (Pause) _____

●

● (1630)

The Chair: Order.

[*Translation*]

We'll start the second round.

Welcome to all the witnesses.

[*English*]

On the study of Bill C-3 we have three presentations. In order to get through questions—I don't know if we have given you this in advance—if you could shorten your presentations to seven and a half minutes as opposed to ten, that would be helpful. It would at least give us time to get through one round of questions. I hope that's not too great an imposition.

We'll begin with

[*Translation*]

Ms. Nicole Dufour and Ms. Renée Dupuis, from the Barreau du Québec. Go ahead, please.

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good afternoon. Thank you.

My name is Nicole Dufour. I am the secretary of the aboriginal law committee of the Barreau du Québec. First,I would like to apologize for the absence of the president, who unfortunately could not get away to be with us.

I'm going to make the general comments and my colleague, Ms. Dupuis, who is chair of the aboriginal law committee and who has done a lot of work in aboriginal law, will make the specific comments. In view of the time frame we were given yesterday, we were late in sending our comments. I will give you a few passages.

The bill is intended as a response to the Court of Appeal for British Columbia decision, rendered in April 2009, in the McIvor case. The Court of Appeal held that paragraphs 6(1)(*a*) and (*c*) violate the Canadian Charter of Rights and Freedoms and cannot be justified under section 1 of the Charter because the amendments made to the Indian Act in 1985 do not minimally impair the applicants' rights in that they served to widen the existing inequality between the applicants' group and members of the comparator group. Those amendments not only maintained the existing rights of a class of persons, they in fact improved their status as of April 17, 1985—

● (1635)

The Chair: Ms. Dufour, could you slow down, please?

Ms. Nicole Dufour: Those amendments not only maintained the existing rights of a class of persons, they in fact improved their status as of April 17, 1985 relative to their status under the previous version of the act. In so doing, the 1985 amendments increased the disadvantage for the applicants, with respect to the status that should be granted to a child of a mixed marriage, depending whether Indian status was that of the mother or the father. The Court of Appeal suspended the effect of its judgment for a period of one year—I was recently told that three months was added to that year, and therefore until July 5, 2010—to allow the government to take the necessary statutory measures to resolve the discriminatory nature of the act.

The Barreau du Québec notes once again that the bill proposes a piecemeal amendment of the Indian Act, which has previously occurred following court decisions and specific applications. Discrimination problems were identified very soon after those amendments were passed 25 years ago. Upon their adoption, numerous criticisms focused on the displacement to following generations that these amendments had introduced, whereas they were supposed to serve to resolve secular discrimination against women as a result of their marriage.

The Barreau du Québec fears the effects of this type of amendment on the logical structure of the act. It does become increasingly difficult to get a clear overview of the act as a whole. Piecemeal legislating undermines the consistency of the act. In this case, this bill, introduced in response to the McIvor judgment, creates new disadvantageous distinctions for persons in the same group as the applicants and disregards other disadvantages set out in the Indian Act.

We have specific comments on each of the clauses. I'll allow my colleague Ms. Dupuis to make them.

Ms. Renée Dupuis (Lawyer, Barreau du Québec): Thank you for allowing me to speak, Mr. Chairman.

The Barreau du Québec's specific comments on Bill C-3 in response to the McIvor judgment concern a certain number of clauses, but the two main clauses concern the proposed paragraph 6(1)(*c.1*) and clause 9 of the bill. We have noted that there may be problems of concordance in clause 2(1) of the bill, that is to say that, in the French version, “une personne” is replaced by “toute personne”. And, from a reading of the present act using this new wording, we believe there are problems of concordance that must be reviewed. We therefore suggest that concordance is assured for this expression in all other sections of the Indian Act.

With respect to clause 2(2), we note that the proposed amendment restates the present test, in both the English and French versions, and we wondered about the purpose of this clause. In a very substantial manner, in paragraph 6(1)(*c.1*) which would be added to the Indian Act and which, according to the objective pursued by the government, is to serve to eliminate the discrimination identified by the Court of Appeal for British Columbia, we note that this new paragraph concerns the children of a marriage born before April 17, 1985, which introduces a distinction between children born before and after that date. In addition, the amendment concerns only the children of a union formalized by marriage. The bill does not correct the discrimination against children born outside marriage prior to 1985, more particularly children born outside marriage to an Indian father and a non-Indian mother, depending whether they are boys with status under subsection 6(1) or girls with lesser status under subsection 6(2).

The Barreau also wonders about the proposed subparagraph 6(1)(*c.1*)(iv), which, to obtain enhanced status, appears to require that a child must be, himself or herself, a parent. We believe that this element should not be added as a condition for change of status, since introducing this condition creates discrimination between the members of a single group depending on whether or not they have had children. Whether or not a person has had children should not be a condition for enhanced status. In fact, the proposed subparagraph 6(1)(*c.1*)(iv) merely enhances the status of children who already have children. The Barreau du Québec suggests that the question of grandchildren be handled separately. We submit that the bill should offer the option of granting status in accordance with the provisions of subsection 6(1) to all children, whether or not they are parents.

Furthermore, the Barreau—

● (1640)

[*English*]

The Chair: Madam Dupuis, could I ask how much more you've got there? We are now over time, but I think it's important to get your suggestions and proposals.

Ms. Renée Dupuis: I would say two and a half minutes.

The Chair: Okay.

Is that agreeable that we go ahead?

Some hon. members: Agreed.

The Chair: I think it's important to get this on the record even if we have to shorten the questions.

[*Translation*]

Go ahead, madam.

Ms. Renée Dupuis: The Barreau wonders about all the situations contemplated by the bill. Does the government want to resolve situations existing at the time the bill is adopted or is it providing for future situations as well? The present wording of subparagraph 6(1)(*c.1*)(iv) seems to indicate that only those persons who already have children at the time the bill comes into force could have their status enhanced, which would create a disadvantageous distinction for persons who have children after the act comes into force.

The Barreau also notes that the case of children who are born to Indian women and whose paternity has not been declared is not resolved by this bill. These children are currently registered under subsection 6(2), and have been since 1985. It is assumed that the undeclared father is not Indian.

The Barreau is aware that the introduction of different status in 1985, depending whether it is granted under subsection 6(1) or subsection 6(2), has had a direct impact on the communities in that it determines access or lack thereof to services, as well as the benefits and programs of the federal government and band councils. We would like to draw the committee's attention to that point. This differential treatment has given rise to very difficult social situations in a number of communities where the qualifier "6(2)" is considered derogatory and synonymous with lower status.

In closing, the Barreau recalls that, when the so-called "double mother" rule was rescinded in 1985, a number of bands obtained an exemption to the act as a result of which they kept their numbers intact. The Barreau believes that the bill does not resolve the discrimination that continues to exist between those bands exempted from the act and those not exempted.

Our final comment concerns clause 9 of the bill. We want to recall that the amendment to the Canadian Human Rights Act repealing section 67 was assented to on June 18, 2008. As a result, since 2008, anyone feeling they have been discriminated against under the Indian Act may seek remedy from the federal government, but a three-year grace period was granted to band councils, which postpones any recourse against them until after June 2011.

A reading of the provisions of clause 9 of the bill leads the Barreau to question the possibility of instituting the proceedings recently provided for under the Canadian Human Rights Act. Although recourse against discrimination is of a public nature, the Barreau du Québec believes that the wording of clause 9 limits its application.

In conclusion, we believe that the bill as introduced is incomplete and avoids the entire issue of discrimination in registration in the Indian Registry.

Thank you, Mr. Chairman.

● (1645)

The Chair: Thank you, madam.

[*English*]

We will now go to the Canadian Bar Association. We have with us Gaylene Schellenberg, from the legislation and law reform section, and Christopher Devlin, representing the national criminal justice section.

Welcome. We'll try to do the same thing. It's important for us, as you can imagine, to get these remarks on the record. But if you are able to condense them some, please do so at your discretion.

Go ahead, Ms. Schellenberg.

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you for the invitation to present to you today the CBA's views on Bill C-3.

The Canadian Bar Association is a national association of over 37,000 lawyers, notaries, law students, and academics. An important aspect of our mandate is seeking improvements in the law and in the administration of justice. It's from this perspective that we appear before you today.

With me is Christopher Devlin, an executive member of the CBA's national aboriginal law section. The section represents lawyers from all parts of the country who specialize in aboriginal legal issues. Mr. Devlin practises law in Victoria, B.C.

I'll turn it to him to present the substance of our submission.

Mr. Christopher Devlin (Executive Member, National Aboriginal Law Section, Canadian Bar Association): Yes, and I'm with the aboriginal bar section, not the criminal bar section.

I should add that I was counsel for one of the intervenors in the McIvor case as well, so I've been involved in this issue for a bit of time.

The committee has the legislative summary before it that gives a history of not only the McIvor case, but also the preceding amendments to the Indian Act for section 6, namely, Bill C-31, and before that, although it never was enacted, Bill C-47. I'm not going to rehash that. We've given you a written presentation giving some background from our perspective.

I'd like to focus, in my limited time, on the four recommendations we make. They're all substantive, but one of them is more substantive than the others. Let me briefly go over the three lesser substantive ones and then we'll get to the main point we want to make.

We asked the question, does Bill C-3 eliminate sex discrimination? The answer is, sort of but not quite, so we want to focus on trying to figure out what can be done.

We appreciate that the B.C. Court of Appeal provided a very narrow interpretation of section 6, and to some degree the government has responded with an equally focused piece of legislation. However, the opportunity to look at section 6—this is the first time in 25 years—shouldn't be passed by and this opportunity taken merely to respond to the court of appeal, but maybe look a little deeper to see what can be done given the constraints of the existing court order.

I'm beginning at the middle of our paper, page 4 in the English, and I believe it's page 5 in the French portion.

Our first point—and this is one the previous speaker just mentioned—was that under the proposed paragraph 6(1)(c.1), there are four conditions in order to gain section 6 status under the bill. The fourth condition is that you also have to parent a child. The CBA's first recommendation is that this last condition be removed.

The legislation, so far as we understand it, was designed to reflect the fact pattern in the McIvor case. So with Sharon McIvor's adult son, Jacob Grismer, how do we ensure his children have status? The point was made before, so I'm not going to go into it in depth.

The fact is that by requiring people in Jacob Grismer's situation to have a child before their own status is improved from a 6(2) to a 6(1) seems frankly to be a bit silly. It also adds some administrative inefficiencies, because you then have to have two different applications for re-registration under different status, as well as the child.

The Jacob Grismer generation has to apply to improve their status in order for their child to then get section 2 status. It seems that's unnecessary because that's covered in a different part of the bill. So our first recommendation is that subparagraph 6(1)(c.1)(iv) be removed from the proposed amendment to the Indian Act.

Our second recommendation—and this was addressed at length by Chief Wilson-Raybould earlier, so we just want to note that the CBA supports this—is that there should be adequate funding provided for first nations to address the influx of new members given the passage of this bill. That's our second recommendation. Sorry, I got that backwards. That was our third recommendation.

Our second recommendation also goes towards clause 9, which was raised by my colleague, and that is that it precludes people bringing actions against the government. Again, this seems like a bit of a parting shot at potential litigants. With the repeal of section 67 of the Human Rights Act, I think it does call into question how those proceedings will go given this prohibition and whether opportunities will be there for future litigation.

● (1650)

There are also several cases already in the courts that will have to be judged as to whether they'll be shut down by this or will be able to proceed.

The discrimination has been there, and the government has known about it, since 1985. It was well canvassed in the committee reports of the day. The government shouldn't be able to avoid liability now, in our view, just because of the passage of time, for something it has known about—this residual discrimination within the Indian Act.

I'd like to get to our last recommendation, which is our main one. I would encourage committee members to look at the table in our report. This is where we say that within the confines of the focus of this legislation, there is still residual sex discrimination. I think you heard from Ms. McIvor yesterday, and we say in our brief, that this bill does not eliminate all sex discrimination. We have provided a comprehensive list of the sex discrimination it doesn't address. Even within the four corners of the bill, there is still some residual discrimination.

What we've done here in the table is set out three scenarios. The first is prior to 1985. That would be before Bill C-31. If a woman married out, she lost her status, as did her children and her grandchildren, but the hypothetical brother did not. In fact, everyone kept their status, except in this peculiar situation, from 1951 to 1985, when the double mother rule was in place.

I should say that the double mother rule was in fact really only operative for 13 years. It came into effect in 1951, but you had to have people who were becoming age 21. So it wasn't until 1972 that the first people could actually be struck as Indians from the register. There was evidence before the court of appeal—I don't have the reference handy—that in fact of the 2,000 or so people the double mother rule could have affected, only about 100 were in fact taken off. There were two reasons for this. One was that over half of the first nations in the country were exempted from the double mother rule. The other was that the minister was able to pass ministerial orders exempting provisions of the Indian Act, including the double mother rule, from applying to first nations. Several first nations were able to be exempted from that rule. So it actually affected a very narrow group of people for a very short period of time.

The middle part of the table shows what happened after Bill C-31, and this is the problem Bill C-3 is trying to remedy and what the court of appeal grappled with. This is exactly Sharon McIvor's situation. She was reinstated. Her child got subsection 6(2) status, but the grandchildren born before and after 1985 did not get status, whereas the hypothetical brother had full status under subsection 6 (1), and so did the second generation. There was a distinction, then, between the children born before 1985 and those born after 1985. If they were born before 1985, they actually kept full subsection 6(1) status, but if they were born after 1985, they got subsection 6(2) status.

With this proposed bill, there is residual discrimination. Everyone is equal, more or less, in terms of whether they have subsection 6(1) or 6(2) status, except the grandchildren born before 1985. If they were born before 1985, this bill would confer on them subsection 6 (2) status. But the hypothetical brother's children would have paragraph 6(1)(c) status.

Again, we want to emphasize that Parliament should take this opportunity to end all sex discrimination. At the very least, within the four corners of this bill, it should try to be consistent and try to eliminate the sex discrimination. We have a recommendation for an additional clause, which would be subparagraph 6(1)(c)(ii).

● (1655)

The Chair: Thank you very much, Mr. Devlin and Ms. Schellenberg.

We now move to our third witness this afternoon. Welcome, Kathy Hodgson-Smith. Ms. Hodgson-Smith is from the Métis National Council. We are delighted to have you here this afternoon to provide some insight on the bill we have in front of us.

We have taken about 10 minutes for the others, so if you go 10 minutes, that would be fine. If you can shorten it up a bit, that would be appreciated also.

Ms. Kathy Hodgson-Smith (Barrister and Solicitor, Hodgson-Smith Law, Métis National Council): Thank you.

I'd like to begin by thanking the chair and the honourable members for inviting the Métis National Council to appear before you today. The Métis National Council represents between 350,000 and 400,000 Métis people from Ontario westward.

The Métis have a major interest in issues of citizenship within aboriginal nations. While the court of appeal case of the Queen and McIvor held that determination of status under the Indian Act was indeed the domain of Parliament, the court also held, and the Métis Nation does agree, that section 35 of the Constitution Act offers relevant principles and perspectives not argued in that case.

The Métis Nation submits that citizenship is also an issue of aboriginal rights. The Métis Nation views the determination of citizenship as an inherent right of the aboriginal peoples protected under section 35. Canadian constitutional law accepts this premise. Canadian common law establishes that customary aboriginal laws, which would include laws of citizenship that survived Confederation, are indeed enforceable. Binding international law also supports the principle that identity is an inherent right.

Canada's 1995 inherent right policy on aboriginal self-government recognizes that membership in an aboriginal community is the proper subject matter of self-government negotiations under section 35.

The Supreme Court in the Queen and Powley set out a legal framework for recognizing distinct Métis communities and the inherent right of those communities, by virtue of their prior occupation and distinct cultures, to define their own citizenship. In determining the lawful implementation of Métis aboriginal rights, the right to hunt for food, the court held that the process of identifying Métis people, based on community self-definition and objectively verifiable criteria, was not an insurmountable task. The Métis Nation is in agreement with this premise.

Since 2004, the Métis have received federal support under the post-Powley initiatives to register its citizens through its governing member structure. The Métis Nation believes it is fair and just that Canada, through Bill C-3, amend its legislation to end discrimination against Indian women and their descendants.

Issues of citizenship under the Indian Act, however, extend far beyond that legislative domain. In addition to being the proper subject matter of self-government negotiations between aboriginal nations and Canada, the Métis Nation believes it is also the proper subject matter of negotiation within and between aboriginal nations.

Pursuant to the announcement of Minister Strahl on March 11, 2010, Canada has proposed to initiate, in partnership with Métis and first nations, an exploratory process to discuss these broader issues of citizenship. INAC has proposed that the process be based upon principles of collaboration and inclusiveness. The Métis National Council agrees to engage in these principles in partnership with Canada, but seeks also to ensure that the exploratory process also be based upon informed and respectful dialogue.

As for citizenship, it is recommended by the Métis Nation, when an aboriginal nation touches upon and affects self-determination, Canada's approach to dialogue on citizenship must be undertaken on a nation-to-nation basis. The Métis National Council protocol agreement signed between Canada and the Métis Nation in September 2008 provides a workable mechanism for implementation of this dialogue with the Métis. Canada should also provide reasonable capacity for the Métis Nation to engage in dialogue with first nations.

As well, the Métis National Council seeks that Canada ensure a broad-based educational process is established that will provide the necessary background information for aboriginal and non-aboriginal Canadians to have an informed discussion on citizenship within aboriginal nations. This information must acknowledge that aboriginal citizenship falls within the inherent right of self-determination. It is our submission that Canadian law and policy require such an approach.

In 2002, after several years of consultation with the Métis community, the general assembly of the Métis National Council, as part of its governance development, passed a resolution regarding the registry within the Métis Nation. It provided that Métis means a person who self-identifies as Métis, who is of historic Métis Nation ancestry, who is distinct from other aboriginal peoples, and is accepted by the Métis Nation. The Queen and Powley is not inconsistent with that definition.

● (1700)

Self-identification for the purposes of registration, under the amendments proposed by Bill C-3, must be premised upon free and informed consent. For example, some siblings may apply for membership under the Métis Nation registry and others may not. Some siblings may apply for registry under Bill C-3 or under the Indian Act and others may not. The choice is, unfortunately, not always just based on cultural identity.

It is a reality in Canada that aboriginal people, including the Métis Nation, suffer severe social and economic hardship. Hunger, disease, poor housing, unemployment, and low education attainment are realities in our communities. It must be understood that the lack of recognition for the Métis has created situations of inequality within the aboriginal community. Decades of marginalization and exclusion of the Métis have placed Métis Nation citizens with a difficult choice when facing these hardships. Bill C-3 will create a means to address social and economic hardships with a cultural cost.

Because of this situation of unequal access and benefit, Métis citizens may have to choose to register under the Indian Act in order to access necessary benefits such as health medication, support for travel to receive medical attention, educational opportunities, and the right to hunt, fish, and trap for food, etc. They are entitled to the basic information needed to make such a difficult decision.

It is our recommendation that Métis citizens are entitled to reasonable information in order to make free and informed consent as to whether or not to register under the Indian Act through the Bill C-3 opportunities. The Métis Nation requires the capacity to advise Métis citizens who qualify under Bill C-3 for registry under the Indian Act of their options and the ramifications of such actions as they pertain to this piece of legislation and to their registration as a Métis citizen.

A person registered under the Indian Act or on a band registry would not be eligible to be enrolled as a citizen of the Métis Nation or included on a Métis Nation registry. Métis Nation citizenship requires that the person self-identify as distinct from other aboriginal peoples for cultural and nationhood purposes. Ancestry is only one part of the criteria. This is in keeping with the historic and contemporary fact that Métis have always maintained and displayed a collective consciousness and identity as distinct aboriginal peoples. The inter-marriage of Indian and Métis peoples is a historic and contemporary reality.

During the implementation of Bill C-31 in 1985, many Métis people, some of whom were minors at that time, registered under the Indian Act without full information as to the ramifications of that registration. Many of these people, now understanding the reality of that decision from experience, want to withdraw from the Indian registry, and currently no mechanism exists for this withdrawal. It's our submission that free and informed consent was not in place at the time of registration under Bill C-31. This history should not be repeated with Bill C-3.

It's our recommendation that Canada establish a means by which individual persons identifying as Métis Nation citizens, who wish to be removed from the Indian Act registry and regain their status in the Métis community, can seek to do so. As well, we seek Canada to remove the age discrimination component of Bill C-3 on McIvor to eliminate the status of those individuals who would otherwise be entitled to register but for the 1951 cut-off date. The response from the community to date suggests that this is an issue of age discrimination.

● (1705)

The Chair: Ms. Hodgson-Smith....

I appreciate, and I'll let members know, that Ms. Hodgson-Smith has provided a comprehensive brief, of which we're partway through now. We will undertake to have this translated and distributed to all of the members. In order to leave some time for questions from members, we're going to finish up there.

Members, in light of the time, we'll go to five-minute questions, if we could.

Oui, monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Will we also get the Barreau du Québec's brief?

The Chair: Yes, absolutely.

[*English*]

We'll have that. In the same vein, if it hasn't been translated we will undertake to get that done and circulate it to all members. That's a good point.

Now, let's go to questions from members for five minutes. To our witnesses, it's five minutes for the question and response, so try to keep the answers succinct, along with members' questions.

Let's go to Mr. Russell for five minutes.

Mr. Todd Russell: Thank you, Mr. Chair, and good afternoon to each of you.

I certainly want to thank the Canadian Bar Association and the bar association from Quebec for their submissions. I think we will have to study them very, very closely. They suggested some very practical ways we could maybe resolve some of the difficulties in this particular bill.

I'd just like each of you to comment very briefly on clause 9. I know the Canadian Bar Association has recommended that we get rid of clause 9 altogether. It wasn't quite clear to me, but is that opinion shared by Ms. Dufour and Ms. Dupuis?

There was also some mention of how it interacted with the repeal of section 67, and I was just wondering if you could take a minute to clarify that for me.

To Ms. Hodgson-Smith, it's good to see you again, and thank you for your words. I note that when Bill C-31 came in, it was a hell of a situation in the Northwest Territories, where people basically had to choose between registering or maintaining their identity. Is there any indication or do you have any sense of what kind of impact this is going to have on the Métis population itself, given the familial ties, and even the cultural ties, with certain first nations communities?

I'll stop there.

● (1710)

[*Translation*]

The Chair: Ms. Dupuis, go ahead, please.

Ms. Renée Dupuis: Thank you for this opportunity to respond and to go back over this extremely important issue. Very briefly, it must be recalled that, in 1978, when the Canadian Human Rights Act was passed, section 67 was adopted in order to rule out any recourse against the federal government under the Indian Act. It is very interesting to note that, at that time, if you go back to the parliamentary debates of the time, the federal government argued that it was pursuing exploratory discussions with the First Nations in order to determine how it was going to change the Indian Act.

In 2000, a committee recommended, among other things, that the repeal be adopted; in other words, this exclusion was removed. The only individuals deprived of recourse under the federal act were Indians. In 2008, the act was amended. Section 67 was repealed and a right was granted to file a complaint with the Canadian Human Rights Commission—which could wind up before the Canadian Human Rights Tribunal—against the federal government upon passage of the act in 2008, against a band council, eventually, in 2011. A grace period was granted to the band councils so they could adjust to this major change.

We have one question, and this is why clause 9 concerns us. This clause seems to be designed to undo what was done in 2008 and to make it so that there can be no recourse under clause 9, contrary to what was decided in 2008 when section 67 was repealed, in the context of the general legislation on discrimination.

[*English*]

The Chair: We'll go to Ms. Hodgson-Smith.

Ms. Kathy Hodgson-Smith: Thank you for your question.

The inter-marriage of first nations and Métis people is a contemporary reality. It's also a historical reality. So it's very possible that a person registered under the Indian Act could have Métis Nation ancestry. Removal from the Indian Act registry would allow them to come forward and register under their Métis Nation ancestry. There will be an ebb and flow in terms of the registries: there will be people who are currently registered under that Métis Nation ancestry, who can then register under the Indian Act; and there will be people who are removed by the processes of the Indian Act who may then have access to the Métis Nation registry, if they indeed have ancestry themselves.

Mr. Todd Russell: Can we get a quick word from Mr. Devlin?

The Chair: Okay, but very quickly only.

You have 30 seconds, Mr. Devlin.

Mr. Christopher Devlin: You have our written submission. In English, our view is on the bottom of page 6.

It seems to me that if the government knows—and it did for the last 25 years—that there was this residual discrimination, it means they've denied programming, education, whatever. Then why shouldn't someone have the opportunity to sue?

Then there's also the charter issue. Would this just result in further charter litigation to strike this provision down?

The Chair: Okay, good.

We're going to go back to Ms. Hodgson-Smith, because I didn't realize there were about 30 seconds left in her presentation. The rest of this was actually attachments, so we were in fact very close to the end. So for the purposes of getting the presentation on the record, we'll introduce the last segment of Ms. Hodgson-Smith's initial presentation and then we'll have it all in the blues.

So please go ahead with the last three paragraphs of your presentation. I'm sorry about that.

● (1715)

Ms. Kathy Hodgson-Smith: Thank you very much, Mr. Chair.

I'll just wrap up by saying that legislation that regulates cultural identity interrupts self-governance processes at the community level. It interrupts those processes in the community in which the individual originally held status and the new community to which they are then given status, and/or where status has been terminated, it does so in the community to which the individual will then seek to belong.

I wish to thank the committee for inviting and accepting our submissions.

The Chair: Thank you very much for that.

So you have in its entirety the presentation by the Métis National Council. We appreciate your patience with that.

[*Translation*]

Mr. Lemay may now go ahead for five minutes.

Mr. Marc Lemay: I'm going to try to be precise. First, I want to thank Ms. Dupuis, the Barreau du Québec, the Canadian Bar Association and Ms. Hodgson-Smith.

I thank the people from the Barreau du Québec, who have made us aware of a problem. We are going to re-examine clause 9. I also very much appreciate the position of the Canadian Bar Association.

I'm going to read you the text of an amendment. I don't need a response from the Barreau du Québec or the Canadian Bar Association today. However, if possible, I would like you to send us a written opinion on a possible amendment.

Do you believe, as I do, that, if we pass Bill C-3 as it stands, the discrimination against aboriginal women will continue? We won't have resolved the discrimination problem and it will continue. Do you agree with me? That's perfect.

Now I'm speaking to the representatives of the Canadian Bar Association. If we amended paragraph 6(1)(*a*) to read: "or if that person was born before April 17, 1985 or was a direct descendant of such and such a person", do you believe that might solve the discrimination problem? That's what I understand from your recommendation, which appears on page 9 in French and in English, with regard to the amendment to Bill C-3.

Do we agree? If possible, I would like you to analyze that. I'm not asking you for an immediate answer, quite obviously. However, would your recommendation be consistent with my recommendation or our possible recommended amendment?

I will close by putting another question to the representatives of the Canadian Bar Association. I wonder why you are proposing an amendment. You propose to delete the proposed addition of subparagraph 6(1)(*c.1*)(iv) to the Indian Act, and you then propose a number of interesting criteria. Wouldn't it be better to simply stick to your last recommendation?

There, I hope I didn't lose you, but I would like to hear what you have to say on the subject.

[*English*]

Mr. Christopher Devlin: Thank you for your questions. We will take back your proposed amendment and think about it. On first blush, I suspect it's broader than what our proposed amendment would be for paragraph 6(1)(c.2). I think your amendment would start to address what everyone has been.... It is my understanding of all the witnesses that we should take the opportunity now to look at larger sex discrimination, not just the sex discrimination identified by the B.C. Court of Appeal. Our amendment is to try to stay within the four corners of the existing statute as much as possible.

Your second question, as I understood it, was why is it necessary to remove proposed subparagraph 6(1)(c.1)(iv). We say that this recommendation goes to the Jacob Grismer generation, and our final recommendation goes to the generation that is the grandchild generation, so the child of the Jacob Grismer generation. We see these as different recommendations addressing two different generations.

● (1720)

The Vice-Chair (Mr. Todd Russell): You have 30 seconds left now.

[*Translation*]

Mr. Marc Lemay: Do you have anything to add, Ms. Dupuis?

Ms. Renée Dupuis: I wanted to tell you that we have taken note of the amendment you suggest. As regards the type of amendment we consider necessary, it seems important to us, if we want to take action on the judgment, that the amendment ensure consistency in the act and that it isn't a literal response to Ms. McIvor's personal situation. Otherwise, rather than talking about Bill C-3, An Act to promote gender equity in Indian registration, we'd be talking about Bill C-McIvor. However, we believe that a Bill C-McIvor would create a new discrimination and would not resolve other existing discriminations.

We could come back once we've analyzed your amendment.

Mr. Marc Lemay: Thank you.

[*English*]

The Vice-Chair (Mr. Todd Russell): *Merci*. Thank you very much.

Now to Ms. Leslie for five minutes.

Ms. Megan Leslie: Thank you, Mr. Chair.

Thank you all for your presentations. *Merci beaucoup*. In particular, thank you to the Canadian Bar Association for this chart, because I tried to do this myself and it didn't work. So thank you. This is very helpful. In fact, I do not have any questions about your submissions. I thought they were very clear and succinct, and I'm also very much in agreement with the recommendations you've made.

I do have one question that I'd like to tap into, and it is your legal expertise. Feel free to say this is beyond your expertise if it is, but some of our previous witnesses have talked about how we might go back to the original Indian Act and discuss ending gender discrimination all the way back. Can you think of any legal remedies there might be to try to address that? Again, if it's beyond your expertise, feel free to say so.

[*Translation*]

Ms. Renée Dupuis: May I take advantage of that question to draw your attention to one element that struck us, but that I did not focus on?

There is a long history of discrimination against women, and it is set down in the Indian Act. The judgment of the Court of Appeal for British Columbia retraces the reference points back through time.

In 1969, there was talk about abolishing the Indian Act. In 1985, there was talk about amending it, and something very decisive happened with the adoption of the Charter of Rights and Freedoms and the revision of the statutes. Parliament undertook a revision of its statutes. In a way, a revision was carried out and gave rise to Bill C-31, the act of 1985. Thus, in 1985, despite the adoption of the Charter, we witnessed a shift in discrimination, but also a maintenance of discrimination.

Earlier I talked about section 67 of the Canadian Human Rights Act. In 1987, all recourse against the Indian Act was ruled out. In addition, we did not emphasize the fact that, in 1985, the opportunity was created for the First Nations, the bands within the meaning of the act, to adopt membership codes. Everyone recalls the circumstances of that exchange. The First Nations were opposed to Bill C-31, but they were told they would have the opportunity to apply membership codes and that that would enable them to exclude people who were going to be granted or regranted Indian status.

You can see that there is a history there that was constructed in a piecemeal manner. We want to tell you today that you, as legislators, must pay attention. You must respond to a judgment, but not by introducing a Bill C-McIvor. You must bear in mind that there are constraints, charters of rights, a federal act, and so on, and that, in 2010, you cannot legislate by disregarding those fundamental instruments.

● (1725)

[*English*]

The Vice-Chair (Mr. Todd Russell): We have about one minute.

Mr. Christopher Devlin: First of all, this would take us beyond the Canadian Bar Association's formal position on this bill, so it's somewhat speculative. I think to undo the historic sex discrimination under the Indian Act would be a far larger task than this committee has been set.

I think that was what the trial judge attempted to do in McIvor. That's probably as good a starting place as any for guidance as to how to try to do it. Essentially, the court of appeal just narrowed the order, so it only spoke from 1951 onward. These amendments reflect that.

Ms. Megan Leslie: Thank you, and again, thank you all for your submissions.

The Vice-Chair (Mr. Todd Russell): Thank you very much, Ms. Leslie, and you're right on time.

We will now go to the last questions of the day. Mr. Duncan will be splitting his time with Mr. Payne, for five minutes.

Mr. John Duncan: I have two questions. The first one would be for Kathy Hodgson-Smith.

It's a very direct question. Maybe you said it, but if you did, I missed it. Does Métis status exclude persons who have status under the Indian Act? Does it necessarily follow that if you have status under the Indian Act, you are ineligible for Métis status?

Ms. Kathy Hodgson-Smith: Yes, sir, it does, because of the requirement to self-identify as a distinct people.

Mr. John Duncan: I thought that's what you were saying, but I wanted to clarify.

For the Canadian Bar Association, your first recommendation deals with the issue of a parent not being able to register unless they have a child. The net effect would be that the parent would move from subsection 6(2) to subsection 6(1).

If that person does not have a child, it's neither here nor there, in any case, because transmittal is not an issue. The difficulty is that this individual applying for 6(1) status without a child is very problematic for the registrar, as I understand it, or could be very problematic or very onerous.

So I just wonder if the strength of your recommendation, which looks very straightforward, is actually useful if it makes no difference but creates administrative complexity and burden. Have you taken that into account?

Mr. Christopher Devlin: I would say two things. First, unlike the court of appeal, Parliament can cast its net somewhat wider than the narrow confines of the bill. To the extent that there is a distinction within the communities between people who have 6(2) status as opposed to 6(1) status, this amendment would try to eradicate that.

There are very overt distinctions made. Looking forward again, with the repeal of section 67 of the Canadian Human Rights Act, it could well be that people who have 6(2) status but are otherwise entitled to 6(1) status, but for the fact that they don't have a child, could face discrimination in some way from their band council. So I'm anticipating future litigation there.

What we say is that, first of all, the registrar has to deal with complex registration questions all the time. The first nations have to put together their package, their application form, and they have to be able to prove their situation.

The administrative inefficiency that we've identified is actually in the situation where the person does have a child. They've already been registered as 6(2); they've already gone through that process. Now they're going to have to go through it again in addition to registering their child. It's doubling up.

The objective is the transmittal of status to that grandchild, but in order to do that you actually have to change the registration status of two people, not just one, not just the grandchild but also of the child's generation, the Jacob Grismer generation. We say that creates administrative inefficiencies. Why deal with two applications in front of the registrar when in fact you only need to deal with one?

The Vice-Chair (Mr. Todd Russell): We have just 30 seconds left.

● (1730)

Mr. LaVar Payne (Medicine Hat, CPC): I have two really quick questions for the Canadian Bar Association.

The Vice-Chair (Mr. Todd Russell): One would suffice.

Mr. LaVar Payne: Thank you, Mr. Chair.

First of all, in terms of totally eliminating gender discrimination, has the Canadian Bar Association calculated the number of individuals who would be eligible for status under the Indian Act?

Quickly, after that, have you done any estimates in terms of the costs that you suggest should be provided under your recommendation in support of funding for first nations?

Mr. Christopher Devlin: Quickly, the answer is that we have relied on the government's expert, Stewart Clatworthy, for the estimates there, and we haven't done any costing at all.

Mr. LaVar Payne: Thank you.

Did I make it?

The Vice-Chair (Mr. Todd Russell): Fantastic, Mr. Payne.

First of all, thank you, witnesses, for your briefs and for taking the time to be with us to share your thoughts. It will certainly inform our committee's work as we go forward.

There are just a couple of things for committee members before we adjourn. Mr. Lemay presented a scenario around an amendment, and the bar association from Quebec and the Canadian Bar Association had indicated that they might want to respond.

To put this in a timeframe, we might be going to clause-by-clause next Thursday. So if you have something additional that you would like to present, that is the sort of timeframe we may be working within.

Secondly, to all committee members, if there are amendments that people are looking to put before the committee, it may help administratively if we have them by Wednesday so that they can be distributed. It doesn't preclude, of course, as I understand from the clerk, amendments coming from the floor. But if you have them written and at least some time to consider them, that may facilitate the process.

That said, have a good weekend. *Bonne fin de semaine.*

The meeting is adjourned.

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