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Chair

Mr. Bruce Stanton

Standing Committee on Aboriginal Affairs and Northern Development

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● (1530)

[*English*]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Good afternoon, ladies and gentlemen. We're going to begin. We are waiting for a couple of other members, but I think we have enough for quorum, so we'll proceed.

We recognize we've got a fairly busy afternoon here, so the more time we have, the better.

Welcome witnesses, members, and guests to our 10th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. We are resuming our consideration of Bill C-3. This is pursuant to the reference given on March 29.

I'm going to dispense with the more lengthy introductions. We're under some tight timelines. You know we're going until about 4:30. We have essentially four groups with us. I think we'll try to team you up together and try to do our best with the four of you. We'll try to say a five-minute presentation each. We'll go through each of the presentations. The more you can summarize your key recommendations in those five minutes, the better. That will then give us a bit more time for questions from members.

I'm going to suggest to members that if you accept this, we could keep our questions to five minutes, and I hope we'll be able to get a few more questions in. Does everyone agree?

An hon. member: No.

The Chair: Okay. There's no agreement for that, so we'll proceed in the normal course.

Monsieur Lemay, vous avez un commentaire.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chair, I'll soon be making a proposal—I'll wait for my Liberal colleagues first—that the clause-by-clause consideration of the bill be postponed to next Tuesday. I'll explain why later. I realize there are many people with us now and that is something I regret. I respect the witnesses, and they have only five minutes to make a statement concerning a bill that is key to their future, not ours, theirs.

With all due respect, Mr. Chair, this process is beginning to weigh on me. I would like the witnesses to have the time they need to explain their positions. If ever we do not have time to ask them questions, we could continue Thursday during the first hour. The witnesses are here and I know that some of them have worked very hard to prepare for today. This is probably one of the most important bills we have debated, along with Bill C-8, An Act respecting Family Homes situated on First Nation Reserves and Matrimonial Interests or Rights in or to structures and lands situated on those reserves, and Bill C-21, An Act to amend the Canadian Human Rights Act. So I think we can take another day or two. I'm ready to listen to the people here today; we have until 6:30 p.m. If we're not finished, then we can continue Thursday afternoon. Five minutes is not enough to discuss section 6 of this 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).

Mr. Chair, I am not questioning your good faith. I know you want to do the right thing. I have the utmost respect for that, but there are essential aspects. The members of the committee have questions and so do the witnesses. It is their future that is at stake here, and I say this with all due respect.

[*English*]

The Chair: *Merci, monsieur Lemay. Je comprends votre commentaire*, and you understand that we did circulate this in advance so that members would understand. We had not heard back from anybody. But let's proceed and see how we do. We'll go through. The committee has the ability to set its own timetable and we'll do the best we can to make sure.... I would agree, and I'm sure all members understand the importance of hearing from all the witnesses who have expressed an interest in giving their perspective on this important bill that's in front of us. It was because of that that we wanted to accommodate all the requests that came to us and those that were recommended by members of the committee to be heard on this particular bill.

So let's proceed. Your comments are noted, Mr. Lemay.

We will begin with the Indigenous Bar Association, and we'd like to welcome Dianne Corbiere as well as David Nahwegahbow here from my riding of Simcoe—North. It's always a delight to have somebody from home here in front of us, not that that should in any way be different for our wonderful witnesses who are here today.

Let's proceed. Ms. Corbiere, go ahead.

Mrs. Dianne Corbiere (Representative, Indigenous Bar Association): Thank you.

I am to send greetings on behalf of our president. She couldn't be here with us today, and she asked my colleague David and I to provide the presentation for the Indigenous Bar Association.

I apologize that we couldn't translate and provide this in advance, but I'm told by the chair that it can be distributed here later.

For those who don't know us, the Indigenous Bar Association is a non-profit organization representing indigenous peoples involved in the legal profession across Canada. We include judges, lawyers, academics, students at law, and law graduates from the indigenous community in Canada.

The IBA has been active since its creation in 1988, but also with its predecessor organization, the Canadian Indian Lawyers' Association. That was before my time, but my colleague David Nahwegahbow was around then. The IBA focuses on the following.... Well, one of the key objectives of the IBA is to promote recognition and respect for indigenous laws, customs, and traditions in the work we do. So in the spirit of summarizing our recommendations, I'm going to try to keep within the five or so minutes allotted.

Due to the fact that Bill C-3 is merely a reactive response to an antiquated, severely flawed piece of legislation—I'm sure you've heard a lot of that—the bill cannot and does not promote a broader solution. It is a narrow bill that only creates room for those who fall under the same fact pattern as Ms. Sharon McIvor, meaning it only addresses the issue of status loss due to marriage. Questions pertaining to citizenship, indigenous jurisdiction, and the long-term viability of the status system as a whole remain unanswered.

By not taking this opportunity to address these broader issues, first nations communities—and also, I think, Canadians—will continue to suffer harm due to the continued loss of access to their citizens.

It is a widely held view that first nations across Canada have vehemently asserted that membership or citizenship is a core area of self-government. These assertions have also received significant support in major studies such as the Penner report on Indian self-government in 1983 and the royal commission report on aboriginal peoples in 1995. As you know, these were initiatives that were supported by the different parliamentary groups at the time.

In the Haida case, the Supreme Court of Canada has recognized that indigenous nations have pre-existing sovereignty, which undoubtedly includes the right to determine their own membership or citizenship.

Put simply, first nations in Canada traditionally exercise the right to determine their own citizenship. This is now a constitutional right recognized by section 35 of the Constitution Act, 1982. In the view of the Indigenous Bar Association, the existing status system under the Indian Act is an unjustifiable intrusion into the inherent right of indigenous nations to determine their own citizenship.

The failure of the crown and federal government to recognize indigenous rights to determine their own citizenship, in addition to the imposition of the status system on indigenous populations, also violates article 33.1 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

To flip ahead in my presentation, Bill C-3 is just a minor modification of the status quo. It continues to perpetuate the inequality within the first nations community. It's not just a gender issue.

By not addressing it, it hurts the community as a whole.

● (1535)

Families may have members who are registered as subsection 6(1) or subsection 6(2) or non-status. If you think about it, what other community in Canada has this type of legislative determination? Personally, I'm a subsection 6(1). I'm the mother of a subsection 6 (2). I'm a Robinson-Huron Treaty annuity.... I'm Canadian. There are all kinds of characterizations to describe me.

The IBA's main recommendation is that the federal Government of Canada move away from defining Indians to supporting an approach that recognizes first nations jurisdiction in determining citizenship. Again, we consider continuing to perpetuate this through Bill C-3 and other acts as a violation of our mutual constitutional obligations under section 35, 1982.

Moreover, the federal government's continued insistence on interference with first nations jurisdiction to determine its citizenship is inconsistent with international norms. The fact that these legislative sections still exist are inconsistent with current international conventions, most notably article 33.1. But there are other articles you should draw your minds to: articles 4, 9, 18, and 19.

The second recommendation of the Indigenous Bar Association is that Canada establish another special parliamentary committee to act as a parliamentary task force on the broader issue of self-government, membership, and citizenship in conjunction with sections 6 to 14 of the Indian Act.

Previously, the Canadian Indian Lawyers' Association provided recommendations to the then Penner committee on Indian self-government. One recommendation, which was adopted by the Penner committee, was that constitutional change to address the issues we're recommending was not required. The federal government has always had the ability to resolve this legislatively.

● (1540)

The Chair: Ms. Corbiere, do you have another recommendation you want to get on the record? Then we'll have to move on.

Mrs. Dianne Corbiere: Our third recommendation is with respect to the bill itself. The IBA agrees with the Canadian Bar Association, our colleagues, that clause 9 needs to be removed from Bill C-3.

For now, those are my submissions.

The Chair: Thank you very much.

We'll now go to Ms. Gabriel. Ellen Gabriel is the president of Femmes Autochtones du Québec.

Welcome, Madame Gabriel. You can proceed.

Ms. Ellen Gabriel (President, Quebec Native Women Inc.): Thank you. Greetings, Chair and all members of the House of Commons standing committee.

Quebec Native Women appreciates this opportunity to address you all, to present our perspective on the historical discrimination faced by aboriginal women and their descendants under the Indian Act, an injustice that was not corrected with the passing of Bill C-31 in 1985. Quebec Native Women rejects the restrictive vision proposed by the federal government as it will not put an end to gender discrimination entirely.

I would like to note to you the shortcomings of this process, which failed to adequately provide aboriginal peoples with any effective and meaningful consultation on the serious matter affecting their rights. The five minutes accorded will not provide a sufficient amount of time to address all our issues concerning Bill C-3, so I will highlight a few.

One is the lack of real and effective consultation with indigenous peoples consistent with the constitutional obligations of the federal government.

Two, the exclusion of the historical and the institutionalized nature of the discrimination against aboriginal women that was permitted under the Indian Act since its imposition in 1876 and whose definition of an Indian was first that an Indian is a male.

Three, the lack of a financial plan to remedy the existing housing shortage on reserves. Insufficient land base and resources on reserves, especially since the amendment, will result in an increase of 6% in the status population.

Four, the non-inclusion of a provision to provide immediate band membership to a new registrant, and that it ignores their inherent rights and their treaty rights.

In more detail we choose to present two of our main concerns.

Bill C-3 is dependent upon the B.C. Court of Appeal, whose decision is limited and flawed, being premised on the continuance of discrimination. Indeed, the proposed cut-off, based on a post-September 4, 1951, birthdate for a new registrant, assumes that this is strictly an issue of sexual discrimination and should be addressed within the registration regime. It is retroactive only to 1951, in which the introduction of the double mother rule was recognized and implemented. So Bill C-3 is not only erroneous, but it will continue to promote inequalities based on date of birth.

Sexual discrimination faced by aboriginal women effectively goes back to 1876 of the Indian Act and not 1951, whereby an Indian woman's status was dependent upon the status of her husband. Grandchildren who trace their aboriginal ancestry through the maternal line will continue to be denied status if they were born prior to September 4, 1951, unless they have at least one sibling born after that date. But this is not the case for descendants of aboriginal men. Moreover, other governmental administrative policies such as unstated paternity and on-reserve matrimonial real property continue to discriminate against aboriginal women as progenitors.

Thus, amongst the many recommendations we have, and given the constraints and duress we are under, we make the following recommendations:

First, that the element of categorization of Indian status, such as subsection 6(1) and subsection 6(2), and the cut-off date based upon a post-September 4, 1951, birthdate be removed from Bill C-3.

Second, that the administrative policy regarding unstated paternity of a child born to an unmarried woman be immediately changed to a requirement that the mother of the child sign an affidavit or statutory declaration as to the status of the father of the child.

Bill C-3 does not recognize the rights of aboriginal peoples to self-determination. It does not take into account the fundamental rights of indigenous peoples as nations and as supported in international human rights law to define who can be a citizen of their nation, to define their own nationality and identity, and what obligations and rights are entailed within their definition. Self-determining rights for indigenous peoples are supported in international law as well as in the Canadian Constitution. International instruments include the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration of Human Rights.

Indigenous peoples have the right to govern themselves, to reinforce their own forms of government and citizenship, not as a grant from the Government of Canada but as an inherent right as peoples. We also recommend that the Government of Canada recognize the inherent rights of aboriginal peoples to define who can be a citizen of their nation and what obligations and rights are entailed within their definition. However, this must be done in accordance with international human rights law, consequently allowing indigenous peoples to move positively towards self-determination with sufficient resources to make self-determination a success.

● (1545)

In conclusion, on Bill C-3 and the idea of a separate joint process to tackle broader issues, while Quebec Native Women recognizes the need to amend the archaic nature of the Indian Act, Quebec Native Women, as stated earlier, deplores the restrictive vision of the federal government based solely on a patchwork remedy to the specific problem of discrimination brought to light in the McIvor case, as analyzed by the Court of Appeal for B.C. on limited grounds. This is a missed opportunity for the Government of Canada to put an end to the patriarchal regime of indigenous guardianship that the Indian Act constitutes, by implementing a decolonization process whereby indigenous people's values, self-determination, culture, language institutions, and nationhood will be respected and reinforced.

In spite of the federal government's acknowledgement that there are a number of broader issues relating to registration and membership that go beyond the specifics of the McIvor decision, the proposed changes to the Indian Act will not extend to these broader issues. Instead, the Canadian government is relying on a separate, parallel process whereby the Minister of INAC will work in partnership with national aboriginal organizations to establish an exploratory process with the participation of first nations and other aboriginal groups and organizations. Such an exclusive process, restricted to national aboriginal organizations, is cause for concern, as it evacuates the notion of democracy within these discussions and ignores Canada's constitutional obligation to conduct proper consultations on matters affecting the rights of aboriginal peoples.

The intended parallel discussions also exclude aboriginal people's right to self-determination from the ongoing legislative process by dictating once again who has the right to determine Indian status, an important link to aboriginal identity, membership, and citizenship. Therefore, it begs the question: does this mean that only court orders will motivate the Government of Canada to address the thorny question of legitimacy of the Indian Act and that the federal response is bound to be circumscribed? With Bill C-3 the deplorable answer seems to be yes. Thus, it is reasonable to expect that new cases will be brought before the courts to denounce the continuing gender and racial discrimination within the Indian Act.

I guess I will end there today.

Thank you very much.

The Chair: Do you have more to add?

Ms. Ellen Gabriel: I think what has happened with defining status is that Canada decided who is going to be a beneficiary of treaties. Canada is not including the fact that treaties are made between nations, and that as nations we have a right to decide who our citizens will be.

We have other recommendations that include: a two-day constitutional conference to be conducted with aboriginal peoples and their representatives to address the federal, provincial, and territorial understandings and agreements as to the respective jurisdictional implications and obligations; that Bill C-3 eradicate all forms of discrimination; remove the categorization in Bill C-3; that the Government of Canada recognize the historical and institutional nature...and by this we mean that we never gave up our sovereignty; we never gave up our rights. Indigenous women are the ones who hold the culture, the language, and the heritage of our children.

This bill is only one movement towards making some changes to the archaic nature of the Indian Act, but it is not the be-all and end-all. We are hoping that discussions on renewing our relationship will finally begin amongst ourselves, nation to nation, between the Government of Canada and indigenous peoples, not just NAOs, but indigenous peoples as nations. That's what RCAP was about. RCAP was about how to define the new and evolving relationship. What the Indian Act has done is take away our rights as self-governing and self-determining nations.

I appreciate the time. I know other people are going to present, so I'll stop there.

Thank you.

● (1550)

The Chair: Thank you very much, Ms. Gabriel.

Looking at our schedule, members, we can actually make this work. We'll give another three minutes to Ms. Corbiere. The rest of you will have 10 minutes for your presentation, and we can actually work in one round of seven minutes for everybody. It'll take us about an extra nine or ten minutes to get through it, but we don't have votes at 5:30, so we're going to continue in the usual format until we're done. So it's a 10-minute presentation, as is normally the case. It means we're going to extend each of the one-hour sessions slightly, but we can complete this today.

Now, let's welcome Grand Chief Lucien Wabanonik. It's great to have you here, Grand Chief. Chief Wabanonik is with the Assemblée des Premières Nations du Québec et du Labrador.

Chef Wabanonik.

[*Translation*]

Grand Chief Lucien Wabanonik (Grand Chief, Assembly of First Nations of Quebec and Labrador): Thank you, Mr. Chair, for giving us a bit more time. I'm sure you understand that this is an extremely sensitive issue for our people and our nations. We appreciate your flexibility with regard to the time allotted to us.

Ladies and gentlemen, members of the committee, on November 24, 2009, in the wake of the short engagement process set up as part of the initiative seeking to modify the registration program with the Indian Registrar, Chief Ghislain Picard of the AFNQ wrote to the Minister of Indian Affairs and Northern Development to suggest that he extend the suspension period of the declaration of invalidity handed down by the Court of Appeal for British Columbia on April 6, 2009.

The chiefs of the first nations of Quebec and Labrador were summoned to a brief meeting on November 4, 2009, with government officials who clearly did not have a proper grasp of the issue. In Chief Picard's opinion, this meeting did not fulfil the Government of Canada's duty to consult with the first nations, because consultation is really what we are talking about here.

The federal government was supposed to consult us on this important issue. However it would appear that the period granted to Parliament for such an important matter is somewhat artificial. It would seem to be in the government's interest to use certain bogus constraints to shirk its responsibility for eliminating all discriminatory distinctions contained in the registration rules for Indians and for formulating, in collaboration with the first nations, a plan designed to implement these modifications.

In any case, the new deadline of June 5, 2010 should not be used as an excuse to only partially eliminate one single discriminatory distinction among those that still exist in the Indian Act or to refuse to prepare for, in conjunction with the first nations, the many effects that the changes to the registration rules will have. But at the same time, we believe that the eight remaining weeks between now and when the House rises should be sufficient to allow Parliament to improve 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), as concerns the requirements of the Canadian Charter of Rights and Freedoms.

We believe that these eight weeks should be sufficient to allow the government to reach an agreement with us concerning an implementation plan designed to manage the influx of new arrivals in our communities. Furthermore, if, despite the good faith and efforts of all the parties involved, eight weeks turns out to be insufficient, the government should take advantage, in a timely fashion, of the openness shown by the British Columbia Court of Appeal in its April 1 ruling, and request another extension of the suspension period of the declaration of invalidity.

If Canada is truly the champion of justice and fairness for all, then Parliament must make the necessary changes to Bill C-3 to ensure that the brothers and sisters rule is eliminated from the registration rules, along with the distinction that was ruled illegal in the McIvor decision.

During the brief encounter between the chiefs of Quebec and Labrador and the department officials as part of the engagement process, it was impossible to obtain any kind of information on what the government, thanks to its recent experience with Bill C-31, intends to do to mitigate the problems caused by the application of the proposed changes to the registration rules. We concluded that the minister had not yet addressed the question when drafting of Bill C-3 began last fall.

The implementation of Bill C-3 will create many problems, including problems accessing information for people targeted by the bill; problems arising from changes made to the registration rules and benefits accompanying Indian status; problems linked to the registration process and deadline; social and political problems integrating new entrants into first nations communities, on or off reserve; potential problems due to a limited job market, cultural differences or simply natural hostility in the face of an imposed decision; and finally, problems linked to the financial and other capacities required to integrate new entrants into the reserves and provide them with the programs and services to which they are entitled.

● (1555)

[*English*]

It is thus essential that the Department of Indian Affairs agrees with the first nations on a road map for implementing the amendments to registration rules before Bill C-3 is adopted. This committee can ensure that the government does so. It is equally essential that a provision requiring the ministers to regularly report to Parliament on the issue of the implementation of the amendments to the registration rules is added to Bill C-3, with the specific issues this report must cover outlined there.

The first nations of Quebec and Labrador hope over time that not only are all discriminatory distinctions eliminated from the Indian registration rules, but that these rules are no longer needed. The first nations hope to recover the complete authority in matters of membership they enjoyed before the middle of the 19th century. This presupposes the political and economic autonomy of first nations favoured by the recognition of our traditional rights and by the treaty process. It is only once these objectives are attained that article 33 of the United Nations Declaration on the Rights of Indigenous Peoples will be fully fulfilled. Indigenous people have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

For the time being, the first nations of Quebec and Labrador ask the committee to take the first two following measures and to encourage the government to take the third: one, improve Bill C-3 to eliminate all Indian registration rules that create discriminatory distinction; two, introduce a provision into Bill C-3 obliging the government to report to Parliament on the implementation and the amendments of the registration rules; three, create with first nations a plan to implement the amendments to the Indian registration rules introduced with Bill C-3.

That finalizes my presentation, Mr. Chair. Thank you for listening.

The Chair: Thank you very much, Grand Chief.

I think I did mention to Ms. Corbiere that we're going to come back to you. You have an extra three minutes, so if you want to figure out what you want to put back into your presentation, that would be great. You're all set to go. Okay, good.

We have here with us today,

[*Translation*]

M. Daniel Nolett, director general, Abenakis Band Council of Odanak and Michèle Taina Audette, representative, Marche Amun.

[*English*]

Thank you very much.

Also joining us here today is Paul Dionne.

We don't have the expected representative from the Band Council of Odanak, but I understand, Mr. Dionne, you are from the council and are joining with Monsieur Nolett and Madame Audette. That's correct? So we have one presentation, then, *pour les deux*?

[*Translation*]

Mr. Daniel Nolett (Director General, Abenakis Band Council of Odanak, Grand Council of the Waban-Aki Nation): In fact, there will be two presentations, Mr. Chair. Mr. Dionne is here with us. He is the counsel working on the Abenakis' case. He will respond to any questions the members of the committee may have.

[*English*]

The Chair: Okay, let's go ahead, then. You have 10 minutes.

● (1600)

[*Translation*]

Mr. Daniel Nolett: Thank you, Mr. Chair and committee members. First, Chief Rick O'Bomsawin, who was to make the presentation, sends his regrets. He was unable to be here due to last-minute obligations. I will be making the presentation on behalf of the band council. I would ask Ms. Michèle Audette to begin the presentation.

Mrs. Michèle Taina Audette (Representative, Marche Amun, Grand Council of the Waban-Aki Nation): Thank you very much. I would personally like to sincerely thank the Abenaki Nation for having thought about a great project, the Marche Amun. I would like to greet everyone here this afternoon.

In my opinion, Bill C-3, which merely complies with the British Columbia Court of Appeal decision in McIver versus Canada, only goes a small way toward eliminating the discriminatory aspects of the Indian registration rules. Moreover, I think that the department is using this bill to do as little as possible about the problem. The department is moving too quickly, and there may be serious problems as a result in the short, medium and long terms.

The members around this table have an incredible opportunity, and you should use it to entirely eliminate all the discriminatory aspects of the Indian Act. It is particularly fortunate that the BC Court of Appeal ruling in a way prevents you from correcting those flaws. I urge you to help me, to help us, those taking part in the Marche Amun, to write a new page in the history of the First Nations and the aboriginal peoples of Canada. Let us put an end, once and for all, to the discrimination that has existed for too long a time already.

In history, gender-based discrimination was brought in, without our asking for it, in 1868. Legislative provisions passed at that time provided that Indian status could be passed down only through the male line. You know how it works: when an aboriginal man married a non-aboriginal woman, she became an Indian and so did her children. But when a woman, such as my mother and our grandmothers, married a non-aboriginal man or an aboriginal man without status, she lost her aboriginal and treaty rights. So did her children. In the language of the Indian Act, she would lose her status and also be evicted from her community and her territory.

It is sad to see that women are still paying the price in 2010, as we speak. Aboriginal women continue to be victims of discrimination based on gender—this is the case of Kim Arseneault, whom my colleague will introduce to you in a few minutes—and that discrimination exists in a number of areas.

Such discrimination violates the Canadian Charter of Rights and Freedoms, as Ms. Gabriel mentioned. I would add to that certain conventions that Canada has signed and is not adhering to: the American Declaration of the Rights and Duties of Men, the International Convention on the Elimination of All Forms of Discrimination Against Women and, in particular, the Convention on the Rights of the Child.

Yes, Mr. Lemay, there are many people working hard to come to speak with you today.

On May 4, a symbolic event will begin. A group of women will be walking 500 kilometres from Wendake to Ottawa, to Parliament Hill, to deliver a message to Prime Minister Stephen Harper and his Minister of Indian Affairs and Northern Development, Mr. Strahl.

Each day, we will be repeating the same message to everyone in Quebec, to all Quebeckers, and also to Canadians. We want to say that Canada is bringing in legislation to reinforce—and I mean reinforce—gender inequality, and we are demanding that Canada eliminate that kind of discrimination.

As to the obligation to reveal the name of the father of our children when they are born, it is not something that is imposed on any Canadian women. If she brings her child to the emergency department of the hospital, no one will ever ask her to prove the identity of the father before looking after her child. That is what has been happening to us in our communities since 1985. Then there is the right of women and their children to obtain Indian status. Those categories must be eliminated.

I would also remind you that there is ongoing discrimination with respect to band membership for these women and their children. Suppose that certain communities have restrictive membership rules. If Bill C-3 is passed, women and children in that situation will not be able to go back to those communities. In addition, the government has refused to allocate more money for the increase in the registration for Indian status. Women are once again paying the price. They are still suffering from the harm done in 1985. Bill C-3 will create or recreate the same reprisals that have taken place since then.

● (1605)

What breaks my heart, as the mother of five children—including one that is more Indian than I am, one that has no status, and that really illustrates the situation—is that Ottawa always has the exclusive right to determine who is an Indian and who is not. I am 38, even though the act considers me to be 17. I think that there are people in the communities who can make this determination.

In closing, I want to say that if Bill C-3 is passed as it stands, the discrimination will continue. It will continue and I do not want to be a party to that. And I would ask that the respected members of this committee refuse as well to be a party to this injustice.

On behalf of myself and my children, I want to say that you have an opportunity to make a difference. Please do the right thing.

Thank you.

The Chair: Thank you very much.

We will now go to you, Mr. Nolett.

Mr. Daniel Nolett: Thank you, Mr. Chairman.

I would first like to point out that the Abenaki nation has been active in trying to have the legislation amended. We brought a case before the Superior Court in March 2009. Representatives of the Abenaki nation also intervened in the McIvor case to fight discrimination under the Indian Act.

I agree with those who have already spoken that Bill C-3, in its current form, maintains certain discriminatory aspects that have not been changed. This afternoon, I would like to bring two specific cases to your attention. You have received documents and tables that illustrate these cases of discrimination.

First, there is the rule concerning brothers and sisters, which is represented by the case of Susan and Tammy Yantha. This is in the document. Bill C-3 does not resolve this kind of problem. In 1951, when the registry was created, only the sons were granted Indian status in cases where an Indian man fathered children outside marriage with a non-Indian woman.

In 1985, because of the changes brought in with Bill C-31, the daughters from that kind of union were able to obtain status under subsection 6(2). As you can see in the table, the first generation, that is, the Indian man and the non-Indian wife, came under the 1951 legislation. In the second generation, Susan Yantha's father was an Indian, but her mother was not. So if Ms. Yantha had had a brother, he would have been granted status under subsection 6(1). In 1985, Ms. Yantha obtained her status under subsection 6(2). Her daughter, Tammy Yantha, who is the third generation, still does not have her status, whereas if Susan had had a brother, his children would have their status under subsection 6(1). The current legislation, Bill C-3, does not grant status to the children of Susan Yantha. The bill ignores those cases.

Let us come back to the other example, which is directly related to McIvor; it involves cousins. This case involves Kim Arseneault who is a member of the Wôlinak first nation and part of the third generation.

In 1985, her grandmother regained her status under Bill C-31. She had lost her status because she married and had children with a non-Indian. In 1985, she regained her status on the basis of subsection 6 (1). One of her children was Kim's mother, who was born in the 1950s and gave birth to Kim before 1985.

A careful analysis of Bill C-3—I understand that this can be complicated, but the table we have provided will help you follow—shows that Kim will regain her status under subsection 6(2). But if Kim were descended from a man, she would have status under subsection 6(1), like all the third-generation children.

Because Kim is a third-generation descendant of a woman and was born before 1985, in accordance with the amendments, she would recover her Indian status under subsection 6(1). With Bill C-3, owing to gender discrimination, Kim will regain her status only under subsection 6(2).

● (1610)

The Chair: Thank you. Unfortunately, your time has run out.

[*English*]

Let's return to Ms. Corbiere for three minutes.

Monsieur, please go ahead.

Mr. David Nahwegahbow (Representative, Indigenous Bar Association): Thank you, Mr. Chair.

I have a few additional comments to elaborate on one of the points that was made in the submission. Overall I think the problem with the bill is that it represents a band-aid solution. I think everybody's saying that. It won't solve the problems that have been created over a long period of time with regard to the Indian Act.

A number of studies, including RCAP and the 1985 Penner committee report, have consistently said not to tinker with the Indian Act—that it's really too broken and you can't fix it. The main issue is the need to recognize the right of first nations to determine their own citizenship.

One of the problems you face as a committee at this stage is your inability to deal with the bigger issue, the bigger problem of self-government. You have, at least according to my understanding of the rules, some limits to the scope of your investigation of the situation. You are really limited to the terms of the bill. The recommendation we made is that you really need a more broadly based initiative, one similar to that of the Penner committee that studied and reported on this same issue in 1985.

Actually, as my younger colleague has noted, I was around back then, and I remember exactly the same kind of dynamics. The charter had just come into force. Section 15 was about to come into force, because its implementation was delayed until 1985. You had a case in the UN at the time, the Lovelace case, and there was a lot of pressure to try to come up with some solutions.

We realize now that the solutions that were developed were inadequate. We see the inadequacies today. Nevertheless, at the time I thought the initiative of Parliament to study the issues of membership, citizenship, and self-government was quite an interesting opportunity. It was an opportunity for parliamentarians to become versed and to understand a little more broadly and a little better the broader issues, which is really what we've indicated.

I think our main recommendation is that you take the time to open up your mandate, if that's possible, and look at the issue of self-government, self-determination, and citizenship.

The Chair: Thank you all for your understanding and patience.

Now we're going to go to questions from members. We'll begin with seven minutes for Mr. Russell. Witnesses, the seven-minute period includes both questions and responses. We're going to hold very tightly to the seven minutes.

Go ahead, Mr. Russell.

● (1615)

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

Good afternoon to each of you, and thank you for your very considered presentations.

I appreciate, and I'm sure other members do, your comments around the broader initiatives, the broader aspects that you're dealing with, whether they be jurisdictional issues, self-government issues, band membership issues, the right of citizenship issues, or the determinance of citizenship issues. I understand those and I fundamentally agree.

I agree with the comments that the government has only been forced to deal with the gender inequity provisions in the Indian Act because of the B.C. Court of Appeal decision. I agree as well that this bill is very, very narrow and only tries to deal with the facts as laid out in the McIvor decision. I believe that around this table we all agree that gender inequality, sex discrimination, will continue to exist even after Bill C-3. I believe as well that we have an obligation to act.

I know some of your arguments around the archaic nature of the Indian Act, but if we could, once and for all, do one thing—that is, in regard to sex discrimination under the Indian Act—do you feel we must take that step as parliamentarians, understanding that the broader issues still remain? Do each of you have specific recommendations to end, once and for all, sex discrimination under the Indian Act?

If you have specific recommendations, I would gladly receive them so that we can analyze them as soon as possible and introduce them here in the committee. I would gladly do that. So I just lay that before each of you.

The Chair: Do each of you want to comment briefly on that?

Mr. Russell, is that what you would prefer, that they comment now, or were you thinking of having them submit it?

Mr. Todd Russell: Absolutely, sir.

The Chair: Let's go ahead, then, with each of our witnesses here today, starting with Madame Audette.

Just about a minute and a half each, if we can.

[*Translation*]

Mrs. Michèle Taina Audette: That's fine.

I will simply reiterate my support for what the Aboriginal Bar Association, the Quebec Aboriginal Women's Association and the Assembly of Chiefs said regarding the right to self-determination and self-government. I agree completely with this. However, you're asking me one thing. There is so much here. I could tell you that you have to stop forcing mothers to disclose the name of their child's father. I swear to you that there are many, many others. Your question constitutes an impasse. To my mind, this should have been taken out since 1985.

Mr. Paul Dionne (Lawyer, Grand Council of the Waban-Aki Nation): I don't have any overall solution to propose to Mr. Russell, but there's a partial solution. In the framework of the McIvor decision, in order to correct the situation that Mr. Nolett explained, that is the third generation of women affected by Bill C-31 who were born before April 17, 1985, the Canadian Bar Association proposed last week that paragraph C.2 be added to the bill. It would read as follows:

[*English*]

> that person is a child born after September 4, 1951 and before April 17, 1985 of a parent entitled to be registered under section 6(1)(c.1).

I think this would improve the bill considerably in that it would allow those third-generation children who were born before April 17, 1985, to get the 6(1) status and not the 6(2) status, which they are entitled to.

The Chair: Let's move on.

Grand Chief Wabanonik.

[*Translation*]

Grand Chief Lucien Wabanonik: Thank you, Mr. Chairman.

I'm not comfortable with the question and I don't agree with it. It's so difficult to answer that. If we say something, it could create other types of discrimination. That is what I'm afraid of. Only one question is being answered and that could be presented in the House for a single question. I have some serious concerns about that.

However, if I had to answer, Mr. Russell, I would say why not respect the UN Declaration on the Rights of Indigenous Peoples? It says respect self-government for peoples and nations. In that sense, we could bring forth our own solutions to this issue. The government has to show some flexibility and openness.

Thank you.

● (1620)

[*English*]

The Chair: Ms. Gabriel and Ms. Corbiere, go ahead, each for a minute, please.

Ms. Ellen Gabriel: I'll do my best.

Thank you for asking the question. I think it's an important question. If there were no so-called economic benefits—and I use that term loosely because there are no benefits, really—to this, I don't think we'd be discussing this today. The Canadian Constitution recognizes the inherent rights of indigenous peoples. Why is it we always have to go to court to define what our inherent rights are? Why do we have to spend the time and energy and the money to go to a courtroom? We can talk about how archaic the Indian Act is and how we should get rid of it—and I've heard that from many generations—but no one's ever decided how we're going to get rid of the Indian Act. Let's get rid of it. We know it stinks.

We did a survey of our members, and 86% of the respondents said they wanted to get rid of the categorization. Seventy percent of our respondents said they wanted to go back to the creation of the Indian Act in 1876 to deal with this issue of status, and we're talking about treaty rights—

The Chair: We'll have to leave it there, Ms. Gabriel. Thank you.

Ms. Corbiere or Mr. Nahwegahbow?

Mr. David Nahwegahbow: It's an interesting question, and we wish we could help you, but it's a slippery slope. I guess the best answer is to abide by the UN Declaration on the Rights of Indigenous Peoples, and let indigenous peoples make those decisions themselves. A leap of faith is going to be what's needed in this country. It will bring about transformational change, and that's what the committee ought to do.

[*Translation*]

The Chair: Thank you.

Mr. Lemay, you have the floor for seven minutes.

Mr. Marc Lemay: Thank you, Mr. Chairman.

I thank our witnesses for appearing here. The three draft amendments that will be tabled by the Bloc Québécois concern clause 6(1)(c.1)(iv) of the Indian Act. If you consult the brief presented in French and English by the Canadian Bar Association—and incidentally, I wish to congratulate them—you'll see that there are exactly the same three amendments. I would like to hear your views on these.

In the first amendment, we move that clause 6(1)(c.1)(iv) of the Indian Act be amended. It would read as follows:

> New status under clause 6(2) would be possible for any person satisfying all the following criteria: his or her grandmother lost Indian status by marrying a non-Indian; one of his or her parents is currently a Status or has the right to be a Status Indian under clause 6(2) of the Indian Act; he or she was born on or after September 4, 1951.

I would ask you to familiarize yourself with this. In a few minutes, I will propose that we postpone clause-by-clause consideration to next Tuesday. So you will have until next Thursday or Friday to send us your comments. I know that's short notice, but I think that's what the government wants.

In the second amendment, we simply propose deleting clause 9 of Bill C-3. I invite you to read it.

The third amendment seeks to add clause (c.2) to paragraph 6(1). It would read as follows:

> This person is a child born after September 4, 1951 and before April 17, 1985, to a parent who has the right to be a Status Indian under subsection 6(1)(c.1).

Those who know me know I have very great respect for first nations. We're going to try to eliminate discrimination. We think that this would be possible with these three amendments. With regard to the right to consult, study, etc., I think that that's not the purpose of this bill. We have to stick to it. I think that my colleagues on this side of the table are going to want to try to eliminate discrimination. It's possible that this bill go further, but my colleagues opposite would have to remember Bill C-21, which abolished section 67 of the Indian Act. There was a brief section, but after it passed, there were nine. And yet, it was done. I'm not asking you to give me an answer immediately. If you can do so, so much the better.

Mr. Chairman, with your permission, I'd like to finish with a point of order. I would like to ask that this committee postpone clause-by-clause consideration of this bill until Tuesday, April 27, and that draft amendments be tabled at the latest on Friday, April 23, at 4 p.m.

● (1625)

I think that we found a way to eliminate discrimination, but it won't be easy.

[*English*]

The Chair: Okay. You have the question, witnesses.

On the point of order, Mr. Lemay, it's really not a point of order; it's a question of the schedule of the committee. Just leave that with me for a few minutes and I'll come back to it.

Did you want to leave the question with the witnesses and allow them to respond?

We'll go on to the next question, which will be from Madam Crowder.

[*Translation*]

Mr. Marc Lemay: If they're ready, I'd like them to answer if possible. Otherwise, we can postpone this.

I'd like the point of order to be debated and put to a vote before 6:30 p.m.

[*English*]

The Chair: We'll do our best to do that. As you know, Monsieur Lemay, there is nothing pressing immediately at the end of this meeting. My thought was to take the time to hear from the witnesses today. We'll allow the meeting to continue past 6:30, if necessary, until we finish hearing the witnesses we have slated for today. We can come back to this item of committee business at the end. I will commit to doing that.

[*Translation*]

Mr. Marc Lemay: Point of order, Mr. Chairman. You know as well as I do, given your long experience, that anyone around the table could ask for the committee to adjourn at 6:30 p.m. That could not be debated and would have to be put to a vote. I would like us to discuss this immediately afterwards. This would be done before we hear other witnesses and would allow us to adjust our schedules before next week.

[*English*]

The Chair: I'll ask the question, then. In fact, on the timing of the meeting, I'll just point out that really, the meeting adjourns at the discretion of the committee. The times we have on our agenda are indeed a guideline, but we don't adjourn the meeting without the consent of the committee. You're right about the adjournment motion, but of course that can be defeated if a majority of the committee members choose not to do that.

I'll simply ask, is there consensus from the committee members that we in fact move the meeting we originally planned for the second hour of this Thursday afternoon, which was for clause-by-clause? Monsieur Lemay is proposing that we move that discussion to Tuesday of next week, which would be April 27, at the regular meeting time of 3:30 to 5:30.

Is there consensus to do this?

Mr. Duncan.

● (1630)

Mr. John Duncan (Vancouver Island North, CPC): I would like to suggest that before we get a bunch of amendments tabled by the opposition, we have an opportunity outside of committee, in a more informal setting, to go over informally with the department questions and answers with respect to any possible amendments. Then there can be an open discussion, at least, before they're tabled. I think it would be productive. I make that offer. We had actually already made the offer, but that was for tomorrow, and I understand that the Bloc can't make that date. But if we could do it before Friday, it would sure be helpful.

The Chair: You're saying to do it outside of the committee meeting.

Mr. John Duncan: I am saying to do it outside of the regular committee, with all our rules.

The Chair: The department is available, then, for that kind of consultation.

Mr. John Duncan: On that basis, we have no objection to moving the clause-by-clause to Tuesday.

The Chair: It'll probably end up there anyway, to be honest with you.

Is there consensus, then, that we'll plan, for next Tuesday, a full meeting on clause-by-clause consideration?

Similarly, Mr. Lemay, on your second point, any proposed amendments should be provided to the clerk by this Friday, April 24.

[*Translation*]

Mr. Marc Lemay: It's the 23rd.

[*English*]

The Chair: It is April 23.

Mr. John Duncan: Try to raise some of the things.

The Chair: I think that's really outside of committee consideration. Mr. Duncan is essentially suggesting that the department would be available for those kinds of consultations. Do I have that correct? Okay.

Are there any other comments on this point?

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Yes. I think it's really important that we have some opportunity to present questions, both to INAC and the Department of Justice, because a number of issues have arisen from witnesses that I think need clarification.

The Chair: Of course, as part of clause-by-clause consideration....

Ms. Jean Crowder: I'd like to do that before the amendments. I think Monsieur Lemay's suggestion is that we have time to consider the amendments. I think it could influence what kinds of amendments we might put forward.

The Chair: As I understand it, amendments would come forward for consideration as part of the clause-by-clause analysis of the bill. As you would know, departmental officials would be on hand for those meetings. We would suggest committing to doing that beginning on Tuesday.

As members know, if it takes longer than that meeting to complete that consideration, then that's what it will take.

Ms. Jean Crowder: Sorry, Mr. Chair, perhaps I wasn't being clear. There have been a number of issues that have arisen, which may or may not result in amendments, that are perhaps just a matter of clarification.

The Chair: You have questions about them.

Ms. Jean Crowder: Right. Rather than doing it as a one-off, because I understand that the department has offered to brief us on a one-off basis, it might make more sense for the whole committee, as Mr. Duncan pointed out, to have the benefit of it so that we're not....

The Chair: Are we suggesting, then, that we have the department here on Thursday?

Ms. Jean Crowder: Why not?

The Chair: We have the....

Mr. John Duncan: I was suggesting that we do it outside the formality of a committee meeting.

The Chair: Okay. Can I leave it to you, Mr. Duncan, to see if you can arrange that? That would have to be this week, then, before....

Mr. John Duncan: We've made the offer. We'll just have to try to find a common time that works for people.

The Chair: All right.

At the moment we would have an extra hour on Thursday. Is it the preference of the committee to have the department in for that second hour? We currently have the Canadian Human Rights Commission scheduled for the first hour of the Thursday meeting. Do you want to have the departmental officials here in the second hour?

[*Translation*]

Mr. Marc Lemay: If this suits the government, we could devote the first hour on Thursday to the Human Rights Commission and the second to departmental representatives. We would have until 4 o'clock Friday to table our amendments. We will consider these amendments next Tuesday starting at 3:30 p.m.

● (1635)

[*English*]

The Chair: Is that agreeable?

Mr. John Duncan: Yes.

The Chair: I don't see anybody objecting to that, so that's the way we will proceed. We'll go ahead. We'll ask departmental officials to come for the second hour on Thursday. We'll go to a full meeting on clause-by-clause the following Tuesday.

Go ahead, Mr. Russell.

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

I certainly agree with going clause-by-clause on Tuesday and taking as much time as necessary to make sure we get some things right. I think we've been cautioned by the witnesses here. Even some of the witnesses were cautious about making proposed amendments that might result in residual discrimination, again, related to the Indian Act. So I think we certainly have to be very diligent in how we go forward, because it is not a simplistic act in itself. Neither are some of the amendments.

I would like to say that as a courtesy we should try to have the proposed amendments in by the end of business on Friday.

The Chair: Of course.

Mr. Todd Russell: There's nothing prohibiting us from bringing amendments to the floor on the day of clause-by-clause. Is that not right?

The Chair: You understand it correctly. We're asking, really, as a courtesy, to have the amendments in by Friday, but nothing in the Standing Orders prevents proposed amendments from coming during the meeting on the Tuesday because we're in clause-by-clause consideration.

Mr. Todd Russell: As we know, given the constraints on how we work here, sometimes, within Parliament, we may introduce amendments that will in no way, shape, or form see the light of day. They'll be ruled out of order by the legislative clerk, or subsequently by the chair. We will do what we can within the confines in which we find ourselves.

The Chair: I sense that this is what members wish to do, so that's the way we will proceed.

Thank you, by the way, for your patience, while we conducted that little bit of committee business. You're all very patient and tolerant this afternoon.

We had a couple of minutes left on Mr. Lemay's question. Does anybody wish to just make a brief comment in that respect? Mr. Lemay posed the question.

Let's go to Monsieur Nolett.

[*Translation*]

Could you limit this to 30 seconds, if possible?

Mr. Daniel Nolett: In my opinion, it would be worthwhile taking our time to examine Mr. Lemay's amendment proposal. It contains good points, but we have to make sure that we haven't missed the essential points of the amendments. We took notes and we will take a look at this. We suggest submitting something by Friday.

Mr. Marc Lemay: Mr. Chairman, I suggest that we distribute, in French and English, the brief by the Canadian Bar Association which discusses the clauses in French and English. It's very precise and there's no ambiguity. We perhaps could do this by the end so that you can have them and send us something by noon Friday because we have to table this before Friday afternoon.

[*English*]

The Chair: We'll get some copies.

Madame Audette.

[*Translation*]

Mrs. Michèle Taina Audette: Thank you very much.

My concerns are about everything that was raised concerning the obligation of disclosing the name of the father, the right to belong to a band and the right to live on reserve. I fear that all this will be omitted because of what you're proposing. However, I will do my homework, that is I will read it and I will send you my position in this regard.

[*English*]

The Chair: Anyone else? We have about 20 seconds left. *Très bien.*

Let's go to Ms. Crowder for seven minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

First of all, I would like to thank you all for coming. You've raised some serious issues around the ongoing discriminatory aspects of the Indian Act. Of course, what many of us are very concerned about is the piecemeal approach to dealing with both status and citizenship. When he came before the committee the minister himself indicated that there are at least 14 cases in the court system around discrimination of various shapes and forms, and we are well aware of this. There's a grave concern that as each case comes through the system and it's found that there's discrimination in place, we'll be back at this table looking at further amendments to the Indian Act.

I believe it was the Indigenous Bar Association, in a previous bill—I don't remember exactly what piece of legislation it was—that identified the issues around the piecemeal approach to this and urged the government and the committee to seriously look at that kind of approach. Many of you have spoken about the unintended consequences of Bill C-31 from 1985 and the ongoing problems this has raised in many communities. I understand there's a grave concern for that kind of approach.

The challenge we have before us is that we have a B.C. Supreme Court decision that strikes down two sections of the Indian Act that will have an impact on roughly 45,000 people. We've already been warned by the chair that some amendments could potentially be ruled out of order. We don't know until we submit them. So I guess I'm seeking advice. Given the fact that we have a narrow bill before us, that it only deals with very limited aspects of the discriminatory practices in the Indian Act, many of us are feeling that we will support Bill C-31 despite the deeply flawed approach.

Do you have any suggestions or comments, if we chose not to support it, on how we deal with those 45,000 people who could lose their status as of July 5? Do you have any ideas? No?

It's a challenge before us, even though we agree that this is not the way to go. Feel free, if you have any comments, to jump in on this. I also want to point out that a number of you have sent briefing documents. I have a briefing document that goes back to 2008 on a first nations registration status and membership research report prepared by AFN and INAC. So the government was well aware in 2008 that there were problems: the RCAP report of 1996, the Penner report, which has been quoted, and I believe in 1988 there was a committee report that outlined the challenges.

Could you actually speak to the recommendations out of the 1988 report, because we're now dealing with something, what, 22 years later?

● (1640)

Mr. Paul Dionne: If you wish, I can read from this committee's report back in 1988, concerning the siblings discriminatory rule....

Ms. Jean Crowder: Which is the case you outlined?

Mr. Paul Dionne: This is the Susan and Tammy Yantha situation, which was outlined by Mr. Nolett. In 1988, pursuant to the tabling of INAC's report on the implementation of Bill C-31, this committee tabled its own report and recommended...and I'll read from recommendation number 11 of the fifth report of this committee:

> We recommend that section 6.(2) of An Act to Amend the Indian Act, 1985 be amended before the end of the current session of Parliament

—that was back in 1988—

> in order to eliminate discrimination between brothers and sisters.

That's the case Daniel Nolett spoke about, in which Susan and Tammy Yantha are involved as claimants.

Ms. Jean Crowder: So we had before us an ongoing public acknowledgement of discriminatory practices, and 22 years later we still don't have any action to deal with a situation that you are now having to take to the courts again. Is that correct? I believe you sent us a brief on the case that's gone before the courts, and that was filed....

Mr. Paul Dionne: The case was filed in March 2009.

Ms. Jean Crowder: So given the complexities of the court system, you could be looking at another decade before we have a resolution on a problem that was acknowledged in 1988.

● (1645)

Mr. Paul Dionne: Exactly. You will probably be convened here 10 or 12 years down the road discussing the same issue because of another court decision on another discriminatory situation.

Ms. Jean Crowder: I think we're all well aware, and I think somebody mentioned it, that the courts, when they provided the extension to the government to July 5, acknowledged that they could have provided a longer extension based on the complexity of the situation and the recognition that there was a need to consult first nations before significant changes were made to the Indian Act.

So I would propose another solution. The government could apply to the courts for an extension, withdraw this bill—because we know many of the amendments we would suggest will be ruled outside the scope of the bill—and present a bill after working on a nation-to-nation basis that would solve some situations we have before us.

Does that seem like a reasonable solution?

That's the end of my questions.

The Chair: Thank you, Ms. Crowder.

Let's go to Mr. Duncan.

Mr. John Duncan: Thank you very much. There are so many issues and so little time.

I guess what struck me in all of the testimony was that there was a lot of discussion about the inherent right to determine membership.

I was also very struck by your comments, Ellen Gabriel, that if there were no perceived "benefits" involved, we would probably not be here, and that if membership were determined strictly by first nations, instead of the government being sued, we'd probably have complaints under the Canadian Human Rights Act. So that's one thing that flows from the changes made to the Human Rights Act to eliminate section 67 of that act.

But we also heard something else, I think from Dianne Corbiere. Dianne, you were referring to the inherent right to determine membership. At the same time, you were echoing a recommendation made by the national chief, or stating the same recommendation—I don't know who is echoing whom. But you called for a special parliamentary committee to look into citizenship, membership, and other issues.

I'm struck by two things. One is that we have put an exploratory process in place, a parallel process, along with Bill C-3, to deal with all of these things. But is there not a contradiction between the inherent right and asking for a parliamentary committee to look into these very issues? That's really the substance of my question to you, Ms. Corbiere.

Mr. David Nahwegahbow: I'll address that.

It's a good point. It's something the Penner committee grappled with at the time.

The problem is that you're messing around with peoples' rights, in any event. Rather than messing around in a fashion that's really inappropriate, have a good look at the situation. In other words, don't be limited by a series of minimal amendments, but look at the broad picture. Maybe you need to make the amendments that are before you, but don't drop the ball on the big picture.

You have an opportunity to confront the situation. We now have an international declaration on the rights of indigenous peoples, and Canada, as a citizen of the world, needs to deal with those rights as peoples.

So it may appear to be a contradiction, but if you're going to look at it anyway, look at it through the proper lens.

● (1650)

Mr. John Duncan: I have a very simple follow-up question, but I'd like to get it on the record. There are, I believe, 230 bands across the country that already determine their own citizenship. As I understand it, there's nothing pre-empting the other first nations from doing the same thing. Am I correct in that understanding, as far as you know?

Mr. David Nahwegahbow: It's not totally correct. The extent to which first nations can currently determine their own membership is prescribed by the Indian Act. There is a very limited form of delegation that was provided or included in Bill C-31. It was an attempt, I guess, at addressing the issue of self-government and determination of membership/citizenship at the time. But it was not adequate; it still isn't adequate.

Mr. John Duncan: Further to that, I understand that there is nothing to limit membership to registered Indians, so how could that be limiting? How is section 10 of the Indian Act limiting?

Mr. David Nahwegahbow: Well, it does limit. There's a certain latitude in which first nations can determine their membership, but membership has to include some acknowledgement of those people who are potentially excluded from status. Government has to be able to deal with these two concepts in a manner that is balanced.

What I've heard from many first nations across the country is that they want to be able to deal with members, but they don't get adequate funding. You raised the issue of benefits; those are main issues.

The other thing that was dealt with in the Penner committee report is the need to have appropriate fiscal arrangements with first nations, rather than to have funding accorded, as I think somebody mentioned, to individuals or accorded on an individual basis. You need to be able to fund first nations on a nation-to-nation basis.

Mr. John Duncan: Mr. Chair, I want to say that I think we've started the exploratory process.

Thank you.

The Chair: So it would appear. Thank you very much, Mr. Duncan.

Ms. Gabriel, did you have a final point to make?

Ms. Ellen Gabriel: Yes. I wanted to add that for membership, you have to be a status Indian. That doesn't necessarily mean that if you have status, you have membership. That's been the problem for a lot of indigenous women who regained their status in 1985 but who are not allowed to live in their communities, to be buried in their communities, or to own land that their parents give to them. That's one of the problems we have.

If this bill is going to be passed without amendments, then we need some guarantees that band councils will also respect it. Band councils receive their authority from the Minister of Indian Affairs. Some of our members have problems in receiving services, because while they have membership in Ottawa and status in Ottawa, their own bands refuse to grant them and their children any services. We talked about discrimination, but we also have to address the problem of discrimination at every single level.

The Chair: Okay.

We are out of time. Thank you very much.

I thank all our witnesses again for their understanding this afternoon and for abiding by sometimes strict time guidelines.

Members, we're now going to suspend for about three minutes. We'll try to switch over as quickly as we can, and then we'll resume our second hour.

● _____ (Pause) _____

●

● (1655)

The Chair: Ladies and gentlemen, I would ask that we invite our witnesses to take their seats for our second hour.

I apologize for pushing people along in our timelines here, but we have a very busy afternoon.

As some of you who were here in the last hour know, we're under some fairly stringent timelines today. But we will adhere....

Order. If I could ask those who have discussions going on to take those outside the room, that would be great.

We'll continue with our consideration of Bill C-3.

As I was saying, we will stay with the normal format of 10-minute presentations and we will have one round of seven-minute questions and responses.

We welcome to our second hour Chief Angus Toulouse, Ontario regional chief, Chiefs of Ontario, who is joined by Johanna Lazore, senior policy advisor.

We also welcome Chief William Montour, who is joined by Mr. Richard Powless, both from the Six Nations of the Grand River. Welcome.

We'd also like to welcome Grand Chief Stewart Phillip and Chief David Walkem of the Union of British Columbia Indian Chiefs.

Finally, just about to take their seats, we have Chief Guy Lonechild, who is joined by Paul Chartrand. Both are from the Federation of Saskatchewan Indian Nations.

As you heard, we're going to go quickly through the presentations. I will have to keep you to the 10-minute mark, and I'll try to signal that you're coming close to the end of the 10 minutes.

Let's begin with Chief Toulouse from the Chiefs of Ontario.

Chief Toulouse, please go ahead.

● (1700)

Chief Angus Toulouse (Ontario Regional Chief, Chiefs of Ontario): Thank you.

I'm from Sagamok Anishnawbek, on the north shores of Lake Huron. I'm here on behalf of the Chiefs of Ontario. Thanks for the invitation to appear before you on this important matter.

Canada's proposed amendments to address the British Columbia Court of Appeal's decision in McIvor fall short of eliminating discrimination within the Indian Act. The proposed legislation addresses only one area of discrimination within the Indian Act and does so in a very narrow manner.

First nations women, in particular, and their descendants have been subject to various forms of discrimination based on sex, race, and family-marital status since the newcomers to our lands began to impose their laws upon us. This practice is contrary to how first nations women were traditionally treated within our pre-contact societies.

Further, INAC has provided no indication that it will provide additional funding to first nations to cover the costs of new members granted status by the legislation. The lack of funding to accompany new members will likely cause strife and divisions within first nations. The Indian Act amendments proposed by INAC to address the British Colombia Court of Appeal's ruling in McIvor address the gender inequality in the registration of status Indians, but provide another line of assault upon first nations by corroding their right to determine their membership and identity.

Although Bill C-3 is silent on whether or not bands determining their own membership must accept new members, with the application of the Canadian Human Rights Act on June 18, 2011, to first nation governments, bands may face challenges to their membership codes should they choose not to accept new members for any Canadian Human Rights Act-related reason. Thus, any silence within Bill C-3 on the subject of bands that determine their own membership codes, section 10 bands, should not be seen as effective compliance by Canada to the indigenous right to determine their own identity and membership.

Over half of the 133 first nations within Ontario do not control their first nations lists. This means that new status Indians will be added to those lists by INAC. This, in effect, is a phased approach to taking away the right of first nations to determine their own membership and identity.

In addition, INAC has proposed a process of information gathering to address the broader issues of first nations citizenship. Such a process will be completely futile without a commitment from Canada to recognize first nations jurisdiction over our identities and membership. Our individual and collective identities have been insidiously taken over by concepts that are rooted in a foreign ideology, one bent on weakening our nations. Issues of indigenous identity and membership in Canada cannot be looked at without first acknowledging the context of colonialism that continues to exist within Canada and continues to negatively affect first nations.

Continuing colonialism mostly arises out of the actions or inactions of those who refuse to acknowledge and address their attitudes of paternalism and subjugation towards first nations. It is unfortunate that this aspect of our history needs to be consistently re-mentioned within all of our work, as it has yet to be fully understood and accepted by Canada.

Not only has our cultural sense of belonging been undermined by imposed definitions, but our psychologies, spiritualities, and political structures have also been impacted. We have individually and collectively experienced the intrusion of the Indian Act upon our daily lives for the past few generations. The right to control our identities without interference should be recognized as an integral aspect of reconciliation and is really about our right to exist as peoples.

On April 1, 2010, INAC Minister Strahl presented to this committee and stated that there is no consensus among first nations on the broader issues of membership and identity. While this statement may in part have some merit, its true value is in demonstrating the government's lack of understanding of the context of colonialism.

Surely it was not INAC's expectation that after several centuries of both intentional and systemic subjugation, first nations would be able to reach a consensus on how best to fix the first nations citizenship issues within a matter of months. Even after a lengthy process of repairing the damage of the last few centuries through a process of decolonization, it is unlikely that the many culturally and linguistically diverse first nations in Canada will reach a consensus on anything beyond key principles.

● (1705)

Canada continues to effectively ignore a key international instrument, the United Nations Declaration on the Rights of Indigenous Peoples, that describes the minimum standards required for the survival of indigenous peoples.

Although the most recent Speech from the Throne provided an indication of the current government's intention to endorse the declaration “in a manner fully consistent with Canada's Constitution and laws”, this commitment could arguably impose a lower standard upon the human rights found in the declaration. The proposed amendments and INAC's information-gathering session fall short of living up to the minimum standards described within the declaration.

A situation that has served to assist the breakdown of our collective identities has been our economic dependence upon the Government of Canada. The wilful ignorance of our treaty rights, deprivation from our lands and resources, and paternalistic legislation have all contributed to the situation we are in today. This unfortunate reality serves to demonstrate in part how we have come to rely upon definitions of “Indian” and “aboriginal” that are always attached to the rights and benefits we need to live.

Many first nations individuals in Ontario now find themselves in a state of poverty that is difficult to overcome. First nations governments face a similar struggle in trying to meet the basic needs of their community members.

With regard to the legislative amendments proposed within Bill C-3, INAC has indicated it does not know what the exact impact upon first nations will be. However, the projected number of new registrants is approximately 45,000.

Ontario has one of the largest populations of first nations inhabitants within Canada. With no mention in the federal throne speech nor in the recently released budget, first nations in Ontario potentially face massive pressures upon the limited funding they receive for critical areas such as education and housing.

The current government has demonstrated little concern for the numerous first nations citizens and families who are already living at or below the poverty line. The combined effect of the HST, the harmonized sales tax, increased membership under Bill C-3, the repeal of section 67 of the Canadian Human Rights Act, and the matrimonial real property legislation proposed in Bill S-4 will potentially deliver a devastating blow to first nations' struggling economies. Ironically, both Ontario and Canada have publicly pledged their commitment to helping eradicate first nations poverty. Without increased funding to accompany legislative changes, only harmful effects will be felt by the first nations people.

In conclusion, I make the following recommendations to the Government of Canada:

Recognize and respect first nations right to determine and have jurisdiction over our own identities and citizenship.

Acknowledge Canada's colonial history and commit to a process of decolonization. This should serve as the foundation for all other efforts to help first nations peoples.

Comply with human rights standards described in international law relating to indigenous peoples, in particular the indigenous right to determine identity and membership as well as the right to free, prior, and informed consent.

Canada, working together with first nations, should focus on addressing fiscal relations in order to move away from the existing unsatisfactory contribution arrangements. Address the reality that cost implications are a key interest underlying the government's insistence on controlling status.

Last, commit to providing financial assistance to first nations before the implementation of this legislation.

Meegwetch.

● (1710)

The Chair: Thank you, Chief Toulouse. I appreciate that.

Now we'll go to Chief Guy Lonechild. It's great to have you back, Chief. It's on a different subject matter but it's great to see you here. Please go ahead for up to 10 minutes.

Chief Guy Lonechild (Federation of Saskatchewan Indian Nations): Thank you very much, Mr. Chair.

On behalf of Saskatchewan's first nations, I begin by acknowledging the elders of the people of the Algonquin territory.

I want to thank the members of Parliament, this talking place, for giving me the opportunity to speak to you about Bill C-3. I wish to raise two key points this afternoon.

My first is that Bill C-3 could add more than 45 new registered Indians to the Indian registry. One of the questions I would pose in this discussion is, what are the financial implications of Bill C-3? Where, as here, the government has introduced new legislation, and when it does, then as first nations leaders and citizens alike, we want to know what the proposed amendments, if any, will cost. What is the plan of the government regarding the added costs of bringing on new registrants? I have in mind particularly those costs of providing public services to those new registrants.

My second question relates to the exploratory process. We are concerned with what, as we understand it, the government is proposing. We are concerned about a unilaterally imposed process where government agents would listen to people and collect information, but not show interest in having a healthy, friendly discussion on how to create good respectful relations with treaty first nations.

We hear a lot about reconciliation these days, and reconciliation is a two-way street. We are in favour of a process of consultation to establish good relations, including on the nation-to-nation approach where each first nation decides who belongs, in a future where the Indian Act has been abandoned and in its place we have respectful government-to-government relations based on a treaty relationship. It is now a buzzword in Saskatchewan that we are all treaty people. Treaty first nations are voicing a strong willingness to move beyond the Indian Act to a nation-building approach where each nation exercises its right to decide who belongs. On this, there is broad consensus.

FSIN, through its founding document, the Convention Act of 1982, is one such vehicle proven to provide leadership and direction in building consensus among 74 first nations in the province of Saskatchewan. This has resulted in a number of province-wide initiatives that were developed in cooperation with federal and provincial governments.

Let me return to Bill C-3. Bill C-3 is a response to a court case. The government had to do it. While we agree that an amendment was necessary to maintain the legislative foundation for the current Indian Act registration system, we urge the government to adopt a new approach to the way it develops laws and policies dealing with first nations. As in the case of Bill C-3, the government has historically acted by managing issues or responding to crises, by acting only when forced to do so. We are in favour of a principled approach, a nation-building approach, where each nation decides who belongs in a process of negotiations on the institutions of self-government, respect for the treaties, and doing away with the Indian Act. We would like to see a principled approach, one that focuses on nation building and also on the respect for human rights, including the right of self-determination. Each nation would decide who belongs. Negotiations with first nations are necessary because each nation must be free to decide who belongs to it.

The idea that first nations have a right and are in the best position to decide who belongs has a long history in this Parliament. In 1983, the Penner parliamentary committee report recommended that first nations have the right to decide who belongs, for the purpose of deciding the procedures and institutions of self-government. This approach was reflected in the final report in 1996 of the Royal Commission on Aboriginal Peoples. I have here Mr. Paul Chartrand, a commissioner from the royal commission. It recommended the nation-to-nation approach based on the human right of self-determination.

Several United Nations treaty bodies responsible for overseeing Canada's performance of its obligations under human rights treaties have, since 1998, urged Canada to adopt the RCAP approach as a domestic application of the right of self-determination. The United Nations Declaration on the Rights of Indigenous Peoples declares the human right of self-determination of indigenous peoples, and that includes the right to decide who belongs to a people.

● (1715)

You are not going to get consensus on a definition of “Indian” within the Indian Act. The nation-to-nation approach is realistic. It proposes that each nation would be free to decide in a process of negotiations with the federal government. This is what we need, instead of another exploratory process.

Thank you very much.

The Chair: Thank you, Chief Lonechild.

We'll now go to Grand Chief Phillip and Chief Walkem. They're both from the Union of British Columbia Indian Chiefs.

Grand Chief Phillip, would you like to proceed?

Grand Chief Stewart Phillip (President, Union of British Columbia Indian Chiefs): Good afternoon.

Wai xast skelhalt ipsi nuxsil. Encha es quist Ascasiwt.

I would first like to begin by acknowledging and paying my respects to the Algonquin grandmothers, mothers, and grand-daughters of this territory. I also extend that recognition to the traditional and spiritual leaders, as well as to the elected officials of the Algonquin people.

I would also like to thank the committee for the opportunity to be here to make our presentation. Chief David Walkem is going to undertake the more comprehensive aspect of our presentation.

I would like to read the most recent resolution from the Union of B.C. Indian Chiefs, which is a political organization that has existed in the province of British Columbia since 1969. It's interesting to note that it was the indigenous women who raised the funds and created the resources to bring the organization forward as a political voice for their issues.

It's the resolution of the Union B.C. Indian Chiefs, Chiefs Council, March 17 to 18, 2010, Vancouver, B.C. “Resolution no. 2010-08 RE: Bill C-3”:

WHEREAS the appropriate approach to determining citizenship is one that is based within the laws and traditions of Indigenous Peoples; and,

WHEREAS Bill C-3 does not acknowledge Indigenous laws, nor has Canada made space for these discussions to occur in drafting these amendments to the *Indian Act*; and,

WHEREAS Bill C-3 amendments will not address the many aspects of discrimination against Indigenous women and their descendants that continue to exist in the *Indian Act*. Importantly, the second generation cut-off provisions will continue to mean that the numbers of status Indians decline in the long run, and that people who are recognized under the laws of their own communities and nations as being citizens will continue to be denied status;

WHEREAS Canada has not articulated an adequate plan to assist and properly resource Indigenous communities in addressing the increase in status Indians and Band members that will result from Bill C-3 and has instead created a situation that will further fracture Indigenous Nations, communities and families.

THEREFORE BE IT RESOLVED that the UBCIC Chiefs Council adopt the Position Paper on Bill C-3 presented by the Bill C-31 Working Group, as amended from the floor of the UBCIC Chiefs Council;

THEREFORE BE IT FURTHER RESOLVED that the UBCIC Chiefs Council direct the UBCIC Executive, Staff and Bill C-31 Working Group, to:

Approach other Indigenous organizations to work collaboratively to address the amendments to the *Indian Act* that are being proposed by Canada to respond to the *Indian Act* under Bill C-31;

Seek standing for the UBCIC Executive to appear before the House Standing Committee considering these amendments;

Undertake an active lobby effort aimed at educating federal Members of Parliament and Members of the Senate (including the Minister of Indian and Northern Affairs and federal parties' aboriginal affairs critics) about this issue and seek to lobby for more inclusive amendments to Bill C-3;

Support actions required by UBCIC communities to respond to the impact that Bill C-3 may have, including highlighting education within the communities of the potential impacts;

Explore opportunities to work with UBCIC member nations and communities to articulate Indigenous laws about citizenship as an alternate to the status based process that Canada currently follows, including that the UBCIC Chiefs Council mandate the Bill C-31 Working Group to plan, organize and implement an ***Indigenous Citizenship Action Plan*** based on Indigenous laws;

Produce public education materials, arrange for speaking engagements to build public support. Include use of popular media and social networking resources to ensure that strong and clear messaging is available to all First Nations in British Columbia regardless of location;

Explore bringing a legal challenge to the process that Canada followed in bringing Bill C-3 forward without the consultation and consent of Indigenous nations;

● (1720)

Therefore, be it finally resolved that the UBCIC Chiefs Council appoint the following representatives to join and be active participants of the Bill C-31 Working Group: Chief Nelson Leon, Adams Lake Indian Band; Chief David Walkem, Cook's Ferry Indian Band; Chief Donna Gallinger, Nicomen Indian Band.

It was moved by Ko'waintco Michel, Nooaitch Indian Band; seconded by Chief Jonathan Kruger, Penticton Indian Band; and carried.

With that, we'll go to Chief David Walkem.

Chief David Walkem (Chief, Union of British Columbia Indian Chiefs): *Kuk'chem.* Thank you, Mr. Chair and members of the committee, for hearing us today.

As Grand Chief Phillip has said, I'm from the Cook's Ferry Indian Band, the Nlaka'pamux Nation. Sharon McIvor is from one of the member bands of our nation. So this issue has been near and dear to our hearts.

We have three specific amendments, and we'll provide the clause-by-clause amendments we have put forward. Unfortunately, they were caught in translation today, so we'll get them to you as soon as we can.

First and foremost, as the Grand Chief has said, the bigger issue is the citizenship issue. We have limited our comments to the bill that has been put forward. Because Bill C-3 is only a partial fix, and discrimination continues against the descendants of indigenous women, the Union of B.C. Indian Chiefs is advocating that Bill C-3 be amended to eliminate continuing areas of discrimination.

Currently, people who are denied status because their grandmother married a non-status person and who were born before September 4, 1951, will not be entitled to regain status. We recommend that the 1951 cut-off date be eliminated. It is not just or equitable to continue the discrimination simply because a person was born before the 1951 cut-off date. The proposed amendment would reduce the discrimination based on date of birth, ending discrimination against those born before September 4, 1951.

Our second amendment deals with those cases in which paternity wasn't stated. Bill C-3 only addresses the situation of those who were denied status because their grandmother lost status due to marriage. Others were born outside of marriage and were denied status because a registrar deemed them to be non-status and to have a non-status father.

The Union of B.C. Indian Chiefs recommends that status be returned to the descendants of Indian women who lost status due to marriage—as in Bill C-3 as it currently is—and to those who were born outside of marriage and were denied status because the registrar assumed their father was non-status. This proposed amendment would eliminate the discrimination in Bill C-3 based on the fact that some people were born out of wedlock.

The last amendment we're recommending is to strike clause 9 to allow Indian women and their descendants who lost status due to the discriminatory operation of the Indian Act to pursue, through the courts or other negotiation, restitution or compensation for the losses their families suffered as a result of the historical discrimination imposed on them by this legislation, similar to the process followed for people who went to residential schools.

With that, I thank you for the opportunity. We will take questions on this. *Nkwusm*.

● (1725)

The Chair: Thank you both.

Now we'll go to Chief William Montour. He represents the Six Nations of the Grand River, as does Mr. Powless.

Chief Montour, welcome. Please go ahead.

Chief William K. Montour (Chief, Six Nations of the Grand River): *Sge:no swa:gwego.*

Thank you, Mr. Chairman.

I first want to acknowledge the Algonquin people, whose territory we're in, and I also want to thank Mr. Lemay for convincing the committee that we need five more minutes.

Thank you, Mr. Lemay.

Six Nations of the Grand River has the largest population of any first nations community in Canada: 23,183 citizens, with approximately 12,000 residing on reserve, along with 5,000 other people, including non-status, non-member, and non-natives.

While it is the elected council of Six Nations presenting today, it is important to note that our traditional government, the Haudenosaunee Confederacy council of chiefs, still functions at Six Nations. We have preserved our traditions, customs, and practices, as well as our Iroquoian languages.

As the largest population of status Indians in Canada, we also have the greatest potential to have this bill impact us more profoundly. It is possible that, once registered, many of our people will want to return to our community, or already may be in the community, to establish themselves as part of their community, to know their culture and traditions, and maybe even learn their language. This will lead to an increased demand for our services, such as housing, education, and health. We already operate at maximum capacity in these areas due to INAC's 2% funding cap. We do not know the full potential impact of this bill because we do not have the resources to undertake such a study.

The title of Bill C-3, “an Act to promote gender equity in Indian registration”, makes it hard to believe that in this day and age, with all the legislation in place to protect all women from gender discrimination, we are still petitioning the Government of Canada about the unfair treatment of the women from our nations. I applaud Ms. Sharon McIvor for her persistence and dedication in ensuring that this inequality is not carried on to her grandchildren and future generations of our people.

Since the inception of the Indian Act registration sections, first nations women have been targeted as being less of a person than first nations males and have been punished and banished because of choices they made in marriage. The federal government has also waged a mental war on our people by legislating our identity to the point where many have labelled themselves as a status Indian, non-status Indian, Bill C-31 Indian, and I am sure some will refer to themselves as Bill C-3 Indians.

In fact, we of the Six Nations are, and always have been, citizens of our nations. This is our birthright. It is not your right to legislate our identity, yet somehow we continue to allow this. The time has come where we must take control of our own identities and move beyond seeking fairness and approvals from an outside government that has continually waged this mental war. As the elected chief of the largest first nation in Canada, I am putting the Government of Canada on notice that we intend to make this a reality in our community.

I would like to bring forward our concerns regarding the intent and potential impact of Bill C-3 in four specific areas: first, duty to consult; second, gender equality; third, financial impact; and fourth, first nations jurisdiction.

First, in terms of duty to consult, any new federal legislation that has the potential to affect our aboriginal and treaty rights triggers a duty to consult and accommodate, as reaffirmed in various decisions of the Supreme Court of Canada—for instance, Haida, Taku, and Mikisew Cree decisions. The federal government's duty to consult and accommodate has clearly not been met with Bill C-3. You have heard from sponsors of the bill that consultation is not necessary because it does not affect our rights. Nothing could be further from the truth. There is nothing more fundamental to our rights as indigenous nations than to determine who our citizens are and to protect their rights. The federal government should be prepared to move on this issue in a broader perspective than Indian registration.

Second, eliminate all gender inequality. I am in agreement with Ms. Sharon McIvor's recommendation that if the Indian Act is the standard that Canada uses to determine status and it is introducing this bill as a way to remove gender inequality, then Bill C-3 needs to go further than the court of appeal decision and remove gender inequality from the time it was introduced in history. It is not necessary for the federal government to adhere strictly to the court of appeal decision, as they had an opportunity to eliminate all gender discrimination with this bill but chose not to. We agree with Sharon McIvor that all people born before April 17, 1985, should be placed in the 6(1)(a) category. Bill C-3 will not accomplish full gender equality. It is just another quick-fix solution to keep the governments out of litigation in the interim.

● (1730)

Third, there is the financial impact of the increased population. In the 1985 amendment to the Indian Act, the federal government misjudged the number of our people wanting to return to their communities. It has never provided the promised adequate resources. To compound the problem, federal funding to first nations communities has been capped at 2% since 1996.

In the case of Six Nations, the impact on funding for returnees on Six Nations was dramatic. In 1985 we had approximately 11,000 people registered both on and off reserve. In 1987 we had 3,880 additional people added to our registration list, which represented a 36% increase to our population.

We have no confidence that the federal government has fully assessed the potential impacts or has done sufficient analysis on the financial implications for first nations from this proposed amendment. As this bill will increase the status population of all first nations in Canada, we recommend that increased funding must be a key component of the proposed legislation.

Then there is the first nations jurisdiction. First nations citizens and members of first nations communities will continue to be denied the full recognition of their status even after this bill passes based solely on whether they descend from a matrilineal line versus a patrilineal family line.

Article 33.1 of the United Nations Declaration on the Rights of Indigenous Peoples—UNDRIP—states that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the states in which they live. We consider the exploratory process proposed by Minister Strahl as a first step in ensuring article 33.1 becomes a reality in this country. However, we will not support a process where cabinet wants to examine ways of seeking gender equality in Indian registration. We do not wish to work in a process that supports Indian registration; we want the process to look at the larger picture of first nations citizenship determined by the nations. This is providing that there is a will from cabinet to do the work required and the accompanying resources appropriated to work on this issue. This must be accompanied by a legally binding commitment from the federal government to recognize and register as citizens any person a first nation deems to be their citizen.

What we are talking about is first nations citizenship, not the registration provisions that still deny birthrights to first nations citizens under an antiquated colonial piece of legislation. We need to stop the legislated identity for our people and recognize first nations governments' jurisdiction to identify their citizens based on an individual's birthright and lineage.

This also means that all persons recognized by first nations as citizens must be eligible for federal funding based on these new numbers. It also means that first nations governments will need to be proactive and take the step of developing and defining who their citizens are in a written code or law. Once such a law is in place, it should replace the Indian Act provisions on Indian registration and membership, and it would become the law for the first nation government and community.

We are recommending that this committee urge the federal government to move beyond the Indian Act registration process and begin a process that would start the recognition and acceptance of first nations models of citizenship laws. We further recommend that this committee urge the cabinet to follow through on Minister Strahl's commitment to begin this exploratory process.

In conclusion, we recognize the limitations this committee may have on this legislation, but we also recognize that this committee has the capability and authority to recommend that the federal government move beyond the current Indian Act registration process. We urge you to do so.

Nia:weh.

The Chair: *Meegwetch*, Chief Montour. It's great to have you all here.

I should say, by the way, that I appreciate that you were accommodating. We are running a little bit late today, and I know we didn't get started precisely on time with our session this afternoon, so we appreciate that.

Now we're going to go to questions from members. We'll begin with Ms. Neville for seven minutes.

● (1735)

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much. Thank you to all of you for being here today.

While you all haven't presented quite the same position, you've certainly made a number of important arguments.

My first question is to Grand Chief Stewart Phillip. The C-31 committee that works within the Union of B.C. Chiefs.... Is the recommendation you made here today the outcome of their discussions? Are there discussions currently ongoing, and can you tell us where they're going?

Chief David Walkem: I'm on the committee. Yes, it is the summary discussions of our committee that we put before you today. We did present a position paper addressing the bigger issues of citizenship last November, when asked by the government to comment on those. It was passed through our chiefs' council meetings.

Hon. Anita Neville: Has the committee received that paper?

Chief David Walkem: No, we're getting it translated. We didn't have it ready for today, but we will get it to you.

Hon. Anita Neville: Thank you.

I guess my question to all of the presenters here is that if we as a committee have the opportunity to recommend to government that it ensure that all women are treated equally, that if we can amend the bill—and we are looking at potential amendments—to ensure that some aboriginal women are not more equal than others, would you like us to proceed with that, given the many other issues you raised, whether citizenship, consultation, inherent rights, funding, and so forth?

Chief David Walkem: The question as I understand it was would we want you to support amendments that would get rid of the inequalities or discrimination against aboriginal women?

Hon. Anita Neville: And do you want us to move forward on that without addressing some of the other issues raised?

Chief David Walkem: In our discussions—and why we were very specific about parts of the proposed legislation put before us—we wanted this discrimination to be addressed now. A lot of these people—especially in regard to the 1951 cut-off date—are elderly. This bill deals with those between 29 and 59 years old, but prior to that there are elderly people. There aren't a lot of them, and we want to stop the discrimination right now.

Hon. Anita Neville: Are there any other comments?

The Chair: Do any other witnesses wish to comment on Ms. Neville's question?

Chief Toulouse.

Chief Angus Toulouse: I just have a couple of quick comments.

Concerning government recommendations generally, first nations collectively and individually are developing, rebuilding, or revitalizing their nations. What they're saying is that this requires Canada to desist from any activity or legislation, and it should honour the treaties and aboriginal and human rights so we can continue to build our economies. What we really need to do is to build our own governance structures and revitalize our cultures and our traditions. We want to lessen the impact or power the Indian Act has over our first nations and communities.

The Chair: Chief Montour, I thought I saw your hand up. Did you want to go ahead?

Chief William K. Montour: Yes, he upstaged me.

I believe we need both. In the interim, we need to have the recognition for those people who are aggrieved. But more importantly, I think we have to go back to the start of this whole history, back to 1876. To quote Dan George in one of his movies, “Women are the centre of our nations, the centre of our worlds.”

We envision these laws, our citizenship laws, putting women back to where they were prior to the tinkering by the colonial governments and taking that power away from women. In our community, in our society, it's matrilineal. Women make chiefs and also tear them down. We have to get back to that way, as far as I'm concerned.

Thank you.

● (1740)

The Chair: We have two minutes.

Ms. Neville, are you okay with that?

[*Translation*]

I'll now give the floor to Mr. Lemay or Mr. Lévesque.

Mr. Marc Lemay: First of all, I am honoured to meet you. We have with us the grand chiefs of the First Nations of Ontario, Saskatchewan and part of the Six Nations from British Columbia. The majority of aboriginal peoples in Canada are probably represented here.

I have a general question and, if I have time, I will ask a more specific one. You are all chiefs involved in your communities. I know that, because I meet you on occasion during first nations' assemblies. What was your reaction to the government's tabling of Bill C-3? I am aware that there were very few consultations in the legal sense, regarding the decisions of the Supreme Court. Can one of you quickly tell me how you reacted to the tabling of this bill?

[*English*]

The Chair: Mr. Lonechild and then Mr. Montour.

Chief Guy Lonechild: Just very quickly, thank you for the question, Mr. Lemay.

One of the things that's commonly said is, here we go again. Back in 1985, Bill C-31 looked at addressing some of these very common concerns this bill now tries to address. Rest assured, it won't close the gap of further discrimination totally. Of course, this again is something that we feel is trying to legitimize the Indian Act through minor amendments, which the Canadian Human Rights Act and various other things, in the form of the charter, are going to take down anyway. I think it's just going to repeat history.

I think that's why there's a sense of urgency that we voice our concerns about making a vehicle that's not in the best interests of our first nations as treaty people and legitimizing it through these recommendations. I think it's just reliving the bad nightmare of many of our chiefs back in 1985. I wasn't around then, of course, but we have to endure this again.

[*Translation*]

The Chair: Chief Walkem, you have the floor. We will then go to Chief Montour. No, to Chief Powless, I apologize.

[*English*]

Mr. Richard Powless (Advisor, Six Nations of the Grand River): I think the first reaction was disappointment. We wonder why this government has to be dragged kicking and screaming to do these things. The last time they looked at this was 25 years ago. They did a bad job then.

Courts don't make policy, and they have a chance to do this right. They had a year to consult. They didn't do it. Having engagement processes with everybody is not the way to approach this. We've been telling them this, time after time, on every piece of legislation they keep running up.

In spite of the federal apology for residential schools, the approach is still the same. It's the Indian agent mentality that, “We know what's best for you.” We're wondering when they're going to learn and start from the beginning and do it right, and start by consulting us.

● (1745)

The Chair: Chief Walkem.

Chief David Walkem: *Merci, Monsieur Lemay.*

The first reaction was that this bill is the absolute bare minimum to get by another court decision. That's why in our recommendations we've tried to broaden it to address a number of other court actions ongoing, as past presentations have indicated. We believe that our amendments will address the majority of those issues, but there is still the issue of this exploratory process. We've asked for full consultation. The exploratory process with national organizations doesn't do it. It has to be dealt with at our community and nation levels.

Yes, the first reaction was, “The courts have said, 'Here, go do something', and we'll do the bare minimum to get by the court decision.”

[*Translation*]

Mr. Marc Lemay: If I have understood your remarks correctly, the bill in its current form will not solve any problems, and we run the risk of ending up, once again, before the courts. That is what I understood.

I listened to the amendments proposed by the representatives from British Columbia. I thank you for them. Oddly enough, those amendments resemble the ones presented by the Canadian Bar Association.

Do you believe that with these draft amendments, we will at least be able to attempt to eliminate the discrimination that currently exists and that you highlighted in your remarks and your briefs?

[*English*]

Chief David Walkem: Our specific amendments will only address part of the discrimination that's out there. We did not have time to deal with all of it.

We are also trying to understand the limitations of the parliamentary process: here's a bill, and what can you do with it? We were looking at ways to maximize the benefit with the least amount of tinkering. It's not perfect.

[*Translation*]

Mr. Marc Lemay: Okay. However, if—

The Chair: You have 30 seconds left.

Mr. Marc Lemay: Since I have only 30 seconds left, I will be brief.

I know that you are very busy. The amendment proposes eliminating the proposed addition, which would be subclause 6(1)(c.1)(iv). If we were to remove that, we would eliminate a large part of the discrimination because we would be eliminating the following words: "had or adopted a child, on or after September 4, 1951, [which is what you wanted] with a person who was not entitled to be registered on the day on which the child was born or adopted;" By removing that, we would be eliminating a good part of the discrimination.

The Chair: Okay.

[*English*]

Just a yes or no response only. Confirm or not.

Chief David Walkem: Probably.

Mr. Marc Lemay: A good politician.

The Chair: Now let's go to Ms. Crowder.

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

I too want to thank the witnesses for coming before us.

Both in your testimony and a little earlier we heard about the previous report to the House of the Commons, the 1988 fifth report of the standing committee. I just wanted to put on the record—and we'll have to confirm this with the department—that a number of people have raised the issue around unstated paternity. In that report it actually said that:

> We recommend that as there is no legal requirement in the Act for unmarried Indian women to name the father of their children in order to establish their entitlement to registration and band membership, the practice be discontinued immediately.

According to the 1988 report there is no legal requirement to do this. If that's the case, it would seem reasonable that it could be dropped. The other thing they did point out was identifying the discrimination between brothers and sisters, which was already pointed out earlier.

I want to refer to something else in this report, because a number of you have raised the issue around resources. We've had difficulty in getting any kind of estimate from the department about financial implication. In part, what they argue is that they don't know how many people will want to return to their communities or how many people will apply because it will be driven by the applicant; it will be driven by the person deciding whether they want to apply to be reinstated.

Again, in this 1988 report there's extensive analysis on the financial impacts. It would seem reasonable to me that, given the experience in 1985, there would be a reasonable history around estimating the financial implications for bands and putting aside some financial resources to do that. I wonder if you could comment on that. They list everything: elementary and post-secondary, housing, health and welfare, social services. They have lists of tables, charts, and costs.

● (1750)

Chief William K. Montour: I was actually on the committee. In fact, I chaired the chiefs committee on citizenship with AFN from 1985 to 1991, and we worked on that.

In 1985, when Bill C-31 was enacted, the federal government estimated that 56,000 people nationally would want to become Indians again. Of that 56,000, probably 10%, or 5,600, would actually move back to the communities. As an impact buffer, the government made a bill for $295 million at that time.

Ms. Jean Crowder: Only for five years, though, right?

Chief William K. Montour: Yes. But as I stated in my presentation, there are close to 200,000 new Indians in Canada, and the huge impact in our communities alone is overwhelming.

Let's take the estimate of 45,000 people who may become status people under Bill C-3. Could they not use some kind of similar assumptions? At least there is something there for first nations communities to look at the impact and find ways to allay the impact, and also, more importantly, to help the people who want to come home to re-establish themselves back in our home communities. In our case, a lot of the people did return home, and they brought a lot of extra expertise that wasn't in the community before. There are a lot of people who say it was bad, but in my estimation, a lot of good things happened there. People come back with new ideas, new expertise, different ways of looking at the world, and I think there is an opportunity here that we may miss.

Ms. Jean Crowder: Do I still have time?

The Chair: You have a few minutes.

Ms. Jean Crowder: We have heard both from the minister and from the department that with the repeal of section 67 of the Canadian Human Rights Act, and one of you mentioned it, there will be a potential remedy for people to file a human rights complaint against their band. My question actually is, to date, have you seen any resources in terms of helping chiefs and councils grapple with the implications for their bands and for the potential financial implications? Part of the commitment when that bill was passed was that you would get resources to help you understand. So I wonder if any of you have had that, because we have now heard that this is coming down, through this piece of legislation, to you. Has anybody had any resources?

No. None?

Chief Angus Toulouse: As far as I know there are no resources. What I do recall, having being the former chief of one of those communities that had a membership code, is that there were a lot of problems with the code that could easily be challenged by the Canadian Human Rights Act. What the community didn't have was the kinds of fiscal resources to deal with the needed amendments. Again, there was something that was prescribed back in 1985 by government policy that really limited the first nation councils' ability to develop a citizenship code that is more reflective of today's society and needs.

The Chair: Chief Montour had his hand up there as well.

Chief William K. Montour: I'm no lawyer, but I try to look at things in a common-sense way. The Canadian Human Rights Act, the way I read it, deals with programs and services to a community, and if somebody is not getting that, then they have an argument. We are talking about citizenship here, people's identity. I don't see where the Canadian human rights legislation has any say in that. That's from a grassroots point of view, that it's irrelevant, because all they are looking at is whether this person had due process if they were asked to leave the committee or if someone was fired because they were non-native or whatever. To me that is what the Human Rights Act is all about, not about citizenship or identity.

● (1755)

The Chair: We will be hearing from the commission as one of our witnesses as well, so perhaps that will be a line of questioning.

Are there any other comments on Ms. Crowder's question?

Okay, go ahead.

Ms. Jean Crowder: The exploratory process has come up a number of times, and on the exploratory process what we've heard clearly is that it can't stop at the national aboriginal organization level. Do you agree with that, that it needs to come down so that it is not just national aboriginal organizations that are included in the exploratory process?

The Chair: Grand Chief Phillip.

Grand Chief Stewart Phillip: Yes. As I indicated earlier, the Union of B.C. Indian Chiefs has been involved in discrimination, prejudice, and racism against indigenous women since our inception 40 years ago. I also indicated that we have a Bill C-31 working group, which should tell the committee members that we have been actively involved in this issue for a very long time.

We have an action plan that looks at a litigation strategy, and certainly we'll be looking at the Declaration on the Rights of Indigenous People. We will be looking towards citizenship issues in other indigenous realms throughout the world. We are going to be working with our communities in terms of determining the impact of this type of legislation.

What hasn't been addressed here is the effect that Bill C-31 as well as the proposed Bill C-3 have in eroding our membership, and that is a very insidious dimension of this legislation that is addressed in our position paper and needs further discussion.

The Chair: We'll have to leave it there.

Thank you, Grand Chief, and thank you, Ms. Crowder.

Let's go to Mr. Rickford.

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

Anecdotally, Chief Montour, you should take comfort in the fact that you're not a lawyer and that you do have common sense. Lawyering and common sense rarely go hand in hand. As my colleague just pointed out, that's spoken as a true lawyer. Mr. Lemay is upset that I'm dissing my own.

For a couple of weeks now we have listened to testimony across the bigger issue, which can be bifurcated into the content of Bill C-3 and then the exploratory process with respect to what in my view is a justification for the exploratory process itself; that is, there appear to be some fairly serious and profound issues around status membership and citizenship and the different perspectives on what status membership and citizenship implicate.

For the record, I share the view of the minister and his officials, who rightly said that apart from being inclusive, the department didn't have a preconceived notion of what a separate exploratory process would look like. In my respectful view, that may mitigate some of the sense that this is intended to be any process that resembles a colonial or agent-type process.

As a signatory to the Indian residential school agreement, even within the confines of the law and one of the largest class action settlements in the history of the free world, I think what we saw was consensus on a number of defined legal issues, policy matters, as they may be implicated, from the scope of what the court could have potentially considered had it actually gone before the bench.

That said, my focus in the back half of this seven minutes afforded to me is to try to understand some of the key points of convergence, and perhaps divergence, so far.

I respect and understand some of the concerns around national forums, but I think it should be pointed out that a number of the people at this session have, and currently do, participate in national forums with respect to first nations governance. In an attempt to understand, perhaps more comprehensively, what the divergent and the convergent points are, I would ask—and perhaps I'll just pick a couple of chiefs....

Chief Lonechild, you made some interesting points on a principled approach that is respectful of a nation-to-nation nation-building relationship based on a treaty. I appreciate that. You felt or perceived that there was a broad consensus.

Maybe you could start the discussion around some of the key divergent and convergent points. I think it's worth saying that the exploratory process is wide open to that extent, and it may very well involve a dialogue about some of the substantive points you raised.

Thank you.

● (1800)

Chief Guy Lonechild: Thank you very much, Mr. Rickford.

Again, as the FSIN, I'll say that this isn't our first rodeo when it comes to exploratory processes. In the province of Saskatchewan, we've got the Office of the Treaty Commissioner, which of course is an exploratory process; the Treaty Governance Office, which is an extension of that process; and other exploratory processes that have either failed to meet the expectations of first nations governance—

Mr. Greg Rickford: What would make this work, Chief? Our time is really limited, and I apologize for that.

Chief Guy Lonechild: To get to it then, we cannot have note takers coming to our tables; we have to have decision-makers. If we have decision-makers who are able to sit down respectfully with our chiefs, as they have—and with all due respect to our chiefs who have sat there for a good number of years...I think of Chief Denton George from the Ochapowace First Nation, who is no longer with us today.

If the government is serious about this, don't send note takers; send decision-makers.

Mr. Greg Rickford: And that would be to get some consensus around the content of Bill C-3, but to also look at some of the broader policy implications that have been raised by at least a couple of chiefs and grand chiefs here today.

Chief Guy Lonechild: I won't speak for them. I'm just trying to address the question of the exploratory. There are fundamental flaws with that, and it shouldn't be something that is just a waste of your time or ours.

Mr. Greg Rickford: Chief Montour, I was struck by a comment you made. You have a rich history, actually, of working with the AFN committee on citizenship. As part of this process and in an effort to get some convergence, what is out there and what has been out there for us to understand? I mean with respect to your perspective around citizenship, perhaps around models of citizenship across different jurisdictions. I don't mean in federal-provincial-first nations, but just within the first nations. As I stated, we're really looking at a reconciliation of status, membership, and citizenship, and there are constituents within each of those three places that have a stake in this process.

Chief William K. Montour: This is a criticism of our own governments. We've never really sat down and said, "What is a citizenship law going to look like?" I think it's imperative that we do, because citizenship has to take the place of the Indian registry and status and non-status members. People have to become citizens of our nations. That's important.

We did a study at the AFN in 1992. It said that in 100 years there are going to be no status Indians if we continue this, meaning there are going to be no status Indians by 2092. So that begs the question, what happens then? To live on our lands, you have to be a member. To be a member, you have to have status. So if there's no more status, there are no more members. So the Government of Canada says, "Well, the crown says we don't have to preserve these lands for the use and benefit of Indians any more because there are no more Indians." I look at it as the biggest land grab of the century.

● (1805)

The Chair: We are out of time there. Thank you, Mr. Rickford.

Grand Chief Phillip, did you have just a 10-second comment?

Grand Chief Stewart Phillip: Yes. I just want to make the point that there's a vast difference between a blind date and the actual marriage vows. This notion of a comprehensive exploratory process, in our view, doesn't come anywhere near meeting the legal standard of consultation and everything that entails.

The Chair: That will conclude our second session.

I want to thank all of the witnesses for their time and attention this afternoon and for keeping their responses concise.

Members, we're going to take another very brief suspension. We'll resume at 10 minutes after the hour for our final session.

We're now suspended.

● _____ (Pause) _____

●

● (1810)

The Chair: I would ask members to come back to their seats. We'll resume for our next one-hour session.

I would also ask the witnesses to come and join us at the table.

Chief, some of our staff will help to adjust the room for you.

Chief R. Donald Maracle (Chief of the Mohawks of the Bay of Quinte, Association of Iroquois and Allied Indians): We're here on behalf of AIAI, which is part of this group, but we're not in the same presentation.

The Chair: That's fine. There are three separate presentations.

Chief Maracle, while you carry on getting set up, we'll begin.

I would take this opportunity, first of all, to apologize that we're later into the day than we had first anticipated. These things sometimes happen. We recognize that our witnesses have travelled some distance to meet with us today. It's important that we have the opportunity to get their comments on the record.

Let's begin. By the way, we'll have three 10-minute presentations. I think you've been here for part of this and have seen how it goes. We'll open with presentations of 10 minutes. We'll then go to one round of questions from members.

At this point, I would like to invite Ms. Sharon Venne to make opening comments for 10 minutes, please.

Mrs. Sharon Venne (Treaty Researcher, As an Individual): Good afternoon.

I'd like to thank the members of the committee for giving us time to make a presentation.

I am speaking here on behalf of the chief and council of Onion Lake Cree Nation, which is in the Treaty 6 territory located in the present provinces of Saskatchewan and Alberta. In addition, I am speaking on behalf of a number of treaty peoples who have asked me to make their voices heard.

The title of this bill refers to gender equity. This is gender equity within the Eurocentric legal system. Our views of gender roles and what constitutes gender equity may be quite different from those that Canada considers to be universal. This legislation does not affect the indigenous laws of our nation.

By way of background, we came from a territory that made a treaty in 1876 with the British crown on a nation-to-nation basis. At the time of the treaty-making, the lieutenant governor and imperial commissioner, Alexander Morris, requested a peace and friendship treaty be made with our nations. The treaty-making was between nations, not on an individual basis. The crown was following its own laws encoded in the Royal Proclamation of 1763 that treaties are made with the collective.

At the conclusion of the treaty-making, the chiefs were requested by the treaty commissioner to identify their people. This was self-identification. The individual identified with a certain band, and that band accepted them as being part of their band. The treaty commissioner did not select people and put them behind their leaders. Indigenous peoples lined up behind their leaders and treaty pay lists were created. These treaty pay lists were the source of the status lists that were created by the 1951 amendments to the Indian Act.

If you look at the elements of self-identification in relation to indigenous peoples, one of the most fundamental elements of identification is: one, on an individual basis, an indigenous person is one who belongs to those indigenous peoples through self-identification—group consciousness; and two, is recognized and accepted by the group as one of its members—acceptance by the group.

This preserves for those communities the sovereign right and power to decide who belongs to them, without external interference. This is essentially the definition that the Supreme Court of Canada accepted in the Powley decision in relation to the Métis. This is not the standard being used by Parliament in dealing with treaty peoples.

At the time that Lieutenant Governor Alexander Morris was at Carlton House making a treaty with my ancestors, Parliament in Ottawa was passing an act for the gradual civilization of Indians. At the treaty-making, the legislation of Canada was not mentioned. Over the years Canada has been making piecemeal amendments to the Indian Act to accommodate its own political agenda.

I will show you examples of the Indian Act and its amendments from 1868 until 1975, which I indexed some years ago, as an example of how many acts we are talking about. The Indian Act was in place long before the patriation of the Constitution in 1982. Indigenous peoples fought hard to have our treaty rights protected in the patriation process. It was the result of extensive lobbying by indigenous peoples that there were certain sections inserted into the Constitution, including section 25 of the charter and section 35 in the Canada Constitution Act.

After the Queen came to Canada and signed the Constitution Act on Parliament Hill in April of 1982, the Government of Canada and the Department of Indian Affairs pretended that the Constitution did not happen. There was no overhauling of acts of Parliament to bring them into line with the Constitution, as there was when the North American Free Trade Agreement was entered into. Rather, there has been complete silence from Parliament.

The Indian Act has been amended through a piecemeal process over the years, bringing it into line with the goals and objectives of the state of Canada and not with the provisions of the Constitution. There is a move to use the act as a means to individualize the rights of indigenous peoples. Parliament is again involved in this process by making amendments to the Indian Act, as if section 25 of the charter does not exist.

When we had these treaty pay lists and they converted them to status lists, this was an abuse of the treaty relationship. This was an abuse of the honour of the crown. And where is the honour of the crown in this relationship?

The Government of Canada, through the Department of Indian Affairs and other departments, has taken the definition of Indian and made policies for the purposes of funding various programs and services. These programs and services were delivered without consideration of the legal and constitutional obligations owed to treaty peoples, and this has been pointed out by the Auditor General.

● (1815)

Now, members of the committee are probably wondering what this has to do with Bill C-3. If you could give me a second, I'll explain.

Minister David Crombie, when he introduced Bill C-31, was very clear about the issue of status. Status is the government's identification of a person who is an Indian for the purposes of defining benefits the government wants to give Indians as individuals. It is not based on the constitutional obligations owed to treaty peoples. Membership is a collective right. The first nations decide as a collective who are their members. As a treaty successor state, the Government of Canada must accept the collective decision, just as the treaty commissioner accepted the treaty list at the time of the making of the treaty. It is not the business of Canada to decide membership using legislation designed to assimilate and destroy the first nations.

Let me just go to the part of the decision relating to the B.C. Court of Appeal. In paragraph 66 of that decision—and the Department of Justice did not mention this paragraph in their presentation on the history of the case—there is very significant wording. This is what the judges of the court of appeal said:

> I do not doubt that the arguments might be made to the effect that the elements of Indian status should be viewed as aboriginal treaty rights. The interplay between statutory rights of Indians and the constitutionally protected aboriginal rights—

● (1820)

The Chair: It's important, but slowly, for the translation.

Mrs. Sharon Venne: Excuse me. I wanted to get it all in before 10 minutes. I'll slow down.

The Chair: You have five or six minutes.

Mrs. Sharon Venne: Okay. The judges in the court of appeal said in paragraph 66:

> I do not doubt that the arguments might be made to the effect that the elements of Indian status should be viewed as aboriginal or treaty rights. The interplay between statutory rights of Indians and the constitutionally protected aboriginal rights is a complex matter that has not to date been thoroughly canvassed in the case law. It seems likely that, at least for some purposes, Parliament's ability to determine who is or who is not an Indian is circumscribed.

That's from the B.C. Court of Appeal. We suggest that the committee have some independent lawyers—that is, other than the Department of Justice lawyers—provide you with evidence regarding this important statement and how it might circumscribe the powers of this committee.

The committee is dealing with the issue of status. As you know, in Bill C-31 there was an issue created where people could define membership. We now have a situation in the first nations where people who are status are not receiving benefits, people who are membership Indians are not recognized as status, and there's no link between the two. Our treaty right as first nations needs to be restored. If you're going to involve those who are not part of that relationship, then the committee is actually creating mischief in relation to unfinished treaty business.

The Canadian government has failed to maintain the honour of the crown. It has failed to fulfill the crown's sacred commitments. In each and every instance, the government has benefited and profited from the failure to honour the treaties. These are not innocent oversights.

We are here today to review those proposed amendments to the Indian Act. We are fully aware of the purpose. Parliament in 2010 wants to do what successive Parliaments have done since 1876. Parliament wants to pretend the treaty did not happen. It wants to pretend that section 35 of the Constitution did not happen. Parliament wants to pretend that the rest of the world voted to accept the Declaration of the Rights of Indigenous Peoples as an international standard. The colony of Canada still wants to hang on to its colonial past by defining who is an Indian.

The committee can look to the future and bring Canada into the 21st century by establishing and implementing the treaty relationship. All of Canada's prosperity is based on the expropriation of the benefits from the treaty relationship without honouring the obligations of the treaties.

To this end, we will make a number of recommendations, hopefully to be implemented in our lifetime.

The Chair: Ms. Venne, I'm going to ask, since we've only got about 30 second left, how many recommendations you have.

Mrs. Sharon Venne: I have four.

The Chair: Okay. Can you just step through them very quickly?

Mrs. Sharon Venne: Yes. They are: that Parliament move away from the physical support of individuals and move towards the physical support of first nations; that the whole concept of status should be climbing in significance and moving towards first nations identification; that the government go back to the structure of the treaty, understanding that the crown is the treaty partner, not the federal government; and that this relationship be based on the honour of the crown.

Thank you.

The Chair: Thank you very much. That was great.

We'll go to Dr. Palmater next for 10 minutes. She is the chair of Ryerson University's Centre for the Study of Indigenous Governance.

Welcome, Dr. Palmater.

Dr. Pamela Palmater (Chair, Ryerson University's Centre for the Study of Indigenous Governance, As an Individual): Thank you very much.

Thank you for inviting me to speak to you today about this incredibly important matter. I don't think anything has been said so far about self-government and self-determination in our own jurisdiction that I don't agree with.

That being said, my presentation deals more with the nuts and bolts of Bill C-3. It's also important to note that I'm not acting as anyone's legal counsel. I'm not here on behalf of any political organization. The people I represent are my ancestors, my extended family, my children, and our future generations—seven generations into the future.

My name is Pam Palmater and I'm a Mi'kmaq woman; however, my status in life is that of a non-status Indian. I am a first-generation non-status Indian because I descend from a matrilineal lineage as opposed to a patrilineal lineage. This negatively impacts every single member of my family; not just myself as a non-status Indian, but my children. All of my siblings will be differently impacted by Bill C-3 because of our own particular fact scenarios. Some of us were born before 1951, some of us are illegitimate, and some of us are adopted. All of these things will create further divisions in our family.

I see six major problems with Bill C-3. Subclause 2(2) of Bill C-3 simply re-enacts paragraph 6(1)(a) of the Indian Act as it reads now and will not accomplish the goal of eliminating gender discrimination. There is nothing in the McIvor court of appeal that prevents Canada from addressing larger forms of gender discrimination.

When the Supreme Court of Canada recognized the treaty right of the Mi'kmaq people in the Marshall case for commercial-based fishing, their response was not that they signed only one agreement with one first nation with regard to eels; there was a much larger response. They signed agreements on a whole array of fish species with all willing first nations. At no time did they say we were limited by Marshall to only deal with that fact scenario.

Similarly, when Lovelace brought her case to the international forum, Canada's response was to not simply reinstate paragraph 12 (1)(b) on women; they reinstated their children and gave bands the option of controlling their own membership. They changed the legal presumption for unstated paternity from that of Indian paternity to non-Indian paternity, and they reinstated a whole host of other individuals. It's inconceivable that we can sit here today and say that somehow, because of this one singular case, we're limited in our abilities.

On my second problem, assuming that subclause 2(2) of Bill C-3 is not amended, subclause 2(3) of the bill, which adds proposed subparagraph 6(1)(c.1)(i) to the Indian Act, is still problematic because it contains a 1951 cut-off date. We've heard previously at committee that there is no 1951 cut-off date and people will not be negatively impacted, especially if those people have siblings who were born post-1951, but I would take those assurances lightly because that is not what the act says.

My third problem is that subclause 2(3), which adds proposed subparagraph 6(1)(c.1)(iv) to the Indian Act is probably the most problematic because it creates a new distinction not enacted in the Indian Act before. It creates a distinction between the children of Indian women who married out who have non-status Indian kids and those who don't have non-status Indian kids. It is completely unnecessary for Canada to create a new distinction that will, for all intents and purposes, discriminate on the basis of family status.

My fourth problem is that clauses 7 and 8 of Bill C-3 do not provide adequate protections for those to be registered under Bill C-3 with regard to band membership. This is in stark contrast to what we did in 1985. Some limited protections were enacted to protect those who were reinstated with regard to band membership. There is no conceivable reason that we cannot do that now. The Lovelace case was not about band membership. This one isn't either, but that doesn't mean that gender protections can't be incorporated.

● (1825)

Fifth, even if this committee will not consider a broader amendment to address gender discrimination in section 6, the current bill would still have to be amended as it does not entirely address even the gender discriminations that were raised in McIvor. Double mother clause descendants still have better status than paragraph 12.(1)(b) descendants. In my actual 15-page submission—I don't know if everyone has it yet, it's probably not come from translation—I provide charts that explain that.

The main point here is that not to remedy the minimal gender discrimination that was raised in McIvor defeats the entire purpose of Bill C-3. What are we talking about if we're not going to at least do what was in McIvor?

The final problem is clause 9. Clause 9 is an offence to Indian women and their descendants who have already waited more than 25 years for justice. It is also counter to both the spirit and the intent of the Charter of Rights. INAC officials appeared before this committee and stated that even though Bill C-3 didn't deal with the larger gender and other discrimination issues, the repeal of section 67 of the Canadian Human Rights Act would provide an avenue for individuals to bring forward claims of discrimination. Yet, at the very same time, Canada is appearing before the Canadian Human Rights Commission, denying the commission's jurisdiction to even hear these complaints on the basis that status is not a service. It seems somewhat disingenuous for Canada to limit the remedy under Bill C-3 under the guise that there are alternate remedies when in fact that might not be the case.

I have nine specific recommendations.

One, Canada should withdraw this bill, seek an extension of time, and redraft more appropriate legislation.

If this cannot be done, then I would suggest that an amendment be made to clause 2 of Bill C-3 by adding the words "or was born prior to April 17, 1985, and was a direct descendant of such a person to paragraph 6.(1)(a) of the Indian Act".

Number three, delete clauses 3 and 4 of Bill C-3 and any reference to the very problematic section of proposed paragraph 6.(1)(c.1) of the Indian Act.

Number four, a new clause should be added before or after clauses 7 and 8 of Bill C-3 that provides protections for Bill C-3 individuals with regard to band membership, especially for those born pre-1985.

Number five, clause 9 of Bill C-3 should be deleted in its entirety or amended to provide limited protection for bands and only in regard to status.

Number six, adequate funding should be provided to first nations for band-delivered programs and services based on their actual increased membership numbers and to enable bands to review and compare their band membership codes to the Charter of Rights and to the Canadian Human Rights Act and make the necessary amendments to ensure that their codes respect gender equality.

Number seven is that Canada, in partnership with national, provincial, and regional aboriginal organizations, first nations communities, and individuals negotiate a process by which to compensate those affected by Bill C-3 in the fairest, quickest manner possible. They have already waited more than 25 years.

Number eight is that additional legislation be immediately drafted in partnership with those same aboriginal groups to proactively address the remaining aspects of gender discrimination in the Indian Act.

Number nine is that Canada, in partnership with those same groups, negotiate the mandate, terms of reference, funding structures, and deliverable objectives of a joint consultation process that will lead to further amendments to the act dealing with the other discrimination issues in the short term, but negotiate a similar process for the long term to establish modern treaties, self-government, and first nations jurisdiction over citizenship.

Do I have any time left?

● (1830)

The Chair: About 10 seconds.

Dr. Pamela Palmater: Okay.

Points to stress: Bill C-3 does not fully deal with the gender discrimination of McIvor; two, Canada is not limited by the McIvor decision; if Bill C-3 goes through unamended, it will conflict with the Canadian Human Rights Act; four, the assumption is that Bill C-31 had unintended consequences. We all know this isn't the case.

The Chair: Thank you, Dr. Palmater.

Now we'll go to Chief Donald Maracle. I see that the chief is joined today by Velma Hill-Dracup—welcome—and also by Keith Sero. Mr. Sero is a councillor with the Mohawks of the Bay of Quinte, as is Ms. Hill-Dracup.

We'll turn it over to Chief Maracle. Please proceed. You have 10 minutes.

Chief R. Donald Maracle: *She:kon sewakwe:kon.*

Bonjour.

Good evening, everyone.

[*Translation*]

We offer our best wishes to the members of this House of Commons committee.

[*English*]

I'm here on behalf of the Association of Iroquois and Allied Indians. I found out on Friday that I was going to be presenting today for the grand chief, so I'll do my best.

The Association of Iroquois and Allied Indians includes eight communities in southern Ontario, with a membership of 20,000 people. The Mohawks of the Bay of Quinte, of which I am chief, has 8,000 of those members.

The presentation has been handed out to you today. Bill C-3, Gender Equity in Indian Registration Act, on first nations citizenship is contrary to the Royal Proclamation of 1763 and the Treaty of Niagara of 1764. The Royal Proclamation of 1763 was executed at the close of Pontiac's war and was intended to recognize first nations sovereignty and autonomy in their own territories in a nation-to-nation relationship. The Treaty of Niagara was a peace and friendship treaty with the crown one year after the assertion of sovereignty that confirmed the mutual respect and the crown's commitment to respect first nations jurisdiction over their own land and people.

The Indian Act was unilaterally introduced in 1876, during the height of the residential school establishment, and was never agreed to in any treaty with first nations. Section 35 of Canada's Constitution Act recognizes and affirms first nations, aboriginal, and treaty rights. Aboriginal and treaty rights are inherent rights that have never been relinquished to Canada and still exist.

Bill C-3 is inconsistent with the inherent right to self-government recognized in section 35.1 of the Constitution Act. First nations have the right to exercise our own jurisdiction and govern ourselves without the influence or interference of federal legislation. These rights include the inherent right to determine who our members are.

The Royal Commission on Aboriginal Peoples recognized that citizenship is vested in the first nations right to determine our own citizenship and our own criteria for citizenship. The United Nations has also spoken to this matter in article 33.1 of the declaration, which states that indigenous peoples have the right to determine our own identity and membership in accordance with our customs and our traditions.

The crown always has a duty to consult on any legislative or policy matter that affects our people or the well-being of our communities. The Supreme Court of Canada has recognized that the federal government is required to consult and accommodate first nations when they are contemplating action that could affect aboriginal and treaty rights.

Bill C-3 infringes and derogates first nations treaty and aboriginal rights. This is another case of Canada's assertion that their own laws do not apply to themselves when dealing with first nations. Canada held a number of public engagement sessions—

● (1835)

[*Translation*]

Mr. Marc Lemay: Mr. Chairman, I have a point of order.

[*English*]

The Chair: *Oui.*

[*Translation*]

Mr. Marc Lemay: Did I understand correctly that the chief distributed a document? If it was distributed, it was not done so in both official languages. So the document should not be in the hands of committee members without a translation of it. I don't have it and I don't have the translation. I see that others have documents that I do not have.

The Chair: The clerk received the document and it is currently being translated. We do not have it here.

Mr. Marc Lemay: Some have it.

The Chair: No.

Mr. Marc Lemay: So it was not distributed.

[*English*]

The Chair: No, they have not yet been distributed.

Chief R. Donald Maracle: Karen Campbell handed them out at the beginning of the session.

The Chair: It was sent to the clerk, but it must be translated before it can be circulated to the—excuse me, just a moment.

Okay. A document was circulated by one of the staff of the witnesses. Documents that are provided privately to witnesses around the table, because they don't come through the clerk, don't necessarily have to follow the protocol. We do ask witnesses to provide documents for distribution in both official languages. We have encountered this issue before, so when you refer to the document, as you've given it to us here today, it will have to be translated and then provided to the members at large. Understand that some of the members here don't have the opportunity to make reference to it. If you could guide your comments accordingly, that would be helpful.

Thank you, Chief.

● (1840)

Chief R. Donald Maracle: *Je m'excuse, Monsieur Lemay.*

Canada held a limited number of public engagement sessions in limited timeframes as information sessions. The duty to consult and accommodate cannot be delegated to third parties like INAC or AFN. Meaningful consultation must occur with the actual rights holders, who are our members. There is a huge issue of capacity and resources. First nations lack the capacity and resources to administer their own membership rules, while Indian Affairs continues to take a paternalistic role in asserting oppressive policies like the Indian Act.

First nations lead every category of socio-economic statistics in Canada, including poverty and unemployment. Bill C-3 will add to those socio-economic problems with first nations due to a lack of resources and services such as housing, education, health care, and policing for current membership. Canada has not committed to any new resources to go with the sharp increase in membership proposed under Bill C-3.

I've handed out informally a report that was published in *The Hill Times* on Monday, March 1, 2010, about the socio-economic conditions on all reserves in Canada, and in particular the current chronic underfunding, which is the basis of a human rights complaint with the Human Rights Commission as well as the United Nations special rapporteur.

Bill C-3 does not recognize first nations institutions, processes, and approaches to determining our own membership. First nations have had these processes in place for thousands of years prior to contact. Traditional forms of mediation and alternative dispute resolution such as the elders council and circles must be established, recognized, and used. In addition, the repeal of the Canadian Human Rights Act, set to take effect in 2011, will put first nations in a vulnerable position for litigation for membership in a variety of scenarios, including denial of services, which cannot be provided due to the lack of services and funding. Again, Indian Affairs tells us there will be 20,000 to 45,000 new members, but there is no commitment to provide the financial resources to accompany and make provision for new members on reserve. First nations resources and services will be stretched even further as a result of Bill C-3.

In addition, Canada does not recognize that first nations with very limited land bases will require additional land to service a population. The Department of Indian Affairs Ontario regional office is bankrupt when it comes to having the ability to fund water treatment systems and urban-style subdivisions that are required to make provisions for new housing. While we currently have 18,000 acres of land on a reserve, a lot of that land cannot be developed because it is swampland. First nations have the poorest land and are often on extensive waiting lists for basic services that other people take for granted, such as the provision of safe drinking water.

I speak as a community chief for one of the large first nations in Ontario. We currently have a waiting list of 105 people for housing in our area. Affordable housing is an issue. There's not enough money for post-secondary education for people to pull themselves out of poverty through education. I think most people sitting at this table would recognize and value education as an important asset to get yourself out of poverty. Simply passing legislation to cure a human rights issue, yet visiting a whole raft of socio-economic problems on communities that are already strapped is really not a very progressive step. I realize the court has ordered Canada to correct the injustice to aboriginal women, and we do support that. However, there needs to be a holistic approach to this problem; otherwise the socio-economic problems are going to worsen for first nations people.

The Chair: Thank you, Chief Maracle. I appreciate that.

Now we will go to questions from members.

We'll begin with Mr. Russell for seven minutes.

Mr. Todd Russell: Thank you, Mr. Chair, and good evening.

I thank you all for your patience. I know it's been a long wait, but I think the work is very important, and what you're presenting to us is certainly going to inform us, as committee members, in trying to improve this particular bill.

I was very intrigued by the statement made by Ms. Palmater that Bill C-3 does not even meet the test as set out by McIvor. I was wondering if you could expand on that a little bit. I think that is certainly a question we'll have to put to the departmental officials as well, to get their response.

I think you raise a very good question. When there were other cases around aboriginal rights in some instances or around status in other instances, the government took some pains to move beyond strictly what the court had adjudicated in their decisions, had broadened it out a little bit. You mentioned two examples: Marshall and of course the Lovelace case. In this particular instance, it seems the government has taken a lot of time to make it as narrow as possible, almost making the bill fit exactly the family situation that had arisen in the McIvor case, and that's it. And if they're lucky enough, other people might fit in there somewhere. That seems to be the approach. I would like your opinion on the first point, on where it doesn't meet McIvor, because that's very important.

The second issue is around Canadian human rights. Am I sensing that you're saying we're setting up first nations for complaints? You know, more people will get status, but we don't provide resources. That's what the government is doing. Therefore, as Chief Maracle has stated, if they can't get access to housing or other basic services, that will give rise to more human rights complaints. Is that the relationship I'm hearing between what Bill C-3 does and the repeal of section 67, which will come into effect within another year?

● (1845)

Dr. Pamela Palmater: With regard to your first comment about Canada making the choice to make it very limited, we have lots of examples of how Canada has responded in a much larger way to deal with the fundamental issues. I should also add that Canada creates new Indians all the time. We have Conne River, we have Innu, and now we're going to have the FNI. But when it comes to Indian women and their descendants trying just to get equality, nothing more. I think it was Chief Montour or Mr. Powless who said this: Canada has to be brought to the table kicking and screaming. That's a significant concern.

In the translated version I have included two charts, one that shows how the situation between Indian women who married out and double mother clause people are still not equal, even after Bill C-3. I've also included a chart that shows my family as an example of how that's not the case. The majority of double mother clause descendants will still have paragraph 6(1)(a) status and then can pass on subsection 6(2) status to their grandchildren. That is not the case for paragraph 12(1)(b) descendants, and that is where the inequity is. You can't just pick and choose which double mother clause people you're going to talk about. We're talking about all the double mother clause people.

To your question with regard to the Canadian Human Rights Act and the interplay with Bill C-3 in that, I agree with what you said: for sure we're setting up first nations. What I was specifically getting to is that clause 9, which denies compensation for those who have suffered discrimination, not pre-1985 but post-1985 when the charter was in play, could potentially limit the remedies at the Canadian Human Rights Commission.

If you go to the Canadian Human Rights Commission and say you're being discriminated against on the basis of status, and DOJ doesn't win their argument about jurisdiction, or delays because of the joint process, then what is their remedy? If Canada is insulated from liability under Bill C-3, how will that impact the Canadian Human Rights Act? I haven't seen any analysis from DOJ, INAC, or any bodies yet. I would be interested to see what the Canadian Human Rights Commission says.

That is my primary concern, to be saying, you have an avenue under the Canadian Human Rights Act, but maybe you don't if we pass this bill.

● (1850)

Mr. Todd Russell: Mr. Maracle, regarding the impact of Bill C-3, fundamentally every witness has said there will be residual discrimination. Many have said we have to get rid of it, if we can, procedurally. I don't know what the government's response will be, but that's certainly our position. And it could broaden outside of Bill C-3—not 45,000 people, but it could be 100,000 or 150,000. We don't know the number.

When we asked whether they had done an analysis of the financial impact, they told us they hadn't. I can't believe everything I hear now, but they told me they didn't have it done. I know with the bean-counters over there, there has to be somebody counting.

But you're saying it's going to have a major impact on your communities. Is that right?

Chief R. Donald Maracle: We believe it will. Mr. Crombie promised the chiefs in 1985. The chiefs at the time requested that there be a financial analysis done on the impact of the legislation on first nations programs and services. It wasn't done.

We were promised by Mr. Crombie, who was the Minister of Indian Affairs at the time, that first nations would not be worse off. We wound up with tremendous pressures for housing, as well as long waiting lists for post-secondary education. I believe the Assembly of First Nations states that there are 10,000 first nations people on a waiting list for post-secondary education. Without education, first nations people cannot alleviate their poverty.

It's critical to the passage of any bill to correct the gender discrimination that there be a financial analysis done in terms of impact, to make sure it's not going to worsen the socio-economic condition of first nations people.

The other point in terms of social justice is that the double mother clause generally speaks about people whose ancestry is from two non-native women who have gained status through marriage. It would be a racial insult to first nations women if the grandchildren of women who gained status through marriage can pass the status down further than the people who are of Indian descent.

The Chair: Thank you, Mr. Russell.

[*Translation*]

Mr. Lévesque, you have the floor.

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): I would like to share my time with Mr. Lemay. I only have one question.

Ladies and gentlemen, I am not a lawyer, but a labour relations consultant. The impression I am getting is that something has been cobbled together again today to fix a measure which was established previously. The government has had plenty of time, but it only responded with two small paragraphs to satisfy the Supreme Court ruling. It's as if you added a single ingredient to a recipe save the entire dish. The members of the bar would say that it is like obscuring a clear view of the totality of our laws.

Ms. Palmater, you presented several elements. Mr. Maracle illustrated the existing problem very well, namely that first nations have their own rules. We will have to act accordingly, which may mean holding a private retreat with the people in a position of authority to ensure that everybody is treated the same way.

For now, since we must satisfy a Supreme Court ruling, do you see any possibility of make an amendment? My colleague, Mr. Lemay, who has many good ideas, could make a suggestion. I don't know if you were here when he put forward one such idea. Do you think you can send us any suggestions by Friday, which would not affect existing protections, and which would guarantee and improve recognition for mothers, grandmothers and girls, in short, guarantee status regardless of a person's gender?

● (1855)

[*English*]

The Chair: Does anyone...?

Go ahead.

Dr. Pamela Palmater: Were you speaking specifically in regard to band membership as well as to status, or to status only?

[*Translation*]

Mr. Yvon Lévesque: I was referring to recognition of a person's status and registration with a band. This is not just about recognizing a person's status. I am a Quebecker, and I know what my status is, but if I cannot register with a population, it is not worth much.

Dr. Pamela Palmater: I agree.

[*English*]

One of the main issues here is that prior to 1985, bands did not have control over their membership. That was a determination made by Canada for all bands. So when we're talking about reinstating the descendants of Indian women who married out to status, that should also include band membership, because it was at a time when bands didn't have control over their membership.

If you want to talk about 1985 forward, that's a whole other issue, and I have tons of recommendations on how band membership should be determined.

But I'm talking about pre-1985. There should be no question whatsoever that the descendants of these Indian women who married out should be added to band membership because that was Canada's responsibility at the time. How can we add them to status only and not membership? And if you're asking for suggestions or if I will submit something further, for sure.

[*Translation*]

Mr. Marc Lemay: Do I have any time left?

The Chair: You have three minutes.

Mr. Marc Lemay: Fine.

There are two aspects to this issue. The first is registration. Registration is carried out under section 6 of the Indian Act. But registration is discriminatory, and everybody agrees on this. Everyone has been in agreement over this for the last two weeks. As for us, we cannot intervene with regard to section 6. Dr. Palmater, I saw that you also address the rules governing band membership. We cannot touch that. Do you see the limitation? We cannot touch membership. It is already fairly complicated, I admit. If we remove discrimination—which we will try to do—a native band will still have the power to refuse membership for some people. This issue would then go before the Human Rights Commission. I don't know if you understand. The only power we have is to amend section 6. I cannot touch section 10, because that lies outside the authority of the House. What do you think of this?

[*English*]

The Chair: Go ahead.

[*Translation*]

Dr. Pamela Palmater: I don't agree.

Mr. Marc Lemay: Oh, bravo! Finally!

[*English*]

Why?

Dr. Pamela Palmater: Here's why. In 1985 Lovelace's case dealt with status. But when Canada responded, it didn't just amend the status for Indian women and their descendants; it also changed the ability for bands to determine their own membership. That wasn't in the court case. It also changed the legal presumption of Indian paternity. It also changed other types of individuals who could be reinstated, and that was completely outside of the scope of that litigation. It was outside of the scope of all of those other things. Yet somehow Canada determined, “Well, you know what? I guess we can fight with band membership a bit. Anybody who wants to determine band membership can.” It's the same now.

The point I really want to make clear is that I'm not talking about 1985 forward; I'm talking about anybody affected, anyone reinstated, because pre-1985 the bands did not have the ability to determine their membership. So because it was under Canada's jurisdiction, Canada has an obligation to protect those people born pre-1985, for band membership as well as for status.

[*Translation*]

The Chair: Ms. Crowder, you have seven minutes.

● (1900)

[*English*]

Ms. Jean Crowder: Mr. Chair, I'd like to thank the witnesses. You've presented some challenging material here.

I want to start with Dr. Palmater. And I look forward to seeing your brief, because you presented a number of complicated issues that I think we need to take a look at. I do have a couple of quick questions, though.

My understanding is that you wanted us, in Bill C-3, to delete the entirety of sections 3 and 4?

Dr. Pamela Palmater: It depends. If you add those words to paragraph 6(1)(a), then delete all of subparagraph 6(1)(c)(i). But if you don't, then delete subparagraph 6(1)(c.1)(iv) and clause 9.

Ms. Jean Crowder: That will be in your brief, right?

Dr. Pamela Palmater: Yes.

Ms. Jean Crowder: I just want to backtrack a little bit. You're right, the government could have chosen to introduce a bill that was far broader in scope. There was nothing in the McIvor decision that limited the government's introduction of legislation—nothing. What we're challenged with now is that we have a very narrow bill and a limited ability to amend it. It will be interesting to see what kinds of rulings are made on any amendments we propose and whether they are deemed to be inside or outside the scope of this bill. So there is a challenge for us. I think you probably know that there's been a suggestion that we withdraw the bill and introduce a more appropriate bill.

I wanted to touch on Canadian human rights, because you made a comment, and it was kind of skipped over. A number of us have received correspondence from a person, Jeremy Matson, born in 1977, who has a case before the Canadian Human Rights Tribunal. Am I understanding you to say that the department is arguing before the tribunal that the tribunal doesn't have the jurisdiction to hear that? Despite what we've been hearing from the department and the minister that a remedy would be to file a human rights complaint, in fact the government itself, the department itself, is arguing that the Human Rights Tribunal has no jurisdiction. Do I have that right?

Dr. Pamela Palmater: You have that right. I have the same correspondence from Jeremy Matson. He contacted me because of my website, knowing I'd be presenting here today, and said, listen, you need to know what they're arguing, because they're not saying the same thing at committee.

That's why I raised it.

Ms. Jean Crowder: So in effect we have shut the door on that remedy. That was your point on clause 9. If they should win their case before the tribunal that it's not a service, and therefore the tribunal has no right to hear it, and clause 9 stays in the act, then in effect people will have no remedy. They won't be able to go to the Human Rights Tribunal about status, because clause 9 limits their ability to do that. So they'll have nothing.

Dr. Pamela Palmater: What we're saying, if that is the case, is that Indian women and their descendants don't have the right to receive a remedy for charter violations. And it will be only Indian women and their descendants. I don't think, in this day and age, that we have the right or the authority to do that unless we change our Constitution.

Ms. Jean Crowder: To back up a bit, we had—I think it was Bill C-21—the repeal of section 67 of the Canadian Human Rights Act, which in theory gave people the ability to file a human rights complaint. In effect, that is a meaningless action if they are now not allowed to file a human rights complaint on status because of the service argument.

Dr. Pamela Palmater: Yes, it would be either because of service or because we're going to put all these cases on hold, because we have a joint process. That could go on for, what, twenty years?

Ms. Jean Crowder: Your talking about the exploratory process.

Dr. Pamela Palmater: Yes, so maybe we should delay hearing these cases because of this joint process.

Ms. Jean Crowder: It doesn't seem reasonable.

Dr. Pamela Palmater: It doesn't sit well with me.

Ms. Jean Crowder: No.

I want to ask about funding, Chief Maracle. I think others touched on it as well. I think it's very troubling that we have no estimate of funding. There's certainly nothing in the budget that earmarks funding if Bill C-3 should be implemented. We've had other pieces of legislation that have been implemented without the funding attached. The B.C. First Nations Education Act is a really good example. The first nations in B.C. are still trying to get funding for a piece of legislation that was passed, I don't know, three years ago now. So it's very troubling that there isn't a recognition of the impact, not only on chiefs and councils and on people who want to be reinstated, but on a number of other issues, such as education, awareness, and all those other things.

Do you want to add anything to that?

● (1905)

Chief R. Donald Maracle: Currently there is no mechanism in the funding formulas to address growth. For example, I mentioned that if we have to go to urban-style development, we'll need basic infrastructure, water, sewer, street lighting, roads to build subdivisions, if we are to try to get more people living on the same piece of land. The department does not have the financial capacity to address the infrastructure needs that first nations communities have.

Six Nations is the largest community in Canada. It was only last year that it got funding for its water treatment plant. We've been trying to get a water treatment plant for our community for 20 years. So the very basic infrastructure requirements are not there to handle the increased population of people who want to live on the reserve.

The other compounding factor is that Bill S-4, which is currently in the Senate, is going to entitle more people to live on the reserve as a matter of law. There is no provision or arrangement between Canada and the provinces over who will pay for services for non-Indians who will be living on the reserve, nor will the federal or provincial government engage in that discussion to sort that question out.

Nowhere else in Canada would there be any kind of confusion about who is responsible to provide very basic services that the Canadian public take for granted; it's only with what occurs on the reserve. The neglect on the part of the governments, both federally and provincially, to address those issues is a form of discrimination because it demonstrates that the needs of first nations people and non-Indians who live on the reserve are not important matters to be resolved by the crown, whether it's federally or provincially. That is a form of discrimination that's unacceptable.

The Chair: We're out of time now, unfortunately.

Thank you, Ms. Crowder.

I will go now to Mr. Duncan.

Do you have a point of order, Monsieur Lemay?

[*Translation*]

Mr. Marc Lemay: It's just a straightforward question. Did Ms. Palmater have a brief?

The Chair: Yes.

Mr. Marc Lemay: In that case, we will read the translation of her brief.

[*English*]

The Chair: Thank you, Monsieur Lemay.

Mr. Duncan.

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

Just as a little background, I've been on and off this committee, but more on than off, since 1994. I recognize that the world has changed a lot in that timeframe. When I first started on this committee, Bill C-31 wasn't such an old bill. It's now something we look at historically, but it was still very fresh in everyone's mind at that time. I can say with some authority that things are much more complicated when we respond to or do anything relating to conflict or litigation and things flowing from litigation.

I can think of such things as that we have now established legally and very clearly a duty to consult, responsibilities, and obligations.

Another new wrinkle, of course, is something we've been talking about, which is the Canadian Human Rights Tribunal. They were not a player and now they are a player. As a matter of fact, they are monitoring these meetings and will be appearing before this committee next week.

I don't think we can make any connection between what a government department might be arguing before them and what their mandate is. Their mandate is something for them to decide, very clearly.

Given the complexity of duty to consult, given the timeframe that we were dealing with in the McIvor case, yes, it's a narrow response; we haven't said otherwise. This is a narrow response: we've set up an exploratory process, without terms of reference or context until such time as the national aboriginal organizations, friendship centres, and so on have an opportunity to engage in doing exactly that. So it's not as though we've....

Pamela Palmater, you were saying that it could go on for 20 years. Well, I'm sure they don't want it to go on for 20 years, so there will be context in terms of reference set by all of the participants to ensure that we don't have that kind of process.

Rather than a consultation, I'm suggesting—and asking the question—is this not better than a consultation, from the standpoint that all of the parties understand they are part and parcel of setting the terms of reference, the context, and timelines, and so on, whereas "duty to consult", in my mind anyway, can be more one-sided, I guess, for lack of a better terminology?

That's my advocacy, my comments, and my question at the same time. Any of you are invited to respond.

● (1910)

Dr. Pamela Palmater: Those are really important comments, because they tend to inform the process that's going on here at the committee. You're asking me whether Canada's response with Bill C-3 and an undefined joint process is a reasonable response to McIvor. I would say no. It's not a reasonable legal response; it's not a reasonable relationship and reconciliation response.

I take your point about people not wanting it to be 20 years. Of course, we don't want the joint process to be 20 years. But section 67 of the Canadian Human Rights Act was also meant to be extremely temporary in nature while we engaged in a "joint process" to review the discrimination in the Indian Act and deal with it; 25 years later it was repealed.

I'm not one for making predictions; I go on past practices, because that's all we have to go by. So that's my concern. There's nothing about the joint process in Bill C-3, there's nothing about what we're going to be doing in Bill C-3, and there's nothing about funding in Bill C-3. Those are just political potentials. If you couple those political potentials with past practice, I have significant concerns, if we don't make some real changes in Bill C-3.

Mr. John Duncan: Just in quick response, section 67 of the Canadian Human Rights Act was a government initiative that was very much opposed by the opposition in a minority government and very much opposed by much of the first nations and aboriginal community.

Mr. Todd Russell: I have a point of order.

The Chair: Yes, go ahead.

Mr. Todd Russell: If it was vigorously opposed by all the opposition parties, it would never have passed, seeing that there was a minority government. So it took the support of opposition parties for section 67 to be repealed and for it to go forward. The record should be corrected.

The Chair: It's not a point of order.

Mr. John Duncan: It was originally vigorously opposed.

Some hon. members: Oh, oh!

The Chair: No, Mr. Duncan has the floor. What he says is up to him. We allow freedom of speech here.

Mr. John Duncan: Mr. Maracle and Ms. Venne may want to respond to my first question.

Chief R. Donald Maracle: I speak as a community chief, and I don't purport to know all there is to know about Bill C-3. What I do know is that there is not enough funding currently to deal with the population we have now, and that there are very basic services for which we have to turn people away and say no—for education, for housing. Having more members without any commitment is going to worsen the situation for first nations people.

The other thing is, I think Bill C-3 is only a partial response to the discrimination that first nations women suffer. If Canada is truly committed to its Constitution in eliminating all forms of discrimination against people on the basis of gender, then it needs to continue with the work, correcting the legislation to achieve the ultimate goal that there wouldn't be discrimination against first nations women.

It still will continue. There will no doubt be other court cases and complaints to the United Nations about discrimination. I don't really believe that the people who sit in the House of Commons have a clear understanding of the nature of the discrimination to be in a position to put forth good legislation at this time.

The Chair: Did anybody else have a short comment?

Ms. Venne, were you okay with that? Okay.

We'll hear Ms. Palmater again, but be very short.

Dr. Pamela Palmater: My comment is very short.

The perceived time limit to deal with McIvor is only that: it's perceived. Canada successfully sought an extension. The comments from the court were that you could have received a longer one. I think Canada could have and should have made a significant commitment to consultation and said we're going to take 18 months to do this and let's see whether the court will agree. I'm betting, based on Supreme Court of Canada decisions, that they would have given you the time.

● (1915)

The Chair: That will do it.

Witnesses, thank you very much for your time and patience this afternoon. I know we went a little later.

Also, to members, I appreciate your understanding in accommodating this afternoon's very busy agenda. We'll reconvene on Tuesday afternoon with the witnesses as suggested.

Thank you very much. Have a good night.

This meeting now stands adjourned.

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