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Chair

Mr. Chris Warkentin

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•(1105)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): I'm going to call to order this 13th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Colleagues, today we have before us departmental officials who are going to give us an overview of land tenure and the land registry systems.

Mr. Beynon, I believe you have a submission for us. After that we'll start with questions. If you want to make introductions, that would be great.

Mr. Andrew Beynon (Director General, Community Opportunities Branch, Department of Indian Affairs and Northern Development): My name is Andrew Beynon. I'm the director general of community opportunities with the Department of Aboriginal Affairs and Northern Development.

With me today are Margaret Buist, director general of the lands and environment management branch; and Kris Johnson, the senior director of lands modernization.

Kris and I had an opportunity to speak with you on October 6 regarding the first nations land management regime and we're very pleased to be with you again today.

Today we will begin by providing some information with respect to land tenure, first of all by trying to distinguish reserve lands from other categories of land that you'll often have occasion to consider. We'll then try to describe some of the particular features of land tenure on reserve, the land registry system, and the management of reserve lands under the Indian Act.

There's a long history of reserve creation in Canada. It goes all the way back to the Royal Proclamation of 1763. The history of reserve creation varies from province to province, but there are several characteristics of reserves that trace all the way back to the royal proclamation.

Firstly, the land is typically owned by the crown, and the crown makes the decision to restrict the use of its own land and set it aside for the benefit of a first nation. Now, there is one section of the Indian Act, section 36, that contemplates ownership of reserve lands by other parties. That is very uncommon. Pretty much the only examples of that are a few religious orders in Quebec that held title to the land, and the land was set aside or reserved for Indians. In the vast majority of cases, the land is typically owned by the crown.

Second, it is usually the federal crown that holds title to the land because it is the federal crown that has the legal authority to create reserves, as opposed to the provincial crown.

Third, though the lands are owned by the crown, the lands are set aside for the benefit of an entire first nation or community rather than set aside as individual parcels owned by individuals.

Fourth, reserving the land for the Indians restricts the ability of non-members to acquire those lands directly from the first nation.

Fifth, because the lands are set aside for the members of the first nation as a whole, important decisions regarding the land, and particularly decisions on whether to transfer or lease the land, typically require a vote of the members of the first nation as a whole.

Those are five characteristics of reserve lands that you will very often see.

While many reserves were set aside over 100 years ago, reserve creation continues to this day. Over the past 10 years, over a million acres of land have been added to reserves by the federal crown.

Lands are set aside as reserves by order in council, not pursuant to legislation. For your interest, we've included in the briefing materials that we distributed to you today an example of a typical order in council setting aside reserve lands.

So again, just to be clear, the Indian Act doesn't have a set of provisions regarding creation of reserves.

Parliament's legislative authority is focused on lands that have been formally set aside as reserves. Many of the provisions of the Indian Act and modern legislation, like the First Nations Commercial and Industrial Development Act and the First Nations Land Management Act, are exclusively tied to the reserve land base.

With that background, I'll turn to making some comparisons with other aboriginal interests in land.

Several types of land that you will often be called upon to consider or hear mentioned are traditional territories, aboriginal title, historic treaty lands, and settlement lands.

Historic treaties specified that reserves would be created after signing treaties, and these are treaty land entitlements. Reserves have been created within treaty areas and continue to be created as treaty land entitlement claims are resolved.

First nations often refer to larger traditional territories extending beyond reserves, and they either claim or have established rights over those lands. Some rights, like hunting rights within traditional territories, are not full ownership or land tenure. A full ownership claim within a traditional territory only arises for those parts of traditional territories over which first nations assert ownership based on aboriginal title to land.

- (1110)

There have not yet been any Supreme Court of Canada decisions specifically identifying lands that are subject to aboriginal title. The size, location, and nature of aboriginal title and the overlapping claims among first nations are issues that remain to be decided in the courts.

Some first nations have, in modern times, concluded land claim agreements with the crown, such as the Nisga'a Treaty. In modern land claim negotiations, the parties do not typically identify parcels of land that would be subject to aboriginal title. Instead, the settlement of land claims typically leads to identification of settlement lands that are owned by first nations. Those settlement lands are usually not reserves.

To summarize, reserves are a specific category of land, which are often within the broader traditional territories over which first nations may have some rights or claims to unextinguished aboriginal title.

Turning to the specific land tenure on reserve, the Constitution assigns to Parliament law-making authority over Indians and lands reserved for the Indians. It's under the authority over lands reserved for the Indians that Parliament has enacted legislation that governs land tenure, registration, and land management on reserve.

For the most part, the Indian Act establishes limited forms of land tenure, including forms of land tenure that are not familiar to Canadian property owners, businesses, and lawyers. For example, under the Indian Act, individual possession of a tract of land is provided through a certificate of possession, sometimes called a CP, which requires both first nation and ministerial approval. This is a limited form of tenure, because the holder of a CP can only transfer that right of possession to another member of the same band, and only with the approval of the minister.

There is a risk that the CP will be cancelled if the band member ceases to reside on the reserve for more than six months, and not all band members have CPs. There is no automatic right to obtain a CP, for instance, when a person moves on to a reserve.

These are some of the differences between typical fee simple land ownership off reserve where, even if you move to another province, you can still own your fee simple land.

Where the holder of a certificate of possession proposes a lease for a period of less than 50 years, the CP holder can deal directly with the party to whom they want to issue a lease. For longer periods, up to 99 years, the first nation must approve, and this is usually through a community meeting and a resolution of the band council. This process for leasing lands is a much slower and more costly leasing process faced by other landholders in Canada.

Last, it's very difficult for the holder of a certificate of possession to raise funds through mortgages like other landholders in Canada, because of the general restriction on mortgage and seizure of reserve lands, as set out in section 89 of the Indian Act.

The use of certificates of possession varies widely across the country. There are some first nations that have none at all and have decided to deal with possession of lands locally, without the backing of a legally recognized Indian Act instrument. In these first nations, land ownership rights may not be recognized or, if the first nation does create interests in land, they're interests that cannot be registered in the Indian Act land registry system nor in any provincial land registry system.

For any lease of lands that's held by a community as a whole rather than individual certificates of possession, there is a requirement for a designation under the Indian Act, even if the lease is for a short period of time. The designation process under the Indian Act is a more costly and slower process for leasing lands than typically applies off reserve. A designation of lands is not something just decided upon by a band council as the first nation government; it is voted upon by the entire membership of the first nation. So the community members are asked to review complex legal documents.

A new designation vote is sometimes required if a leasing proposal changes over time where, for example, a business proposal is modified as engineering and architectural work takes place.

Even where designations are approved by the membership of a community, leases under the Indian Act then also have to be approved by the minister. The federal crown faces fiduciary obligations and potential liability if land tender decisions are improperly made, and so the minister seeks legal advice on proposed leases. This, unfortunately, causes delays in concluding leases.

Typically, leases under the Indian Act have terms of less than 99 years, so significant commercial and residential developments on reserve are based on 99-year leases rather than the longer terms or fee simple arrangements typical off reserve.

- (1115)

Turning to the land registry, pursuant to the Indian Act the department keeps a series of land registries. The Indian land registry system is where records are kept of the land tenure instruments, such as certificates of possession and designations, which I mentioned earlier.

The Indian Act land registry is different from a provincial land registry, which provides certainty of land tenure and a priority ranking system, so registering an instrument before another instrument does not necessarily give it precedence. As well, an instrument of land tenure that is not under the Indian Act, such as a custom allotment, cannot be registered. It is also possible to have registered and unregistered instruments in respect of one parcel of land on reserve. Currently, land instruments are registered by mailing the physical documents through the department's regional offices to headquarters. This results in some delay in registration compared with the electronic systems for registration typical in provincial land registries.

First nation communities typically do not have extensive land use planning facilitating orderly development and assisting with environmental protections and controls. There is a limited authority over zoning in the Indian Act that allows first nations to make zoning by-laws, but few first nations have established those zoning by-laws and none have the comprehensive systems for developing, updating, administering, and enforcing zoning undertaken in other communities in Canada.

Other regulation and enforcement of land use that off-reserve communities use for land management are incomplete or insufficient under the Indian Act. As an example, regulations under the Indian Act that govern waste disposal provide for a maximum \$100 financial penalty or three months' imprisonment.

Reserves are not surveyed in the same way as other communities in Canada. The surveying is often limited, not covering all of the reserve, and survey boundaries are not adhered to by individuals who build their homes outside of lot lines. There is little regulation of development as a result. In addition, there are few mechanisms for addressing boundary disputes within first nation communities.

Some first nations do not wish to adopt the same types of controls over zoning, surveys, and individual lots typically used by municipal governments, and they would resist any characterization of their community in that fashion. On the other hand, many first nations are looking for more powerful tools that they can tailor to fit the circumstances of their community. Without strong land use planning, it is difficult to efficiently manage residential, commercial, and industrial development, as well as community health and safety. For example, in the absence of planning, schools may not match the size of residential development, and infrastructure may not be of the right size and type to match community growth.

I'll turn briefly to the issue of lands modernization.

In the earlier part of this presentation I described many of the limitations on land tenure, registration, and management under the Indian Act. There are modernization initiatives that are changing land tenure registration and management on reserves. For example, the First Nations Land Management Act allows interested first nations to take over land management themselves and remove the limitations from the Indian Act. As I have limited for this presentation, we would be happy to discuss some examples of these modernization initiatives with the committee during the question period, or in a future presentation.

I will close by mentioning that in the materials we provided the committee, in addition to giving you an example of an order in council, a non-statutory instrument for setting aside lands as a reserve, I believe we've also given you an example of a certificate of possession issued under the Indian Act. For any of you who are familiar with acquiring a property off reserve, you will know that the description of your lands is usually far more detailed. A certificate of possession is very brief, and it may interest committee members, particularly those with a legal background, to look at the back page. There's a reference to registration and the certificate of possession is subject to other registered interests, even to interests that are not registered in the Indian land registry. Again, that's very, very different from what typically occurs with provincial land registration systems.

● (1120)

The Chair: Thank you very much.

We'll start our questioning with Ms. Duncan, for seven minutes.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair.

Thank you very much for appearing.

It was my understanding that a request had been made for you to come at the tail end of our study, after we had heard from the first nations, but I'm hoping that you'll be amenable to returning, because I'm sure we will have a thousand-fold more questions after we have heard from various first nation governments, organizations, and so forth, who have had some experience in pursuing some of the options you've mentioned.

My first question is to you, Mr. Beynon. You used the term "modernization". Is that a term you use or has it come from the government?

Mr. Andrew Beynon: It's a term that, I think it's safe to say, we ourselves identified as a way to describe the range of issues that we're trying to deal with in moving away from the Indian Act over time. I think it's a term that's resonating with some of our first nations partners and with the government as well.

Ms. Linda Duncan: We've heard from a number of witnesses so far, mainly national leaders of the Inuit, Métis, and first nations. Certainly, National Chief Shawn Atleo expressed some concern about "modernization" or a movement to fee simple, and so forth. He had hoped that our committee would also pursue innovative, productive, constructive mechanisms so that first nations can sustainably benefit from the land by relying on traditional uses and methods. That's why I asked the question.

I've had the opportunity, as the official opposition critic on aboriginal affairs, to start reaching out to a number of first nation communities. I have been receiving hundreds of letters on their issues. By and large, most of the issues seem to relate to outstanding claims to recover lands or to gain compensation for lands that were legally or, in some cases, potentially illegally removed from the first nation. For example, Six Nations, have a claim for multi-billions of dollars. Having looked at their case, they are making pretty valid claims, where lands under this so-called modernized approach were leased and the moneys recovered from the lease disappeared and never went to the first nation.

The Paul First Nation, which I've worked with for more than 40 years, have a smaller claim, due to lands that they say were taken away from them by the Minister of Indian Affairs without the legal process of a vote by the majority of members of the nation.

We've heard from the land management board and a couple of the chiefs who are participating enthusiastically in terms of moving into a land code. But we were also given a map of Canada showing where there's interest.

I wonder if you could give us a little bit of feedback on the other side, on the reasons you're being given by some first nations that they don't want to get involved in a land code. Specifically, I noted that no one, except the Fort McKay First Nation in Alberta, has expressed any interest, based on the materials provided.

Mr. Andrew Beynon: Maybe I could just begin by adding a quick comment. Lands modernization, in our view, again, just describes the full range of activities by which we're trying to move beyond the Indian Act. It's not necessarily a term suggesting a fee simple option. I know there are many first nations in Canada that have said that they do not like the idea of fee simple. There can be options for lands modernization, like the First Nations Land Management Act, that don't go to the issue of fee simple.

I think what you've underscored is important, that there is a very strong interest in trying to move ahead, away from some of the limitations of the Indian Act, but in a way that can fit the traditions and customs and circumstances of first nations.

With respect to the issue you were raising about reserve lands that have been taken away without compensation or with inadequate compensation, you're right that many first nations are pursuing specific claims in respect of those lands. And in some cases where there are settlements or resolution of those outstanding claims, the land is ultimately added to reserve. So part of the expanding reserve land base, over time, will resolve those issues. I'm not saying that's going at the speed first nations would like, but there is some progress being made.

With respect to your question about interest in the first nations land management regime, I don't know if I could go into the record and answer on behalf of others, but I do think there's maybe a bit more interest—even in the province of Alberta—than maybe just one first nation. At least the signals I've heard are that there are several first nations considering that potential option.

• (1125)

Ms. Linda Duncan: I'm only going on the basis, sir, of the report that your department gave to us.

Mr. Andrew Beynon: Okay.

Ms. Linda Duncan: I have one final question. You've mentioned accurately the regulatory gap in dealing with first nations. There are lots of mechanisms that have been there for more than 20 to 25 years. The Canadian Environmental Protection Act specifically provides for the enactment of federal regulations to govern environmental protection on Indian lands. No regulations have ever been enacted.

When the Indian Oil and Gas Act was amended this past year, I noted and brought to the attention of the House that the choice was made to have lesser penalties for environmental damage on Indian lands than other Canadian lands.

I think there are a lot of outstanding issues, and the bigger question is this. Why is the government continuing to stall on bringing forward the basic environmental protection that should also be accorded to first nation lands that provincial governments accord to provincial and territorial lands?

Ms. Margaret Buist (Director General, Lands and Environmental Management, Department of Indian Affairs and Northern Development): With respect to your comment on CEPA, there are the fuel tank regulations that were brought in as a result, and they're the only ones that have been brought in to regulate the use of fuel tanks on reserve. We're working closely with our colleagues at Environment Canada on the regulation of the fuel tanks on reserve that are within the purview of the first nations.

As you rightly point out, there are a number of regulatory gaps. They result from inadequate, outdated regulations associated with the Indian Act itself. For example, our Indian waste disposal regulations, the timber regulations, and the mining regulations are all within the purview of my particular branch, and we have some very action-oriented initiatives taking place with Environment Canada. We met with them yesterday to try to examine the lack of efficacy of those regulations and how to give them some teeth.

As you also know, that process takes time, because we do that by engaging directly with first nations as opposed to imposing that kind of regulation on them.

Ms. Linda Duncan: And are you—

The Chair: Thank you so much.

Your time is finished, Ms. Duncan.

Mr. Rickford, you have seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair, and thanks to the witnesses. I think my colleague is asking some great questions on the regulatory gaps. I have two questions. The second one will be about regulatory gaps and will perhaps build on this important line of questioning.

First, thank you, particularly Andrew and Kris. As you well know, I was pondering this a couple of months ago and asked you to come to talk to me about some of this on a preliminary level, and I appreciated the work that you have put together. It's been very beneficial.

I have just a couple of comments to make about the initiatives that are under way through your branch. As you said, Andrew, they are addressing challenges presented by the Indian Act, specifically with respect to the land tenure registry, land use planning, regulation, and management of land use. There are a number of initiatives to talk about.

I know one of the ones I'm watching keenly now and am involved with substantively is the Fort William First Nation fibre optimization plant, which began with a settlement process that the minister and I were involved with and attended in Thunder Bay. Now they're moving forward under FNCIDA, which is an exciting, dynamic, integral participation in that sector, and one that I think we have a lot to look forward to.

Other ones speak to the diversity and the ability to get into commercial enterprises. The Squamish First Nation's condominium project comes to mind.

So all of this is good stuff. But both sides have vested interests in looking at the challenges, the barriers, and some of the residual issues. So I would ask you, Andrew, what efforts are already under way to address some of the problems you outlined in your opening remarks?

Could you spend about two minutes on that, and then we'll get to the regulatory gap.

• (1130)

Mr. Kris Johnson (Senior Director, Lands Modernization, Community Opportunities Branch, Department of Indian Affairs and Northern Development): Perhaps I can respond to that.

Mr. Greg Rickford: Yes.

Mr. Kris Johnson: You've already touched on a couple of them, but you're right there are several others that are worth mentioning to this committee, which address the wide variety of issues that Andrew outlined in his opening remarks. For example, additions to reserve is a process that many first nations are dissatisfied with, particularly with the time it takes and some of the processes involved in doing that. So we are simplifying and making those processes more efficient, in collaboration with the Assembly of First Nations. We've established a joint working group to address these issues.

The lack of ability to submit records electronically to the Indian land registry was outlined earlier. We do have a pilot initiative under way to allow for electronic submission of records. We also have pilot projects under way to invest strategically in very high-quality land use plans to address some of the longer time horizon issues outlined in Andrew's remarks.

We are now working on expanding the First Nations Land Management Act, which we've talked about previously to this committee. This allows first nations themselves to address several of the limitations posed by the Indian Act by removing them from section 34.

You mentioned two of the projects under the First Nations Commercial and Industrial Development Act. Another one I might highlight is the development of regulations for the liquefied natural gas plant at the Haisla First Nation in B.C.

The member mentioned earlier the recently amended Indian Oil and Gas Act. There, we are developing modern regulations pursuant to that act as well.

Mr. Greg Rickford: Thanks, Kris.

I think, just for certainty, the official opposition critic raises a good point about the likelihood of your reappearing at this committee to talk more about this. My own view is that there is great value at the front end and the back end of this, because I think the members, including me, still require some foundational pieces to this, that is, where are we now and, what have you. So we're looking forward to that.

I just want to go to the regulatory gaps. There are examples of regulatory gaps on reserve and how they're being addressed. How are provincial regulations being used on reserve? I know there are certain techniques available to replicate, particularly with respect to large-scale or complex development projects. Can you speak to that? That sounds to me like a way of dealing with some environmental and other kinds of regulatory gaps in a fast and effective way.

Mr. Kris Johnson: Perhaps I'll field that one as well. Margaret touched on it briefly earlier, but a regulatory gap really is the absence of adequate laws, including the regulations and the monitoring and enforcement mechanisms, to govern those activities. That gap may exist either because we're not adequately exercising the authorities we do have or we lack certain authorities, or those matters are typically dealt with by provincial governments and their jurisdiction doesn't extend onto the reserve land base.

One tool is the First Nations Commercial and Industrial Development Act, although there are certain other pieces of legislation allowing for a technique that replicates provincial laws and makes them federal law—a technique that's usually called incorporation by reference and permits the federal government to take advantage of existing comprehensive regimes with the provincial system.

It's important to note that a referentially incorporated provincial law becomes a federal law, so it is a federal law that applies to the activity on reserve and not a provincial one. When provincial officials administer or enforce regulations under acts like the First Nations Commercial and Industrial Development Act, they do so on behalf of the federal government and they enforce federal laws. The use of this legislative technique in no way extends provincial legislative powers onto first nation lands.

•(1135)

Mr. Andrew Beynon: Can I just add to that as well? That example of the First Nations Commercial and Industrial Development Act is an interesting one because, under the terms of the legislation, a band council resolution is required before any federal regulation is made and we work with the first nations themselves on the terms of what the regulation is going to be like. It's not abandoning a jurisdiction to a province. The federal crown maintains control and does it in partnership with the first nation.

The use of incorporation by reference, though, is somewhat controversial, because I think some first nation members would say it looks as if we're letting the province control something, but it's really a shorthand legislative-drafting technique. We could refer to weights and measures standards from Switzerland, or we could refer to and incorporate by reference a technical number from a sports organization—or in this case we're just incorporating by reference technical information from the provincial system.

The Chair: Thank you very much.

Ms. Bennett for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): I apologize for being late. I think a lot of us on this committee are doing double duty in the chamber today on the opposition day motion.

For me as a new member of this committee, the learning curve is a bit steep in terms of the various acts and definitions and processes. I thank you for the deck, because I think it will be very helpful, in that what I think we're trying to do is to bring all Canadians with us as we seek justice for first nations, Inuit, and Métis in Canada and to have Canadians understand why this is so important.

The story of irritants and the lack of progress is huge. For those of us who have recently been out and about listening, it seems there are stories of proposals being sent back because there's too much conservation and not enough land use of a potential commercial nature in them. Chief Louie told us about having to wait years to have a bank on his reserve. We have continued to hear stories, including last week in regard to the Northwest Territories where, because of land claims, the companies don't see sufficient certainty for them to invest. The territory is said to be far behind because its land claims haven't moved forward in a way that offers certainty to commercial partnerships.

If you were going to explain to Canadians what you do, could you help us see why it seems so bureaucratic and why we can't just get on with it?

Mr. Andrew Beynon: That's a very good question.

Some hon. members: Oh, oh!

Mr. Andrew Beynon: I think, though, I maybe would strike a slightly more optimistic note. Despite all of the problems I've commented on in respect of the Indian Act and its regulations, it's remarkable how much economic development and high-quality environmental conservation is being done. When I first started, I can remember that the most complex development was the Park Royal Shopping Centre of the Squamish First Nation in Vancouver; now the kinds of developments that are being contemplated or put in place are vastly more interesting and beneficial to first nations

themselves. So despite the problems of the Indian Act, people have tremendous creativity and have been able to move a long way.

In our role, we're very much trying to work with the first nations, with local governments, and with provincial governments to identify as much as possible how to move ahead despite the limitations of the Indian Act—and, in some cases, breaking away from its terms, via the lands modernization initiatives.

•(1140)

Hon. Carolyn Bennett: And you're using that term again, as my colleague asked about.

Mr. Andrew Beynon: Yes.

Hon. Carolyn Bennett: A lot of first nations are very suspicious of what it means.

Mr. Andrew Beynon: I'm not sure I would say it's a term that I've yet heard causes harm.

But very quickly, when we have a conversation, if the focus is on trying to move ahead in a way that allows for sustainable economic development and addresses the concerns of the first nations as to their vision for the future of their community, and if it's a question of potentially using a tool such as the First Nations Commercial and Industrial Development Act or first nations land management legislation or of trying to develop new options and different ways of proceeding, I think it's a conversation and an evolution or change that I've seen over the past generation and that, I think, will continue and move ahead.

Hon. Carolyn Bennett: Are you saying that modernization to you means...? As my colleague said, many people feel it is a bit of an obsession about fee simple. Are you saying that it is about using creative means to get out from under and around the Indian Act?

Mr. Andrew Beynon: These are very much legal and proper means. But yes, I see lands modernization as a very wide umbrella, not necessarily just one potential option for some first nations of fee simple

We know there are many first nations, for example, that have concerns about fee simple and don't want to pursue that option. When I say "lands modernization" I see it as many different ways of moving beyond the Indian Act, and not necessarily as that one issue.

The Chair: Thank you, Ms. Bennett.

Mr. Clarke, you have seven minutes.

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

I'd like to thank the witnesses for coming, and I thank you for your words. What you say is appreciated. In listening to the opposition talk about the one word, "modernization", I would say that I hear from my chiefs of first nations on this, and that hearing non-aboriginals make a big deal over the word "modernization" offends me, as an aboriginal first nations person.

What first nations are really asking for is not a handout, but a hand up. It comes right down to economics. Economics is the key to what we're speaking about today. Hearing some non-aboriginals talk about modernization, I would respond that it's just a word. It's just about helping first nations and aboriginals move ahead.

Many first nations communities across Canada have a deficit in land use planning. There are many positive impacts happening. For example, when you look at Saskatchewan, the Dakota Dunes Casino and golf course are progressing very well using this model.

I understand that the department has initiated a pilot project to invest in strategic land use planning to test different approaches. This is great or good news, but it could also have some dampening effects on some others that may not be ready to go to that point.

My question is, what work is being done to address the issues of land planning on reserve?

Mr. Andrew Beynon: I'll make a first response and ask my colleagues to add as well.

The reason we're trying to do it as a pilot project is that there are a few first nations in particular that have approached us and said they are very interested in trying to ensure there is high-quality land use planning. We want to work with them on what is a fairly novel issue to make sure that we're doing it the right way. Then, for those that are interested, we would see potential expansion of it across the country.

I'll give you an example. There is one first nation—I believe I'm going to be meeting later today with the chief and representatives of this first nation—that has had a recent addition to the reserve. These are lands that have not yet been developed. What they're interested in doing is making sure that, to the extent they can, they have high-quality development of those lands—partially in terms of economic development, but also in terms of conservation—and properly deal with the residential as well as the commercial land, and then all the associated utilities and road rights-of-way, and so on.

The good thing about working with them on this is that we have an opportunity to deal with some land that hasn't been developed yet to try to assist the first nation in deriving the right kinds of benefits from that land—not just economic development, but also appropriate conservation and proper management of the land.

• (1145)

Mr. Rob Clarke: We're seeing that in the southern part of Saskatchewan, just north of Regina, where first nations have potash interests right now and are looking at securing partners from the industry to develop those—and also, I believe, foreign ownership. They are looking at Environment Canada and its standards as well to help progress this one development, which is going to have billions of dollars' worth of ramifications for just that one community or a group of four communities. So that is huge. Economic development is a key point here and will probably lead to aboriginals superseding the non-aboriginal groups, once they all get on board.

I look at Saskatoon, for instance, and the University of Saskatchewan, which holds land parcels around the school. They created a box store mentality, developing a lease with the major box chains and creating the property there. They have a lease value of up to 99 years. The university still holds that property.

Could the first nations have that same approach available to them for planning development?

Mr. Andrew Beynon: Yes, I think that's a good example that you've raised. The interest that I've heard is in trying to look less at one single economic development project but at a range of economic development activity.

I'm not entirely familiar with your University of Saskatchewan example, but it resonates with me because it's a matter of not just responding to a particular business opportunity on a small parcel of land. It's about having a sense of what the whole, the combination, could drive at and how each one can connect and feed off of each other to maximize the benefits.

Mr. Rob Clarke: From my understanding in talking to some chiefs, they prefer the tenure system established under the First Nations Land Management Act.

As a quick segue here, since fee simple tenure is common off-reserve and we're changing to the fee simple system, I'm very curious about this reserve land being an effective way to address some of the changes with the current tenure.

Mr. Kris Johnson: Perhaps I'll respond to that.

There is a proposal, in its early exploratory stages, by the First Nations Tax Commission examining that very issue, whereby a limited number of interested first nations could grant fee simple title to some or all land parcels with a reversionary right to the land to the first nation, so that no matter who owns the land, the land as a whole would be under first nations jurisdiction.

However, as you rightly noted, there are many other first nations that prefer land tenure rights as they currently are, or as they would be under the First Nations Land Management Act, whereby lands are transferred by Canada and then bands transfer the leasehold interest rather than fee simple title to individuals and groups.

For economic development, the key issue is security. Land tenure is secure when a person holding an interest in land can predictably assert and enforce their rights to the land. Private sector investment seeks that certainty, simplicity, and consistency in order to invest in and develop the land.

While off-reserve land tenure provides that security, there are many different ways that land tenure on reserve could be reformed to accommodate the unique needs, interests, and rights of first nations as a whole, or individual communities and their vision.

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

Mr. Bevington for five minutes....

Mr. Dennis Bevington (Western Arctic, NDP): Thanks, Mr. Chair, and thanks to the presenters.

There's a principle that we should talk about when we talk about land in aboriginal communities. In the region I come from, there's a very strong sense of collective land ownership that is a very strong part of the cultural values of first nations, as I understand. There's a great sense of their wanting no further alienation from the land as well.

When we're talking about land modernization, are we talking about moving away from what first nations have as a traditional collective sense of what land is? Is that one of the fundamental issues that we're talking about here?

• (1150)

Mr. Andrew Beynon: No, I don't think I would agree with that.

I think that first nations, as they pursue land modernization possibilities, be it an FLMNA regime, or the limited number of first nations that may be interested in fee simple in the future, or other mechanisms, retain a strong culture of maintaining their collective interest in an entire reserve that has been set aside for the entire community. First nations would have the authority, for example, to make sure they can earmark very sensitive lands and say those will not be developed because they're for a very narrow community-oriented use.

It's only where the first nation as a whole comes to a decision and says, for example, we do want to benefit from the commercial mainstream and to engage in some of the economic development and derive the benefits that those create, that they can identify parts of reserve land and say they're going to lease those out. In some communities, they've made a decision that they want a maximum lease term of 99 years because then the community's connection to the land over the long term will be maintained.

In some communities they are considering the potential of fee simple, in that they are saying to themselves that even if some of the land is disposed of to non-members, first nations governmental authority would still be maintained, because the laws applying to those lands would be the laws that are made by the first nation itself.

It's a question for individual communities as to how they want to deal with what I agree is their strong connection to the land and strong communal sense of it, either by limiting the development of those lands or ensuring that the development is only by specific term leases—

Mr. Dennis Bevington: You agree there are extreme sensitivities that come into anything we're doing here when we talk about land modernization?

Mr. Andrew Beynon: Yes, I do agree.

Mr. Dennis Bevington: Yes, there's no getting away from that.

Mr. Andrew Beynon: No.

Mr. Dennis Bevington: Absolutely.

I'm just curious about your department. I've spent some time in municipal government, and I'm looking at the roles and at the responsibilities you apply. How many people work with you in your particular branch in servicing all of the first nations on reserve that are applying for these orders in council? You have a fairly large job in taking a band council resolution and getting an order in council on it.

What personnel and what resources do you have to service all of these first nations?

Ms. Margaret Buist: My branch in headquarters is in charge of the reserve land issue south of 60 and the two reserves north of 60. We perform certain functions in headquarters. My branch size is about 70 people, but we can't do our job without all of the people in the regions.

Each individual first nation will deal first with the regional office in a particular province or territory, when they want to do something with respect to lands, such as an addition to reserve. They work with the regional colleagues. I couldn't tell you how many lands officers there are. There are quite a few in each region. Then the lands issue—

Mr. Dennis Bevington: Could we get those numbers?

Ms. Margaret Buist: Sure. Yes.

Mr. Dennis Bevington: For the whole structure of what you're doing there, could we just get that presented to us in terms of numbers?

Ms. Margaret Buist: Yes.

Mr. Dennis Bevington: Also, I would like to see it in comparison to what is required for municipal land management, so we can get a sense of whether you're up to speed to handle the tremendous volume of requests that I'm sure that you get under these things. That would very much be my interest here, to understand that completely.

Thank you.

The Chair: Thank you.

Ms. Margaret Buist: We can divide it up to the reserve lands piece that I do, and get you that information. Sure.

The Chair: Thank you so much.

Mr. Johnson, you had a comment.

Mr. Kris Johnson: Sorry, but if I may make one further comment on that, another part of this to consider is that many first nations communities have land managers themselves, so we'll try to get some estimates. We don't have perfect numbers on that, but we'll try to provide some estimates about the level of capacity within those communities themselves.

• (1155)

Mr. Andrew Beynon: Sorry, but it is such an interesting question that we'll not just try to give you a sense of the personnel—how many employees there are—but also of the volume of the transactions, because they're in the thousands.

I would just stress that when Margaret was mentioning numbers of employees, that's not just for the processing of orders in council on lands. That's for the whole range of land and environmental functions.

The Chair: Thank you very much.

Mr. Payne, for the last five minutes.

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

I want to thank our witnesses for being here today. I want to echo the comments of my colleague, Greg, about your being here and up-front and providing a bunch of information. I think it's really important that we in fact get some of the information to help us understand the land planning process. I think having you come back again would be beneficial. I certainly hope that we will see you again during this process.

One of the questions I have for you folks is this. How is the Indian lands registry system being improved? Also, has integrating reserve land registrations into provincial land registries been considered as well?

Ms. Margaret Buist: Thank you for that question.

We have a number of activities under way to improve the land registry system. You heard Andrew describe some of the challenges with respect to that registry system, such as when first nations have to mail documents into headquarters as opposed to pressing a button and electronically registering them.

We're doing a pilot project with first nations right now training them to work with electronic registries. We have some examples already for the First Nations Land Management Act registry and the self-government registry. Those first nations can register electronically. So we have experience with that, and we're expanding it into the Indian registration system.

We just did a major upgrade over the last two years of the information technology used in association with the registry. That has greatly increased the capacity to capture the data necessary. You were shown by Andrew a certificate of possession. The imaging for that is much better now, so it can be seen much better on the system. The details are captured and the reports can be produced. First nations can go onto that public registry and look up the documentation related to their reserve lands. That's helped speed up the process as well.

We're also integrating survey boundary information into the system. You heard Andrew speak about survey issues on reserve. We're able to match much better the survey information with the lot boundary descriptions of the land. In a way, we're trying to replicate the efficiencies that exist in the provincial land registries.

Finally, we've also increased what I'd call our geographic capability using the GIS system. That allows both first nations and developers to identify potential economic development opportunities on reserve much more easily and quickly.

Those are some of the improvements we have under way. We're trying to match, as much as possible, the efficiencies of the provincial land registries.

Mr. LaVar Payne: You talked about pilots. Some bands are actually able to do this electronically now. Do you track any inquiries that are going on in this process? How has that helped the reserves—or in fact, the department?

Ms. Margaret Buist: We get daily requests for assistance through our information technology help desk, when people are trying to use the system. That's one area we track in assessing the challenges facing first nations people who are using the system. We also get letters to the minister that bring to our attention concerns with respect to the system.

Whenever we have those concerns raised, we look at further training for a particular land manager in a first nation. Or we may meet face to face with the first nation. Some of our officials are out in Kamloops next week to address some of the specific concerns of that first nation. That's how we respond.

• (1200)

Mr. LaVar Payne: In terms of the system itself, have you had any companies or organizations access it to try to see how they can make investments within the first nations reserves?

Ms. Margaret Buist: Yes, very much so. As I said, it's a public system. It's open to the public, so businesses and banks that are looking at lending can all access the system.

The Chair: Thank you very much.

And thank you to our witnesses. We appreciate your testimony today. I know we'll be having you back before this study is complete, but thank you very much. For many of us, this is an important building block as we undertake the study. Thanks so much.

Members, there are a couple of things I want to make you aware of.

Earlier, we spoke a number of times about the Russian delegation that is seeking to speak to members of our committee. The clerk has been able to negotiate an agreement with our Senate colleagues to meet at the same time, so we can utilize the same translators. That will be on November 22, this Tuesday, from 9:45 till 11:30—but of course we will probably have to step out at 10:45 to get to our committee.

We'd like to know which committee members would be interested in doing that. There's room for at least six members. The delegation would like to talk to us about Arctic sovereignty and a whole host of other things, things that would be important for those of us who are interested in these issues and are representative of this committee. So I'd like to get an indication of who will go. I intend to go, and I think Carolyn, Dennis, and Linda will. I imagine we'll get some names from the other side as well.

There will be some information from the clerk with regard to that. But thank you, colleagues, because that is coming and I just wanted you to know it was happening and to be aware of it.

Committee members, the subcommittee will commence here shortly. So I adjourn this meeting.

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