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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1550)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, we're going to call this 48th meeting to order, the Standing Committee on Aboriginal Affairs and Northern Development.

Today we continue our review of Bill C-27.

We have the privilege of having two witnesses from the Office of the Privacy Commissioner. We have the Privacy Commissioner herself, Jennifer Stoddart. Thank you so much for joining us. Joining her will be Patricia Kosseim. I hope that's somewhere close to the pronunciation of your last name. We do apologize when we get those wrong.

You're no stranger to committees, Ms. Stoddart. We'll begin with your opening statement for approximately ten minutes, and then we'll start our questioning for the next little while. I will turn it over to you.

I must thank you for making your time available to our committee.

Ms. Jennifer Stoddart (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Thank you, Mr. Chair, and thank you for inviting me.

Honourable members of the committee, I am here today to speak to you regarding Bill C-27, an act to enhance the financial accountability and transparency of first nations.

As you know, Bill C-27 will require that first nations chiefs and councillors provide an audited schedule of remuneration every year to the Minister of Aboriginal Affairs and Northern Development. This schedule will underline moneys paid by the first nation, or any entity it controls, to its chief and each of its councillors, acting in either their official or their personal capacity. The bill would require that first nations publish this schedule on their websites and make copies available to anyone upon request. Additionally, the minister would be required to publish this schedule on the Department of Aboriginal Affairs and Northern Development's website.

While I understand that there are existing reporting arrangements in place for many first nations, C-27 would effectively harmonize all reporting to the department and provide a legislative basis for proactively disclosing this information publicly on the Internet.

Our office's own mandate is the Privacy Act, which applies to federal public sector organizations. While the Privacy Act has been considered quasi-constitutional, some of its provisions may be superseded by other acts of Parliament. For instance, as a general rule, personal information under the control of a government institution cannot be disclosed without the consent of the individual to whom it relates. As the law stands today, specific salaries are considered personal information within the meaning of the Privacy Act, and they cannot be publicly disclosed by the Minister of Aboriginal Affairs and Northern Development without consent. However, the Privacy Act does exceptionally allow for disclosure of personal information without consent where authorized to do so by another act of Parliament. In other words, if the bill before you were to pass, the minister would be allowed to disclose specific salaries for the purposes set out in Bill C-27.

The privacy issue before you is therefore not one of lawfulness, but one of principle. Bill C-27 invokes two equally important democratic principles—accountability and privacy. The question is, how should these two values interplay to minimize adverse impacts and maximize democratic capital for Canadians?

[*Translation*]

I will now discuss existing salary disclosure regimes.

Transparency and accountability are principles that my office takes very seriously. I have, along with Canada's other federal, provincial and territorial Access to Information and Privacy Commissioners, signed a joint resolution endorsing and promoting open government as a means to enhance transparency and accountability. These are essential features of good governance and critical elements of an effective and robust democracy.

In considering this bill, I note that there is a distinct trend in Canada towards publicly disclosing the salaries of elected officials along with other senior officials paid from the public purse. When money comes from taxpayers, the expectation of transparency increases as the level of responsibility or salary associated with a position increases.

At the federal level, the precise salaries of elected officials such as the Prime Minister, ministers, members of Parliament and other positions are disclosed every year by the Parliament of Canada on its Indemnities, Salaries and Allowances Internet page. Furthermore, pay ranges for public service positions are also made public.

Similarly, in Quebec, the salaries of elected officials are published by the National Assembly. The specific salaries of Quebec's public servants, by contrast, are not disclosed to the public although those of high-ranking officials can be made available through access request.

In Ontario, the specific salaries of elected provincial officials are made publicly available; while only public servants paid $100,000 or more per year have their name, salary and amount of taxable benefits disclosed in yearly reports. Other provinces, including British Columbia and Manitoba, also use salary thresholds as a basis for triggering public disclosure requirements of senior elected officials.

There are no comparable regimes that currently cover all first nations across Canada. Bill C-27 would put in place a uniform standard for publicly disclosing remuneration of elected officials, among other public reporting requirements, in more than 600 first nations. Its impact on the privacy of these officials therefore requires careful analysis and consideration.

● (1555)

[*English*]

In the final part of my presentation I will speak about the appropriate privacy analysis framework.

Along these lines, my office has a long-standing practice of examining the privacy risks posed by a particular initiative by applying a privacy analysis framework, and its elements can be summarized by four key questions: One, is the measure demonstrably necessary to meet a specific need? Two, is it likely to be effective in meeting that need? Three, is the loss of privacy proportional to the need? And four, is there a less privacy-invasive way of achieving the same end?

The first question evaluates whether the proposed measure is required to achieve a particular policy object. In most cases, the answer to this question is positive, and the current case is, at first sight, no exception to the rule. Financial transparency of public moneys paid to elected officials and senior government officials is an important objective that may very well warrant a legislative measure to ensure more uniform reporting requirements than is currently the case and ultimately enhance public accountability and transparency.

The second question considers whether the proposed measure will be successful in achieving the stated policy goal. There may be instances where the proposed measure may not be particularly effective in achieving the objectives for which it was designed. Given the complexity of the native governance architecture, I would respectfully submit to this committee that I may not be the right person to answer this question. In this instance, I would rather defer to the discerning assessments of experts well versed in aboriginal issues.

The third question, which focuses on proportionality, is critical to assessing the privacy impact of a proposed measure. It essentially functions as a sort of balancing test to help determine whether the potentially harmful effects on privacy of individuals is outweighed by the salutary effects of the proposed measures. At this step it is important to identify all the potential privacy implications of the proposed measures, the number of affected individuals, and the extent of the privacy laws. Then one can make a more enlightened determination as to whether or not the public policy benefits of the proposed measure, in this case greater and more uniform public disclosure requirements of first nations, outweigh the adverse privacy impacts on individual chiefs and councillors.

As parliamentarians, you may find that proactive disclosure of exact salaries, in addition to all of the other public reporting requirements, exceeds the incremental benefits this may yield in terms of enhanced public accountability and transparency. On the other hand, if disclosing salaries of elected officials is becoming a widely adopted trend in Canada, as appears to be the case, it may well be considered reasonably in line with public expectations and proportionate to disclose the salaries of chiefs and councillors as well.

The fourth and final step seeks to determine whether the proposed measure can be substituted by another measure that might have a less adverse effect on privacy. This is a time to consider whether there are different options that could yield similar results, but in a less privacy-intrusive way. For instance, disclosing salary ranges or aggregate salary amounts for relevant groups, as opposed to specific salaries of individuals, could prove just as effective in achieving enhanced transparency and accountability without incurring the corresponding loss of individual privacy.

To conclude, Mr. Chair and members of the committee, I'd like to thank you again for the opportunity to comment on the importance of these considerations in the proposed legislation. Finding the right balance between achieving stated policy objectives and the protection of privacy can be a complex and difficult undertaking. I hope this analytical framework I have presented is useful to you in your deliberations.

I and my senior general counsel will be happy to try to answer your questions.

● (1600)

Thank you, Mr. Chair.

The Chair: Thank you, Ms. Stoddart. We appreciate that.

We'll begin the questions with my colleague, Ms. Crowder, for the first seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

Thank you, Ms. Stoddart and Ms. Kosseim, for appearing before the committee today.

I want to refer to a specific statement you made where you said, “financial transparency of public moneys paid to elected officials”.... By “public moneys”, I'm presuming you mean moneys that come from the federal government. When you talk about public moneys, could you be clearer on what you mean by that?

Ms. Jennifer Stoddart: Yes. I believe that's all moneys in the control of elected governments. As we did mention in those examples, it's the federal government as well as the practices of various provincial governments, I think. It means under the control of either one or the other government.

Ms. Jean Crowder: The reason I'm asking that specific question is because at times chiefs and councils are partly paid out of funding they get from the federal government, but at other times part of the remuneration for chiefs and councils comes from own-source revenue, which may be revenue that's generated potentially by business enterprises. Do we make a distinction then between moneys that come to chiefs and councils from the federal government versus OSR?

Ms. Jennifer Stoddart: Again, I stress that I am not an expert on aboriginal affairs. I have great respect for the amount of knowledge that it takes to speak to these matters.

It would seem to me that if there is a significant amount of revenue coming from businesses or areas that do not receive public money, then a different analysis should apply.

Ms. Jean Crowder: To date, has the Privacy Commissioner's office undertaken the analysis of different moneys that could be received by first nations?

● (1605)

Ms. Jennifer Stoddart: No.

Ms. Jean Crowder: Okay.

On remuneration, I want to refer to two quotes. I think it's clear that what we've heard from testimony is that certainly first nations are interested in transparency and accountability. I think the devil is always in the details, and I want to refer to two pieces of information.

KPMG wrote a letter on December 2, 2011, where they talked about access to information. They wrote:

> It is important to define the appropriate stakeholders for the financial information to be presented under this Bill. General stakeholders are entitled to information concerning public money. Members of the First Nation should have access to full financial information regarding the First Nation. The requirement to make all information public and posting this information on a website extends far beyond the needs of stakeholder groups.

We've heard a number of arguments that there is an accountability chain that people acknowledge. People would argue that the accountability chain is from the first nation to its membership, not from the first nation to a broad general public that may or may not have any interest.

Could you comment on that?

Ms. Jennifer Stoddart: I understand that perspective. I know there are other perspectives too, and to the extent that perhaps it's not always identical in each case, in each aboriginal nation, how the money is received, there may be room for some distinction depending on the various financial structures of different first nations.

Ms. Jean Crowder: In that same light, the Chartered Accountants of Canada described first nations as having three primary accountability relationships: to the members, both on and off reserve; to federal departments that provide public funding to first nations; and to capital investors, lenders, and creditors who use the information for decision-making purposes. Again, we haven't heard a lot of argument about that.

In fact, under federal government money, there's already in contribution agreements, grants and contributions, a requirement for first nations to provide information to the department. That's already there and well established.

But they go on to say:

> The general public, media and public interest groups were not considered to be in a "direct accountability relationship" with First Nations but were groups that "may also want access to First Nations financial reports." Bill C-27 would provide a legislative basis for such access by requiring First Nations to post their financial information online and by providing a court remedy to compel this disclosure.

Again, I think there's this statement around accountability and reporting, but the anticipation that any group could request that information....There has been some argument that first nations governments are going to be treated differently than other organizations. For example, private sector businesses have accountability to their shareholders, but they don't have accountability necessarily to the media.

Can you talk a little bit more about that accountability relationship?

Ms. Jennifer Stoddart: I don't think I can, with great respect, because I'm not a specialist in accounting or public accountability. I don't think I'm the best person to speak to that issue. I can only speak to the issue of personal information and whether or not it is justified, according to the criteria I've laid out for you, that the salaries and the remuneration, which I think includes transportation, reimbursement for expenses, and so on, be posted publicly on first nations websites and on the department's website.

Ms. Jean Crowder: As well as entities over which first nations have control, which would pay part of that money to chiefs and councils, and these could be commercial enterprises and economic drivers for the community. So those are required as well.

Have you done an analysis of the requirement of those other entities?

Ms. Jennifer Stoddart: No, we haven't, honourable member.

Ms. Jean Crowder: Have we got time?

The Chair: You have one minute.

Ms. Jean Crowder: Are you familiar with the Montana decision?

Ms. Jennifer Stoddart: Slightly, I guess. My general counsel certainly is.

Ms. Jean Crowder: Have you taken a look at the Montana decision in light of these requirements?

Ms. Jennifer Stoddart: Could I refer this question?

Ms. Patricia Kosseim (General Counsel, Office of the Privacy Commissioner of Canada): Yes, we have.

Ms. Jean Crowder: Did you draw any conclusions about the Montana decision with regard to this particular piece of legislation?

Ms. Patricia Kosseim: In Montana, the whole issue of personal information was raised but discarded by the court, as you remember, because in that instance the salaries were in the aggregate. Although the argument was made that the aggregate amount could be divided per capita, and that therefore you could decipher or determine how much salary each individual was making, the court discarded that because there was no evidence to say that it was the right formula that anybody could reasonably be expected to use.

In that case, the question of personal information didn't arise squarely. Under the new Bill C-27, if it were to come to pass, of course specific salaries would be disclosed, and then the whole issue of whether or not they constitute personal information—which clearly they would in the sense that they would be specific salaries—would be displaced as superseding legislation. In effect, that would trump that exception under the Privacy Act.

We'd be looking at a very different scenario if C-27 were to come to pass, and Montana really didn't help in terms of that inquiry.

The Chair: Thank you very much.

We will turn to Mrs. Block now for seven minutes.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chairman.

It is a real pleasure to be here today to join this committee and this study. I am not a member of this standing committee, but I am very interested in this piece of legislation.

I want to thank you for being here, Ms. Stoddart. It's been a while since I've seen you. I think the last time I saw you was when I was a member of the ethics committee. I very much appreciated the work you did through that committee, and I also very much appreciate the work you do as our privacy commissioner.

I appreciated your statement and what I thought was a very balanced approach to this issue. I also appreciate a statement that you made early on in your introduction, that:

> ...C-27 would effectively harmonize all reporting to the department and provide a legislative basis for proactively disclosing this information publicly available on the Internet.

I guess what I want to do is bring the conversation back to those areas that you are very comfortable in speaking to. My first question would be, what are some of the pieces of legislation and principles of transparency relating to financial transparency that governments in Canada are expected to follow?

● (1610)

Ms. Jennifer Stoddart: Financial transparency for governments in Canada would probably vary according to the province. Again, there are other people who know more about financial transparency than I do, but I think, first of all, our parliamentary budget process means, in principle—I know it's a complex process now, and it's hard for many of us to follow—that the budget statements and the intentions of the government in spending are laid before the representatives of the people. More recently, in the search for greater transparency, we've gone to publishing a lot of expenditures on websites, so they are very readily available.

I believe the Accountability Act of 2006 brought in a whole series of new measures where our budget, incremental expenses of many officials, expenses of organizations, and, more recently, our quarterly budget reporting in the last 12 months for departmental and agencies have to be published online.

These are the main thrusts. The Comptroller General and the Auditor General also make reports to the public.

Mrs. Kelly Block: Are you aware of any pieces that you just referred to applied to first nations governments?

Ms. Jennifer Stoddart: I don't know that, honourable member. I have read that the Auditor General has audited the first nations, and I'm aware that he or she raised the issue of the reporting burden in the past, but that is all I can say.

Mrs. Kelly Block: Okay. How do the standards for first nations government that are set out in this bill compare to that of other governments? Maybe speak more specifically to the federal government in Canada.

Ms. Jennifer Stoddart: In my presentation I suggested that this is a trend, with the caveat that to the extent you can compare the elected officials of first nations and some of their high-ranking employees to government officials. There may be constitutional arguments. There are doubtless aboriginal law arguments that seek to make that distinction. But to the extent that they are public officials, I noted that there is a trend in Canada, with very few exceptions, to requiring greater transparency about their remuneration, benefits, and other moneys they may spend personally.

Mrs. Kelly Block: Speaking about the fact that it may reasonably be in line with public expectations to disclose the salaries of chiefs and councils because other levels of government are doing that as well, I'm wondering if you would be able to share with this committee any of the benefits for first nations or for government—the federal government or other governments in Canada—that you see as a result of this legislation.

Ms. Jennifer Stoddart: Thank you for that question.

As Privacy Commissioner, I spend more time thinking about the protection of personal information than the contrary. As I mentioned in my statement, there is a growing trend toward transparency throughout the democratic world. As Privacy Commissioner, I have tried not to stand in the way of that trend. It's important for democracies, but at the same time, we also understand that we have to protect personal information very strongly.

For example, this morning I was talking to a group about the ongoing challenge of having civil servants look into files where they have no business. That is unacceptable in a democracy. That doesn't mean that in general we should be transparent about things that are not personal. The challenge before us today in this case is which people in jobs of importance that are funded by money collected by the public—at least in part, but in the case of the federal government totally—deserve to have their remuneration posted online as an exception to the general rule, because the public has a great level of trust in them and needs to know exactly what is happening with them.

● (1615)

Mrs. Kelly Block: Thank you.

The Chair: Thank you very much.

We will now turn to Ms. Bennett for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

As my colleague from the NDP was explaining, there are some serious concerns, including those from Chief Darcy Bear. The announcement of this bill took place in his community. His understanding of the bill was that the first nations community would be entitled to have a look at the salaries of the chief and council because of the complexity of how so many first nations are funded, meaning a mixture of own-source revenue as well as government funding. I think everyone was surprised that this bill lumped together salaries plus expenses plus honoraria in a way that could look quite alarming for somebody who is not used to understanding how much it costs to represent a community in Canada that is very distant from Ottawa, and the kind of cost it takes to come together to form public policy in Canada for first nations by first nations.

Is there a different test for the privacy that all Canadians should be able to have, compared to what the community itself should have, with a password-protected way of getting to the band website, or having it posted on the wall in the band council office? Is that a different test, in terms of privacy and in terms of elected office, to the people who elected them?

Ms. Jennifer Stoddart: I guess we haven't been able to think as much as we would like to along these lines, but certain researchers, notably the Australian Law Reform Commission, in its review of their privacy legislation raised the question of group rights and group attitudes to privacy, particularly in aboriginal communities, which would be different from those of us with perhaps a more European individual privacy rights origin.

Last year we did fund a study, done out of the University of Victoria, about that topic. Perhaps I could ask the general counsel to describe it briefly, to the extent that this is a reality.

Ms. Patricia Kosseim: Under our contribution program, we funded research that was conducted out in B.C., I believe. It had to do more specifically with electronic health records in the context of aboriginal groups, and it explored this concept of group privacy as it could be applied to aboriginal peoples. Of course, our laws are silent on the concept of group privacy and are founded on the notion of individual privacy.

To go back to the question of different stakeholder groups, one of the fundamental principles, really, is the need to know and the need to divulge information necessary for the objective of the bill or of the program or of the initiative. The framework the commissioner presented allows you that flexibility to look at the kind of distinction you're making between different stakeholder groups: what they need to know, for what purposes, what are the broader policy objectives, and what are the least privacy-invasive ways of achieving those objectives.

Although we've presented it for Bill C-27 as it exists, there are many subtleties and distinctions that, in your wisdom, you may choose to make that will give you at least the framework, the tools, to deal with those questions.

Coming back to the concept of different stakeholder groups and different measures of accountability, depending on the ultimate purpose, those are the kinds of formulae that, as I said, in your wisdom parliamentarians could apply in a flexible way.

● (1620)

Hon. Carolyn Bennett: Chief Darcy Bear proposed a number of amendments because there is huge concern that the publication of financial statements of band-owned enterprises would leave them open to predatory practices of non-aboriginal companies. Again, sometimes that business may hire 20 people, and to look at it as though that member of council is receiving all that money is quite misleading.

There was also a concern that council members may not feel they want to open a business if this is going to happen, or that it wouldn't even be viable. Why would a successful business person in the community want to run for council if, all of a sudden, his business would be put at risk, compared with other people who aren't council members?

It sounds like the government is thinking about entertaining some of the amendments. In terms of your number one principle of whether the measure is demonstrably necessary to meet a specific need, who's need, in terms of transparency, are we talking about? Would you be prepared to have a look at the bill, with its amendments, to see if some of the issues you've raised in your four points would be better met with the newly amended bill?

Ms. Jennifer Stoddart: We haven't seen the amendments, but if you wanted us to come back to talk about them or.... You're well served, I think, by your parliamentary staff, but certainly if we could be helpful to you....

Perhaps I could mention to you, honourable member, that I think some of what you're talking about has to do with access to information. Financial information is not usually personal information per se, particularly if it's in a company or in an organization. In access to information, there are limits about confidentiality, about disclosing information that will jeopardize the profitability of a company. Another parallel to look at would be what the transparency requirements of Canadian companies are, both those that are publicly traded and those that aren't.

The Chair: Thank you very much.

We'll now turn to Mr. Wilks, for seven minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thanks, Chair.

Thanks for coming today.

I really respect the role you play. As a retired member of the RCMP, I recognize the privacy issues that come up from time to time and the importance of ensuring that certain information is protected, to protect those you may be putting in harm's way from time to time, but I also recognize the importance of being accountable to the public. Bill C-27 aims to do that.

I am curious: in what way does the Privacy Act apply to first nations governments? Is there anything that applies to first nations governments through the Privacy Act now?

Ms. Jennifer Stoddart: Can I turn you over to the specialist on this?

● (1625)

Mr. David Wilks: You certainly can.

Ms. Patricia Kosseim: The Privacy Act will apply to certain entities if they're listed in the schedule to the act. Of course, it applies to the departments like Aboriginal Affairs and Northern Development Canada, and it applies to certain first nations groups to the extent that they're explicitly listed in the schedule to the act.

On the other hand, most band councils, first nations councils, to the extent that they are creatures of the Indian Act under the jurisdiction of Parliament, will be covered by another legislation we administer, and that is the private sector legislation, or PIPEDA. To the extent that they are federal works or businesses carrying out the core activities intended by the spirit of the Indian Act, they will be covered by that legislation, with respect to their relationships with employees, for instance.

With respect to personal information that they may hold of third parties, they will also come under the private sector legislation, but only if the activity in question that we're looking at is of a commercial nature. So it really depends on a case-by-case basis, to make a factual determination as to whether that private sector legislation will cover—

Mr. David Wilks: I wonder if you could expound on that a bit more. You tweaked my interest when you said the "commercial sector". Could you just expound more on that part of it?

Ms. Patricia Kosseim: For instance, there is an example where a band council provided a complaint that came to our office. The activity in question was in their capacity as landlord to the complainant. In that capacity, they were not only a federal work, undertaking, or business—a FWUB—but because the third party was not an employee, we had to determine whether it was a commercial activity. In that case, we determined that providing a dwelling was a commercial activity and it therefore fell under the act. That's an example where something can be both a FWUB and a commercial activity covered by the act.

Mr. David Wilks: You alluded to this in your statement, Ms. Stoddart, but I'm just going back to it. Section 8 of the Privacy Act prohibits the disclosure of personal information unless an individual consents. Then you went on with regard to paragraph 8(2)(b), where disclosure is authorized by a federal statute or regulation. In other words, if this bill were to pass, the minister would be allowed to disclose specific salaries for the purposes set out in Bill C-27. Part of that disclosure will be through a website. I'm going to suspect that is part of it.

I wonder if you could expound a bit more on that. I believe that what you've said is correct, but the disclosure of specific salaries would not only be to the ministry, but also to the public. Is that correct?

Ms. Jennifer Stoddart: That's what I understand the act provides for. It has to be on the first nations website, and then the Department of Aboriginal Affairs and Northern Development will put it on its website, so you would have named individuals and their salaries on websites.

Mr. David Wilks: And remuneration as well. Okay.

Further to that, because Bill C-27 would require the public disclosure of financial information, including personal information, am I correct that once this information is publicly available, the personal information would no longer be subject to the use and disclosure requirements under sections 7 and 8, respectively, of the Privacy Act and that other parts of the Privacy Act would continue to apply?

Ms. Jennifer Stoddart: Yes, I believe the Privacy Act would apply to the extent that it isn't specifically superseded by this new legislation, if it is to pass.

We mentioned that because we thought there was, in the discussion of this, some misunderstanding about the role of the Privacy Act. The Privacy Act is not the Canadian Charter of Rights and Freedoms. It doesn't specifically mention privacy in passing, but it has been used to measure other laws.

The Privacy Act is not used to measure other laws. Another law can amend the Privacy Act, and the Privacy Act has always provided for this. That's what we wanted to clarify for the committee.

Mr. David Wilks: Is this the case with similar legislation related to other governments across Canada, provincial or municipal? Do we start to get in sync? Does the Privacy Act mean to ensure that levels of government start to conform, so that what happens in British Columbia will be similar to what happens in Ontario, Quebec, or New Brunswick?

● (1630)

Ms. Jennifer Stoddart: I'll start, and perhaps the general counsel will have a more acute observation.

I think there is a general tendency towards sync, from what we can find out. The one difference—and it's of interest only to lawyers who are really into this kind of thing—is that in the Province of Quebec they have their own charter and they measure their own legislation. So if we were in Quebec, you could ask whether this legislation measures up to the Quebec charter. It could be declared unconstitutional according to Quebec. None of the other provinces have that. But in general, Quebec's privacy legislation is broadly similar to privacy legislation in other parts of Canada.

The Chair: Thank you, Mr. Wilks.

We'll now turn to Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good afternoon, Ms. Stoddart.

My question will be fairly short.

What rules currently apply to corporate entities and crown corporations in which the state may have particular interests? What disclosure rules for names and financial information apply to all crown corporations across Canada?

Ms. Jennifer Stoddart: Honestly, I am not sure I can answer your question because I have not thought about it. We could send you a written response on this.

Mr. Jonathan Genest-Jourdain: I would appreciate that. I understand that my question is fairly technical.

I listened carefully to your presentation. You stated that it is currently quite difficult for Aboriginal Affairs and Northern Development to disclose names in connection with bands for honoraria and financial operations. On the legislative front, what are the current, specific obstacles that lead to the department having its hands tied?

Ms. Jennifer Stoddart: The Privacy Act states that personal information held by federal institutions, including the Department or Aboriginal Affairs and Northern Development Canada, must remain confidential if an individual has not consented to the disclosure of that information. I believe there is an exception laid out in section 8 concerning treaty negotiations or land claims. Besides that, the same applies to everyone in Canada. The information shall not be disclosed without the consent of the individual in question.

Mr. Jonathan Genest-Jourdain: In your opinion, what was the core objective of Bill C-27? What target group was meant to benefit from this bill?

Ms. Jennifer Stoddart: Once again, sir, I am not in a position to answer that question. I am not a political scientist nor an analyst of debates on aboriginal governance. It seems to me that the main goal is to shed light on how this money is being spent. This is money that the government distributes not only to first nations, but also to the Department of Aboriginal Affairs and Northern Development Canada who then distributes it to first nations.

Mr. Jonathan Genest-Jourdain: Thank you.

I will share my time with my colleague, Mr. Bevington.

[*English*]

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, witnesses.

The minister indicated, in a previous meeting on this, that they have a government-to-government relationship with first nations.

Have you seen anything in the disclosure information suggesting that the federal government has an influence on the provinces and territories or other governments in how they develop their disclosure policies?

Ms. Jennifer Stoddart: No, not in this legislation.

Mr. Dennis Bevington: Each province develops its own.

Ms. Jennifer Stoddart: Yes.

Mr. Dennis Bevington: Okay.

I'm still interested in some of the aspects of this bill, although I simply don't agree with the bill because of that particular reason. But I'm interested in the bill in terms of the layout of information.

We had the Canadian Taxpayers Federation in front of us, making very wild claims about the nature of first nations remuneration, based on information that they had somehow garnered.

You've talked in your briefing about how important it is that the information doesn't lead to misinformation. Could you speak a little bit more on that particular issue, how it's important that information that's provided is very clear in nature, to protect the individual as well? Is that fair to say?

● (1635)

Ms. Jennifer Stoddart: Certainly there is an obligation, both under the Privacy Act and under PIPEDA, that personal information about individuals has to be accurate and up to date. That's a basic tenet of privacy protection.

Mr. Dennis Bevington: So lumping in expenditures with salaries and lumping in remuneration for per diems with salaries, and doing those sorts of things that might inflate the wage of an individual working for a first nation...would you consider that to be proper use of information?

Ms. Jennifer Stoddart: I think the attributions or the nomenclature used have to reflect accurately what kind of personal information it is. So to the extent that you can be more precise, I think that's ideal. But you're down to actual wording, so I can't really pronounce on it.

Are you saying “total of moneys paid out”, or are you saying “salaries” versus “travel expenses reimbursed” versus “per diems” versus...? Whatever it is, I think you should use an accurate label. That is a basis of privacy law.

The Chair: Thank you very much.

We'll turn now to Mr. Clarke, for five minutes.

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

Thank you very much to the witnesses for coming in today.

You mentioned that the mandate is protection of personal information for individuals.

What we're hearing is a broad range of testimony from witnesses —from first nations leaders, from members of communities, and from band members as well—and there is a fine balancing act that has to be done here.

You mentioned your recommendations, but being from a first nation myself, I know from what we hear, and Mr. Wilks was also saying.... I'm a former RCMP member as well, and I've seen the first nations that are reporting and taking the financial information from consolidated reports and providing it to Aboriginal Affairs, meeting those challenges in order to meet the requirements for their funding envelopes.

I'm going to go back to your mandate, but I'm also going to go into how the organization tries to protect personal information. There is one interesting part, and I'm not sure if you're quite aware of this. How does the Privacy Act apply to first nations governments? That is one key component that I need to know the answer to.

If you look at first nations that are trying to get the information, and the challenges they face, where first nations aren't providing that information.... We have the good reserves, such as where Chief Darcy Bear supplies the information to his membership. My first nation community of Muskeg Lake also provides the information on the website. They go from community to community, like Edmonton, Saskatoon, Prince Albert, and they have band meetings and provide that financial information to them. However, there are first nations communities that don't provide that information, and when members come forward, they're blocked from getting that information and they fear reprisal.

Under section 10 of the Indian Act, for a first nations band member to get information from the band council, they have to release their information, their personal data; they have to sign a waiver.

How do you feel about that?

Ms. Jennifer Stoddart: Honourable member, we have had complaints to our office over the years about individual members of first nations not getting the information from the band council. If I look over the last three years, we've had about 10 complaints by members of first nations against the administration.

Most of these have been settled; the information has been given. We are still working on some, but this is a phenomenon we see; it's alleged there's less than total transparency within the band itself.

● (1640)

Mr. Rob Clarke: How would you resolve the issue of the first nations band member having to sign a waiver of their identity in order for chief and council to release that information? The chief and council are going to see that band member making a request, and their identity isn't protected. How would you resolve that?

Ms. Jennifer Stoddart: I haven't personally looked at that before, but perhaps the general counsel has. I haven't looked at that part of the Indian Act to see how....

Ms. Patricia Kosseim: I've only seen that come up in the context of jurisprudence, where an individual actually did consent to the disclosure of her identity in order to put the request forward. But the overarching principle is that proactively, as I understand it, even in the current regulations under the Indian Act, first nations must be making this information available to band members in a conspicuous place.

I'm not sure why an individual would have to go through those formal means of making an access request to obtain information. My understanding, and I'm not an expert in the Indian Act or its regulations, is that under the regulations those audited financial statements must be made available to members in a conspicuous place.

That's the best I can do with my knowledge of the Indian Act.

The Chair: Thank you so much.

We're going now to Mr. Bevington for the last questions.

Mr. Dennis Bevington: I'll share my time with Madam Hughes.

Right now there's a situation—and you have demonstrated it with the complaints you've received—where band members who vote for the people who run their bands have the opportunity to gain the information. It may not be perfect, but it's there.

Now we're going to have a situation under this act where virtually the whole country, people who don't vote for band councillors, who don't vote for band chiefs, will have all that information at their fingertips.

Do you see that that situation improves the privacy of the individuals when the information is not with the validators, is not with the people who are voting, not with the members of the band, but with the entire public of Canada? Do you see that that could be construed as an invasion of the privacy of the individuals in question?

Ms. Jennifer Stoddart: Certainly to any of us in the situation of having a lot of our personal dealings being publicized because of the jobs we—

Mr. Dennis Bevington: The whole of Canada votes for our government.

Ms. Jennifer Stoddart: I can understand that. We have a situation in which a series of band individuals then have their earnings and/or total remuneration being looked at by all Canadians.

I think this comes back to the first question I suggested to you: is this justifiable in a reasonable and democratic society? And is this going to be effective in the goal that seems to be making band councils more transparent in their administration of money?

I went on to talk about whether it is proportional or basically overkill. Could you accomplish the same thing by making the information available to the department and to the band members only through—I think somebody mentioned—a coded access to the band website? I think those are questions you have to look at.

Is there also an alternative way of doing it? I mentioned some of the techniques. In some provinces, people with over a certain amount have their expenses or their remuneration disclosed. Could you do salary bands?

Mr. Dennis Bevington: It sounds as though you're leaning in the direction I'm talking about, that people who are validators of those particular elected officials are the ones who should have the information, instead of necessarily every Tom, Dick, and Harry across the country.

Ms. Jennifer Stoddart: I'm not leaning in any direction except that of privacy, and I don't have all the facts; you have all the facts. You're listening to all the witnesses. Some of you have intimate and personal knowledge of what's happening in aboriginal governance.

I'm just suggesting to you that you have to look at this question. This is a very relevant question: does all of Canada need to know how much band council chiefs and members need, or do their own band councils and possibly Indian Affairs?

● (1645)

The Chair: You have a minute and a half left.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): I really appreciate your input on this, and obviously it's very limited, because as you've indicated, you are not privy to a lot of the goings on in the first nations.

When we look at the Auditor General's report from December 2006, it basically said the unnecessary reporting burden placed on first nations communities needed to be reduced, and it noted that AANDC alone obtains more than 60,000 reports a year from over 600 first nations.

I know you can't comment on that—or maybe you can, I have no idea—with respect to whether or not this reporting habit that has been foisted upon the first nations is more than what is actually being requested from other levels of government, first of all.

Second, as my colleague was indicating, first nations have their own government. The federal government doesn't tell the provincial government how to disclose its information. In your view—and I don't know if it's within your purview—are first nations able to decide for themselves how to decipher that information and how to get it out there?

Also, when it comes time to providing that information to the first nations members themselves, as opposed to having it on a website, is that contrary to being able to get that information out to the members?

The Chair: I will just say our time is up, but if the commissioner wishes to comment in response, she may do so.

Ms. Jennifer Stoddart: I'll try to respond to those two questions.

Yes, I read about the reporting burdens described by, I think, the previous Auditor General. If it's any consolation, the burden on small entities to report to the federal government is already huge. Non-aboriginal small organizations frequently cry that they have been burdened with 160 reports per office and so on. That being said, honourable member, in preparing for this, I believe I read there was an announcement recently that it had been streamlined by the department.

Secondly, on the issue of whether aboriginal bands are a distinct level of government and what that means, perhaps I can refer to our general counsel.

Ms. Patricia Kosseim: I understand the importance of the question. I don't think either the commissioner or I, certainly not today, are able or are well versed enough in the kinds of constitutional issues that this may raise.

To the extent that we may, we can help you work through the privacy implications, using the framework that we put forward and inviting you to use it and adapt it to address some of the distinctions and the subtleties that you need to in order to, in your view, meet the ultimate objectives without unduly invading privacy. But I'm afraid on that question in particular, in terms of the federal government's role with respect to the governance of first nations, that's beyond my area of expertise, to be safe.

The Chair: Thank you very much.

We want to thank you both for coming today, Ms. Stoddart and Ms. Kosseim. We appreciate your time and your expertise, which you've shared with our committee. We know we pressed you for information that's beyond your mandate, but we thank you for being gracious in responding to our questions and responsive to our inquiries.

Thank you so much. I'm sure we'll see you again.

Colleagues, we'll suspend now for a few minutes and then move back in camera for committee business.

[*Proceedings continue in camera*]

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