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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1535)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I'll call to order this 50th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today, pursuant to Standing Order 108(2), we are studying the subject material of clauses 206 to 209 of the Indian Act in Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures.

Colleagues, before we get started with our witnesses who are waiting here, we do have just one piece of housekeeping business with regard to the decision by the subcommittee to convene this meeting. We have a budget that needs to be passed.

Our witnesses are here, but in fact, if we don't okay the provisions of the budget, it's coming out of Jim's paycheque—

Voices: Oh, oh!

The Chair: —so we want to make sure we pass this budget. Jim has told me that he has persuasive ways to see that all of you will somehow be paying for that.

Colleagues, could I have a motion to pass this budget as it has been presented?

An hon. member: So moved.

The Chair: It's moved by Mr. Rickford and seconded by Ms. Crowder. All in favour? Anyone opposed?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: I appreciate, colleagues, your taking care of that piece of business.

First up, colleagues, we have witnesses from the Department of Aboriginal Affairs and Northern Development. Today we have with us folks who are not strangers to our committee.

I'll turn it over to you, Andrew, if you want to begin. Then we'll have some questions for you, as is the custom of this committee.

Mr. Andrew Beynon (Director General, Community Opportunities Branch, Department of Indian Affairs and Northern Development): Thank you. *Bonjour.*

I would like to spend a few moments providing a bit of background on current Indian Act provisions dealing with designations to explain the context and then provide some information with respect to the proposed amendments in Bill C-45 that change the designation process.

Before I begin, I should mention that my name is Andrew Beynon. I'm director general of community opportunities branch at the Department of Aboriginal Affairs and Northern Development Canada. With me today is Kris Johnson, who is our senior director of lands modernization. We also have the good fortune of having Paul Salembier here; he is our legal counsel and has worked with us on these amendments.

I'll begin by saying that the concept of land designations in the Indian Act is relatively new compared to much of the Indian Act. These provisions were introduced into the Indian Act in 1988. They were designed to refine the provisions in the Indian Act dealing with use of reserve lands to create a category that allows for first nations to deal with lands, but without having to absolutely surrender them.

In this way, designated lands could remain reserve lands and not be cut out of the reserve. This feature of designation is particularly useful for entering into leases. That's because a lease is, of course, a temporary use of the lands, not a permanent alienation of the reserve lands. The designation provisions were added into the Indian Act primarily to allow for some first nations to also make arrangements to tax the leasehold interest, rather than have a third party on the reserve lands and lose that parcel of reserve land entirely.

By way of introduction, one of the interesting things for parliamentarians is that when the designation provisions were introduced into the Indian Act, they were introduced right into the provisions that deal with absolute and conditional surrenders of land, so when you look at the sections starting at section 38 of the Indian Act, you'll see references to absolute surrenders, conditional surrenders, and designations.

In the legislative provisions in Bill C-45, which make amendments to the designation process to make it more effective, we've tried, or the legislative drafters have tried, to keep largely intact and unchanged the provisions dealing with absolute and conditional surrenders, and to segment more and make clearer the designation provisions. I wanted to offer that as an introductory point: that these provisions in Bill C-45 really do focus on designations, and as much as possible leave unchanged the procedures and the provisions dealing with an absolute surrender when a first nation wants to take some land out of a reserve.

One of the key features of designations under the Indian Act is that designations have enabled first nations to provide jobs for community members through leases, as I mentioned before, collect property taxes from commercial and industrial developments, and even attract capital for developing small and medium-sized businesses. This is also relevant to the management of petroleum and mineral resources that are under Indian Act reserves. It's a connection of the designation provisions to the Indian Oil and Gas Act.

Designations have many purposes, ranging from oil and gas to commercial leases to industrial leases, and I think some of the witnesses who will follow us today will speak with their experience about the use of designations for these kinds of long-term leases.

Procedurally, under the Indian Act as it stands now, before the amendments proposed under Bill C-45, there are two important provisions with respect to designations. One of them is that the Indian Act is set up to require a community to hold a vote to decide upon a designation. It's not just the role of the band council; the voting procedure for designations under the Indian Act requires a majority of eligible electors to be present.

In practice, since 1988, whenever designations have been held, about 80% of first nation communities have failed to get the required voter participation or turnout at that first vote.

Under the current system, if a band council fails to get the required turnout on the first vote, it can request that a second vote take place to consider the proposed designation of lands. On that second vote, there is a lower threshold for voter approval.

The key point to raise with committee members is that in practice under the current Indian Act provisions, we have seen that in about 80% of these cases we're going to the second vote with the lower threshold.

The second issue with respect to the current Indian Act designation process is that after the community gets through the voting process, and usually a second vote, the consideration of the designation requires a federal approval in order for it to become valid. That federal approval is by the Governor in Council. The proposed designation comes in to our department and is reviewed by the Minister of Aboriginal Affairs and Northern Development, but then is taken one step further, going to a full order in council.

I will turn now to the nature of the proposed amendments in Bill C-45. As I said earlier, these are proposed amendments that deal only with designations. We've tried as much as possible to thread out any of the provisions dealing with absolute surrenders and leave those unchanged.

The key to these provisions in Bill C-45 is to make two improvements to what I have described before, which have ended up being lengthy and expensive processes for achieving designations of lands.

The first amendment is to lower the voting threshold for every designation referendum, eliminating the process of going to second votes and requiring merely a simple majority of voters in favour. It is anticipated that this will save months of time and the financial resources that would be required to conduct second votes.

I should stress that this is just an issue of the voting threshold, based on the practice and experience we have gained over time. This is not an alteration of the role of on-reserve and off-reserve voters. Under the current designation provisions, both on- and off-reserve members are entitled to vote; the same would hold true if Bill C-45 is passed.

The second proposed amendment, again based on our experience with the speed and cost of designation processes, is to eliminate the requirement for approval by Governor in Council as the final step in the designation process and instead simply provide that the minister may approve the designation.

These two proposed steps, I would suggest to you, do not represent a fundamental break with the concepts that have been around since 1988 for designations. It is still a process for temporary alienation of lands, primarily for leasing purposes. There is a community ratification process open to all of the community members and there is a federal approval to finalize the designation. All we have done is simplify the voting process and the federal approval, not eliminate either one of them.

I hope these opening comments provide some explanation of the provisions. We'd be happy to answer questions.

● (1540)

The Chair: Thank you, Mr. Beynon. We appreciate this.

We'll turn now to Ms. Crowder for seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you very much for coming before the committee.

Before I ask you a question, I have to make a comment on the process, which is outside your purview.

Our committee is looking at some clauses in Bill C-45. It is a huge bill that we as a committee actually can't make amendments to. If we wish, the committee can choose to write to the finance committee to propose amendments. This isn't a normal process for a committee to undertake study of a bill, a bill that has the potential of having serious impacts for first nations communities across this country.

I needed to make that comment.

We have a letter here from Treaty 8 that in a way captures some of the concerns that people are raising. It says:

> As the government has encoded these changes within the present omnibus legislation, the Indigenous Nations have no process to make changes. We have been silenced by the parliament process. We cannot make any oral intervention.

Then they go on to say that as a result, they're submitting their comments in writing. They say this is a prime example of the racism exhibited by the state of Canada towards their nation. Decisions are being made without their consent.

As you bring these changes forward, there are two questions I'd like you to answer. First, what consultation process did the department undertake prior to these changes being brought forward?

Second, although this is being touted as a way to speed up the process, what changes are being made within the department itself? I notice that the FAQs your department put out say the proposed amendments would not change the current level of service provided to first nations, including the initial discussions in planning and community information. Of course, I met with first nations across this country who continue to talk about the substantial delays within the department.

If you could address those two questions, I'd appreciate it.

● (1545)

The Chair: I'm sorry to intervene. I simply wanted to double-check. Was that the Onion Lake letter that you were referring to? It's Treaty 6, I believe, rather than Treaty 8.

Ms. Jean Crowder: I'm sorry. Yes, you're right. It's Treaty 6 territory, Onion Lake Cree Nation, absolutely.

The Chair: I think it's only the first nation, not on behalf of Treaty 6.

Ms. Jean Crowder: Yes. Thank you for that clarification, Mr. Chair.

Mr. Andrew Beynon: In response to the first question you raised about a consultation process, the legislative changes that have led to the budget are not ones for which there's been an extensive consultation process on the contents of the legislation itself, but I would offer that these provisions that modify designation provisions, as I said earlier in my opening remarks, don't really adjust the substance of a designation. It's still the same fundamental process of having a community decide upon whether or not they want to do a designation, followed by a federal approval.

Ms. Jean Crowder: Mr. Beynon, I'm sure you are familiar with the UN Declaration on the Rights of Indigenous People. Article 19 talks about “free, prior and informed consent”. It doesn't talk about the scope of the decision. It simply indicates that—

Mr. Andrew Beynon: You may hear from some other witnesses, but I would suggest that these particular proposals do not have any impact on or change aboriginal or treaty rights, which is where the courts have identified most of the consultation obligations.

Ms. Jean Crowder: But it's the department that's made that decision. You actually haven't taken it on the road to engage in a consultation process to have first nations determine whether or not that infringes.

Mr. Andrew Beynon: Again, I'll stand by what I said. We've looked at what these provisions do, and I think it would be very difficult to suggest that there's an infringement on aboriginal and treaty rights.

The other point that I would raise is that—

Ms. Jean Crowder: If you'll forgive me, I don't think it's up to the department to make that determination. I think it's the nation's right to make that determination, not the department's.

Proceed.

Mr. Andrew Beynon: I'm going to stick with what I said on the record.

The other comment I would make is that a number of groups have indicated concerns about the process that's required for designations and the very lengthy time that's required, especially to go through a multiple voting process and then to wait for the detailed federal approvals up to the Governor in Council. Therefore, in designing these changes, which are not wholesale changes to the designation provisions of the Indian Act, we were well aware of concerns that had been identified for us by various first nations.

Ms. Jean Crowder: Again, it's not whether or not these changes are good changes. It's the process that's used to implement them. I mean, we would agree that the process needs to be speeded up, so on that point, what has the department done about its own internal processes, leaving the voting and the Governor in Council piece aside?

Mr. Andrew Beynon: My comment is that we're looking at our own steps in terms of designations to see where we can make improvements, but because we will face a lower cost for every single designation, we anticipate that if these changes go through, we may be in a position to carry out more designations and get at some of that backlog of demand.

Ms. Jean Crowder: On the current levels of service and the funding provided to first nations, can you tell the committee how much the department spends on providing support to first nations when they want to undertake a designation process?

Mr. Kris Johnson (Senior Director, Lands Modernization, Department of Indian Affairs and Northern Development): The costs vary considerably by community. We typically cover the costs of the electoral officers who oversee the conduct of the vote. The costs of mailing out information packages to all eligible electors could be a few thousand dollars, if it's a small community. If it's a larger community, it could be considerably more.

Ms. Jean Crowder: Do you have a ballpark figure about how much the department spends annually on designation processes?

Mr. Kris Johnson: We conduct about 10 to 12 designations per year. Sometimes they require multiple votes. There are maybe around 20 votes. It's anywhere from $7,000 to $50,000 per vote. It is sometimes a little bit more if it's a particularly large community. The cost is variable from year to year. That gives you a sense of how they might total up.

● (1550)

Ms. Jean Crowder: Is there a backlog in the number of communities waiting for votes to take place?

Mr. Kris Johnson: No, not in waiting for votes to take place, because the volume isn't that high. However, we have heard anecdotally that some have avoided the process because of the difficulty.

The Chair: Thanks, Ms. Crowder.

Mr. Richards, we will turn to you for seven minutes.

Mr. Blake Richards (Wild Rose, CPC): Thank you, Mr. Chair. I appreciate that.

I will start by making sure there is some clarity around the idea of land surrender and designation. The act obviously speaks to both. Frequently, land designation is confused with land surrender because of the wording in the Indian Act.

Could you clarify for us the difference between these two terms, and which is being amended in Bill C-45, and why? Why it is important that changes to this legislation apply only to designations?

Mr. Andrew Beynon: I will give a nutshell answer. My colleagues may want to elaborate on it as well.

Essentially, the Indian Act prior to 1988 provided for two things: an absolute surrender of reserve lands or a conditional surrender of reserve lands. As the language implies, an absolute surrender was to be used when a first nation, for one reason or another, wanted to have part of its reserve land cease to be a reserve. A conditional surrender allowed the first nation community to take that same step, but with some kind of a condition tied on the release of the lands—for example, a conditional surrender for railway purposes for however long railways might use the lands, or for electrical utility purposes for the length of time the electrical utility used the reserve.

Particularly with conditional surrenders to a particular user for a limited time, what happened was some first nations came forward and suggested that the specific use and the very particular purpose behind the conditional surrender meant that there was still some remaining interest for the first nation over time. They tried to tax the lands, but the courts decided that the nature of an absolute or a conditional surrender was such that the land was not clearly remaining part of the reserve in order to be subject to taxation.

The amendments introduced into the Indian Act in 1988 clarified two things. One, they made it very clear that there could be a lesser step by first nations, which was to designate lands but not to fully surrender them. The designation would leave a sufficient interest of the first nation in those lands, particularly to permit its taxation. That was the major benefit of the Kamloops amendment in 1988.

As I said in my opening remarks, what Bill C-45 is doing is targeting those designation provisions, for which we now have about 20 years of administration experience, to simplify the process and to make designations go through quickly. It's a surgical set of provisions. It doesn't change the absolute surrender provisions.

Mr. Blake Richards: So we are only talking about the designation portion. The surrender is not being amended by Bill C-45.

Mr. Andrew Beynon: That's correct.

Mr. Blake Richards: Thank you. I appreciate that.

Given that we've now established that point, can you tell me what challenges the designation process currently poses to first nation land managers in dealing with prospective private investors? If you could give some examples, it would be very helpful.

Mr. Andrew Beynon: The current designation provisions have been helpful on the one hand in terms of making it possible to have long-term leases and to marry that with taxation of the leasehold interests, but experience has shown some problems with it, particularly the delays involved in having what is very often two votes by the community before you can be sure the designation has happened. Then on top of that, to have to go through the federal process all the way to a Governor in Council decision.

I think you'll hear from some witnesses from first nations later today on timing, but in many communities the total process for the lengthy designation is around two to four years. I'm even aware of one case in which it took eight years to finally go through a designation process. The problem with that for economic development is that it is simply not operating at the speed of business. Neighbouring communities are able to make decisions with respect to potential commercial, industrial, or residential use of lands far more quickly and capture economic opportunities. That's the first thing.

The second thing is that first nations dealing with the current designation process can't be 100% sure of the speed of going through the voting and the Governor in Council approval process. As a result, if an outside developer is offering some potential that the first nation community may want to pursue, they can't say up front to the developer that they can guarantee a six-month or an 18-month process.

Mr. Blake Richards: So you're suggesting that the benefits are that it will allow decisions to be expedited and also create some certainty for those potential investors to ascertain what the timelines will be in receiving or not receiving approval, which obviously, as we know, is a very important aspect of doing business.

Do you see any other benefits in allowing the minister to be able to approve designations without referring them to Governor in Council?

Mr. Andrew Beynon: Yes, I'd add one more, and that is, as I was saying in response to an earlier question, the anticipated cost of conducting a surrender is going down. Right now, an administrative cost is incurred in having to go to second votes.

● (1555)

Mr. Blake Richards: So in addition to those two facts, it's also reductions of costs. You feel this change will expedite the process for approval of land designations.

Could you give me an indication of to what extent we can expect this process to be expedited?

Mr. Kris Johnson: On your question as to the extent it will expedite, in the designation processes over the last five years, the average time between a first vote and a second vote is about four months, so by effectively eliminating the need to go to that second vote, you will speed things up by an average of four months. Sometimes it can take even longer than that, because you have to formally request it, get a response authorizing the second vote, go back to the community members with the information, allow a specified period of time for them to consider that information, and then conduct the vote.

The timing between a ministerial approval and a Governor in Council approval again is variable, but it's months on average, so when you total it all up, you're probably looking at six months at least, and in most cases probably much more than that.

The Chair: Thank you, Mr. Richards.

We'll turn to Ms. Bennett now for seven minutes.

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

As you know, this committee is studying land management at this time. It seems odd that, based on the two letters that have come to the committee from the Onion Lake First Nation and the Penticton Indian Band, some people think this is a good idea but others are quite offended. Many of the people we've talked to, as my colleague has said, say there was no prior discussion on this matter—no meetings, no consultation—and see it as a violation of their treaty rights to have imposed changes to the Indian Act without their consultation.

As the director general of the community opportunities branch, can you explain how it can happen that we sully the relationship with first nations, ending up with these top-down decisions that they had no say in and weren't even aware of? They didn't even get an information session this time, as opposed to what usually masquerades as consultation. They got a letter saying this is what's happening.

To go back to the UN declaration concerning "free, prior and informed consent", how do you do your job in terms of relationships with communities when this kind of stuff happens?

● (1600)

Mr. Andrew Beynon: I would offer two comments.

First, to go back to my previous answer, with all due respect I suggest that these amendments are not touching upon aboriginal or treaty rights.

The second point I would raise is that designations are not an obligation of first nations; they're a tool to be used by first nations that want to use designations. Simplifying the process but maintaining the role of the community in voting on the designations, I suggest to parliamentarians, is not really a fundamental interference with something that was existing in the Indian Act.

Beyond that, I have to leave it to parliamentarians to consider whether or not, for these amendments or for broader and more comprehensive amendments to the Indian Act or other legislative change, you would want to have a broader engagement with first nations before proposing change.

Again, this legislation is only dealing with the nature of those particular provisions that respond to a complaint about the speed and cost of designations.

Hon. Carolyn Bennett: But in terms of your declaration that this doesn't infringe on treaty rights, isn't it up to first nations themselves to interpret what they think is the right to have been consulted on things that affect them?

Mr. Andrew Beynon: Well, it's something that goes both ways. It is the government that has legal duties of consultation when those are triggered, so it's really for the government to consider whether proposed decisions or legislative actions might infringe on aboriginal treaty rights and whether they're justified.

Again, my suggestion is that this does not.

Hon. Carolyn Bennett: But to tuck something as sensitive as the Indian Act into an omnibus bill.... Have you ever seen that done before?

Mr. Andrew Beynon: I can't say that I have, but the other comment I have to make is that I am not in charge of making decisions on how the government introduces legislation. The choice of Bill C-45 or of another process is not for me as an official.

Hon. Carolyn Bennett: However, for you as the director general of relationships with communities and hoping for their success, consulting with communities probably is the way you generally do business. This hasn't done that at all—not one meeting.

Mr. Andrew Beynon: I would agree that as a director general, a lot of my work is done in consultation with first nations, and there is a lot of merit to drawing out views that they have. In many if not most situations, that's what we do. In this particular case of small changes to the Indian Act involving obvious impediments to economic effectiveness and discretionary provisions—they're not an obligation for first nations—that's the rationale for the choice.

I understand why you're raising the concern and offering what some first nations have said, but this is about as much as I can say as an answer.

Hon. Carolyn Bennett: Taking that view, you can't know what they thought because you didn't ask.

Mr. Andrew Beynon: I'm going to go back to what I said earlier. We did have indications from first nations—many of them—that there are great concerns about the delays in respect to approval of designation processes. This is not something that was developed by me without a sense of some input from first nations.

Hon. Carolyn Bennett: Well, getting the letter from Onion Lake afterward can't make your job easy in an ongoing relationship.

Mr. Andrew Beynon: I would only offer that there are some first nations that have indicated their support for these changes because they respond to the concerns about the speed and delays of designation processes.

Again, it's a discretionary provision. It's not an obligation on first nations.

Hon. Carolyn Bennett: Do you believe there is an obligation by this government to consult first nations on things that affect them?

Mr. Andrew Beynon: I'm not sure if that's—

The Chair: Ms. Bennett, we have to be careful about what we obligate our witnesses to answer when they are civil servants. Obviously we want to be careful to respect their jurisdiction and their responsibilities.

● (1605)

Hon. Carolyn Bennett: Their fearless advice, yes, and confidentiality.

Okay. That's fine.

The Chair: Thank you.

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

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

Thanks to the witnesses for being here today.

I heard you refer in your introduction to the elimination of the Governor in Council process and to allowing the minister to authorize land designation. I wonder if you could tell me about the opportunities in regard to time efficiency for first nations to move forward with economic development in that process, as well as whether you see anything that would hinder first nations from having the minister make that land designation as opposed to Governor in Council.

Mr. Andrew Beynon: I'll turn to the second part of your question first.

The existing system of federal approval for a designation is through the Governor in Council. The change in the legislation is only to make that federal approval through the minister. Quite frankly, I think that is seen as, and is, internal to the federal government.

To put a specific answer to your question, I can't think of any downside to first nations, to businesses, or to individual first nation members in the change from Governor in Council to the minister.

Mr. David Wilks: With regard to the voting process as it's set out right now, it seems to me as though it's a system that in some cases is set up to fail. There's a dual process. It would seem as though we've put an onus on first nations to utilize a system that we don't utilize anywhere else.

Could you speak to that with regard to a majority versus majority, vis-à-vis the simple majority that is utilized basically everywhere else?

Mr. Andrew Beynon: The existing system specified in the legislation and the regulations—of going through one voting process at a high threshold and then having a discretion, which is usually exercised, to go to a second vote at a lower threshold—is very uncommon. In practice, as I said, based on the lessons we have learned, there is often a tendency to just go to that second vote.

I can't say that for sure, nor can I speak to what's in the mind of individual first nation members, but most people know these votes are likely to go to a second vote. There isn't a huge incentive to show up for that first vote because you could end up casting your ballot in the second vote.

Mr. David Wilks: Would you agree that the majority of the majority vote is difficult, based on the fact that I assume you have to get a 50-plus-one result on every vote?

Mr. Andrew Beynon: Yes, it is difficult to obtain that high level of participation at the initial threshold.

To the earlier part of your question, the use of a simple majority to make a decision—the decision of the voters who participate in the vote, in other words—as proposed in the amendments in this legislation is a commonly-used practice. It's the level of vote, for example, for the selection of leaders in a first nation community election.

Mr. Kris Johnson: I'd like to add to Andrew's comments.

Part of your question dealt with a comparison to practices in other jurisdictions. The requirement for a vote at all is different from what most communities do when they're authorizing land use. A typical comparison for the designation process is the practice of zoning in many communities, where there's not a community referendum required.

Given the unique nature of reserve land, there has been put in place this requirement for a community referendum. Having a very high threshold for that draws it even further from the practice of other communities. At least simplifying the voting process to a simple majority brings it closer to, although it is still not equivalent to, the practices used by other jurisdictions.

● (1610)

Mr. David Wilks: It certainly seems to me it would make it a fair process.

Mr. Chair, if I have any time left, I will turn it over to Mr. Clarke.

The last thing I have to say is that it seems to me these amendments being brought forward would work well for the majority of first nations, especially with regard to economic development.

I don't know where the other side comes on this, but it would seem to me the status quo is not an option. What we have now is just not working. Would you agree with that statement?

Mr. Andrew Beynon: Yes, I would tend to agree with that on these two points, on the difficulties of dealing with that high level of voting on the first vote, the delays that are encountered in having to go to a second voting process, and again, the delay that's experienced in going all the way to a federal approval through one of the highest mechanisms, such as the Governor in Council.

Changing these provisions still respects the fact that you do have to have a first nation community vote and still respects the notion that there is a federal approval. It just simplifies them and makes them less expensive and faster.

Mr. David Wilks: If I have any time, I defer to Mr. Clarke.

The Chair: You have about 30 seconds, which is probably not sufficient to ask questions.

We thank our witnesses for coming today. We appreciate your testimony as well as your willingness to answer questions. We have another panel waiting, so we'll turn it over to them.

Thank you so much. We'll suspend, colleagues, and we'll keep it as short as we possibly can to allow us to arrange for our next group of witnesses. We want to make sure we allow as much time as possible for questions and answers.

In the next round, we have representation from the Assembly of First Nations, the Federation of Saskatchewan Indian Nations, the First Nations Tax Commission, the National Aboriginal Economic Development Board, and the National Aboriginal Lands Managers Association.

If all of you folks who are prepared to bring testimony from those organizations would approach, we can make sure this goes as quickly as possible. Thank you.

We'll now suspend, colleagues.

● (1610)

(Pause)

● (1615)

The Chair: Colleagues, I call this meeting back to order.

In our next panel we have representation from the Assembly of First Nations. We have Kathleen Lickers as well as Simon Bird.

From the First Nation Tax Commission, we have Mr. Jules. Thanks for joining us. You've been here before.

From the National Aboriginal Economic Development Board, we have another witness who has joined us in the past, Chief Sharon Stinson Henry. Thank you for being here.

As well, from the National Aboriginal Lands Managers Association, we have Wanda McGonigle. We also have Ms. Irons from the same organization.

Thank you all for being here.

We'll go in the order that follows our schedule and hear from the Assembly of First Nations first. Kathleen Lickers, perhaps you would like to begin with an opening statement.

We'll follow the list and then open it up for questions after that.

Ms. Kathleen Lickers (Legal and Technical Advisor, Assembly of First Nations): Thank you, Mr. Chairman.

Good afternoon to the honourable members of the committee, and thank you for the invitation to appear before you. I'll keep my remarks brief in the interests of my colleagues sharing our time.

I am an external adviser to the Assembly of First Nations. I have been providing them with legal counsel on the issue of additions to reserve and the reform of that process, as well as the specific claims reform.

I appear before you today to share the view of the Assembly of First Nations on the amendments. Our view is tempered by the process under which the amendments have come forward, but let me first share with you the view of the amendments themselves.

On the technical amendments to the Indian Act, we've read through the transcripts and the appearance of the minister before the Senate standing committee introducing the bill and the amendments in division 8 that are intended to streamline the designation process. It is a lengthy, costly, and oftentimes complex process to designate land, which is not the surrender of land, but the leasing of land. By all accounts, at the time at which it was introduced in 1988 it was, and is, commonly referred to as the Kamloops amendment, after the first nation that actually advocated for the change back in 1988. It is a process by to make lands for leasing purposes available to non-band members.

The amendments in the bill that speak to the separation of "designation" from "surrender" are a change that would do two things. First, it would improve the high threshold vote that is required by the provisions as they are currently written. Our colleagues who spoke from the department prior to this panel explained the two-tiered threshold of a majority of a majority on a first ballot, and if first nations are unsuccessful in securing that majority of a majority, that triggers a second vote. The separation of "designation" from that threshold would, in all likelihood, bring some efficiency and cost-effectiveness, frankly, to what is, as I say, an otherwise complex process.

The other elements that are far more technical in nature in this division 8 of Bill C-45 relate to the recommendation of the minister upon the vote having taken place.

Voting under the Indian Act must take place in accordance with its regulations. In the course of those regulations, there is the appointment of an electoral officer. The duties of an electoral officer are explained and detailed in the regulations themselves and include the giving of notice and the overseeing of the entire referendum process. It is after the results of the vote are known that the electoral officer is to sign a statement as to the validity of the vote, and that statement must also be signed by a representative of the first nation. What's technically changing in this amendment is that after that process the community must recommend to the minister to accept the results of the vote.

It was explained by our colleague, Mr. Kris Johnson, when he appeared before the Senate committee on November 7, that the amendment is intended to introduce a stopgap measure in terms of the community being in a position to signal to the minister that they are not prepared to recommend the designation result.

What's interesting about that, and I'm not suggesting anything hinges on it in this amendment, is that there are no amendments being introduced to the regulations themselves, so there is no displacement of the electoral officer in the process.

● (1620)

In fact, the referendum regulations do provide a review process that can be initiated by any community member who wants to challenge the referendum. They have seven days to do so. None of that process is being displaced in this amendment, but the minister can still disregard the designation vote, as it were, even by a simple majority.

The final change introduced by this amendment, again technical in nature, is the replacement of the Governor in Council approval of a designation vote by a ministerial order. We have seen this tool, the use of a ministerial approval in a designation process, through the use of pre-reserve designation in the claim settlements implementation acts that are available in the Prairie provinces of Alberta, Saskatchewan, and Manitoba. Those pieces of legislation were introduced purely to address the number of outstanding treaty land entitlement claim settlements that were occurring in those provinces in 2002.

The Auditor General of Canada has reviewed many elements of the implementation of those settlement agreements, but in the context of the use of designation under that legislation, it incorporates by reference the designation procedures of the Union Act, so in consequence that legislation will be equally impacted by the amendments that are introduced by Bill C-45.

What's important about that, which leads me directly into my remarks about the process—

● (1625)

The Chair: Ms. Lickers, we have gone over time, and I want to make sure we get your viewpoint, but I want to indicate that we are now into overtime—

Ms. Kathleen Lickers: I'm sorry, and I began by saying I was going to be brief.

Let me conclude by saying this: the process by which the amendments have been introduced runs completely at odds to the collaboration that the Assembly of First Nations is currently involved in with our colleagues from the department in the reform of additions to reserve. The very legislation that I speak of that will be impacted by these amendments, the claim settlements implementation acts, have been under discussion at that joint table in a collaboration to bring reform to additions to reserve.

As we come up to January and the first anniversary of the crown gathering, we question the journey that we thought we were embarking on together and the spirit of collaboration and cooperation that was promised.

Thank you very much. Those are my remarks.

The Chair: Thank you so much.

We'll turn now to Mr. Jules for his opening statement.

Mr. Clarence T. Jules (Chief Commissioner and Chief Executive Officer, First Nations Tax Commission): Mr. Chairman and members of the standing committee, it is an honour to be invited to appear as a witness before this committee again.

You are engaging in the important work of legislating first nations people back into the economy, which I support. I believe the proposed changes to the designation processes should lead to more economic development on our lands. I have served my community and people for the last 38 years as a councillor, chief, and leader. During that time, I've learned how the public and private sectors work together to generate economic growth.

The public and private sectors are dependent on one another. The private sector cannot sell its goods and services without adequate infrastructure, reliable service, and a legal administrative framework to protect its property rights.

The public sector cannot build infrastructure and improve services or create legal property rights and administrative systems without tax revenues generated from the private sector. In a successful economy, the public and private sectors support each other.

Unfortunately, this does not happen for first nations. We have a very small private sector; however, the road to fixing this lies in first changing our public sector. Hopefully, this brief story from my community will help explain why the proposed change is so necessary.

In 1988, as chief of my community, I led the first-ever Indian-led amendment to the Indian Act. The Kamloops amendment to the Indian Act, Bill C-115, created the term “designation” for lands that our communities wanted to use for economic development. The use of the term “designation” was intended to make it absolutely clear that a designation, previously known as a “surrender with conditions” or a “conditional surrender”, was in fact not a surrender at all. It was not to be confused with the surrender that involved giving up Indian interest in a part of a reserve.

As you know, with that amendment to the Indian Act, designations have been used by many communities and have helped generate millions of dollars of investment, have helped generate millions of dollars in property tax revenues, and have helped create thousands of jobs.

In 1993, again as chief of my community, we found out how difficult the designation process could be. We were approached by a developer who wanted to lease over 400 acres of our land to build a golf course and resort community. The development was to be called Sun Rivers. When completed, it would generate millions of dollars in tax revenue for our community and a number of employment and housing opportunities for our members. At the time, we believed that it would take two years to complete the designation process, complete the terms of the agreement, improve the infrastructure, and begin construction. We were far too optimistic.

The problem was that Sun Rivers was proposed for a site defined as band lands by the Indian Act. This meant that the land had to be designated for lease via the designation process set forth by the Department of Indian Affairs. That process requires a review by the department to ensure that the government is not exposed to any liability. Unfortunately, investment is all about weighing risks against expected returns.

Sun Rivers looked very good, but, like any investment, it was not risk-free. Because the federal government was risk-free, they wanted to define the “use” clause in the designation quite rigidly. Because our goal was to maximize the return, subject to our risk tolerance, we and the developer needed more flexibility. This disagreement led to a lengthy and consequently more costly designation process.

This difference in goals also put much more onus on the developer than would be typical in a non-first nation setting. They had to provide information materials and presentations to the community, detailing the plans for the development. We believe in informing the community and ensuring proper planning; however, the excess in this case added $200,000 to the developer costs over what would have been typical for a community.

During the designation process, we also unexpectedly received a concern from the Department of Fisheries and Oceans. They had looked at the proposed development from their offices in Vancouver and determined that the development would put spawning beds at risk. This was rather a surprising delay, since the proposed development was on a benchland that hadn't had a stream on it for hundreds of years, let alone any salmon. For those familiar with the Kamloops area, you will know that its annual rainfall puts it in the desert category.

● (1630)

Unfortunately, these geographic and climate factors are not obvious from looking at an aerial photograph in Vancouver. As a result, this caused another unnecessary delay in our designation process. We were, however, able to communicate the merits of the development to our membership, and 74% voted in favour.

After crossing the designation threshold we had to do three things. One, we had to create a legal and administrative system that provided sufficient property rights certainty to the developer and eventual residents. In the municipal context, this would have already been available.

Two, we had to reach a service agreement with the City of Kamloops and the developer to ensure high-quality infrastructure and local services were available at Sun Rivers.

Three, we had to ensure that we could work with the federal government so that lease transfers could be processed at the speed of business as opposed to the speed of government.

The Indian land deeds registry is not as efficient as the Torrens registry system in the rest of Canada. As a result of the added burden implied by the existing designation process, construction did not start until late 1998, a full two years later than expected, at a cost to us and the developer that exceeded $2 million.

If you are looking for an explanation as to why there is so little development on most first nation land, then this story should illustrate why. Simply put, in those days it took an average of four to six times longer and was five times more expensive to do land development under the Indian Act than off-reserve. The challenges of reducing these costs and reducing first nations poverty are one and the same.

I've got another story, but I'll leave it in the interests of time.

In this system under which we've lived for generations, as my father has said many times, we vote for chief and council but we don't vote for bureaucrats who actually determine our lives.

The proposed amendments to streamline the designation process are a step in the right direction. At the very least, the designation voting requirements should be the same as in other governments in Canada, where the majority support is sufficient. Accordingly, I support the amendments to the Indian Act as contained in Bill C-45.

The Chair: Thank you, Mr. Jules.

We'll now turn to Chief Sharon Stinson Henry.

Chief Sharon Stinson Henry (Member, National Aboriginal Economic Development Board): Thank you.

Aaniin kinaweya. Good afternoon, everyone.

[*Witness speaks in her native language*]

My name is Sharon Henry Stinson. I'm the chief of the Chippewas of Rama First Nation in Ontario, but I'm appearing before the committee—and I thank you for hearing me today—as a member of the National Aboriginal Economic Development Board.

The National Aboriginal Economic Development Board, as you may know, is a federal advisory board created in 1990 to provide strategic policy and program advice to the federal government on aboriginal economic development. The board brings together first nations, Inuit, and Métis community and business leaders from all regions of Canada to advise the federal government on ways to help increase the economic participation of aboriginal men, women, and communities in the Canadian economy.

Today I am pleased to offer information that may assist the committee in your study on the subject matter of clauses 208 and 209 in division 8 of part 4 of Bill C-45, which proposes to amend the Indian Act to modify the voting and approval procedures in relation to proposed land designations.

I would also like to offer the national board's views on these modifications and why we believe the proposed changes could go further, such as by providing first nations with additional leeway to amend the term and use of designations when circumstances change. At the board's last appearance before this committee in March of this year, we noted a range of challenges to creating strong economies on reserves, many of them related to the land management processes under the Indian Act, which are all too often expensive, complex, and extremely slow, resulting in missed economic opportunities.

This year, the National Aboriginal Economic Development Board conducted case studies of three first nations. These case studies provide solid evidence of this reality. The three communities that were examined were the community of Membertou in Nova Scotia, the Osoyoos Indian Band in British Columbia, and my community of Rama First Nation. We have all achieved relatively high degrees of economic success despite operating under an antiquated system that was never designed to allow for a range of economic opportunities such as we are seeing across the country today.

With respect to the proposed amendments to the Indian Act under consideration by this committee, our case studies reveal the following. Some of the panellists have already spoken to some of these issues, but I'll repeat them.

First, designation votes cause first nations to lose both time and money. To conduct a designation vote, a first nation must invest a significant amount of time and money to inform all of its members, both on and off reserve, about the vote. We must ensure that they have adequate information to make an informed decision, to hold meetings, to develop communication materials, and, finally, to conduct the vote.

For example, in Osoyoos a designation vote was conducted in 2008 for the Senkulmen project to set a designation length of 69 years and allow for light industry uses in the park. It cost Osoyoos $50,000 and took nearly five months to conduct that vote.

Later, to allow the band to seize an energizing economic opportunity to build a $250 million correctional centre, Aboriginal Affairs and Northern Development Canada and the Department of Justice insisted that Osoyoos conduct a second designation vote for the same parcel of land to change the lease period and allow for institutional tenants. The second designation cost the band an additional $20,000.

In total, the federal government's designation and leasing requirements caused Osoyoos to incur $150,000 in expenses.

Second, designation votes put existing economic activity at risk. Any amendment to the purpose and term of a designation requires an additional vote by the electors of the first nation involved. Communities do not have flexibility to change the duration or purpose of land use as economic opportunities present themselves or continue beyond the term of the original designation.

● (1635)

For example, the land in my community on which Casino Rama is located has a designation term. When that term expires, under the terms of the Indian Act we are to conduct another referendum to approve the future designation of those lands. This puts us at a $30 million net revenue risk.

That is unacceptable. Imagine Canada having to hold a referendum every 40 years on the location of the Parliament Buildings. Now imagine all the local businesses who have built their future on the location of these buildings and leaving their future up to a referendum. It is disruptive to the community and the economy. If you had to go through a referendum every 40 years or less—20 years in some cases—on the land you sit on today, that is unacceptable as well.

In conclusion, the national board is supportive of the overall direction taken in Bill C-45, to this extent: first, we agree to the proposed amendment to Bill C-45 to reduce the voting threshold to a simple majority, as has been mentioned. However, the board is of the opinion that the bill should go further and eliminate the need for a second designation vote when changes to the lease or the use of the land are required.

Second, while the national board supports any measure that will streamline the designation process, such as the proposed amendment to allow the Minister of Aboriginal Affairs and Northern Development rather than the Governor in Council to approve the land designation upon receipt of a band council resolution, the board would like to impress upon the committee the need to further modernize the Indian Act's land management regime. For example, the designation processes should be more similar to the process by a municipal authority to designate or zone land for a particular use. I heard that mentioned earlier as well.

Assuming that a comprehensive community plan exists, the use of costly and time-consuming referenda for decision-making should be limited. First nations that are willing and able should be provided with tools to free themselves from the bureaucratic gridlock that emerges due to the federal government's risk-averse approach.

On a personal note, I recommend that the committee seriously consider eliminating or removing the word "surrender" from the Indian Act and using the word "transfer", if anything. It's unacceptable to use that term.

Voting has already been mentioned in the discussion by the panel. First nations need to have a simple majority, as other communities do in their processes. For heaven's sake, we're not even allowed to have addresses of our voters, if you can imagine, to reach them to give them the information they need to make an informed vote.

I could go on and on, but I won't, in the interest of time.

Thank you, Mr. Chairman, for your invitation to be here today.

Meegwetch. Thank you.

● (1640)

The Chair: Thank you so much, Chief.

We will now turn to Ms. Irons for her opening statement.

Ms. Leona Irons (Executive Director, National Aboriginal Lands Managers Association): We'd like to begin by honouring and acknowledging the traditional territory of the Algonquin people. We'd like to thank the standing committee for inviting us to speak today. We look upon this as an opportunity to create awareness of raising professional standards in first nations land management and draw attention to the need for land management capacity in sustaining economic development.

In addition, we'd like to clarify our position related to Bill C-45, in that we are specifically addressing division 8, clauses 206 to 209 amendments, and with respect to the Canadian Environmental Assessment Act amendments proposed in Bill C-38, which Bill C-45 clarifies. We share the same concerns expressed by the Assembly of First Nations in relation to those amendments.

My name is Leona Irons, and I'm the executive director of the National Aboriginal Lands Managers Association. Today I have with me Wanda McGonigle, who's a NALMA director and the chair for our Ontario Aboriginal Lands Association. Our NALMA chairman, Gino Clement, sends his regrets, as he's unable to attend.

I want to give a background of our organization to validate our appearance here. The National Aboriginal Lands Managers Association was officially formed in 2000 as a non-profit, non-political organization. NALMA is a technical organization driven by first nations land management professionals, and we receive our funding support from Aboriginal Affairs and Northern Development Canada. We have a membership of eight regional land associations with 127 first nations and Inuit community memberships at large, namely in the Atlantic, the Quebec and Labrador region, Ontario, Manitoba, Saskatchewan, Alberta, Nunavut, and British Columbia. We also have some associate members.

Our members operate under various land regimes. We manage land under the Indian Act through our reserve land and environmental management program. We have lands under sectoral self-government under the First Nations Land Management Act, and then we have members who have full control and management of lands through their self-government. It's interesting to note that our membership manages over a million hectares of community lands. With additions of treaty land entitlement and specific claims, those projected numbers will increase significantly.

We have three basic mandates, in that we provide our members opportunities for professional development, networking, and technical support. This will raise professional standards to meet existing and emerging future needs for land managers to efficiently and effectively manage their lands.

We do have many challenges in managing first nation lands. We look at three major issues at least. As land management is the foundation for sustainable economic development, we need more professional capacity, more management tools and systems, and adequate resources to continue supporting our land management programs.

Managing reserve land is unique. There is no true counterpart. Just the definition of “reserve land“ poses numerous land management challenges.

Over the past 12 years we've made significant progress in raising those professional standards and promoting and building capacity in land management. Specific to reserve land designation issues and challenges, the designation process is a critical and imperative part of setting aside reserve land for economic development and other non-traditional use for extended periods of time. The typical designations go through multiple steps. The process takes approximately two years to complete, and in some cases more, as you've heard. Due to the complexities and the multi-phase designation process, many first nations have missed out on lucrative economic development opportunities. Given the extensive time and resources required to obtain reserve land designation, the process is not conducive to a fast pace of economic development.

The challenging phase of the designation is achieving the referendum voting requirements as prescribed by the Indian Act and its regulations. The purpose of the referendum vote is to determine informed consent by a majority of electors of first nations in favour of the proposed designation and the proposed transaction or its intended use. Achieving a majority of electors can be extremely difficult and, for some, unachievable, especially in cases involving large on-reserve and off-reserve populations.

● (1645)

The referendum process has many procedures and requires explicit timing. Significant costs are also associated in holding a referendum. Failure to follow proper referendum procedures could result in a contested and failed referendum.

The bureaucratic approval process can also create a lengthy delay. The various levels of government reviewing and signing off on a designation to reach an order in council are excessive.

In dealing with issues related to the reserve land designation, our organization is quite proud to say we've achieved many successes. As mentioned, managing reserve land under the Indian Act is unique and challenging.

To aid our members in managing the statutory land requirements of the act associated with economic development issues, we've developed a reserve land designation tool kit in partnership with Aboriginal Affairs and Northern Development. This practical tool kit has been a long time coming, and we hope to develop more of its kind in other areas of land management. The tool kit is an integrated set of printed materials, worksheets, flow charts, checklists, best practices, and case studies, creating modules designed to be used by first nations and their professional associates. The tool kit provides a consistent guide for the proper planning and preparation of designation proposals across Canada. We're very excited to be providing pilot training using the tool kit in January 2013 and intend to continue with formal training in the future.

In conclusion, as stewards of the land we have the foremost responsibility of ensuring quality land management to promote sustainable growth and prosperity within our communities. We also have the responsibility to provide technical advice and guidance to support improvement on matters related to first nations land management. Therefore, the National Aboriginal Lands Managers Association recognizes that the proposed amendments to the act outlined in division 8, clauses 206 to 209 of Bill C-45 have the potential to improve the designation process.

I'm going to be leaving you a copy of the tool kit to aid you in your study. Chapter 4 of the tool kit outlines the process of the referendum vote. You can see from the many steps that it looks complicated, which it is.

● (1650)

The Chair: Thank you so much.

Ms. Leona Irons: There is one other thing: I have a PowerPoint presentation that outlines the other requirements associated with a designation.

Again, thank you very much for the opportunity to speak. We look forward to seeing the study.

The Chair: Thank you, Ms. Irons. We appreciate your opening comments.

We'll now turn to our colleagues. We'll begin with Mr. Genest-Jourdain for seven minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Ladies and gentlemen, good afternoon.

[*English*]

I will proceed in French, so I would suggest that you put on your earpieces.

The Chair: I believe it's channel 1 if you're looking for translation. Can our staff in the room make sure everyone has an earpiece? I believe Mr. Bird may be looking for an earpiece. Thank you.

Mr. Genest-Jourdain, we'll turn it over to you.... Go ahead, Mr. Wilks.

Mr. David Wilks: Mr. Chair, we could just allow Mr. Bird to move to a seat with an earpiece. He doesn't have one.

The Chair: Sure. That may be the easiest way to accommodate him. I think we have it.

Thank you so much. I think we're ready.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Now that it's working, we will continue.

I will begin by yielding the floor to Vice Chief Bird.

You have not had an opportunity to speak, and we would very much like to hear your comments on today's delays and discussions, as well as on the legislative initiatives put forward.

Go ahead, Mr. Bird.

[*English*]

Mr. Simon Bird (Vice Chief, Federation of Saskatchewan Indian Nations): How much time do I have?

The Chair: You have to keep it within Mr. Genest-Jourdain's question time, so seven minutes. You're his witness, so he'll tell you when you're done.

Mr. Simon Bird: All right. Thank you very much.

I will state the obvious. I'm Vice-Chief Bird, a Cree member of Peter Ballantyne Cree Nation, voted in by 74 first nations in Saskatchewan representing treaties 4, 5, 6, 7, and 8. I want to state that although I serve as vice-chief of the Federation of Saskatchewan Indian Nations, I'm here by no means representing all first nations in Saskatchewan, and definitely not in Canada. I just want to state the obvious—that this is not consultation—but I did receive and was granted permission to speak on behalf of Onion Lake.

One of the immediate statements I will make is that we want clauses 206 and 209 removed from the omnibus legislation and a process that respects our relationship developed so as to meaningfully discuss the proposed changes. If at all possible, I'd like to read the statement given to me by Chief Wallace Fox of Onion Lake First Nation. Again, just sitting back there, I will mention one thing: that I appreciate the voices that are here in support of first nations, especially on this side of the table.

I've never been so embarrassed in my life to have three people here from the government decide for me as a treaty first nation. I hear stories from my elders and certainly from our former leadership that talk about the residential schools, that talk about the Indian permit to leave the reserve. To still have that going on, to have government people here say that they think on behalf of first nations they should do this or they should do that, is very offensive.

As I said, I come from an educational background. I've been a teacher myself and I'm a Cree speaker in the first nations and I still live off the land when I need to. That to me is my freedom to choose how I live. I have no issue with the people around the table who want to make it.... However they want to do business in regard to lands, that's their right. I don't go over to your first nation and tell you how to do things. What makes you think you have the right to come to our lands and do the same thing?

I'll leave it there for now.

● (1655)

The Chair: Have you got a follow-up question?

[*Translation*]

Mr. Jonathan Genest-Jourdain: Yes, of course.

How many minutes do I have left, Mr. Chair?

[*English*]

The Chair: You have three and a half minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

I will ask the witnesses a question, and they can decide who will answer.

During the presentations, we heard my colleague talk about consultations. So I will discuss a very similar topic—the fiduciary relationship that should exist between the Crown and the aboriginal nations across the country.

Of course, I am bringing up this notion of fiduciary relationship because it is a matter of identity for first nations. So we are talking about potential alienations, potential leases, and about territories and reserves. It should be understood that, with the population growth in our communities, these are issues of identity because we have to consider living on very limited territories.

Following the Supreme Court's decision in the Haida Nation case, the Crown's fiduciary obligation includes ensuring that first nations' interest takes precedence in unilateral decisions. As far as first nations' interests go, that means they have to identify the reasoning behind a specific piece of legislation, a specific initiative. First nations have a very low voter turnout, and there are issues when it comes to voting. That is why two ballots were planned. The low level of mobilization among first nations is highly likely due to a lack of information.

What do you think is the Crown's exact obligation when it comes to ensuring that our community members are well-informed before they can speak out on a specific issue and before they can even consider voting once or twice on a matter of identity? I would like to hear your opinion, so feel free to answer.

[*English*]

The Chair: There's a minute and a half, if anybody in the panel wants to respond to the question Mr. Genest-Jourdain posed.

Go ahead, Mr. Jules.

Mr. Clarence T. Jules: On the issue of designations, I've personally been dealing with these issues since probably 1974 or 1975. From our perspective, those communities that have been involved in land development have always viewed the issues surrounding fiduciary as a cumbersome process. That is because the federal government owns reserve land, so any time you're trying to get into development, you're having to deal with this notion of fiduciary, which came about as a result of the Guerin decision in Musqueam. I think it's an antiquated process and one that doesn't recognize, as Chief Bird was saying, the rightful owners of the land, which, ultimately, have to be the first nations. They have to be the ones to determine what is right for their future.

The Chair: Thank you very much.

We'll now turn to Mr. Seeback for seven minutes.

Mr. Kyle Seeback (Brampton West, CPC): Chief Jules, I have a couple of questions that I would like to ask you, picking up on some of the things that you talked about in your opening statement and a couple of other things that have come up at the committee today.

I consider you one of the driving forces behind creating strong economies on reserve with some of the land issues that you've brought forward, certainly when you talk about the Kamloops amendment.

How do you see these proposed amendments working? Do you see them as sort of complementary to the Kamloops amendment, sort of an extension that flows from that, or how do you view them?

● (1700)

Mr. Clarence T. Jules: What happened is that in 1988 we got embroiled in a court case that determined conditionally surrendered lands were no longer considered our lands. The only way to change that was by amending the Indian Act. I forget who raised the question, but one of the old chiefs from Kamloops said, “Surrender? Never. I've got a .30-30 back home.” Therefore, we had to come up with a word that allowed us to be able to do development on our lands without using the word “surrender” or, indeed, conditionally surrendering the lands, so I invented the word “designation”.

What's being proposed is simply a further step in outlining the ease with which first nations have got to get into economic development. The more steps that are involved, the more cumbersome the process, and the fewer the first nations that will be involved in the national economy.

Mr. Kyle Seeback: Yes, and we talked about this at committee. I know you know that. The First Nations Land Management Act and the first nations property ownership act, which you've talked about, are all things that are going to try to create strong economies on reserve.

I think you said that the changes in 1988 created thousands of jobs and millions of dollars in revenue. Do you see a similar effect taking place by simplifying the process as is being set out in these proposed amendments?

Mr. Clarence T. Jules: In and of itself, it isn't the magic bullet, but anything that reduces the cumbersome process that first nations have to be involved in to get economic development on their lands I support. The fact of the matter is that what we need is first nations to participate fully in the economy. We need to be able to develop our own institutions to facilitate that. The longer we have to depend on somebody else, other than somebody from our community, to determine what's good for us and what's bad for us, the longer we're going to be stuck in this quagmire of poverty.

Mr. Kyle Seeback: But, as you say, this will speed up the process. Do you not think that's going to—

Mr. Clarence T. Jules: Absolutely.

Mr. Kyle Seeback: I think that will spur more economic development—

Mr. Clarence T. Jules: Whether it be in treaty land entitlement or designations around the country, it will make it easier for first nations to begin to contemplate the steps that are going to be required to get into economic development. That means greater independence for first nation communities and greater employment opportunities, and, obviously, greater tax revenue for the community governments.

Mr. Kyle Seeback: I hear this phrase “moving at the speed of business” a lot. I'm not 100% sure what that means, but we talk about it a lot. Do you think this also is helpful in that respect? One official said they think it could take six months off the process, and another said it could take off even more. For designations, are we really getting close, then, to moving at the speed of business, do you think?

Mr. Clarence T. Jules: "At the speed of business" was coined by my dad in 1968 when he said that we elect our own chief and council; we don't elect bureaucrats in Ottawa to be our leaders. He said it takes us four to six years to be able to do a lease, and by that time those tenants or potential tenants are somewhere else.

We have to be able to move at the speed of business, meaning decisions have to be made at the local level.

This helps to do that.

Mr. Kyle Seeback: How much time do I have left?

The Vice-Chair (Ms. Jean Crowder): You have about two minutes and 15 seconds.

Mr. Kyle Seeback: I'm quite content.

The Vice-Chair (Ms. Jean Crowder): Then, Ms. Bennett, you have seven minutes.

Hon. Carolyn Bennett: We as parliamentarians are having a terrible time with not rewarding bad behaviour. We think that omnibus legislation is bad behaviour, but we think that not consulting first nations about legislation that affects them is intolerable.

As you pointed out, it's not even a year since the crown first nations gathering, and we have this raining down of legislation on everything with virtually no consultation at all.

We need your help because we want all Canadians to understand how unacceptable this is. Even if the legislation were to triple a budget or whatever it is on education or health or anything, if first nations haven't been consulted, then I think we as parliamentarians feel it is an obligation of government and that we need to vote against anything for which first nations have not been appropriately consulted.

It's probably the more political witnesses rather than the associations, but is that something you would want Canadians to understand, Vice-Chief, or the legal counsel?

● (1705)

Mr. Simon Bird: Thank you very much for your question.

I stated that I come from an educational background. The way I would explain this to non-first nations and Canadians in general is that our treaties were made with two nations. Both sides had obligations. One side agreed to share the land and maintain peace. The reason this treaty relationship was held so sacred is that we firmly believed that the relationship was not only made between two nations but witnessed and consummated, I'll say, with a covenant with our Creator.

There is a very large steering out in a lot of first nations, a lot of frustration. If you want our first nations to continue to hold up their end of the bargain in terms of our treaty rights, it is very important that our Canadian government not make unilateral decisions, because the treaties were made nation to nation. As FSIN vice-chief, I don't even have the authority to speak on behalf of my first nations. They must give me the voice in terms of what I need to take forward.

Again, I firmly believe that our first nations should not be omnibused. Their rights should not be omnibused. A large portion of our first nations have the ability to understand a nation-to-nation.... They do have the leadership; you simply have to ask them.

My letter here from Chief Fox states the following:

> On the 18th of October 18 2012, the government of Canada tabled another omnibus bill - this is called C-45. In the legislation, there are amendments to the Indian Act. These amendments make it easier for the "reserved lands" to be surrendered. As it presently stands, it needs a majority of the majority of electors to surrender the reserved lands. These amendments allow for a simple majority of the people who turn up to vote. If there are trhirty people and sixteen people vote to surrender, it is a legal surrender. Then, the Minister would deem that it was a vote of the majority of the electors and go to Cabinet for an order-in-council to remove those lands from 91(24).

Thank you

The Chair: Go ahead, Ms. Lickers.

Ms. Kathleen Lickers: Ms. Bennett, I want to address your concern, and it is a shared concern. Certainly the more political members of the organization may have an opportunity to speak to it on another occasion, but let me say this about the rewarding of bad behaviour.

The difficult position that this amendment represents is that while the technical nature of the amendments is largely positive, to wholly throw them away would be to take this organization in a direction that....

The current designation process is complex and is costly, and the amendments that alleviate and mitigate those measures are largely positive, but in the larger context of a collaborative relationship, which was set out at the beginning of the year, what we are foreclosed from knowing or from building on together is what other range of options might have been available.

What is the larger thinking? What would have been a much more expansive dialogue on the leasing of lands, of bringing lands into the economic arena on a more speedy basis, a more transparent basis? What would be a community's threshold vote that doesn't represent Indian Act regulation? What would be the language around the transfer of lands that removes the language of surrender, even on a conditional basis? We don't know. We were foreclosed from that dialogue. We don't know what other options would have been available. On the other hand, the nature of the amendments is largely positive, so we are equally in the same seat.

That said, the table that continues on in a relationship of collaboration and reform on additions to reserve policy, on which the Senate committee delivered its report at the beginning of this month, is going on with the same officials who are speaking to these amendments. That dialogue has been proceeding in a collaborative way, but what will be the outcome of this and its impact on that dialogue? The legislation is part of that dialogue and the options for legislation have been part of that dialogue, which runs completely at odds.... That collaboration runs completely at odds.

● (1710)

The Chair: Thank you, Ms. Lickers.

We'll turn now to Mr. Rickford for seven minutes.

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

Thank you to the witnesses today.

I have a couple of questions. I'll go to Kathleen first, and then I'll be shifting gears to talk to Chief Jules.

Kathleen, first of all, I take Chief Sharon Stinson Henry's remarks about this whole process of referendum as something for consideration. Right now, as you know, there is this informed decision process that is regulated by the Indian referendum regulations. There is a process there that, importantly, has some critical elements: initial discussion, planning, and community information meetings.

As briefly as we can, would you agree that the proposed amendments speed up the process without changing the substantive requirements that, for now, are worth protecting with respect to designated provisions?

Ms. Kathleen Lickers: They do. It's important to state that the amendments, clauses 206 through 209, speak to one very specific component of designation which, as you say, is the voting required under the regulation. That change from a two-tiered voting threshold to a simple majority on one ballot is very significant but represents one element of the whole of the process.

Mr. Greg Rickford: Moving from there, the "majority of the majority" was problematic. I was reading a letter, which I think everyone on the committee has, from the Penticton Indian Band. They said, *inter alia*, that they "have been moving aggressively forward with a number of economic development initiatives" and that "the Indian Act simply does not match the pace of business". We've heard about this speed of business concept.

As a committee, we've actually visited the Penticton Indian Band. They're geographically located for some huge economic opportunities and they are quite vested in this whole process, but notably, they have a problem with this "majority of the majority" idea.

I think you stated it earlier, but do you have any additional comments on how helpful it is to reduce the majority threshold?

● (1715)

Ms. Kathleen Lickers: It was spoken to earlier by the representatives of the department, in just the time factor alone. The information sessions go forward to the second vote as well. Certainly, this varies by the complexity of the case. The time, a four- to six-month lapse between the first vote and the second, is a significant factor when you are talking about potential lessees coming forward and wanting to maximize the opportunity under consideration.

The other aspect that does have some efficiency built into it doesn't necessarily represent the vote but does represent where the ministerial order would proceed over the Governor in Council. In my opening remarks, I spoke about having some experience or evidence of that. One of the benefits coming out of the Prairie settlement legislation is a process that allows for that to happen. Experience has been that it represents a savings in time of about six months, which in and of itself represents some cost-effectiveness.

Mr. Greg Rickford: Yes, that's fair. I appreciate that, Kathleen.

In your presentation, you also referred to this new requirement for the band council resolution. The new requirement for band council resolution is innovative in that it also gives the band an opportunity to recommend or to reject to the minister that they recommend or accept this. This is a new control mechanism we see taking place at the community level. You made a comment about its being somewhat problematic for you.

Isn't it also true that in these situations, this new requirement for the BCR could facilitate an appropriate decision by the minister?

Ms. Kathleen Lickers: I have to say that as benign as it appears on paper, this is one area where a dialogue with Canada is needed on the thinking behind the necessity of introducing a further stopgap after a community vote.

I'm curious. The community would have gone though that referendum process. Implied within that small section of the amendment is that the community would doubt the informed consent they have just given by a simple majority.

This is one aspect for which a collaborative process would give some insight on why that is a necessary amendment. If you have a referendum by simple majority and you have a review process set out in the referendum, it's not clear to me why a further measure from the community would be necessary. Why is it necessary to have the electoral office and a representative of the leadership sign off on the vote, and then you give them the further opportunity to say no?

Mr. Greg Rickford: It may be contrary to the outcome of the—

Ms. Kathleen Lickers: Not only is it presented in a way in which the community could choose not to recommend, but also the minister has the ultimate say. The minister himself or herself could decide to disregard the vote, even as a simple majority, so there are a lot of stopgap measures. It's not clear to me where it actually becomes definitive.

The Chair: There are 10 seconds left.

Thank you, Mr. Rickford.

Thank you to our witnesses in this round. We appreciate your testimony. We thank you not only for your brevity, but also for bringing forward points that were absolutely essential.

We will now suspend the meeting.

We will return to our next group of witnesses, Mr. John Gailus and Mr. Gordon Shanks.

We are running a little bit behind schedule, colleagues, but I think this last round was important.

Mr. Vice Chief, were you looking for a point of clarity?

● (1720)

Mr. Simon Bird: Yes. I have two quick questions. Can I make a submission?

The Chair: You can bring them over to the clerk, and we will have those circulated.

Again, thank you very much. We will now suspend and open up for our next witnesses to come forward.

● (1720)

(Pause)

● (1725)

The Chair: I call this meeting back to order.

Colleagues, there has been some discussion among the respective parties and there seems to be an appetite to collapse the two final panels into a single one as we only had one representative in the final panel. I think this will be a more effective use of our time. That is why you will see this panel differs from our original agenda.

Today in the last panel we have Mr. John Gailus. He has been here before, as has Mr. Gordon Shanks. Thanks so much, gentlemen, for joining us.

We have Chief John Thunder joining us as well. He is the chief of Buffalo Point First Nation.

We will go in the order of our listings here.

We will turn to Mr. John Gailus first and have his opening testimony. Then we will follow with Mr. Gordon Shanks and then the chief.

Mr. John Gailus (Partner, Devlin Gailus Barristers and Solicitors): Thank you, Mr. Chair. It is good to be back.

Just by way of background for the members, I am a lawyer. Please don't hold that against me. I'm sure there are a lot of you in the room.

I am a member of the Haida Nation on the northwest coast of British Columbia. I am also a former employee of INAC, but not for as many years, apparently, as Mr. Shanks, so I will defer to him.

I worked there for about four and a half years as a land management leasing officer. I did a number of designations and leasings. Since 1999 I have been in private practice.

Part of my practice also is trying to navigate the designation processes in the Indian Act and to get some on-reserve economic development going.

I only have a few comments on the proposed amendments and I will keep them brief.

As a practitioner, I am very much in favour the amendments. I have two current files on my desk that are designations; I have to say I talked to one of my clients last week, and they said to tell you they are in favour of the amendments.

I think the elimination of the double majority requirement and Governor in Council approval will shave several months off the process.

In addition—and I talked about this before in my appearance on the land use study—it will also encourage compliance with the act. Many first nations are forgoing the process for a do-it-yourself approach, not taking advantage of the highest and best use of their lands and potentially exposing themselves and the government to liabilities.

However, lawyers always try to find holes, and a couple of areas cause me concern.

First is the amount of discretion that is going to be vested in the minister's office. As you are probably aware, the designation process can be traced back to the Royal Proclamation of 1763. Its purpose today is to ensure the informed consent of the members of the band both on and off reserve.

The two-vote requirement is common in all sorts of organizations, and certainly in terms of corporations. My testimony is that there needs to be a quorum. We speak of quorum in the corporate sense; in terms of the Indian Act, the quorum is 50% plus one. You need to show up to vote, or vote through mail-in ballots.

In the corporate sense, if there aren't enough people to constitute a quorum, you adjourn the meeting. Then you have a second meeting, and it's just a simple majority, so there is some consistency with the current act and what happens in the corporate world, as it were.

Without having a quorum threshold, there is the possibility of lands being designated for long terms, for example 99 years, without a significant portion of the membership voting. I submit there is a possibility of that leading to legal challenges.

In my view there needs to be a clearly defined quorum that the minister will accept as a broad consensus. While this may be addressed in policy or amendments to the referendum regulations, my personal preference would be that it be embodied in the legislation.

Overall, however, the amendments are a significant step forward, with the caution that the lack of a quorum—and I use that term in the corporate law sense—may lead to legal challenges.

● (1730)

The Chair: Thank you, Mr. Gailus.

We'll turn to Mr. Shanks now for an opening statement.

Mr. Gordon Shanks (As an Individual): Thank you, Mr. Chairman.

Members of the committee, thank you for inviting me to appear before you again.

As you may recall, when I appeared before you last May I told you that I had spent more than 20 years in the Department of Indian Affairs, most of that time as an assistant deputy minister, so I have some familiarity with the topic that you're studying. However, my knowledge is not absolutely current.

I had the benefit of listening to the panel before me, and so, unfortunately, most of the points I was going to make have already been made much more eloquently than I can make them.

I'll briefly make three points, though. First is the obvious one. You may have thought of this before, but the fact of Indian land has been a central aspect of first nations in this country. I think an argument could be made that without the protection of the Indian Act, first nations as they appear today—as vibrant, intact entities—probably wouldn't exist. The notion of the Indian Act and Indian land has been with us for a long time and has been central to the history of first nations.

The question you're studying now is what standards should be used if that Indian land is going to be leased to someone else—generally speaking, to non-Indians. The Indian Act, as you know, doesn't allow land to be used by non-Indians except through the permission of the crown.

I would argue that if a first nation is proposing to give up its land absolutely—for ever and a day, what's called a “surrender” under the Indian Act—the bar should be very high. This is collectively held land, and therefore it's legitimate that there be a high bar and that no changes be contemplated in the Indian Act. I would agree with that.

The decision on leasing is a separate matter, though. Leased land does not disappear from the land base of the community; it's simply an allocation to someone else to use it for a period of time, and it reverts to the first nation after the lease ends.

Land is a commodity that is necessary for economic development, as Manny Jules pointed out to you. The timing of economic development is a very significant factor. I've heard complaints many, many times from first nations about the difficulties in getting things done in a timely fashion. I would agree that anything that is going to speed up the process at all is a good thing. I would lend my support to that amendment.

The last point I would make—and it's one that was alluded to by others, although maybe not as directly—is that I wonder whether these amendments really go far enough, in the sense that they still require the minister for Indian Affairs and Northern Development to approve a referendum. I think it might be time for the committee to think about throwing off the vestiges of colonialism and transferring that fiduciary duty from the federal crown to the first nations themselves.

This is obviously a complicated question, and it would require a fair bit of analysis and study, but I think the notion of the designation really raises it. Once a first nation has decided that they want to lease the land, on what basis should the minister second-guess that first nation? If they have done things through due process and followed norms of advice and involvement, I think the committee may want to say that perhaps it should be left to the first nation and that the crown can remove itself from the decision.

Those are my opening comments, Mr. Chairman.

● (1735)

The Chair: Thank you, Mr. Shanks.

We'll now turn to Chief Thunder for an opening statement.

Chief John Thunder (Chief, Buffalo Point First Nation): Thank you, Mr. Chair, as well as members of the standing committee, for this opportunity.

My name is John Thunder. I am the chief of the Buffalo Point First Nation, located in Manitoba on the beautiful shores of Lake of the Woods, just across the border from the United States.

I am 52 years old. The first time I proxied for my father was when I was 18 years old at the Assembly of Manitoba Chiefs meetings. I have known the likes of Walter Dieter, Robert Conley, and Brian Vino. I even have a picture of Jean Chrétien wearing a headdress and trying to implement the 1969 white paper. Between my father and me, we have led the way for first nations in lands and economic development. We have basically written a book on it, and this is what I present to you today. I have a few books that you can help yourselves to in order to read our story.

What has been transpiring since my dad, both financially and personally, started 35 years ago to build a modern resort community, a world-class tourist destination, is that today we have a total investment of about $50 million in infrastructure and community development that surpasses most communities in Canada. We have a deficit of a mere $3 million. We have literally graduated from the Indian Act and no longer need these impediments that are placed in front of us. It is my goal and priority to host a contribution-burning ceremony in 2015 to finally sever the ties with the department of dependency.

Beyond the need to have our land code passed, and without the siege and takeover and sabotage in our communities' referendum, we more importantly want to have the total economic impact that we have created on our land. This peninsula is generating four times the revenue in taxes and natural resources. That is what our government should have for ourselves, rather than those moneys being pocketed by other governments. This is what will ultimately allow us to get out of the dependency that has been created for first nations.

There are literally billions and billions of dollars every single day that run right through both our front yard as well as our back door. Our lake is a hydro reservoir for electricity and, of course, the city of Winnipeg's drinking water. There are two transmission lines, and a natural gas pipeline runs six miles from my community, all exporting into the United States with not a penny of those revenues benefiting my community. The Canadian National Railway cuts off our community for a total of four hours every single day, yet they pay taxes to the Rural Municipality of Piney while that railroad line runs right through our community. The property taxes from this business belong to the first nation and not some other government.

I heard a good line from Paul Fauteux today, who did this study on 25 successful first nations: “I stole it fair and square.” I thought that was a pretty good analogy. It is this injustice that I have been trying to correct, but with little to no success.

We have been identified as one of the healthiest and fastest-growing communities in Manitoba, and that includes the non-aboriginal communities as well. To continue to go through processes that take a minimum of five years to accomplish is nothing short of economic suicide. Then to allow economic terrorists to sabotage all of our hard work will set us back as first nations another 30 years. Having a community vote on whether a business gets to be built on our land is insane, to say the least. The time for extracting the Indian Act from our lives to allow first nations to move forward based on their own merits is long overdue.

It is interesting that in our treaty land entitlement process, a second vote of the simple majority was incorporated into our referendum process so that we were guaranteed a favourable outcome. This might sound somewhat contradictory, but one must understand that a lot of our people lack the trust and the education to make an informed decision that ultimately is handed down to us by the Indian affairs department. It would only make sense to have all this made available with the lands management program.

● (1740)

I would also like to question why the Department of Indian Affairs and Northern Development has watered down this study on the successes of first nations and why the recommendations are being ignored and whitewashed. I had to post this study on my blog so I could create an opportunity for other first nations to have access to this document, because no one in the federal government was willing to move this forward.

As the chiefs in 1910 said to Wilfred Laurier, they say that they have authority over us and claim this country as their own, using their courts to regulate and control us. That was 102 years ago, and still we live with this hanging over our heads to this very day.

In closing, let me say that without the authority to implement the financial as well as the judicial side of government, we might as well be denying the future of Canada and the first nations of this country. We should be assets, not liabilities. We can help protect our country from exploitation and start adding value to our resources, rather than continuing to wholesale them. We should sit as equals with the rest of society in Canada.

If we play our cards right, we can become economic powerhouses by using our land and resources to the benefit of all of our people. We can protect the environment by reinvesting these moneys where they belong. This is what I consider a sustainable and long-term strategy for becoming a community for the future.

Meegwetch, and thank you.

The Chair: Thank you, Chief.

We'll turn to Mr. Bevington for the first seven minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you to all three of the witnesses.

We've all really enjoyed having witnesses here on this particular bill, but I think we all feel a little frustrated as well, because this is not leading to any changes in this legislation. This is the way it is right now in Parliament.

I want to go to the future, because quite obviously all three of you have said that this is not adequate. What would be adequate for first nations? What is the direction first nations want out of this type of legislation? Where do first nations want to go, as nations and as governments?

I think I heard pretty clearly, Chief Thunder, about where you want to go.

Could I just get from each one of you a snapshot of where you think first nations want to go, from your experience and your understanding? That includes Mr. Shanks, who's worked on the other side for quite a number of years.

● (1745)

Chief John Thunder: As a first nation leader, I have spent my entire life studying and watching what has been transpiring for first nations across Canada, and I have travelled from coast to coast to coast and seen a lot of first nations. I've consulted over 50 first nations for economic development purposes. At the end of the day, all I can say is we only have 4% of the land in Canada. The rest, the 96%, is controlled by the Government of Canada and the provinces, yet the 4% we have continues to be milked by the Canadian provincial governments for their own advantage. We get nothing from the 96% of land that exists out there, and that includes our traditional territory, our Treaty 3 traditional territory. I get nothing from that. My community has never received one penny, yet there are billions of dollars floating right by my community, all around my community.

I'm not trying to ride on the coattails of somebody else by taking their money, their businesses, and their revenues. What I am saying is that the economic impact that we've created on our land is worth more than anything that the Department of Indian Affairs and Northern Development will ever give us.

One of the questions I have always had is why, in Manitoba, does the province receive $1.5 billion in equalization payments to subsidize that small population base, while that same society uses our population as a means to cap us with a formula? That is why first nations are so reluctant to come to the table to deal with the Canadian government. It's because basically it's a one-sided affair that doesn't allow us to move forward.

The Department of Indian Affairs and Northern Development blamed my businesses, called me “an enterprise”, and said our sewer system would not be funded by the Department of Indian Affairs because of that. When the federal government can sit there and blame my businesses and then use Revenue Canada, another department of the federal government, to turn around and tax those same businesses by collecting GST, income tax, capital gains, and then deny us those taxes to have our businesses' profits and revenues build our communities' infrastructure, to me, that is economic suicide. It can't continue to happen. Either the federal government has to get off our land and leave those revenues to our government or else take fiduciary responsibility for our affairs. They can't have it both ways.

They steal our money and then they deny us access to those very dollars. If our businesses have to build our communities' infrastructures, then there is absolutely no sense in going into business because nobody in their right mind would build a business and take their profits and give it to something that has nothing to do with what they are doing from a business perspective. It doesn't work that way in the rest of society. Why should it work that way with us, as first nations?

Mr. Gordon Shanks: To answer your question about where first nations want to go with this, my experience tells me that they want to go back to the discussion of the mid-1980s when there was a lot of talk about self-government under the Canadian Constitution. I think what first nations are really looking for is a recognition that they constitute a level of government within the constitutional sense, and they want to be treated as equals in a legal sense. You can't really talk about first nations monolithically, because there are so many different viewpoints, but the ones involved in economic development and in land, by and large, would like to create a different land tenure. They would like to get out from being Her Majesty in Right of Canada and create a land tenure of first nations that is not subject to the crown.

That's a complicated thing to do, but that is essentially, at the end of the day, where first nations want to go.

● (1750)

Mr. John Gailus: I'd agree with the comments of Chief Thunder and Mr. Shanks on this. I think there isn't a silver bullet; there isn't a one-size-fits-all solution out there.

When you're looking at first nations, you see there are some common aspirations. They want autonomy. However, there are limitations from community to community, based on geography, capacity, and education, on whether or not they are prepared to take on the full self-government piece. The first nations I deal with vary greatly across the board in terms of their capacity to manage their communities. That's not their fault, but I don't think there is a one-size-fits-all answer.

In British Columbia, though, where I do most of my work, we see first nations taking up the treaty process, for instance. At least half of the first nations there want self-government.

In the economic development context, you've seen a number of first nations clamouring to get into a land code under the First Nations Land Management Act. There is a long queue of first nations that want to get into the FNLMA, but I know that funding is an issue there.

There is devolution as well. I'm not sure whether the government is doing section 53 and section 60 delegations anymore. I think they are pushing everybody to the land code.

The common theme is that first nations want to be autonomous when it comes to making decisions about their land.

The Chair: Thank you very much, Mr. Gailus and Mr. Bevington.

We'll now turn to Mr. Boughen for seven minutes.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair.

I want to extend thanks to the panel for staying with us throughout most of the afternoon. We appreciate your comments and your positioning. If we don't hear from people in our constituencies, we don't know what they are saying, and so we appreciate your willingness to share your thoughts with us.

As I listened to the speakers this afternoon, it seemed that a common theme was around time and timeframe. I wonder whether each panel member might share with the committee your thoughts on time. If the government said, “Here it is; you dictate the times and how you want to set it up”, what would you say?

Chief John Thunder: The process that the Buffalo Point First Nation went through was that Councillor Green, one of my councillors, received the education. I've received the education. My executive assistant also received the education. We have more than enough expertise.

Once we had the education, we tried to go into the process and were told no money was available and that we would have to wait for three years. We waited three years, and then when the process started, we were told there was still no money and that we would have to pay for the process ourselves, so we did. I think we're the only first nation in Canada that was required to pay for it ourselves.

We completed the process, which required three community meetings and a consultation with all members. In January two years ago we set the referendum date, but the minister didn't sign our independent agreement, and for whatever reason didn't sign it for a year and a half.

Once that minister's signature was received, we sent out the referendum date and the package, but the schedule and the timeframes were off by one week because of certain delays. The lands management programs delayed their half of it. Then we had to send out another referendum, so we did it three times.

By that point our people were totally frustrated, had no idea what was going on, and were questioning the date. When we finally held our referendum last week, we had some band members come in, take over the office, and put a stop to the referendum.

I ended up with a court injunction and an extension to the court injunction. The RCMP refused to abide by the court injunction, so these people are still occupying my office. This is the third time they've taken over my office. I got a court injunction the last time, 12 years ago. The courts wouldn't deal with it and the RCMP wouldn't enforce it. I've spent tens of thousands of dollars on court action, yet the RCMP has refused to abide by the court injunctions.

The bottom line is that ever since we started our community's development.... We were flooded out of our community. Nobody lived there for over 50 years. When my father started this modern community, he built it from scratch. There was nothing there. We had to build our own roads, our own infrastructure. We had to do everything. The only thing INAC did was try to set us up to fail. I believe to this very day that they're still trying to set us up to fail, because I can't understand why the RCMP doesn't abide by a court injunction that comes down from the Federal Court.

Either way, all I know is that the sooner we get rid of the Indian Act and the sooner we get rid of the Department of Indian Affairs, the sooner we can take back our lives and live a healthy, productive life.

● (1755)

The Chair: Thank you.

Mr. Boughen, you have about two and a half minutes left.

Mr. Ray Boughen: I would like to hear thoughts on this time concept from other panel members, because that seems to be across the whole piece. From what the chief just said, it is definitely an important factor. You're waiting three years to put a business plan together, and in that length of time wars are won and lost and people fly to the moon and all sorts of weird things happen.

Mr. Gordon Shanks: I can only agree that the frustration first nations have is with the bureaucratic lengths. Anything that can speed that up is going to be helpful.

Manny Jules talked about the speed of business. We're not talking about a very complicated thing here. We're simply saying that if I want to put in a store and I want to lease the land, I want to know if it is available for lease. My banker will give me 60 days, and I want to get this done. Are you on or not?

This is not rocket science. It is completely unnecessary to make the process as convoluted as it is, and it could be shortened a lot more. This legislation doesn't do very much, but it's a step in the right direction.

Mr. John Gailus: Certainly the current state of affairs is unacceptable in terms of how long it takes from getting a project proposal to having a lease in place. As I think I said in my opening comments, eliminating the double majority requirement and eliminating the Governor in Council requirement could shave six to 12 months off that process.

You've still got the Indian referendum regulations, which take something like 49 days, I think, in terms of the notice that's required, so that's still going to be an issue. Then there's a host of policy requirements in order to even get to your designation vote. There are appraisals, surveys, and environmental assessments, although I'm not sure that's still a requirement under CEAA 2012; I haven't looked at it. There are community meetings and then negotiations with the developers, and lease terms imposed by the Department of Aboriginal Affairs and the Department of Justice that third parties may not like. There are a lot of negotiations that go on with that as well.

These proposed amendments are certainly a step in the right direction, and there are other alternatives, as I said, land code being one example. I think that's what Chief Thunder was talking about: trying to get the land code process in place. That's not a fast process either, so we need to work on that.

● (1800)

The Chair: Thank you very much. I apologize, but your time is now up, Mr. Boughen.

We'll turn to Ms. Bennett for seven minutes.

Hon. Carolyn Bennett: Thanks very much.

Thanks for coming, because, as you know, we have some serious concerns about the process around all of this.

Mr. Shanks, have you ever seen changes to the Indian Act tucked into a budget bill of this size?

Mr. Gordon Shanks: No.

Hon. Carolyn Bennett: Do you think it's a good idea?

Mr. Gordon Shanks: Well, in my experience, if you don't consult you end up shooting yourself in the foot. One of the wise old chiefs used to say to me, “Go slow to go fast”, because if you don't, you'll get nowhere. You need to ensure that enough people have their say and, as one of the chiefs said this afternoon, you need to explore the options. Who knows what options were cast aside, or why these were chosen over others? No one knows if it's presented as a *fait accompli*.

In my experience, consulting and engaging with the affected players makes sense.

Hon. Carolyn Bennett: In terms of understanding the context, I think all of the panellists have expressed the ultimate goal of autonomy and I think the reason for this part of the omnibus bill is to try and fix some irritants, but as we've heard, even from the legal counsel to the AFN, we don't know the context or what other choices could have been considered. I think the concern we've heard from you, Mr. Gailus, is about the unintended consequences of legal liability if you don't have a quorum, and that a simple majority of not enough people could actually cause big trouble.

Is that what you were saying?

Mr. John Gailus: I think the concern there is twofold.

The act as it currently stands is very clear on what the quorum is for a meeting—it's 50% plus one—whereas the amendments that are being proposed rather leave it open. If I'm meeting with a client or I'm meeting with a developer and I say, "Here's the new process, and this is the way it works", they will ask, "How many people do we need to get out to the meeting?"

Well, what's the threshold? Is it 30 people? Is it 50? As I said, it vests a lot of discretion in the minister's office to make the decision to approve or to not approve. It's going to lead to litigation, obviously, if the vote has been approved in accordance with the act in terms of just a simple majority, yet the minister says, "You didn't quite meet the threshold. In my view, for this first nation, you need to have 25% of the members show up", or 40%. That is the concern as I see it.

As I said, part of the gap can be filled with policy. If the policy is upfront and the department says it will be 25%.... For some of the land codes that have been passed by first nations, 25% seems to be the threshold for their meetings, but it's going to be different; it may be a higher threshold, depending upon how many people live on reserve versus off reserve.

What we're faced with now is what you called the "unintended consequence". The unintended consequence of Corbiere, allowing off-reserve members to vote, is that many of them don't participate, and they're counted as "no" votes under the current system. They're part of the quorum that would be required, and yet they choose not to participate.

● (1805)

Hon. Carolyn Bennett: I think that's what some of the chiefs have said to us—that they vote with their feet, and that not showing up sometimes is a "no" vote in the way they see that participation or lack of engagement.

Chief Thunder, your frustration is very clear about what you feel is an attitudinal problem of more and more top-down process and not being listened to and your very practical suggestions not being heard.

How do you think we should go forward, as my colleague asked?

Chief John Thunder: As chief, I understand—and I said it earlier, in comments in my presentation—that a lot of our people lack the trust. When we have legislation that is done by the Department of Indian Affairs and then introduced, it's very difficult for us to convince our people that it's in our best interest, because the direction is coming from the wrong source. It needs to come from us, not from somebody else. The Department of Indian Affairs has a lengthy history that is not very favourable to first nations. When we keep coming up with new legislation or new programs that come from the top down, it is very difficult for me as chief to convince my people that it's in their best interests. That, to me, is where we need to find our own ways and our own solutions.

The other thing that really needs to be done I commented on two weeks ago, in Toronto at the aboriginal law forum. We're talking about the timeframes, and time is of the essence when it comes to business as well.

When we did treaty land entitlement in Manitoba, we studied the transferring of land to reserve status and found that it was taking 22 months to convert it to reserve status. There was a lot of duplication between the federal and provincial governments. We streamlined the process and brought it down to 18 months. Since treaty land entitlement in Manitoba was signed 15 years ago, it is now taking four and a half years to transfer a piece of land to reserve status, so we have regressed quite substantially.

My answer and solution to this is to implement penalty clauses. If the federal government or the provincial government doesn't meet the timeframes and the schedules that we included in our implementation process in our agreement, then for every day of delay there should be an extra acre of land given to the first nation. I can guarantee you that if these penalty clauses were incorporated into all of our agreements, the federal and provincial governments wouldn't be dragging their feet, taking us through a process that ultimately can take anywhere from five to 20 years.

The Chair: Thank you, Chief Thunder, and thank you, Ms. Bennett, for that.

Colleagues, for the Conservative folks Mr. Rickford was the last questioner, but he has suggested that it may be time for us to go to committee business, because we do, of course, have some, and he knows that many of you have responsibilities tonight as well.

We'll thank our witnesses. Thank you so much, gentlemen, for being here. We appreciated the testimony that you provided and your willingness to answer the questions that have been asked.

Colleagues, we'll suspend and return in camera to consider the report back to the finance committee. The meeting is suspended.

[*Proceedings continue in camera*]

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