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Chair

Mr. Chris Warkentin

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•(0845)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): I call to order the 64th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Pursuant to the order of reference of Wednesday, December 5, 2012, we are continuing our study of Bill C-428, An Act to amend the Indian Act (publication of by-laws) and to provide for its replacement.

Today we have the privilege of having one of our own committee members testify before our committee as the proponent of this private member's bill.

Mr. Clarke, we'll turn it over to you for the first 10 minutes and then of course we'll begin our rounds of questioning. Please go ahead.

Mr. Rob Clarke (Desnethé—Mississippi—Churchill River, CPC): Thank you, Mr. Chair. Thanks, everyone on the committee, for being here today.

It's a great honour but, unfortunately, the weather isn't great, so I'll let Carolyn get settled in before I start.

Is that okay, Carolyn, or should I start?

Hon. Carolyn Bennett (St. Paul's, Lib.): Please start. I'm ready.

Mr. Rob Clarke: I believe in my traditional values, one being a first nation person. It's an honour to be here speaking on such a sensitive issue as the Indian Act. Hopefully, once we have finished this meeting today, you will get a better picture of what I'm trying to do.

Mr. Chairman, members of the committee, and guests, I'm honoured to be here today to open the committee's study of my private member's bill, Bill C-428, the Indian Act Amendment and Replacement Act.

As a proud member of the Muskeg Lake Cree Nation and a parliamentarian, the opportunity to sponsor a private member's bill comes along very rarely. I was lucky to be picked in a lottery to bring my bill to Parliament and I take this opportunity very seriously. The reason I'm doing this is in fact the reason I got into politics.

I spent almost half my life living and working on reserve. I was born under the Indian Act and no doubt will die under the Indian Act, but I don't want the Indian Act to follow me to my grave.

As a veteran of the RCMP, with over 18 years of service, I spent the majority of my policing career living and policing on reserves.

What bothered me was that I had to enforce this 137-year-old Indian Act and saw daily the impact that this antiquated, paternalistic, and racist legislation had on grassroots band members.

As a representative for Desnethé—Mississippi—Churchill River, a riding having almost 23 first nation communities and the second largest first nation population in Canada, I'm very aware of the challenges posed by this outdated, colonial statute we refer to as the Indian Act.

The problems created by this archaic piece of legislation are far reaching, extending to every aspect of our lives as first nations, and are the root causes of the Attawapiskats of our country. Indeed, we heard every single candidate for chief in the 2012 Assembly of First Nations election say that the Indian Act must go. Virtually every leader of first nation communities across Canada said that the Indian Act must go. And experts from across the political spectrum all say that the Indian Act must go.

In a November 9, 2012, interview the current national chief, Shawn Atleo, said:

Yes, the Indian Act and the Indian Act bureaucracy must be fundamentally and finally eliminated.

The Indian Act is completely contrary to Canadian values and stands in the way of our progress and success as first nations, and has done so for generations. In fact, this legislation treats those of us who live under the Indian Act as second-class citizens.

This legislation was put in place in 1876. It served as the model for South African apartheid, and it really has no place in Canada in 2013 or any other time in our history. It remains a blemish on Canadian society and must be rectified.

Let me talk for a moment about the connection between apartheid and the Indian Act. In an article by South African lawyer, Gary Moore, he sets out the following details:

●(0850)

In 1913 the young Union of South Africa enacted a native land act. The act prohibited the sale or lease of scheduled areas of land reserved for natives to whites. It prohibited natives from acquiring land outside reserves. Reserve land was mostly Crown land. Natives were left in occupation, and native systems of land tenure continued. In 1936 a Crown corporation was created, the native trust, to purchase additional areas released for native occupation.

In 1927 South Africa passed an act for native administration generally. It declared the governor-general to be "supreme chief" of natives in most provinces. He had power to appoint and remove chiefs, divide and amalgamate tribes, and punish offenders. His actions as supreme chief were not cognizable by the courts. The act gave the governor-general power to make law by proclamation for native reserves. Proclamations provided for the administrative grant to natives of permission to occupy residential sites and arable allotments in reserve settlements and locations, with restricted tenure and disposal rights.

The governor-general could make regulations for such purposes "as he may consider necessary for the protection, control, improvement and welfare of the natives, and in furtherance of peace, order and good government".

That's "POGG".

There were special rules and regulations for succession to property of deceased natives. Regulations forbade whites to enter native reserves without a permit. There were regulations restricting the number of shops a native shopkeeper could open in a reserve.

Native administration was under the minister and department of native affairs. The department was a vast empire in South Africa on its own. A 1951 act provided for tribal authorities each comprising a chief and his council. A 1953 act vested control of native education in the central government.

Does this sound familiar? It should:

It is said that before South Africa enacted native administration laws it sent officials to Canada to study the reserve system provided for in Canada's own Indian Act.

However, for all the abuse that South Africa has rightfully had dumped on it because of apartheid, in 1994 that system was finally removed from law. Yet here in Canada the Indian Act, which came well before apartheid, still exists almost 20 years after the demise of apartheid: 20 years.

I must ask the members of this committee, is this the kind of law we wish to see in the books in 2013?

I truly believe there's a consensus to replace the act. The real questions are, how should that happen, and what will replace it?

When I submitted my bill in its first version in December of 2011, I asked for a full repeal of the Indian Act. What I wanted to do was start a serious discussion and debate about getting rid of the act—and here we are today. I believe I've done that, and accomplished that.

In subsequent discussions with first nations leaders and grassroots members, I was told that the wholesale elimination of the act could inflict unintended collateral damage. It could also place fiduciary responsibility on first nations communities unless there was careful consideration of the effects of each and every clause, and of course they want to know what we'd replace it with.

My goal was to ask my first nations leaders and grassroots to engage with the crown to come up with these solutions. In speaking with our first nations leaders and grassroots members, and after three draft versions of the bill, I arrived at the current and fourth version.

I know there are those who question my right to do this. There are even those who have said the entire exercise must be done by indigenous, for indigenous, people. So I agree, and here we are.

As a parliamentarian and an aboriginal person, I've heard repeatedly that I have no right to bring this bill forward like any other parliamentarian.

There are even those who have said:

I am afraid that a backbencher's private member's bill is not an appropriate consultation for this very serious relationship with first nations in this country.

●(0855)

Well, I believe it's my responsibility to do it. It has to be done. The time has to be now.

I also know that there are some who claim that this bill cannot have been put before the House of Commons without a formal consultation process. Those very same people clearly know that a private member's bill in the House of Commons does not have the financial or human resources for me to conduct a full-scale consultation, nor is it permissible to share a bill with anyone until it is tabled in the House of Commons.

Nonetheless, I have been engaging and reaching out to first nations on the Indian Act for years, and I have seen with my own eyes the harm this legislation has done. Bill C-428 is designed to mandate development of a process in which first nations and crown can work together on ways to review, repeal, and replace the Indian Act.

Finally, there are those who have specific concerns about the content of the bill itself. I'm here to say that I'm open to amendments that move us closer to the repeal and replacement of the Indian Act, and I'm also open to amendments that make the bill closer. What I hope to see is an open, frank discussion of this bill that bridges partisanship. For me, it's not about the Conservatives or the Liberals or the NDP, and not about partisan ideology, but about starting a process that could transform the lives of so many first nations people, especially the younger generation.

In addition to the mandate of the Minister of Aboriginal Affairs to produce an annual report on the progress of the repeal and replacement of the Indian Act, in collaboration with first nations, this bill will bring a number of changes to the Indian Act. These changes are housekeeping in nature and are designed to remove the underbrush from the act, but they also speak about the goals of the bill.

The true intent of the Bill C-428 is to create and aid freedom and independence for first nations. This is the motivation behind the changes to the bylaw process, wills, and estates sections of the act. These changes will remove the Minister of Aboriginal Affairs from the process and return control of bylaws, wills, and estates to the communities, where they belong.

In addition, a number of sections of the bill remove outdated, antiquated, and unenforced sections of the Indian Act. These sections cause delay. I'm sure we all agree that it's bad policy to leave in these laws and things that there is no intention of ever enforcing.

An example would be the section of the Indian Act that prohibits the sale of agriculture products grown on reserve to anyone off reserve without the permission of an agent of the Minister of Aboriginal Affairs. This section of the act has been waived for a number of years and therefore is not enforced. Imagine a Cree farmer growing corn and not being able to sell his corn without the permission of the Minister of Aboriginal Affairs. It kind of reminds me of a first nations wheat board.

Another section that would be almost as laughable, if it were not so paternalistic and patronizing, is section 92, which prohibits missionaries, aboriginal affairs employees, and reserve teachers from trading with first nations under the Indian Act.

A more insulting and hurtful section of the act is the one that has established residential school systems. My grandparents attended residential schools, so this is very personal to me. I am sure no one here would want to see residential schools again in Canada. A heartfelt apology to aboriginal Canadians who survived the system was made by Prime Minister Harper on behalf of all Canadians and all the other political parties in the House. There is no moral policy or reason to keep this law in the books.

To go back to the two essential questions, they are: how shall we deal with the Indian Act review, repeal, and replacement, and what should be in its place? I can't answer these questions alone. That is why we're here today in committee: to seek these answers. I'm sure we each have our own ideas about what a respectful and modern relationship between first nations and Canada could be, but we have to arrive at a consensus about what this means and what this would look like.

Our people have waited 137 long years for this discussion. It's about time that we take it seriously. It's my hope that this bill will serve as a springboard for engagement. I look forward to this process and answering your questions today as we proceed through the examination of Bill C-428.

Thank you, Mr. Chair.

• (0900)

The Chair: Thank you, Mr. Clark.

To begin, we'll turn now to Ms. Crowder.

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

Thank you, Mr. Clarke, for coming before the committee today.

We would likely agree with you that successive Conservative and Liberal governments have pursued an assimilationist agenda, and I would argue that an assimilationist agenda continues to play out today with the lack of progress on key issues that speak to the honour of the crown, like treaty and comprehensive land claims implementation. So we would agree with you on that point.

When we look at things like the UN Declaration on the Rights of Indigenous Peoples and its article that talks about “free, prior and informed consent”, this gets us to the heart of the matter. A private member's bill, no matter how well intentioned, does not point to the fact that what we are speaking about here is the honour of the crown and the duty to consult.

I want to quote from an article on the Turtle Island Native Network, from June 29, 2012, that notes:

Advancing Aboriginal policy through private member's bills raises significant problems with the Crown's duty to undertake consultation and accommodation on legislative changes that will impact Aboriginal and treaty rights.

I think that's the heart of the criticism that has come forward, that once again we have a bill—in this case a private member's bill—that is taking apart the Indian Act piecemeal. It could have unintended consequences, and I repeat, no matter how well intentioned, it's imposing changes on first nations.

I wonder if you could comment on that specific matter, that first nations have been saying that if the Indian Act is to be taken apart, they must be consulted in advance of proposed changes.

Mr. Rob Clarke: Thank you very much for your question.

I'm sitting here as a first nation's individual who has had to live and work under the constraints of the Indian Act. When we talk about meeting with first nations, it's about engagement and reaching out. That's what I've tried to do on my private member's bill, to actively reach out to first nation leaders, grassroots individuals, and elders, and talk to them, ask them about the parameters facing first nations. It's about economics and societal changes that are affecting first nations on a day-to-day basis on reserve.

I've met with and continue to meet with first nation chiefs, organizations, grassroots members, and interested stakeholders. I have conducted a thorough outreach program, including social media and round tables, band meetings, direct mail-outs and, recently, town hall meetings.

• (0905)

Ms. Jean Crowder: Just to interrupt you there, Rob, you know the process and that I have only seven minutes.

Are you suggesting that this fulfils the crown's duty to consult?

Mr. Rob Clarke: I have a private member's bill. The one thing, when we talk about the crown, is that it has to be nation to nation.

Ms. Jean Crowder: Exactly.

Mr. Rob Clarke: What I'm utilizing right now is the parliamentary process of the committee, including to form a legal consultation with first nations. In my private member's bill, I'm trying to look at mandating first nations to meet on a yearly basis, in consultation with the federal government, to look at a more modern and respectful relationship and dialogue to create a more modern and harmonious act that reflects today's values.

You mentioned the UN declaration, and I'd like to point out that under the UN Declaration on the Rights of Indigenous Peoples, to which Canada became a signatory in 2010, we have the responsibility to uphold the articles established in accordance with the UNDRIP, and to adhere to the requirements.

I'd like to point out that under Article 18,

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making....

That's what I'm also doing, through bylaws, letting first nations be self-governing and form their own bylaws without having to have ministerial approval.

Also, Article 19 reads:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

That is also being included in my private member's bill: a yearly review with the minister and first nations, and that's being legislated.

But also, nothing in Bill C-428 contravenes any part of the declaration; it legislates a consultation process whereby the minister must report back to the House the progress that has been made in repealing the Indian Act. I have met, and will continue to meet with, willing partners in the process, including the first nations grassroots, chiefs, and organizations.

But the bill also promotes other articles in the UN declaration, which you've pointed out, such as Article 3, which calls for first nations to "...freely pursue their economic, social and cultural development".

Ms. Jean Crowder: Mr. Clarke, could I just interrupt?

The Chair: Mr. Clarke, I believe Ms. Crowder is just trying to ask a follow-up question.

Mr. Rob Clarke: And I'm just trying to answer the first question she asked about the UN declaration.

Thank you, Mr. Chair.

Ms. Jean Crowder: How much time do I have left?

The Chair: You have just over a minute.

Mr. Rob Clarke: Similarly, the bylaw section of Bill C-428 reflects article 4. These sections....

Mr. Chair, the UN declaration, which states—

Ms. Jean Crowder: Mr. Clarke—

The Chair: Mr. Clarke, Ms. Crowder has very limited time. I believe she's asking a follow-up question and she has only a minute left. She may desire not to hear the final portion of your answer, but it is her right to ask a follow-up question.

Ms. Jean Crowder: I just want to follow up, Mr. Clarke, with the comment that despite all of the quotes you're using from the UN Declaration on the Rights of Indigenous Peoples, it is the crown that must undertake consultation in order to make significant changes that would impact on every aspect of life for first nations.

With all due respect, a private member's bill does not reflect the honour of the crown. So I would argue that all of those quotes you're using from the UN Declaration on the Rights of Indigenous Peoples do not fulfill the crown's responsibility to undertake changes to the Indian Act.

Thank you.

The Chair: We'll turn now to Mr. Bruinooge, for seven minutes.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

I'm just a little surprised, hearing some of the lines of questioning coming from my honourable colleague.

Mr. Clarke, you can help me understand what Ms. Crowder is trying to say. I think she's trying to say that as a first nation person, you should simply sit idly by and live under the Indian Act without being able to utilize your office to contemplate some changes to the very act that leaves you in an apartheid status.

Is that exactly what you think she said?

• (0910)

Mr. Rob Clarke: The impression I got, and from what I've heard in the past, is that through a private member's bill I'm not capable...or as parliamentarians that we don't have the privilege of bringing forward legislation. As a first nation individual—

Ms. Jean Crowder: I have a point of order, Mr. Chair.

The Chair: I recognize a point of order by Ms. Crowder.

Ms. Jean Crowder: Mr. Chair, I could actually ask that my statements be read back into the record. At no time did I make any comment like that.

The Chair: That's not a point of order, Ms. Crowder.

Mr. Bruinooge.

Mr. Rod Bruinooge: All I heard from Ms. Crowder was that Mr. Clarke simply has no right to introduce changes to an act that limits him in a way that she doesn't appreciate. I find that line of questioning quite ridiculous in light of the fact that he's trying to do something pretty important for first nation people. I just think a little more respect would be in order, for some who could—

Hon. Carolyn Bennett: Respect is not about putting words in another member's mouth.

The Chair: Order.

Ms. Bennett, it's not your time to question.

Mr. Bruinooge, would you direct your questions through the chair to our colleague, Mr. Clarke.

Mr. Rod Bruinooge: Rob, when you were first elected to the House of Commons and you came to this hallowed place, I remember your telling me when you got here for the first time that your biggest interest was to see changes, in particular to see the Indian Act repealed.

How has your career progressed since that moment?

Mr. Rob Clarke: Coming from an RCMP background and actually living and working on first nation reserves, I've seen the social and economic barriers that the Indian Act has placed on first nation communities.

I'm from Muskeg Lake First Nation. I know first-hand, as a first nation citizen and as a law enforcement officer, the kind of barriers this legislation has created for first nations.

One of the most painful things I had to do as an RCMP member was to enforce the Indian Act. I became a bylaw officer. I also became a truancy officer, going into people's residences and asking the parents to take their children to school. We talk about education being very important for first nations, but having to dictate it through the Indian Act isn't the right way to go. I want to see these barriers to success removed.

I remember having to do the enforcement, as an RCMP member, and that's why I'm looking at my private member's bill. One, I want to amend the bylaws, to empower first nations to form their own bylaws. Two, I'm trying to repeal outdated sections of the Indian Act, such as regarding agriculture, individuals who have the right to trade with first nations, and the residential schools clause, so residential schools can't be mandated by the minister or any future governments and don't happen again in Canada.

What I'm also trying to do is set up a legislative process for first nations on a year-to-year basis, consult with the government and look at more modern, respectful language that properly reflects today's society, and start a meaningful dialogue. Currently in the Indian Act there's nothing that requires the federal government to consult with first nations on a year-to-year basis. This is paramount, and hopefully this answers Ms. Crowder's question about consultation. What I'm trying to do is set up a legislative process that will bring the government to the table with the first nations. That's what I expect.

Mr. Rod Bruinooge: You've met with many first nation people across Canada. Perhaps you could go through some of the provinces you visited.

Mr. Rob Clarke: I've travelled extensively as a parliamentarian under my limited House of Commons budget. I've travelled through Alberta, I've travelled through Saskatchewan, I've travelled through Manitoba, and I've travelled even into the Northwest Territories when we were doing parliamentary committee travel there.

From coast to coast, I've always asked first nation leaders and grassroots individuals what they think of the Indian Act, and everyone says to get rid of the Indian Act. But they always ask what we are going to replace it with. I'm not here to impose what we're going to replace it with. What I'm trying to do is provide a solution for first nations, and I'm asking what their solutions would be. That is why it's paramount to have a year-by-year review of the Indian Act.

● (0915)

The Chair: Thank you, Mr. Bruinooge.

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

Hon. Carolyn Bennett: Thanks very much.

We have grave concerns that this is a job that needs to be done by the Prime Minister. As the Prime Minister promised at the crown-first nations gathering, the government would not repeal or rewrite the Indian Act, and any future changes would be developed with consultation among the government, the provinces, and first nation communities.

Therefore, I am concerned that this is piecemeal. As you know, when the officials came before us, Rob, there were serious flaws with this bill in terms of bands not being able to declare their communities dry, and serious concerns around how wills and estates would be dealt with in Quebec.

Consultation requires sending and receiving. Could you please tell us whom you consulted with and what they said? All we've heard on this side are some serious objections to this bill, including people saying that they wanted to get unanimous consent just to withdraw it and start again, with the Prime Minister at the helm. Could you tell us the dates, also?

Rob, you have to accept that once it has passed second reading and comes to this committee, the ability to make substantial changes to it is very limited by this committee. And that doesn't qualify as full-scale consultation.

Unlike what you said, it is possible to consult on a draft bill. And it is possible to do this properly with any private member's bill, by getting out and actually listening to what people say, as opposed to going out and saying, "This is what I want to do. How do you like it?"

We were very concerned last summer that even when you presented to the FSIN, you refused to take questions from them. It seemed as though you were not in listening mode and that this bill had already been tabled.

So in the order of how we do things as parliamentarians—going out, and in aboriginal-style leadership, by asking, not telling—whom in the first nations community did you hear from? Who wanted you to make these particular changes in this particular manner, rather than it being led by the Prime Minister?

Mr. Rob Clarke: Let me be very clear here. At the first nations gathering, the Prime Minister said that he was not going to blow up the Indian Act. That would have left a big hole in the ground. But the problem is that the roots are deep. He was going to look at incremental change to the Indian Act.

As a first nation individual, when I first had the bill drafted, my intention was basically to repeal the entire Indian Act. Having met with first nation leaders across Canada, especially in Saskatchewan—let me finish, Carolyn.

By meeting with individuals across Canada, there has to be—

Hon. Carolyn Bennett: Rob, the question was, who did you meet with and what did they say?

Mr. Rob Clarke: Let me finish, please, Carolyn. I have my talking time here, please.

You have to understand our culture.

Hon. Carolyn Bennett: No, no. I asked a very specific question.

Mr. Rob Clarke: And I'll get back to you.

Hon. Carolyn Bennett: I want to know who you met with and what they said.

Mr. Rob Clarke: When engaging with first nations and doing the outreach process, I met with grassroots members right from the very beginning, since I ran in the 2008 byelection.

Hon. Carolyn Bennett: On the bill?

Mr. Rob Clarke: When we talk and meet with individuals, especially across northern Saskatchewan, and also across Canada, I am also talking—

Hon. Carolyn Bennett: Who did you meet with who likes this bill?

Mr. Rob Clarke: Carolyn, please, let me finish.

• (0920)

Hon. Carolyn Bennett: I want a list of who you met with. If you're going to do proper consultation, you actually have to keep a record. Who did you meet with and what did they say?

Mr. Rob Clarke: I've gone through four different versions of my private member's bill. My original draft was drafted with the repeal of outdated sections in mind, and it progressed as I met with individuals and chiefs from first nations across Canada, including chiefs from Ontario, from—

Hon. Carolyn Bennett: Just table the list. Who did you meet with and what did they say?

Mr. Rob Clarke: Carolyn, we talked about dry reserves. We talked with the FSIN. I'll explain the process that occurred with FSIN.

When I drafted the bill, I went to speak with the FSIN. They were supposed to meet with me, the four vice-chiefs. The four vice-chiefs were supposed to look at a process to do a consultation with the reserve. And then in eventual subsequent meetings, I was going to meet with the entire first nation.

We talk about the process of openness and being frank and looking at engagement and the outreach portion of the bill. I've talked with first nations. I've met with Tsawwassen. I've met with Flying Dust. I've met with English River. I've met with Muskeg Lake. I've met with Attawapiskat.

Hon. Carolyn Bennett: What did they think of it? Did they like it?

Mr. Rob Clarke: It was not only with leaders, but I've always talked to the grassroots as well. They need to see the change. There have been first nations out there who like it. But they would also like to do their amendments to the bill. When I introduced the bill under.... You mentioned section 85.1 about the dry reserves.

It was a first nation leader who brought forward the point that there were going to be problems with the bill. I was open to the amendments. He said that there were over 297 first nations across Canada who have bans on intoxicants on reserve. What he suggested, and hopefully it's going to be addressed and studied at the committee stage, is that we make amendments to allow first nations to maintain their dry reserves.

Carolyn, I had to enforce this, and it's not fair for first nations to have their rights to form their own bylaws. It's a paternalistic

approach. You're talking about maintaining the status quo, and that's not fair.

Hon. Carolyn Bennett: I'm saying there is an unintended consequence because of a lack of consultation.

Mr. Rob Clarke: You're starting to dictate what's good for first nations. You've done that.

Hon. Carolyn Bennett: No, and Bob Rae's bill and his motion are quite clear on how you go about this properly.

Mr. Rob Clarke: Mr. Chair, Bob Rae's bill is basically the same as the first draft of my private member's bill. All that Bob Rae's bill does is that it's a motion for further dialogue. It would add another two years and then there would be another 139 years of more talk. What my bill does is to create a process that legislates that government to stop talking, and let's look at some meaningful change and dialogue.

The Chair: Thank you, Mr. Clarke.

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

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Rob, thanks for being here. I know you've put a lot of work into putting together this piece of legislation, and I thank you for all your hard work.

You've proposed several changes to a number of sections, and I'd like to start off by asking you—and here I'm sure you did a lot of research—how you decided which sections of the Indian Act you wanted to amend and repeal. Can you walk me through that process?

Mr. Rob Clarke: The first thing I did with this bill was to carefully review each and every section of the Indian Act to remove unused, archaic, irrelevant sections of the act. There are many sections in the act that make no sense in our world today, for example, the section that deals with bylaws. In the past, band bylaws had to get ministerial approval before coming into law. This will change what permits bands to make or publish their own bylaws.

Similarly with wills and estates, a will had to be approved by the minister before it could be valid for first nations persons. This will no longer be the case.

Once we've cleared the underbrush or the dead wood from the act, it will make it much easier to see what needs to be done to ensure that no first nation community is harmed by removal of the act and that it is replaced with an act that respects a more modern relationship.

As for bylaws, we talk about empowering first nations. An example I have is when I was a police officer on the Ahtahkakoop First Nation and talking with the former chief of that reserve. We had a real problem on that reserve with drug and alcohol abuse. We had predators out there who were trafficking in cocaine, marijuana, and pills on cheque days. As a police officer, I was going out and catching the bad guys and making the arrests. But these predators were preying on the most vulnerable. The chief and council asked me what we could do by way of a bylaw, which every other municipality has a right to do across Canada, to ban individuals from that community, to remove them.

The chief drafted the bylaws and sent them off on different occasions, and three or four were sent back by the department refusing them the same rights that other communities had drafted into law, refusing first nations the same rights that other non-aboriginal communities had drafted using that exact same wording to prohibit individuals from living in that community. So we have a two-tier system of rights. They're not being treated equally; they're not given the same rights under the Criminal Code as a non-aboriginal community.

That is why I'm trying to empower bylaws, to allow first nations the same rights as other communities.

● (0925)

Mr. Kyle Seeback: It appears that you're taking a step-by-step approach to a number of sections. Why are you taking that approach rather than repealing the entire act as some other people have suggested might be the way to go?

Mr. Rob Clarke: First nations, individuals, grassroots members, band members say, "Blow up the Indian Act. It's gotta go." But as one chief said, "It's a train wreck ready to happen." There's a fiduciary responsibility on the part of the crown. A former Supreme Court justice, just in April of 2012, indicated that you can't just blow up the Indian Act. There has to be an incremental process to get rid of some of the outdated clauses in the Indian Act. When we look at the Indian Act, it's paternalistic. It provides for the evils of not allowing first nations to participate actively in economic opportunities.

That's why I look at agriculture. I come from the prairie provinces, and I've talked with individuals such as Howard Cameron. He wanted to start a farm on Beardy's First Nation with the youth to teach them to live off the land, but also how to grow their own produce for sale.

As I said in my opening speech about a farmer growing corn, those first nations still have the same opportunity either through ethanol.... It's a modern business world out there, and first nations want to be actively engaged in it. The only way first nations can be actively engaged is to participate in the economy in every sense the same way every other Canadian does.

I look at wills and estates. I don't have the same rights that everyone here at the committee has. I'm treated as a second-class citizen. I have to get my will approved by the minister. I don't think that's right. For every individual here, all they have to do is have the will witnessed by an individual, a friend. The approach of the Indian Act is paternalistic.

Something has to be changed. Is it a mindset? Everyone says, "Let's get rid of the Indian Act," but when push comes to shove, when we sit down and actually want to discuss it, all I hear is, "You can't do it. You don't have the right."

I'm a first nation person. I understand that. I've lived it. Many of you here don't understand that. You say you do, but you don't.

The Chair: We're pretty well out of time, so we'll move on to Mr. Genest-Jourdain for five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good morning, Mr. Clark.

In your opening remarks, you said that the outdated nature of the Indian Act was at the root of the unfortunate social situation in Attawapiskat. I would say that the Attawapiskat situation became a source of discomfort for your government only once it started receiving media coverage. I think this situation is the result of a utilitarian relationship that has gradually developed between first nations and a government whose policy is dictated by a corporatist agenda primarily focused on the mining of natural resources. I would like to point out that a diamond mine is located close to that community. Nothing is left to chance.

I have a question about the harmonization of the law and your initiative, as it is proposed. Like me, you heard the testimony of the department's representatives at our last meeting. There was clearly some discomfort over the nearly impossible harmonization of the law when it comes to certain issues, including wills and estates on reserves across the country. In Quebec in particular, there was a real problem with the application of provincial legislation. Another issue had to do with the harmonization of rules that apply to holographs, among other things, and the validity of such documents.

I would like to hear what you have to say about the studies you have conducted. I also want to know how much focus you—and the experts who helped you draft the legislation—have placed on the bill's legal aspects and its applicability on the ground.

Thank you.

● (0930)

[*English*]

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

We talk about the wills. You mentioned Quebec and the provinces. It's an inconvenience for the provinces for wills and estates. I go back and we talk about the wills of first nation individuals where we have.... Your first nations as well, we all have a treaty card. One of the issues that I had when I joined the RCMP was that I drafted my will not realizing that I had to get ministerial approval.

Back in July 7, 2006, I had a very unfortunate incident, which I don't talk about. It always gets me very emotional. I was in charge of a detachment in Spiritwood Saskatchewan. At 9:24 p.m. I had a very unfortunate announcement that two RCMP officers were fatally shot. What that caused me to do in the aftermath was to review my will. I didn't know I had to get ministerial approval to verify my will. No one else here has to do that. Like I say, I don't want ministerial approval to verify wills, to authenticate them. I don't want the minister to make the decision, if my will is contested by individuals out there, on who gets what.

You talk about Quebec and about provincial systems. I had an uncle, a veteran, and he and his family were arguing in a first nation community about his estate. What they had done, not realizing it, was to go to an attorney, a provincial lawyer, and ask for power of attorney when the provincial lawyer didn't have that right. It had to be the minister making that decision, authenticating or verifying it.

Now we talk about different approaches out there that are currently in the system or the federal government recognizes. There's Cree family law. There's also Algonquin family law that can address wills and estates. However, the Indian Act won't let that happen, so it makes these null and void. But the federal government recognizes Algonquin and Cree family law. I'm hoping that the witnesses coming forward in the future will be able to clarify that.

• (0935)

The Chair: Thanks, Mr. Clarke.

I will turn now to Ms. Ambler for five minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair.

Thank you, Mr. Clarke, for being here today. You mentioned that your grandparents had been in residential schools. I suspect that part of your motivation for addressing that issue is a very personal one. I wanted to ask you why you're removing the provisions, the sections, on residential schools from the act.

Mr. Rob Clarke: It's very personal to me. Do I understand residential schools? I attended a small non-aboriginal school with three classrooms. I was disciplined but it also disciplined me to stick to the principles. Residential schools represent a dark chapter in Canadian history. My grandparents talked about them, but they also valued education and understood that education was still important. However, there's no place in Canada for residential schools in 2013 or at any time in our history. As a grandson of two residential school survivors, I've seen the devastating effects of residential schools. The goal of the bill is to remove any references to residential schools to prevent any future government or minister from reinstating them again.

Mrs. Stella Ambler: Thank you.

Of course, that's led to this historic apology, to which you also referred, and the statement by this government, I believe in 2010, that it was our intention to remove all references to residential schools from the Indian Act. So you're basically putting this into practice, keeping a promise. Is that correct?

Mr. Rob Clarke: That's correct.

In 2010 Minister Strahl made that commitment to the Truth and Reconciliation Commission. How appropriate would it be for a first nations individual to legislate the removal of that clause? It's not about symbolism in government; it's about doing the right thing as first nations.

Mrs. Stella Ambler: It would be very appropriate.

Speaking of the truth and reconciliation process, how will that be affected by this bill as it relates to residential schools?

Mr. Rob Clarke: It's very simple. The bill removes any references to residential schools. It's to prevent any future government from reinstating them. That's the intent of the bill.

Mrs. Stella Ambler: Do you see any changes going forward in the delivery of education to first nations?

Mr. Rob Clarke: No. The removal of residential schools will not affect the delivery of first nations education at all. You have the federal government currently in a formal consultation process with

interested parties on reforming the K-to-12 education. I believe it should be finishing up here in September 2014.

Mrs. Stella Ambler: Excellent.

Do you think that this is not only fulfilling a promise but also doing the right thing? It's almost a formality, really.

Mr. Rob Clarke: I look at residential schools and, having had to work on the first nations, I've seen the effects of alcohol abuse, solvent abuse. People have talked about residential schools for so many years, what they had to go through—the abuses, from sexual to physical. There's just no reason to have it in the act. Why do we have to have it now?

Mrs. Stella Ambler: You've used the word “survivor”, which is very telling in itself.

• (0940)

The Chair: Thank you very much.

We'll turn to Mr. Bevington now.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair, and my thanks to our colleague.

I want to talk a little about the consultation process that you've outlined here. It's a collaboration. The wording in your bill is that you want some collaboration between the minister and interested first nations organizations.

How does that outline any formal consultation process? It simply says we should have some collaboration between the minister and interested first nations organizations. That's a pretty weak direction to the minister.

Mr. Rob Clarke: I don't think so. What I'm saying about formal consultation in my private member's bill is that I'm requiring the government to meet with first nations in a formal consultation process. There's nothing in the act that compels government to meet with first nations to consult with them about the Indian Act. That's my intent.

Individuals can talk about it and talk about it. What I find disheartening is that everyone gets caught in the preamble phrase “duty to consult”, but it's never been clearly defined. First nation communities, just recently with FSIN, were sitting down, trying to define the phrase “duty to consult”. They couldn't do it.

I'll quote. With the formal consultation process—and everyone talks about it—

The Crown is not under a duty to reach an agreement; rather the commitment is to a meaningful process of consultation in good faith...the duty to consult and accommodate applies to the provincial government.

The duty cannot be delegated to third parties. This was from the Supreme Court, under section 35(1) of the Constitution Act, 1982, where the B.C. and Haida...

Mr. Dennis Bevington: If you had included a meaningful consultation process in this bill, you would have been subject to having a royal recommendation for the bill because there would have been costs applied to the government. Don't you agree that your ability in this bill to tie the government to any meaningful consultation, by the nature of it being a private member's bill, is very limited?

Mr. Rob Clarke: Currently, the federal government has the mandate to do a formal consultation. They have the capacity. They have the budgets. They have the individuals and human resources to do the formal consultation. What I'm trying to set up—

Mr. Dennis Bevington: It still requires resources to do that.

Mr. Rob Clarke: What I'm trying to do, Dennis, is to set up a legislative process that starts a legislative framework to do a consultation.

Currently, there's no money being expended. What I'm trying to do is to start a process that will compel the government, bring the government to the table, to consult and talk to first nations about the Indian Act. It's happening every day now where first nations are being engaged. When we're sitting here talking about fiduciary responsibility, you're talking about money that is not being spent. What we're trying to do is to start the process of a consultation framework.

Mr. Dennis Bevington: Is the main focus of your bill basically the requirement to report annually on work undertaken in collaboration?

Mr. Rob Clarke: What I'm trying to do is to start the process of reporting annually to the House of Commons, or to the committee, on what the minister is doing to make progress in the relationship for a more meaningful, a more open and transparent dialogue, and to create a more modern and respectful agreement or act.

Mr. Dennis Bevington: You've said, and I quote what you just said before this, that we have had too much dialogue. We've had 139 years of dialogue. Why should we have two more? What you've created is a process for more dialogue. That's it.

Mr. Rob Clarke: What I've started, Dennis, is a framework to start looking at the Indian Act and a more modern and respectful act.

When I look at the NDP constitution it is very interesting. The New Democrats believe in working with Canada's first nations, Inuit, and Métis people to move toward self-government with practical and concrete steps, supporting the settlement of land claims and backing up these actions with investment in the urgent social needs of aboriginal communities. Working with first nations, Inuit, and Métis peoples to implement self-government, fostering economic opportunity, and lasting prosperity for first nations, Inuit, and Métis people in Canada by advocating for shared resource management and decision-making resource revenue sharing, and to increase access to capital—

●(0945)

Mr. Dennis Bevington: And your point is? Are you talking to your bill, or are you talking—

The Chair: I think you are done—

Mr. Rob Clarke: I'm not done, Dennis. What I'm doing is starting the process—

The Chair: I think Mr. Bevington's time is up. That actually does bring us to the end.

Mr. Bevington and you, Mr. Clarke, could probably continue this dialogue for some time.

Mr. Dennis Bevington: I don't want to continue the dialogue. It's going nowhere.

The Chair: Colleagues, we have now come to the end of our allocation of time.

Ms. Bennett.

Hon. Carolyn Bennett: In view of the consultation that Mr. Clarke says has taken place, I would ask that he table the names of the groups that he has already met with and what they said to him, which could inform us as to the witnesses we could call here. If he has already met with them, that might help us as long as we know what they said. It would be interesting for committee members to be apprised of that consultation.

The Chair: I'm certain that Mr. Clarke will make every effort to have those conversations with you.

Hon. Carolyn Bennett: Will he table it, though?

The Chair: I'm not sure what the process is in terms of tabling, but I'm certain that the committee would welcome anything that Mr. Clarke wanted to table.

Hon. Carolyn Bennett: But is there perhaps a consultation report that he could table?

The Chair: I don't know the answer to that, but I think Mr. Clarke is hearing it. If there is, I'm certain he'll make an effort to circulate that.

Colleagues, it's been determined that rather than going to the committee business of the entire committee, it would be more expeditious at this point to have the subcommittee meet. Of course, members are welcome to join the subcommittee—but other folks, you're welcome to depart. We can just have the subcommittee members meet.

The committee is adjourned.

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