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# **Standing Committee on Aboriginal Affairs and Northern Development**

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**EVIDENCE**

**Thursday, March 21, 2013**

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**Chair**

**Mr. Chris Warkentin**



## Standing Committee on Aboriginal Affairs and Northern Development

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•(0850)

[English]

**The Chair (Mr. Chris Warkentin (Peace River, CPC)):** Colleagues, I'll call this meeting to order.

This is the 65th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Sixty-five is an important number, but we cannot retire: we continue our work.

Folks, first up today for our ongoing review of Bill C-428, we have from the Native Women's Association of Canada, Michèle Audette and Teresa Edwards.

Thank you so much for being with us this morning. We appreciate your joining us, and we look forward to your testimony.

We'll turn it over to you for the first 10 minutes to hear your opening comments, and then we'll begin with rounds of questioning after that. Thanks so much again for being here.

[Translation]

**Ms. Michèle Audette (President, Native Women's Association of Canada):** Thank you very much.

[Witness speaks in her native language.]

I wish to thank our host nation, the Anishinabe Nation, for welcoming us to its territory, now shared, on which many times, many moccasins from across Canada have come to remind the federal government of the reality of the aboriginal peoples.

I am proud to be accompanied by my colleagues, Claudette Dumont Smith, Executive Director of the Native Women's Association of Canada, and Teresa Edwards, who is responsible for human rights and is a lawyer with the Native Women's Association Canada.

The Native Women's Association of Canada was founded in 1974 and is very active in several areas, notably discrimination against women, of which one of the primary causes is the Indian Act.

History has surely taught you that we native peoples have been here for thousands of years. It is important to reiterate that this means we were highly organized societies, societies in which governance was very structured in political, social, cultural and economic terms.

Allow me to give you a short lesson on the history of the Indian Act. The Act was designed to ensure the gradual emancipation of the Savages — and unfortunately the goal remains the same today, in 2013 — so that the children of the Minister of Indian Affairs, that is, status Indians, might be emancipated and become Canadians in the

prescribed form. I am sorry, but we are still very much alive, very active and very proud of our origins, our history, our present and our aspirations for tomorrow.

It is important to mention that on January 28, I took part in the opening of your debates in the House of Commons. According to the media, there were 5,000 consultations with native peoples here in Canada. I do not believe that some five- or ten-minute periods in a parliamentary committee constitute a consultation. We are talking here about the present and future of our nations. This is not a consultation, but a place where I can, on behalf of an organization, to share with you some solutions or concerns.

I do wish, though, to acknowledge the courage and determination of one member of the committee, Rob Clarke, for calling attention to the archaic aspect of the Indian Act. Yes, the act is archaic, paternalistic and obsolete. Let us recall that this act was imposed on us. None of our native leaders, our elders or our youth participated in the development of this act. You see the results today: when we do not take part in the well-being of our nations, we end up with failures. We are in a state of survival and the act is one of the major causes of this situation.

Why not do things differently then, Mr. Clarke, in 2013, with this bill that may change our present and our future? I am therefore asking you, sir, to ensure that we work together on this, in close cooperation. It is not enough to grant us ten minutes to tell you whether we are in agreement or not. No, the Native Women's Association of Canada is not in favour of this bill. So I think we could do a remarkable job together.

Native women are the ones most affected by the Indian Act.

•(0855)

[English]

I will switch to English. My coffee is good now.

Aboriginal women are the most affected by the Indian Act, and we all know why. It is sad to say to the committee today that in 2013 aboriginal women across Canada are the most marginalized. Right now, yes, the Indian Act will not protect their human rights or individual rights, not even their collective rights, and there is no protection of their security in the Indian Act.

I understand that. I know. But why are we doing what our ancestors did—my dad is white—when they imposed the Indian Act? There was no real consultation or consent. For me, consultation must have consent attached to it, where two human beings engage in an exchange and ask, “What will be the best for my present and my future?” Right now, I feel that we are using the same paternalistic approach of imposing something that we think is best for someone else.

I'm 41-years-old and I know what's best for my family, what's best for me, and what's best for our people. The people will say the same, I hope, that every person or organization that comes here.... We need to work together, instead of imposing things as our ancestors did.

We have a great opportunity here. I'm asking all of you, appealing to your hearts and to your brains, can we do it differently this time? The native women of Canada would be so proud to work with you if we were doing things differently, where we could be involved, where we could have a voice, and where we could add some beautiful things to that legislation. Yes, we need to get rid of the Indian Act, but not this way, not the way it's proposed.

I will transfer now to my colleague and will come back at the end.

**Ms. Teresa Edwards (Director, International Affairs and Human Rights, Native Women's Association of Canada):** Thanks, Michèle.

Good morning.

*[Witness speaks in her native language]*

My name is Teresa Edwards, as I was introduced by Michèle.

I am from the Mi'kmaq First Nation in Listuguj, Quebec.

As Michèle so eloquently stated, the MP Rob Clarke has claimed that he brought this legislation forward because the Indian Act is an archaic piece of legislation that treats aboriginal people as wards of the state, with no power. Yet there has been no thorough process in place to meet with our leaders, our governments, and the people within the communities to hear the voice of women on how to best proceed to amend the Indian Act.

Calling witnesses to a committee is not, in fact, a thorough consultation by any stretch. We have to ensure that any changes to the act are designed by first nations themselves. If they are not part of the solution, there will not be a successful implementation. We have seen this for hundreds of years. Aboriginal people need the provisions that will protect their rights. With the government moving forward unilaterally, as it has, it is still treating us as wards of the state and making decisions on what it thinks is best for us, even now in 2013.

It's become apparent to all Canadians that this government is not consulting our people, and the resistance is manifesting itself with every Idle No More demonstration that is happening in every community across this country.

There have been little to no opportunities for community women to express their views, to strategize, or to discuss their visions on any amendments to the Indian Act.

Despite the fact that aboriginal rights are protected within the Constitution, and despite the fact that the Supreme Court of Canada has set out specific processes for governments to thoroughly consult, accommodate, and get consent regarding legislation affecting aboriginal peoples, this government has been systematically passing legislation that strips away these rights and our protections with little to no input from our people, which is a breach of this country's very own laws.

Any efforts to change the Indian Act must be based on collaboration between first nations and the government, not on independent action by a member of Parliament or by the government alone.

NWAC opposes this bill for a number of reasons. For example, residential schools created generations of alienated peoples whose earliest experiences were of forced removal from their families and communities, profound racism, and brutalization. In total, some 150,000 aboriginal children attended 130 Indian residential schools from the 1800s until the last one closed in 1996. This is a 100-year history, as the last school close in 1996. So the impacts are very real and very present in past, current, and future generations of our people.

The cultural traditions that honoured children and elders were replaced by Euro-Canadian ones that inflicted physical, emotional, and sexual violence while instilling deep notions of shame and inferiority. Violence was normalized and there was complete impunity for the perpetrators. While violence is a symptom manifested towards our women and within our communities, it is at the core of the ongoing intergenerational trauma from Indian residential schools and the challenges that face us today.

The current effects are demonstrated with educational achievement levels, addiction challenges, child welfare apprehension, over-criminalization, conditions of poverty, vulnerability of women and girls to predators, and increased indicators of mental health difficulties.

Given all these facts, it would be more appropriate to put in place legislation that would ensure that all Canadian students were required to learn in school about the true history of our peoples so that racism could finally be addressed through proper educational curricula and put these myths to rest.

There is an urgent need to address the context of inequality and the intergenerational trauma in which aboriginal women and girls are affected. In particular, more attention must be paid to the continuum of violence and poverty where aboriginal girls are unprotected, revictimized, and then later criminalized.

Measures and processes such as this are not the way to move forward. We can be far better served with other legislation that will positively affect the lives of future generations. This legislation, and similar legislative reforms that are being put forward, are all laying the foundation for further dispossession of lands; loss of resources and benefits; jeopardizing our socio-economic security; as well as putting the environment, water, and animals at future risk while enabling governments. Both federal and provincial governments will have more decisions about the future and about our resources. In no way will these methods or measures benefit our people.

• (0900)

I'm speaking to you about this legislation, but also all the other pieces of legislation that have been moving forward in the same manner.

[Translation]

**Ms. Michèle Audette:** In conclusion, I would say to you once again that you now have a unique opportunity for us to work together. I am talking here, about the organizations, in particular the Native Women's Association of Canada. You are expressing the will to change the reality of native peoples. Why not do this with us?

Together, we could make sure that the statistics on the poverty facing women in communities and urban centres are reduced. We could also reduce the statistics on violence, disappearances and murders, all problems confronting Canada's native women. I would call that a real partnership. Could we have a real partnership this time?

Let us recall that this approach, as proposed by the member of Parliament, is inconsistent with human rights and many Aboriginal rights, as well as the UN Declaration on the Rights of Indigenous Peoples, which Canada has signed.

In closing, I repeat that we have a chance to work together. Why not forget about this bill and build one together for the present and future of the first nations in Canada?

Thank you very much.

• (0905)

[English]

**The Chair:** Thank you for your opening statement.

We'll begin our rounds of questioning with Ms. Crowder, for the first seven minutes.

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

Thank you, Ms. Audette and Ms. Edwards. I think you've laid out your position pretty clearly.

We would agree that no matter how well intentioned a bill put forward by a member might be, in this case a private member's bill, something that continues to alter the Indian Act piecemeal shouldn't proceed. We would also agree that using the UN declaration's statements about around free, prior, and informed consent, there should be a process developed in conjunction with aboriginal peoples to amend or change or abolish the Indian Act.

You're right: we all agree that it's a colonialist piece of legislation that needs to change. Not everybody from coast to coast to coast is in agreement about how that should happen, and so there does need to be that process.

I have two questions, and I'll ask the first one. A couple of times in your presentation you used the word "collaboration". In its preamble, Bill C-428 says, "for the development of this new legislation in collaboration with the First Nations organizations", and in clause 2, it says—and this is where the minister is supposed to report to the House—"on the work undertaken by his or her department in collaboration with First Nations organizations".

In our view, collaboration does not equal consultation and does not equal free, prior, and informed consent. I wonder if you could comment on those two sections of the bill where it talks about collaboration, and whether in your view that translates into consultation.

[Translation]

**Ms. Michèle Audette:** Thank you very much, Ms. Crowder.

These are indeed fragmentary approaches.

[English]

I urge the committee to abandon this legislation or project. I urge you to do this. We can do something else that will be in collaboration with the native women of Canada—I won't speak on behalf of the other organizations. We have so much to learn from what happened in the past. Why are we making the same mistake when we can discuss this together and can have an exchange?

For me, collaboration is when we talk about a consultation, when I have time not only to absorb what is proposed but also also to go back and propose something. For me, that's an equal or working relationship. In this case, we found out a couple of days ago that we were invited here and that we would have to say within 10 minutes what we wanted to happen. It would have an impact on the next decade, and I don't know how many decades. I don't want to put that on my shoulders, not even on NWAC's shoulders.

So if I respond to your question, *madame la députée*, my perception or NWAC's perception is that this is not a consultation. Collaboration is where we also have time to go across Canada to meet with the women so that they can understand the situation and the project that is being proposed here, but that is not happening in this case.

[Translation]

With regard to the human development index, Canada was once the best country in the world. Today it is in 11th place. Regarding the equality of men and women, it has fallen to 18th place. So imagine what it must be for native peoples. We must have slipped to 80th place.

With this bill, maybe we could reverse the trend if we worked together on improving these statistics.

• (0910)

[English]

**Ms. Jean Crowder:** You mentioned a couple of things that constitute consultation in your view. I know a tremendous amount of work has been done around what constitutes consultation. If the Indian Act were to be completely overhauled or repealed, what do you think needs to be place to have an appropriate consultative process with the Native Women's Association of Canada?

[Translation]

**Ms. Michèle Audette:** Thank you very much.

It is extremely important to equip our national organization and all our regions so that, in our communities, we can speak freely and comfortably about what could be a project of society or a project in a region.

We also feel that it is necessary to stop making all projects the same, as if all native peoples were the same. That is wrong. Among the first nations, there is an unbelievably rich cultural diversity throughout Canada.

I would say that the Indian Act is the source of a lateral form of violence within our nations and our communities. The way it has been constructed over the years, women have been the ones most affected. So forums are necessary, as are places where we, too, can write recommendations or build a vision of these things. Women have something to say, whether they are in an extremely isolated community or in an urban centre because they can no longer go back to their communities for whatever reason.

This consultation also requires that the whole matter of the UN Declaration on the Rights of Indigenous Peoples be enforced. It clearly talks about education, culture, identity, protection, safety, individual rights, collective rights, women's rights, children's rights and so on. Everything is good in that project. We could have a firm foundation.

It is necessary to ensure that we have the necessary funding and the necessary native experts. It is necessary to have a reasonable length of time, not just ten minutes. I am talking here about a year or two during which this reflection and this mobilization from the base will lead us to a project of society in which, finally, we will no longer be treated like children.

Ms. Edwards, you wanted to say something.

[English]

**The Chair:** We'll turn to our next questioner.

**Ms. Teresa Edwards:** Can I respond?

**The Chair:** With just a very short interjection, if you have one.

**Ms. Teresa Edwards:** I would suggest that the committee look at implementing the UN Declaration on the Rights of Indigenous Peoples. NWAC provided input for a guide on how to implement that, and I'd be happy to share that with the government. It lists step-by-step processes for achieving free, prior and informed consent, and how you would do it over one, two, five, and ten years of building a true collaboration, not over a year with intermittent standing committee hearings with one or two presenters.

Thanks.

**The Chair:** Thank you.

I will turn to Mr. Rickford now for seven minutes.

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

I thank the witnesses for being here today. Perhaps a couple of clarifications are in order.

Teresa, in your speech you made at least a couple of references to this being a government bill, and I would clarify that it's a private member's bill. Moreover, this is a private member's bill that's being brought forward by a first nation member of Parliament, who, for the purposes of any and all discussions around this matter and in his day-to-day life, is subject to the conditions and the terms set out in the Indian Act. In this manner, I'm going back to my initial clarification with respect to government and private members' business.

It is available to members to advance legislation of particular interest, as it is for all members, irrespective of the political party they represent. It may be personal, it may be on behalf of a constituent or group of persons who may exist in their riding or in a region or across the country. To that extent, and as someone who has invested an entire professional career living and working in first nations communities, I am very pleased that a colleague of mine from those communities has come forward with a piece of legislation—which, I might add for your benefit, originally looked somewhat different than it now does for purposes of our discussion and debate here at committee.

Rob's work over the past two years has started a conversation about certain components of the Indian Act that are relevant to him, including the history of his family, and the community or communities that he was raised in as a young person. Michèle and Teresa, they reflect his own experiences, many of them very personal, experiences I would respectfully submit to you, that have had a profound impact on him for the purposes of bringing forward these specific clauses in his private member's bill.

For example, on the matter of wills and estates, prior to being a member of Parliament Rob spent a professional career with the Royal Canadian Mounted Police. He accumulated a certain pension and various assets. It looked very much like something that other Canadians would accumulate. He lost a colleague on a particular evening who was fatally shot. Rob then realized that unlike the process his colleague would have to go through, he on his part would have to have his will, the transfer of his assets and legacy to his family, signed off on by the Minister of Aboriginal Affairs under the terms and conditions of the Indian Act.

On this very narrow question, Michèle, do you agree there is something wrong with that? It's really a yes or a no.

• (0915)

[Translation]

**Ms. Michèle Audette:** Yes.

[English]

But please don't quote me saying that I approve of the legislation.

**Mr. Greg Rickford:** I'm fleshing out the issues here.

[Translation]

**Ms. Michèle Audette:** Thank you.

[English]

**Mr. Greg Rickford:** Of course, you've been to committee on a number of occasions, Michèle, and understand some of the issues we want to flesh out.

Furthermore, Teresa, if I can go back to you, it wasn't clear to me why you wanted any and all references to Indian residential schools taken out of the bill, notwithstanding the larger narrative that you were driving at regarding all legislation. More precisely perhaps, why wouldn't you want any and all references to Indian residential schools removed from the Indian Act? Further, do you not agree that a first nation member of Parliament whose family members attended residential schools, which left a profound impact on him, should have an opportunity to remove the words "Indian residential school" from the Indian Act?

**Ms. Teresa Edwards:** For me, the idea isn't that I would not want the words "Indian residential school" removed from the act. What I am cautious about is any history being taken from the Indian Act that demonstrates what occurred with Indian residential schools at a time when the Truth and Reconciliation Commission is under way and in the process of making ongoing recommendations about implementing strategies that could heal the generations who currently exist.

I would hate to think that the Indian Act would be amended in a piecemeal fashion, striking out the section on Indian residential schools so that we could thereby look back, without an alternative in place, and say that never happened. We already have many members of Parliament and Canadians who say that was 100 years ago, when in fact it wasn't. The last school closed in 1996. This is a very real issue.

I respectfully submit that despite the MP's personal experience, Michèle and I, as first nation women, have lived the personal experience that we have been advocating about for some 30 years, and we've been personally affected by Indian residential schools. We've been impacted by Bill C-3 and by Bill C-31. However, I would never propose that I have the solution or would never come forward to tinker with the Indian Act in a piecemeal fashion for my personal benefit when I know, even as a lawyer, that any case that goes forward to the Supreme Court of Canada is a huge risk because it's not only about my case but also about the 633 first nation communities and hundreds of thousands and millions of people who will be impacted by this legislation and by cases that go forward and are decided by the Supreme Court of Canada.

With all due respect, personal issues aside, we still need to proceed in a manner consistent with the UN declaration, in a manner consistent with how it's been set out in the Supreme Court of Canada decision.

• (0920)

**The Chair:** Thank you.

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

**Hon. Carolyn Bennett (St. Paul's, Lib.):** Would you provide the clerk with a copy of the guidebook you referred to?

**Ms. Teresa Edwards:** Absolutely.

**Hon. Carolyn Bennett:** It would be important that all members of this committee understand how the UN declaration could be implemented in a meaningful way, one that was about real consultation.

I'm quite struck by the eloquence and articulate nature of your testimony, as always.

It seems pretty clear that you don't like this bill. Are you saying that the bill should be withdrawn?

[Translation]

**Ms. Michèle Audette:** Indeed, I think so, for personal reasons. I live in a community where I am raising my five children and I see injustice, violence, discrimination. It is a lovely community, but I do not even have the right to vote, because I am not a member. There are a thousand and one reasons.

Furthermore, I would say no to this bill for reasons related to well-being. I cannot speak on behalf of all women in Canada, but I can say one thing, from the fact that I defend the interests of these women. If we have a chance to get rid of an archaic act, can we, native women, be in the front row and contribute solutions? We are the ones who are concerned.

[English]

Can we be the ones at the front line to change that legislation? With this case right now, we are not.

So, no. I urge you, members of Parliament, to withdraw or to abandon this legislation and to please make sure that we will be part of such changes, as community members, as mothers, and for the rest of women across Canada. We're amazing. We have lawyers, doctors, social workers, and police. We have all kinds of people who could build a beautiful project for our societies. Please.

**Hon. Carolyn Bennett:** You've said that native women are the most *impliquées, touchées* by this legislation. Did the author of this bill, the member, meet with you to run this idea past you as half of the indigenous population in this country?

**Ms. Michèle Audette:** I saw in the media last October that his colleague gave me a business card. I heard about it, but I got no personal invitation. I have to be frank also: I didn't knock on his door, because I thought that it would pass, that it would never get to this stage. See, I'm learning too about politics. We'll make sure that we keep that dialogue to make sure that we do it together.

**Hon. Carolyn Bennett:** And if he had met with you or asked to meet with you, I take it that you would have given the same advice you're giving the committee today: do not go this route.

**Ms. Michèle Audette:** I probably would have, but with more passion. We'd be face-to-face and with a coffee maybe, but with the same concern—French, English, it doesn't matter. But yes, we would bring the same advice, and even more because of the time.

**Hon. Carolyn Bennett:** You've been very clear that the Indian Act has to go. Who is in charge? Whom do you see as responsible for putting in place a process for getting rid of the Indian Act?

• (0925)

**Ms. Michèle Audette:** I'm not sure I understand.

**Hon. Carolyn Bennett:** Who in a gathering between the crown and first nations, in any movement, would be the person you would need to have on side if this was going to change?

**Ms. Michèle Audette:** I'm sure there is good intent in Mr. Clarke's actions. But not only should the AFN be participating, but the Native Women of Canada MUST, in capital letters, also be involved.

**Hon. Carolyn Bennett:** But on the government's side, who is the person who's supposed to drive this process?

**Ms. Michèle Audette:** The Prime Minister?

**Hon. Carolyn Bennett:** Do you think we should call the Prime Minister to this committee and see if he actually is going to get on with something meaningful?

**Ms. Michèle Audette:** Please! He didn't accept a simple meeting with the GG and the chiefs of Canada. I doubt if he would come. But if he agreed to sit down, I'm sure people would make sure that he got the message that there's some willingness on our part, and on my part too, that we should have that dialogue.

**Hon. Carolyn Bennett:** You were also affected by the Indian Act, as was the member who crafted this bill. There are some things in the bill that seem to be problematic, like the inability of a band to declare itself dry, or issues with the civil code in Quebec on estates and wills. So just to repeat: you don't think it's possible to fix this bill. You think it needs to be withdrawn, correct?

**Ms. Michèle Audette:** Yes.

**Ms. Teresa Edwards:** With respect to wills and estates, you're talking about billions of dollars held in trust for Indians. To alter the protections currently in place, as archaic as that process may be, is a very dangerous road to walk.

**Hon. Carolyn Bennett:** Can you explain a little bit more about that?

**Ms. Teresa Edwards:** We would need to have other measures. We need to have other protections in place. Right now, you're seeing the systematic dismantling of any protections for first nations. Treaty rights are being taken apart piece by piece. You're having the Canadian Human Rights Act apply on reserve. There is a push to have matrimonial real property rights apply on reserve. Next it will be taxation, wills, and estates. So you're getting to the notion that all Indians will be the same as other Canadians.

**The Chair:** Ms. Bennett.

**Hon. Carolyn Bennett:** So if this bill passes, you are worried that all of this, the wills and estates, will be put at risk.

**The Chair:** Ms. Bennett, your time as expired.

Mr. Boughen, we will turn it over to you.

**Mr. Ray Boughen (Palliser, CPC):** Thank you, Mr. Chair, and I welcome our witnesses this morning and thank them for taking time to share part of their day with us. I appreciate that.

Teresa, you mentioned something about protections. I didn't quite pick up on all the things you were saying. Are you addressing anything to do with discrimination between first nation women and men under the Indian Act? Is there a need to have protection for that? Can you expand on that a little bit?

**Ms. Teresa Edwards:** No, that's not what I was referring to. I wasn't referring to being protected from Indian men. Michèle also made reference to how we're marginalized in the Indian Act, even currently, with issues such as status. I know that's not the matter at hand, but when we talk about protections.... When you have Indian status, that directly correlates with membership, benefits, housing, schooling—all of your treaty or band rights. Right now, even with the implementation of Bill C-31 and Bill C-3, we still have a situation that hasn't been rectified, where women and men with the exact same parents are not sitting with the same Indian status, thereby leading to their not having the same rights to pass on to their children and grandchildren.

Although it looks on the surface that it's addressed by Bill C-3, if you examine Sharon McIvor's case, which she's taking to the UN, you will see that she still does not have the same, as it were,

“Cadillac of rights”, as her brother. They have the exact same parents, but for the fact that she is a woman, she has lesser rights. That has an impact when you are talking about their continuing to pass on those rights. Those were more the protections that I was looking at.

In 2013, half of the aboriginal women population are not married—80% of women are single mothers raising their own children alone. When they go to register their children for Indian status with their band, it's not up to their band but the registrar at Indian Affairs. The mother will indicate who the father is on the Indian birth registry to ensure that her child has status. When that form gets to the national registrar in Ottawa—one registrar—the office will strike it out as void if the father has not signed that birth registry. That's a practice that is currently under way. In many cases, the woman is not with the man. She could have been raped. It could have been a case of incest. She could have had a child with a man who is married. Of course he's not going to want to sign the birth registry. She is at the will of the man. Therefore, there's a negative assumption that the child is not native, thereby removing the mother's rights to be eligible for housing for possibly five children. She'll be allocated a house for herself, because the way that the funding agreements go, they will only count status Indians. That's what I refer to when I talk about women being further marginalized and having lack of protections within the Indian Act. It's more a result of the impositions of the Indian Act and the inequalities in government processes. It's not something aboriginal men are doing.

• (0930)

**Mr. Ray Boughen:** Thank you for that.

Both of you women have been talking about the changes that Mr. Clarke introduced in his private member's bill. I would ask you this. If you are unhappy with what you see in the bill, and unhappy that the bill even exists, what's the alternative? For years this act has been in place and there has been no change to it, or very little change that anyone would ever notice. Now we have a member of Parliament who says that the Indian Act needs to be changed and has publicly stated that he would welcome amendments to his bill. Yet there is this seeming resistance to the bill being put on the floor of the House and voted on.

Can you help me understand what you would do if you don't follow this path? How are you going to effect change? This is a change agent. It may not be massive, but it's the start of a change. Mr. Clarke's bill has been a change agent. How would you address this differently?

**Ms. Teresa Edwards:** Well, change is not always good, right?

**Mr. Ray Boughen:** No, no.

**Ms. Teresa Edwards:** Sometimes change is to our detriment, as we have seen. Bringing in the act itself was change. Bringing in the policy about Indian residential schools was change. I'd say those are very devastating impacts on our nations.

For me, as I've said, I would recommend a thorough free, prior, and informed consent model that's laid out in the UN declaration. The government has signed on to the declaration, and therefore implementing could occur in a full partnership.

You asked who we would engage with. It would be with leadership—obviously the Prime Minister getting behind this movement of positive change and partnership and collaboration—but with a full and thorough process with all those impacted: the Assembly of First Nations, the leadership, the governance, but also the community people.

It would be a thorough process, set out over five or ten years, with deliberate goals and objectives set out by both parties and led by a first nations, not a rushed process. It's always this rushed process that government is trying to impose. Then you have huge resistance, and then people ask why there's resistance. Let's do it right for once and save the taxpayer billions of dollars of legislation going forward. Minor meetings happening don't constitute consultation.

Let's do it properly the first time. Actually, it wouldn't be the first time, but let's make a change and do things right, thoroughly, using the UN declaration as a road map for action.

• (0935)

[Translation]

**Ms. Michèle Audette:** I would ask you the following question, sir, in 30 seconds: why not honour your former prime minister, Mr. Mulroney, when he ordered a royal inquiry commission? The recommendations in the royal commission report also talked about the future of native peoples with respect to rights, governance and so on. Why not honour him and see to it that a project of society is created, but one that includes the people directly concerned, that is, us, in our communities?

[English]

**The Chair:** Thank you very much.

We'll now turn to Mr. Genest-Jourdain, for five minutes.

[Translation]

**Mr. Jonathan Genest-Jourdain (Manicouagan, NDP):** Good morning, ladies. It is refreshing to have you with us this morning.

I have seen, in the past two years, the thinly veiled attempts of this government to get rid of responsibilities it has regarding aboriginal nations across the country. These are veiled attempts because they are made within legislation that may seem harmless at first glance, but we can see that the bills coming from the members are no exception to the rule.

I particularly appreciated the part of your presentation that dealt with the scope of the concept of consultation and the search for consent from the parties. I would like you to go into this more deeply by talking to us about the possibility being offered to the nations, first and foremost to their members as individuals, of not giving their consent to a particular initiative.

Also I would like you to talk to us about the need for this government to go and consult the members of the communities, above all, and not be content with meeting the nine leaders of a community. In Uashat-Malietenam, to take a familiar example, there

are 9 leaders for 3,000 individuals. It cannot be considered that a proper consultation has taken place if only these nine individuals are consulted.

**Ms. Michèle Audette:** Thank you, Mr. Genest-Jourdain. I point out that you are the MP for my riding.

As Ms. Edwards clearly explained, for us, consultation is closely linked to consent. When we go into the communities to see what is happening on a daily basis, we note that consultation, whether federal, provincial or within the community, is a new process. This type of democracy comes little by little and that is just fine.

Our organization has been fighting since 1974. We find it extremely important to have real consultation, if of course there was some cooperation with the Conservative government with a view to changing or amending the Indian Act. We could be equipped, with human resources, expertise, funding or whatever, in order to educate people in our communities, because these are the people who will be directly affected. It would mean going to where the communities are located. Why not do so in collaboration with Aboriginal Affairs and Northern Development Canada? It is necessary for organizations to be able to present their proposals and inform the government about what is taking shape so that the government can in turn say what it is thinking. Because solutions come from the communities. In my opinion, in such a case, we could talk about consultation.

We have to give people the time to think about things and absorb everything, because such projects are very heavy. Then we have to make sure we can build it all together. Quebec does so with its estates general. Why not do likewise this time?

The personal stories like those I heard earlier could be multiplied by a million from one end of Canada to the other. Everyone has some such experience. If this bill is maintained, we will end up saying the same things in 10 or 20 years.

• (0940)

**Mr. Jonathan Genest-Jourdain:** How much time do I have left?

[English]

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

[Translation]

**Mr. Jonathan Genest-Jourdain:** To your knowledge, have the initiatives taken by this government in the past two years given rise to deployment and a real presence on the ground. Have there been meetings with people?

You said that it was essential to go into the communities and hold information and training sessions there for the people, in light of the low literacy rate among the inhabitants of certain communities. To your knowledge, have such proactive measures been put forward in recent years?

**Ms. Michèle Audette:** In fact, at the historical meeting of the first nations, held on January 28, last year, between the Crown and some of our elected representatives — not all our elected representatives — it was officially announced to us that the Indian Act would not be amended and, if it were the case, the aboriginal peoples would be consulted.

Barely one year later, however, this commitment has not been respected. When I hear that 5,000 first nations have been consulted, I would like to know who they were and what they were consulted about.

Instead of banging our heads together or accusing one another, I suggest that we be constructive, here and now, for tomorrow.

[English]

**The Chair:** Thank you very much.

I will turn now to Mr. Rathgeber for five minutes.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

Thank you, witnesses.

I just want a clarification on one item, Ms. Audette. In your opening comments, you indicated that with respect to the 1876 Indian Act there was no consultation with regard to first nations and aboriginal persons.

I suspect you're probably right, but I'm curious as to how you know that, given that there was no access to information legislation and there were very few records kept. How do you know what consultation did take prior to Parliament's passing of the Indian Act in 1876?

[Translation]

**Ms. Michèle Audette:** The oral tradition is very much alive in our communities. I live in a community that signed a treaty. I think it was the Murray Treaty. Then came the act. The people were not consulted on these written documents. The act was imposed.

With some research, we can demonstrate that this did not occur after enlightened consent had been obtained. Often we experienced famine or extreme poverty, without understanding the consequences the document might have for tomorrow or for future generations. Some communities or nations were unfortunately taken in, in my opinion.

I repeat that there is an oral tradition. Lots of historians, anthropologists and sociologists would be able, if you invited them here, to affirm that there were not any consultations and that this act was imposed.

[English]

**Mr. Brent Rathgeber:** Okay. I have a follow-up to that.

You believe, and I think legitimately so, that aboriginal persons need to be consulted with respect to changes to the Indian Act. You'll have to forgive me—I'm new to this committee and I'm just getting up to speed—but my concern, or at least my observation, is that it's not clear to me with whom Parliament or the government ought to consult. What I mean by that is it's not clear to me who speaks for aboriginals and who speaks for first nations.

I had a town hall meeting on some of these issues during the February break. It was clear to me that members of the aboriginal community don't always believe that Grand Chief Shawn Atleo speaks for them. So I'm curious: from your perspective, who needs to be consulted and collaborated with as we go forward in this process?

[Translation]

**Ms. Michèle Audette:** It is important to mention that Chief Atleo was elected only by the chiefs. There was not a universal vote. So it is to be expected that some people say he does not represent them. However that may be, I wish to say that it is an organization that does a very good job of defending the interests of first nations throughout Canada. He is not, however, the spokesperson for everyone, in that there was not a universal vote. He is the spokesperson of the chiefs only.

I say that all Canadians should be consulted: men, women, first nations, the communities and the organizations working towards this, that could be partners with the federal government in this project of society.

● (0945)

[English]

**Mr. Brent Rathgeber:** You can appreciate two things: first, that consulting with all Canadians is probably not practicable. The more people are brought into the process, the less likely it is that consensus can be achieved. You understand that.

**Ms. Teresa Edwards:** I could ask the same question with regard to this government. Does this government then claim to speak for all Canadians even though there was the lowest voting turnout in history? I think 20% of Canadians voted for this government. Would they then pretend to speak for all Canadians? I think not.

With any legislation, for every consultation, they set out to engage every part of the community. Michèle is not suggesting that you meet with every individual Canadian. Of course not. The cost would be astronomical. But, we need to make sure that you meet with first nations leadership, certainly. Prior governments always met with five or six groups—the Assembly of First Nations, the Native Women's Association, the Métis National Council.... It's not rocket science.

**Mr. Brent Rathgeber:** Just so you're clear, I'm not suggesting that the grand chief speaks for all aboriginal persons. My question was—and I do appreciate the answer—how broad the consultation process, in your view, ought to be. I thank you for your input.

Thank you, Mr. Chair.

**The Chair:** Thank you.

We do want to thank our witnesses for joining us this morning. We appreciate your testimony and your answers to the questions.

We'll suspend, colleagues, just for a few minutes to switch witnesses.

Thank you.

● (0945)

\_\_\_\_\_ (Pause) \_\_\_\_\_

● (0950)

**The Chair:** Colleagues, we'll call this meeting back to order. We now have witnesses from the Congress of Aboriginal Peoples.

We want to thank Mr. Devoe and Madam Lavallée for coming.

We appreciate your willingness to come here and testify before our committee. We will turn it over to you for the first 10 minutes and then we'll have some questions for you as well.

Thanks again for joining us. We appreciate your willingness to be here.

**Chief Betty Ann Lavallée (National Chief, Congress of Aboriginal Peoples):** Thank you, Mr. Chair.

I'll apologize beforehand. I have a slight cold, so if I start coughing, everybody clear the room. You don't want it.

**Voices:** Oh, oh!

**Chief Betty Ann Lavallée:** *Kwey*, hello, and bonjour.

Good morning, Chair Warkentin and committee members. It's a pleasure to be here on the traditional territory of the Algonquin peoples to speak to you about Bill C-428, the Indian Act Amendment and Replacement Act.

I am the National Chief of the Congress of Aboriginal Peoples. Since 1971, the Congress of Aboriginal Peoples, formerly known as the Native Council of Canada, has represented the interests of off-reserve, status, and non-status Indians, the Southern Inuit of Labrador, and Métis throughout Canada. The congress is also the national voice for its affiliate organization that advocates on behalf of aboriginal peoples living off reserve.

For over 43 years, the congress has been a strong advocate for amending the Indian Act. Today, over 60% of aboriginal peoples live off reserve. The provisions of this act are rooted in a colonial ordinance directed at imposing restrictions and regulations for the purpose of assimilation. These restrictions are what created the removal of Métis and non-status Indians from their historical communities in the first place.

Our organization supports the removal of the archaic provisions created under the Indian Act, such as, for instance, eliminating the minister's control and authority over wills and estates. Canadian governments do not control the average person's wills and estates. Likewise, aboriginal people should be able to take control of their own personal affairs and not be subject to such childish scrutiny and personal interference by the crown into matters that no other resident of Canada would ever tolerate.

The removal of the phrase "residential schools" from the education provisions in this bill is a big step forward. In June 2008, the Prime Minister apologized for the residential schools, although no one should ever forget the tragedies and the injustices that have been done to so many of our aboriginal peoples. Our constituency has been touched by the residential school system. In fact, many of our people relinquished their status so their children would not be forced away from their homes and into residential schools.

The Truth and Reconciliation Commission of Canada is now a major part of the Indian Residential Schools Settlement Agreement. This amendment could be part of the healing process for all those personally affected by the residential school system.

The Congress of Aboriginal Peoples, along with other participants, partnered with the federal government in the joint ministry advisory committee, JMAC, to assist in drafting Indian Act amendments. This committee tabled their final report on March 8, 2002. The report laid out recommendations and legislative options

for a first nations governance act. At that time, our organization was supportive of this initiative.

Some of the proposals put forth in Bill C-428 are not dissimilar to the positions put forth in the joint ministerial advisory committee report and the First Nations Governance Act. For example, Bill C-428 repeals section 85.1, "By-laws relating to intoxicants", under this act. The governance act also addresses section 85.1 and how these limitations have long been criticized by bands and representative organizations as being out of keeping with traditional law-making practices.

This bill also requires permitting and mandating individual first nations councils to publish bylaws. This measure allows for more inclusion to all community members, regardless of residency. Aboriginal peoples should be informed about their communities. Since the Corbiere decision, aboriginal people who live off reserve have the right to vote in elections should they choose to do so, and they also have the right to participate in and vote on decisions regarding specific claims and resource issues.

One of the most significant aspects of Bill C-428 is that it will require the minister to report annually on the work undertaken by his or her department, in collaboration with aboriginal organizations and other interested parties, to develop new legislation to replace the Indian Act. We at the congress believe that this is useful and positive initiative that would keep all parties informed on the progress thus far.

● (0955)

As I previously indicated, the Indian Act was one of the first pieces of legislation to define and create arbitrary classes of aboriginal peoples such as status, non-status, and Métis. Prior to delineating aboriginal peoples, it was understood that non-status and Métis were included in the Constitution Act of 1867 under subsection 91(24). Recently, we've had this confirmed. This subsection provides Canada's federal government exclusive authority to legislate in relation to Indians, and lands reserved for Indians.

Under the Indian Act, non-status and Métis were gradually excluded from the same rights and privileges as status Indians. A recent Federal Court decision ruled that Métis and non-status Indians in Canada are Indians under subsection 91(24) of the Constitution Act of 1867. This decision marks a new relationship with the Government of Canada.

As a national aboriginal organization, we fully expect the government to abide by their duty to consult.

Mr. Rob Clarke has done just that. He consulted with the Congress of Aboriginal Peoples on a few occasions about his private member's bill, Bill C-428, and he made himself available to any aboriginal community off reserve who invited him to learn more about his private member's bill. He attended our annual general meeting and met and had a discussion with my board of directors. He offered his time to come out to speak to their individual boards, which they held at this meeting, and community peoples.

On the whole, this legislation addresses obsolete sections of the Indian Act and permits more participation by off-reserve community members. As a Mi'kmaq, I am a registered Indian under the Indian Act, with my status tied to an Indian Act band. Although I live off reserve, I am recognized as a Mi'kmaq woman with treaty and aboriginal rights. Much of the relationship between the crown and aboriginal peoples involves treaties and treaty relationships, not the Indian Act. There are members in our constituency who are non-status Indian with treaty rights, but they are not protected under the Indian Act.

Treaties were established before the Indian Act. Treaties did not discriminate between mixed bloods. Status and non-status Indians and Métis were all included in these treaties.

The Congress of Aboriginal Peoples respectfully requests a helpful addition to this bill. We believe the annual report by the minister should be amended to include the implementation of treaties. Most non-aboriginal people, and even the media, seem to think the relationship between the crown and aboriginal peoples is based on the Indian Act. This is not the case. The treaty relationship is the basis of the relationship. It is not based solely on legislation. To view it otherwise would limit our thinking to only those issues that are currently covered by the Indian Act, and not those that are broader in scope.

This is an instrumental bill, and it's important to address the distinctions made between people living on and off reserve, as well as the broader principles.

*We lalioq.* Thank you. Merci beaucoup.

•(1000)

**The Chair:** Thank you very much for that opening statement.

I will now turn to Mr. Bevington, for the first seven minutes.

**Mr. Dennis Bevington (Western Arctic, NDP):** Thank you, Mr. Chair. Thank you to the witnesses.

I was struck by your comments at the end on treaties. I think they are very appropriate and are part of the ongoing struggle that first nations and non-status people across this country face. There is a confusion between treaties and laws. Laws are made by Parliament, and treaties have a different level of authority under the Constitution as well. You're absolutely right. That's a very valid comment on this.

But we are dealing with the law here. There are some changes to the law that have been proposed by Mr. Clarke in his private member's bill. You said that you thought this was a good idea, the bylaw relating to intoxicants. I'm thinking of the Northwest Territories where our communities are not on reserve. All communities have the authority, through plebiscite, to outlaw alcohol in their communities. That outlawing of alcohol applies to all people. Are you saying here that the 259 reserves that have made decisions about intoxicants should not have that authority that's provided to municipalities across the country?

**National Chief Betty Ann Lavallée:** No, sir. What I'm saying is that they should have the ability to pass a bylaw without having to go to the minister every time. If they decide that their community is going to be a dry community, it's a matter of their mandating by council and chief through a proper governance structure the

outlawing of alcohol, drugs, or whatever other substance they choose to limit in their communities without having to get that bylaw vetted by the Minister of Aboriginal Affairs and Northern Development Canada. What this is doing is giving control back to the community to make decisions on their own.

**Mr. Dennis Bevington:** That's an interesting other point. It's not the point I was referring to, which is that by repealing section 82, the minister would no longer have the authority to disallow a bylaw. Most governments have review mechanisms for laws that are passed in their communities. At a higher level, we have the courts. Would you say then that first nations' bylaws would only be subject to court interpretation for their validity, fairness, and a sense that it works for...? Would you say that's the situation we should have?

•(1005)

**National Chief Betty Ann Lavallée:** No. What I'm saying is that as long as an Indian Act band is operating under the Indian Act they still have the same responsibility as.... Let's be straight. They are federal municipalities. We're talking about the law now. That's what they are; they are no different from any town, city, or village. They have a geographical area they are responsible for and for which they pass laws. They also have an obligation—which I hope we will address later, because consultation does go two ways—to publish, just like any city, village, or town, any potential changes to their bylaws so that their communities will be fully informed of these bylaws and have the ability to come before chief and council and debate them. It's called good governance.

**Mr. Dennis Bevington:** In the case of most municipalities there's a review structure for any bylaws that a municipality passes. If we simply remove this provision, then there is no review structure for any bylaws made by first nation governments. Do you think that's the direction we should go? Or should there be accompanying work with first nations to establish their own review mechanisms to ensure that the people on the reserves who are subject to the laws of that reserve are not being unduly taken up on their rights?

**National Chief Betty Ann Lavallée:** As I said, this is only a beginning.

**Mr. Dennis Bevington:** You're taking something away and not replacing it. What do you do in the meantime?

**National Chief Betty Ann Lavallée:** I'd love to replace the whole act. If I had it my way, this act would be gone today. The fact of the matter is that we're dealing with a couple of sections. I'm very open. We participated in JMAC and reviewed the whole Indian Act paragraph by paragraph, line by line. But unfortunately, it's the status quo, because there were some leaders who refused to accept it given that it would limit their authority. That's the status quo of how things operate on reserve in some cases. Unfortunately, we still deal with that today.

But this is a start. At some point, we have to start looking at this piece of legislation that is so out of date that it actually creates problems for aboriginal peoples, whether they're on or off reserve.

**Mr. Dennis Bevington:** You think the piecemeal approach for getting rid of the Indian Act... I share your sentiments, but there is some concern here about this process. Is this the correct process to follow to redesign a law that applies to quite a number of first nation governments across the country?

**National Chief Betty Ann Lavallée:** If I had my way, I'd say let's burn it, but I don't. I have to be realistic, and I have to realize that change is not going to occur overnight. If we can, get everybody in the room who needs to be there and start looking at this piece of legislation as a whole, as the Liberal Party did. They were the ones who brought forward a first nations governance act, under Minister Nault. We did extensive consultations. We were part of the committee that was rewriting the Indian Act under JMAC. We've had a seat on JMAC. It would have brought in good governance and accountability and dealt with the bylaws. It would have dealt with all these things that everybody is talking about today. Unfortunately, it didn't pass. It went nowhere.

**The Chair:** Thank you.

We will now turn to Mr. Clarke for seven minutes.

**Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC):** Thank you, Mr. Chair. I would like to thank the witnesses for making it here today. I guess they had a fun-filled journey trying to find the building.

First of all, what I heard is that the Indian Act in its entirety has to go. It's ironic because that is what one of my first drafts of my bill intended to do. My private member's bill was to repeal the Indian Act in consultation with first nations, and over a two-year period to implement new, modern and respectful language. After meeting met with first nations' leaders, organizations, and grassroots, we went from three drafts to my final and current fourth draft, which was submitted back in June 2012. My colleague Mr. Bevington mentioned the really interesting part here. I'd like to quote former Supreme Court Justice Ian Binnie for the record:

Canada's Indian Act is riddled with "archaic features," but Parliament would be wise to phase in reforms rather than scrap it and start from scratch.

And...

I think the government will have to proceed area by area, with the aboriginal communities and range of interests, and pick off things that can be resolved today, abolish the related aspects in the Indian Act, and move forward in this piecemeal fashion.

This was back on April 12, 2012. It was on the CBC News Saskatchewan website. It's interesting because those are very strong words. This is from a Supreme Court justice who understands the laws of the nation and had to enforce or make decisions that affected Canadians and first nations across Canada.

There was another article by David P. Ball on March 1, 2013, on the launch of the missing and murdered women inquiry. He said this:

[The] Assembly of First Nations (AFN) urged politicians to collaborate on what National Chief Shawn A-in-chut Atleo called a "critical issue." Atleo said in a statement that he hopes indigenous people's voices are included in the committee's work and that a core priority of the body's deliberations must be to ensure that "our peoples are safe wherever they live."

That goes into the bylaws and economic development and getting first nations away from the poverty created by the Indian Act. In my private member's bill, we also talk about meeting on a year-by-year basis. The minister has to report back to the committee on progress.

As a national chief, can you clarify whom you represent?

• (1010)

**National Chief Betty Ann Lavallée:** As I stated in my opening remarks, the Congress of Aboriginal Peoples—we were formerly known as the Native Council of Canada—has been around for 43 years. Our organization was started back in the seventies to address the issues in our province. It was five women who had been thrown off the reserve. They started the organization at the kitchen table because they basically weren't going to take it anymore. They were not going to lose their aboriginal and treaty rights because they had the audacity to marry a non-aboriginal person, whereas their brothers would marry non-aboriginal people and their spouses would gain status. If they brought children into the relationship, so would they.

This is who we represent. We have represented for over 43 years the interests of off-reserve aboriginal peoples from coast to coast. Just recently, as I mentioned in my document, the Federal Court of Canada has congratulated the Congress of Aboriginal Peoples on taking forward finally the constitutional question on who had the fiduciary responsibility. For a while there we were referring to ourselves as the "forgotten people", "nobody's Indians". We were in a vacuum. The province said it didn't want us. Unfortunately, the federal government said, "Well, no, you're not our responsibility". When the Indian Act was first created, we were all included because the Indian Act included—it's very interesting, if you ever get the chance to read the memos and memorandums between the first minister of Indian affairs and Sir John A. Macdonald and those who brought all of us together. It was never meant to sustain us. At the time, the Indian Act was generated until they could deal with the Indian problem.

• (1015)

**Mr. Rob Clarke:** Thank you, Chief.

There are some differences between first nations on reserve and first nations off reserve, or aboriginals off-reserve as well. Can you explain some of the differences?

**National Chief Betty Ann Lavallée:** First off, there is the term "first nations". Everybody thinks there are 633 first nations in Canada. No, there are not. There are 633 federal Indian Act bands in Canada. There are 73 first nations in Canada. The Mi'kmaq nation, the Maliseet nation, the Cree nation, those are the nations. The Indian Act bands are an intricate part of the nation, but they do not make up the nation unto themselves.

I'm going to use New Brunswick as an example. There are five Maliseet reserves, Indian Act reserves. Those combined together, including those who live on the reserve and those who off the reserve, make up the Maliseet nation. That's why it is important. I had heard a question asking, "Who do we talk to when we're doing consultation?" The fact of the matter is that everybody has to be consulted. How you do that, if we're going to piecemeal get away from the Indian Act eventually, bringing ourselves back into the proper treaty relationship, is that everybody who would be a potential beneficiary of that nation—I'm going to use my own nation, the Mi'kmaq nation—would have to somehow be consulted to be able to make the transformation from the Indian Act back into our historical governing nation of peoples.

**The Chair:** Thank you.

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

**Hon. Carolyn Bennett:** Thanks very much.

Thank you for coming, National Chief.

You've commented on the importance of the duty to consult. Obviously it was important that the member consult with you and your board. As you've heard from other witnesses before you and, I'm sure, in the media, there are serious concerns that the duty to consult hasn't been taken as seriously as people would think should be the case for a bill to have come to this place after second reading, to have been passed in principle, to have come to a parliamentary committee without really any response to negative feedback or an understanding that this piecemeal approach is upsetting people as we take the time and energy to do this instead of doing what many believe is the only way to truly get out from under the Indian Act, which is for the Prime Minister to actually lead a process to replace it, including the fiduciary responsibilities.

So my concern is whether, even though you were consulted, you think there has been sufficient consultation for it to be at this place, at this committee. This committee can't really do anything other than fix these fatal flaws, because it has already been passed in principle. The officials who have come before us have told us that the way this bill is written now, a band wouldn't be able to declare itself dry. There are serious problems that could have been fixed if there had been consultation, but as you, I think, know, a lot of people feel that the time and energy being placed on this private member's bill would be better spent by Parliament and by important stakeholders like you actually doing the big piece of work led by the Prime Minister of this country.

**National Chief Betty Ann Lavallée:** Dr. Bennett, I can't speak for other aboriginal organizations, but I do know, as an aboriginal leader, that when I first heard of Bill C-428, the very first thing I did was contact the member and set up a meeting to sit down and discuss it with him. Then I made the offer. I've been around long enough to know that there's never any money for consultations. I knew that with something this important, I would have to find a way to ensure that the people I'm responsible to had some sort of way to have input. As a responsible leader, I knew that my people were all coming together for our annual assembly, and I extended the invitation to Mr. Clarke to come and speak to them.

• (1020)

**Hon. Carolyn Bennett:** I guess my understanding of the duty to consult is that it's the duty of the government to consult, not the duty of stakeholders to try to put something together in the best way they can. My concern is that there seem to be some opinions on the other side that because it's a private member's bill, there is no duty to consult. That has been said by some of the assistants on the other side, too, quite to the astonishment of some of the stakeholders.

**National Chief Betty Ann Lavallée:** I don't buy that. To me, consultation is a two-way street. It's give and take.

**Hon. Carolyn Bennett:** Do you believe that because this affects indigenous people in Canada, that for any private member's bill there is a duty to consult?

**National Chief Betty Ann Lavallée:** If Parliament wants to change the laws—because this could be a private member's bill coming from any party—and if it's going to affect aboriginal peoples and it's done with the best of intentions, then Parliament itself is going to have to start looking at them and putting resources aside for any member of Parliament to be able to do consultation.

**Hon. Carolyn Bennett:** Shouldn't the consultation take place before the bill is tabled and before it passes second reading?

**National Chief Betty Ann Lavallée:** Well, I'm not a parliamentarian. I'm just an ordinary person, so I'm not too familiar with how things happen in the House sometimes. I've seen consultation occur with aboriginal peoples after bills have been passed.

**Hon. Carolyn Bennett:** But that isn't really in keeping with the duty to consult, is it? It's the things that are already passed that affect first nations, Inuit, and Métis peoples. The law then exists, as opposed to their being consulting beforehand. There is a law that affects indigenous peoples in Canada.

**National Chief Betty Ann Lavallée:** My understanding is that if this goes farther, there will be consultations.

**Hon. Carolyn Bennett:** But it will have been passed; these things will have been changed.

**National Chief Betty Ann Lavallée:** Yes, but this is not the be-all and end-all, here right now. My understanding is that it's still going to have to go to the Senate, and at that point there will be opportunity for more consultations.

**Hon. Carolyn Bennett:** You seem much more comfortable with the piecemeal approach than many other commentators. Would you rather have a full undertaking by the Prime Minister to replace the Indian Act with the fiduciary responsibility of the crown?

**National Chief Betty Ann Lavallée:** As I've said, we've been down that road before under JMAC, which was excellent, the governance bill, Bill C-7, under Minister Nault at the time. God love him, he tried because he saw what the act was doing to us. Unfortunately, when you have various aboriginal peoples, not unlike Canadian society, we all have our different opinions and our different approaches to issues. This seems to be the only way that we're going to be able to deal with this: start targeting the little pieces right now, and then hopefully the treaty consultations that are occurring in processes across Canada will at some point overtake these and move us out from underneath this Indian Act.

• (1025)

**The Chair:** Thank you.

I'll turn to Mr. Seeback for seven minutes.

**Mr. Kyle Seeback (Brampton West, CPC):** Thank you for the information you gave in some of your opening remarks and some of your responses to the questions. I found them to be very informative.

I want to talk a little bit about the question we keep hearing today about duty to consult and consultation. I take it that you would consider that your organization was consulted with respect to this particular piece of legislation?

**National Chief Betty Ann Lavallée:** As I said, as soon as I found out about the bill, I contacted Mr. Clarke. I set up a meeting with him and his staff, along with my staff, to find out first of all what he was attempting to do. Then I went back, relayed the information to my board, gave them a full briefing, and asked them whether they wanted to go forth or what, and I was instructed accordingly. Mr. Clarke was invited to our annual general meeting and he was given free rein in the room, which included all my board, plus their boards and grassroots people who were there from the communities, to talk to them. From what I understand, he's been contacted and requested to go out, and has met with some of our communities.

These changes weren't a big shock to us because, as I said, we've already been through the governance act, C-7 under Minister Nault, and we were sitting on the JMAC committee drafting the changes to the Indian Act. So these aren't...

**Mr. Kyle Seeback:** Were there some things that you wanted to see? Did you request that certain things be in this bill of Mr. Clarke's?

**National Chief Betty Ann Lavallée:** I just told everybody today what I wanted to see. The last piece I'd like to see in there is not just reporting on the progress of amendments to the Indian Act, but also treaty updates. How are the treaty tables across Canada going? That's it.

**Mr. Kyle Seeback:** You said something that I found informative, that there are 633 federal Indian Act bands. I've never heard that description before, but it's useful in my mind. I knew the number. But you said "73 first nations", and so—

**National Chief Betty Ann Lavallée:** —historical first nations.

**Mr. Kyle Seeback:** —historical first nations.

You mentioned, for example, that in New Brunswick there are, I think you said, five reserves.

**National Chief Betty Ann Lavallée:** In New Brunswick, there are 15 altogether.

**Mr. Kyle Seeback:** But of a particular—?

**National Chief Betty Ann Lavallée:** There are five Maliseet; the other ten are Mi'kmaq. Then we have our little friend down in the southern corner, close to the Maine border, called Passamaquoddy.

**Mr. Kyle Seeback:** If I wanted to consult—let's say I wanted to bring a private member's bill.... Everyone can exhale; I don't have a private member's bill on any of this. But if I did and I wanted to consult, would I have to consult with all five reserves?

**National Chief Betty Ann Lavallée:** Currently, you would.

**Mr. Kyle Seeback:** So it wouldn't be just having consultations with 73 first nations. Are you suggesting that it would be with 633 federal Indian Act bands; that I'd have to have a consultation with each and every one of them?

**National Chief Betty Ann Lavallée:** Currently, under the law that's what would be required, if they wanted to push it and challenge it, until we get our treaties back in place with our 73 historical nations. That would change the whole concept of consultation; then it would be with the nation.

**Mr. Kyle Seeback:** Did Mr. Clarke ask you for some input on this bill? When you met with him—when he came out to your organization—did you have particular suggestions for him?

**National Chief Betty Ann Lavallée:** No, I didn't. I didn't speak to him that night, except to say hello and here is the room and thank you for coming. I invited Dr. Bennett and Ms. Crowder; they were also at the function. I left it for my board members and the members of the organization who were there to approach Mr. Clarke on their own.

I don't run interference, so if he was going to get it that night, he was on his own.

**Mr. Kyle Seeback:** Mr. Clarke seems to be open to input and changes to the bill. Do you believe that's true, and do you have any other suggestions for this particular piece of legislation?

**National Chief Betty Ann Lavallée:** The one I have put forth, at this point, is about reporting on the treaties. I think it's very important for aboriginal peoples across Canada to know what point various treaty tables have reached, because many of us, in particular those of us who live off-reserve, have been totally left out of the process. There have been no consultations whatsoever.

Right now there's a treaty table happening in New Brunswick, and I have not been involved in it whatsoever. Neither has the off-reserve population there; we've been totally left out, and so we have no idea. Even some of the people on reserve don't know what's going on with these tables. We're hoping that adding this will give us a general idea of where these things are going.

• (1030)

**Mr. Kyle Seeback:** Great.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Seeback.

We'll turn to Ms. Hughes now for five minutes.

**Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP):** Thank you very much for appearing and for your input on this. I'm glad you were able to meet with Mr. Clarke, because that's not the case for everybody.

I have a chief who took the initiative to write to Mr. Clarke and Mr. Rickford with respect to a meeting on this. Although they were invited to their community, which is Whitefish River First Nation, what the chief got back was "Thank you for your letter" and no indication of whether or not they would attend the meeting to discuss this particular piece of legislation. Neither was there an invitation for him to come to Ottawa. I'm hoping he'll have an opportunity to come here to voice his concerns with respect to this type of legislation.

The other thing is this. As you indicated, you aren't a parliamentarian, but given the position you have, I guess you can say that you are political in some sense, because you have to take some stands on issues.

You also talked about the consultation piece and the treaty piece. In the past there have been two major attempts to remove the Indian Act. The first was the white paper authored by Jean Chrétien in 1969 that sought to assimilate first nations into mainstream Canadian society by scrapping the Indian Act and reserves.

Interestingly, Harold Cardinal and other first nation leaders published the red paper called "Citizens Plus", which outlined the reply:

It is neither possible nor desirable to eliminate the Indian Act. It is essential to review it, but not before the question of treaties is settled.

And as you indicated, those treaty issues are still not settled.

The fact is that there are some problematical aspects of this bill. You talked about consultations. I'm trying to get some sense of this. You said that you had a meeting and relayed some information to your board; then you had a meeting, and I'm sure that not all of your membership was able to attend, given how vast Canada is. Isn't that right?

What percentage of your membership was able to attend this meeting to provide input?

**National Chief Betty Ann Lavallée:** At our assembly, we're allowed 18 delegates per province. Each of my board members is the chief and president of the province he or she comes from, in which they have a board of directors that they report to. Those board members are the chiefs and councils of the communities in that province.

**Mrs. Carol Hughes:** So you can say that they actually consulted in order to give you input for the decision to either take a stand on this bill or not.

**National Chief Betty Ann Lavallée:** I have been given direction by my board to support this, but with the amendment concerning treaties.

As I said, it's the same as it was with JMAC. It's the same thing. It's the same stuff that we had extensive consultations on under

Minister Nault, when I went for a month and a half throughout the whole province of New Brunswick. At that time I was the chief in New Brunswick. We went throughout the whole province picking apart the Indian Act. We had a seat on the committee.

**Mrs. Carol Hughes:** My question to you, then, is this. Do you think that first nations should have the ability to consult as well? Should they have a timeline permitting consultation and be able to come here to speak on the issue?

• (1035)

**National Chief Betty Ann Lavallée:** I don't see why they aren't requesting to come here.

**Mrs. Carol Hughes:** Some of them have. The problem with the private member's bill is that it's very limiting as to when and how many people can come in and actually have a say. This is the problem with the private member's bill.

Mr. Clarke has indicated that the bill basically provides some framework, "a legislative process" to "start meaningful dialogue...on a year-to-year basis". He also talked about a serious discussion about getting rid of the act, but also the inability to "conduct a full-scale consultation" and an "open, frank conversation".

I appreciate the fact that Mr. Clarke acknowledges that his government is not living up to its fiduciary responsibilities to first nations people and that the government takes a "paternalistic approach". He said that over and over again during his presentation.

The fact of the matter is that the government is not taking a fiduciary responsibility. Do you think Mr. Clarke should have worked with the government to table a government bill that would allow for proper consultation to take place, and that it would then be taking its fiduciary responsibility?

**The Chair:** You are out of time, but if there is just a short answer, we'll allow a response.

**National Chief Betty Ann Lavallée:** No, if I have an opportunity to make a change to this Indian Act, as a first nations person I'm going to take it.

**The Chair:** Thank you so much.

Ms. Ambler, we'll turn to you now.

**Mrs. Stella Ambler (Mississauga South, CPC):** Thank you, Mr. Chair, and my thanks to you both for being here today, and for your very enlightening testimony.

I want to pick up on something mentioned by my colleague opposite. She said there are some things that are problematic in this bill. What has struck me most today in hearing what you've been saying, and what was said by a previous couple of witnesses, is a proverb I think we all know: The best is the enemy of the good. We now say: The perfect is the enemy of the good. This is human nature. We all want a perfect solution, and sometimes we reject a more moderate—the glass is half or three-quarters full—solution for that reason. It seems to me that is what so many people might be saying.

I want to thank you for accepting the fact that, while this might not be exactly what you want to see, it is definitely a step in the right direction—Mr. Clarke's intentions are to improve the quality of life for aboriginals in Canada. That's what strikes me the most.

Does that accurately reflect what you're trying to tell us?

**National Chief Betty Ann Lavallée:** I'm saying yes. We have to start somewhere. What really bothers me about this whole Indian Act is that I don't think most Canadians realize that the apartheid system in South Africa was based on the Indian Act. Here we were in Canada condemning the South African government for apartheid at the UN and in international courts when we were still doing the same thing here in Canada. They saw the light 20 years ago. Why haven't we seen the light? It's not just one government; it has been a multitude of governments over the years.

**Mrs. Stella Ambler:** Yes, Mr. Clarke mentioned that.

**National Chief Betty Ann Lavallée:** We have to start somewhere—if it starts with four little amendments, then it starts with four little amendments. You can't just take the Indian Act, as a lot of people would like to see, and rip it up, because you're going to leave a void. That's the problem. But at some point we have to start addressing the points in the Indian Act that have no meaning. Residential schools—

• (1040)

**Mrs. Stella Ambler:** I was going to ask you about that, actually. I'm new to this committee, so please forgive me. Would off-reserve aboriginals have been affected as well?

**National Chief Betty Ann Lavallée:** Yes.

**Mrs. Stella Ambler:** When Mr. Clarke spoke to the committee on Tuesday, he mentioned that his grandparents were survivors, so he comes to this from a very personal angle. We haven't mentioned this government's historic apology in 2008, but I suspect it certainly made all Canadians aware of that terrible chapter in our history.

But I digress. I want to ask you specifically, because I am new to the committee, are off-reserve first nations individuals treated as all other Canadians, or are they still subject to the paternalistic and archaic aspects of the act?

**National Chief Betty Ann Lavallée:** We actually fall in no man's land some days. It just depends on how well we're able to blend in.

**Mrs. Stella Ambler:** Right.

For example, in respect of wills and estates, would you have to have your will approved by the minister?

**National Chief Betty Ann Lavallée:** Yes, but before that ever happens, I'm going to ensure that everything has already been turned over to my grandsons.

**Mrs. Stella Ambler:** That's the practical fallout of a law like this.

**National Chief Betty Ann Lavallée:** I have no choice. If that is not taken out, I have no choice. Before I die, I have to ensure that everything I own is transferred to my grandchildren to ensure they're protected. I own 25 acres of land, fully wooded, which is very valuable, and I've worked hard for everything I have. So has my husband, who's still in the military.

**Mrs. Stella Ambler:** And you don't want to risk it.

**National Chief Betty Ann Lavallée:** I'm not going to risk my estate.

**Mrs. Stella Ambler:** Unless this bill passes, in which case....

**National Chief Betty Ann Lavallée:** In that case then, it will depend on how well behaved they are over the next 15 years. That will determine what they get.

**Mrs. Stella Ambler:** Thank you very much.

**The Chair:** Thank you.

We do want to thank our witnesses this morning. We appreciate your testimony and willingness to answer our questions.

Colleagues, we will suspend for just a couple of minutes, and then I do want to return to address a couple of items of committee business.

*[Proceedings continue in camera]*





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