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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)): I call to order this 69th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

For the first hour today we have a witness coming to us via video conference from Winnipeg. He will be with us for the first hour. We already have panellists for the second hour joining us. They will be here to answer questions in the second hour.

Mr. Kinew, we'll turn it over to you for the first 10 minutes, and then we'll have some questions for you.

Mr. Wab Kinew (As an Individual): Thank you. Can everyone hear me?

The Chair: We sure can, thanks.

Mr. Wab Kinew: Okay, thank you.

[Witness speaks in Ojibwa]

I'll wait for the simultaneous translation to catch up there. No, it's okay, I'm just kidding.

Good morning, relatives. My name is Wab Kinew. I'm the director of indigenous inclusion at the University of Winnipeg where I'm in the process of setting up programs that help to connect indigenous people with the mainstream economy in a way that respects indigenous values.

In the Ojibwe introduction that I just gave to you, I told you about my lineage. I said I'm a member of the lynx clan. My people are known as the Lake of the Woods Anishinaabe. My father is Tobasonakwut, my grandfather the original Wabanakwut, and they gave to me the Anishinaabe way. My father spoke to me in the Anishinaabe language. Through them I learned Anishinaabe law.

That is correct: we have Anishinaabe law, a law that tells us to take care of each other. I think others should understand this. We, as indigenous nations, the Anishinaabe being but one example, have laws and governance systems that are still valid, in effect, and relevant to our modern conduct. My introduction refers to many of these laws, to my clan, to my family, to my membership in the spirit lodge Midewin. All of these things ascribe rights, responsibilities, and define my expected conduct within Anishinaabe society. If more people understood our laws and cultures, we could bring about reconciliation between indigenous people and other Canadians.

The Indian Act as it exists right now is an affront to these indigenous systems of law, culture, and governance. The Indian Act

asserts the supremacy of western law and implies that indigenous law and culture do not have value. By imposing a system of governance on us you tell us that we do not know how to govern ourselves.

This may sound abstract. However, Chandler and Lalonde have found that cultural continuity is a hedge against suicide in first nations in British Columbia. American research suggests that native youth who are active in their cultures are less likely to use drugs and alcohol. If this is what the research tells us, why do we continue with an approach that undermines these cultures and that implies that indigenous nations do not have value? The proper course of action is to help indigenous people revitalize our own cultures and communities. The first step toward helping that take place is meaningful consultation. By consulting with indigenous people you send a message that you value us, our culture, and are therefore interested in a new relationship that is not coloured by the paternalism of the past.

The Indian Act has been very damaging in that it has removed opportunities, made dependence the easiest path for many, and led to the damaging residential school era. I'm against the Indian Act. The real issue is not whether or not to replace the Indian Act, but how to do it. Status Indians and others affected by the act have made life choices according to situations that have been created in part by the legislation. We have decided where to live, whom to live with, and how to earn a living based, in part, on the Indian Act. To change it or remove it without consulting us is not right. First nations people deserve to have our voices heard in designing whatever is to replace the Indian Act for that reason alone. However, results of the duty to consult changes to the Indian Act will affect treaty rights and aboriginal rights, so some meaningful consultation should occur.

I realize that I and other first nations people have been invited to provide comment, but I do not believe this fulfills the crown's duty to consult. Is there transparency as to why I and others invited to speak were chosen? Has a call gone out generally to everyone affected by the Indian Act to provide comment? Is there any assurance that the opinions we provide will be reflected in the handling of the bill? A thorough consultation would not leave room for these questions; hence, I do not believe that the duty to consult is being fulfilled.

There is a proposed provision in Bill C-428 to provide for reporting on collaboration between the federal government, first nations, and other interested parties to develop new legislation to replace the Indian Act. However, this is too vague to represent meaningful consultation. All it requires is that a report be made. I worry that such a report will simply say there has been no progress towards replacing the Indian Act.

If consultation with first nations is a real priority, then it should happen before a bill is tabled, not after. If there is a real desire for it to happen, then we should also spend some time drafting the terms of reference, allocating resources, and setting timelines for that process. We should not merely say, "Let us have a report once a year". Instead, since Bill C-428 is a piece of legislation designed without meaningful consultation with the first nations people upon whom it will be imposed, it is paternalistic in the tradition of the existing Indian Act.

Solutions imposed from outside of indigenous communities do not work. They have not worked for the past 140 years. Replacing a paternalistic Indian Act with a paternalistic act to amend the Indian Act is not real progress. We must replace the Indian Act, but we must replace it with legislation that has been designed at least in meaningful consultation with, if not entirely by, indigenous people.

The proposed provisions within Bill C-428 are fairly innocuous. I do not think you would find very many people who would argue in favour of residential schools or keeping the laws that made them possible on the books. However, does anyone really fear that the federal government will start funding residential schools again if the Indian Act is left the way it is? I do not think so. So removing these provisions represents picking the low-hanging fruit, if you will. That may not sound too bad, but in a world of limited resources, picking the low-hanging fruit comes at the expense of tackling the more challenging aspects of the relationships between Canada and the indigenous people.

There must be a legal interface between the Anishinaabe law, of which I spoke earlier, and Canadian law, and we have an interface already, interfaces actually. They are called treaties. We should be focusing our attention on honouring the spirit and intent of the treaties. Spending our time tinkering around the edges of the Indian Act distracts us from what we should really be doing to improve the relationship between indigenous people and other Canadians: honouring the treaties in the treaty areas and respecting aboriginal title in the non-treaty areas.

Furthermore, there is only a limited amount of political capital available in this country to deal with indigenous issues. If we expend it on this bill, I worry there may not be enough left over to tackle the real problems in first nations communities. When I visit reserves across this country, the problems I hear about over and over again are suicide, prescription drug abuse, and the lack of opportunity. We should be focusing on tackling these problems. You will recall that Chandler, Lalonde, and others have found that culture, and consequently the indigenous laws embodied therein, can help deal with some of those issues. Let us devote our energies to improving the relationship between indigenous people and Canada and to responding to the immediate crises many first nations people face today.

Based on these remarks, I have three recommendations: one, that the federal government engage both first nations politicians and grassroots indigenous people in a meaningful consultation about replacing the Indian Act, meaningful consultation meaning a consultation process where the opinions expressed by those first nations and indigenous people are not only heard, but reflected in future legislation; two, that this consultation happen before any act to replace the Indian Act is tabled; and three, that you withdraw Bill C-428 as an act of good faith until such meaningful consultations take place.

Meegwetch. Merci. Thank you much.

● (0855)

The Chair: Thank you very much.

We'll begin the questions with Mr. Bevington, for seven minutes.

Mr. Dennis Bevington (Western Arctic, NDP): *Mahsi Cho*, Mr. Kinew.

I'm from the Northwest Territories. That's my riding. I represent five indigenous first nation regions in the Northwest Territories and one Inuvialuit. We certainly, as well, have very strong Métis people in the Northwest Territories.

I agree with your sentiments. We're dealing here with a private member's bill that was brought forward. It's not even a government bill. What we have here is that the individual has brought forward a bill, hasn't demonstrated consultation with first nations, and really is, as you said, occupying a lot of our committee time here that could well be put to other purposes.

Do you think it would be appropriate for us now to simply put forward a motion to Parliament to withdraw this bill?

Mr. Wab Kinew: Yes, I do. I do not begrudge MP Rob Clarke for making an attempt to tackle the problems posed by the Indian Act. I think that the sentiment is good. However, as I stated in my comments, to me the real challenge is not whether or not to get rid of the Indian Act, but rather what is the process that is going to replace it going to look like.

If we are starting down a path that is all about imposing legislation without consultation with first nations people, then I don't think that's the right path. If we are going to really devote the time, energy, and resources and if we are really committed to doing this right and moving past the Indian Act era, then the process by which the legislation is designed and then ultimately implemented is very important and it needs to reflect a new relationship, which is one that I see embodied by many Canadians from coast to coast to coast, which is that people want to move past the era of paternalism.

What I see happening more and more today is that people understand that indigenous peoples have our own cultures, our own laws, our own ways of doing things, and that these are worthy of respect and they need to be taken into account when legislation is being designed.

Yes, I would agree with such a motion, mainly because I think that the bill as proposed is set on a foundation that is one of paternalism and does not reflect true consultation with first nations people.

• (0900)

Mr. Dennis Bevington: I recognize my colleague's desire to change things as well. I don't see it as a bad thing, but I do see that there needs to be a statement made here.

We've seen legislation come forward from this government in the last two years that has not been subject to consultation in a meaningful fashion. I agree with you on the importance of this government and the rest of us legislators understanding that first nations need to be the prime movers in the development of new legislation. It fits with the concepts of self-government that we're working on in the Northwest Territories and across the country. Those concepts should be the paramountcy I believe in much of what's going ahead here.

How can we talk about self-government without the first nations giving us the answers that we need to make the legislation here in Parliament meaningful? How can self-government work in the future without that clear understanding on our part as legislators?

Mr. Wab Kinew: No, I don't think it can. I think that ultimately federal politicians definitely have a role to play in helping to bring about positive change for first nations people in Canada, but I don't believe that the role is to dictate what is to take place in first nations and other indigenous communities.

Rather, once first nations have a model and a system that's based in their culture and that is applicable in the contemporary realities of funding agreements and bylaws and things like that, once we have a system like that, then I think the role of federal politicians is to support those things to figure out what sort of allocation of resources makes sense and to figure out this idea that I mentioned of an interface between Canadian law and indigenous law.

I think that the contemporary role for federal politicians, if we want to get the relationship right, is to collaborate and not to dictate. It's to identify where things are going right, to see who is actually taking concrete steps towards improving their communities and to work with them. If we're going to continue to have a one-directional conversation, then that does not represent a step forward in the relationship; rather, it's a continuation of the relationship that has been the norm in Canada for the past 140 or so years.

Mr. Dennis Bevington: Thank you very much.

My time has pretty well run out. I think you've expressed the feeling on this side of the table. I'll leave it at that.

The Chair: Thank you.

We'll turn now to Mr. Boughen.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair, and my thanks to Wab Kinew for taking time out of his busy day to share with us his thoughts on this topic.

I think we all agree that we need to move beyond the paternalistic Indian Act, but the question is how, and what we should replace it with. Mr. Clarke's intention with the bill was to start the conversation and take concrete action to enhance the lives of first nations people.

Could you share with us what you imagine replacing the Indian Act with? It would be something which the aboriginal communities can buy into, but what kind of a program, what kind of a process, would it be?

• (0905)

Mr. Wab Kinew: As I said, I respect Mr. Clarke's intention in designing this bill.

The proper way to go about a meaningful consultation process to replace the Indian Act would be one which sets out a timeframe, sets out the resources it's going to take to get the consultation done, and drafts the terms of reference for that consultation.

I realize there's been an attempt in this bill to provide for some consultation. This is reflected in the requirement for a report to be made annually on the progress of the collaboration. However, the way we operate in the contemporary world is that if you want something to get done, you have to measure it. If we want this consultation process to go forward, and we want it to be transparent, and we want it to be designed in such a way that there won't be ongoing questions about whether or not it was a meaningful consultation or whether the duty to consult was fulfilled, then we should set out the specifics as to how we are going to measure the outcomes of that consultation process.

To me the key pieces of the process are that there be a timeline, that there be resources devoted to the consultation process, and that the terms of reference be drafted. Beyond that, for it to be recognized broadly as a meaningful consultation, it can't just be that we have people coming forward to speak their piece, but then we go ahead and draft the legislation according to our own desires anyway. Rather, it should be inclusive of those voices that are heard within the consultation process. Meaningful consultation is one in which consultation occurs, and the voices from that consultation process are reflected within the legislation that is eventually tabled.

Those are the key aspects as I see them. I think there are a number of reasons for this. First of all, there's the crown's duty to consult. Beyond that it's just a matter of rightfulness to consult with the people who are going to be affected by the legislation.

Finally, if you want to speak of political expediency, if you have people's buy-in obtained through consultation, then I think there is a greater chance of success that the legislation will be embraced after it is passed and that consequently it will lead to more positive results.

Mr. Ray Boughen: Do you think that this bill is a step in the right direction in helping us move past the current Indian Act?

Mr. Wab Kinew: I don't believe it's a step in the right direction, because it's a continuation of the history of imposed legislation within Canada. As I said, I believe the intention behind the legislation is good. The desire to change the Indian Act is something I agree with. However, because of my analysis of it, which is basically that there has not been thorough consultation with first nations people in designing the bill, I think it is just a continuation of the existing policies of paternalism rather than being a real step in the right direction.

Mr. Ray Boughen: Mr. Clarke has introduced the bill with the idea of an incremental approach. What are your thoughts on bringing the bill forward in small segments?

Mr. Wab Kinew: I believe that pragmatism and considering political reality, I think, are really important, especially when we're dealing with issues like the Indian Act, which the average Canadian may not thoroughly understand. I respect that approach. However, I still think that every step we take down the road towards replacing the Indian Act should reflect a renewed commitment to a nation-to-nation relationship. It should reflect a new understanding, one which consults with first nations people.

If we are to proceed in one giant leap, which would replace the Indian Act in one fell swoop, or whether we are to legislate those changes incrementally, piece by piece, I think that either course of action we take, the first nations people must be consulted prior to those steps being taken.

● (0910)

Mr. Ray Boughen: Given the fact that there are over 600 different bands, how would we consult with everyone? What are your thoughts on how we can maximize the consultation process?

Mr. Wab Kinew: I think the federal government has extensive experience in doing consultations not only with indigenous people, but also broadly in other areas like the environment. I think that having consultation meetings regionally and then having those findings reported back at a national level is a legitimate approach. I think that we also need to do a fair bit of outreach. While there are certainly a great number of people who are really engaged with the political process in indigenous communities, there is also a fair degree of apathy among some of the people who may be most affected by this bill.

In addition to a consultation process that happens within the regions and not just in Ottawa, I'd also like to see a fair degree of outreach, which could take the form of marketing efforts, or it could take the form of ground level grassroots outreach.

The Chair: Ms. Bennett, for seven minutes.

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

As my colleagues on this side have said, I think we agree with you totally that this bill should just be withdrawn and that we should proceed with a proper process for replacing the Indian Act.

Seeing that you're here with us and somehow the government has decided to support what you have called a paternalistic act to replace the paternalistic Indian Act, it gets in the way of moving forward in a meaningful way to begin that consultation and the real work that needs to be done.

You, with *8th Fire*, have done amazing work in trying to get indigenous issues on the radar of the 96% of Canadians who aren't from an indigenous background. I was grateful for your description of the kind of process that it would take with first nations, but I wonder if you have thought about how you would advise the crown to also begin the process of educating those 96% of Canadians about the need to get rid of the Indian Act and get rid of it now, in terms of what they see and what you've described with Chandler and Lalonde. How do we get there? As you know, political will comes when all

the people of Canada say to the government to get on with this now, please.

How do we do a better job explaining that this isn't an Indian problem, that this is a Canadian problem and that we need all Canadians to be onside to increase the political will of a government to get on with it and do the job?

Mr. Wab Kinew: I agree with your assessment that having non-indigenous people in Canada buy into the need to replace the Indian Act is very important. That will generate the political capital necessary to engage in this wide-ranging consultation process that I've outlined in a few of the answers and in my comments.

Having worked in the media as a daily news reporter for a number of years, I can tell you that issues like the Indian Act and the rationale behind why consultation with first nations needs to occur, these are complex issues that are not easily explained in a two-minute news story or in a 700-word column within a newspaper. It is definitely a challenging exercise.

However, every year the government sets out its priorities. I think one step would be for the federal government to make this a priority, and consequently, the media would be forced to do a better job in explaining what the issues are and what the duty to consult is.

Beyond that, I think there's a real challenge in Canada within our education system at the elementary, secondary, and post-secondary levels about how we teach indigenous history and indigenous issues today. I think in the long run we want to look at those things and make sure that the place first nations people, Métis people, and Inuit people occupy within the fabric of the country is properly taught. That's the long-term solution.

I think the immediate solution, one which federal politicians can engage their constituents in, is to make this a talking point. Whatever your assessment is of the Indian Act, or the policy alternatives that could potentially replace it, I think there's widespread agreement that the status quo doesn't work. On one side of the spectrum you have people who think the act is offensive and paternalistic. On the other side you have people who may not be against the way the act is approached, but who just resent the current status quo on reserves. They too would want to see the Indian Act changed.

I think it's working from that common ground where federal politicians say, "We're tired of the status quo. Let's do something to change the status quo. In order not to have to revisit this issue again in a year, when the next first nations housing crisis or another thing pops up in the news, let's do it right. Let's get it right this time."

The way to get it right is to engage in the consultation process with first nations, to fulfill the duty to consult, and to make sure that whatever legislation eventually gets passed reflects that consultation process right back, even before the legislation is tabled.

It's a sentiment that I agree with, and it's something that all politicians may be able to play a role in bringing about.

● (0915)

Hon. Carolyn Bennett: In my riding, we're calling it Idle "Know" More in trying to make sure that we play a role in eradicating the ignorance and getting on with it.

We're also impressed with what they've done in New Zealand, where Maori studies are taught from kindergarten to grade 8. It's been over a year since the TRC recommended the curricula changes. Obviously some provinces and territories have begun that, but I guess we feel that this has to be done at all levels of government, from school boards to us as federal politicians.

Thank you for all you do in being able to tell the story in a way that all Canadians can understand. It's a really important role that you play.

Meegwetch.

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

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair, and thank you, Mr. Kinew, for your testimony today.

I look at the Indian Act and it goes back 137 years of maintaining the status quo. We've seen approximately 16 attempts to try and change the Indian Act, but it has always been met with failure.

I look at the Indian Act, and then I look at apartheid in South Africa which took the Indian Act and used it as a template. Currently in South Africa, they don't have apartheid, but here we have 137 years of the Indian Act, which is still in place, which governs the day-to-day lives of first nations.

In your series, *8th Fire*, people came forward to be interviewed and provided their life experiences. Everyone says to get rid of the Indian Act. We hear it from the AFN leaders. We hear it from leaders all across Canada. They say to get rid of the Indian Act, but no one ever seems to want to do it.

Being a first nations man myself living under the Indian Act, I don't have the same rights as my non-aboriginal colleagues here have. I feel like I'm being treated as a second-class citizen being dictated to in my day-to-day life. Then I hear the word "consultation". I'd like to get some clarification from you, Wab. On every piece coming forward from the opposition, either a motion that affects first nations or a private member's bill, do you feel that they should be consulting across Canada with every first nations group?

● (0920)

Mr. Wab Kinew: Yes.

Mr. Rob Clarke: On their motion?

Mr. Wab Kinew: Yes, absolutely.

I don't believe it is a partisan issue. I don't believe it is an issue between the sitting government and the opposition. In the end, whatever piece of legislation gets passed in the House of Commons will be implemented into law by the crown, and the crown needs to fulfill the duty to consult. If there were to be legislation proposed specifically to replace the Indian Act, or more generally that would apply to or affect treaty rights or aboriginal rights, I think that should reflect a consultation process with the affected first nations. If it's the Indian Act that is going to affect all first nations, then I believe, yes, that consultation process should take place.

Mr. Rob Clarke: I fall under a very different set of circumstances right now with my private member's bill. As a first nations man, I

have a unique opportunity. If we look back, three or four years ago the Indian Act wasn't on the radar. My purpose in introducing this private member's bill is to get the discussion going from a federal standpoint. That's what I believe is happening now. We've heard everyone talking about it in the back rooms, but no one has ever wanted to bring it forward and talk about it here in committee. I feel this is the ultimate place for this to be discussed, at formal meetings, where all governments—provincial, federal, and first nations—and opposition can hear it. This is a place where it can be honestly and openly discussed.

This legislation actually calls for somebody to report to Parliament on a process toward replacing the Indian Act. Currently in the Indian Act there's nothing that mandates the federal government to talk about the Indian Act and make changes in partnership with first nations. How do you feel about that? Do you think we should simply be maintaining the status quo, without any idea of allowing first nations to come forward and say, "Hey, we have an idea that would provide an opportunity for first nations to progress, new legislation that will help through economic opportunities"? How do you feel about that?

Mr. Wab Kinew: Well, the status quo is not working for the average first nation person. I doubt very many people outside of the indigenous community are happy with the status quo on reserve or as it applies to status Indians.

The point I want to make with my comments today is that continuing with legislation, which is proposed and in some cases passed without consultation with first nations people, is itself a continuation of the status quo.

I respect your intention in bringing forward an attempt to change the Indian Act, but I think the whole process needs to be done in consultation with first nations people and other affected parties. If we engage in that sort of consultation before, during, and after those legislative processes, then I think there will be real transparency, real buy-in, and consequently a greater chance that those legislative changes actually lead to challenging the status quo.

Beyond that, there are many first nations in Canada, and not just first nations, but also regional organizations such as the Grand Council of Treaty No. 3 in northwestern Ontario, that have started, or in some cases implemented, alternatives to the Indian Act.

I would just like to say on the record that yes, the federal government needs to work with those first nations and regional organizations that are taking those concrete, positive steps. I hope there is the will on the part of the federal government to work with those organizations that are doing that and to figure out, in collaboration with them, what sort of resource allocation to those initiatives makes sense.

● (0925)

Mr. Rob Clarke: Do you feel the Indian Act will be dismantled in your lifetime?

Mr. Wab Kinew: Yes, I do. In the last five years, beginning with the federal government's apology on Indian residential schools, and moving towards the Truth and Reconciliation Commission, and then more recently with the coverage of the housing crisis in Attawapiskat, and then this past winter with the widespread attention to the Idle No More movement, I believe there is more and more attention being paid to indigenous issues in Canada than ever before.

I believe that, while it may be messy in the short term, in terms of the debate sometimes being rancorous, sometimes there being a lot of conflict, a lot of partisanship in some cases, in the end most Canadians are decent people, and most Canadians want positive outcomes for both themselves and for their fellow compatriots. In the long run those shared interests will lead us towards a path to get rid of this paternalistic piece of legislation that is currently on the books.

Today if I show the average Canadian a status card and ask them if it makes sense in 2013 to carry a race-based piece of identification around with me, most people will say, "No, that doesn't make sense. That doesn't sound like the Canada I know".

However, it doesn't immediately follow that we should therefore just remove the Indian Act entirely. As I said in my comments, this piece of legislation has been on the books for a long time. People have made their life choices—where to live, what to do, how to earn a living—based on that existing legislation, so we can't just pull the rug out from under them. Rather, we need a very thorough consultation process, which is going to take their concerns into account, and in so doing, we're going to bring about a piece of legislation, and the ideal legislation in the long run is one that's actually going to last. It's not one that we'd legislate for a year or two, figure out that there are a whole bunch of problems with it, and then have to return to the table and start drafting a replacement for the replacement.

So I think the debate—

The Chair: Mr. Kinew, I hate to jump in here, but we have other folks who need to get in and question here.

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

Mrs. Carol Hughes (Algoma—Manitoulin—Kapusksing, NDP): Mr. Kinew, I think you're absolutely right that this is about picking the low-hanging fruit as opposed to tackling the real problem, which is the relationship. By tackling the relationship, as you've indicated, the solutions will be there.

We've heard from a variety of witnesses who have indicated that the first people are the ones who will be able to assist in guiding this government in being able to have the proper legislation, if that's what needs to be in there, in ensuring that the relationship is rebuilt and, as well, ensuring their ability to govern on a nation-to-nation basis.

Mr. Clarke mentioned about feeling like a second-class citizen. I can tell you that when I spoke to Chief Moonias this week with respect to the string of suicides and the attempts of suicide in his community, he said that he thinks that they feel more like refugees than they do the first people in this country.

Also, Mr. Clarke mentioned that the Indian Act hasn't been on the radar. The fact of the matter is that if we're getting comments like that, then it's obvious the apology may have been for nothing, and

the crown-first nations gathering may have been for nothing. The crown-first nations gathering was an opportunity for the government to have those discussions and consultations with the first nations, to be able to resolve the issues that the Indian Act has brought forward and the problematic areas that have come along the way. We've had successive governments that have refused basically to rebuild that relationship, so I understand that.

I want to ask you whether or not you think it is impossible or too onerous for the government to consult with the first nations. I know you mentioned that you feel that it can be done, but do you think that it's too onerous on them? My understanding is that if there's a will, there's a way. We're talking about 600 and some first nations, not 6,000 and some. Could you reflect on that and give me your point of view?

• (0930)

Mr. Wab Kinew: I do not believe that the apology was an exercise in futility. Rather, I believe that the federal government's apology on Indian residential schools was a good thing. I saw in my own family the way that it made a positive impact on first nations people. My father went to residential school. I'm the first generation in my family who didn't go to residential school. My older cousins went to residential schools. The apology was not a panacea. It was not a miracle solution, but for some people, such as my father and my uncle, it did make a positive impact on their immediate well-being. That's the first thing I want to say.

The jury is still out on the outcome of how to assess the crown-first nations gathering. If we look back in 10 years and say that the meeting didn't have any impact, then perhaps it was an exercise in futility, but if this time period we're in right now ends up leading to some concrete, tangible outcomes for first nations people, then perhaps it was a step on the road to that. We'll see. The jury is still out.

With regard to your question, no, I don't believe that meaningful consultation is too onerous. I don't believe that the duty to consult is an onerous imposition on the crown. The honour of the crown is at stake.

The reason I said consultation needs terms of reference, a timeline, and resources to do so is that those are the things that need to be in place if we want things to actually happen. If you want something to happen, measure it. Let's put the measurements in place by which we can evaluate whether consultation has occurred.

Putting out the call to 633 first nations across Canada and other affected parties does not have to be a huge, onerous burden on the crown. That could be done reasonably within the existing resources allocated to the federal department, Aboriginal Affairs and Northern Development Canada, in my belief. Furthermore, the consultation process to actually bring in those voices, to aggregate them, and to work those into a piece of legislation that would legitimately replace the Indian Act could be done realistically as well. No, I don't believe it's too onerous.

The Chair: I will now turn to Mr. Rathgeber for five minutes.

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

Thank you very much, Mr. Kinew, for your interesting presentation.

What if the consultation does not lead to consensus? Where does that leave us?

Mr. Wab Kinew: It's an interesting question, because it's one thing that first nations people grapple with all the time. I think we ought to look at it indigenous nation to indigenous nation. Are we likely to find consensus among all 633 first nations across Canada? Perhaps not. Is it more likely to find consensus among, say, all the Anishinaabe or Ojibway communities? Is it more likely to find a consensus among all the first nations within a given treaty area such as Treaty No. 3? I think that is more likely.

If we make the consultation process so that it's implemented on a regional level, I think we're more likely to hear a unity of voices, because the conditions within a given region, within a given people, are more similar than they are across the regions of Canada. That's why I suggested earlier that the consultation should be very regional in nature.

We also need to consider the fact that in replacing the Indian Act, it may not be a one-size-fits-all solution that comes next. As such, we ought to consider whether there would be one approach for communities in, say, the prairie region, while perhaps there's another approach that makes sense in Atlantic Canada. Perhaps there's another approach that makes sense on parts of the west coast. The way—

• (0935)

Mr. Brent Rathgeber: Excuse me. I understand that. I need to move to a second question.

I understand the duty to consult, and I understand that it's enshrined in judicial decisions and in history, but some have suggested, and I think I might join them, that this proposed legislation sets out a pretty protracted duty to consult. As you know, and as we all agree, the Indian Act needs to be replaced, but no one seems to know exactly with what.

Clause 2 of this bill, as you cited in your opening comments, requires the minister to report annually to this committee regarding progress by his department “in collaboration with First Nations organizations and other interested parties”. I would suggest to you that this is a duty to consult.

I appreciate your comments about timeframe and resources, but it's quite conceivable that in this process in the first year the duty to consult might set out a timeframe or resources to lead to eventual replacement of the Indian Act, based on the consultation that you so rightly desire.

Mr. Wab Kinew: I agree with your assessment that the duty to consult is important and it must be fulfilled; however, I don't think what's proposed in this legislation fulfills that criteria because, as I said in my comments, it's too vague, right? There's merely a requirement to report about progress and that this reporting happen annually. It doesn't mandate that progress actually be made. For all we know, the report every year could be “Well, there was no progress this year”.

If we really want that progress to occur, then we should set out the terms by which we are going to measure progress. What is progress? How does that look and what form does it take? Also, money talks. We want something to happen: measure it. Let's talk about money. Let's talk about the measurement of it. Let's talk about the timeline. By setting out those clear measurable objectives in that case, we may be able to make real progress.

Mr. Brent Rathgeber: Do you not agree that your people and your groups need to be consulted regarding the timeframe and the necessary resources?

Mr. Wab Kinew: Right, before the legislation gets tabled—

Mr. Brent Rathgeber: This statute accommodates that.

Mr. Wab Kinew: No, because the legislation has been tabled without consultation. Consultation should happen before legislation is tabled, before legislation is proposed.

Mr. Brent Rathgeber: Thank you.

The Chair: We'll turn to Ms. Crowder now just for a clarification.

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

I just had a brief point that I wanted to clarify, and also a quick comment that of course we would agree that the residential school apology was absolutely essential and was a very important historical moment in Canadian history. I appreciate your talking about the impact on you and your family.

My point of clarification is with regard to your comments when you talked about timeframe references and terms of reference. I don't want to presume this, but I'm presuming that you would want the timeframe, the terms of reference, and the resource discussion to happen with first nations so that government—and this is not partisan, as I don't care which government it is—doesn't present this plan and say, “Well, take it or leave it.” I'm presuming that you want—

Mr. Wab Kinew: Yes, that's correct.

Ms. Jean Crowder: Good. Thank you very much.

Mr. Wab Kinew: To clarify, I should say explicitly that while I am advocating for a timeline, resource allocation, and a terms of reference, specifically those things should be arrived at in consultation with first nations people. Yes.

Ms. Jean Crowder: Great, thank you.

Mr. Wab Kinew: Thank you for asking for that clarification.

The Chair: Thank you very much, Mr. Kinew. We appreciate it's early where you are. We certainly appreciate your willingness to join us this morning.

We'll now suspend the meeting, colleagues.

A panel is arriving, so we'll suspend for five minutes to get those folks arranged and ensure that everyone's in place. We'll begin again in five minutes.

The meeting is suspended.

• (0935) _____ (Pause) _____

• (0940)

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

This next hour of the meeting is a little different from the first hour. You'll recall, colleagues, that the last meeting we had a round table similar to the set up for this second hour.

In introduction, I want to first and foremost welcome our guests. Thank you so much for being here. We appreciate your willingness to come to Ottawa and engage with this committee. We always appreciate having folks living in the communities affected by the legislation that we're reviewing come to our committees so that they can be heard directly. We certainly appreciate that.

We're going to begin by introducing ourselves. We'll go around the table, starting on the left-hand side.

My name is Chris Warkentin and I'm the chair of the committee. I represent a riding in northwest Alberta. Thanks again for being here.

We'll turn to Jean.

• (0945)

Ms. Jean Crowder: Jean Crowder, I'm a member of Parliament for Nanaimo—Cowichan, on Vancouver Island, and I'm the aboriginal affairs critic for the NDP.

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Jonathan Genest-Jourdain, member of Parliament for Manicouagan.

Mr. Dennis Bevington: Denis Bevington, member of Parliament for the Northwest Territories.

Mrs. Carol Hughes: Carol Hughes, Algoma—Manitoulin—Kapusking in northern Ontario.

Hon. Carolyn Bennett: Carolyn Bennett, member of Parliament for St. Paul's in Toronto, and I'm the critic for aboriginal affairs for the Liberal Party.

Chief Marcel Head (Chief, Shoal Lake Cree Nation): Marcel Head, chief of Shoal Lake Cree Nation, Saskatchewan.

Chief James Plewak (Chief, Keeseekoowenin Ojibway First Nation, Executive Council, Anishinaabe Agowidiwinan): Chief James Plewak, chief of the Keeseekoowenin Ojibway First Nation, the Riding Mountain Band, Anishinaabe Agowidiwinan, Treaty No. 2, Manitoba.

Chief Nelson Houle (Chief, Ebb and Flow First Nation): Chief Nelson Houle, Ebb and Flow First Nation, signatory of Treaty No. 2.

Chief Eugene Eastman (Chief, O-Chi-Chak-Ko-Sipi First Nation): Chief Eugene Eastman, O-Chi-Chak-Ko-Sipi First Nation, Treaty No. 2.

Mr. Charles Whitecap (Policy Analyst, Prince Albert Grand Council): Charles Whitecap, I work with the Prince Albert Grand Council.

Ms. Charlene Desrochers (Lawyer, Constance Lake First Nation): I'm Charlene Desrochers. I'm a member of Constance Lake First Nation in Northern Ontario.

Mr. Kelly Tailfeathers (Researcher, Blood Tribe): I'm Kelly Tailfeathers, Blood Tribe, the Kainai, Blackfoot Confederacy.

Mr. Brent Rathgeber: Good morning. I'm Brent Rathgeber, member of Parliament for Edmonton—St. Albert. Thank you for coming.

Mrs. Stella Ambler (Mississauga South, CPC): Welcome. I'm Stella Ambler, member of Parliament for Mississauga South, and chair of the Special Committee on Murdered and Missing Aboriginal Women.

Mr. Kyle Seebach (Brampton West, CPC): Good morning. I'm Kyle Seebach. I'm the member of Parliament for Brampton West, just outside of Toronto.

Mr. Ray Boughen: Good morning. I'm Ray Boughen. I'm the member of Parliament for Palliser, located in south-central Saskatchewan.

Mr. Rob Clarke: Good morning. My name is Rob Clarke, and my riding is Desnethé—Missinippi—Churchill River in northern Saskatchewan.

The Chair: Thank you.

We're also joined by Greg Rickford, the parliamentary secretary to the minister. He had to step out for a call but he'll be right back.

First and foremost, colleagues, we've been asked to have a map distributed and it's in one language only. The names are in English. I'm looking for unanimous consent to circulate that document.

Seeing no resistance, we'll circulate it so it can be referenced during our time together.

Today we want to thank our guests for coming to our committee.

You are well aware of the private member's bill that is before us today. What we will do is reflect on either the bill in general or its specific elements. You're aware that the bill touches on a number of different points of the Indian Act. It removes some sections of the Indian Act and works toward replacing that act with a process by which the federal minister would have to report to this committee or to Parliament on an annual basis.

Hon. Carolyn Bennett: We'd welcome any written submissions.

The Chair: Yes, I want to invite our guests that if they have a written submission in addition to their comments, we would be happy to have that reflected in the testimony.

Thank you, Chief Head. We'll make sure that we include that.

In terms of the act there are significant and diverse elements that are being reflected on and impacted by this bill. There are economic sanctions and trade sanctions that are being removed from first nations land and people as they relate to agriculture and produce. Also being removed are archaic elements of the act that prescribe provisions for education and truancy officers. There is, in addition, the removal of a portion of the act that deals with residential school provisions. There are also changes that would remove the ability of the federal minister to review and override decisions by first nations governments when it comes to bylaws. Other proposed changes would remove the minister's responsibility for overseeing wills and estates. There are other elements that some of you may want to reflect on, and we invite those comments as well.

We'd like to turn it over to you. We want to hear directly from you on these and other aspects of the bill that are important to your communities.

We have traditionally let you decide who wants to go first. We certainly are interested in hearing from you.

● (0950)

Chief James Plewak: Mr. Chair, I'd like to invite Chief Houle to describe the significance of the eagle feather that we have before us.

The Chair: Thank you.

Chief Nelson Houle: Good morning, everyone.

Before we start, an eagle feather signifies truth and respect. When we speak here today, it will signify this. Also, I respect a lot of people coming here. In our culture, one of the biggest respects we have is the passing of tobacco. I guess I should remind you guys that we travelled a great way to come here and meet with you. If you want something like that in the future, if you want to fully understand something, you should pass tobacco first. You've got to really understand our people, what we've gone through, and where we come from.

You look at the feather itself. To walk traditionally our way of life is very hard. They say it's to walk this red road or to walk this feather, which means that feather's hard in the middle. You know how hard it is to walk straight and narrow. If you falter, you go left and you go right. That means maybe to drink or to get into bad habits. We heard Wab Kinew comment on drinking alcohol and drug abuse, addictions. These are all things that happen in our communities. We get out of these things through traditional values. They say that if you fall into the soft part of a feather, it's just like a pillow. It's like a bed. Once you get into that comfort zone, you have no worry in life. You just rely on that. What you do is pretty much throw your life away. For somebody to come and walk how hard it is in a feather, that's how hard it is. These are values that were taken away through residential schools and through the Indian Act itself.

I wanted to speak further. I'm in total agreement with Wab. We're all in consensus. You always ask how we get past this. The way to get past this is you have to understand who we are and what we went through. We signed a treaty. For us, we signed Treaty No. 2 with the Queen. We had a Treaty No. 2 meeting on Tuesday in my community, and we had all our elders come out from various communities. We talked about what this government is doing to us and how the Idle No More movement has awakened our people. We have to go back to the treaty arrangement, which is what we've known and what we've seen. We have a treaty signed with the Queen and the chiefs within our territory. What's happening is that there's a third party coming in here, and they're trying to administer policies and laws on us. They tell us that we have to take things into your own hands.

As Wab stated earlier, there's a lack of money. If you look at the various agreements according to the treaty, you're guaranteed a school. In Ebb and Flow, we were given a school in 1983. It was built for 250 students. Today, we have 708 students. What we've done is not everybody utilizes the gym we have. Chief Eastman has the same problems. All the various communities do. The only way you can get a school is if you give up your lot of land and the province comes in. There's a breach of treaty right there. It's also

with the dollars that we get on reserve. We get \$7,200 per student for tuition fees. Off reserve, other schools are being funded at \$11,667. There is a great indifference there. When you look at it, we're being set up to fail. Those are things just on the education side. You're guaranteed a school today. How many sorts of different schools are there? There are elementary schools, junior high schools, high schools, universities, and colleges. That had to be fixed up.

As Wab mentioned, there should have been changes coming along the way. We've come to about 140 years since the Indian Act. There should have been changes made along the way to accommodate us.

I like the comments that Jean makes sometimes. I always read up on Jean's comments. She's right about our resources; they built this country, but we've been forgotten.

● (0955)

We still get \$5 every year for our treaty. Look at that \$5 today and consider what it was worth maybe 140 years ago. You need to index that.

Do you want to make changes? Then make changes according to the treaties, what we signed for. Give us those schools. Give us the funding we're supposed to be getting. Give us the honours we're supposed to be getting.

Every first nation's entitled to, for every family of five, it says 160 acres. Where is that? How many people have come and gone who have never gotten that?

It also says that before anything happens in our territory, we'll be consulted. We weren't restricted to living on reserves. We have a territory. That's the map you see before you. If somebody wanted to come to live there, you had to consult with the chiefs. You had to ask special permission to live there, and they gave it up for settlement.

You talk about produce and farming and all that. That's all that was allowed. Anything beyond that has to be done through consultation. All this was signed on the basis of four directions.

You really have to understand who you're dealing with first. Even me, I was lost, too. We're only human. We make mistakes.

Four directions, if you look at the signing of the treaty, it says, "Then they made their mark." You look at the mark. People look at it. It's an X, right? It's not an X; it's four directions. If you look at what the four directions are, in our culture.... This is what I mean. You have to go out and fast. For somebody to speak on our behalf, they have to live in our shoes. Our culture, being traditional, every year we go out and fast for four days, four nights. You go without. That's to give yourself to the Creator, to do the right thing, to know what we need.

Four directions come from that significance. The first direction that's talked about is the tree. The second direction is an animal. The third direction is the land. The fourth direction is the water.

When I asked what those significances were, I sat with my elders and they explained them to me. The elders said that first direction was a tree. When people asked if they could come to live in this territory we own, we asked them what they were going to do there. They said, "I want to farm. I want to survive. I want to live." We allowed them. They didn't come with houses, but they came with tools.

Then they would ask the chiefs, "I need to build a home. Can I go into that bush there and cut trees to build a home?" The chiefs would say, "For every three or four loads you get, you give me one or two loads." That's the basis of the treaty working. There was an agreement. That settler would get his home, but whatever was left for the chiefs, they took it and they distributed that among their people.

If you look at what's made from the tree today, your furniture, your homes, paper, everything, it's a big industry. A businessman makes 40% to 50%. Provincial governments that are collecting the taxes make 30% to 40%. The federal government here, you're collecting 5% to 10% through administration fees. About 2% to 5%, maybe even 10%, goes back to the Queen, according to treaty. Nothing comes back to our treaty offices.

The second one, the animal, at that time it would have been the buffalo. Where's the buffalo today? Today, cows are everywhere. We don't get a share of that. The fishing, we don't get a share from that, either, yet they're fishing in our tributaries and all that. Think about it. It's big business. First nations people are big business.

I concur with Jean and all the comments she's made. The permits, the licences, everything, there's a lot of money being exchanged at our expense.

That third resource, that third direction, this is the big one. It's going below the land that we gave away. It's all about oil today: \$218 million was taken out last year in Treaty No. 2 territory. That's our people's oil. That's our future as well. If we had that resource, if that money came to us, we wouldn't be sitting here with you today.

• (1000)

We'd want a working agreement. We would have our schools and our roads would be fixed up.

We came here a few years ago when we were flooded, and everybody turned a blind eye to us. That was never discussed in the media. It was controlled. We know that.

Oil is only one. There are so many other minerals: gold, silver, nickel, copper, potash. We have an abundance of potash. To us, that's what these bills want. They want more of our resources; they want to take them away.

Our fourth direction is the water, and the elders say, "When you can't go into the lakes, rivers, and streams and draw water freely and drink from it, that's when all four parts of the treaty have been breached". That's where we are. Look at all the hydro projects. They're controlling the waters. They're making money from that resource. We're getting flooded out in that process, our people back home in our communities, because there's so much saturation in the land. There's nowhere for that water to go, so it's going into our houses and it's creating black mould, as in Chief Eastman's community and in my community. Over time, because we're not

being funded for mould remediation or for real issues, our people are getting sick because of it. People are developing mould spores in their lungs. You can't repair those; once your lungs are gone, your lungs are gone. Our kids are getting sick with respiratory illnesses. People are getting sick so easily from mould. These are the real issues.

If there was a working agreement to go into treaty implementation, we would be self-sufficient. How many people come and do business in our area? Some of the laws that we've discussed at Treaty No. 2 are to make a resource law. We want to have control of our own resources. We'll do it willingly with any government that's there in place.

You look at all this. The treaty's been breached. We've said this in so many meetings. The Queen lives abroad, but we live here together. Let's make a new treaty. If you really want to get down to business, let's make a new treaty.

This bill that is being passed around and talked about, it's as Wab said—he didn't come out and say it rightfully—it's like putting the carriage before the horse. That's exactly what it is. You should consult with us first, before you even think about pushing a bill forward. That's a true working relationship there, that's what you have.

If you look at how things of the treaty are, how did we get to where we are today? The Indian Act itself did this.

We have our own stories in our communities, foretelling of settlers coming in, walking in the creeks, and coming upon something that's shiny and glittery. They come upon it and it's gold. The settler picks this up and takes it to the chief and says, "Hey, Chief, look at this very valuable stuff here. We should dig this up." The chief says, "No, don't disturb it. Just take what you see. Give us half, and you take half". That's the treaty working, there.

What happens is the settler goes on and talks to other settlers. They develop these colonial governments, and then they bring this Indian Act and they bring all of this election code. What do they do? They make that treaty chief run against somebody else. They make him run for his position in the community. Perhaps the treaty chief comes from a family of 10, and now he runs against somebody who comes from a family of 50. Who's going to win? It's a popularity contest. So the treaty chief is out. This new chief comes in and then the settler comes back to him and tells him, "There's stuff here, we're going to do some things here, but because you're supposed to live in the reserve, we're not going to bother you in the reserve with what we're going to do here. Is that okay with you?" The chief, not knowing any better because he's a new chief and too proud to go ask the treaty chief what he should do....

That's how we began to lose our way. We're not even allowed in our own territories. There are fences up, and "no hunting" signs. They say to us that there's no trespassing. Those are our lands. We're being locked out of our own lands. We can't even practise our own culture and heritage there.

•(1005)

Those are the real solutions. If you want to do something honestly, then work with us right from the start. Don't bring out this law and then try to say you've consulted with us later, because you're doing things backwards.

That's what I'd like to say.

The Chair: We'll turn it over to other folks, if there is anybody who wants to speak either specifically as it relates to the legislation that we have before us, or more generally as well.

Chief James Plewak: Thank you, Chair.

Thank you for the opportunity to provide information that will allow us to strengthen our relationship.

My name is Chief James Plewak. I'm the son of Marjorie Burns, who is the daughter of Walter Burns, who was the son of Solomon Burns, who was a son of Moses Burns, also known as Chief Keeseekoowenin, who was the half-brother of Chief Mekis, who entered into Treaty No. 2 on August 21, 1871, with the imperial crown, on behalf of the Riding Mountain and Dauphin Lake bands and the rest of the territory.

The territory is the map that you see before you.

Today with me are Chief Nelson Houle of Ebb and Flow, and Chief Eugene Eastman of O-Chi-Chak-Ko-Sipi. Both of them are with Treaty No. 2 first nations.

In the 1800s our people worked with the Hudson's Bay Company to create trade and commerce in what is Manitoba today. The area, which was our traditional territory over which we exercised sovereignty, covered the eastern shore of Lake Winnipeg, as our eastern boundary, going west to Moose Mountain, which is today in southeastern Saskatchewan, as you'll see on the map.

It essentially ran from the northern point of Waterhen Lake to the U.S. border, except for the area that was specified in Treaty No. 1... the postage-stamp Manitoba stretched out to what is today Brandon in southern Manitoba, and it's as you can see on the map.

In 1871, when representatives of the imperial crown asked us if we would open up portions of our territory for immigration and settlement, there were no settlers on our territory. We were the only occupants, as Chief Houle noted in his comments. By requesting the treaty, the crown acknowledged our sovereignty. We utilized our sovereignty and consented to Treaty No. 2. The word "consent" appears at the outset of the treaty.

We could have done what the Ojibway of the Rainy River area did. They told the commissioners to get on their way and they would think about the treaty for a winter or two more. But we did consent, and as Justice Binnie said in *Mikisew Cree First Nation v. Canada*, the treaty was not the end; it was the beginning.

As Chief Justice McLachlin said in the *Haida Nation* decision, the duty to consult and to accommodate is for the purpose of reconciling the sovereignty because of our prior occupancy and the crown's assumed sovereignty. That's an ongoing process that's required when we speak of consultation.

There is another matter that you should be aware of. We not only opened up portions of our land for settlement, but we invited the settlers' children to attend our schools because they had none. We invited the settlers to be part of our church because we had one for our people who wanted to learn Christianity.

We helped the settlers establish themselves, to build their homes, to survive the winter. We made arrangements with them to trade in our cattle and our horses, which were the finest of the land. By the Rupert's Land Act, the crown was told the new Canada had no jurisdiction in our territory until a treaty had been entered into, a just and equitable treaty for compensation.

We were assured in our treaty negotiations that lands not taken up by immigration and settlement would continue to be ours, to be governed by our sovereign governments, which included all the Ojibway communities within our territory. We were assured that we would be compensated for the loss of use of those lands that were settled. One dollar an acre was the amount to be paid in 1871, the going price then: not a dollar annually, but a one-time dollar an acre for as long as the sun shines and the river flows, but you never paid a penny of it, not one penny of it.

This alone explains the poverty in which we have lived for so many generations. Just to give you an idea, in my area agricultural land is now going for about \$500 an acre. Back in 1871 the value of that land was \$1 an acre. You can see how much it has increased in value.

•(1010)

The Chair: I don't want to interrupt, but I'm curious as to the length of your statement. It seems it's a written statement. My only concern is that we want to make sure we hear from everybody and we are limited in our time.

Chief James Plewak: May I have three more minutes, please?

The Chair: Sure.

Chief James Plewak: You may wonder what all this history has to do with why we are here on Bill C-428. It is because if you do not understand this history, verified by your documents, you will not understand our fierce opposition to your bill.

Treaty No. 2 in no way diminishes our sovereignty. To the contrary, it gave and still gives your crown the right to exercise its sovereignty over its settlers and the land we shared with them. Every other document is smoke and mirrors and incantations of doctrines of discovery and our inferiority, which made it necessary for you to still, in the 21st century, be amending an act for the gradual civilization of Indians.

Your bill is an infringement on our sovereignty, a breach of our treaty, a breach of the honour of the crown. We want to re-establish the true legal spirit and intent of that treaty. We want a mutually productive, friendly, warm relationship with you and your people.

We continue to hold out our hand of friendship to you, yet while you meet here to discuss removing obsolete nonsense from the Indian Act, your continuing violation of the treaty is killing us. It is a cause of great misery and trauma as Wab Kinew was noting earlier today.

I'll give you one example. Among our Treaty No. 2 first nations, one has been totally dispossessed, Lake St. Martin. Well over 1,000 people were evacuated from there due to deliberate flooding by the Government of Manitoba in order to save the people of Winnipeg from flooding.

Chief Eastman's community was deliberately flooded. The Ebb and Flow reserve of Chief Houle was severely damaged by intentional flooding.

Where has the federal government been? We are still dealing with this problem two years later. "Isn't that a provincial matter?" you ask. This action causes a trespass on our reserve lands, and the federal government has the obligation to take action. In fact, under the Indian Act, which you want to amend, it has the sole authority to lay those trespassing charges.

In case you didn't know about this flooding, it happened in May 2011 and destroyed nearly 200 homes, making the community uninhabitable. Those hundreds and hundreds of people are still, two years later, living in hotels in Winnipeg in temporary placements with nothing tangible on the horizon except promises and requests for patience. This is just one of over a half-dozen communities that are suffering from this kind of flooding of their homes.

Further, we are damaged and traumatized because the schools we insisted upon as part of Treaty No. 2 have been pauperized into an inferior system of education. Only 38% of our high school students graduate. Compare that to the rest of Canada. That's something we have to be mindful of.

The Chair: Chief, I hate to do this, but we have to respect that other folks have come. We are about halfway through our timeframe and we haven't heard from others.

I'm wondering if there would be a chance that you would be able to conclude immediately and turn it over to some of the other folks who would like to be heard as well.

Chief James Plewak: Yes, okay.

In closing, we believe that if your committee would investigate its parts of the treaty, you would be dedicating yourselves to working with us to re-establish that original relationship, so that many of the problems would disappear and we could each apply to our respective sovereignties to make a spectacular future for our children.

We ask you not to squander this opportunity by passing this bill. We ask you to set the bill aside and let us get down to some real work.

We will take what you do with this bill as a sign of your intentions to carry on as colonial masters tidying up the act or as being ready to start meeting with us at the treaty table to fix a broken relationship.

Thank you.

• (1015)

The Chair: Chief Eastman, would you like to make a couple comments?

Chief Eugene Eastman: *[Witness speaks in his native language]*

I come today to express my concerns over the proposed bill's changes to the Indian Act.

It makes me wonder how this whole process is working. We have stated for years that we need changes, that we need progress coming from leadership. One person writes a bill and puts it on the floor of Parliament and wants to change our lives when this person has never lived on a reserve.

I take this as an insult. I'm offended by this while my people are suffering from the flood we have back home today and from the spike in cancer in my community. We have to drink runoff water, grey water. We have sewage fields. We're faced with inland flooding this year. The water has to be pumped out over the permanent dikes that surround us. We're a diked-in community. It's quite disturbing that suddenly we are sitting here today trying to focus on little things in the Indian Act.

I have treaty rights. Let's focus on those.

I ask myself what we need to do. Do I have to bring my people in here, the sick people with diabetes or cancer? I don't know, but I think your government and your people, your officials, have to come to see for yourselves, and not fly over our communities as the minister did a week or so ago without my knowledge of his coming to our territory. That's working behind our backs without our knowledge. He should come and see for himself.

We sit here and ponder how we're going to change one word of the Indian Act, or this word and that word.

It's quite upsetting that I have to be here to explain myself. If I have to, I will bring my people here. The media is criticizing us for what we are doing, being accountable and transparent. Whose worry is that? Is it your taxpayers? They say we are being funded by the taxpayers. No, we are not. According to the treaty, we should be the richest people walking this land, from the resources that are being extracted on a daily basis.

In our territory we have potash. We have forest. If you look at the Duck Mountain area on the northern part of it, which is Treaty 4, there's no bush left. We hunt on that land. We fish. We lived off the land. There is nothing there.

It's very upsetting that we sit here and talk about these things. Let's talk about the real issues. Let's go back to our treaty table. That's what we are proposing here as we sit as representatives from Treaty No. 2.

The Chair: Thank you, Chief.

We will turn it over to Chief Head.

Chief Marcel Head: I'd like to say good morning on behalf of my people back home.

I, too, feel the same way in regard to meaningful dialogue in terms of consultation. We do have a clear definition of what that word means in our belief, but it's a total definition, both federal and provincial governments. Our definition clearly states that in order to consult meaningfully with our people, you have the majority of our people present in a duly convened meeting.

Just because I'm here doesn't mean this is meaningful consultation. I know time and time again governments have stated that I, as the representative of my own first nation community, that's a way of consultation. But it's not. You have to come down to our community and consult with our people about this particular piece of legislation that's being proposed.

I was one of the chiefs who participated in the crown-first nations gathering. This whole thing about the Indian Act, we were told by the Prime Minister in front of all the chiefs and in front of all his MPs that he had no intention of repealing or changing or even uprooting—I think that was what he mentioned; it's like uprooting a tree—he made no mention of any changes to the Indian Act. That's what he was saying.

Now even before the crown-first nations gathering, we sat with Mr. Clarke, who's the MP of our particular riding, and there too he showed us the private member's bill, and we told him. If I remember correctly, Rob, we told you just to hold off for now; put a hold on your private member's bill. But you went ahead and forwarded it in the process.

This Indian Act—I agree with the gentleman who spoke before me—has done nothing but oppress and depress our people. That is not what our people had agreed to when they signed the treaty. With the private member's bill, I know Mr. Clarke visited the Federation of Saskatchewan Indian Nations assembly in our neighbouring community, in the town of Nipawin, and did a presentation there, but he didn't.... You know, this is what, I guess, angers leaders across Canada: you have different individuals who come into our assemblies and present their views in regard to the Indian Act, but yet they're not prepared to answer any questions.

You'll remember correctly, Rob, that you weren't prepared to answer any questions, but you got up to the podium, and you did ask a question to the chiefs—

• (1020)

The Chair: Mr. Head, if you'll address your comments through the chair, it's probably a more appropriate way to do that.

Chief Marcel Head: All right, but that's exactly what he did. In the midst of that, I was the chief who stood up in the assembly and told Mr. Clarke, "You're not prepared to answer any question in regard to the private member's bill. Why should we answer any questions you bring forward?"

I believe there has to be meaningful dialogue—I agree—before there are any changes to the act.

There was also the January 11 meeting with the Prime Minister. I was one of the chiefs who was present at that meeting, and we agreed there has to be meaningful dialogue. At that time when we sat with the Prime Minister we were talking about the omnibus bill that affected the ability...and it has something to do with the Indian Act, too. We were trying to get a dialogue and a strategy session with the government of the day. The consensus was that the Prime Minister had agreed to have meaningful dialogue with the first nations leaders across Canada.

Right now we're just waiting. It's a waiting game. I'm prepared. I have presented a document to this standing committee as to what needs to happen before any changes to the act should happen.

In the midst of that, with the leaders and the commitment to an immediate high-level working process with treaty nation leaders, there has to be some meaningful dialogue, as I mentioned.

I was just talking to my policy analyst. I believe the first meeting should be kind of an introduction. When we're talking about treaty implementation, in the midst of that we don't want to rush through a change to this piece of legislation unless there is something at the end that will be beneficial for our community.

Right now we believe we have to have that dialogue with the government. As you know, I'm prepared to sit down with the Prime Minister and his high-level cabinet ministers to have a meaningful dialogue with them and present our position.

The document you have in front of you is a document we have presented to the Prime Minister and there hasn't been a response to that document. That highlights the process of what we think meaningful dialogue should be on treaty implementation.

Thank you.

• (1025)

The Chair: Thank you. We'll have that translated and then distributed.

Go ahead, Mr. Tailfeathers.

Mr. Kelly Tailfeathers: I'd like to respect our fellow first nations for all being here today.

I'm from the Blood Tribe, and I'm here on behalf of our chief, Chief Weaselhead.

Standing committee members, I think you're well aware of our position on the current issue, Bill C-428, and I encourage you all to study our paper.

Our position is pretty clear. The Blood Tribe is of the view that Bill C-428 has the potential to adversely impact our rights. Therefore, Canada was obligated to consult with us prior to introducing such proposed legislation. We recognize that the Indian Act is fairly outdated. However, our main concern is that there has been no meaningful consultation with first nations, including the Blood Tribe.

Again, I go back to what the chief said about the Prime Minister. We have him on record recently stating:

Our government has no grand scheme to repeal or unilaterally re-write the Indian Act. After 136 years, that tree has deep roots. Blowing up the stump would just leave a big hole. However, there are ways, creative ways, collaborative ways, ways that involve consultation between our government, the provinces and First Nations leadership and communities. Ways that provide options within the Act, or outside of it, for practical, incremental and real change. So that will be our approach, to replace elements of the Indian Act with more modern legislation and procedures, in partnership with...First Nations.

How does the federal government, with all due respect to Mr. Clarke, of which he is a member, reply to this hypocrisy?

Constant bills are being pushed on our people without our input into them. That's why we're here today.

That's all I have to say. Thank you.

The Chair: We'll go to Mr. Whitecap.

Mr. Charles Whitecap: Thank you very much, Mr. Chairman. I'll be brief, five minutes.

I have some comments on the proposed bill by the MP. Amendments, as he should know and as all you MPs should know, do not benefit the first nations in any way, shape, or form. They benefit the bureaucracy by strengthening their paternalistic authority, and it reaches the goal of termination and assimilation as stated by John A. Macdonald, the original Prime Minister.

I would like to disregard amendment in that bill itself. Replacement is something that to a certain extent I probably would agree to. But prior to that happening, I think the MPs and Canada need to understand who we are, as has been stated. In doing so, they have to educate themselves the day before treaty, the day during treaty, and the day after.

The day before treaty we were sovereign nations with our own political, fiscal, judicial, and social agendas. If you look at the international interpretation of nationhood, we have our own form of government, population, land, culture, and most importantly, we have our language. The intent is that we escalate and contemporize those agendas into what is being referred to nowadays as self-government. But self-government alone will not be sufficient. Self-government within the federal policy is short-term. At the end of the day, it will just be delegated authority, more or less status quo. Self-government can only happen if we are allowed, through legislation agreed to by the first nations and Canada, to have access to the resources that we have surrounding our reserves and inside our homelands.

Self-sufficiency, the fiscal agenda, is what should fund self-government in order for us to govern our own people. Self-government relies on the funding that we generate, and in the same manner, the judicial agenda. Self-adjudication relies on funding that we should be able to generate from the resources that we have, again in our ancestral lands and in our homelands. Self-determination is an agenda that is identified in treaty. A resurgence of indigenous nationhood on one hand, the application of the fiduciary on the other, and then implementation of treaty. I think that is something that Chief Head stated in the past in meetings with senior officials within Parliament, and also with the Prime Minister and with the Governor General of Canada. I'm not sure if that's been filtered down to the MPs who should be receiving that kind of information.

Again, I go back to the word "replacement". Amendments, as I said, I'm not in favour of, but if we are going to dismantle something, I say we should not concentrate only on the Indian Act itself. Bring into it where the authority comes from, and who exercises that authority. Dissolve the Indian Act, and at the same time dismantle the department and do away with the Minister of Indian Affairs, and replace them with something similar to the Privy Council.

•(1030)

Ladies and gentlemen, in closing, there is that constitutional authority, subsection 91.24. Most people look at it as application of the fiduciary. We in Shoal Lake and Red Earth interpret that section as recognizing the royal proclamation of 1763 where it states tracts of land will be reserved for Indians or tribes or nations. That is affirmed in section 25 of the Constitution, and section 35 is there for the protection. We need to move a couple of steps further just from

protection and our constitutional authority. We need to implement a treaty, and there needs to be a mechanism of enforcement so we don't have MPs interfering. They should be doing work for the Euro Canadians, as we used to call them. We don't have problems with how the MPs deal with Euro Canadians, but we need a system that will deal specifically with our issues.

Ladies and gentlemen, I thank you for your time. I am sure I took five minutes or so.

•(1035)

The Chair: Thank you very much. We appreciate your comments.

Ms. Desrochers, you're the last, so we'll give you a slot.

Ms. Charlene Desrochers: Yes, and I have a lot to say. Where do I start? I didn't prepare a submission.

I want to thank the chiefs for the opportunity to sit beside them.

I'll give you a little bit of my background so you'll know where I'm coming from. I'm a Cree woman. I grew up in northern Ontario. I don't know if you know where Longlac, Hearst, or Thunder Bay are. This is part of Treaty No. 9.

I'm a member of Constance Lake First Nation. I'm a registered nurse. I'm a lawyer. I have a masters of law in indigenous peoples law and policy, for which I studied under the UN Special Rapporteur on the Rights of Indigenous Peoples, Jim Anaya.

All my nursing background is in first nations. I've worked in about 14 first nations in northern Ontario, in the Treaty No. 3 and Treaty No. 9 area, in fly-in and urban.... I've worked in downtown Toronto at Anishnawbe Health Toronto. Basically, all my nursing career has been with first nations people on and off reserve. My legal career has also been with first nations. I've worked with chiefs and council. I've worked with individual first nations. I've worked with Health Canada as well in the first nations and Inuit health branch. I've worked at the Assembly of First Nations and at the Congress of Aboriginal Peoples. I've had the opportunity to do some stuff with the Native Women's Association of Canada as well.

I've basically been through the whole system, and I am very disheartened with what I've seen on the part of all the players involved. That's just so you know where I'm coming from.

I really think the Indian Act needs to be repealed. It's a very racist piece of legislation. It's the cause of all the problems in our communities and part of the residential school.... Before I went to law school, I worked in these communities. I've seen the effects first-hand of the Indian Act and the residential schools. When I went to the Assembly of First Nations and saw what was taking place inside that organization, I was very upset. I went to the Congress of Aboriginal Peoples and saw what was taking place inside that organization, and I was very upset. I went to the Native Women's Association and saw the same thing.

We need change and we need it now.

Yes, I agree: there's no consultation. This bill breaches aboriginal and treaty rights. It breaches our right to self-government. It breaches our treaty right to education.

On the estates, it breaches our rights to govern ourselves and our estates. I've worked on the estates issues, and the Department of Aboriginal and Northern Affairs is really difficult to deal with on estates management. I've had clients. I've called the department. They're telling me to call Six Nations, to call back, and to call the department, and nobody answers my calls. So yes, repealing that part of the Indian Act is good; however, you're dumping jurisdiction to the provinces when our people have a right to govern in the areas of estates and wills. They also have the right to govern in their treaty right to education.

I think Rob deserves credit for raising the issue of the repeal of the Indian Act, because it is something that we were not talking about publicly. However, I think there does need to be a process in place, and this bill does not describe a process. We need something in place to replace it. We need the resources.

We need the right people, first of all. What I've seen throughout my nursing and legal experiences is the right people are not being used. We have educated practitioners on the ground in all of our communities. We have nurses, lawyers, and teachers, and they're not being used. The system is being monopolized by a select group of people. We need to move away from that. If you want to repeal the Indian Act, you need to start using the right people.

My thought is that we do need to have that. I've been listening to the chiefs talk. They're all saying the same thing: nobody's listening to them. The government is not listening. That disconnect is right there. When the government is not listening and not hearing....

You're listening, but you're not hearing what the people are saying. That's the problem right there. The fact that we're not using the right people is another problem right there. It shows you that the bilateral relationship is not taking place and never has.

It's time. We're all saying the same thing: there has been no consultation. The federal government is saying that we need change. We say yes, but you need to start working with us if you want that change to come through and you need to start using the right people.

I've mentioned this to a few leaders. We need to repeal the Indian Act, but I don't think legislation to replace it is the right way to go because it will be just another Indian Act under a new name, just like the First Nations Land Management Act. That's another Indian Act,

as far as I'm concerned, because it regulates Indians. It's just another title.

We need nation-to-nation agreements. If you want to repeal the Indian Act, start implementing nation-to-nation agreements. We've been talking about change and reform. Let's sit down and start doing it now.

● (1040)

We know what we need to do. We need to start implementing it, nation-to-nation agreements with a holistic approach. You can't just focus on education without looking at health and without looking at housing. You need to look at all these issues in a nation-to-nation agreement.

Those nation-to-nation agreements can be regional, national, however the people want to do this, but it's up to the people. The people have a right to participate in decision-making. They have that right to be consulted by their own leadership. Our people are not being consulted on the ground. I'm not saying it's happening everywhere, but I have clients who say they are not being consulted on issues.

No, we're not perfect. The federal government isn't perfect. Non-first nations people are not perfect either. But we're coming along, and we're making progress.

We need our share of the resource revenues. If we want first nations to succeed, you have to share the revenues and give us that ability to thrive and succeed as well. We also need to participate in the 2014 federal-provincial transfer payment negotiations. First nations should be at the table and receiving their fair share of the transfer. If the federal government is truly sincere in helping us recover from the Indian Act and the residential schools, you need to treat us like we're partners and let us sit at the table. There's no reason that cannot be done today.

The status quo is unsustainable. We're not going to be able to do this for very much longer. The people are suffering. The conditions are getting worse because it's costing more money. The longer we wait, the more money it's going to cost to improve our lives.

What else did I want to say here? Someone mentioned the jurisdiction under section 91.24. Yes, that gives the federal government jurisdiction over Indians and lands reserved for Indians, and the provinces have their jurisdictions listed in section 92 of the Constitution.

It's my view that section 35 of the Constitution gives first nations jurisdiction over their issues. That was the intent of section 35, so let's start implementing section 35 as it gives first nations jurisdiction over these issues.

There is no good reason we cannot be at the table as partners on a partnership level today. The only reasons we cannot would be hate and racism, and that's obvious. It's not from everybody, but those are the only reasons, and not wanting to share the resource revenues from the lands. We can adequately share. If the companies don't want to share, we can take it from the provinces. There is no reason the provinces and the federal government cannot take our share of the revenues directly from the third party resource developers if they want to be difficult, as we're seeing with the mines in the Ring of Fire, northern Manitoba, and all the other areas.

Yes, first nations are an industry. You've seen it. We're an industry in the criminal law setting. We're an industry everywhere. That's all we are right now. That's basically how we're being treated, as an industry for the legal profession and for the consultants. I'm a lawyer, and I'm saying this because we really need to change now. It really needs to be addressed.

I've looked at the bill. The one issue I had with the process was it provides for the federal government to work with first nations organizations. The organizations do not represent or speak for the people. They were implemented without the people's consent, and the organizations need major reform. When I say organizations, I'm only speaking about the AFN, CAP, and NWAC, because those organizations do not represent the people. They do not consult the

people, and they do not speak for the people. They speak for themselves, and those organizations benefit about 20 people.

We need to change because our people have a right to participate in decision-making and to hold their leaders accountable. If we continue on with the first nations organizations in that bill, the status quo is going to continue, so we might as well just scrap everything and continue living as is.

●(1045)

The Chair: Thank you very much.

Our time has expired, but we certainly appreciate your testimony today. Obviously over the last number of weeks we've heard divergent opinions, so certainly we appreciate having your opinion. You reflect the communities which you represent, and certainly we do appreciate your willingness to come to Ottawa and to testify here.

Colleagues, I want you to be aware that our next meeting will be at Queen Street. We've been bounced out of our room here, and we do need the teleconference and video conference equipment, so we'll be at Queen Street. Please be mindful of that.

Thanks so much.

The meeting is adjourned.

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