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Chair

Mr. Chris Warkentin

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● (0845)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, we'll call to order the 75th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

We are continuing today our study of Bill S-8. We have representatives from across the country. It is our privilege to have our witnesses here today, and we certainly appreciate folks coming from different parts of the country to reflect on this bill and to give us their testimony.

Colleagues, there have just been some small changes to the schedule of the witness list. We are going to hear from first nation communities first, and then in the final 45 minutes we'll hear from representatives of the Canadian Bar Association and the Canadian Environmental Law Association. We're going to cut it into two separate panels of witnesses, which will enable us to reflect a little more coherently on the bill. I do apologize to our colleagues for not being more clear about that in the information we sent out.

With no further ado, we do want to hear from our first nation representatives from across this country. We're going to begin by hearing from the representatives of the Mohawk Council, and I believe it's Acting Chief David who will begin our rounds of testimony. We will hear from the different representatives for 10 minutes and then we'll have some questions for you.

We'll turn it over to Acting Chief David.

Mr. Brian David (Acting-Grand Chief, Mohawk Council of Akwesasne): *Sge:no swa:gwego*. Bonjour. Good morning.

The Chair: Good morning.

Mr. Brian David: Coming from Akwesasne, we are a community of about 16,000. If you're not aware, our community is divided by the international border and a provincial line. For this very reason, in the early 1990s we negotiated a protocol agreement with Canada to deal with some of the unique features and issues that come up as a result of these multi-jurisdictional areas.

We've been an active participant in the discussions that have taken place over the last several years surrounding the development of federal legislation to address the safety of drinking water for first nations. Last year the Mohawk Council of Akwesasne provided oral and written testimony on Bill S-8 before the Standing Senate Committee on Aboriginal Peoples.

Regarding first nations' views on the expert panel, unfortunately, this has not continued with the drafting of the Bill S-8. We feel there was a lack of consultation and accommodation. I think this is a feature of the shortcomings that we hope to raise with the committee today.

As I've mentioned, we've reached milestones with Canada in self-government negotiations— first with the protocol agreement, then with active negotiations on lands and [*Inaudible—Editor*]...sectoral agreement. We have an agreement in principle on governance and relationships. We're actively involved in a negotiating mode with Canada for self-government.

I have mentioned before that we have in place a protocol agreement as a background. As an annex to that agreement, in the area of water and water regulation, it's already there. This particular act supersedes and oversees that, which causes great concern to us. The land and sectoral agreement that we're negotiating would encompass many of the issues that are currently being addressed in federal legislation. It is and always has been our opinion that the water quality standards can be established by first nations, that first nations who have the capacity to develop their own regulation and have a tradition in that, should do so. But they should do so in a manner that's not inconsistent with the standards set federally or provincially. All that is to be done should be left to the first nation. It has to be done that way because we all come from different and unique situations across the country.

One issue of particular concern has to do with the derogation clause, clause 3, within Bill S-8. It abrogates and derogates aboriginal and treaty rights to the extent necessary to ensure the safety of drinking water on first nation lands. We take strong exception to clause 3, as it intends to derogate from the existing aboriginal and treaty rights of aboriginal peoples guaranteed under section 35 of the Constitution Act, 1982. Aboriginal and treaty rights are inherently protective of the natural world, including waters. They're based on living in peace and harmony with our surrounding environment. The waters are viewed as bloodlines of our earth, our mother, and our survival depends on ensuring the health and safety of the waters. There is no need for a derogation clause that would take away these rights; they are inherently protective of the waters, and thus to the health and safety of our peoples.

If the existing provincial water laws already recognize and affirm aboriginal and treaty rights consistent with section 35 of the Constitution Act, 1982, the federal water legislation proposed for first nations should be consistent with both the protections afforded in the Constitution Act, and the provisions within provincial water laws that recognize those rights. It is strongly recommended that clause 3 of Bill S-8 be rewritten so that it is consistent with the Constitution Act and provincial water laws, with wording along this line:

> For greater certainty, nothing in this Act or the regulations is to be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

I'll now turn this over to my colleague, Mr. Jim Ransom.

● (0850)

Mr. Jim Ransom (Director, Tehotiiennawakon, Mohawk Council of Akwesasne): Thank you.

Good morning. I'm specifically going to address the regulations proposed in Bill S-8.

My name is Jim Ransom. I serve as the director of Tehotiiennawakon and oversee the environment, economic development, and emergency measures for the Mohawk Council of Akwesasne. I'm going to address in particular clauses 4, 5, and 6 in Bill S-8. They really represent the heart of Bill S-8.

While we support safe drinking water with appropriate standards, we cannot support the way Bill S-8 is written. In regard to developing standards, we have prepared a proposal to develop our own water and regulatory framework. We have submitted it to Aboriginal Affairs and Northern Development Canada.

It is comprehensive and will meet and exceed the requirements in Bill S-8. It has been prepared in cooperation with the Provinces of Ontario and Quebec. Building relationships around common interests and ensuring safe drinking water for all peoples is important to us. We actually have letters of support for our approach from the Ontario Ministry of the Environment and from the Quebec Ministry of the Environment.

However, the approach we've taken is not envisioned by Bill S-8. Clauses 4, 5, 6, and 7 put us to the back of the regulatory bus. Subclause 5(1) deems us owners of our water systems but fails to recognize our authority to self-regulate those same systems. Instead, it transfers liability without consideration of the condition of the assets being transferred to us, and it sets us up for failure without adequate resources to ensure transferred systems are safe and can be maintained.

Bill S-8 recognizes provincial water laws, but not first nation water laws. Clause 6 allows the Minister of Indian Affairs and our Minister of Health to enter into agreements made under the regulations “with any province, corporation or other body” and related to “administration and enforcement of regulations”, but it doesn't do the same with first nations.

To address these concerns, we offer the following recommendation: that clauses 4, 5, and 6 be amended by including first nations as entities that can be conferred legislative, administrative, judicial, and other powers necessary to effectively regulate drinking water systems and wastewater systems. In other words, don't just make us owners: give us the responsibility to regulate our own systems. The development of regulations must be done with the active involvement of first nations and should have room for recognition of first nations' jurisdiction and authority.

The last concern we have with Bill S-8 is in the sense of how it confers to the provinces jurisdiction over first nation water systems. In doing that, it doesn't consider the reality. Provincial water laws were developed for a different audience. They were developed for their own municipalities. They were not developed with first nations in mind.

For first nations, we have unique circumstances that are not considered by the provinces. We have cultural traditions that are not considered. We have operators in our communities who in many cases have not been trained to provincial standards.

Also, how you deal in remote communities with on-reserve water and wastewater systems is totally different from how you would deal with it in, say, Toronto or Ottawa. That's not being considered.

For us in particular, we're in two provinces. If you're going to confer and delegate down to the provinces, which province? That's a question that we have in particular.

● (0855)

We feel that the legislation can be enhanced by including provisions that allow first nations who have the abilities to develop their own regulations—or groups of first nations working together—to self-regulate. That's the direction the provinces are going in right now because of budget cutbacks. They're trying to get out of the regulatory business. And suddenly in Ontario you're giving them 133 first nations that they will now have responsibility for, with no resources.

We've spoken with them. They're not ready to take on that burden. But we are, because we see it as a responsibility.

With that, I'll turn it over to my colleague Micha Menczer.

The Chair: Our time has expired for the first submission, so this will have to brief. We want to hear from you, but we don't want to sneak time away from others.

I'll turn it over to you.

Mr. Micha Menczer (Legal Counsel, Mohawk Council of Akwesasne): Thank you.

Good morning. My name is Micha Menczer, and I am the legal counsel for the Mohawks of Akwesasne.

I will be brief. There is a written presentation in the kit that goes into more detail, but I want to address some of the proposed solutions from Akwesasne. My colleagues have addressed some of them. I want to highlight two areas.

There is a copy in your kit of a political protocol that was entered into between Akwesasne and Canada in 1998, and renewed recently in 2012 for 10 years. This protocol really recognizes the multi-jurisdictional nature of Akwesasne and the problems this creates for the community, both international borders and interprovincial borders. One community, so many jurisdictions, hard to govern, both for the Mohawk Council and for external governments.

It also recognizes a commitment to look for innovative and new solutions that will address this unique situation. There is no other first nation in Canada with these circumstances.

You hear a lot of things in the press about Akwesasne. For those of you who have been there, you'll know it's a very strong community, a well-governed community, and this protocol recognizes it. How does this relate to the bill?

The other piece I want to comment on is that in the spring of 2012, Akwesasne and Canada's chief negotiators signed two agreements—an agreement in principle on lands and estates, and an agreement in principle on governance and relationship. Those are also excerpted in your kits.

The Minister of Aboriginal Affairs recently received cabinet approval, and we are beginning final negotiations this summer. That agreement will recognize Akwesasne's jurisdiction over water and wastewater regulation and standards. Under clause 14 of the bill, upon completion of that agreement the bill would not have application to Akwesasne unless they sought to be on the schedule, as you are aware.

So how do we address these unique circumstances of multi-jurisdiction in Akwesasne? In terms of our recommendations in this area, there are two things.

First, under subclause 5(4) of the bill, there can be a regulation made exempting a first nation for all, or parts of, the bill. Our recommendation—it's in the submission—is that because of the fact that it is multi-jurisdictional, and as Jim has mentioned and as the written presentation goes on to explain, you can't have Ontario and Quebec in each part of the community looking for a consistent system. So we're looking for a concurrent development of a regulation under subclause 5(4) that would set out the regime for Akwesasne—the only one in Canada that is unique in this way.

The second element is that other bills you have—for instance, Bill S-2, dealing with matrimonial and real property—have a transition period when talking about first nations with land codes, to develop their laws before the bills click in. Even the first nations governance act of 2002, which was flawed in many ways, had an interesting provision in, I believe, clause 34 that allowed a three-year period for nations in the process of concluding final self-government agreements to be exempt from the application of the bill, to allow those agreements to be finished and ratified.

We're looking for the same thing in this legislation for Akwesasne. We're entering into final negotiations this summer. Actually, I'm going to a meeting tomorrow with the federal negotiators, where we're going to set the timetable for this.

It doesn't make sense to do that work, have the bill apply, and then un-apply. So we're looking for, similar to what you have in Bill S-2 and similar to the concept that was in the governance act, a three-year transition period to allow us and Canada to complete this work that will give recognition to Akwesasne's jurisdiction.

There is a lot more in here, but another element is that Akwesasne has been recognized by Canada, by Liberal governments, by Conservative governments, as unique through the political protocol, and needing to find solutions. There is a demonstrated capacity. There is a first-class facility. When Minister Duncan was minister, he visited the community and commented very positively on what it was like. The Grand Chief has invited your committee members to come down and see it for yourself.

So there is capacity, and there is a legal basis, based on the self-government agreement negotiations nearing conclusion, and the political protocol to look at this differently.

That's what we're asking.

● (0900)

The Chair: We appreciate that. Thank you so much. We'll undertake to get those documents circulated.

We'll turn now to Chief Weaselhead from the Blood Tribe first nation in Alberta.

Chief Charles Weaselhead (Chief, Blood Tribe/Kainai): Thank you.

[*Witness speaks in Blackfoot language*]

Good morning, Chairman, and members of the standing committee. On behalf of the Blood Tribe, thank you for the opportunity to address you on Bill S-8.

As you know, the Blood Tribe has a population of just under 12,000 on a huge tract of land, so Bill S-8 will affect us not only with regard to our constitution but also in the way the bill is delivered through regulations in our community.

The Blood Tribe, of course, has expressed concerns with this bill, through submissions and representations, from its inception as Bill S-11. Unfortunately, these efforts have not met the intended goals as the existing legislation, Bill S-8, will not provide safe drinking water for first nations peoples. Bill S-8 will put in place a legislative framework that will place the responsibility and liability for safe drinking water systems on the shoulders of the first nations chiefs and councils without giving them the financial resources and the capacity to carry out the responsibilities. Appendix A shows the amount of resources required to make sure we come up to speed with what is necessary for safe drinking water and wastewater management.

By transferring the liability to the first nations, Bill S-8 absolves the federal and provincial governments of liability. We do not see this as the proper exercise of the federal crown's fiduciary duty to first nations, a duty that has been recognized by the Supreme Court. Bill S-8 will not provide safe drinking water to first nations communities. It will only saddle first nations government with a responsibility that they do not have the resources to carry out. When they fail to carry out that responsibility, they will have broken the law and will be subject to punitive measures under the law. That is the situation that will be brought about by Bill S-8.

Earlier, I spoke to Bill S-11, and that was specifically what was stated in there, that the number one priority was to provide the necessary resources before regulation or legislation was set out. How does this scenario bring about safe drinking water for first nations communities? How is this the solution for the desperate and deplorable state of drinking water for first nations communities which has drawn worldwide attention?

In May 2003, Indian Affairs' own assessment of water and wastewater systems in first nations communities found that 75% of first nations water systems in Canada posed a risk and required a massive investment, having been neglected for decades. In 2006, the expert panel on safe drinking water for first nations, commissioned by the federal government, found that the primary issue was insufficient resources for first nations water systems and recommended that adequate resources be a precondition to any legislation. That is spelled out clearly in appendix A of the submission by the Blood Tribe.

The expert panel realized that a regulatory regime would not address the situation. Creating and enforcing a regulatory regime would take time, attention, and money that might be better invested in systems, operators, management, and governance.

In 2007, the Standing Senate Committee on Aboriginal Peoples in its final report on safe drinking water for first nations recommended that the resource gap for first nations water systems be addressed first as a precondition to any new legislation, and that first nations be consulted about the development of new legislation.

Recently, the national engineering assessment of first nations drinking water systems, commissioned by the federal government, found that a $4.9-billion investment is required to ensure that first nations peoples get the same level of drinking water services that are available to other Canadians. Of that, $162 million is needed in Alberta and $30 million is needed in the Blood Tribe. The United Nations has recognized a human right to safe drinking water. Without the required $4.9 billion investment in first nations water systems, this bill will violate our human rights for safe drinking water.

● (0905)

The national engineering assessment also found that in Alberta 64% of water systems cannot afford qualified operators. Only three out of 82 first nations water systems are operating without risk. Some 26% of first nations water systems are high risk, deliver inadequate water supplies, and need immediate corrective action.

These reports, panels, and committees on first nation drinking water systems all come to the same conclusion: only resources will ensure the safety of first nations' drinking water. Legislation cannot create safe drinking water. How can anyone, in the face of credible expert advice, pass this legislation? The $4.9-billion shortfall needs to be addressed. That is what will begin the process of ensuring the safety of water for our first nation communities.

As far as legal rights are concerned, it has been said that the bill is not about rights. That is not true. Safe drinking water for our people is our priority, and always has been. However, Bill S-8 not only fails to provide for safe drinking water, it also gives rise to serious legal issues that need to be addressed. These include no consultation.

Canada is legally required to meaningfully consult with the Blood Tribe whenever it contemplates action that may adversely affect our constitutionally protected aboriginal and treaty rights. Given that the bill provides for the derogation of such rights, Canada's duty to consult has been triggered; however, there has been no consultation with the Blood Tribe.

As far as our band council authority goes, the Blood Tribe council has authority under the Indian Act to pass bylaws dealing with the construction and regulation of wells, cisterns, reservoirs, and other water supplies. The bill provides that the regulations may prevail over any of our laws, including any that we make under the Indian Act respecting these matters. This bill amounts to regulations having the ability to usurp our statutory authority to make these laws.

The expert panel on first nations drinking water did an independent legal analysis of section 35 rights and concluded that there was a sound, legal basis for first nations' right of self government over water in our communities. Canada has refused to consult with us about the implications of Bill S-8 in this regard.

As far as third-party powers are concerned, the bill provides for the conferring of very broad legislative, administrative, judicial, or other powers on some unknown third party, who can, among other things, appoint an unidentified person or entity to manage our drinking water system. Essentially, it could punish us if we failed to adhere to the regulations, through the imposition of fines or imprisonment, or both. The bill further allows this third party to seize and detain things when verifying compliance with the regulations, and to obtain warrants to search places.

On imposition of liability, the bill provides authority to deem us to be the owner of a water system that is not ours. As a result of being deemed an owner, we would consequently possess certain liabilities that we would not otherwise have. At the same time, the bill makes provision for extensive liability protection for third parties and federal and provincial representatives.

On the matter of the UN Declaration on the Rights of Indigenous Peoples, Canada has endorsed that declaration, which states that legislation of this nature must be developed with the free, prior, and informed consent of indigenous peoples. A half-day engagement session on the legislation does not meet this obligation.

Where do we go from here?

We have sent out a profile of the Blood Tribe in appendix A, which is attached to this submission. You will see that we are obligated, through our tribal principles as expressed in *Kainayssini*, to protect our rights. What Bill S-8 proposes will adversely impact our rights. We are therefore opposed to it for these reasons. We are not opposed to safe drinking water or wastewater management. That must be at the forefront.

For these reasons, as well as the underlying and fundamental reasons we have mentioned above, we do not believe that amendments alone can remedy the problems inherent in this bill. We are of the view that Bill S-8 ought not to proceed at all, because Canada has not discharged its legal duty to meaningfully consult with first nations, including the Blood Tribe. Canada cannot continue to act in disregard of its duty.

We are of the further view that prior to this proposed legislation moving forward in the House, meaningful consultation should occur. We therefore recommend that this bill not be passed or enforced until such consultation has taken place. Additionally, any proposed solution to the issue of safe drinking water, whether by legislation, policy, or otherwise, ought to ensure that practical solutions are provided so that our people ultimately have access to safe drinking water. That ought to be the focus of any action Canada takes, rather than on violating our rights and imposing a paternalistic and punitive approach to the problem.

● (0910)

Our submission does not constitute consultation. We respectfully submit our concerns about Bill S-8 to the Standing Committee on Aboriginal Affairs and Northern Development. On behalf of the Blood Tribe chief and council, thank you for giving us this opportunity to provide the Blood Tribe's submission.

The Chair: Thank you, Chief. We appreciate that and your being here this morning.

We'll turn now to Grand Chief Makinaw. Welcome back. We've heard from you recently. We'd like to hear your submission this morning. Thanks.

Grand Chief Craig Makinaw (Grand Chief, Confederacy of Treaty 6 First Nations): Thank you, Chairman.

Thank you and good morning, members of Parliament, staff, chiefs, and technicians who are here today.

I am Chief Craig Makinaw from Ermineskin Cree Nation and also the Grand Chief of the Confederacy of Treaty 6, representing 17 first nations.

I'd like to introduce one of our council members from Ermineskin. Laurelle White is sitting with me.

We are tabling a written submission with the committee. I'm not going to read the submission but rather highlight some of the key points related to our objection to the whole legislation.

We have travelled from Ermineskin and Treaty 6 to appear before this committee on Bill S-8. Our ancestors entered into treaty with the British crown to allow for the Queen's subjects to live in our territories. When our ancestors entered into treaty with the British crown, water was included in the treaty for as long as the rivers flow. These were the words used at the time of treaty-making. In any discussion on water and the use of water, our treaties must be considered. Our ancestors did not give up water. Our ancestors tied the treaty-making to the waters flowing. The crown did not ask for the waters.

When we talk about water and the actions of the Parliament of Canada, the honour of the crown arises. Treaties are important constitutional documents for the state of Canada. Under international, Commonwealth, and Canadian law, Canada could not exist without the treaties made with our ancestors. The treaties underpin the whole state of Canada.

In light of this foundation, what is the constitutional authority of Canada to impose a legislative framework on the treaty first nations? Where is the honour of the crown?

In the Haida case, the Supreme Court of Canada wrote:

> The honour of the Crown also infuses the processes of treaty making and treaty interpretation. In making and applying treaties, the Crown must act with honour and integrity, avoiding even the appearance of 'sharp dealing'.

Treaties serve to reconcile pre-existing aboriginal sovereignty with assumed crown sovereignty and to define aboriginal rights guaranteed by section 35 of the Constitution Act, 1982.

It is clear from the court cases that the Supreme Court of Canada, on the issue of the honour of the crown, is relevant when dealing with treaty rights. This is the case even when those rights have not been proven. The assertion of the right engages the government in a process to consult with first nations. It cannot be overridden by Parliament.

There is a positive obligation on the government to act in an honourable way in dealing with treaty peoples. In the case of the drafting and submitting to the Senate Bill S-8, An Act respecting the safety of drinking water on First Nation lands, no process was engaged with first nations.

The proposed legislation won't change the constitutional rights of the treaty first nations and put our nations in harm's way under various provincial schemes. There are ongoing boil water advisories across Indian country. This legislation does not propose any solutions. Rather, the legislation puts first nations in the direct path of an oncoming freight train.

At the same time, government is busy undermining programs that might have assisted first nations to avoid the whole process. We recently learned of the cancellation of the drinking water quality program. The government officials wrote:

> The dedication and on-going support to this program enabled this program to grow and mature into a very successful and respected research program by First Nations communities across Canada.

Was it due to its success that the government cancelled the whole thing?

To quote the next paragraph:

> I regret to inform you that Health Canada will not continue with the Drinking Water Quality Program after March 31, 2014. The Drinking Water Program will focus on enabling the communities to monitor drinking water quality as per the Guidelines for Canadian Drinking Water Quality.

● (0915)

How is this going to be done? The legislation is pushing our nations into the hands of the provinces and private corporations. This is a violation of the treaty. Programs and services that are started and cut by civil servants do not honour the intentions of the crown. These decisions are in contravention of any semblance of democratic processes. Legislation is drafted. We are invited to speak, but none of our words are taken into consideration. There are no amendments. There is no process.

We have complained to the United Nations as we struggle to uphold the honour of the crown, but the successor state of Canada throws dirt on the crown on a daily basis with these kinds of bills and acts. This is not bringing honour to the crown. We do not give our free, prior, and informed consent to this legislation.

I'd like to thank you for the opportunity to make this presentation today. I have some other motions from AoTC, from our chiefs' meetings.

● (0920)

The Chair: Thank you. We appreciate that. We will collect those and then we'll seek to get them distributed. Thank you, Grand Chief.

We'll turn finally to Grand Chief Twinn. Thank you for being with us again, on behalf of the committee and my province of Alberta.

Chief Laboucan, thank you so much for joining us this morning as well. We'll turn it over to you folks and then we'll begin with the rounds of questioning.

Grand Chief Roland Twinn (Grand Chief, Treaty 8 First Nations of Alberta): Good morning. I'll try to be brief. Most of what I was going to speak of was mentioned by the other representatives today. I'm going to allow some time for Chief Rose to use up some of our time together.

First off, the Assembly of Treaty Chiefs of Treaties 6, 7, and 8 in Alberta has, from the very beginning, made significant efforts to work with the Harper government to fix the deplorable state of first nations' drinking water systems. Our efforts have been rewarded by the government with political spin, broken promises, and a meaningless piece of legislation that will do nothing to ensure safe drinking water for first nation people.

We also have the exact same concerns as the Mohawk Council of Akwesasne, although I do have a little bit of a different view. I do not believe that a self-government agreement will exempt you from this legislation. I believe there's a clause in there that says this is enforced, in effect, with those first nations who have self-government agreements. The bill does not respect our section 35 rights, and our nation, the Sawridge First Nation, has exercised our section 35 rights to self-government and self-determination. We have developed our own constitution, our own legislation, and we do hold 15 areas of jurisdiction to ourselves.

This legislation, in my view, is going to make a lot of lawyers rich, and that's all it's going to accomplish. We are going to have to take this to court, to either judicial reviews or actual cases. There are 25 first nations in Treaty 8 Alberta and our situations are all completely different.

As the Sawridge First Nation, we don't have a drinking water system of our own. We are a small nation. We've applied to the federal government for over 20 years to control our own water and sewer systems. We've been repeatedly denied by the government. Our water is provided by the Town of Slave Lake municipality. We have taken advantage of the program for monitoring safe drinking water. The water standards are higher at the federal level is what we have found. Some of the contaminants in the water are at a high level according to the federal standards; however, when I get the letter from Health Canada, it says our water is provided by a municipality and is within provincial standards.

I'm not sure if the people of the Sawridge First Nation would agree that we would fall under now lesser standards using the provincial government's standards.

This has been echoed. There have been several expert panels who have said they need resources prior to legislation regulation. There have been so many times that we've seen these types of things being pushed through.

On section 35, the expert panel on first nations drinking water did an independent legal analysis of section 35 rights and concluded that there's a sound legal basis for first nations' right of self-government over water in their communities. Canada has refused to consult with us about the implications of Bill S-8 in this regard.

We're in the 21st century. You would think that the draconian ways of dealing with first nations of this country have dissipated, but they seem to be alive and well.

To top all of this off, the only part of Bill S-8 that actually does anything is the liability protection provisions that excuse Canada from all responsibilities for the safety of first nations' drinking water. If the bill were truly named, it would be “Breach of fiduciary duty to first nations and protection of liability for the Government of Canada, and the abdication of its moral and legal responsibilities for safe drinking water for first nations act”. That's how we feel.

I will turn it over to Chief Rose; she has a few words to say.

Thank you.

● (0925)

Chief Rose Laboucan (Chief, Treaty 8 First Nations of Alberta): First, I'd like to say good morning to everyone. I'm grateful you're here.

Chris, I'm supposed to tell you that Richard Kappo said hello. He's in your riding and he wishes he could be here.

I'd like to start by reading article 2 of the UN declaration: “Indigenous peoples and individuals are free and equal to all other peoples...”. I'll read that again, because it sounds so good. “Indigenous peoples and individuals are free and equal to all other peoples and individuals have the right to be free from any kind of discrimination...”.

That's as far as I'm going to go.

As a chief of my nation who has been elected for six consecutive terms, I'm sick and tired of the racist, bigoted treatment of first nation people in this country. It is time for change.

I come from a community that was on a 10-year boil water advisory. It was 10 years before we received a water treatment facility—and in my opinion, $6 million taxpayers' dollars was wasted because we can't even supply proper water quality to our people with that facility. It's a waste of money. We are still on a boil water advisory from to time. We just got off one, we got back on one, we're on one again. It never stops.

We need to address the problem of the infrastructure, the problem of maintaining the facility, the funding for qualified operators in our area, and also some kind of mandatory process to keep that quality of service that we should be giving to our people.

In 2006 the expert panel on safe drinking water recommended adequate resources. If you read the report, It was a precondition before any legislation was supposed to be developed. I'm asking this committee to listen with an open mind to bring about a difference in allowing quality water to be accessed by our people.

I've been here before and presented to committees and I'm not sure if anyone really listens or if this is part of a show or something. You know that water is critical, that it's vital to our people, that it's vital to anyone's survival, not just mine. Quality water is needed by everyone, and the bills coming forward right now are not doing anything to protect our water.

You go to other bills and you know that some lakes and rivers are not being protected now, and that's allowed. It's allowed by the people who are in power in our governments of the day, so that it's not possible to say how important it is to have that quality water, to have it for the next 10 generations and not just for tomorrow.

When I look at all of this process, the only thing that's benefiting, in my opinion, is the government of the day. They're the ones that are protected. I become liable for my community. What's the point? What is the point for us to be leaders in our community? We're going to be saddled with the liabilities of anyone who may take us to court in the future, as they did in Walkerton. I know the federal government bailed out that town, and so it should have.

You have that opportunity to fund this adequately now so we could produce the quality of water that we need, because it's not just about the facility. You're not addressing all the other things: the intake of the water to that facility that, at the end of the day, will produce that glass of water for you to drink. There are internal problems in the mechanisms there. I think those need to be addressed.

● (0930)

This bill is called the safe drinking water bill. No one's against that. That part of it is good in words only. But at the end of the day, it doesn't give us that.

This is something that needs to be considered by this committee. I hope you have your listening ears on—sorry, I'm a teacher by trade, so I'm using the terminology that I used to use—and you really do something. I hope this Conservative government that's in power today can really make a difference in allowing quality water in our communities. Don't waste the money by giving us water treatment facilities that we can't even operate and maintain. That's ridiculous. That's a waste of money.

At any rate, those are some of the things I wanted to say. No matter how we look at it, and no matter where you come from in this country, protecting our water is number one. Without it, you won't survive.

I just wanted to say those few words. I thank all the people from Alberta who have come here to talk on this water bill...and to our friends from the east who are here, talking about this process, but most of all for the rest of you to have that open mind to be able to make a difference in the long run. Otherwise, it would have been a waste of our time.

Thank you.

The Chair: Thank you very much, Chief.

We know it's earlier in Alberta; I feel your pain, absolutely.

We'll begin with Ms. Crowder for the first five-minute round.

Ms. Crowder.

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

I want to thank each and every one of you for coming before the committee.

I would like to be able to say that I had some confidence that the committee would be able to amend the bill, but I have to say that my experience over the last two years has been that, almost without exception, any attempts to amend legislation that comes before here has not been voted on by all members of the committee. The opposition has attempted to change these bills, and we've had very little success.

We've been hearing consistently about issues around jurisdiction, the non-derogation clause, liability, consultation, and resources. That's been a consistent message around what's wrong with this bill.

Chief Twinn talked about ending up in court. I have a recent article here that says by 2012, the total legal fees for Aboriginal Affairs will exceed $110 million. So the government is prepared to put money into fighting these cases instead of making sure the legislation is correct.

I think Chief Weaselhead asked a very important question, that given everything we've heard, how can we pass this legislation?

I only have five minutes, and that includes your response time, so I'll ask my question. In the preamble, it says that the Minister of Health and the Minister of Aboriginal Affairs “have committed to working with First Nations to develop proposals for regulations”.

I think you're all aware that regulations are developed outside of the scope of oversight from Parliament and from this committee. What would you like to see in terms of a process? How would you define a process that says “working with First Nations to develop proposals for regulations”? What would that look like?

Chief Twinn.

Grand Chief Roland Twinn: I do believe we have to develop a table where we can have some actual negotiations, not just input. We need to be able to have some input into what these regulations are so that we can have a grasp of whether or not we can comply with them.

First and foremost, without any resources given to the Sawridge First Nation, I find it very odd that any regulations could apply to us. We do not run a water treatment plant. I'm sure a lot of smaller first nations out there don't have water treatment plants.

How do you expect us to comply with any regulations when we have nothing to regulate? We have no resources to develop any capacity. You want me to be responsible for safe drinking water when the Town of Slave Lake runs the water treatment plant in its entirety. If somebody gets sick, they're not going to sue the town. This absolves the town, the municipalities, and the provincial and federal governments of liability, and throws it squarely on my shoulders. I don't see how that is constitutionally right. Does that not breach my Charter of Rights and Freedoms in terms of undue persecution? I don't think it's possible....

I'll just leave it at that.

● (0935)

Ms. Jean Crowder: Anyone else on what that would look like?

Chief Makinaw.

Grand Chief Craig Makinaw: I guess lately we've been having these meetings and sessions, but I know I echo what Grand Chief Twinn is saying, that we shouldn't have one-day consultations across the country and conference calls. That's not consultation. I agree with the grand chief that we must have a lot of time to discuss these bills to make sure that the sections where we have concerns are addressed. If that doesn't happen, then I agree with Chief Laboucan and all the other chiefs who are here that we'll probably end up being in court. We have to seriously look at the water issue.

There's another matter I didn't bring up here, and maybe I should have spoken on earlier. We had a commitment from INAC to give us $15 million towards our water system, and it is almost 10 years now that we've been waiting. Back home with Maskwachees Four Nations in Hobbema, Alberta, we're still waiting for this $15 million to help us with our water system. It hasn't come through yet, and we've been asking when these dollars will come through. It's getting to the point now where I'm speaking for myself, that we have to do something about that because if we don't move on asking the government for that $15 million, they're just going to brush us off.

Our water issues back home are getting worse now, and we're running out of water. It's just something I want the committee to be aware of, one of the other issues we have at home. We're running out of water and there are more houses there on cisterns, so it's getting to the point where down the road it's going to be a major issue.

Thank you.

The Chair: Thank you very much.

We'll turn to Chief Weaselhead.

Chief Charles Weaselhead: Yes, I just want to emphasize, albeit not echo the previous speakers on this, that what is most important—number one—is to do an overall assessment of each community. Somebody mentioned that there were differences in our communities with regard to size, population, and those types of things.

The other important thing that we've always advocated is building capacity for our operators. In Alberta we do have a small component that provides a circuit rider training program to our operators. I think it's really important because our people in our community know what the issues are, what the challenges are, on a day-to-day basis. We provided some kind of training to them through this. If you build capacity at the start, it takes away some of the liability issues and those types of things.

Our position comes as a complete package. Resources need to include capacity for our operators as well, because we are not going to stand for outside operators coming into our community. We've trained our people as well. I'm not talking about the jurisdiction, the constitution, the consultation. All those are built into the package. The process itself is flawed in regard to this. But on the ground, I think we still need to provide that capacity to our operators. I think most of our briefing packages talk about process in regard to consultation, our constitution, our own authority about providing safe drinking water, and stuff like that.

As far as the province is concerned, they have a duty to consult with us in that regard. To bypass us—if we're not part of this whole regulatory process—is not going to provide the opportunity for us to succeed in this. So I think it's important that this thing be consulted on from day one. We need to review the situation in the communities. We need to know exactly what it is the regulations speak to and under whose authority, and the protection of that.

Thank you.

● (0940)

The Chair: Thank you, chief.

We'll turn to Mr. Boughen now for the next five minutes.

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

Let me add my word of welcome to the panel for taking time out of your busy day to consult with us. We appreciate your involvement and expertise.

Speaking of expertise, given your expertise on water and waste management, are you willing to participate in discussions to develop regulations and share your best practices so that other first nation communities can benefit from your experiences? I would welcome any of the panel responding to the question.

Ms. Dorothy First Rider (Councillor, Blood Tribe/Kainai): Good morning, everyone. I'm Dorothy First Rider from the Blood Tribe. To address your question and going back to the previous question regarding our regulation, the regulations have to respect the jurisdiction of first nations. We have to understand and appreciate the fact that the first nations are under-resourced.

Most first nations do not have the capacity to be able to begin discussing regulatory frameworks. I believe some first nations, such as the Blood Tribe, are entering into water management discussions with the Province of Alberta. They will be entering into discussions on the jurisdictional and the regulatory framework within the parameters of the existing reserve.

Our first nation, for example, has 548 square miles with 1,600 existing residences. We have five major communities on the reserve. It is going to cost us $30 million to bring up to speed the wastewater and water treatment plants for each of those communities, and approximately $78 million for the next 30 years for the continued operation, maintenance, and upkeep of those water and wastewater treatment facilities. So before we can begin to explore or discuss the regulations, we need to be able to address the capacities of each of those first nations and then amend those regulations to meet the needs of those first nations from now and into the future.

Mr. Ray Boughen: Thank you.

Any others?

Jim.

Mr. Jim Ransom: It's a mistake to think that the provinces have all the answers. I'll give a case in point.

In the early 1990s, if you were a first nation operator, the only way you could get trained was to go to provincial training. It didn't work. When I was at the Assembly of First Nations, we pioneered a first nation training program in Ontario and, I think, in Manitoba. We took the trainer into the community versus taking the operator out of the community. It worked and it ended in savings.

It became the Indian Affairs national circuit rider training program that was just mentioned. It was a first nations solution that was generated because we were engaged and involved. This legislation doesn't do that. We're more than happy to share best practices, to talk about what can work and what should work, but nobody is listening.

Mr. Ray Boughen: Let me just move down to another phase of the question.

Given that subclause 5(4) of the bill provides flexibility within the regulatory development process to allow the multi-provincial and international geographic of the Akwesasne to be accounted for, are you willing to work with the government to address your unique territory?

Mr. Brian David: I know that was the original intent of the development of the protocol. It's inherent. It's been there. With the protocol that we have with the federal government that we signed in the 1990s, and the one we signed just last year, the whole approach and the discussions around the self-government negotiations have already been demonstrated. It's already been expressed.

Mr. Ray Boughen: So it's in place and ready to go.

Mr. Micha Menczer: My only other comment is that Akwesasne is prepared to do that. It's looking for a commitment and it needs to be concurrent. If the bill comes into place and there's a general set of regulations, then Akwesasne is going to be swept up. The whole point of the protocol and one of the purposes of subclause 5(4) that you quote is exactly that.

From the instructions we have from councils, we're prepared to work on that regulation, but it has to be as the other chiefs have said: a true cooperative venture, not a regulation presented for consultation. It has to be developed in cooperation and it should be concurrent so that it all comes in at the same time the bill comes into force. Otherwise, we're not achieving anything.

● (0945)

The Chair: Thank you very much.

We'll turn to Ms. Bennett now for the next five minutes.

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

I know most of you have been here before. This morning seems to me one of the most poignant panels we've ever heard. Whether we're hearing from Akwesasne, the large Blood Tribe, or a small community, we're finding that nobody wants this bill. Everybody sees that it doesn't get you safe drinking water. Everybody sees it's just removing the liability from the federal government.

It is hugely important that you are here today. Your panel and the response this government makes to it should be compulsory watching for every Canadian. This is Civic Literacy 101, this is Idle No More, and this demonstrates how we as Canadians respond to yet another piece of legislation being foisted on the people who have to live with it. Chief Rose and many others have come great distances. Your testimony today was consistent and compelling. I hope that Canadians will call upon the Conservative members of this committee to understand that this is a bad bill. Every single expert, including a Senate committee, has said that without the resources you cannot do your job. They said these resources were a precondition of any legislation. We need to understand that one size doesn't fit all. The stories you've told us here morning show that top-down won't work, that only bottom-up with customizing will be effective, whether it's done by a neighbouring community like Grand Chief Twinn's or whether you undertake to do this yourselves.

I would love, Grand Chief Twinn, for you to table with the clerk your full set of remarks. I understand why you had to explain your feelings about what this bill feels like to somebody who is responsible for the safe drinking water of a number of people. I would like it if Grand Chief Makinaw could also table the letter he received from the department, saying that they're not doing safe drinking water any more. This is important. As a backbencher in a Liberal government, I can remember ragging the puck for over a year with a bad bill on endangered species. We refused to vote for it until the government would amend it.

What I'm hearing this morning is that you want this bill withdrawn because it's not fixable. But unless there some epiphany or some titanium is injected into the spines of the members opposite, we are going to get this bad bill. And we probably won't get any amendments, because that's been their track record. On this side, however, we make this commitment: in respect of your section 35 rights, we will work to persuade them to add a non-derogation clause or to remove clause 3 of the bill. The Canadian Bar Association believes this has to be done if your rights are going to prevail.

We wrote a letter to the minister saying that we couldn't support anything without the necessary resources and consultation, and we will stay with that. But today your concern that this will fall on deaf ears has never been more poignant. I wanted you to know that coming here is hugely important. Even if we can't fix this bill, you have shown how paternalism and a top-down approach makes things worse. This only makes it better for the crown to actually lift off, as it did with the human rights, where you didn't have the money to build ramps or do what was needed to honour those requirements.

● (0950)

I can't thank you enough for plainly telling your story of your different situations. We will do everything we can to persuade the members opposite that they have to go back to the minister and explain what a bad bill this is and how it will make things worse for you.

The Chair: Thank you, Ms. Bennett.

We'll turn to Mr. Rathgeber now for some questions.

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

Thank you to all of our witnesses for your interesting perspectives.

I want to zero in on the issue of liability. To the chiefs and grand chiefs who were concerned about the downloading of liability from federal or provincial authorities to first nations, I'm curious if you're familiar with clause 11 of the bill, specifically subclause 11(3).

Do you agree with my interpretation that those provisions do not download responsibility to first nations, but rather they put limited liabilities on all parties who act under the regulations, including first nations? Can anybody answer that?

Grand Chief Roland Twinn: I don't understand the question.

Mr. Brent Rathgeber: Subclause 11(3) talks about acts and omissions for the federal minister or employees. Subclause 11(2) talks about liability for provincial officials, and subclause 11(3) talks about acts and omissions for either persons or bodies. When I read that, it would seem to include first nations who are acting pursuant to the regulations created under Bill S-8.

I know we'll be talking to lawyers in the next hour, and perhaps we'll get their perspective, but from the perspective of the chiefs and grand chiefs, does anyone have any comment on that interpretation of clause 11 of the act?

Ms. Dorothy First Rider: I think those particular sections are legal debates. That will take a lot of different interpretations, and a lot of different legal opinions will have to be provided.

However, to the first nations and the chiefs and councils who represent their respective communities, we shouldn't be regarded as “any other persons”. It is clearly indicated in that particular section and subclause 3 that it omits the liability of the federal government and the provinces. We are only referred to as “any other persons”. We need to be able to commit to adequate funding for first nations in terms of capacity, infrastructure, resources, and continued operations and maintenance for the thirty-year life cycle of the infrastructure, to ensure that little to no liability will be assumed by first nations.

If this bill is going to go through without having any kind of commitment for adequate funding or capacities, then of course first nations are going to be taking on that liability. Whether they want it or not, it is going to be pushed onto them. We need to be able to safeguard ourselves from assuming any kind of liability and ensure that we do not take that liability away from the federal government.

Remember that clause 3 protects the first nations and that the federal government took on the responsibility for first nations when they entered into treaties. What the legislation does, whether the first nations want it or not, is to push the liability onto them and relieve the federal government of their fiduciary obligations.

Mr. Brent Rathgeber: Thank you for that.

Mr. Ransom.

Mr. Jim Ransom: I would refer you to paragraph 5(1)(q). That's where it deems “a First Nation or any person or body, for the purposes of this Act to be the owner...”. I don't think it gives any authority to first nations anywhere else, except for that one sentence. In clause 11, first nations are not specifically mentioned as being given protection for liability purposes. But here we're declared the owner specifically, so there's no consistency in the rest of the legislation. Wherever it says a “province” or another “body” should be conferred something, they should say “first nation” as well.

● (0955)

Mr. Brent Rathgeber: I hope you appreciate that the word is “may”; it's permissive, not mandatory.

Thank you, Mr. Chair.

The Chair: Thank you so much.

We'll turn now to Ms. Hughes for the next round.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Thank you very much.

Before I start, Chief Twinn, I noticed that you had a presentation. You went off script because of timelines. I'm wondering if you and anybody else who may have had presentations and didn't get a chance to read them into the record wouldn't mind tabling them so we could have them as part of our deliberations.

I greatly appreciate the information you've provided us today.

I can also quote here. This is from the Assembly of Manitoba Chiefs. Their stance is “that Bill S-8 be abandoned or tabled to establish a good faith and honourable process that explores the Custom Water Law option from the Expert Water Panel”.

Again, that's the same direction here.

Chief Laboucan, you talked about the infrastructure, about the fact that you're on a boil water advisory. I know some of my first nations are in similar situations.

Let's look at Kashechewan, for example, in Charlie Angus's riding. The minister was here at one point. In his speech he basically said that they had a state-of-the-art system, but look at the situation they find themselves in, and he tried to put the blame on someone who wasn't properly trained. Yet, as far as I know, since 2006 Northern Waterworks has run that plant.

After the flood, the community had recommended storm sewers and back-flow limiter valves for each house and the government refused. This is part of what you're talking about. You have a state-of-the-art system but you don't have all the intricacies to make sure it functions properly. Maybe you could clarify that for me.

I also have a letter here from Chief Shining Turtle. He wrote the minister about the community infrastructure dollars and says: ...let's do some math:

> $155 million over 10 years so 155/10 = $15.5 million/year nationally.
>
> INAC has 8 regions so
>
> 15.5/8 regions = $1.94 million/year/region
>
> Ontario Region has 133 First Nations
>
> 1.94/133 First Nations = $14,567.67 per year per band.

He goes on to talk about the cost: Water main construction in our area is $300.00/meter and building construction is $+300.000/sq. ft.

He went on to say that he wasn't sure you far they'd be able to get with that type of infrastructure.

I'm looking at all this. With respect to these dollars, I'm wondering about the need for infrastructure, and the information you had indicated with respect to language to give a three-year transition. I don't think three years would be enough when we're looking at this.

Do you have any comments with respect to the government's phased-in approach, which they feel would allow communities the opportunity to meet the conditions necessary to comply with legislative standards? To your knowledge, how, why, and who will determine whether a first nation is ready to comply with the regulations?

Mr. Micha Menczer: I'll comment on the three-year transition. That wasn't in relation to compliance with the regulations. Under clause 14 and the definition of a first nation, a self-governing first nation, or a first nation subject to a final agreement/treaty that has self-governing provisions, is not covered by the act unless it chooses to be.

Akwesasne has completed an agreement in principle. The minister will be signing the agreement in principle, looking for a formal date within the next month or two. Final agreement negotiations will commence late this summer.

I should say the agreement in principle in Akwesasne is a comprehensive agreement, so it's not a light agreement. I mean no disrespect to others. It's not an agreement that leaves a lot to be completed in the final agreement negotiations. That was the direction from council. If you're going to do this, do it seriously.

My analysis is we're about 85% to 90% toward a final agreement, so it's not going to be another 10 years. It's anticipated, and the work plan is for about a two-year process for negotiations, and then about a year for ratification and a bill through Parliament.

I acted for Westbank First Nation throughout this process, so we have a good sense of how this kind of timing works.

The three-year transition period is to allow for the completion of the final agreement negotiations and ratification, in which case they would be exempt. It's not for compliance with the other regulation.

The submission on an exemption regulation was based more on the multi-jurisdictional nature of Akwesasne and how it doesn't fit. One of the members referred to that. If that regulation is done properly, in cooperation with Akwesasne, taking into account all the elements, it has the potential to work hand in hand.

● (1000)

The Chair: Thank you very much.

Colleagues, our time has wound up.

I want to acknowledge that there were a number of different submissions made in paper format. If there are written submissions that you haven't yet made available, we'd certainly be interested in receiving and distributing them.

Colleagues, because of the timeframes we're working under and the significance of these documents, we will have to agree to suspend the requirement for translation before distribution. I wonder if we can get consent to distribute without full translation.

Ms. Jean Crowder: I'm sorry, but with respect, Mr. Chair, we have a policy that we do not distribute documents unless they're translated into both official languages. I would challenge the committee if the documents were all submitted in French. Many of the committee members do not read English. I think that's unfair.

The Chair: We're limited in our ability to distribute documents if there isn't consent to waive the requirement for translation. I'm not receiving unanimous consent to waive that requirement as we have done in the past.

Witnesses, I'm afraid we will not be able to distribute those documents, because we don't have the resources to have those immediately translated. You can distribute them yourselves to the members of this committee, but it cannot be done through the clerk.

Colleagues, I might recommend that you ask for those documents directly.

Ms. Crowder.

Ms. Jean Crowder: There is another solution. Allow the committee sufficient time to review the evidence before we go into clause by clause. There is no need to push this bill through without giving us adequate time to study the testimony that's come before us.

The Chair: Ms. Crowder, we have time to hear the testimony. The issues of translation are well known at this committee. The documentation that has been received would take significant time to translate and, obviously, that couldn't happen within the necessary timeframes.

Colleagues, if you'd like to see those documents, please ask the witnesses directly for them.

We'll now suspend the meeting for this time and return shortly, because we have an additional witness to hear from.

The meeting is suspended while we make the transition.

● (1000)

(Pause)

● (1005)

The Chair: Colleagues, we will call this meeting back to order. We thank our witnesses for waiting for the second round. We apologize for the initial confusion.

Anyway, we do have representatives from the Canadian Bar Association. Christopher Devlin is with us again. Thank you so much for being here. We also have Terry Hancock. Thanks so much for joining us.

By video conference, we have Ramani Nadarajah. I apologize if I haven't got the name right. We'll turn to you shortly.

We'll begin with the opening statements from the Canadian Bar Association, and then we'll move to the Canadian Environmental Law Association.

[*Translation*]

Ms. Terry Hancock (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair and ladies and gentlemen members of the committee.

The Canadian Bar Association is very pleased to be appearing before you this morning to speak to Bill S-8, which is a very important piece of legislation for Canada's aboriginal people.

The Canadian Bar Association is a national organization that represents over 37,000 lawyers from across Canada.

[*English*]

The letter you received was prepared by our aboriginal law section, a group of lawyers from across the country who are specialists in aboriginal law.

● (1010)

[*Translation*]

One of the Canadian Bar Association's objectives is to improve the law and the administration of justice. It is through that lens that we have examined Bill S-8.

[*English*]

With that, I'm very pleased to introduce you to Mr. Christopher Devlin, a well-known expert in aboriginal law, and well known to this committee.

Mr. Devlin is here on Victoria time to address the main points of the bill.

Thank you.

Mr. Christopher Devlin (Executive Member, National Aboriginal Law Section, Canadian Bar Association): Thank you. I note that it's already past six or seven in Victoria, so I'm fine at this point. It's not quite as early as the last time.

Our comments today are really focusing on the non-derogation clause of the bill, but I want to start by saying that it is critical that there be safe drinking water on reserve. The CBA supports that. The bill, by design, is a framework bill; it's enabling legislation for subsequent regulations. That's fairly obvious, and there's a great deal of flexibility in the bill, particularly with respect to subclause 4(1), subclause 5(4), and clause 7. I'll be coming back to that at the end of my opening comments.

Our concern—and this survives from the previous iteration of the bill, BillS-11—is now with clause 3 of Bill S-8. That's where there's this exception or ability of the regulations to derogate and abrogate the aboriginal rights protected by section 35 of the Constitution Act to the extent necessary to ensure the safety of drinking water on first nation lands.

Our simple point to the committee is that we don't believe this is necessary and we don't believe it is required for the bill to be effective as it's drafted. We don't see anything that suggests that it's necessary for the bill to be implemented, and we also question whether it's constitutionally valid to have this kind of language in the legislation. When we made previous submissions, we have talked about the test for infringement that was set out by the Supreme Court of Canada in the Sparrow decision. I'm sure you've heard testimony about that. It does place safety and conservation of resources at the top of the priority list when one is looking at potential infringements, and then you go down in order after that, to the provision of sustenance and ceremonial and traditional practices for first nations, then to commercial rights, and finally to other kinds of users of resources.

I want to dwell on that for a little bit, because inherent to aboriginal rights and to treaty rights is the safe exercise of those rights, which is something that may have been missed by the drafters of the bill. Safety and the preservation of resources are actually inherent, and the courts have discussed this in a variety of contexts, to the exercise of aboriginal rights. Most of the time the courts have discussed it in the context of hunting. You can't hunt in an unsafe manner. You can't shoot from your pickup truck on the side of the road. You actually have to engage in safe hunting practices, and I think with respect to any aboriginal rights involving water and water management, those have to be exercised in a safe manner.

So we really see this qualification as being unnecessary, because inherent to aboriginal rights and treaty rights is safe management, ensuring the safety of the resource so that it is managed and applied in a safe manner.

The other point that I want to bring up is that because this is framework legislation, we don't have the regulations in front of the committee. We don't really know what they're going to be. I did mention that it's a very flexible bill and that the bill anticipates a variety of regulatory regimes across the country. There could be one uniform regulation. There could be a multitude of regulations—we don't know at this point. And for us, that raises a concern or there being not only a multitude of federal regulations but also the potential for the incorporation by reference of provincial water regimes in lieu of federal regulatory regimes. We're not sure of the degree to which those provincial regimes will honour the section 35 rights of the first nations in question. Those provincial regimes have not been developed, frankly, with any reference, for the most part, to section 35 rights, and so it's quite an open question on how that is all going to interrelate.

● (1015)

Here I think of Chief Roland Twinn's earlier comments. He was anticipating the potential for significant litigation. I think there's a real risk of that here, particularly when we're thinking about the derogation of the section 35 rights by referentially incorporating provincial water management regimes.

I think the ideal way to proceed is to develop regulations on a case-by-case basis with the affected first nations regarding safe drinking water on their particular reserves. Then regulations are drafted specific to those first nations, whether it's the first nations that were here today or other witnesses that you've heard from.

To do all of that does not require the derogation clause or the exception at the end of clause 3 of the bill.

I'll leave those as my opening comments.

The Chair: Thank you very much.

We'll now turn to Ms. Nadarajah, who is here by video conference.

You've been waiting awhile, and we appreciate your willingness to wait for us. We'll turn to you now. Thank you.

Ms. Ramani Nadarajah (Counsel, Canadian Environmental Law Association): Thank you, Mr. Chair and members of the committee.

My name is Ramani Nadarajah, and I am counsel with the Canadian Environmental Law Association.

CELA is a non-profit, public interest organization that was founded in 1970. It's an environmental law clinic that provides legal services to low-income people and disadvantaged communities by undertaking litigation and law reform to strengthen environmental protection.

We agree that improved access to safe drinking water is urgently needed in many first nations communities. The need for an appropriate regulatory regime for water and waste water in first nation communities has been highlighted in numerous reports, which I believe have been alluded to by previous speakers.

CELA has reviewed the bill and we believe that for the bill to achieve its goal of ensuring safe drinking water for first nations communities while protecting aboriginal and constitutional and treaty rights, three key issues need to be addressed.

First, constitutionally protected aboriginal and treaty rights need to be afforded protection under the bill. Second, a multi-barrier approach for first nations water resource management should be incorporated in the bill. Third, first nations governance structures need to be respected.

I am going to deal with the first issue now, which I think the Bar Association has already addressed, the issue of non-derogation in clause 3. CELA notes that the Supreme Court of Canada has already established the test for infringement of protected aboriginal and treaty rights for legitimate legislative objectives under the Sparrow decision. Given the existing jurisprudence on this issue, the limiting section in clause 3 of the bill is unnecessary, in our view.

Consequently, as we noted in our brief that was submitted earlier, our position on this issue is similar to what was addressed before. We don't think that particular section is necessary, but we also note that if there is a non-derogation clause, we submit that the one included in Ontario's Clean Water Act, which was designed for the protection of the sources of drinking water, is the most appropriate provision.

That provision simply reads as follows in section 82 of the Clean Water Act:

> For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act....

The second issue the bill needs to address is to provide a more detailed provision about how to improve water resource management on first nation land. To a great extent, the bill's implementation will be dictated by the content of its regulations. However, we note that the list of regulation-making powers provided in clauses 4 and 5 of the bill fail to clearly ensure a multi-barrier approach for first nation drinking water systems, as recommended by the Walkerton and North Battleford inquiry reports.

A multi-barrier approach would require the following: reliable certification of labs; clear oversight and reporting responsibilities; clear delineation of the roles of health and environment water officials, including first nation officials and their governments; reporting of adverse events; delineating responsibility for responding to adverse events, and clear protocols; public involvement of community members, disclosure and transparency; means of receiving expert third-party advice, such as in Ontario through the Ontario Drinking Water Advisory Council; and outlining of resources and funding mechanisms, including for remote and small systems; and providing for infrastructure planning over time. CELA admits that a multi-barrier approach needs to be incorporated into the bill, otherwise it will remain simply as vague enabling legislation.

● (1020)

Finally, CELA admits that there needs to be recognition and protection of first nations' rights over the governance of water on reserve lands. In this regard, we have concerns about paragraph 5(1)(b) of the bill. That paragraph states that the regulations may "confer on any person or body any legislative, administrative, judicial or other power that the Governor in Council considers necessary to effectively regulate drinking water systems and waste water systems".

The generic nature of this clause is a concern, given that the expertise and professional qualification of "any person" is undefined. That provision has the potential to result in possible loss of first nations' ability to control and manage their lands and water systems.

In addition, we note that clause 7, which is the conflict clause in Bill S-8 , provides that regulations may prevail over laws or by-laws made by a first nations to the extent of the conflict in respect of protection of drinking water.

Both of these clauses, in addition to clause 3 that I discussed earlier, have the potential to undermine the right of first nations to self-govern. Therefore, the committee should consider revisions to these provisions to ensure that this is not the case. Those are all my submissions, subject to any questions you may have.

The Chair: Thank you very much.

We'll turn to Mr. Genest-Jourdain for the first round of questioning.

[*Translation*]

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

My questions will mainly focus on subclause 5(1)(*h*) of the bill. I invite you to read it quickly. It says the following:

> (*h*) confer on any person the power to verify compliance with the regulations, including the power to seize and detain things found in the exercise of that power;

What do you think "any person" means?

What do you think that notion of person implies under this specific provision?

[*English*]

Mr. Christopher Devlin: Thank you for the question.

Because this is a framework piece of legislation, we don't have the regulations in front of us. One would presume that "any person" would be someone with lawful authority acting pursuant to some sort of legal authority. But we don't know whether it is an official from the Department of Aboriginal Affairs, a peace officer, or a provincial water management inspector. We don't know.

I thought your question was actually going to be more about the power to seize and whether that's consistent with the Indian Act. It would seem to me that the regulation can't trump the Indian Act, but I guess that's to be dealt with on another day.

● (1025)

[*Translation*]

Mr. Jonathan Genest-Jourdain: You're getting a bit ahead of me.

What do you think the power to "seize and detain" implies? What things can be seized and detained, and what is the scope of the power conferred by this provision?

[*English*]

Mr. Christopher Devlin: Again, because the regulations aren't before us, we just don't know. These are just the possible things that the regulations could make available.

One of the interesting things would be whether the property that would be subject to the seizure would be first nation property or not. If it's not first nation property—say it's a water plant owned by the local municipality that's situated on reserve land—then that would be different. If it were actually owned by the first nation then there could be a conflict there between section 89 of the Indian Act, which doesn't provide for seizure of property on reserve that is owned by first nations, and the regulations.

I'm not so sure it would be saved by clause 3 because that's a statutory provision. It's arguable whether it's an aboriginal right, but on its face it's a piece of federal legislation that says you can't seize Indian property on reserve. That would have to be figured out, presumably by whomever drafts the regulations and, in the process of drafting the regulations, how that would apply on a particular reserve.

[*Translation*]

Mr. Jonathan Genest-Jourdain: My next question is a bit broader.

Previous witnesses have said that the result would likely be a breach in the fiduciary relationship between the crown and first nations, since that delegation does not take into account criteria on water provision and water quality. That obligation would be taken on by first nations, but they wouldn't necessarily have a designated budget.

I would like to hear what you think about that situation.

[*English*]

Mr. Christopher Devlin: I'm sorry, but I didn't quite follow the question. Are you wondering if the regulation is a breach of the fiduciary obligation of the crown?

[*Translation*]

Mr. Jonathan Genest-Jourdain: Could the application of these provisions constitute a breach in the fiduciary relationship, since those obligations are delegated to first nations, but there is no budget envelope set aside to ensure an adequate follow-up to those measures?

[*English*]

Mr. Christopher Devlin: Thank you.

Certainly that goes outside our brief, so I have to be careful on that score. It seems to me that because this is just a permissive provision, where the regulations may do these things or they may not, we would really have to see the specific regulations that are drafted pursuant to this statutory power to know if there were a breach there or not in the first place.

I wouldn't be prepared to say that it is a breach in and of itself at this time.

The Chair: Thank you very much.

We'll turn now to Mr. Seeback for the next round.

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

Christopher, thanks for your testimony today.

I want to talk about a couple of things. One of the things you said is that this is a very flexible bill, and I think that's true. One of the things I find when we go through the study of this bill at committee is that people seem to forget that this is enabling legislation, so it provides a framework. That's another word that you're using.

When you're drafting a framework or enabling legislation, you're going to put together a whole grab bag of things that may be in there because you want to cover every possibility that you may regulate on. Would you agree with me, with that statement?

Mr. Christopher Devlin: I totally agree that it's enabling legislation. It's a framework, and that's how it has been designed.

Mr. Kyle Seeback: And if you're doing that, you want to cover off as many possibilities as possible when you're setting out what you may regulate on. Would you agree with that statement?

Mr. Christopher Devlin: I've seen it done both ways. I've seen it done this way where you have a whole grab bag, as you're saying, or I've seen it left with almost nothing in there, and it's left to the Governor in Council to pass regulations and it's a wide open power. You can go either way.

Mr. Kyle Seeback: One thing I want to comment on is, a lot of people have come and said or sort of stated as a fact, for example, that this legislation will transfer the regulatory authority to the provinces, and that this bill will transfer liability to first nations.

When you look at the clauses, the clause clearly says "may". It's one of the things that may come as a result of the consultation with first nations with respect to regulations. My view is that it's not necessarily accurate to say that this bill will do that. It would be more accurate to say that this bill may do that. Would you agree with me on that within a sort of statutory interpretation framework?

Mr. Christopher Devlin: Yes. We just don't know what it will do because it is framework legislation. What will happen is in large part dependent on the regulations that are drafted once the bill is in force.

● (1030)

Mr. Kyle Seeback: One of the things that the expert panel on safe drinking water for first nations did say is that one of the things you need to move forward with is a regulatory framework. Would you agree that a regulatory framework is one of the ways to move forward in ensuring safe drinking water?

Mr. Christopher Devlin: Oh, yes.

Mr. Kyle Seeback: In my view it's a necessary sort of precondition or first step. You set out what the regulatory framework is and then you would look at what the funding envelope would have to be to meet those regulations. That's the logical process for me.

Some people have agreed with me, and some people have disagreed. I'm happy to hear whether or not you want to join the bandwagon that's agreeing with me or jump on the one that's not.

Mr. Christopher Devlin: I don't think it's the bar's position to hop on any bandwagon.

We do mention in our letter to the committee that adequate resources have to be allocated. You've heard considerable testimony from other witnesses, and this is true of all infrastructure at municipal levels: at the end of the day you get what you pay for. If you don't pay for good roads, you get holes in the roads. If you don't pay for good water systems and adequate training, you get unsafe water systems.

Particularly when you're talking about municipal infrastructure, the resources have to be allocated. A lot will depend on how the bill is implemented. It's really hard to sort of look in a crystal ball, but in an ideal world there would be regulations that would be tailored very specifically to the specific circumstances of first nations, either individually or on feasible regional levels where, when you're looking at how water is delivered to a particular area, whether it's one first nation or a series of first nations, you would have regulations that would then match that particular context.

Mr. Kyle Seeback: But even if we get that—

Mr. Christopher Devlin: That has the potential to help begin to address some of the safe drinking water issues.

Mr. Kyle Seeback: But if we did what you're suggesting there, in order to determine what amount of funding would be required to implement that plan you'd need to have the plan first, which is, "What are the regulations going to be?" Does that not make more sense to you?

Mr. Christopher Devlin: I know that Treasury Board likes to have a plan before they issue a cheque.

Mr. Kyle Seeback: How am I doing for time?

The Chair: You're pretty well out—

Mr. Kyle Seeback: Well, I'll just say one last thing.

My colleague, Mr. Genest-Jourdain, was talking about paragraph 5(1)(h) and about seizure and what it will do. Again, this is not mandatory language. This is permissive, right? The clause overall starts off with "may".

So again, that concern may or may not actually exist, because that regulation may or may not ever come into force. Would you say that's accurate?

Mr. Christopher Devlin: It will entirely depend on the regulations.

Mr. Kyle Seeback: Thank you.

The Chair: Thank you so much.

We'll turn now to Ms. Bennett for the next five minutes.

Hon. Carolyn Bennett: Thanks very much.

I don't think it's up to your association to make a pronouncement on that, but I do think in terms of my colleague on the other side that there have been very clear assessments of how much money it would take to get safe drinking water. I mean, that's actually the goal here: safe drinking water.

It seems that $1.2 billion is needed urgently, and $4.6 billion over 10 years, so I don't think the precondition, as was stated in the assessment, in the Senate report, and in your third paragraph, is being met in terms of.... I don't think people need the regulations in order to make the investments that people are saying they must have, both for the infrastructure and the training and operation.

I guess my concern is about what we've heard from the previous panel in terms of liability and what actually is going to happen here. We heard about three different situations: a multi-jurisdictional one, a large reserve in terms of the Blood Tribe, and then a small Ermineskin First Nation that has to get its water from elsewhere.

If you ended up with a Walkerton, if you ended up with a situation where people have gotten sick or even have died, what happens after this legislation in terms of the liability?

● (1035)

Mr. Christopher Devlin: That's going back to clause 11 of the bill. When those questions came up earlier, I went through the bill. Really, it allows for the same kinds of defences for people to assert. Some of the concerns were that there would be a transfer of liability from the federal government to first nations.

I would make two comments. One is that it doesn't actually say “a transfer of liability”. What it does is say that any person or body that is involved in this is “entitled to the same limits on liability, defences and immunities as those that would apply to a person or body exercising” their power or performing those duties “under the laws of the province”. It basically allows for the same kinds of defences to exist on the reserve in the federal context as there would be off the reserve in that respective province. That's the first comment—

Hon. Carolyn Bennett: In Akwesasne, you have two provinces.

Mr. Christopher Devlin: Right, and so then the question would be, well, you have a conflict of laws there, so which one would apply? The answer is that we don't know. I think Akwesasne would like to have its own water management regime in place, and then they would tell you whether there were any limits and defences.

The second point I would make is that in all three subclauses under clause 11, it's noted that those limits on liability, defences, and immunities are subject to potentially being changed in the regulations. So again, we really don't know the extent of which limitations on liability and possible defences that a first nation or a first nation corporation running a water management or treatment system would have.

As to whether those would exist as they exist off reserve in the province, we won't know the answer to that question until the regulations themselves are developed, because the regulations may add additional defences and limits on liability, or they may take away. We just don't know at this point.

Hon. Carolyn Bennett: Paragraph 11(3)(a) reads,“no person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada”.

That seems like it's been moved.

Mr. Christopher Devlin: Well, Canada has been protected, but then whoever the other party is in subclause 11(3) is able to rely on the same defences as they would off reserve in the province, except as that may be amended, changed, enhanced, or detracted by the regulations. At the end of the day, we're not really going to know what that is until it is in the regulations.

Hon. Carolyn Bennett: Say in the situation where they have waited 10 years for this plant and the department has not given them what they need to do this, and then... Christian Island, where I've been, where they are waiting for a fabulous new plant, waiting for the membrane that they need, they didn't get the resources from the department. I think what the chiefs and grand chiefs are saying is that somehow, when the government, the crown, doesn't give them what they need to do their job of safe drinking water, all of a sudden, miraculously it's the band's fault.

● (1040)

Mr. Christopher Devlin: That is a concern. And again, this is one of the problems with having framework legislation. Until we see the actual regulations that would apply to that particular reserve, we really just don't know the extent to which that first nation community is liable, or if it's the neighbouring municipality that's made liable by the federal government, for example. We just don't know. We need to see those regulations. That's one of the limits of discussing framework legislation: it's very much going to be dependent on the regulations that are going to apply to the particular first nations.

The Chair: Thank you, Ms. Bennett. Your time has expired.

Hon. Carolyn Bennett: It seems you could pay fines, go to jail, because the department—

The Chair: Ms. Bennett.

Hon. Carolyn Bennett: —didn't give you what you needed to do your job.

Mr. Christopher Devlin: Potential.

The Chair: Thank you.

Ms. Ambler, we'll turn to you now for the next round.

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

Thank you to both of our sets of witnesses for being here today. I really appreciated your testimony.

I wanted to address a comment that you made earlier, Mr. Devlin, about resources, and specifically that they have to be allocated. I was hoping to talk about this in the earlier panel. Were you there for that? Yes. Because there was so much talk about inadequate resources, I looked up what the federal government has invested since 2006 in first nation water and wastewater infrastructure. As a global figure it's $2.5 billion. In April 2008 the government announced $330 million, a two-year investment in a first nations water and wastewater action plan, as well as $193 million over two years for the completion of projects related to infrastructure. Ongoing annual departmental A-base investments of $197.5 million, that's annual. In budget 2010, the first nations water and wastewater action plan was extended for two more years to an additional $330 million. There's probably more; that's all I could find.

There's a commitment as well, within the development of the regulatory framework, to add to that, knowing that the way a legislation is developed will have to provide for additional capacity on reserves to provide this safe drinking water. I don't know if you heard the Chief Rose Laboucan talk about the fact that there was a $6-million plant investment made on her reserve and that it's not working well enough. I guess my question to you is, when you're talking about adequate resources, is there anything more this government could be doing?

Mr. Christopher Devlin: I love those open-ended questions. In terms of the action plan, I note in the legislative summary that it wasn't renewed after March 31, 2012.

Mrs. Stella Ambler: Is that the $197.5 million annual?

Mr. Christopher Devlin: Budget 2010 allocated the $330 million, and then in Budget 2012, $330 million was committed over two years, but the action plan itself was not formally renewed. I haven't seen something since then, but I noticed that in the legislative summary.

Again, the bar is really concerned about the law reform issues raised by the bill. If we're going to have a bill, we want to make sure it strikes the right balance in terms of the section 35 rights issues.

You need the right amount of money to have the municipal infrastructure, and that will depend on the circumstances community by community. That's difficult to assess. Frankly, there are people who are far better at assessing that than the aboriginal law section of the—

● (1045)

Mrs. Stella Ambler: While I agree with you, obviously when you made that comment it was a little bit off the rest of your comments. I simply wanted to make sure that you knew about that, because we take this seriously, too.

My colleague, Ms. Bennett, was talking about clause 11. To switch over to that for a second, you made two points on it. I was wondering if you could elaborate on the second point, because you mentioned that we don't know yet.

Could you tell us what the options might be, as we're developing the regulatory framework, to have that liability end up in a fair place, legally speaking, to allow for all the parties to take their fair share of responsibility if something goes wrong? How could we do that?

Mr. Christopher Devlin: That's an exercise in drafting the regulations, in that it really depends on who's going to be charged with owning the facility, who's going to be charged with operating the facility, what that's going to look like for the particular first nation. Is it the first nation itself? Is it the local municipal government that's going to be providing the water to them?

It's going to be so context specific that in order to be fair, I think you'd have to look at the context of each situation when you're drafting the regulations that are going to apply to that situation, to know who should bear their fair share. Because we haven't seen the regulations, I don't know. But I think subclause 11(3) is envisioning a situation where the Government of Canada no longer is the owner-operator and is really not a part of the delivery of the water system or the waste management system, so no longer wants to have the liability for it.

The question that subclause 11(3) begs is, who is going to be the owner and the operator? I think Grand Chief Roland Twinn's concern was that if it's the first nation, particularly if they're the operator or are responsible jurisdictionally, they're getting all the liability without any guarantee that they're going to get the resources. If it comes from the municipal district beside the reserve, they're not even going to own the system they're now potentially liable for.

Those are all highly contextual, highly specific situations that have to be dealt with in the context of the regulations that apply to that particular first nation.

The Chair: Thank you, Ms. Ambler. I do apologize. Your time has expired.

We'll turn to Mr. Bevington for the final questions.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, witnesses. It's a very interesting discussion. You brought up incorporation by reference, which is something that's in front of Parliament right now in Bill S-12. Under Bill S-12 there's provision for ambulatory reference. In other words, regulations changed by other bodies will apply to the regulations taken on.

What do you think of a situation where the provincial regulations can be changed without any interaction with the federal government, without any interaction with the first nations under section 35? What do you feel about the conjunction of these two bills coming together where these ambulatory opportunities are now within the regulations? How does that affect the rights of first nations?

I'd ask you both to comment on that.

Ms. Ramani Nadarajah: I'm going to leave it to Mr. Devlin to deal with the issue of how that would impact on aboriginal rights in relation to incorporation by reference. My concern with the incorporation by reference is really about uniformity of standards, which is that it potentially allows uneven standards on reserve lands in terms of drinking water quality. That would be our primary concern with that issue.

Mr. Christopher Devlin: I love a question that asks me how I feel about something, because I have many feelings about referential incorporation that are spawned from section 88 of the Indian Act. I've never much liked that section, but it has been there for a long time in the Indian Act. In that situation, provinces can amend their motor vehicle legislation without giving any notice to the federal government and that legislation and regulations can apply on reserves under section 88 of the Indian Act.

Here I think you have a similar ability: the regulation, as opposed to the statutory provision, can scoop up existing provincial regimes. The provinces can adapt that from time to time. The only proviso in the referential incorporation provision is that, unlike in the situation under the Indian Act, the Governor in Council can make adaptations of those provincial laws, which is, I think, a step forward from where we see section 88 of the Indian Act.

Now I'm not familiar with Bill S-12, so I don't know if that kind of language has been included there. But if one is going to have referential incorporation in a bill, although I don't like these clauses generally, I think it's a better clause if it allows the Governor in Council to adapt the laws of the province to deal with the specific situation on the reserve.

● (1050)

Mr. Dennis Bevington: You weren't quite getting to my point. Regulations that can be ambulatory in nature are then determined by those who set out the regulations. If it's a body other than the federal government, then it can adjust the standards for safe drinking water. It can change the perspective of how.... You set up a drinking water plan according to certain regulations, certain standards you have to meet. If the province changes them without consultation with first nations, I can see a problem arising there.

Mr. Christopher Devlin: I can, but with respect, that's not entirely how the provision reads. Although it does referentially incorporate provincial laws, and the provinces can still change their laws without notice to the federal government, the Governor in Council retains the power to make adaptations of those provincial laws as considered necessary. So there's a residual power.

The question that it begs, though, is whether the Governor in Council will exercise that power. We just don't know. Again, that's going to be very context-specific. But if one is going to have referential incorporation in a bill, I'd prefer that the federal government reserve that power to nonetheless adapt those provincial laws of general application as it deems necessary. I think that's a better way of doing it rather than just having referential incorporation carte blanche as you see under section 88 of the Indian Act.

The Chair: Thank you very much.

Thank you, witnesses, for being with us this morning. We certainly appreciate your willingness to bear with our scheduling and we appreciate your opening statements and your willingness to answer questions.

Colleagues, I just note that the vast majority of amendments, we believe, have been submitted. We have notice that some are continuing to come in. We will make those available to committee members by tomorrow morning so that everyone can review what has been submitted by their colleagues. Our next meeting, Thursday's meeting, is going to be in the East Block. We'll send out notice of that, but just take note of that.

Thank you so much.

The meeting is adjourned.