



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

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

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AANO • NUMBER 002 • 2nd SESSION • 41st PARLIAMENT

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**EVIDENCE**

**Thursday, November 7, 2013**

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**Chair**

**Mr. Chris Warkentin**



# Standing Committee on Aboriginal Affairs and Northern Development

Thursday, November 7, 2013

• (1100)

[English]

**The Chair (Mr. Chris Warkentin (Peace River, CPC)):** Order please.

Colleagues, this is the second meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we continue our work and we'll be hearing from the minister with regard to our study of Bill C-9, An Act respecting the election and term of office of chiefs and councillors of certain First Nations and the composition of council of those First Nations.

As is our custom in this committee, we'll turn the meeting over to the minister for about 10 minutes, then we'll have some rounds of questioning.

Minister, thank you so much for being here. We appreciate you coming.

Colleagues, as for the second hour, we do have people here to testify in the second hour and then we have one housekeeping motion that needs to be dealt with. We'll deal with that at the very end of the meeting today.

Minister, we turn it over to you now.

**Hon. Bernard Valcourt (Minister of Aboriginal Affairs and Northern Development):** Thank you, Mr. Chair. Members of the committee, I am very pleased to be here today to address Bill C-9, the first nations elections act.

As you all know, our government has been working closely with first nations to bring about real improvement to the election process for first nations and this has been going on for over five years. Indeed, this legislative proposal has been largely driven and led by first nations, in particular the Atlantic Policy Congress and the Assembly of Manitoba Chiefs under the then leadership of Grand Chief Ron Evans.

These two organizations first came to our government in 2008 when they told us their views about the current Indian Act elections system which, in their view, was simply not working for them. They said they would rather have another option to the current Indian Act election system.

It is their efforts over the past five years that have led to the development of the proposed first nations elections act that is before you today in the form of Bill C-9. Both organizations first engaged in their own regions of the country, then subsequently with first nations organizations and leaders in other provinces to develop

recommendations for a better election system than the one operating within the Indian Act. It was these recommendations that formed the basis of the bill you see before you today.

Mr. Chair and member of the committee, I think it is time we passed this bill into law so that first nations can take advantage of the benefits it has to offer.

[Translation]

In fact, just recently, I received a letter from the Atlantic Policy Congress of First Nations Chiefs wherein they reiterated their strong support for the First Nations Elections Act and further stated that **this bill would** ... help reform elections by creating the political stability needed to effectively implement long-term community plans and build the confidence in governance that should result in increased economic opportunities and development for first nations who choose to opt in to the legislation.

I also received a letter from former Grand Chief of the Assembly of Manitoba Chiefs, Ron Evans, who **stated that** ... when enacted, Bill C- 9 will change the way first nations are governed, create stability and credibility, strengthen self-governance and allow first nations to move forward.

As my colleagues are aware, there are currently three ways in which first nations select their leadership in Canada: 343 conduct elections under their own community or custom election codes; 238 conduct elections under the Indian Act; and 36 conduct elections under self-government agreement provisions.

And what we heard from first nations during these consultations is that transitioning to a community election code or to a self-government agreement is not a viable option for them, but that they wanted a strong, viable legislative alternative to the Indian Act.

That's exactly what this bill does. It provides first nations that so choose with another alternative that addresses the many weaknesses of the Indian Act election system. It is important to understand that no one is obligated to participate; first nations who want to adopt the election system under the legislation may do so.

• (1105)

[English]

I want to take a moment, Mr. Chair, to highlight some of the weaknesses in the Indian Act that the first nations elections act seeks to address.

First, the election terms under the current act are too short. The Indian Act requires that first nations communities hold elections every two years. Let's be realistic. Two years simply does not provide enough time for first nations leadership and council to plan for and implement long-term community development projects and take full advantage of emerging opportunities to improve the lives of the people in their communities. It really puts first nations in perpetual election mode and it has been expressed time and time again that changes are desperately needed to lengthen the election term.

The first nations elections act would provide for a term of office of four years and would also enable six or more first nations communities to line up their terms of office and hold elections on the same day, also referred to as "common election day". This is something that the Assembly of Manitoba Chiefs in particular had identified as the major impetus for calling for changes to the current Indian Act election system.

Second, rules are lacking regarding the nomination of candidates and mail-in ballots. For example, there are absolutely no eligibility requirements in order to be nominated for chief, and individuals can be nominated for both chief and councillor in the same election. This bill would provide clearer rules regarding eligibility for nominations and for the making of regulations that address many issues surrounding the nomination of candidates and mail-in ballot voting that commonly surface at elections held under the Indian Act. We are committed to developing these regulations in partnership with first nations.

• (1110)

[*Translation*]

This bill would provide for clearer rules regarding eligibility for nominations. It would also provide for the making of regulations that could address many of the issues surrounding the nomination of candidates and mail-in ballot voting that commonly surface with respect to elections held under the Indian Act.

Third, unlike the Canada Elections Act, the Indian Act does not set out any offences or penalties for election-related abuses. The Indian Act does allow for the removal of an elected official from office if they are guilty of engaging in a corrupt practice in relation to an election, but there is no fine or additional penalty such as imprisonment.

There is also absolutely no penalty for a non-elected official that engages in election-related abuses such as buying votes, using a forged ballot or obstructing the conduct of an election. This system allows for serious offences to go unpunished, which is an encouragement rather than a needed deterrent.

This bill would rectify this unacceptable legislative gap and provide for defined offences and penalties surrounding questionable and fraudulent activities, such as vote buying, using intimidation and obstructing the electoral process.

Fourth, election appeals under the Indian Act currently go to the minister, not the courts. This is paternalistic and frankly not a business I think that the minister should be in. This bill would remove the minister from the equation and ensure that appeals are

dealt with by the courts as is the case for many other levels of government in Canada.

Mr. Chair, I am sure my honourable colleagues would join me in expressing our appreciation to these first nations leaders—some of whom I know you will be hearing from later today—for their important work on this bill. They saw the need to reform their election system and then took action to bring about practical changes. All the credit should go to them, and they deserve our support in passing this bill swiftly into law.

Thank you. I would be pleased to answer any questions committee members may have on this legislation.

[*English*]

**The Chair:** Thank you, Minister. We appreciate your coming this morning.

We'll turn it over now to Ms. Crowder for the first round of questions.

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

Thank you, Minister, for coming before the committee today.

I just have a couple of points. You mentioned in your presentation that there are currently 238 first nations under the Indian Act, and you also indicated this is opt-in legislation.

Do you have an estimate of how much interest there is, how many first nations out of the 238 may be interested in moving into this new piece of legislation?

**Hon. Bernard Valcourt:** I stand to be corrected, Ms. Crowder, but I don't believe we have done a survey to determine how many were interested in adopting the new election system. However, we trust that given the interest shown by all of those that were consulted by the first nations themselves, they feel there is quite a good number of them that will opt in and see the advantages of it.

**Ms. Jean Crowder:** But they could remain under the current Indian Act system if they chose?

**Hon. Bernard Valcourt:** Absolutely.

**Ms. Jean Crowder:** Towards the end of your presentation, you also mentioned appeals. I know the Senate study indicated it takes between six and eighteen months currently to hear appeals before the department.

Can you tell me approximately how many appeals the department would receive on an annual basis?

**Hon. Bernard Valcourt:** On average, if I look at the last 10 years, there are about 32 appeals filed per year from Indian Act election bands. Of those 32 appeals that annually take place, on average, only about three are referred to the minister per year.

Many of the election appeals are rejected by the department because the reasons put forward for the appeal either do not demonstrate violations of the election rules, or are frivolous, or were not submitted within the 45-day appeal period. When I say "frivolous" I should maybe qualify by saying there is not often the kind of evidence that can support the appeal. That's why so few are referred to the minister for his decision.

• (1115)

**Ms. Jean Crowder:** So under the proposed legislation under clause 3, one aspect of that is for a nation to indicate that they want to be included, but there are also provisions in this legislation for the minister to order somebody under the new legislation.

Would that be either Indian Act bands or custom? Just custom?

**Hon. Bernard Valcourt:** No, just Indian Act bands.

**Ms. Jean Crowder:** Okay. That's not clear from this.

So what you're saying is—

**Hon. Bernard Valcourt:** Yes, there was a protracted...no, you're right. Sorry.

**Ms. Jean Crowder:** But it could be either Indian Act—first nations currently under the Indian Act legislation or custom code. Both could be referred to the new legislation.

**Hon. Bernard Valcourt:** If the minister was satisfied that there was indeed a protracted leadership dispute, in that case, yes, either an Indian or a custom band could be ordered to come under the act.

**Ms. Jean Crowder:** Does your department have a definition of what a protracted leadership dispute looks like? Or corrupt practice? Are there definitions?

**Hon. Bernard Valcourt:** No. There are no definitions per se in the act or in regulations. I think the view in the department and how it would be interpreted is that it is a situation when, because of a leadership dispute that can't seem to be resolved, the health and safety of the members of that community may be at risk.

**Ms. Jean Crowder:** But it's still going to be at the minister's discretion.

**Hon. Bernard Valcourt:** Yes, and you know, it is a power that is already, as you know, under the Indian Act.

**Ms. Jean Crowder:** So it's not really an improvement.

**Hon. Bernard Valcourt:** It is an improvement in the sense that the minister will not force that band to go under the old Indian Act. It has to come under this new act with all of its strengths and transparency and accountability, which is lacking under the Indian Act system.

**Ms. Jean Crowder:** I'm sure you're aware, Minister, that the sticking point here is in fact for many first nations they don't want that kind of ministerial discretion.

What has been suggested—and I'm wondering why the department didn't consider it—is an independent commission, an independent body, that would oversee disputes. That was recommended in the original JMAC report. It was recommended in the Senate report to remove that kind of ministerial oversight.

Why didn't they go to an independent commission?

**Hon. Bernard Valcourt:** Because that was considered and there was consultation with first nations. There were a number of reasons why a commission was not considered. First, the role such a commission would play in electoral appeals is questionable, particularly given that the offence and penalty provisions of the bill provide that corrupt practices will be responded to and addressed by law enforcement, crown attorneys, and the courts.

**Ms. Jean Crowder:** Sorry, Minister, it's not just about corrupt practices. It's about where there may be disputes over the outcome. It may not be corruption. They may think the ballots weren't counted properly.

The rest of us have oversight with an independent body, with Elections Canada. I'm just wondering why first nations wouldn't have that same opportunity.

**Hon. Bernard Valcourt:** If you look at other levels of government, at the municipal level...let's take Ontario or New Brunswick or any province for that matter. We don't have a commission for municipal elections. The court deals with any violations of the act, which is what is prescribed here.

Another consideration are the resources that would be required for the establishment of such a commission, which would be costly and add nothing in the sense that the court now would be tasked with deciding whether or not the act has been violated.

• (1120)

**The Chair:** Thank you, Ms. Crowder.

Mr. Strahl for the next seven minutes.

**Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC):** Thank you, Mr. Chair, and thank you, Minister, for coming to speak to us today.

As you indicated in your remarks, first nations have three options available right now already for conducting their elections for chiefs and councils. They can follow the steps outlined in the Indian Act, in the Indian band elections regulation. They can develop community or custom election codes, or they can hold elections in accordance with the community's constitution under a self-government agreement.

Given that there are already three options available, why do you think that a fourth option, as outlined in this bill, would be beneficial to first nations?

**Hon. Bernard Valcourt:** Our government has brought forward this legislation as a legislative alternative, particularly for those first nations currently operating under the Indian Act, to hold elections under a legislative system that is strong, modern, and comparable to municipal, provincial, and federal election systems in Canada, which they don't benefit from now.

The Indian Act provides for what I can characterize as a cumbersome, inefficient, and unaccountable model which is ripe for abuse. I receive letters in my department all the time, and this has led the first nations across Canada to demand reform, and this opt-in legislative framework would allow first nations seeking to improve governance to opt in and establish a turnkey framework that would allow for stable and accountable electoral systems on reserves.

**Mr. Mark Strahl:** Given all of that, that it will improve governance, and again we talked about electoral abuses and how this would address that, why make it opt in instead of mandatory?

**Hon. Bernard Valcourt:** Well, that's an excellent question. I too share your frustration with instances of electoral instability on reserves. I would like to highlight, however, that the government would rather not interfere in first nations governance. It is our view that generally bands should be self-governing. It is for that reason that we would like to gradually do away with the Indian Act election provisions. However, our government believes that incremental change that responds to the desires of first nations is more effective in the current circumstances than any drastic top-down legislative approach on elections.

That's why we're leaving the decision to individual first nations to choose which election system best suits their needs or their respective communities.

**Mr. Mark Strahl:** We talked a bit about the opt-in provisions. I'm wondering if you could clarify to the committee the procedure that would need to be taken by a first nation should it wish to participate in the new proposed framework. Similarly, is there a process if they opt in and after a few cycles they say they don't like it any more? Are there provisions in the act to allow them to opt out?

**Hon. Bernard Valcourt:** If the first nations wish to abandon this inefficient, paternalistic, and unaccountable Indian Act election framework, under Bill C-9 they would have to follow a relatively simple process.

First, the band councils—I'm sure, because that's the way I see them operate—would consult their own membership. And then they would have to adopt a resolution that would be forwarded to the department, whereupon an order would be made designating the band under the new act and setting the first election date. It's as simple as that.

Historically, we know there have been two ways to opt in to federal legislation relating to aboriginal affairs: a band council resolution or a referendum. Now, the referendum option was considered, but it did not garner much support with the first nations that participated in the consultation process. And because of the experience of first nations, we decided that we'd rather go with their preferred course, which was the resolution and not the referendum.

However, to get out of it once you are under this, the only way you can go is with a custom system that they can do, provided, again, it meets the requirements of the policy in that regard, which ensures that the custom system must respect the Charter of Rights and Freedoms. To get out of this act, this new bill, they would have to go through a referendum that must garner the support of the majority of the electorate in which 50% of eligible voters participate, and it must then be published in either the *First Nations Gazette* or on the website maintained by the first nation.

• (1125)

**The Chair:** Thank you.

We'll turn now to Ms. Bennett for the next round of questions.

**Hon. Carolyn Bennett (St. Paul's, Lib.):** Thanks very much, Mr. Chair, and thank you, Minister, for coming before us.

We think this is an excellent example of bottom-up legislation. A lot of first nations have come together to bring this forward to you. Most other first nations we've talked to have seen this bill as basically positive as long as it remains optional legislation. As my colleague pointed out, although Bill C-9 is basically optional, clause 3 clearly provides you with explicit powers to bring first nations currently under the Indian Act or custom code under Bill C-9, which flies in the face of the optional nature of this bill, and it seems to be the primary source of concern for most first nations.

You said in your opening remarks:

This is paternalistic and frankly not a business I think that the minister should be in. This bill would remove the minister from the equation—and would ensure that appeals are dealt with by the courts...

You get that the minister shouldn't be in this business, but clause 3 (1)(b) and (c) puts you right back telling first nations what to do again.

Will you remove this clause? It was almost right, and then you put this thing in and alienated all the people who were your original partners. You had a partnership and now they're annoyed. Neither protracted leadership dispute nor significantly compromised governance is defined in the legislation. We're back to the whim of the minister, and you have a very broad discretion about where you can intervene.

Minister, would it make more sense to just remove that one piece and let us get on with the bill, as was the original intent? From the AFN and Regional Chief Wilson-Raybould's testimony, there's a consensus: just get this little piece out and we'll help you get your bill.

**Hon. Bernard Valcourt:** Listen, I'm going to be really candid with you. When I first saw this, I had about the same reaction you're having. A protracted leadership dispute affects the members of the community. Services cannot be delivered, decisions cannot be made. Housing decisions, infrastructure, people, schools—there's no decision that can be made because there is a protracted leadership dispute that prevents the council from making decisions. So I said, "Is there a way for a judge to decide this?" When you think of it, these are policy decisions. You cannot put the burden on judges to make policy decisions in the running of a band.

This is going to be very, very rare. Under the current Indian Act, this power under 3.(1)(b) has been exercised, I think, only three times. It's very rare. But in those cases where it happens, what do we do? If I took this out, there would be a *vide*, and then what do we do? The judge cannot do anything about it. So I think we owe it to the membership, to first nation members, to have an escape clause to protect their best interests, and that's what this is there to do.

Under the other one, (c), in the case of a corrupt practice, under the Indian Act the power is already there. I could set the election aside under section 79, and then they'd remain under this act, which is not working. At least, if this happens under the Indian Act, the power will not put them back in a system that is not working. The power is to put them under an act that is sound, and that's the reasoning behind insisting on keeping those there.

If I don't, if I get rid of (b) and (c), I think I create a situation where we're going to have an empty...What do we do when it happens? It's done in the best interests, I believe, of those first nations, and we've discussed this with first nations.

• (1130)

**Hon. Carolyn Bennett:** Okay.

Minister, you already have the power to do this stuff. Why are you ruining this bill with a power you already have?

This bill is going to allow you to put people on a schedule they don't want to be on. As Jody Wilson-Raybould said, this is not appropriate because first nations are in a period of transition toward self-government and increased autonomy; the approach should be for governance reform and a collective strategy that creates foundations for good governance. I think this is what Regional Chief Wilson-Raybould said.

It seems that you are just irritating people by reiterating in the bill powers you already have in a way they don't want you to act.

**Hon. Bernard Valcourt:** If the Atlantic Policy Congress and the former Grand Chief in Manitoba had told us that this would be fatal to the bill, I don't know if the bill would be here today. But under (c) ....

The experience is there.

This bill applies only to those communities that have demonstrated an inability to solve their governance issues. This is not meant for communities that can solve their governance issues.

What do you do with those first nations that cannot resolve their governance issues and you know that the health and safety of the membership of that community are at stake? Under section 91.24, the federal government has the obligation to ensure that, when there is a failure to resolve a governance issue, the minister should be able to intervene.

• (1135)

**Hon. Carolyn Bennett:** He can already.

**The Chair:** Thank you, Minister.

We'll turn now to Mr. Clarke for the next question.

**Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC):** Thank you, Minister, for coming in today.

I'd like to play a little scenario before you from my past experience. I lived and worked on reserves and was in the RCMP. We had to deal with a lot of the Indian Act, especially in regard to band elections.

Ahtahkakoop is going through some major problems right now. For one, it was at one time under custom, but they didn't have the problem of elections; basically theirs was a template for one of the

best elections in place. Lo and behold, what happens? A new administration comes in and we're hearing the first nations leadership using the Indian Act to basically help themselves get elected and keep their powers. They are manipulating the Indian Act in a way that helps them get elected from election to election to election.

Some of the things I've seen in the past include voter fraud, where individuals are paid off and there is basically no recourse for the government to suspend the election. Another thing is when the chief and council elect relatives to be the returning officers. I have a hard time with that.

It gets very frustrating. The band membership.... We're listening to the elected leadership making these changes but we're not hearing from the grassroots. That's what I get really frustrated about.

What we're looking at now is a new opt-in piece of legislation where it has to go to the grassroots members...when the grassroots members bring it forth. I hear the opposition criticize it but what they're really doing is trying to protect the status quo and protect their leadership because they feel that's where the votes are. It's not. It's at the grassroots level, where they need to have proper leadership and representation.

That's what I get really frustrated about.

Having been in the RCMP, having to take ballot boxes, having to keep them for two years locked up in our detachment exhibit lockers waiting for the appeals, for the results to be reviewed by the department...something has to be done.

The leadership protects this whole empire, and that's where it has to go back to the grassroots.

As you know, Minister, I get really frustrated with this whole thing. Some people want to protect the status quo, and the Liberals do it very well, but they don't have a clue. As we all know, the government has a constitutional duty to consult with aboriginals and first nations and the membership. Basically we have to protect the membership.

One of the questions I have is, what was the driving force for this legislation at its inception?

**Hon. Bernard Valcourt:** The first nations who decided, on their own, to seek an alternative to a broken system were the driving force. The act was developed by first nations in partnership with our officials in the department.

**Mr. Rob Clarke:** How would you describe the relationship between your department and the first nations in the development of this bill?

**Hon. Bernard Valcourt:** The work was in partnership. The Atlantic Policy Congress and the Assembly of Manitoba Chiefs were the driving force behind the drafting, working with the officials. Those two organizations were driving this, throughout the country, among first nations under the Indian Act.

That's why, as I think was acknowledged earlier, this piece of legislation cannot be characterized as having been imposed by Ottawa upon first nations. It was a product of their full participation, at their urging. That's why I believe this committee should pass this quickly, so it can become law.

• (1140)

**Mr. Rob Clarke:** How important is it that this legislation be adopted quickly? We're seeing many cases, right now, being appealed. We're seeing elections being appealed just at the band level.

For instance, I received a petition from over 400 individuals—from Ahtahkakoop, or Sandy Lake, in northern Saskatchewan—400 signatures from a band who want to see major change. Then, once the challenge is brought forward and the chief and council see the petitioners' signatures on it, those individuals are now afraid of repercussion; of losing their jobs, losing their options or opportunities for post-secondary education, or even education as a whole. That's one of the things that has to be addressed: the ultimate power is at the chief and council level, where they can dictate who gets what, or who gets what housing.

Do you think this legislation is important to first nations' membership?

**Hon. Bernard Valcourt:** Absolutely. This is for the benefit of all first nations that want to take advantage of it, but the particular time in which we live is not to be underestimated.

As I travel all of Canada, on first nations territory, I see all the opportunities and this kind of new sense on the part of chiefs and council and communities to work together. For example, I was in North Battleford in Saskatchewan not long ago, where they pull together, they aggregate, they work together, but then when you have an election every two years, you lose them.

This is politics. You need partners. We talk to the premier and to the ministers. We don't lose our counterparts in Quebec or Ontario or Alberta every two years. They are there for a four-year term, and usually you have a long period.... It's the same thing with first nations. I think that will help first nations to work together much more effectively. Those who opt for a four-year term will have the time to implement change. I think the membership will have full confidence in their council because the election will have been fair, transparent, and accountable. I think that's important for the membership of first nations.

**The Chair:** Thank you, Minister.

We'll turn now to Mr. Genest-Jourdain for the next question.

[*Translation*]

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

Under the bill, a first nation could opt in to the new election system by way of a band council resolution.

Minister, a very troubling matter was brought to my attention at the beginning of my term. Some communities are very remote. Take the community of Pakuashipi, for example, in my riding; it's north of the 52nd parallel. Then-chief Christiane Lalo told me that, strangely enough, his council's resolutions were prepared by law firms in large

urban centres and that the members of his council had never endorsed those decisions. Basically, the resolutions were bogus, if you'll pardon the term.

How are you going to ensure the legitimacy of those kinds of documents, which can have a huge impact on local policy and tribes?

**Hon. Bernard Valcourt:** That's a complicated question.

The bill before us concerns the election system. We and the first nations—the key players who gave rise to this bill—are trying to make sure that the members of their communities have access to a responsible, accountable and transparent election system.

Now, it's important that the members of those communities have confidence in the election system and know their chiefs and band councils were elected according to the principles of democracy with respect for everyone's rights. That's what this bill will do.

If an elected band council adopts resolutions prepared by others, I don't think I should get involved. But I would certainly encourage those community members to get involved in issues that concern them and to speak to their band council.

• (1145)

**Mr. Jonathan Genest-Jourdain:** You realize that, once the resolution is sent to you, it could open the door to an election in the following six months. At least, that's what I took from the document. That means it could be used as leverage to undermine the game or switch the cards, so to speak. Minister, I would humbly submit that this could ultimately be used for purposes that are less than honourable.

Now, let's discuss the elections regulations. It is clear that regulations will be developed under this bill. How inclusive will the process of drafting those regulations really be as far as involving members of the first nations communities goes? To what extent will they be consulted? How involved will they actually be in drafting those regulations, which are ultimately the key ingredient here?

**Hon. Bernard Valcourt:** Absolutely. It is our intention—and we have engaged the first nations in question—to work with them to develop the regulations that will be adopted under the bill. As soon as possible and right after the bill is passed by Parliament, the department plans to work with those first nations on drafting the regulations required to implement the bill.

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

**The Chair:** About a minute.

[*English*]

**Ms. Jean Crowder:** I want to come back to the regulations, Mr. Minister.

I'm hearing you say "work with", but have you started discussions with first nations in anticipation of this bill passing, since the Conservatives have a majority?

Developing what that process would look like, exactly how will first nations be included in the development of regulations?

**Hon. Bernard Valcourt:** I don't know if I can give you exactly how they will be incorporated, but the intention is to develop the regulations in close cooperation with the first nations that have been the proponents of this bill.

I think our understanding and theirs also is that we're going to sit together and see how we can draft and implement each set of regulations in the best possible timeframe to ensure they can quickly take advantage of the provision of the act.

**The Chair:** We'll hear from Mr. Seeback for the next five minutes.

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

Minister, I think one of the things that we often forget is that other communities across Canada benefit from a very stable electoral system. Municipally there is an election every four years. Provincially and federally there is similar legislation, which provides for stability and certainty. That's not necessarily the case with all first nations communities. I see that as a bit of a disadvantage.

What would you characterize as the main benefits of the legislation for first nations communities?

**Hon. Bernard Valcourt:** The main benefit I would say is, of course, first of all the answer to this call by first nations for the length of the mandate. A term of office of four years would have a tremendously positive transformational effect on first nations leadership and allow for the execution of longer-term plans.

Groups of first nations would have the possibility of lining up their terms of office, so that their respective councils could have a common election day. This is not to be underestimated, especially in regions. We talk about the Ring of Fire, and we talk about certain areas where you have a bunch of natural resources that are going to be developed. First nations could have a common election day so that the leadership is always on top of the issues in their area and what they can do.

Another definite advantage is the improved processes and procedures for the nomination of candidates. Seeing a hundred candidates for councillors on a 12-member council is not unheard of. At least you would have improved processes and procedures for the nomination of candidates and a better mail-in ballot system that is less open to abuse. I'm getting letters from all over the country from first nations membership complaining about the mail-in ballot system.

To me, the most important one is the appeal process that will now be heard in the court instead of before the minister. The process is not only cumbersome, but it's ridiculous. A complaint is made and then it is analyzed and then it takes six to eighteen months before it reaches my desk. By the time it reaches my desk, the election is about to happen. So you have had a council in office under a cloud of allegations for eighteen months, almost two years. It doesn't make sense.

I think these are the main advantages of the bill, the reasons it should be passed, plus of course the clearly defined election

offences, which allow for prosecution and the imposition of penalties by the courts.

• (1150)

**Mr. Kyle Seeback:** I understand the opposition's complaint. They're saying they don't think that, even under exceptional circumstances, the minister should have the ability to opt-in a first nations community. I accept that that's their complaint, but I don't see how that affects the legislation, because this is opt-in legislation. I don't suspect there's going to be a circumstance where a first nation is going to say, "You know what? I'm not going to opt in to this, even though it's a great piece of legislation, because you might be able to bring somebody else in."

I don't understand how that's a real criticism of the legislation. Maybe you could comment on that.

**Hon. Bernard Valcourt:** I like the way you think. I agree with you. Why would you not take advantage of a good situation? I was bothered by this. Personally, I looked at this. When I thought about it, I asked myself, "What about those communities where they cannot resolve the governance issue?"

If it were only for the chiefs, I couldn't care less about them. But I'm thinking about the membership, the grassroots that your colleague refers to, the real people who are deprived of leadership, of benefits, of services, because you have politicians playing at the top and they don't care about the people, or if they do they show a very strange way of exercising their care. They cannot solve it.

That's very rare. I hope this will never happen, but if it does, I don't think we should hold the membership of a first nations community hostage to politicians who cannot solve the governance issue.

**The Chair:** Thank you.

We'll turn now to Mr. Bevington for a final question.

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

I want to thank the minister for being here today. I suppose the people of Toronto are concerned about the very issue you just raised.

Once again, we're dealing with nation-to-nation relationships, and I think that has to be very much the prime focus. You mentioned two groups that have supported this legislation, but one letter was from a former grand chief of the Assembly of Manitoba Chiefs.

What's the validation now coming from the new grand chief?

**Hon. Bernard Valcourt:** Do you mean the grand chief who says they will bring Canada to its knees?

• (1155)

**Mr. Dennis Bevington:** If that's his comment—

**Hon. Bernard Valcourt:** Yes.

**Mr. Dennis Bevington:** That's the one I'm referring to.

**Hon. Bernard Valcourt:** Well, no, I don't think he supports this. I doubt he's supporting this.

**Mr. Dennis Bevington:** But he's an elected—

**Hon. Bernard Valcourt:** Absolutely.

**Mr. Dennis Bevington:** So you've referred to a previous grand chief as the one who is supporting this legislation. Do you have any other major first nations groups that we can reference that have come out in support of this legislation—other than the Atlantic Policy Congress—as we speak today?

**Hon. Bernard Valcourt:** I'm sure these hearings before the committee will allow you to make that determination.

**The Chair:** Thank you.

I think that was the final question, colleagues, before we suspend.

Thank you, Minister, for being here. We appreciate your making yourself available.

We'll now suspend before we hear from our next witnesses.

• (1155) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1200)

**The Chair:** Colleagues, we'll call the meeting back to order.

We have a panel with some folks who know first-hand the importance of good electoral laws. We look forward to hearing the testimony of the respective chiefs.

We'll begin to my left and work our way down, so we'll start with Chief Vicaire. Then, of course, we'll have some questions for you as well.

**Chief Dean Vicaire (Executive Co-Chair, Atlantic Policy Congress of First Nations Chiefs):** Thank you to all in the room for giving us the opportunity to once again express our opinions with regard to Bill C-9.

My name is Chief Dean Vicaire of Listuguj First Nation and the co-chair of the Atlantic Policy Congress of First Nations Chiefs. With me today is my colleague, John G. Paul, who is our executive director, and we are here today to speak on behalf of the Atlantic chiefs regarding our support of Bill C-9.

Our member chiefs do support Bill C-9 as it currently stands. We feel it reflects the recommendations in a resolution we adopted in January of 2011 asking the minister to draft legislation that would present a strong alternative to the Indian Act election system.

One of the reasons we decided to champion electoral reform is because at 75%, Atlantic Canada has the highest percentage of first nations that hold elections under the Indian Act system. We believed that if we could build a better election system, the majority of our first nations would immediately benefit. We first became interested in election reform in October of 2008, when we passed a resolution asking the minister to amend the term of office under the Indian Act election system from two years to four years. As we continued to discuss this change, both amongst ourselves and with what was then the Department of Indian Affairs, we realized that the Indian Act election system had other fundamental weaknesses that needed to be addressed. The department's willingness to support further discussions on this matter presented an opportunity to elaborate a more extensive reform.

At the current time, approximately 40% of first nations in Canada hold their elections pursuant to the Indian Act. Those election provisions are outdated and problematic, to say the least. Not only

did we hear this when we were engaging with our own constituents on this question, we also heard it when we were discussing our recommendations with first nations groups in other parts of the country.

Specific issues centre on the following:

The term of office for elected band councils under the Indian Act is two years. This short length of term places first nations communities in an almost continual state of electioneering, and it undermines the band council's stability, as well as their efforts to develop long-term projects.

A weak process for the nomination of candidates can result in the nomination of many candidates. As the Minister of Aboriginal Affairs clearly said earlier, there are sometimes over 100 candidates for one election. That, indeed, happens constantly in my community.

The mail-in ballot system is open to abuse.

The appeal process to the Minister of Aboriginal Affairs and Northern Development is paternalistic, complicated, and often takes too long to produce findings and a final ruling.

The absence of defined election offences and associated penalties under the Indian Act allows alleged cheating and other related activities, such as the selling and buying of votes, to go unpunished.

As I mentioned earlier, the APC has taken a keen interest in looking at ways to stabilize and improve upon first nations governance through a stronger and more modern election system. With the support of Aboriginal Affairs and Northern Development Canada, the APC undertook research on the issue of band council elections. After having heard from first nations leaders, governance technicians, and community members in their respective regions, we came forward with our recommendations.

I would like to outline for all of you how we went about developing these recommendations.

We struck a working group to conduct research and develop options. We published articles in a widely circulated first nations newspaper, the *Mi'kmaq Maliseet Nations News*, and we developed a Facebook page, both of which invited first nations members in the whole region to share their views and complete a survey. The working group presented their research, options, and all the feedback to a group of governance experts and electoral officers and, of course, the chiefs themselves. Based on all the discussions and feedback received, we arrived at the definitive recommendations that we submitted to the minister.

I want to share with you our recommendations that are reflected in Bill C-9.

The APC recommended the development of brand new opt-in first nations election legislation and further provided recommendations for its content. For the most part, these recommendations are reflected in Bill C-9. Bill C-9 contains some of the same rules as the Indian Act election system along with some important differences, which are the following:

The term length is four years, instead of the two-year term that exists under the Indian Act system.

•(1205)

There are defined qualifications for candidates for chief and clear rules around the nomination process.

There are clearly defined offences and penalties that will deter questionable election activities, especially those that take place around mail-in ballots.

Finally, the minister is not involved in election appeals.

I'm going to stop there and share my thoughts, which I shared with some people I spoke with during the suspension.

The minister does indeed have a valid point with regard to leaving that void, having courts get involved in policies. At the same time we all understand that the minister has these overriding powers that are contradictory in terms of a paternalistic viewpoint.

I'm sharing with John and some of my other colleagues around the table. Since it's an opt-in choice for communities, perhaps we can correct the legislation or make an amendment that upon written consent or request from the individual first nation, the minister can step in, for instance if there's wrongdoing in one of the four or five issues that we've talked about.

One of the members here.... I'm sorry I've forgotten your name.

•(1210)

**The Chair:** He's Rob Clarke.

**Chief Dean Vicaire:** Rob Clarke made some valid points and had personal experiences in his former position. Perhaps the leadership in the first nations community can ask the minister to step in. That way, it speaks to the first nation still having control and it has the minister step in when—and only when—requested. That's just an idea.

Although the APC did not recommend that a new election regime allow for a common election day among first nations, it appears that the provision in the bill that allows a minimum of six first nations to line up their terms of office is gaining interest among many of our first nations. I'm sure John will speak to this point, which is that we're in the perpetual motion of the election mode throughout first nations. Every month, I believe it is, it continues. It's like a bad nightmare.

I will speak to some of the elements of Bill C-9 that have been commented upon and debated in the past.

One is the new opt-in legislation by band council resolution. The APC recommended that individual first nations, if they so choose, could opt in through a band council resolution. We debated a great deal on whether it would be preferable for the opt-in mechanism to be a referendum. We reached the conclusion that although it is certainly an effective way to determine the will of the community, it is simply not cost effective to consult the community in this fashion on all issues.

Moreover, our experience with community votes is that first nations voters tend to favour the status quo. Therefore, requiring a referendum to move to the new election regime would in effect act as a huge barrier for first nations to reap the benefits of the four-year terms, which is what we are trying to achieve. Even though a

referendum is not required, our chiefs have told us that they would not make this type of decision without first engaging in some substantive way with their community members on this particular question.

The second element, of course, is the term of office for band council members. The APC recommended that the new election legislation provide terms of office of four years, making them comparable with most other governments in Canada.

The Indian Act, in requiring elections every two years, has created conditions of instability and has fostered divisions in first nations communities. Most often, the two-year term of office is too short to provide political stability for first nations governments to plan for and implement long-term initiatives and to build a proper foundation for community development before they face re-election.

Being a newly elected chief of a year and three months, I can certainly attest to that.

The two-year term is especially difficult and challenging for those elected to a band council for the first time. New chiefs and councillors need time to learn about their responsibilities and the various projects that require their attention. Projects are often put at risk by the two-year election cycle and the related high turnover of elected officials. Time and focus are key for economic prosperity and change in our communities, to allow leaders more time to implement the vision that will help all communities and increase their ability to show progress and results.

The third element is the appeals of band council elections. Under the Indian Act, election appeals are received, reviewed, investigated, and decided upon by the minister and his department. Numbers given to us by the department show that 30% of all elections under the Indian Act have been appealed, which amounts to 40 elections per year, give or take. Each year, usually no more than five of the appeals result in the overturning of an election. Very few of these occur in the Atlantic region.

These numbers illustrate a fundamental problem with the way appeals are currently dealt with. In close to 90% of the appeals launched, the allegation of wrongdoing is either unfounded or is deemed not to have affected the outcome of the election. The problem is that it usually takes months, if not over a year, for these conclusions to be reached. While an election appeal is outstanding, it is very difficult for a band council, whose very election is called into question, to govern effectively, to make long-term plans and key decisions, and to initiate projects.

We think the problem lies in the fact that the appeal process is simply too easy to engage in by community members whose motives may be questionable, and we also think that the role of the minister in investigating and deciding upon election appeals is a paternalistic and inappropriate intervention in the internal affairs of a first nation.

•(1215)

We need a more rigorous appeal system that does not afford a role for the minister, while at the same time ensuring that frivolous—to use his word—or unfounded allegations do not engage a lengthy appeal process that hampers the first nation's ability to govern.

The APC initially recommended that the role of the minister and his department in election appeals be eliminated in favour of the establishment of independent tribunals.

We are comfortable with the election appeal process in Bill C-9. The courts decide election appeals, impose penalties, and overturn results in municipal, provincial, and federal elections. They could play this same role in first nations elections.

In conclusion, this submission on Bill C-9 to the Standing Committee on Aboriginal Affairs is based on our analysis of how well Bill C-9 responds to the recommendations put forward by our organization when we engaged our first nations members on the issue of elections. We have called for the design and implementation of a new opt-in first nations election act and resulting regulations that would provide an effective and modern system for governing elections for the opting-in first nations.

As evidenced by the recommendations, first nations are interested in having free and fair band council elections that support stable, effective, and accountable first nations governments, as well as supporting the individual rights of their members.

We thank you for providing us with this opportunity to hear the reasons why we support this bill. We ask that you lend your support as well. We strongly believe that all first nations in Canada need other options for addressing these important and pressing governance matters that are currently facing their communities.

Thank you.

**The Chair:** Mr. Paul, did you have something to add?

**Mr. John Paul (Executive Director, Atlantic Policy Congress of First Nations Chiefs):** Yes, a very brief comment.

I haven't created any specific comments, but I know the work that we've done with the communities themselves and the leadership over the last six years in developing these recommendations that are reflected in the bill. I can tell you for a fact that as soon as this bill is adopted into law many of our communities will move to this process immediately.

I have been in discussions with all our communities in Atlantic Canada that are under both custom and the Indian Act system. All of them have told me this is a good thing. It will help us create our future prosperity and move towards economic sustainability of our communities and improve the lives of our people in the community.

It's funny because in the discussions that we did hold in the communities about the election process in all our communities—and we used SurveyMonkey to get surveys from everybody and anybody who wanted to comment on what we were doing—it was interesting that many people saw what we were trying to do not as something that was from the leadership, but something that they believed fundamentally had to change. They articulated that to us again and again and again, whether it was the electoral officer, whether it was the councils, whether it was the band managers, whether it was whomever. They articulated the need for this.

They also indicated how this would create fundamental change in the community. Really at the heart of the matter of this legislation is creating change, improving governance. We've all seen the type of governance that occurs in Toronto. We don't want that. We want a

system of governance that works for us and addresses all the needs of all our people in the community and outside the communities, to support all our membership in their endeavours, so that we ensure in all of our communities that we get the best leaders for the job that needs to be done. There's a lot of work that has to be done from now on and it's going to continue to increase.

The better the process, the better the leaders, the better the results we'll get in terms of improving the election process in our community. With that, thank you.

• (1220)

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

We'll turn now to Chief Evans for your submission.

**Chief Ron Evans (Chief, Norway House Cree Nation):** Mr. Chair, I want to acknowledge my colleagues who are here with me to present to the hon. members.

With all due respect to Mr. Bevington, I am the Chief of Norway House right now, although that says "Grand Chief". I am no longer the Grand Chief, but I hope I can still garner his respect, as well as that of all the members, which is precisely why you should support this bill. That is the attitude out there when there is a change. That's not the position any longer.

I am very pleased to have been invited to testify to the House of Commons standing committee on aboriginal peoples to speak on this important bill before us, Bill C-9.

As the former Grand Chief of the Assembly of Manitoba Chiefs and the current Chief of Norway House Cree Nation, I am pleased to provide support for Bill C-9, the first nations elections act.

Although this bill does not directly affect my community of Norway House Cree Nation, as we have enacted a custom election code that already gives us four-year terms, this bill is important for those 37 first nations in Manitoba and the 240 first nations in total across Canada whose elections are governed by the Indian Act.

Years of hard work and commitment stand behind this bill. Bill C-9 will change the way first nations are governed, create stability, strengthen self-governance, and allow first nations to move forward.

I would like to thank the Minister of Aboriginal Affairs and Northern Development for his position on it, and the departmental staff for their commitment to supporting this very important initiative, and hope that each of you, as our representatives in the House of Commons, sees the urgency and importance in supporting this bill.

I would also like to thank the Atlantic Policy Congress of First Nations Chiefs for their partnership in undertaking the national engagement process in 2010. During my time in my former role as Grand Chief of the Assembly of Manitoba Chiefs, we reached out, in collaboration, to first nations across Canada to discuss the groundbreaking work that both of our respective organizations had done to improve the electoral system for first nations whose elections are governed by the electoral provisions of the Indian Act.

The first nations elections act provides some constructive provisions that will strengthen the election process and governance of first nations, including a longer term of office, from two- to four-year terms; and a common election day where all first nations who opt in to the first nations elections act will eventually be elected on the same day. This type of general election adds a more robust and transparent nomination process for candidates, fair and sound penalties for offences, and most importantly, an independent process for the first nations elections act.

Let me just remind you of our history in Manitoba, when we had the framework agreement initiative, the FAI. Over \$60 million to \$100 million was spent over a 10-year period. At the end of 10 years, of those who had signed on, I believe there were only a handful of leaders when the FAI was concluded who had started out in the process, and therefore the new leadership was not aware of what the understanding and the direction was. As a result, the whole initiative failed, and that cost millions of dollars simply because of the high turnover of leadership.

The current Indian Act election system is not working. It is proven to be weak and creates instability for our communities and their economies. It has prevented first nations from moving forward on important projects and initiatives such as economic development, and on important infrastructure developments that are vital for communities, their well-being, and their quality of life.

With the current two-year term of office, our research and experience has shown that newly elected chiefs and their council members have little time to learn their responsibilities, build the necessary relationships, and develop or complete the necessary projects and initiatives before it's time for another election. In any given month, leadership in one or more of the band councils in each province is changing due to an election. Constant changes to band councils cause major disruption to the important plans and projects being worked on in the community, as I just finished describing. This political instability makes first nations very unattractive to long-term investment and economic development by both internal and external entities.

It is important to note that the vision of a four-year term of office, a central component of this initiative formerly known as the common election day initiative, is not a new concept.

• (1225)

This vision was first articulated by the leadership of the Manitoba Indian Brotherhood in 1971, in *Wahbung: Our Tomorrows*, a document that has inspired our leadership ever since it was written because it strikes at the very heart of our sustainability and self-governance.

Wahbung is a visionary document that was created by the Indian tribes of Manitoba expressing the position and policies to achieve honourable and mutually satisfactory relationships between Canada and the Indian people of Manitoba. Wahbung is referenced by the leadership of today to guide us in the work we do and to respect the work of the past leadership.

In reference to governance it is stated in Wahbung that the method of elections must be left at the discretion of each community. It is

recommended that the terms of office of elected chief and council be extended to four years. That's going back to 1971.

The ultimate goal of all first nations is to be self-sustaining and self-governing. Creating an electoral system that is accountable, transparent, and driven by first nations is essential in creating stability and credibility within first nations governments and will strengthen first nations governance in Canada. These changes will benefit all first nations, will improve and strengthen first nations governance, and will allow first nations to move forward in a positive and progressive manner.

In 2009, The Assembly of Manitoba Chiefs, as mandated by chiefs in assembly via resolution, researched and discussed changes to first nations' election systems with first nations leadership, technicians, and first nations people across Manitoba. I personally went and met with these communities, with the grassroots people themselves in those communities. This initiative was coined "the common election day initiative of electoral reform". As part of this initiative, engagement sessions were held within the leadership and with community members of the 37 Manitoba first nations that hold their elections under the section 74 electoral provisions of the Indian Act.

The engagement sessions held were extremely significant, informative, important, and valuable as we gathered thoughts, comments, and recommendations on how to improve the election system for first nations governments. The input received from the community engagement sessions was carefully considered in crafting recommendations to then-Minister of Indian and Northern Affairs Canada, now Aboriginal Affairs and Northern Development, to develop an improved system for first nations elections.

The feedback we received from the communities supported the call for a common election day for first nations to opt in to the new legislation and a four-year term of office, along with an appeal and recall process.

This however, would not be mandatory. It would be the prerogative of each individual first nation to decide whether they want to opt in to the first nations elections act. With the support of the Minister of Aboriginal Affairs and Northern Development Canada, departmental staff, and in partnership with the Atlantic Policy Congress, we were able to undertake a national engagement process in 2011, while I was in my former role as grand chief of the Assembly of Manitoba Chiefs. This allowed us the opportunity to discuss with first nations in other regions across Canada the groundbreaking work that our organizations had done in collaboration to improve the electoral system for first nations currently under the Indian Act.

As part of this national engagement process I had the privilege of meeting with the first nations leadership across Canada, engaging them in discussions on how we could make this a reality together. We extended the opportunity for the leadership and the members who participated in the engagement sessions to provide their recommendations and feedback with respect to improving the electoral system for first nations.

Both the first nations leadership and members also shared with us their challenges stemming from the inefficiencies of section 74 provisions that have detrimental impacts on first nations people and communities.

The engagement sessions proved to be successful as we received positive and supportive feedback from the leadership in British Columbia, Alberta, Saskatchewan, and Ontario. The Atlantic Policy Congress engaged the eastern provinces and received the same positive feedback with consistent recommendations. We also used social media, urban forums, and our respective organizations' websites to ensure that individuals across the country had the opportunity to engage and provide feedback and recommendations no matter where they lived.

After this information was gathered and reported to the department, the next step was to work together with the department to craft the proposed legislation before you, which is Bill C-9.

This important, groundbreaking, and historic initiative has been many years in the making. A concept born in the 1970s is finally closer to reality thanks to the hard work and determination of the Manitoba first nations leadership, the Atlantic Policy Congress, and through the hands of now four ministers of Aboriginal Affairs and Northern Development.

• (1230)

I want to acknowledge and thank those former ministers, the Hon. Jim Prentice, the Hon. Chuck Strahl, and the Hon. John Duncan, and now the Hon. Bernard Valcourt, as well as the respective staff, each of whom deserve ample credit and thanks for their ongoing support and commitment and for their every effort in ensuring this initiative would one day become a reality and legislation.

Once again I would like to express my absolute support for Bill C-9. I hope that in this session of Parliament you as our representatives in the House of Commons as well as our representatives in the Senate understand the importance of this bill, and that you provide your support to ensure that first nations governance can be strengthened, and that you be part of making the positive and necessary legislative change that is supported by many first nations in this country.

Thank you, once again, for the invitation to participate in today's standing committee proceedings.

*Ekosani.*

Thank you.

**The Chair:** Thank you, Chief.

Chief Fontaine, we'll turn to you now for your opening statement.

**Chief Donovan Fontaine (Sagkeeng First Nation):** Good afternoon, honourable members and colleague chiefs. Good afternoon everybody.

I'm here on short notice, so excuse my tardiness. I don't have a presentation that's formal, but I could submit one when I get back home.

I want to thank my colleague chief for having me as part of this, going back to 2009, and being here today. So thank you, Chief Evans.

I don't know where to begin because, as I said, this was a last-minute thing last night. So I'm going to speak off the cuff, and that's fine that it's on record.

Where do I begin? Our community had a referendum in 2009 on whether we should have an election code and whether it should be every four years. It was unanimous. Our community endorsed it and supported it. Over 80%, I do believe, supported a change to our two-year term. I also supported the resolutions at the Assembly of Manitoba Chiefs level, which Chief Evans just spoke about, so there was a good consensus and a good group there.

That group is not there today, but the resolution is still there, and the mandate that the current grand chief has must respect those past resolutions. To say whether or not he's in favour of this is a moot point. He has to be driven by those resolutions.

Obviously we're here for Bill C-9. We're here because of the election system that we didn't create. I don't want to call it a mess, but I didn't create the system; I was elected into it. Our community signed a treaty in 1871. It was a hereditary chief, and then his son took over for another 27 years, so I don't know when the amendments were made. You have to excuse my chronology of events here, but there were amendments to the Indian Act, and then we had elections in the community. That's the system we have been under since.

I support this for the very reasons you heard my colleague talk about: stability and continuity in community, so you can advance community comprehensive planning and you can advance economic development. That's the primary reason I support that.

But the catch here—and I think it's a catch-22—is that if I support this, and if leadership supports and drives these initiatives, it's pretty quickly turned around by people saying we're self-serving, we're looking after ourselves, we want a four-year term, we want to be in office longer, and we want power longer. So we turn it and we give it back to the grassroots. We give it back to the people and say, "You develop the code; you develop the process". More often than not, these things sit on the shelf. We had about three or four election codes, and they sat on a shelf for years. We got funding from the government to develop these, produce them, and take them to our community. They weren't perfect by any means. Neither is this bill. There is some good and there is some bad in here, but at least it's taken us out of the two-year system.

Can you imagine the U.S. government—Canada even—being in constant election mode every second year? I've watched the American channels. It's crazy. They are already talking about elections, the year right after the election. It's just crazy. In our communities where there are families, close ties, and factions in groups, I would say it's even more confrontational. There's bitterness. It's not healthy for communities to be in constant election mode every second year.

You want to talk about austerity budgets. You want to talk about tightening the belt. Every second year in our community is election year. What do you think our leadership's going to do? Will they say no to every request? They become more laissez-faire and more lax, and they say yes to requests. Otherwise they're out the door, right? That's not to take away from the good leadership that does say no and just drives the community economic development plan and gets elected based on its track record of success.

But there are some out there who can't do it, so they spend, and keep putting the community back to square one again the next year. It's just a vicious cycle. Here we are trying to administer poverty... administer social programs. For me to keep track of all these bills, I can't do it. I can't go to my community and consult on every bill. I was inundated with all these bills coming through from the government in the last three or four years. I can't take every bill to the community—the omnibus bill, this, that, the water bill, everything else. My hands are tied with administering the crumbs, so to speak.

I can't consult on every line here, and I can't read between the lines on everything, but I do know there are some good things in here. I like the recall mechanism. I think we do need a recall mechanism.

• (1235)

How do we handle this? For example, if you have a community of 300 people, 60% of them are one family. You're probably going to have that person from that family elected all the time, but that's no different from the government system. You've got your corporate people, that's a family; you've got your middle-class taxpayers, that's a family; and you've got your lower-end poor people, that's a family too. They're elected based on certain things, so you can't say the big families. There are corporate families in Canada and they drive the political agenda.

I don't know what the appeal mechanism would be, what the answer is, but I do know if there is room in here for communities to fine-tune it themselves, have a recall mechanism, perhaps have a review after two years, saying, "Here's the plan you were elected on, here's the community vision you said you were going to deliver". Two years later we'll have a look at it and if they didn't deliver, sorry, they're out the door.

There has to be some kind of mechanism because the community can be handcuffed for four years with incompetent leadership. That's the danger I see. It puts the onus back on the electorate. You have to put good people in there. But then if you have big families putting the people in, you could say it's their own choice. They're living in the community.

So it fixes itself, in other words. We don't have to worry about how these people are elected as long as it's fair, it's democratic, and they respect Corbiere and Gull Bay. I'm okay with it.

Chief Evans talked about custom. That system is good as well. As I said, we had our hereditary chief. It's not to say that those systems weren't democratic in our communities. We had patriarchal, matriarchal societies throughout this land and those were really good democratic models. Women took a lead role in leadership. There were ways to whip your leadership into line, so to speak. I don't think it's any different from what we're proposing here.

To give a little historical context. I talked about imposition on all these amendments, where we had no say, or at least involvement, in drafting them. It goes back right to day one when we signed our treaties. We had trading posts in our community: Hudson's Bay, the North West, these people had a very strong influence on our community. Our people couldn't leave the reserve to make a living. You were bound and at the mercy of the trading companies. Fort Maurepas, Fort Alexander, Port at Morris, about four or five forts in our community controlled everything. On top of that we had the church: Anglican, Catholic, and again, controlling families, based on family names, and there were competitions. They also played roles in our leadership. They drove the agenda. If you weren't a churchgoing, devout Catholic they were going to support somebody else behind the scenes.

So there is always that outside influence in our community. This, again, I see as an imposition. However, is it better than what we have now? I would say so, based on having four years' stability, putting the onus back on the community to put good people in there.

So thank you all.

• (1240)

**The Chair:** Thank you, Chief.

We appreciate all the testimony we heard today. Obviously, your perspective is important to the committee.

We'll turn now to Ms. Duncan for the first five-minute round.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Thank you, Mr. Chair.

It's nice to see everybody here again. Thank you very much for your testimony.

First of all, I would really like to thank the members, particularly of the APC, for the hard work you've done on behalf of all the first nations in Canada. When I was briefly aboriginal affairs critic, we heard from AFN about the hard work you're doing, and you're to be commended—especially for bending over backwards in your consultation, which doesn't always happen.

I heard you clearly: there seems to be strong support for being able to move to four-year elections. I think I'm understanding correctly from Chief Fontaine—he could correct me if I'm wrong—that the referendum was actually on switching from two to four. I don't know if there were other things in the referendum.

I'm going to throw out a couple of issues that have been raised to us with regard to the bill. I'd ask you what your comments might be and whether you have any concerns with those provisions.

I heard you very loud and clear on the desire to be in control of your own elections, with clear rules, not under the yoke of the Indian Act, and also that first nations would be able to opt in. Unfortunately, that's not what the legislation says. The legislation says that everybody is in unless the minister decides they're out. The discretion is still 100% in the power of the minister to decide if anybody can opt out and go and retain customary elections. That seems to be at odds with the UNDRIP, which of course provides that first nations should have the right to self-governance. I'd be curious to know whether you....

I know that Chief Fontaine was clear that he appreciates the switch to the four years, but he might have some issues with the way the legislation is refrained. Any feedback that you can give here potentially could be amendments to strengthen the bill in the direction that you want to go in.

Another issue that has been raised, certainly by the Lubicon First Nation in Alberta, is that there is a divide, of course, in that community. Some have said that they prefer the Indian Act—or at least the government has said go to the Indian Act—and others prefer the customary.

I am simply raising them as examples, because they aren't under treaty yet and they also don't have a first nation final agreement. There may be some first nations that are falling through the cracks. They don't come under the definition of a first nation in the Indian Act, and yet there's no allowance in here for an exemption.

My final question to you is whether you think it would be beneficial to have a provision in the statute that provides for the petitions. The only way under the law right now to contest an election is to go to court. The government has a discretion that they may enact regulations that would allow for petitions, but unless those regulations are enacted, you can't use the petitions.

I guess I'm also asking—it sounds like you're favourable to that kind of an option—if you think it might be useful to move that actually into the statute to set up that system for petitions, or maybe give each first nation the power to set up a system for petitions.

Those are the questions I would put to you. Again, I want to commend you for your hard work on behalf of your first nations and on this topic.

**The Chair:** Ms. Duncan has set up an impossible task. She's asked more questions than there is time to answer.

I don't know how you want to respond.

**Mr. John Paul:** I'll try.

**The Chair:** Why don't you start, Mr. Paul, and then we'll have to move on to other questions. We have very tight timeframes here.

**Mr. John Paul:** I guess with the customary election, one of the things we learned when we talked to our communities is that the customary provision has been there for 15 years, since the last amendment of the Indian Act. We asked communities why they didn't do that. Many have attempted, like Chief Evans talked about, but for whatever reason the communities never got to the stage of actually implementing it in a lot of cases.

I don't know whether it was easier to do the fighting under the Indian Act system, because the Indian Act election process is very

ruthless. It is not a nice process. It is not pretty, and it's very vicious in terms of how it gets played out in a community. It negatively impacts a lot of people in the community.

On the petition issue, one of the things that I thought was part of this is the whole idea that we talked about putting forward a recall mechanism. The recall mechanism would be at the two-year point. It would set aside a very specific process that would have to be done within a very specific time. Basically, if somebody were going totally off the rails, there would be a mechanism to get them out. You see chiefs go for 20 or 30 years as chiefs, and the ones that have gone through the two-year election cycle 10 or 20 times know exactly what they have to do all the time. They can't wait for two years to come up with a new vision. They have to stick with the original one they had and adapt as they go along with changes and growth in the community, because 10 years, 20 years, or 30 years ago community priorities and needs were different.

The enterprises of the communities are multi-million dollar operations now. They need critical expertise and a stable process to achieve their vision and their goals in the community.

I will leave it at that.

•(1245)

**The Chair:** Thank you very much. I'll turn now to Mr. Hillyer for the next five minutes.

**Mr. Jim Hillyer (Lethbridge, CPC):** Thank you, Mr. Chair.

Welcome. I live near the Blood reserve, the largest reserve in Canada. I was recently adopted into the Blood reserve and part of the Blackfoot nation as an honorary member, so I'd like to say *Oki-Napi* on behalf of those people.

Before I get into my questions, since we don't have a lot of time and my colleague, Rob Clarke, has some burning questions, I'd like to defer to him. If there's any time after that, I'll ask some follow-up questions.

**Mr. Rob Clarke:** I'll only take a minute, Mr. Chair, to clarify a couple of things.

Forgive me for my ignorance, but I'm just reading it here. I don't know what Ms. Duncan was talking about, but maybe I'm too naive. I'm reading here about the opt-in. It says: ADDING TO THE SCHEDULE

3. (1) The Minister may, by order, add the name of a First Nation to the schedule if (a) that First Nation's council has provided to the Minister a resolution requesting that the First Nation be added to the schedule;

That's a band council resolution. That's a band requesting to opt in. If I'm ignorant about it, please forgive me. This is a first nations council request to come under the first nations election act by adopting a band council resolution. That's what it says. I don't like misrepresentations being made here.

The question I have, chiefs, if you can help me, is how many of you, as elected leaders, have observed corrupt elections? I've seen a lot of it myself, where chiefs and families are going around paying \$50 to \$100 to the family members to haul them all in and vote, or go out and get them liquored up to come in and vote. I've seen that dozens of times.

The one thing I also want to know—and this is the key point I'd like to maybe get some clarification on— is how do you find electoral officers? Do you think family members should be appointed by the candidates, or do you think it should be a separate autonomy?

**Chief Dean Vicaire:** I'll respond to some of that. I'm 41 years old. I grew up in my community, and I've seen everything that you've just said. I'm the first chief in my community who has been elected and who does not own a store that sells beer and cigarettes. I'm the first chief who has been elected who is not in debt to anyone, nor is anyone in debt to me.

I've been an educator for 10 years. I've served my entire community in different occupations for my entire life. I believe that's the reason why I am sitting in this position, because I've earned it.

I ran a campaign that did not throw any alcohol parties. I've proved that can be done for the first time in my community. I've also proven that I can take on former chiefs who served multiple terms and not put them down. I ran a campaign on integrity. I sit here before you because of that, so I can definitely relate to what you're saying. This is the exact reason why I'm here.

I agree that it's not perfect legislation, but I think with the effort that everyone around this table and the leadership have put into it we can fix some of the inaccuracies, or anything that you may determine that we all can pick apart. It is fixable and doable.

It's long overdue. In 1971 I wasn't even on this planet yet. That's rather discouraging, but yet encouraging in the sense that we're finally here and I'm part of this to get it done.

• (1250)

**The Chair:** Chief Fontaine.

**Chief Donovan Fontaine:** Thank you for that. I don't know if that was a comment or a question, but I haven't in my short life observed any corruption in my community in any elections.

Recently we had an appeal in our community. If I could, I'd like to speak to the reasons for the appeal. One lady appealed based on the fact there were too many people in the room—scrutineers, people observing, the electoral officer. She said there were too many people and she wasn't comfortable.

Another lady appealed because there weren't enough people in the room. Where are the scrutineers? There aren't enough people there. These are very frivolous reasons.

I don't know about the general public, but I'm sure Canadians cast their ballots under the influence of alcohol. It's not just our communities.

Thank you.

**Chief Dean Vicaire:** I have a final note, Mr. Chair.

With regard to the electoral officers that have been put in place—and I want to say this diplomatically—we've had other chiefs who have put in a family member or that sort of thing. In Listuguj, we have the electoral officer who conducts the municipal election in our neighbouring community of Pointe-à-la-Croix, a non-native com-

munity. This man comes in here and runs the election, and that's way more accountable. He has been at it 40 years.

**The Chair:** Thank you.

We'll turn now to Ms. Bennett.

**Hon. Carolyn Bennett:** I thank each one of you for what you've done to move this important issue forward. We know that things have to change. We know that what you've put forward is based on what you've heard from the grassroots, and that our job is to respond to that good piece of work.

Our job here is to take a good initiative and try to move it forward. We want to find out if there are a couple of things that could make it even better—that's what Parliament does.

Because there have been some concerns about the ministerial powers, I need to know if you would support a bill or an amendment that would take out the power of clauses 3(1)(b) and (c). Would you support it if that was amended to come out?

Second, as to your colleagues across the country, you've done a fantastic piece of work in Atlantic Canada and Manitoba, but I understand from the papers that the Library of Parliament has shared with us that the response from Ontario and Quebec was patchy or not really there.

Could you provide the committee with the kind of response you had and how many first nations actually responded? Our job is to do the due diligence for the people that you don't represent and haven't been in touch with. As we do our piece of work and try to get you the bill you want, we want to know if there's something Parliament can do to make it a little bit better.

**Mr. John Paul:** For the discussion, we split up the country, in terms of how we would carry it out. As Ron said, they did Saskatchewan, Manitoba, Alberta, and B.C. and presented it at the chiefs' assemblies, in a lot of cases, and other meetings with chiefs. They basically presented the proposal and asked for any feedback at the session or in writing. That included all the chiefs.

From my perspective, I did Atlantic Canada, Quebec, and Ontario. In the case of Quebec, we didn't actually present. We had somebody from Quebec present our material at the meeting. Then we communicated with all of them, asking if they supported the bill or if they had issues. We followed that up with phone calls to pretty well everybody in Quebec who got back to us. In Ontario, I myself presented at an all-chiefs forum in Toronto. I presented it to all the chiefs of Ontario.

I asked for questions and concerns and all those things. I'm sure it is recorded that I tabled the presentation in some meeting that occurred in Toronto. I asked for two things from them. First I asked if they would support us in this endeavour. Second I said, if they had any issues or concerns about the legislation, they should contact us; contact me directly or our leadership through the AFN.

We also used the AFN in this process, presenting at an AFN meeting as well. We actually presented at a forum that was conducted by the AFN in Montreal where both I and the Assembly of Manitoba Chiefs presented to the AFN assembly. We presented this exact same thing, in terms of, "Here is what we're doing; we're looking for your support, but if you have any issues or concerns about our work, tell us".

• (1255)

**Hon. Carolyn Bennett:** Did what you presented include these extra powers to the minister?

**Mr. John Paul:** At that time it didn't; it was just based on our proposal.

**Hon. Carolyn Bennett:** Would you be able to support the bill without those extra powers to the minister?

**Chief Ron Evans:** This bill originated from ourselves. No one from government approached me to ask what I thought about it. It came from ourselves.

In response to your question whether we would support this if that provision were still in there, I would support it because if the bill is not passed that provision is still there.

**Hon. Carolyn Bennett:** My question, Chief, was whether you would support the bill if that provision were taken out.

**Chief Ron Evans:** Do you mean the provision about the minister's powers? As long as there's something in there that deals with the concern of why it's in there.

I would say to the representatives here that we shouldn't throw the baby out with the bathwater. There are more good things in there than the concerns that have been expressed here.

**The Chair:** Thank you.

Chief Fontaine, you'll have to keep it short. There is another committee coming into this room shortly.

I'll turn it over to you for just a short submission.

**Chief Donovan Fontaine:** I don't know if it's all overarching powers that they have; I don't know if they will have more than they have now.

For example, Chief Woodhouse in our community back home in Manitoba went through an appeal for \$20. He lent somebody \$20.

In our two-year process right now we have a six-week campaign period. What does the chief do, crawl under a rock for six weeks? Somebody has to govern the community for six weeks. There's business that has to be done and then we come in contact with people. If you lend somebody \$20 during that period, it's an appeal. There are dangers around that six-week period. Does the minister have more overarching powers right now? It would be the same, I would think.

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

Chiefs, we appreciate your contribution today. We certainly thank you for coming and being willing to testify.

I'm going to recognize Ms. Crowder, who is moving a motion that has been circulated to all members.

**Ms. Jean Crowder:** Thank you, Mr. Chair.

**I'd like to move the following motion:** That the evidence and documentation received by the Standing Committee on Aboriginal Affairs and Northern Development during the First Session of the 41st Parliament in relation to its study of Land-Use and Sustainable Economic Development be taken into consideration by the Committee in the current session.

**The Chair:** I'm not seeing anyone who wants to speak to this.

(Motion agreed to)

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

Again, Mr. Paul and chiefs, thank you so much for being here.

The meeting is adjourned.







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