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The Honourable MaryAnn Mihychuk

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● (0835)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Good morning, everybody. Welcome to our committee, the Standing Committee on Indigenous and Northern Affairs.

Today we are begining our review of Bill C-92, an act respecting first nations, Inuit and Métis children, youth and families.

Before we start, I want to let the committee and our guests know that we unfortunately have had an administrative glitch and therefore don't have the name tags prepared and the documents in front of us as we normally do. The mail bag, however, is to arrive very shortly, and things will go back to normal. For now I'm going to ask every member to clearly state their name and position, because we don't have these in front of us. I'd ask members to jot theirs down, because we won't have name tags for a while.

This committee plays an important role in Parliament's goal of reconciliation and understanding the truth. We recognize the lands we hold the meeting on not just as a formality, but ask Canadians to reflect on whose land it was before settlers came. How does Canadian history work, and why are we in a position now in which settlement occurred in some areas 400 years ago and yet we still have many issues to address? It's an important process for all Canadians, especially here in Ottawa, for those watching.

We are on the unceded territory of the Algonquin people. We thank them for what they've done for all of us.

Let us move on to our presentation. We're honoured to have Minister Seamus O'Regan, who will open our discussion. He'll present his remarks, and then we'll have an opportunity to delve into the bill by having a chance to ask him some questions.

Whenever you're ready, minister, perhaps you could introduce your team with you. We know who you are, but we'd like to know the others as well.

It's over to you.

Hon. Seamus O'Regan (Minister of Indigenous Services): Madam Chair, I take it as probably a very good indicator of how closely we've been working that I know them all only by their first names.

The Chair: All right, well, why don't we start with you?

Ms. Isa Gros-Louis (Director General, Child and Family Services Reform, Department of Indigenous Services Canada): Good morning. My name is Isa Gros-Louis.

Hon. Seamus O'Regan: Ah, Gros-Louis. It's a revelation to me.

Ms. Isa Gros-Louis: I'm the DG responsible for child and family services at the Department of Indigenous Services Canada.

Mr. Jean-François Tremblay (Deputy Minister, Department of Indigenous Services Canada): Good morning.

My name is Jean-François Tremblay; I'm also known as JF. I'm the deputy minister at Indigenous Services Canada.

Ms. Joanne Wilkinson (Assistant Deputy Minister, Child and Family Services Reform, Department of Indigenous Services Canada): Good morning.

My name is Joanne Wilkinson. I'm the assistant deputy minister for child and family services reform with Indigenous Services Canada.

Ms. Laurie Sargent (Assistant Deputy Minister, Aboriginal Affairs Portfolio, Department of Justice): Good morning.

I'm Laurie Sargent. I am assistant deputy minister of aboriginal affairs portfolio at Justice Canada.

The Chair: Welcome. I think we're ready any time you are.

Hon. Seamus O'Regan: Thank you, Madame Chair and colleagues, for the invitation to appear before the committee today to speak to these important and necessary changes to child and family services for first nations, Inuit and Métis people.

Allow me to start by acknowledging that we are gathered on the traditional and unceded territory of the Algonquin people.

Today my team and I are joined together and will be glad to answer questions shortly.

Protecting and promoting the well-being of indigenous children and families should be the foremost priority of the federal government and governments across Canada. However, that has not always been the case.

Every day in Canada, indigenous children are separated from their families, communities, languages and cultures. Too many indigenous children end up in care away from their communities. These already vulnerable children are forcibly taken from their homes without their parents' consent and all too often are deprived of their culture and identity, as well as the community supports that ensure their long-term well-being.

I think we can all agree that the current system does not work for indigenous children and families and that we cannot perpetuate the status quo in a child and family services system that has been rightly called a humanitarian crisis. Something is seriously wrong when indigenous children represent only 7.7% of all children under age 15 and yet make up 52% of children in care in this country.

Paternalistic policies keep these children isolated from the people they love. Too many young lives have been severely damaged and, in some cases, tragically lost.

This is precisely why Bill C-92 takes an entirely different approach. We have before us a bill that represents a set of national priorities that the government and indigenous groups worked on together, principles that put the child first; that enshrine the importance of culture, community, family and the well-being of that child; and that uphold the dignity of the family and of the child in any dealings with the child and family services system.

Our vision is of a system where indigenous peoples are in charge of their own child and family services, something we recognize should have been the case a long time ago.

Bill C-92 will finally put into law what indigenous peoples across the country have been asking of governments for decades: that their inherent jurisdiction be recognized and affirmed.

Should Bill C-92 be adopted, indigenous communities could exercise partial or full jurisdiction over child and family services. Because a one-size-fits-all approach does not work, it would be up to indigenous peoples to tailor the system to match the needs of their communities, and we are committed to working with individual communities to make sure those services are tailored to meet their needs.

The bill flows from an intensive period of engagement with first nations, Inuit and Métis leaders, communities and individuals, as well as the provinces and territories.

Since the emergency meeting convened by my predecessor in January 2018, there have been extensive meetings and consultations across the country in an effort to get this right. Even in the weeks preceding the introduction of this bill, we were incorporating the suggestions of indigenous groups and provincial and territorial partners.

For me, the truest sense of our efforts came from a statement by Senator Murray Sinclair that our approach “should serve as a model for implementing the Truth and Reconciliation Call-to-Actions in a meaningful and direct way.”

That doesn't mean the conversation starts there or stops there. There are no closed doors to our indigenous partners or the provinces and the territories. This bill and the children it aims to protect are only served if we collaborate and ensure their best interests.

● (0840)

Also, I am not suggesting that we've achieved perfection with this legislation. I am the first to admit there is still room for improvement, and I welcome this committee's input.

Bill C-92 is built on what indigenous peoples and child development experts have told us is required to protect children—to get them off to a good start in life. Under this act, indigenous child and family services will put the child first, consistent with the United Nations Convention on the Rights of the Child, the Truth and Reconciliation Commission of Canada's calls to action and the United Nations Declaration on the Rights of Indigenous Peoples.

This legislation sets out principles to ensure indigenous children and their families will be treated with dignity, and that their rights will be preserved. For instance, children could not be taken into care based on socio-economic conditions alone, as is often the case now. Instead of responding solely to crises, Bill C-92 prioritizes prevention. lt promotes things like prenatal care and support for parents. Both front-line workers and academics have told us that preventative care is the best predictor of child success and positive development. If circumstances dictate that interventions are needed, an indigenous child would only be apprehended when it is in the child's best interests, and priority would be given to placement with the child's own family or community, and with or near the child's siblings.

Under Bill C-92, when an indigenous group or community wishes to exercise their jurisdiction over child and family services and have their law prevail over federal, provincial and territorial laws, the Minister of lndigenous Services Canada and the government of each province and territory in which they are located will enter into three-way discussions around a coordination agreement. If an agreement is reached within 12 months following the request, the laws of the indigenous group or community would have force of law as federal law, and prevail over federal, provincial and territorial child and family services law. If no agreement is reached within 12 months, but reasonable efforts are made to do so, the indigenous law will also have force of law as federal law. ln practical terms this means that, should a government not act in good faith during the negotiation of a coordination agreement after 12 months of negotiations, indigenous child and family services law would have precedence over provincial law.

To promote a smooth transition and implementation of Bill C-92, Canada will explore the creation of distinctions-based transition governance structures. The co-developed governance structures would identify tools and processes to increase the capacity of communities as they assume responsibility over child and family services. We also know that funding needs to be part of the equation for this act to have maximum impact. We cannot presume that the funding models that have supported the current, broken system will be what indigenous groups want while exercising their jurisdiction. Those models and levels should be discussed and designed through the Bill C-92 coordination agreement process.

We pledge to work with partners to identify long-term needs and funding gaps. We are committed to strengthening the bill as it makes its way through Parliament. lt is essential that we work collaboratively and effectively to get this done. The necessity for this legislation goes well beyond partisan considerations—something I think we all understand and agree on. What matters is that at long last we are taking substantive action to overhaul the system, moving away from paternalistic policy failures of the past.

Bill C-92 is a concrete demonstration of our collective determination to forge a renewed relationship between Canada and indigenous peoples, one built on respect and the recognition and affirmation of rights. This proposed legislation is designed for a better future for indigenous children, for their families, and for the communities the bill promises to support and protect.

● (0845)

Ultimately, that is a better future for all of us, and for that, I hope I can count on your support.

Thank you, Madam Chair.

The Chair: Thank you.

We'll open questioning with the Liberal side and MP Yves Robillard.

Go ahead.

[*Translation*]

Mr. Yves Robillard (Marc-Aurèle-Fortin, Lib.): Thank you, Minister O'Regan, for your presentation and for your work on this bill.

I want to address the process of developing this bill. The representatives of the indigenous communities who speak before this committee often tell us not to make decisions in their regard without them. Can you tell us about the consultation process that took place before this bill was drafted?

[*English*]

Hon. Seamus O'Regan: We had some 65 different meetings and heard from some 2,000 people from right across the country about this, giving us an understanding of what exactly it will mean.

More often than not, it's met with disbelief. I spent quite a bit of time this week in Manitoba, Saskatchewan and British Columbia. Their attitude toward the proposed legislation, Bill C-92, is mixed. It is fair to say—and I look at my colleague, Robert—that in Manitoba there seems to be a belief that we will not actually do this. Manitoba doesn't believe we will actually come forward with this legislation.

In British Columbia it's certainly been more forceful. It has helped us along. This is the legislation it has been waiting for. Many of the provinces have built up capacity on the ground where they were already looking at child and family services legislation within their communities, so they are anxious to have a national blanket that would protect them within federal law and that allow others to reach the same capacity as they have.

In other areas, where the provinces are more heavy-handed when it comes to youth and social services, such as Manitoba and Saskatchewan, there is greater trepidation about whether or not this is real and meaningful. We've spent most of our time assuring them that that is the case.

Manitoba, for instance, is introducing something called the bringing our children home act. We are encouraging legislation from the ground when it comes to child and family services. What we're pointing out to the provinces is that what we are proposing with Bill C-92 would work concurrently with what they want to develop on the ground. It is unique to their circumstances and fits nicely with what we want to do nationally.

Sometimes in dealing with a number of Cree women who are confronted with the idea of child and family services and taking them back to their communities, they have rightfully said, when they walked away, that they were walking away with more questions than they had had before. I saw that as a good sign. Those groups are about to develop their own child and family services based on the wants and needs and capabilities of their communities, and we are providing a shelter within the federal framework.

That is exciting, because it will be more effective. We have effectively doubled the amount of money for child and family services over the past two and a half years, somewhere up to $1.2 billion. It's a substantial amount of money, and it remains there. The difficulty is that 80% of the funding that we carry on through the provinces and through our agencies goes toward the “protective services”. That is an ironic term that basically refers to the security and everything that surrounds the abduction of a child. So 80% of the budget is about the abduction of the child and the associated costs, which are many.

There is a hope too that there will be more money freed up there, because the communities themselves.... We are hell-bent on making sure that we drastically reduce the number of children who are taken from their families and that, over time, we put an increased light on preventive care and prenatal care, so that we never again reach that position.

● (0850)

[*Translation*]

Mr. Yves Robillard: An essential aspect of this bill is the principle of the best interests of the child.

Can you explain in more detail what this means? What does this mean in the context of the bill, and how will this principle be applied?

Mr. Jean-François Tremblay: The bill states that the first important component is the best interests of the child. The concept is well established and understood by the provinces and the people working in child welfare. We needed to ensure that the first component in the legislation was the best interests of the child. The groups that we've worked with in recent months told us this.

We added the issues of cultural continuity, as you know, and substantive equality. The important thing is to know the best interests of the child. In this context, if we look at clause 16, for example, we can see the process. The clause states that it's in the best interests of the children to place them near their families and in their cultural communities, since they can benefit from access to their parents and communities. The best interests of the child must be understood in this context.

Ms. Gros-Louis, do you have anything to add?

● (0855)

Ms. Isa Gros-Louis: Yes.

I think that it's important to also point out that this concept is made up of standards. We'll ensure that these standards are adopted by the provinces, territories and all indigenous peoples. We refer to these national standards, and we want to ensure that the values and standards will at least be applied across Canada, by everyone.

[*English*]

The Chair: We're going to move now to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Minister, for joining us this morning.

Just as we voted at second reading, the Conservatives certainly agree that this is not a partisan issue. We'll mostly be looking at technical concerns and clarifications as we consider this bill in depth over the next number of meetings. I certainly want it on the record that for far too long things have been very tragic in many communities, and this will hopefully provide clarity, if it's done properly and not rushed.

Before I start my technical questions, when you used the word "abduction", I know that we have hard-working social workers across this country. Where communities have taken on child protection services, they have to move them to other care in the best interests of the child. For you to use the word "abduction", I think, is to insult social workers and child services organizations, including indigenous organizations, across this country. Could you clarify why you used the word "abduction", as opposed to what these agencies are trying to do in the best interests of the children?

Hon. Seamus O'Regan: It's not a word that I use easily, as my mother has been in similar situations as a nurse in the north where she had to forceably remove children from families.

Mrs. Cathy McLeod: You're calling her a kidnapper.

Hon. Seamus O'Regan: No, I'm saying—

Mrs. Cathy McLeod: That's what "abduction" means.

Hon. Seamus O'Regan: I'm aware. I use the word "abduction" quite purposely because from the point of view of the family, that is what they see. With all due respect to my mother and her nursing colleagues, my motivation at the moment is the family, and what the family sees is an abduction.

Mrs. Cathy McLeod: With respect, Minister, I think that with using that word.... Unfortunately, there are cases where children have been removed in the past, and calling nurses and social workers basically kidnappers, I find very offensive.

Anyway, to get into more of the specifics of this bill...I think we've had a conversation about this before, so I think it's best if we use an example. Let's say in Alberta there's a Métis child who lives in Calgary who has no connection with their community, and there has not been an agreement of any sort in the past.

This legislation imposes federal legislation on the Alberta government that might have different requirements for indigenous versus non-indigenous children. All of a sudden the Alberta government will have this legislation with requirements around how they deal with a Métis child who might be living in Calgary—or you even have gone as far back as putting prenatals in here. Let's say you have a mother, what is it going to mean for the Province of Alberta when they have a piece of federal legislation that states they need to be very careful about...? Can you tell me what that clause will do in Alberta?

The prenatal clause is providing a prenatal service. Here I think we can all agree with preventative service, with the best interests in mind before the child is born. The provision of the service is to be given priority over all other services. When you have a pregnant Métis woman living in Calgary, what will the legislation require of the Province of Alberta?

● (0900)

Ms. Isa Gros-Louis: I am happy to answer this question. This clause is on a voluntary basis; obviously, prenatal services cannot be imposed.

Mrs. Cathy McLeod: Sorry, in terms of legislative impact, if you have something in legislation that requires something, I don't see the word "voluntary", so how is it all of a sudden a voluntary...?

Ms. Isa Gros-Louis: It's not voluntary for the service delivery person. The service will be offered to the mother, but whether the person wants to adhere to the service or not is voluntary. The service will be offered to the mother.

Mrs. Cathy McLeod: What service? What is Alberta going to have to do under this legislation that it is not doing already?

Ms. Isa Gros-Louis: They would offer prenatal support. If we take an example of a person who may have a drug addiction while pregnant, it would obviously be flagged in the system and the services for drug addiction and recovery would be offered to the mother while she is pregnant. Now, that's where I'm talking about its being voluntary. It cannot be imposed on the person. It it becomes a choice of the mother whether she wants to take the offer of the service provided.

Mrs. Cathy McLeod: I don't have any trouble with it being a choice, but I guess what I'm trying to drive at is this. In terms of the provinces and where jurisdiction is not drawn down by communities, is it correct that all of these clauses in the bill would apply to the province?

Ms. Isa Gros-Louis: That is correct.

Mrs. Cathy McLeod: That is correct. Okay.

I understand completely where a community has drawn down services both for on and off reserve or other circumstances, but what we have here is clearly that the provision of health care is under provincial jurisdiction. Child welfare services are under provincial jurisdiction. Where a community has not drawn down services, all provinces and territories are now going to have to decide what prenatal care means. Is that accurate?

Ms. Isa Gros-Louis: That is accurate. Some provinces, from what we understand, are doing consultation that already considers these issues. Whenever a case is being flagged in the system, some provinces will provide wraparound services to the mother. Some will have one-on-one services. That's what we're talking about.

Mr. Jean-François Tremblay: I will give you an example on this. We did add the term "minimum standards" in the legislation precisely because some provinces said that in some cases they may actually go over those standards and offer more. So, they didn't see it as necessarily.... There is also a system in the provinces that offers prenatal services. We're not starting from scratch.

Mrs. Cathy McLeod: No, of course not. First of all, I certainly am very familiar with what is being offered in provinces across this country. What I am wondering about is whether this is compliant with the Constitution. Can you provide us with any letters from the justice department that say this is all consistent and compliant with the Constitution, that we are not going to end up in courts like we have in other cases? I absolutely believe in preventative services and appropriate prevention. Certainly these are minimum standards, in my perspective.

Mr. Jean-François Tremblay: It's the source of law.

Mrs. Cathy McLeod: But you are compelling the provinces in a way that I'm not sure you can do constitutionally, especially around the delivery of health services. Do we have any letters from Justice that support this is as being consistent with the Constitution?

● (0905)

Mr. Jean-François Tremblay: I say we have authority under subsection 91(24), and we think it is also embedded in section 35 of the Constitution, but I would like Justice to answer that.

The Chair: We do have a representative from Justice, but we've run out of time. Perhaps one of the other members will follow up on your important question.

We are now moving to member Rachel Blaney from the NDP.

Ms. Rachel Blaney (North Island—Powell River, NDP): I'd like to share my time with Georgina. I'm just going to ask a question or two first.

I'm always happy to have a conversation about how indigenous children in this country matter. I think that's always important and something that this country has certainly not had enough conversations about—that, and the family core.

Minister, I'm a strong supporter of the Spirit Bear plan, and I'm sad and disappointed that this government is not endorsing and supporting it. It basically asks that Canada immediately comply with all of the rulings by the Canadian Human Rights Tribunal, which I believe has now come back seven times to ask the government to finally comply. This government, sadly, has not.

It also asks that the Parliamentary Budget Officer publicly cost out the shortfalls in all federally funded public services provided to first nations children, youth and families. In addition, it asks that the government consult with first nations to co-create a holistic Spirit Bear plan to end all of those inequalities—which this legislation simply does not do—and that we look at the core issue in this, which is systemic discrimination. If we talk about that in this place, we need to be mindful that our systems are built on a colonial system, the impacts of which are felt today.

It also asks that government departments undergo a thorough and independent evaluation to identify any ongoing discriminatory ideologies, policies or practices and to address them. Finally, it asks that all public servants, including those at the senior level, receive mandatory training to identify and address these ideologies, policies and practices.

I guess my question is twofold. First, if indigenous children matter in this country, why is this government not supporting this plan? Second, why has the Canadian Human Rights Tribunal come back to this government seven times because of government's non-compliance with the agreement and the judgment made?

Hon. Seamus O'Regan: First and foremost, since I took this position, I'm determined to make sure that we help the individuals who have been affected, and not the agencies that sometimes represent them. I'm more interested in going to the individuals and not the agencies. This hasn't been done in a bit but I'm determined to do it.

Ms. Rachel Blaney: That doesn't explain why the government has not obeyed the Canadian Human Rights Tribunal, or why it has come back seven times with non-compliance and it is still not done.

Hon. Seamus O'Regan: No, it's in the middle of doing it.

I'm going to throw it over to Joanne now.

Ms. Joanne Wilkinson: Thank you.

I would point out a few things. We do continue discussion with our partners, and those partners do include the parties to the Canadian Human Rights Tribunal orders. We are funding the actual cost for prevention for first nation agencies, as an example. The deputy mentioned that we have doubled the funding in this area. That's a huge investment that is going directly to agencies.

Ms. Rachel Blaney: Thank you, I'll leave it at that.

Georgina, you get to ask a question.

Ms. Georgina Jolibois: I do want to say one thing. Principally, this language that the government is using sounds very good, and because of that, it sounds like I'm open to supporting it. However, this bill is quite flawed. I'm very disappointed as an indigenous woman who goes into the riding and sees the reality on the ground for first nations and Métis children on and off reserve.

I am talking about the investments required for the moms and the dads to stay at home and get the help they need from health and healing programs, from training and job programs and the investments there. Then there are the social workers, the physicians, the nurses and those who provide all the medical care, including the RCMP, which often gets involved because there are no social workers available. Without these investments, how can we say that the child is the centre of this? I think that is misinformation that the government is talking about.

I support putting children first. I support their well-being. I support children having families to love and support them, and families having the support they need. Why is the government misleading people? Why has no funding been attached to this bill?

● (0910)

Hon. Seamus O'Regan: This is a bill that deals with jurisdictions, not funding. It deals with jurisdictions in a groundbreaking way that has never happened before—

Ms. Georgina Jolibois: I don't understand when you said—

Hon. Seamus O'Regan: —on which national organizations—

Ms. Georgina Jolibois: —"the deal with the province". I don't understand—

Hon. Seamus O'Regan: —such as the ITK and the Métis National Council and the Assembly of First Nations have worked with us. We followed their lead.

Ms. Georgina Jolibois: With all due respect, I'm not disputing the support of those national agencies and the work they've done. I fully support the work they've done, but they don't have influence on the ground over when a child has the mom or the dad or the grandma or the grandpa or the aunts or the uncles or the cousins take care of them. I understand that concept, but I think the government is missing the point.

Yes, you are, because you don't know the realities on the ground.

Hon. Seamus O'Regan: I haven't said anything.

Ms. Georgina Jolibois: When you see the child, there's no funding available or attached for the mom to go to treatment, for the mom to apply for training, for the mom to want to work, or for the dad.

Hon. Seamus O'Regan: It is not—

Ms. Georgina Jolibois: There's no funding.

Hon. Seamus O'Regan: Georgina, with all due respect—

Ms. Georgina Jolibois: No. With all due respect, you don't understand. Don't condescend. The reality on the ground—

Hon. Seamus O'Regan: I'm not condescending to you.

Ms. Georgina Jolibois: Yes, you are. It's insulting.

Hon. Seamus O'Regan: I would wish that everybody at this table would stop condescending to them.

Ms. Georgina Jolibois: No. You're missing the point, because when I look at the ground—

Hon. Seamus O'Regan: No, I'm not missing the point. I'm not missing the point.

The Chair: I ask that we all use parliamentary language.

Ms. Georgina Jolibois: Yes, you are.

Hon. Seamus O'Regan: The nations and the bands themselves will determine that on their own. They will determine it on their own —

Ms. Georgina Jolibois: So, when it comes to investments—

Hon. Seamus O'Regan: —separate from me, separate from you, separate from everyone at this table.

Ms. Georgina Jolibois: —to pay the family what they need, how can the government assist with that process?

Hon. Seamus O'Regan: That is exactly the point that we wish to be at should this bill pass.

The Chair: We've run out of time on this round for the opposition.

We're moving to the Liberal team.

I see that next we have MP Mike Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): I'll be sharing my time with MP Ouellette.

Last night I hosted an event. It was the screening of a documentary on an individual, Eddie Gough, who was an indigenous child taken from his family and raised by another family, and the trauma that this had on his life. Thankfully the journey took him back to his original family roots on Manitoulin Island, where he has reconnected with family and with his culture. Thankfully it's a happy ending to what has been too often a very tragic story for too many indigenous youth and children in this country.

Can you help us understand how this legislation, hopefully, is going to put an end to the Eddie Goughs of Canada so that they will grow up in their family settings, in their cultures, and with their language in the future?

Hon. Seamus O'Regan: I don't want to presume what that system will look like. I don't want to make any patronizing assumptions of how this will go.

What we agreed upon were three fairly good principles, the first, of course, being for the child. The rights of the child are first and foremost.

Secondly—and this is a very important point—the traditions, the culture and the language of an indigenous child are essential to their health.

Thirdly, when dealing with the system, the child and the family caring for that child should be dealt with always with dignity.

For those of you who have had fairly good treatment when you've dealt with hospitals, those may seem fairly basic things. They are not to a lot of people who will be affected by this legislation.

Each one of them needs time to work through it. Those who determine that they're ready and would like to take this on now, that they've waited long enough....

Last week I had dinner with a group of Cree women and elders just outside of Winnipeg who did not want to involve the province whatsoever. They said, "Let's get it done now." We had to convince them that some work needed to be done.

The bottom line is this: They have a year to enter into negotiations with the federal government and provincial government to help them build their own child and family services. A lot of that is based on making sure that a kid has access to all the right things, to the things that they know, their extended family, that in the eyes of the law they are legitimized, not that they need it, but that they're there and that they're empowered, and that communities get to develop their own way of dealing with situations, with dealing with children in care.

● (0915)

The Chair: Thank you.

Questioning now is going to MP Robert-Falcon Ouellette.

Mr. Mike Bossio: Thank you, Minister.

Hon. Seamus O'Regan: I would simply finalize this.

If after 12 months these coordination agreements are not dealt with in good faith, the legislation that has been developed by the indigenous groups will supersede provincial and federal law.

Mr. Robert-Falcon Ouellette: That actually is a very good segue.

Thank you to the minister for coming.

When I started out here in Parliament, my maiden speech was on child welfare. The statistics are startling. In Manitoba, 87% of children who are taken are taken because of neglect or issues surrounding poverty. That means only 13% have actual allegations of abuse, and of that, only 12% have substantiated abuse in the province of Manitoba. Most children are not taken because of actual abuse; it's because there are major problems in how the system is dealing with poverty. I hope this starts a process in order to begin dealing with that problem, those 11,000 kids in care.

We talk about the laws. How are we going to determine when a law has been passed by an indigenous community? What constitutes an indigenous community? What constitutes an indigenous nation?

Maybe that's for the justice department. How are you going to determine that it is a nation?

Ms. Isa Gros-Louis: In the legislation there is a section that talks about the duty of the minister to publish the law. Once the law comes into effect, the title of the law, the text of the law and the date of coming into force of the law will be published on the department's website. It will also be published in the Gazette. That will give public notice that a law has come into force.

Mr. Robert-Falcon Ouellette: For instance, in relation to the Métis, would the Métis National Council in B.C., Alberta, Manitoba, Saskatchewan and Ontario pass some form of legislation, and then how would that become a law? Would the federal government take that law and publish it in the Gazette?

Ms. Isa Gros-Louis: It's section 35 rights holders that will be able to develop such laws. As the minister has explained, there is a process of making a request to have a conversation with either the province or the territory in which the community is located. After 12 months of negotiations, the law would come into effect, and then we would have the publishing tools that I just mentioned to you.

Mr. Robert-Falcon Ouellette: If Treaty 2 Territory, for example, decided to come together, would it have to pass it under the Indian Act under bylaws or would—

Ms. Isa Gros-Louis: No, it's under this framework. This legislation creates the framework under which indigenous groups, bodies recognized under Section 35, could develop their laws and then have them published in order to implement their laws.

● (0920)

Mr. Robert-Falcon Ouellette: How do you determine if that's a constituted group?

Ms. Isa Gros-Louis: In the definition section, it talks about what is an indigenous body that can do so. There is a specific word that says “authorize”. The indigenous governing body means a council, government or other entity that is authorized to act on behalf of an indigenous group, community or people that holds rights recognized in section 35 of the Constitution Act, 1982. There are different mechanisms to be authorized.

Some first nations may decide that resolution would serve as a purpose to provide proof that the body coming to negotiate is authorized on behalf of either a community or a group of communities.

If you have a group of communities coming, in your example, under Treaty 2, then perhaps each community would have a bylaw or a mechanism that speaks to the fact that it authorizes the body to engage with the provincial or territorial government to discuss the implementation of the law this group would have.

The Chair: Mr. Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you, Minister and departmental staff.

Ms. Wilkinson, do we have a legal opinion on the question of constitutionality that we're talking about?

Ms. Joanne Wilkinson: I'll ask my colleague from the Department of Justice to speak to that.

Mr. Kevin Waugh: That's what everybody in this room wants to know.

Ms. Laurie Sargent: As always, the Justice Department has been working very closely with our colleagues at Indigenous Services Canada in relation to this bill. We are not necessarily going to be in a position to share the legal advice, but I'm very happy to provide a bit of an outline of some of the relevant case law if you'd wish.

As Deputy Minister Tremblay said, the bottom line of the Government of Canada is that this is a valid exercise of federal jurisdiction under subsection 91(24) of the Constitution Act, which uses the old language of “Indians, and Lands reserved for the Indians”. This legislation is intended to deal with indigenous children and to address the needs of and support for indigenous children, communities and families in the exercise of their section 35 rights. There is a constitutional basis for the legislation.

I will acknowledge that the provinces and territories under their jurisdiction, subsection 92(13) of the Constitution Act, have long been exercising jurisdiction in this area. In a way, this legislation is best viewed as a federal overlay, a "double aspect"—to use the constitutional law term—that is very much intended to support the exercise of indigenous jurisdiction in this area.

Mr. Kevin Waugh: Mr. Minister, it's interesting and our shadow minister agrees. The number of children in Saskatchewan that are in care today is higher than under the residential school system. That speaks lots. I know that the provincial government in Saskatchewan feels left out. You were in Saskatoon last week. You did not meet with the minister. You were one of the ministers in the same room with the FSIN officials.

When you bring the federal aspect into the provincial aspect, why would you not meet with Paul Merriman, the social services minister, one-on-one, when he asked you last week for a meeting. You turned him down. Why is that?

Hon. Seamus O'Regan: I turned him down because he wanted to talk about the legislation, and the legislation—

Mr. Kevin Waugh: Shouldn't he?

Hon. Seamus O'Regan: Yes, and I'd very much like to talk to him about the legislation with the leadership of our co-development partners: the Assembly of First Nations, the ITK and the MNC leadership that was present. Three fine people were present for some of the meetings. We were as accommodating as possible. He did not want me in the official meeting, because he didn't want them in the official meeting, so we tacked on an extra day. It was a good opportunity then for us to discuss it.

Mr. Kevin Waugh: But I can see the reservations right now of the Province of Manitoba and the Province of Saskatchewan, because you wouldn't meet with them. They have been in charge of this. They may have some issues they want to share confidentially with you, and you, as the minister, should take the time to meet with the provincial head. I'm very disappointed that you didn't do that. If you're going to do the consultations, start with the rights holders right now—the Province of Saskatchewan—which you didn't do. Why are you not doing that?

Hon. Seamus O'Regan: I'm very disappointed they wouldn't meet with me. I'll be blunt. This is what reconciliation looks like. They wrote it with me.

● (0925)

Mr. Kevin Waugh: I know this legislation was partially written by the FSIN. I'm true on that, but now you've caused an issue in my province of Saskatchewan—

Hon. Seamus O'Regan: I have?

Mr. Kevin Waugh: Yes, and are you happy with that?

Hon. Seamus O'Regan: No, I'm not content with it, but there it is.

Mr. Kevin Waugh: What are you going to do about it?

Hon. Seamus O'Regan: Continue negotiating—

Mr. Kevin Waugh: But you're not.

Hon. Seamus O'Regan: —with the provinces that certainly want to.

Mr. Kevin Waugh: Oh. Because there's nobody.... If Paul Merriman wanted a meeting with you personally, and you want other people in the room, you would not have a one-on-one meeting with him.

Hon. Seamus O'Regan: I'll take his phone call any time he calls me.

Mr. Kevin Waugh: But you didn't last week.

Hon. Seamus O'Regan: I spoke with him on several occasions last week.

Mr. Kevin Waugh: You see where I'm coming from. This is a bill that is coming forward—

Hon. Seamus O'Regan: You can see where I'm coming from—

Mr. Kevin Waugh: Yes, I know.

Hon. Seamus O'Regan: I flew in from Saskatoon. I went to a meeting a day early because they didn't want to have me at the official meeting. So I went to the unofficial meeting. Then they refused to put me on the minutes as having existed at the meeting, nor did they want to put on the minutes the existence of the three other organizations that were with me.

I don't take anything too personally in all of this. These are all the kinds of games that we play in the short term. In the long term, do I think we'll get there? Yes, I do believe we'll get there. I think that all provinces will come onside, because it just makes too much sense. There will be games played. That's fine. That's politics.

Mr. Kevin Waugh: There are games played, and right now people are getting hurt by it.

The Chair: I'm sorry. The five minutes is up, and we're moving back to the Liberals.

MP Will Amos.

[*Translation*]

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair.

The indigenous constituents in my riding of Pontiac have experienced many very disturbing situations with regard to their children. The lack of services affects our entire region, particularly the Gatineau valley. This will have serious consequences for the future of these children, families and communities.

I want to know how the new Government of Quebec reacted to this bill. Of course, the issues observed are recent, but they existed before the election of the CAQ.

Ms. Isa Gros-Louis: During the consultation period, we met with representatives of the provinces and territories. I can say that everyone supported the concept of the bill. Quebec and other provinces stated that it would take some time to prepare for the implementation of certain clauses of the bill. Even though Quebec supports the concept of the bill, it will need time to train the people who provide services in the field.

● (0930)

Mr. William Amos: Thank you for your response, Ms. Gros-Louis.

Apart from the time needed to implement completely new legislation based on a totally different concept that reflects the importance of communities and the paramount importance of the indigenous child, has the new government raised any constitutional or legal issues?

Ms. Isa Gros-Louis: The government representatives didn't raise these types of concerns at the meeting. However, they acknowledged that they didn't have time to conduct a full analysis of the jurisdictional and constitutional issues and that they needed to take another look at the issues and discuss them.

Mr. William Amos: Thank you for your responses, Ms. Gros-Louis. It's very interesting.

I know that the Gatineau valley is very affected, especially the Algonquin communities of Rapid Lake. I imagine that they've responded very positively, but it would be good to hear your comments on the reaction of the Algonquin communities.

Mr. Jean-François Tremblay: I don't necessarily have any comments regarding the Algonquin communities. However, I want to remind you that there are already very concrete and positive examples in Quebec. We've heard indigenous groups, in particular the Atikamekw Nation, describe their positive relationship with Quebec when it comes to issues such as early childhood.

We're using the results of the work that Quebec is already doing with indigenous people, particularly on the principles. We could end up with very positive approaches in Quebec, which wouldn't necessarily be changed by the legislation. The legislation doesn't call into question the positive aspects. Instead, it sets minimum standards. Moreover, in many cases, we have the impression that these standards are already being met or even exceeded.

Mr. William Amos: Okay.

You seem satisfied with your intergovernmental relations with Quebec when it comes to this bill. There doesn't seem to be any of the games that are happening in other provinces and other sectors.

Mr. Jean-François Tremblay: I'm very satisfied with our relations with all the provinces and territories.

Mr. William Amos: I'm glad to hear you say that.

Thank you, Mr. Tremblay.

[*English*]

The Chair: The questioning now moves to MP Arnold Viersen.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you to the minister for being here today.

One of the things that's surprising to me, I guess, is that we do seem to have—and the provincial minister in Saskatchewan seemed surprised by this—a bunch of jurisdictional issues around who the indigenous governing body is. I know that in Alberta we have the Métis Nation of Alberta, but then we also have the Métis settlements of Alberta. Who is going to "stake claim", I suppose, on these children?

The very fact that we're sitting here months away from the summer break, and in the last year of this Parliament—

The Chair: I'm sorry, but I would ask you to be really quick. Our clock is wrong, and I didn't realize that we were actually over. I'll give you one short question, and then we will have to call it quits.

Mr. Arnold Viersen: Okay.

Basically, I'm surprised we don't have the jurisdictional issue between, say, the Métis nation and the Métis settlements in Alberta necessarily sorted out. Saskatchewan doesn't seem to be overly excited about this legislation. We are where we are. What's the likelihood of this piece of legislation passing into law, and what's the likelihood of there being a court challenge to this piece of legislation if it is passed into law?

Hon. Seamus O'Regan: To go back to the beginning of your question, I just counted back, and there were 22 engagements with provinces and territories in the summer and fall of 2018 on options for potential federal indigenous child and family services legislation. And 22 at the senior level, the deputy minister level, is—

Mr. Arnold Viersen: Which could explain why we're here today, but—

● (0935)

The Chair: One question.

Mr. Arnold Viersen: —if we're here today because of all those meetings, I would expect that those issues would have been ironed out by now.

The Chair: The final word goes to the minister, and then we need to let him go.

Mr. Arnold Viersen: So can you explain that to me, Minister?

Hon. Seamus O'Regan: Well, I mean, regardless we'd be here, no matter how well those meetings went or how poorly they went.

The Chair: Very good.

We're actually over our time. I'm sorry for interrupting, but I've already exceeded our allotted time. I apologize to everyone who has been waiting to move.

Thank you so much for coming out. We have begun the exploration of the bill, one of the most important pieces of legislation in Canada.

Thank you, Mr. Minister, for coming out. We really appreciate it.

Meegwetch.

[*Translation*]

Thank you.

[*English*]

● (0935)

(Pause)

● (0935)

The Chair: Let's get together again. The officials are remaining with us and now we can dive right into the bill. Let's continue exploring Bill C-92, an act respecting first nations, Inuit and Métis children, youth and families.

I will restart the round. Are you expecting to do another presentation, or will it all be questions?

It will all be questions. We're going to begin with the Liberal side for a seven-minute round. Who is taking the lead?

MP Robert-Falcon Ouellette is going to lead us off.

Mr. Robert-Falcon Ouellette: I would like to discuss paragraph 9 (3)(e) concerning Jordan's principle. Is that acceptable? Excellent.

Paragraph 9(3)(e) states:

> in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

The concept related to a jurisdictional dispute reflects the Truth and Reconciliation Commission's call to action 3, that all levels of government fully implement Jordan's principle.

We have been implementing a lot of that—more funding, with some $1.2 billion for Jordan's principle. But have you had any discussion with indigenous groups on funding for this into the future? Why is this paragraph in this bill and is so important?

Mr. Jean-François Tremblay: Can you answer the question on why it is in the bill, because you were part of the engagement session specifically?

Ms. Isa Gros-Louis: That's correct.

This section—and there are a couple of others that touch upon Jordan's principle—were specifically included in this bill at the request of participants in the engagement session. While we did not specifically call it Jordan's principle, the principle behind Jordan's principle is captured in the section you're referring to.

The reason for not calling it or identifying it as Jordan's principle is that this bill is much broader than Jordan's principle. Nonetheless, we wanted to make sure—and especially in this section—that the concept of not having a services gap applies in the context of child and family services. That's why this section in particular was added here.

● (0940)

Mr. Robert-Falcon Ouellette: As we implement this, let's say, in two years' time we have an indigenous group from Treaty 4 or Treaty 1 territory that says, “We passed this legislation.” The communities can then create their own regulations about how they want to implement it. Then they decide on the types of services they believe their children require. How do they then go about obtaining the funding to ensure that there is no gap in service and they're actually able to accomplish the desires of the community to look after their children and see their children succeed and reach their full potential?

Mr. Jean-François Tremblay: It's the discussion we're going to have to have with them. You mentioned the dollars for Jordan's principle. As you know, we have more than 200,000 cases that have been addressed under Jordan's principle. The budget is probably over $400 million per year now on the Jordan's principle side.

What is important in a case like you mentioned is looking at the resources that are there, and after that identifying exactly what the needs are, the kinds of services and jurisdictions, and how they want to exercise their jurisdiction. At that point, if there's a gap between the funding available and the funding needed, that's going to be an important discussion between governments.

The bill at the moment, as mentioned, doesn't necessarily address those case-by-case issues, but it would be part of the discussion in each case. We don't expect that it's going to be the same everywhere, so we have to take that into account too.

Mr. Robert-Falcon Ouellette: One of the issues that I believe was faced in Manitoba is the devolution of authority or administrative powers to indigenous communities, with a northern and southern authority that supposedly, technically, had control. But over time, what happened is that the province just created more and more regulations layering them on, due to, I suspect, political fears of children being hurt or killed in care. There are some terrible statistics. More than 400 children have been killed in care under the responsibility of the province in the last eight years.

What guarantee is there that the federal government will not start layering on more and more regulations and trying to direct first nations how they carry out what they deem are their responsibilities in looking after their children?

Mr. Jean-François Tremblay: Yes, you're right to point it out. This is a discussion we have had with first nations leaders in Manitoba. The way it has sometimes been described to me is that we included first nations in the system; we didn't change the system in Manitoba, and the system continues as it is. As you said, it was reinforced by some cases, and that actually created a kind of incentive for more apprehensions of kids.

What we think is different here are the principles, and there's also the recognition of the jurisdiction. First nations, Inuit and Métis have a writ jurisdiction recognized, and they can exercise it. If there's bad faith on the part of a provincial government, they can actually go ahead with their own legislation through the process.

This is a very significant change, and we hope that the principles of cultural continuity, for example, as well as the substantive equality that we talked about and the best interests of the child, will be guaranteed to make sure that what we're doing here is opening the door for a system to change, not actually reinforcing a system as it is.

Mr. Robert-Falcon Ouellette: How difficult was it to obtain agreement among so many different indigenous communities? We're talking about Métis, Inuit and first nations who are also very diverse. You know, we call it “distinctions-based,” the idea that we're all different and have our own distinctions.

How difficult was it to obtain agreement? Usually when we deal with bills in Parliament, they're much more restrained in dealing with either one group or another group. Often you'll see bills such as the Mi'kmaq educational laws, the B.C. tripartite agreements, or the Dakota self-government agreement, and they're all very restrained. How difficult was it to obtain agreement surrounding this?

● (0945)

Mr. Jean-François Tremblay: I think we tried to focus on where there was a consensus among the parties, and there was a consensus that measures needed to be taken to make sure that the kids were not taken the way they are taken in some places now. That was an important element coming from all across the country, which we heard from everybody.

The other element was the recognition of the jurisdiction. Rather than having legislation that tries to put in some system—which is not necessarily something bad—what first nations, Inuit and Métis people will likely do in the future is to describe what they want. This legislation doesn't go to that level of detail. This legislation opens the door for first nations, Inuit and Métis to occupy that space.

That was the way to get as much consensus as possible among the parties, not by predetermining, as the minister said before, what exactly the solution would look like but by setting the stage for those discussions to happen. This bill opened the door for the beginning of a discussion, and that discussion will happen at the nations level, at the regional level and at the local level, way more than in downtown Ottawa, if I may say so, with all due respect.

Mr. Robert-Falcon Ouellette: Four minutes—this is good. Thank you very much for being concise.

I was just wondering how this bill, Bill C-92, would implement or reach some concordance or agreement with UNDRIP, the UN Declaration on the Rights of Indigenous Peoples and its implementation. Is that reflected in this bill?

Mr. Jean-François Tremblay: It's in the preamble, as far as I remember.

Ms. Isa Gros-Louis: UNDRIP is much broader than this legislation, and maybe you're raising this because it was mentioned in Bill C-91. However, in Bill C-91, UNDRIP refers to languages particularly, whereas UNDRIP does not make particular reference to children and families. That's why it's not specifically mentioned in this legislation.

The Chair: You have one minute left.

Mr. Robert-Falcon Ouellette: Laurie?

Ms. Laurie Sargent: Yes, I just wanted to clarify that it is, of course, in the preamble of this bill as an overarching commitment to implementing the UN declaration. Just to provide some nuance to that response, the declaration itself—it's true—doesn't speak specifically to child and family services. There are of course many provisions that relate to children and families generally and the principle of self-determination, which I would say very much underpins this legislation. However, as Isa pointed out, there's not quite the same level of specificity as it has in relation to language.

Mr. Robert-Falcon Ouellette: When you say self-determination, what do you mean for the average Canadian? What exactly does that mean in this legislation, and why is it important?

The Chair: Please provide a very short, clear definition.

Ms. Isa Gros-Louis: It's the power of a group to decide their own fate and their own path.

Mr. Robert-Falcon Ouellette: And that's in the legislation?

The Chair: Okay.

Ms. Isa Gros-Louis: Yes.

Mr. Robert-Falcon Ouellette: I'm just getting it on the record.

The Chair: We're moving on to MP Cathy McLeod.

Mrs. Cathy McLeod: I think I want to pick up where we were going earlier with Ms. Sargent. First of all, you talked about different case law, so if you could table that case law with the committee, that would be very helpful.

As I understand, you're using subsection 91(24), and it is not totally defined. What I perceive is that this legislation is defining the authority. Is that accurate?

Ms. Laurie Sargent: Well, this legislation certainly recognizes an area of jurisdiction in relation to indigenous governments, essentially, governing bodies, which is a section 35, aboriginal-rights framed piece. The legislation itself I would say is founded on subsection 91(24) as a basis for federal jurisdiction in this area.

Mrs. Cathy McLeod: Section 35 rights typically have been defined through court cases. Can you also table with this committee the legislation that has been created by parliaments that have defined section 35 rights, as opposed to a legal process having defined it? Has that happened frequently? Can you clarify that piece?

● (0950)

Ms. Laurie Sargent: This is novel, I will say. This, and the indigenous languages bill are probably the first two instances where Parliament has decided to speak to the recognition of indigenous rights, section 35 rights; and it does flow from the approach this government has taken in relation to recognizing rights without awaiting judicial decision-making.

In relation to case law and so on, I'm happy to table a couple of different decisions, but, ultimately, there is no decision that's directly on point.

One resource I can point you to that I think would be of great use is an article by the honourable justice Sébastien Grammond that was published in 2018 in the national Journal of Law and Social Policy. It's readily available online, but I'd be happy to table it as well, through the Department of Indigenous Services, because it gives an excellent overview of existing law, the provincial basis for legislation in this area, and speaks to both the subsection 91(24) and section 35 aspects. It's an excellent compilation—better than just reading the individual cases.

Mrs. Cathy McLeod: Thank you. That would be really appreciated and I think very helpful.

Mr. Tremblay, it's interesting as I go through this legislation. I did talk about that prenatal issue when delivery of prenatal services is clearly a provincial jurisdiction. One of the gaps is that this is absolutely silent on people as they age out—and we know there are significant challenges in this regard. I would have thought it might be more appropriate to identify that and make it a part of this legislation than perhaps the section I just talked about. We know that our youth, and I guess I still consider.... I used to think 18 was an adult, but the older I get....

Mr. Jean-François Tremblay: You get a different point of view. I know the feeling.

Mrs. Cathy McLeod: But we know there's a real gap. We know that 18-year-olds and 19-year-olds end up with huge challenges, so why are you completely silent in that area in this legislation?

Mr. Jean-François Tremblay: First off, I want to say that this legislation does not fix everything. It's legislation that is part of a general process of reforming child and family services and addressing the needs of first nations, Inuit and Métis. It's not the only thing we're doing. What the legislation is so good at doing is putting the legal framework in place. The legal framework is to say what it says, including the recognition of jurisdiction that could not have been done without the legislation, from our point—

Mrs. Cathy McLeod: You delve into prenatal, but you don't go into—

Mr. Jean-François Tremblay: We are looking at all of those areas, but we also believe that a lot of those issues would be better addressed in a discussion with the rights holders and the first nations, Inuit and Métis. There's no one-size-fits-all approach across the country to child and family services. It would be an interesting Tower of Babel, if I could say that, if we were try summarize that in one bill.

The best thing, as I mentioned before, is to put the framework in place so that those discussions can happen. But it's not the end of a process; it's the beginning of a process. It's a journey that we're starting.

Those questions are the right ones, but they are questions that the legislation cannot answer from Ottawa. It's going to have to be through the processes.

Mrs. Cathy McLeod: I can think of a delivery organization in British Columbia that has a delegated function. They take on both on reserve and off reserve in terms of the work they do. The agreement was signed many years ago.

Technically, what's going to happen to them in terms of the evolution of their next step? They have already drawn down, on and off reserve, so what difference is this bill going to make to them?

Mr. Jean-François Tremblay: The difference would be more the discussion. If they're doing a great job and the first nations that are working with them say they are doing a great job, I don't expect there would be a lot of changes.

Exercising jurisdiction doesn't mean you're going to pass a law tomorrow. If you look at a lot of the first nations law under self-government, they have jurisdiction in education, health and many areas. They don't necessarily pass laws on all those issues. In many aspects, they take part of the legislation or the rules that are already put in place by the provinces.

It's going to be the same case here. You have to have first nations, Inuit and Métis questioning what is best for their children. In some cases, they will work with agencies that they like.

● (0955)

Mrs. Cathy McLeod: This is a first nations-led organization.

Mr. Jean-François Tremblay: Okay. In this case, if the first nation-led organization is well perceived by the first nation itself, I don't think they're necessarily going to change it.

Mrs. Cathy McLeod: It's created by them.

Mr. Jean-François Tremblay: It is not necessarily there to replace good practices. It's there to help the ones who want to do something different to have the tools to do so.

Mrs. Cathy McLeod: When this first nations-led organization has made, on rare occasions, the very difficult decision that it is in the best interests of a child to have other, alternative care, is it just the minister, or does the department call this “abductions”?

Mr. Jean-François Tremblay: The minister referred to cases that were mentioned, when it's only for socio-economic conditions, the cases that we sometimes call in Manitoba “a birth alert”, or kids that are apprehended at birth and there was not necessarily work done. Sometimes, as we and the minister heard from first nations and the Métis and Inuit, they were taken in some cases based just on the profile of the mother, on what she was in the past, not who she is at the moment. That's what they refer to.

When you talk with first nations, Inuit and Métis, they all recognize that there is a moment where protection is needed. Nobody is against protection of children here. That's why the interests of the children is so important. The question is, protection should happen only when other methods and tools have been used before.

The Chair: Good.

Questioning now moves to MP Rachel Blaney.

Ms. Rachel Blaney: Thank you so much for being here with us today.

I want to ask a couple of questions. When the minister was here with us, he said a few things that I want to get clarification on, if you could talk about them.

He said it's up to indigenous communities to tailor to their needs. Also, he spoke about doing that work based on the capabilities of the community.

I represent a large riding in British Columbia with many indigenous communities that are very small. When we talk about capacity to do this work, some of them have that capacity and some of them are limited.

I'm curious as to whether the basic capability of the nation will, in this legislation, make it so that they can't take this next step.

Mr. Jean-François Tremblay: It's a very good example. As you referred to, and you know it as much as I do and probably more, B. C. is a good example of where communities decide to join together sometimes to take jurisdiction or to take control of their own business.

Ms. Rachel Blaney: In my riding, there was an attempt to do so, and they were denied the ability to do that because they were still considered, within those small communities together, as not being large enough to do that.

I just want to make sure that when this bill comes into place, because it will—it's a government bill, of course—those things are going to be represented in it.

Mr. Jean-François Tremblay: Capacity issues are linked to many reasons. Being a small community is one of them. It's not the only one. It could also sometimes be other issues that they will face.

The issue of capacity will have to be addressed. If you're a really small community, it may be difficult to manage an overall system. It doesn't mean that you should not be part of a jurisdiction or a way to manage it.

When I was talking about the self-governing nations, a lot of them didn't take or decided not to go with the legislation because they thought there weren't necessarily the economies of scale to manage, for example, a health system. That's why in B.C. you have a first nations health authority, as you know, that actually delivers health services to all first nations across the province.

In a case like that, it's difficult to make an assumption, case by case, but it's not to exclude any size of community. That's not the point. They all have the same rights and they all need to be respected the same way. However, from a practical perspective, that's the type of discussion they are going to have to have, which is what are the means they need to meet their level of ambition. In some cases, it might mean for them to work with others if they find that it's actually the best way for them to get the capacity for this.

Ms. Rachel Blaney: One of the things is that indigenous communities are really being asked to rely on the spirit of this bill to make sure there actually will be the resources available for them to do the work. We know that in the 2018-19 budget there are zero dollars for any implementation of this. I'm just wondering how I ask indigenous communities across this country to have faith.

● (1000)

Mr. Jean-François Tremblay: To believe in it, yes. The bill is doing something that is very innovative, as was mentioned. The way that we are recognizing jurisdictions in this legislation was not done in the past, so this is something quite exceptional.

We haven't waited for this bill to engage with first nations, Inuit and Métis on child and family services. As was mentioned, it was the extraordinary meeting in January 2018. Even on the funding side, we have almost doubled the budget for the existing system. However, it was also mentioned in a discussion at the CHRT that the system needed to be reformed, and that's part of the reform. Even now, today, if you go on the self-government side, there are negotiations across the country. Because we have actually put the emphasis over the last few years on child and family services, more and more of the first nations or the indigenous groups that are negotiating self-government are focusing on child and family services, and those negotiations are resourced. So, we're not without any resources at the moment. We are doing things, and we are investing more in the system.

Ms. Rachel Blaney: If an indigenous community right now came to that table and said, "Okay, we want to add this into the negotiation process," that's something the government would not only support, but actually have some resources for?

Mr. Jean-François Tremblay: Under self-government at the moment, there's actually a significant number of them, yes.

Ms. Rachel Blaney: One of the other questions I have is this: Why was the word "apprehension" used? That language is pretty outdated. Currently, the more often used terminology is "child removal" and "placement in alternative care". I'm just wondering why that language was chosen.

Mr. Jean-François Tremblay: My English is so bad that I will let her decide why "apprehension" was used versus other terms.

Ms. Isa Gros-Louis: The question was raised, and it's basically to be consistent with existing language use in other legislation. The "apprehension" language is now being used. To make sure our legislation is consistent with the language being used across sectors, we used that language in this bill.

Ms. Rachel Blaney: Okay.

One of the other things I noticed is that the bill doesn't really address the need for technical or data collection. There are some communities that have some capacity, and some have very low capacity. I'm just concerned about making sure this support is there pre- and post-.... I think that's also important: the pre- part of making sure there's the technical support for building this internalized legislation. They need the support and then the data collection as well. I'm just wondering why that wasn't included at all.

Mr. Jean-François Tremblay: As I mentioned before, this legislation is part of a general plan. There are six points. Part of the six-point plan is actually data. We're working with the partners, but also with provinces and territories because this will have a significant impact on them. It's a discussion that we need to have with them. So, those issues are being discussed and addressed. They're not in the legislation because, as I mentioned before, the legislation focuses on what we thought the legislation was the best to address and where there was a significant consensus that seemed to emerge. It is about the jurisdiction, and it is about the protection of indigenous people in the existing system.

That's part of the general reform. The legislation is one tool that we have to address part of the puzzle, if you want, not to address everything. However, it is something that we recognize will be a challenge and will need to be addressed for sure.

The Chair: That ends our round for MP Blaney. We move to MP Yves Robillard.

[*Translation*]

Mr. Yves Robillard: Many children are being cared for in non-indigenous settings. How will this bill affect them?

Mr. Jean-François Tremblay: Ms. Gros-Louis, do you want to respond?

Ms. Isa Gros-Louis: This situation is addressed in clause 16 of the bill. We're asking that each case be re-assessed on an ongoing basis. As part of this process, the situation is reviewed and the reunification of children with their own families is encouraged at all times. The bill seeks to ensure that the situation of children currently in foster care is regularly assessed and that, when it's consistent with their best interests, they can be reintegrated into their families.

● (1005)

Mr. Yves Robillard: The Assembly of Manitoba Chiefs stated that this bill—

[*English*]

Mrs. Cathy McLeod: On a point of order, Madam Chair, I note the bells. We would certainly like to have unanimous consent to keep going. Perhaps we could keep an eye on the clock and give ourselves 10 minutes to get to the House.

Mr. Mike Bossio: I was going to say that I think we can go for 20 minutes. I think that's fair; we're here in the same building as the House.

Mrs. Cathy McLeod: That's why we're here.

Mr. Mike Bossio: Yes, exactly, so it's perfect.

The Chair: MP Ouellette.

Mr. Robert-Falcon Ouellette: I noticed in the schedule that 12:30 to 1:30 is still to be determined.

The Chair: I'm sorry. We have tried to condense the day, but this has not been successful. I'll take this opportunity to inform the committee that we need to stay for the final window, because one of our delegations is not able to move up to 11:30, so we will be in committee until 1:30.

Please note in your schedules that this has not been possible. We thought we could—

Mr. Robert-Falcon Ouellette: Is it possible to make sure that these officials—because I think this is the most technical part, which is quite important—can perhaps stay a little bit longer, if we break for our vote? There are very important questions, and if we only have one group, they can have a chance to speak at length on an issue, but—

The Chair: They could come back at 12:30.

We will try to be as efficient as possible.

Ms. McLeod.

Mrs. Cathy McLeod: The motion is that because we have the bells sounding, we need unanimous consent to stay until 10 minutes before.

I think that, out of respect for the other bookings, we should continue and give them as much time as possible.

Thank you.

The Chair: Yes. We will stay—

Do we know what time...?

We have 28 minutes before the vote, so we can stay for another 15 or 18 minutes.

Mr. Yves Robillard: We're in the same building.

The Chair: All right.

Are we all good? Okay.

Where are we now?

Monsieur Robillard.

[*Translation*]

Mr. Yves Robillard: The Assembly of Manitoba Chiefs representatives stated that this bill simply maintains the status quo and that it leaves the provinces in control.

What's your perspective on this? How would this bill support them?

Mr. Jean-François Tremblay: We don't see the bill that way. The bill wasn't drafted with this in mind. The first nations in many other regions also haven't seen and read this in the bill. I can still understand that concerns exist in Manitoba, especially since there has been a desire for devolution over the past 10 years, which hasn't necessarily produced results.

As I've already said, I believe that some parts of the bill meet the expectations of the Manitoba first nations. First, one of their ambitions is to proceed with their own legislation. This legislation gives them the opportunity to do so. The minimum standards in the legislation will exist only if the first nations, Inuit and Métis people don't create other standards. If the Assembly of Manitoba Chiefs decides to proceed with its own legislation and standards, it will be supported. This will give the assembly federal legal support that it wouldn't have otherwise received.

In addition, unlike in the past, the legislation also applies off reserve. This is very helpful to first nations, which are mainly involved in historic treaties. They can develop an approach that will affect their entire population, and not just the people living on the reserves. We're more than happy to continue the discussion with the Manitoba first nations. We truly believe that this legislation will be used to support the development of their own legislation. The goal isn't to replace the desire for self-determination expressed by the Manitoba first nations.

● (1010)

[*English*]

Mr. Yves Robillard: I will share my time, Madam.

The Chair: We have four minutes. I'll take the opportunity, if possible.

Mr. Mike Bossio: Sure. Please go ahead.

The Chair: Manitoba, unfortunately has—I agree 100%—attempted to devolve the authority to agencies. At that time I was involved with the government as a minister. I think there was an attempt to do the right thing, and the system failed. Children died; the numbers went up.

It's good to hear that there are new models being put forward. One model that I'm very curious to get an update on is the model implemented in Nelson House. In the Nelson House first nation, I understand a new model has come in whereby the children are prioritized and get to stay home, go to school, and be in their community when the parents are provided assistance.

Perhaps you have an official who can update us and maybe describe what has been implemented and the fact that you're getting all kinds of accolades from different people who are watching the progress.

Mr. Jean-François Tremblay: I would turn to Joanne on this. I don't want to paint an only dark portrait of this region. In Manitoba I've seen some agencies that have reduced significantly the number of kids in care by working with communities and trying to find solutions that are different from the existing system. There are people who are trying to do things differently and the legislation just aims to unlock that potential.

Ms. Joanne Wilkinson: Nelson House is a great example. There are many examples across the country where new models are being tried. The example you're referring where the children are the ones who stay in the home and the parents are the ones who come in and out of the home itself is a model that's being explored in other areas of the country as well. There has been success seen with that model.

However, as the deputy mentioned, it really points to the fact that this is all about jurisdiction and the answers lie in communities. They don't lie at this table here; they lie in communities, because that community, Nelson House, and others have found solutions that work for them. That really is the goal here, to be able to open the door so that communities can have that discussion, that families can engage in identifying what the challenges are, where the gaps are and how you can look at new models and share that information across nations as well to make sure that people are learning as they go.

The Chair: That concludes our seven minutes.

Now we're moving to MP Kevin Waugh.

Mr. Kevin Waugh: I still can't believe the minister used the word "abduction". With all due respect, indigenous child welfare workers in this country and the provincial and territorial leaders deserve an apology.

I'm just reading a StarPhoenix article from my city of Saskatoon that speaks of "prevention over apprehension". I wish the minister would have used that instead of "abduction".

How are we going to prevent some of this? When I looked at the cannabis bill put forward by this government, they did little or no education when they bought it out. For example, they never went to any schools. They had lots of money but they never went to the core group that in that legislation needed to be dealt with.

Therefore, how are you going to prevent? Where are you going to start and with how much money?

I agree with some members around this table who say it's fine to talk about AFN, Inuit and the Métis nation, but this has to be grassroots. I really have a lot of issues with this bill because I have seen how this government goes forward with legislation where it doesn't get to the grassroots and then we have major problems.

Let's start there, the prevention. Have you thought through the prevention aspect of this?

Mr. Jean-François Tremblay: We don't only work with AFN, MNC and ITK. We have trilateral tables at the regional level. We have discussions with the first nations, Métis and Inuit across the country.

As I mentioned before, this legislation doesn't try to, and in answer to your question, I have to resist the temptation of deciding what prevention should be. It should come from the first nations, Inuit and Métis. What the legislation is doing is opening this door and creating this space where there would be a discussion about this.

At the moment, we pay actuals. We pay actuals for the first nation system. We don't necessarily give any levers to first nations, Inuit and Métis to decide what type of system they want. That's what we want to force now, to open that dialogue, but it will have to come from the first nations, Inuit and Métis. If it's only devolution of the system as it is, the risk is that we will reproduce what we reproduced before.

It's not the problem of the social workers. It's not their fault individually. It's the system that is based like that and they take into account the rules of the game, and the rules of the game push them to make decisions that are sometimes short term but over the long term have a significant impact on the kids and the families.

What is the magic solution on prevention? I really do believe that actually with all the innovative approach on prevention and the same thing on education, at the end of the day, outside of the principles that need to be there for everybody, it's going to come from the communities and the nations.

The Nelson House case is interesting because it's a different one, but there are cases I mentioned where the communities completely work with the agencies at exploring the best ways to address the needs of the kids and dealing with protection only in the last minute or as a last resort.

I don't know if you want to mention more.

● (1015)

Ms. Joanne Wilkinson: I'll just mention one other thing on implementation.

The minister mentioned this briefly, but we are working with partners to look at distinctions-based governance models in how to transition. As has been mentioned before, this isn't something that's going to change overnight in every single community. The point is to build on the trilateral tables that exist across the country but to have some distinctions-based governance structure that looks at those implementation and transition issues, including things like funding —how we build from where we are now to get to a new funding methodology. Those areas are the types of things those committees could look at.

Mr. Kevin Waugh: I thank you for that because a lot of bands in my province are resentful towards the FSIN, and this is very FSIN-driven. A lot of it is in here. They've had major work on this. When I talk to a lot of the bands, they're saying, "That's FSIN. This is us now."

Meadow Lake Tribal Council, for example, is kind of in disagreement with the FSIN—"That's their perspective. Here's our perspective." I don't think we have peeled back the onion, if you want me to say that, to these local groups.

Now I see that in my province, as I mentioned to the minister, it's all about jobs. Now the Ministry of Social Services is talking about the jobs that come with this department. Are they going to be let go? What is the issue now with the jobs in the province? I do see this as a big issue with Vice-Chief David Pratt of the FSIN going after the provincial government.

Now in the legislature in Regina, if you don't mind me saying so, it's turned into more about the jobs than what it should be, about the children. I don't think we've peeled back the onion enough to deal with ground roots.

Mr. Jean-François Tremblay: What you can say to those groups is just that the legislation doesn't impose on them the system that's here. We're not saying that the system in Saskatchewan should be managed by the FSIN or by another organization. We're saying that the rights holders have the right to come up with the solution to the problem they're facing. It's for them to come up with the solutions at the level they want.

The Chair: We're going to finish with MP Mike Bossio.

You have a five-minute window.

Mr. Mike Bossio: Thank you so much for being here today. There has been some great testimony and great elaboration and clarifications on the legislation.

I wanted to point out one thing. I was fortunate enough to be involved in one of the consultations on this bill in Toronto, where we had all the chiefs in the province of Ontario being consulted on the bill. I would argue that the grassroots were consulted, and their remarks were taken very seriously in laying out the legislation.

Earlier on, you had mentioned there is $1.2 billion worth in transfers to the provinces happening right now for care. From a funding standpoint, as we transition to this other model, instead of those transfers going to the provinces to deal with it, could that envelope not be carved off to deal with the communities that are now assuming responsibility for children's services?

● (1020)

Mr. Jean-François Tremblay: It's part of the discussion. Some of the first nations, Inuit and Métis mentioned that the current envelope that is growing is also significantly, overwhelmingly for protection, so if you reduce protection, can you take that funding to do more prevention? Those are discussions, of course, that we will have to have with first nations, Inuit and Métis for sure.

As mentioned by Joanne, we do cover the actuals for the agencies for both protection and prevention. This money is not going to disappear, so the question is funding the system that the first nations, Inuit and Métis want. I'm not saying that everything in the current system is bad. I'm just saying that those who actually experience this system should have a word to say on what they want.

Mr. Mike Bossio: You made very clear the importance of its being indigenous-created, indigenous-driven, indigenous-led and in indigenous law. We talked about the layers of regulations that could be added on top to work against that process. At the end of the day, if I'm correctly reading your earlier comments, it's the indigenous law that will prevail and, therefore, the regulatory regime that would be associated with that would take precedence over any federal or provincial regulations.

Mr. Jean-François Tremblay: We've been told by some first nations leaders that strong families and strong kids make a strong nation. It means that it comes from there; that's the heart of their identity—with language, of course, and a few other elements.

In this case it's part of the decolonization process, how you make sure that the first nations, Inuit, and Métis decide how they want to address the solution. It doesn't mean that the solutions will be dramatically different in some aspect; it means that they will own those solutions, because they will be their solutions. They will be able to do that.

This is, as you know, a general objective with this department. I am used to saying to my staff that we should be a species at risk looking for its own extinction, because at the end of the day the services have to be delivered by those who actually need them. If you want them to be adapted to the needs of the population, they need to be with those who are on the ground. That is part of this approach.

Mr. Mike Bossio: The feed from that and the strength of this legislation is the fact that it is a framework. It is not a one-size-fits-all approach; every part of the country would have a different solution that could be put forward in order to deal with this.

Mr. Jean-François Tremblay: We have never been able to have any consensus, including among ourselves, if we have tried to define what the system should look like. We have past experience of defining what the system looked like, and that's called the Indian Act. That was not the objective here. The objective is to say, if you want to take it over, you can take it because it's yours; it's your jurisdiction.

The only thing that we put in the legislation is that if you don't take it, we want to make sure that kids will continue to be protected in the future in a better way. Also, if you take it, we want to make sure that there is discussion with other jurisdictions, because we're a federation. We know that interjurisdictional issues exist, and they need to be addressed as much as possible.

[*Translation*]

The Chair: Thank you.

[*English*]

We need to suspend. We'll be coming back. We'll probably be back at about 10:50 a.m., and then we'll start the next session. Could members think about the way we'll probably have to modify our process so that we allow a decent time for our presenters and the Q and A portion.

MP Ouellette, are you satisfied?

Mr. Robert-Falcon Ouellette: I just want to ask on the record about the on- and off-reserve impacts upon children, but maybe the officials could provide the information.

The Chair: You'll have to wait until next time. Perhaps they'd be kind enough to submit something. We would appreciate it.

Thank you. We're off to vote.

● (1020)

(Pause)

● (1055)

The Chair: Thank you for your patience. We're sorry we had to be away and didn't start in a timely manner, but we're anxious to get going now.

Once again, we're on the unceded territory of the Algonquin people. We are studying Bill C-92, an act respecting first nations, Inuit and Métis children, youth and families, which of course is critically important to all Canadians.

Before us, we have Chief Robert Bertrand representing the Congress of Aboriginal Peoples, and Cindy Blackstock for the First Nations Child and Family Caring Society of Canada.

My note says that Robert will start first, but if you've changed it, that would be fine with me.

Excuse me; we'll have a shorter time limit, so....

Ms. McLeod.

Mrs. Cathy McLeod: Madam Chair, could we take one minute—we don't want to cut into our witnesses time—to set out the logistics?

We have another vote at 11:48, , so if we could perhaps go with this panel until 11:40, that would give us eight minutes to get upstairs.

The Chair: Is that agreed?

Some hon. members: Yes.

Mrs. Cathy McLeod: We will then have to perhaps adjust the final four witnesses. We can maybe come up with a plan while we're hearing from these witnesses here.

Thank you.

The Chair: Yes.

Is it still the intention that we provide 10 minutes for each presenter, or is it the will of the committee to reduce their presentation time?

Some hon. members: No, no.

The Chair: You will have 10 minutes each, and then we can discuss whether we want five-minute rounds or seven-minute rounds.

Some hon. members: Five minutes.

The Chair: We'll have five-minute rounds. Okay, we have a plan.

Go ahead.

Ms. Rachel Blaney: I want my seven minutes. That's the only time I get. You guys get multiple times. I only get seven minutes.

Mrs. Cathy McLeod: Let's get the presenters presenting.

The Chair: We'll discuss this a bit later.

Go ahead.

National Chief Robert Bertrand (Congress of Aboriginal Peoples): Thank you very much, Madam Chair.

Good morning, committee members, representatives and guests.

I am National Chief Robert Bertrand of the Congress of Aboriginal Peoples. With me is Mr. Jim Devoe, the CEO of the congress. Before that, he was a worker in the child welfare system for, from what I'm told, about 15 years. That's why he's sitting beside me.

I am pleased to be with you today and wish to acknowledge that we are on the traditional unceded and unsurrendered territory of the Algonquin peoples and their descendants.

Thank you for the invitation to appear and present on Bill C-92, an act respecting First Nations, Inuit and Métis children, youth and families. At CAP, we have grave concerns in regard to this legislation as it fails to meet the specific needs of off-reserve and urban indigenous peoples and further marginalizes our constituency.

First of all, I would like to tell you a bit about the Congress of Aboriginal Peoples, or as we call it, CAP. We are a national indigenous representative organization. For over 48 years, CAP has been advocating for the rights and needs of the off-reserve status and non-status Indians and Métis peoples across Canada, and the Inuit of Southern Labrador.

Our vision is that all indigenous peoples in Canada should experience the highest quality of life through the rebuilding of nations. All indigenous citizens have the right to be treated with respect, dignity, integrity and equality. We must keep this vision paramount for our indigenous children and youth.

Today, as mentioned on numerous occasions, over 70% of indigenous people in this country live off-reserve in urban, rural and remote areas. We know this is in large part due to the breakdown of indigenous families through residential schools, child welfare interventions, incarceration and other forms of institutionalization.

The impetus for this legislation came in part from first nations communities and the tireless advocacy of the First Nations Child and Family Caring Society of Canada. By expanding the purview of this legislation to include off-reserve first nations, Métis and Inuit, it seeks to address the needs of peoples who are constituents of the Congress of Aboriginal Peoples.

I would now like to outline CAP’s position on Bill C-92.

Overall, we know the child welfare system in Canada is broken, and this legislation risks replicating some of these failures. We fear the child welfare system, in its current form, will be forced on indigenous communities and expect a different result. We need to rebuild the way in which we deliver child welfare programs and services prior to the downloading of responsibility. This transfer should not be the end of the state's responsibility to our children, families and communities.

We support our people’s ability to govern their own child welfare systems and want to ensure they are supported to address the challenges that come with this. This legislation should not be a way to transfer the burden of intergenerational colonialism back onto indigenous communities. Without proper funding and an awareness of the political, economic and social context, this legislation cannot permit full indigenous control.

Here are CAP’s specific concerns in regard to the proposed legislation:

Subclause 9(1) and clause 10 refer to the concept of the “best interests of the child”. This concept is deeply rooted in the colonial system and reflects a non-indigenous understanding of community, family and the place of an individual in society.

We see an inherent tension between the rights of the child as an individual as defined by the state and the collective rights of indigenous peoples. A child is part of an ancestral lineage, with complex relations, and is the future of the community. We believe that legislation should allow indigenous communities to determine the definition and limits of the best interests of the child.

● (1100)

Clarification is needed of the government's definition of an indigenous governing body. It is currently defined as a council, government or other entity that is authorized to act on behalf of an indigenous group, community or people who hold rights recognized and affirmed by section 35 of the Constitution Act of 1982. We request clarification as to whether urban indigenous organizations and service providers are considered governing bodies. Who invests these organizations with authority, and who will provide services for all indigenous people in urban settings?

Under clause 15, the legislation addresses socio-economic considerations. Children are at risk most often because of colonial policies, systemic discrimination, and intergenerational trauma. Every effort must be made by all levels of government to ensure that communities and families are supported in ensuring the well-being of children prior to such interventions as the apprehension of children.

This legislation should not force the consequences of colonialism upon indigenous child welfare providers. The government must be required to redress the root causes of the degradation of indigenous communities and child vulnerability before child welfare services are even considered. Legislation should require the government to provide diversionary services for communities and families.

Subclause 18(1) of the bill establishes the potential for indigenous governing bodies to have an opportunity to work with provinces to take over jurisdiction. It is not clear what the implications are for the non-status, off-reserve people and Métis with origins across Canada. For example, for a Métis child living in the Ottawa area, what are the implications if the child and their family are not registered members of the MNC and belong to an urban indigenous community? Will they be afforded adequate, appropriate and culturally responsive child and family services?

It is also unclear whether jurisdictional challenges will be created between provincial-territorial service providers and indigenous governing bodies for non-affiliated families, and how these will be addressed. Clear procedural requirements for the referral of off-reserve, non-status first nations, Métis and Inuit children and families to appropriate indigenous child welfare agencies should be outlined in this legislation.

Lastly, there are no clear obligations for dedicated funding to meet current gaps for off-reserve, non-status, and Métis populations in the bill. A number of funding concerns must be directly addressed with the legislation, such as commitments for indigenous organizations to develop child welfare legislation, expertise and resources; for kinship care arrangements, including comprehensive support beyond monthly allowances; for off-reserve resources for first nations, Métis and Inuit child and family service providers who are in the process of developing resources within their community; and for first nations, Métis and Inuit child and family service providers to provide continuous care and services to children and families who relocate and to maintain continuity of care through supported arrangements with other child and family service providers.

We cannot underestimate the degree to which the child welfare system has negatively impacted CAP's constituency.

In closing, I would like to inform you that CAP and our 10 affiliates were not included in the co-development process of this bill. CAP's exclusion from this process is a critical oversight, because the legislation appears to seek to address the needs of the people who are our constituents: off-reserve first nations, Métis and Inuit.

● (1105)

I am happy to answer any questions you have at this time.

Meegwetch. Thank you very much.

The Chair: Now we move to our second presenter, Ms. Cindy Blackstock.

Dr. Cindy Blackstock (Executive Director, First Nations Child and Family Caring Society of Canada): Thank you, committee members. I as well offer my recognition of the unceded territories of the Algonquin peoples.

I'd also like to begin by recognizing Jordan River Anderson, who will be honoured on what we call Bear Witness Day on May 10. I hope that all parliamentarians will join us in honouring that very special boy who left a legacy that is now beginning to be experienced by many children across Canada.

I am not a rights holder and therefore will not be offering one way or the other to support or not support this bill, but I am a social worker. I'm a licensed social worker and I've been doing social work for over 30 years. I've worked at the child and family caring society, which is a national first nations organization that seeks to provide the best expert advice and, in the case of the Canadian Human Rights Tribunal, the resources necessary for first nations to be able to care for their children in the ways they choose.

I want to begin by focusing on two elements. One is the funding element that's not in this bill. I want to argue that it is a false dichotomy to split jurisdiction and funding, and that it is a huge mistake to split them. I'm not going to ask parliamentarians to put a number in this bill, but I am going to encourage you to enshrine in the bill the funding principles that have been found by the Canadian Human Rights Tribunal as a requirement for funding.

The second thing I want to talk about is practice. I want to encourage members to relook at some of the issues on practice, including the word “apprehension”. It really is a dated word. It is not in the B.C. legislation. It's not in the Ontario legislation. It's not in the Nova Scotia legislation. It's certainly not used by those of us who have been practising in this field for many years.

Before I get into that, I'm going to address a couple of the points from the federal government. The minister was asked about the Spirit Bear plan that would address all inequalities in all public services for first nations children, youth and families, and he noted that he does not listen to associations or does not consult with associations. While I respect that position, I just want to correct for the record that all the chiefs at the Assembly of First Nations adopted the Spirit Bear plan in December 2017. The resolution number is 92. This is something that is supported by the rights holders as an important effort to be able to equalize the ability of families to access services.

I also want to talk briefly about post-majority care. Post-majority care is not an elective activity. It is a statutory requirement of child welfare systems, and I would say that it's a moral responsibility too. Children who have grown up in child welfare care need that bridging into young adulthood, with supports for post-secondary education, training and mental health services. I have been blessed and honoured to work with first nations for about 25 years directly, and I've never heard a first nation say that post-majority services should not happen. I heard the minister and the officials talk about the engagement they've had, so I'm surprised that there's still some question of whether post-majority services should be included. I support the youth in care network in saying that they should be included.

I want to move on to my main presentation now.

In paragraph 212 of the landmark Canadian Human Rights Tribunal decision that found Canada to be funding child welfare inequitably and Canada's failure to implement Jordan's principle to be discriminatory, they referenced a statement made by then deputy minister Michael Wernick, who at the time was the deputy minister for INAC, in 2012. He was speaking to an Auditor General's report that found the inequality in first nations child welfare. He said something that I think is directly relevant to the funding question. I'm just going to read that short paragraph. He said that “One of the really important parts of the Auditor General's report is that it shows there are four missing conditions.” In a previous paragraph, he listed those: “legislative base, service levels, outcomes the government's trying to achieve” and “the funding mechanism”. To continue with the quote:

> You could pick any one of them, such as legislation without funding, or funding without legislation, and so on. They would have some results, but they would probably, in our view, be temporary. If you want enduring, structural changes, it's the combination of these tools.

He added:

> With all due respect, if Parliament wants better results, it has to provide better tools.

● (1110)

Michael Wernick himself, who was Clerk of the Privy Council for this government until recently, was tying together the issue of funding and legislation. One is the authority to act on your own self-governing interests for your children. The other enables that interest to be real for children.

I feel that Bill C-92, unamended, as it's presented, places first nations in a Faustian bargain, where either we take a flawed bill without funding and maybe the hope of funding, or risk the window of opportunity closing and perhaps being nailed shut. The inherent rights of first nations and the safety and well-being of first nations children, youth and their families ought never to be placed in this position. Proper observance of UNDRIP and the Charter of Rights and Freedoms requires more of the federal government. I think we can all agree that what we want to achieve here is the best for first nations, Métis and Inuit children, and that mediocre is one of the vestiges of colonialism.

I'm not going to spend much on jurisdiction because I know you're going to be calling the Yellowhead Institute, and they've done a good analysis, with five leading law professors on that. I would simply say that the caring society adopts those positions. We are of course in support of first nations jurisdiction in child welfare, but we do have some concerns about the wording of the bill in that regard.

I'm going to move now to funding. As drafted, the bill simply recognizes a call for funding. That's it. It then says in the collaboration section that first nations should sit down with the federal government and the provinces to negotiate a funding agreement within one year. If that agreement is unable to be reached, the first nations law becomes law. The problem is that you will not be able to enact that law without money.

Along with the Assembly of First Nations, I have spent the last 12 years litigating against Canada in trying to get equitable funding for child welfare. We were at the Canadian Human Rights Tribunal last week. We're going to be at the Canadian Human Rights Tribunal next week. What we're trying to do is get equitable funding for child welfare. We now have the strength of seven—perhaps even eight—legal orders against the Canadian government to try to get equitable funding for first nations child welfare.

There's little track record there to say that we can hope these negotiations will be speedy and will result in the same kinds of equitable gains that the tribunal has set out. What we would like to see is that Canada put in the binding sections of the act, not just the preamble, the key principles that the Canadian Human Rights Tribunal has set out as funding requirements.

The first one is substantive equality. The tribunal has made clear that it's not enough, Canada, to fund first nations children on a dollar-to-dollar basis with non-indigenous children, because the hardships of the long-standing inequalities in child welfare funding have created a higher need, along with the multi-generational harms of first nations kids. You need to provide those kids with more money to get the same opportunity.

The second one is the needs of the children and families themselves in different communities. You know well, as you come from different constituencies, that different first nations children in different communities will have unique needs. It should be based on that, on the best interests of the child, not from a colonial point of view, but in adopting the general comment by the United Nations Committee on the Rights of the Child for the rights of indigenous children. That provides a good framework for interpreting best interests through an indigenous lens, taking full account of the child's cultural and linguistic needs and taking full account of the unique context of the community. Those are basic principles that should be enshrined in Bill C-92.

I'd also ask members to seriously consider integrating something along with the Spirit Bear plan. Absent the Spirit Bear plan, I think it's going to moot some of the most significant sections of this legislation. Here's why.

This bill includes a section on socio-economic circumstances. It says that you cannot remove any child because of poverty, but the problem is that you can't remove a child for poverty today in Canada. It's in none of the child welfare legislation. Poverty isn't a reason for child removal; it is an undercurrent for child removal. In the United States, in 21 U.S. states and the District of Columbia, they do recognize the role of poverty in child welfare. They have statutory language that addresses it, but they go further. It's not enough to say that poverty is an undercurrent in child welfare. They impose positive obligations on the state to remediate that poverty.

● (1115)

If you implement Bill C-92 but continue to allow the first nations housing crisis to languish and continue to allow underfunding of early childhood programs and of addictions programs, some first nations will be able to make some progress but not the type of progress that is really necessary to be able to enhance and make sure that children are thriving in their environments.

The other section that is important is the prenatal section. I know that was of interest to member McLeod specifically. We absolutely support the importance of prenatal care, but we need to make sure that is universally available to all family members. That's one of the critical pieces.

The Chair: You are out of time.

Dr. Cindy Blackstock: I understand that my time is up. I am open to any type of questions.

The Chair: Very good. Thank you so much.

Questioning will open with MP Yves Robillard.

● (1120)

[*Translation*]

Mr. Yves Robillard: Thank you for your presentation.

My first question is for National Chief Robert Bertrand.

In a new child and family services model, would you prefer that funding be set out in the bill in advance, or should funding be based on community needs and determined in coordination with the federal and provincial governments?

National Chief Robert Bertrand: It's quite difficult to determine the amount required if we don't know the needs.

The second way that you mentioned would be the most logical way to proceed with this bill. That said, I stated at the very beginning that 70% of indigenous people now live off reserve. We must approach these people and determine their needs with regard to children.

When we read this bill, we can see that some parts are missing. Some groups were consulted, and this point was mentioned this morning. However, I can assure you that the vast majority of people weren't consulted. I sincerely believe that the people living off reserve should be consulted in order to obtain a good overview of the issue.

Mr. Yves Robillard: Okay.

National Chief Robert Bertrand: I hope that I answered your question, Mr. Robillard.

Mr. Yves Robillard: Yes. Thank you.

Ms. Blackstock, do the national minimum standards set out meet the needs of first nations, Inuit and Métis children in the child and family services system?

[*English*]

Dr. Cindy Blackstock: We have proposed a blackline version, which I believe members have a copy of, where we have suggested some enhanced wording for the bill. That was something I had referred to you for our suggestions about how to improve it in that regard.

The other important piece I would just call to your attention is that although I really recognize the positive aspect of cultural continuity, that is only going to be able to take effect if it's partnered with the funding elements. That's really another thing where the funding needs to be there to ensure that cultural continuity takes place, particularly for children who were separated from their families through residential schools, the sixties scoop or now through the child welfare system, who are now adults and need to reunify back with their families and back within their community.

[*Translation*]

Mr. Yves Robillard: Senator Murray Sinclair described the co-development process surrounding this bill as a model for implementing the Truth and Reconciliation Commission's calls to action.

Can you elaborate on the engagement with regard to this bill?

[*English*]

Dr. Cindy Blackstock: I can only share what my experience has been. I have seen some of the engagement sessions. In every engagement session I've been at, I have heard first nations leadership call for funding for this bill. It's still not in the language of the bill.

Although it's good that government went out and met with people, it's really important to understand that even when consistent messages have been given, not just in this engagement section but in the case of first nations dating back decades, sometimes that has not translated into the text of the bill for reasons that we don't understand.

Therefore, it would be really helpful to have an understanding of how that information was collected at the engagement sessions, how the people were identified to be engaged with, and then how that information was synthesized. Indeed, who made the decision about what to include and not?

[*Translation*]

Mr. Yves Robillard: Ms.—

[*English*]

The Chair: Are you done? Would you like to share?

Mr. Yves Robillard: Do I still have time?

● (1125)

The Chair: You still have two minutes.

[*Translation*]

Mr. Yves Robillard: Okay.

National Chief Robert Bertrand: Can I also answer that question?

Mr. Yves Robillard: Of course.

National Chief Robert Bertrand: I wish that I could have told you this morning what I heard at those meetings. However, unfortunately, the Congress of Aboriginal Peoples was never consulted. We were never asked for our opinion on the bill. We have 10 affiliated organizations across Canada. These organizations represent indigenous people living off reserve. I find it somewhat deplorable that the federal government hasn't consulted the Congress of Aboriginal Peoples or its affiliated organizations. These organizations are found in all Canadian provinces, from coast to coast to coast.

If we had been consulted, I could have told you the needs and wishes of our members. However, unfortunately, we weren't consulted. I find this very unfortunate, Mr. Robillard.

Mr. Yves Robillard: Thank you.

[*English*]

The Chair: The questioning now moves to MP Arnold Viersen.

Mr. Arnold Viersen: Thank you you to our guests for being here today.

I guess that sometimes we end up in this weird place where something is put in front of us and we're then asked how we would fix it and that kind of thing. I guess I would just like from all of you basically a thumbs-up or thumbs-down on this bill.

Cindy, you've done amazing work, with 88 amendments or something like that, but that doesn't necessarily go to the fundamentals. If this were the bill to propose, would you have proposed it? Or would you have started out somewhere completely different? I know that's a huge question. I'd basically like just a thumbs-up or thumbs-down on this particular bill.

Cindy, I'll start with you.

Dr. Cindy Blackstock: All right.

Again, I can't make that decision as a rights holder.

Mr. Arnold Viersen: Okay.

Dr. Cindy Blackstock: I know there are first nations who have put their thumbs down, some who have put their thumbs up and some who are saying there need to be major amendments.

Mr. Arnold Viersen: Cindy, your perspective has been interesting for as long as I've been involved in politics and beyond that. You've always had an interesting perspective. Are you willing to take off most of your hats and just as Cindy Blackstock give a thumbs-up or a thumbs-down?

Dr. Cindy Blackstock: What I am prepared to say is that for those amendments we put in there regarding funding, the clarification around the socio-economic conditions so that can be real and the recommendations around changing of jurisdictions, we see those as fundamental for the success of this bill.

Mr. Arnold Viersen: By doing that, you imply this is an appropriate bill to be pursued.

Dr. Cindy Blackstock: I've already gone on the record and have said that I absolutely support the aim of this bill—

Mr. Arnold Viersen: Super.

Dr. Cindy Blackstock:—but I feel that the text is deficient.

Mr. Arnold Viersen: Robert.

National Chief Robert Bertrand: I would have to give it thumbs down because we were never consulted.

I have a few statistics here in front of me. They state that nearly half—49%—of the off-reserve first nations children were in low-income families, compared with 18% of non-aboriginal children. In Manitoba, for instance, 90% of children who are in care are indigenous, amounting to something like 10,550 children. In Saskatchewan, there are 5,930 indigenous children in care. In British Columbia, it is one in five.

There is a deep problem, but I don't think.... It's a wonderful first step, but they've left so much out. They've just scratched the surface. I'm looking at these numbers here. They're finding a solution for just a very small number of cases. It should have been more broad based.... It should have included a lot more people.

Mr. Arnold Viersen: I see that you wear an MP pin, so you know how this place works, to some degree.

National Chief Robert Bertrand: Yes. I just wear it so I don't have to go through security.

Voices: Oh, oh!

Mr. Arnold Viersen: I know how that goes.

I know that in some instances.... I've put private members' bills on the Order Paper, and I've been involved in a number where we'd go out and do a kind of horizon scan and put it on the Order Paper to get the feedback. Is that what's happening with this particular bill?

Given the time to an election, it seems to me that if this were something the government was adamant about, they would have introduced it two and a half years ago. It just seems interesting that we are at this place with this bill in front of us and that those issues around consultation and getting agreements with the provinces aren't in place for this bill at this point. Could you comment on that?

● (1130)

National Chief Robert Bertrand: I don't know why the timing of the bill.... You know, it would have been better, as you say, to have it two or three years before. Everything the government does right now is distinction-based, and if you look at section 35, nothing is said about distinction-based. What the constitution refers to is Indians, Métis and Inuit. There's no such thing as first nations. I mean, it's there—it's the creation of the Canadian government—but it should be more inclusive.

I remember when this government came into power, the main talking point was inclusiveness. At CAP we were so happy to hear these things, but it's inclusive for only certain groups of indigenous people. What we wanted was to make sure that those off reserve, whether they be status or non-status, were also included.

As I'm sure you already know, back in 2016, CAP won a very decisive Supreme Court battle with the Daniels decision, but we haven't seen the federal government move on that decision so far. We did sign, back in December, a political accord. One of the items on the political accord was the ramifications of the Daniels decision, but nothing is moving.

To come back to what you were saying about why they waited this late, I have no idea. I cannot answer that. You'd have to ask the Prime Minister that.

Thank you.

The Chair: We're going to move the questioning to MP Rachel Blaney.

Ms. Rachel Blaney: Thank you, Madam Chair.

I'm going to pass it on to Georgina.

Ms. Georgina Jolibois: Thank you very much.

I'll get right to the point.

The principles of the Human Rights Tribunal, Cindy, are not in the legislation. What do you think are the impacts of those not being in the legislation?

Dr. Cindy Blackstock: I think that could actually potentially roll back the clock for first nations children. Thanks to the tribunal and thanks to the work of first nations across this country, we have, just as of 2018, been receiving funding at actuals for prevention. They are not, I should say, providing any money for capital. That's a problem in itself. We could develop a prevention program and maybe host it in a first nation, but there's no money to build the programs. That's still at litigation.

If these principles are not ingrained in this piece, then there will be a bit of a free-for-all on these funding agreements. That's a concern for me, because I think we're finally making progress thanks to the tribunal's decision.

These principles, I think, should be regardless of political party. Everyone should be able to support these for children. I don't know why it's controversial to include them in the bill, to be frank. I think these are fundamental principles about the way we should be treating any child in Canada.

Ms. Georgina Jolibois: You spoke about the undercurrents of poverty. I often speak about those experiences also, because I see those quite heavily in my riding and throughout Saskatchewan, when I go to the reserves and the Métis communities.

How can we at the national level and the federal government think about that? How can we continue to raise these issues? It's not just about housing and about lifting the boil-water advisories. It's actually about fixing the whole system so that there will be clean drinking water every day for the reserve, and the list goes on.

● (1135)

Dr. Cindy Blackstock: I think that's why the Spirit Bear plan is so essential. One of the things that I think are important to put on the record is that in the 153 years that Canada has been around, there has never been a comprehensive plan to reduce all the inequalities that first nations children, youth and families face. Never.

The Spirit Bear plan was the answer to that. It was to develop a comprehensive plan, almost like the Marshall plan. After the Second World War, for those of you who are World War II buffs, the allies got together and developed a comprehensive plan to rebuild Europe. We say that's exactly what's needed here. We need to create that platform of culturally based equity upon which families and children and youth have an opportunity to thrive.

My goal is to have thriving kids—that's what I want to see—who are proud of who they are and who can grow up in their families and get a good education. I think the Spirit Bear plan is essential to that. Absent a plan, we're going to see the same tendency we've seen for the last more than 153 years. That is governments dealing with the inequalities program by program and drop by drop. That hasn't worked. If we still have inequalities in programs, we need the Sprit Bear plan.

Ms. Rachel Blaney: Thank you so much, Cindy. I want to recognize the amazing work that you've done for so long on behalf of indigenous children. I think when we look at the systems—and I want to bring it back to the Spirit Bear plan, because one of the things talked about in there is where that systemic racism is and to start pulling it out. I think one of the biggest challenges is that, because it is normalized and because it has been for so long, it's really hard to pull that out.

I'm wondering if you can speak to what that would really mean across the board, not only in this legislation but fundamentally in the relationship between indigenous communities and Canada.

Dr. Cindy Blackstock: One of the things we hear about a lot is the commitment to reconciliation. I don't question that. I think that many good people across all political parties and across all walks of life are committed to reconciliation.

But, as you say, the whole construct of discrimination, this bifurcation of Canadian society into the savage and the civilized, which underpins colonialism, is in the DNA of the Canadian government and of the provincial and territorial governments.

When we see the Department of Indian Affairs and its descendants —now Indigenous Services Canada and Crown-Indigenous Relations Canada—continuing to litigate against children at the Canadian Human Rights Tribunal, despite making commitments to implement their calls to action, we have to ask ourselves how we can ventilate these departments in ways that will make that structural racism apparent and in ways that will deal with it. I'm not criticizing individual employees. What I am saying is that it's in the system.

Part of the Spirit Bear plan is to have an independent evaluation of the department done, a 360 evaluation. It's never been done in the history of the country despite its role in residential schools, the sixties scoop and child welfare today. Get that done and then work with departmental officials and with other indigenous peoples and recalibrate the philosophy and the ways of working within the department and more broadly within the Canadian government, and hopefully in provincial and territorial governments too, so that we can recalibrate that relationship.

Unless you have someone coming in from the outside looking at the department.... The department has already proven it cannot reform itself even if it wants to.

Ms. Rachel Blaney: Thank you.

I have only a few seconds, but is there is anything you'd like to add on that issue, Robert? I think she said it very well.

National Chief Robert Bertrand: She is the expert.

Ms. Rachel Blaney: The underlying poverty is something... because it is about supporting the family and there is that need for the extra resources just to get anywhere near equitable.

Thank you.

The Chair: Thank you so much for coming forward and presenting.

I'm sorry, on behalf of all MPs, for the curtailed opportunity to continue our questioning, but we have been called for a vote.

I wish to thank you. *Meegwetch*.

The meeting is suspended.

● (1135)

(Pause)

● (1210)

The Chair: Good afternoon. Welcome to our committee, the Standing Committee on Indigenous and Northern Affairs of Parliament.

We are on the unceded territory of the Algonquin people here in Ottawa. I come from the land of Treaty No.1 and the homeland of the Métis people.

We do that because we always want to remember why we have such critical issues like child and family apprehensions or those in care. The number of indigenous children in care compared with others indicates that we have a systemic problem and Parliament is looking to address these issues.

We want to welcome our experts to the committee. I understand that you're modified. You're going to have three presenters and you are going to have seven minutes each or thereabouts.

If we find that the other panellist comes in time, we'll invite them to join as well. That was a little administration to make this work. We'll get started.

Chief Prosper, do you want to start and then tell us how it's all going to work out?

Chief Paul J. Prosper: Sure. Thank you.

Honourable committee members, good afternoon. *Kwe natuptut*. We're honoured to be here on the traditional lands of the Algonquin people.

My name is Paul Prosper. I am chief of Paqtnkek Mi'kmaw Nation. I am here on behalf of the Assembly of Nova Scotia Mi'kmaq Chiefs, which exists as an institution of governance for all 13 Mi'kmaw bands in Nova Scotia. On behalf of the assembly, I have also held the justice portfolio, during which time I have worked on a number of child welfare-related issues.

The Mi'kmaw traditional territory is called Mi'kma'ki, which encapsulates roughly five of the Atlantic provinces. We have a long, rich history. We have a creation story and numerous legends. Our traditional governance structure is the Sante' Mawio'mi, the Mi'kmaq Grand Council. As Mi'kmaq, we have outstanding and existing aboriginal and treaty rights. They have been recognized by the highest courts in this country. Throughout our long, rich history, which stems from the treaty periods to scalping proclamations to pre- and post-Confederation legislation, including the Indian Act, through to residential schools and to subsequent policies of the federal government through such things as centralization, we are still here. We still thrive within Mi'kma'ki, at times despite the failed good intentions of the federal government.

Before the arrival of Europeans, we existed as independent nations governed by our own customs, values and traditions. We operated through *kisult* or Niskam, our Creator, who provided us with how to live through original instructions as human beings. We have an inherent right to self-government. This is independent of any legislative enactment. This is also embedded within the constitutional framework of this country through section 35.

With respect to Bill C-92, the assembly supports the provisions within this bill that recognize the inherent right to self-government. However, we'd like to underscore some fundamental changes that are needed. These are most predominantly funding and transition-related issues, which my counterparts will get into further.

I'll share a bit about our experience within Nova Scotia. Back in 2014, the Province of Nova Scotia reviewed their Children and Family Services Act. There was a major overhaul of that act. We played an important role within that process with the provincial government. This led to roughly 25 amendments to the Children and Family Services Act that dealt with Mi'kmaw people in Nova Scotia. The act previously had no mention of Mi'kmaw people. We developed an interim approach and a long-term approach. The interim approach was to gain some recognition through the provincial act. The long-term approach was for a Mi'kmaw law over Mi'kmaw children, certainly consistent with this bill.

Through those amendments that we achieved in 2017, we have had positive outcomes. For example, there are fewer foster care placements and more within the area of customary care. We have recognized family group conferencing, which exists as a preventative measure through Mi'kmaw traditions, allowing us to take into account an existing situation before it gets to the point of no return. Saying this, however, we are cognizant of the fact that we certainly don't want this federal bill to interfere with the substantive gains we have made provincially.

With respect to my experience, I would just make a note about connection and the role of community. As leaders and chiefs, we often get tired of watching children, families and communities get torn apart by a system that doesn't work.

● (1215)

Certainly in my role, we recognize the need to have basic building blocks, including identity, culture, language and traditions, related to the spirit and well-being of our peoples and of nations. There's a need for connecting and belonging, which is a basic right for community members to live in health and in safe environments. We recognize that the solutions to the problems we have with child welfare must come from within. To resolve these issues they must come from our respective communities.

A certain environment has to exist, because we all know too well that at times provincial laws and policies don't reflect the realities within our communities. We recognize that self-government can provide a mechanism that offers traditional and practical ways to care for children and families, and certainly there are a number of examples in that regard.

As a quick note on funding and transition, we recognize that legislation in and of itself does not really create the change that is needed. There have to be additional approaches involving education, capacity building, governance, infrastructure, stable funding and building relationships within an overall strategic justice initiative.

With that, I'd like to conclude and offer comments from my colleagues here.

Thank you.

● (1220)

The Chair: All right.

You have seven minutes, Ms. Cox. Go ahead.

Ms. Jennifer Cox (Barrister and Solicitor and Project Lead, Enhanced Child Family Initiative, Kwilmu'kw Maw-klusuaqn): My name is Jennifer Cox. I am a Mi'kmaw lawyer. I've been working in the province of Nova Scotia, although I worked for a number of years in the province of Saskatchewan as well. It will be 24 years this June that I first started practising law.

I've done a lot of work in the area of child welfare. In fact, Mr. Morris and I would be on the opposite side of the child welfare file. Part of what we want to share with you today is not only our comments on Bill C-92 but also our experiences in that relationship building. You wouldn't normally see lawyers who are on the opposite side of a case working together, but we have formed those relationships and have been able to make some of the changes we now see in Nova Scotia based on those relationships.

My submissions to the committee are with respect to the substantive provisions of Bill C-92. We did prepare a brief and submit it. Unfortunately, it hasn't been translated, so you don't have it before you.

As the chief indicated, the instructions I have are that we are supportive of Bill C-92, but there are some suggestions for change. Based on our experience in Nova Scotia with the legislative changes there, we're not unaware of the fact that these things happen very quickly, with very little opportunity to participate in the process. To some degree, I think, the committee needs to take that into consideration when you're looking at the motivations behind the government bringing this forward in such a short window. It's definitely difficult for us to participate with not a lot of time, but at the same time, it is not atypical of government to bring it forward and try to push it through.

In Nova Scotia, when we dealt with the changes in the legislation, it was very quick. We had a couple of months. We did the best we could. We came forward with some suggestions. Some of those suggestions led to some really positive changes, which my friend Mr. Morris will talk about in terms of the level of kids in care, with things going down and much more positive outcomes for families.

It's because of the relationships. Because we have one agency in the province, we have a good relationship with the Province of Nova Scotia. We have the Assembly of Nova Scotia Mi'kmaq Chiefs and obviously a good champion with Chief Prosper. There are a lot of pieces to the success story we have in Nova Scotia. It isn't just based on legislation.

I'll get into the substantive provisions of the legislation that we see needing to be looked at. Too, I think it's important for the committee to note that we don't see this as co-drafted. Bill C-92 was not something on which we had anything other than one opportunity. There was an engagement session in October of 2018, but we don't see this as co-drafting. As I already indicated, I also do not see legislation as being the only agent of change. There will have to be the relationships, the funding, the infrastructure, the transition and all of these other things.

We're asking that funding provisions be added to the preamble. I think the word “need” needs to be substituted for “call”. Again, all of these substantive provisions will be provided to you so that you can look at the written text. We're asking that the provisions from the preamble be brought into clause 18 as well. Those are the jurisdiction provisions. We're not asking for changes in wording, other than inserting the word “need”; we're using the preamble language that the Government of Canada has already put forward.

We're asking that paragraph 20(2)(c) also include provisions with respect to funding principles—not formulas, just principles. If those funding principles are not included in the legislation, it makes it very difficult for us to negotiate those coordination agreements.

We're asking that in subclause 18(1), the United Nations declaration on indigenous peoples also be included as a recognition tool. So this subclause would mention not only section 35 of the Constitution Act but also the United Nations Declaration on the Rights of Indigenous Peoples.

We're asking that Jordan's principle be specifically mentioned in paragraph 9(3)(e).

We have some suggestions on the best interests of the child in subclause 10(3) that will allow some space for the inherent indigenous legal and community standards. That's a fairly important piece of the bill. I think it's really important to give indigenous communities some space to allow for their own community standards and traditions to be interpreted while their own legislation is being drafted.

● (1225)

A lot of these provisions won't be applied if they have their own legislation, but in the meantime, there's going to be a transition period and there should be some opportunity to allow for those inherent legal and community standards to come into play.

Paragraph 10(3)(g) we have concerns about. I think, quite frankly, it's in the wrong place. Normally in provincial legislation you see family violence as a reason to remove children, not in a "best interests" section. We are recommending that it be deleted because it may very well confuse people.

The definition of "care provider" unfortunately appears to include allowing foster parents to have standing in a legal proceeding. That's not normally what we see. In fact, provinces and territories in Canada, except Manitoba, do not permit foster parents to have standing in a legal proceeding. There are lots of problems and delays caused by that. Those are our concerns with the definition, and we have provided you with specific wording to amend that.

A voice: Which section is that?

Ms. Jennifer Cox: It's the definition of "care provider", so it's in the definition section. We've proposed specific suggestions to change that.

On subclause 31(1), the five-year review provision, we're asking that you consider making that three years instead because there are a number of different things that have to be looked at here.

We've given you some suggestions with respect to the notice provisions, clause 12. We have a band notice in our form that has been co-developed by the Province of Nova Scotia. We've provided you copies of both the notice and the response that the bands can complete. We think those might be helpful in terms of clause 12 and what we can do when we're given an opportunity to participate. The Province of Nova Scotia and the family courts in Nova Scotia did give us an opportunity to participate in that type of process, and that's the work we are able to do when we work together.

Those are my comments.

The Chair: Mr. Paul Morris, go ahead for seven minutes.

Mr. Paul Morris (Lead Counsel, Mi'kmaw Family and Children's Services of Nova Scotia): Thank you, Chair, and thank you to the committee for inviting me at the last minute and allowing me to join the panel.

I have practised in the area of child protection for 20 years. I've been in-house legal counsel with Mi'kmaw Family for the last three and a half years. It was my primary client prior to going in-house.

I guess one of the reasons why the chief asked me to come along today and join the panel is to talk a bit about some of the changes that have been made, because in Nova Scotia there are the amendments to the legislation that have happened, which are significant and important, but they just happened on March 1, 2017. This is at the beginning stages in terms of what that means for change, but certainly, in the 20 years that I have been involved with litigating child protection matters, I've seen a change within the agency in Nova Scotia.

For those who aren't aware, when I refer to "the agency", Nova Scotia has an organization called the Mi'kmaw Family and Children's Services, through a tripartite agreement of the province, the federal government and the 13 chiefs. They provide all family and children's services for the Mi'kmaw who reside within the geographical communities within Nova Scotia. It is a situation in Nova Scotia where there is an existing agency that provides child protection; however, they currently are providing that service under a provincial mandate. We don't have a separate policy manual. We operate under the Province of Nova Scotia's child protection manual.

Initially, certainly when I started doing this, this was something that was fairly rigid in terms of how it was applied and often would result in more significant interventions taking place, resulting in more taking-into-cares occurring. Much of this had to do with looking at extended family placements and the policies that were in place in terms of having checks done in advance before children could be placed with families, and in terms of having situations where, even if there had been no issues over the last five years with children living in that home, there was a criminal conviction from seven years ago and that person couldn't be considered an extended family placement for children who couldn't remain with other family.

One of the things we have seen without the legislation was that the province worked co-operatively with our agency to do representations to INAC or the organization that preceded INAC to obtain funding, because our agency was underfunded. The number of case files per worker was well beyond the provincial average. Our workforce was substantially increased, and this resulted in an ability for the agency to begin, I think, to provide less intrusive and more and better service to the families they served. It allowed workers the opportunity to take the time to locate and explore family placements before taking children into care. When I say "time", often that's just three or four hours, or an afternoon. That's taking place now, instead of intervention happening quickly, children being placed in care and then having a long, laborious process to clear placements to allow the children to go home.

The practices and policies in place changed how child protection services were delivered, how children and family services were delivered within the communities. When I started doing this in the late 1990s or early 2000s, the majority of files that I was going to court on were temporary care and custody files. Children had been taken into care and the agency would be providing services to address those issues before the children could go home. If it was going to be for a longer period of time, it would be weeks to months before family placements could be approved. Once the workforce was increased, the funding was increased and the level of service was increased, the agency was able to focus on how we could better meet the needs of the families and children we served, find a way to keep children with their families and their communities, and try to reduce the number of removals.

I did tally the numbers. I don't have the numbers from when I started out, because I was one of the junior lawyers working on the files that the lawyer I was working with would assign.

● (1230)

When I tallied the numbers last year, 49% of our files were supervision orders, which means the children are still with one of the parents or both of the parents. Twenty-six per cent were customary care supervisory orders, which means the children were not taken into care but placed with extended family, someone else within the family of the children. Thirteen per cent of kids who were taken into care were in kinship placements. Again, typically, this would have surrounded a funding issue of some sort, where we would have extended family who couldn't afford to care for the children under a supervisory order because there was no funding associated with supervisory orders; you only receive funding if the kids are taken into care. Then, last year we had 12% who were in true, temporary care, in foster homes without family.

It was almost a complete reversal from 20 years prior, when I started doing this, at which time 75% to 85% of my files were temporary care and custody. Now, 75% are family placements with half of the temporary care and custody placements being with family.

We do see this as an opportunity with the rights recognition. The funding piece is going to be key, because it's the provision of services to the families that will effect the real change for families. That can be done through policy as well as legislation.

I think I'm at my seven minutes, so I'll wrap it up there.

I think the main reason I was asked to join the group today was to provide some of that information.

Thank you very much.

● (1235)

The Chair: Thank you.

I'd like to give special recognition to Duane Smith, chair and chief executive officer of Inuvialuit Regional Corporation.

You have taken a position to come a little bit early, and we've put you with this panel. We really appreciate that.

We offer you the full 10 minutes, if you would like, to present.

Mr. Duane Smith (Chair and Chief Executive Officer, Inuvialuit Regional Corporation): Thank you, Madam Chair and committee. I apologize to the others here for crashing their presentation, but I thank you for the opportunity first of all.

I will try to be as brief as I can. Some of my opening comments I sent to you a few weeks ago. I didn't realize it was the same committee that I would be speaking to on different matters.

As the chair has noted, my name is Duane Smith. My English name anyway is Duane Smith. I am the chair and CEO of Inuvialuit Regional Corporation, which represents the very far northwest of Canada bordering Alaska. The area I represent is just under one million square kilometres, two-thirds of that being a water body.

I will cut to the chase on some matters so I can spend some time on some points. As you're aware already, we signed an agreement—when I say we, I mean Canada and us—for us to implement the arrangements we had under the agreement together, which is called the Inuvialuit Final Agreement, back in 1984. It's the second-oldest modern-day treaty we have within Canada.

As I've said and I will reiterate again, the IFA belongs not only to the Inuvialuit but to Canada as well. That's partly why I'm pleased to be sitting before you today, because we have to work together with Canada on issues such as the one I'm here to talk about, on how we can improve and implement our obligations under that treaty.

The ISR itself has six communities. I will skip over parts of it. I do apologize to the interpreters since I'm cutting and pasting because I have been injected into this section here. We do have roughly 6,300 or 6,400 Inuvialuit scattered across the country, mostly within our region.

Before I get into the part about supporting Inuvialuit children, I will mention that I was sitting in the back listening to the Mi'kmaw presentation. I can't state enough my support for the comments and the recommendations they have made to date, because I've heard similar recommendations from other parties including other Inuit organizations.

I would like to turn to some of the things we have been doing to try to support our children, youth and families in the ISR, as it's referred to, or the Inuvialuit Settlement Region. One of the three principal objectives of the IFA is to preserve Inuvialuit cultural identity and values within a changing northern society. Healthy families and communities in which children and youth feel included and supported are essential to the preservation of cultural identity and values.

As most of you may know, since 2014 the Auditor General of Canada has identified serious deficiencies in the delivery of child and family services in the Northwest Territories and in the structures intended to support this delivery. These findings disproportionately impact indigenous children in the territory as over 90% of the children in care are indigenous. At that time, the Auditor General also said that this government could not even identify where some of these children were located.

Then last year, in 2018, the Auditor General did another report. The basic findings were that it was actually getting worse. I don't know how it could possibly get too much worse than having the government not even able to identify where some of these kids were being kept in custody, but now it's getting worse.

IRC has been doing what we can to manage these deficiencies so that our kids do not fall through the cracks.

One example of that is that we provide what we call student and family support workers. The SFSWs were identified as a need in order for schools to connect with families and communities, and I made it a priority when I was first elected in 2016. We use the funds we receive to maintain one staff person for each community. These individuals work out of the schools and provide assistance to students and families of students to ensure that Inuvialuit kids are getting to school and are supported through their school years.

● (1240)

In another example, since I became chair, we have been trying to work with territorial and provincial governments to ensure that children who become government wards or who are adopted into non-Inuvialuit families get a chance to register and ultimately enrol with us. In some cases, Inuvialuit children are removed from their families and sent to places from where it is very difficult and expensive to return to the ISR.

Once we find the child in the system, we try to reach out and provide materials about our three Inuvialuktun dialects, the history of the region and traditional activities. When our records show that a child is about to turn 18, we ensure they have the forms they need to apply to the Inuvialuit Trust. Our staff remains on hand to offer any guardian who wants to know more about the IRC, the ISR and our Inuvialuit communities.

I'll digress again for a moment here just so you understand the government system where a child who turns 18 is put into a hotel for a period of time and then left on their own after that to look after themselves without being given the basic skills to do so. We do have a problem here.

Before Minister Philpott's emergency meeting and the attention that the development of Bill C-92 brought to the issues facing indigenous children, youth and families, it was very difficult to get traction with some provincial and territorial governments. While individual staff members were well meaning, the framework for involving Inuvialuit organizations and sharing information was weak.

Bill C-92 is not perfect, but it is an important step. In our case, we hope that it will provide guidance to the Government of the Northwest Territories as it sorts through the many increasing deficiencies that the Auditor General has identified.

In terms of comments on the bill, I'll turn now to a couple of key elements.

As noted earlier, the transmission of our culture and language, as well as knowledge of and appreciation for our region, are key to preserving Inuvialuit cultural identity and values within a changing northern society. The principles under clause 9 of the bill give appropriate weight to these things. In particular, we see paragraph 9 (3)(d), which acknowledges a role for indigenous organizations, as essential.

Clause 12 of the bill, which requires the service provider to provide notice of a measure to the child's parent and the care provider, as well as to the indigenous governing body that acts on behalf of the indigenous group, will greatly benefit the work that we are trying to do on behalf of Inuvialuit children wherever they are.

With this clause, I would note that the implementing regulations are going to be important. My staff tells me that an obstacle in getting information to indigenous organizations is the intake procedures of the responsible jurisdiction. In some provinces, Inuit did not even have a check box that the social worker could mark. All kids are simply “first nation”, so we have a branding problem here. The categorization of indigenous children within the various databases will have to be done on a more granular basis. This is the only way that social workers will be able to connect the child with the relevant indigenous organization so that notice can be provided.

Clause 16 of the bill addresses the priorities considered in the placement of children. Because of our remote location within Canada and the difficulty children have in visiting their home community once removed, Inuvialuit would like to see some priority placed on geographic proximity of the placements. If this is not possible, we would like to see some provision for maintaining the connection between the child and the home community or region.

● (1245)

As a final comment, as we are working through some challenges in our self-government negotiations, we note the importance of the coordination agreement provisions under clause 20 of the bill. These provisions would allow the IRC to request a coordination agreement with government in relation to the exercise of the legislative authority on, first, the provision of emergency services to ensure the safety, security and well-being of indigenous children; second, support measures to enable indigenous children to exercise their rights effectively; third, fiscal arrangements related to the effective exercise of the legislative authority; and, last, any other coordination measure related to the effective exercise of the legislative authority.

The ability to exercise our traditional governance over child and family services, as it is called in this modern age, is key to ensuring our children have a sense of identity and belonging.

In conclusion, we look forward to working with the federal government on the development of the regulations that will help implement this act when it comes into force.

Thanks for your attention and interest. I am happy to take questions.

Nakurmiik.

The Chair: We will now move on to the question period, starting with MP Dan Vandal.

Mr. Dan Vandal (Saint Boniface—Saint Vital, Lib.): Thank you very much.

Thank you, all of you, for your fine presentations, and welcome to Ottawa.

My first question will be directed right to Duane Smith because he's the freshest in my mind.

Generally, I think you said that it's not a perfect bill, but you're supportive of the bill. My question to you is who currently administers child welfare in your territory. Is it the federal government?

Mr. Duane Smith: No. We're a territory, so it's the Government of the Northwest Territories.

Mr. Dan Vandal: Okay. You've made your point quite clearly. For some reason, I didn't get that. I'm sure you mentioned it, but I didn't hear it.

Chief Prosper, I understand you were on the AFN's legislative working group that worked on this legislation. Is that correct, and if it is, can you tell me what that was like?

Chief Paul J. Prosper: Yes, I was a member appointed by the assembly to sit on the legislative working group. As I understand it, it's a group of aboriginal representatives, first nation representatives from across the country. We had some meetings to collectively discuss the bill.

I'd like to echo the comments by Ms. Cox, in the sense that it wasn't a joint exercise in terms of co-drafting. In terms of the input with respect to the bill, there was a meeting at which issues were brought forward constructively to various government representatives, and that was pretty well it from my understanding.

I think Ms. Cox, who is a member of that same group, might be able to provide further details.

Mr. Dan Vandal: Ms. Cox, you were in the group as well?

Ms. Jennifer Cox: I was, yes.

Mr. Dan Vandal: Can you tell us a bit more about the process?

Ms. Jennifer Cox: It was, basically, the best we could do in the short timelines we had. We were dealing with everybody, bringing everybody together, and sharing information. Everybody put forward their positions on what they felt the drafting instructions should be for Bill C-92, and once the consultation bill was provided, we were given approximately a week. It was given to us before it was tabled, and we had approximately a week to look at it.

It was the best we could do. We had a very short period of time. It was, I suppose, fairly effective given the short amount of time we had.

● (1250)

Mr. Dan Vandal: I believe all three of you—Ms. Cox, Chief Prosper and Paul Morris—have identified funding as an issue. The rationale, what we're hearing from the department, is that we are trying to essentially redesign the child welfare system and that to identify funding right now would perhaps be premature and that, rather, we should see what sorts of models come out.

My question, I guess, is to all of you. When you say "funding", are you talking about precise dollar figures or are you saying that funding principles should be embedded in the bill, if that's your suggestion? I'll go to the chief first.

Chief Paul J. Prosper: My understanding is yes, it's not a definitive amount but more or less funding principles to help guide, later, the provision of adequate services and programming.

Mr. Dan Vandal: Paul, do you want to add something?

Mr. Paul Morris: No, I agree with the chief's comments on that. I don't think putting a number in the legislation would be a good idea. I think that formulas are somewhat concerning as well. I think the key piece is ensuring that there is that clear obligation that funding will be provided so that we don't end up with a provision that's providing for a service that people can't provide.

Ms. Jennifer Cox: It's unfortunate that you don't have the brief. We've actually made suggestions as to the wording. We're just pulling the wording from the preamble on the funding provisions into the actual body of the bill. It is just the principles primarily from the Canadian human rights decision of sustainable equality. It's just the principles. We're not looking for anything specific, but because there's nothing in the body of the bill that speaks specifically to the funding itself, this is what our concern is.

Mr. Dan Vandal: Okay.

All three of you have also mentioned the new legislation brought in by the province. It sounds like it's been a positive initiative. Could you talk about the role of the province in this legislation and how you see that unfolding? Do you have any thoughts on that?

Chief Paul J. Prosper: As mentioned earlier within my opening comments, I believe we have a good working relationship with the province, which helped facilitate the process we went through with the Children and Family Services Act. We had discussions with the province prior to coming to this committee. Those relationships still continue. Basically what we are quite mindful of is some of the gains we made provincially through provincial legislation. There are some areas within this bill that will impact that. We're prepared to outline those issues, and we have outlined them, but that's one of the concerns we wanted to share.

The Chair: We need to move questioning now to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you. Thank you to all the witnesses. I have a lot of different lines of questioning but I do want to pick up on what you just said, Chief Prosper.

What areas might create challenges? We all know that different provinces are in very different positions. What in this bill might create a challenge in terms of your current relationship with the provincial government?

Chief Paul J. Prosper: Thank you for that. Perhaps I can defer to Mr. Morris who certainly can articulate that better than me.

Mr. Paul Morris: I don't necessarily see it as creating a difficulty between us and the province. The concern that I think we see is that we have in the amendments the notice to bands that's being provided. When our agency starts an application, I notify the band that we're intervening: this is the type of intervention and this is who the child is being placed with.

I see in the federal legislation that there's going to be notice provided but no identifying information. I'm trying to equate how I put the band in a position to step in and start to assist. In a lot of cases, when we provide that notice to the band, the band can reach out to the family and find out if it's a housing or financial issue, those types of things, to begin to intervene. That's just one thing that is of a concerning nature.

The other was mentioned by Ms. Cox about the definition of "care provider". The legislation in Nova Scotia currently clearly outlines that a foster parent is not a party to a proceeding. The goal is addressing the protection issue and transitioning the child back to the original caregiver, back to the family member.

When that issue has been addressed to the satisfaction of the agency, the family and the court, we're concerned if a foster parent under that "care provider" definition would suddenly have standing, as we've heard that's an issue in other provinces that don't have legislation that says a foster parent will not be a party in those proceedings.

Those would be two examples of things that would be concerning, where this legislation would take priority wherever it conflicts with provincial legislation.

● (1255)

Mrs. Cathy McLeod: Thank you.

You said, I think, that the jurisdiction is in geographical communities. Is that only on reserve, or is it the whole...?

Mr. Paul Morris: It's on reserve.

Mrs. Cathy McLeod: Would you see an enabling opportunity under this legislation to allow some work off reserve? Is that potentially a possibility?

Mr. Paul Morris: I think the long-term goal of the initiative that's going forward in Nova Scotia is for that to be the case, and this would get back to the funding and manpower issue, as we currently have the manpower to deal with it only on reserve.

About half of the Mi'kmaq population, I think, live off reserve. Geographically I don't think it's an issue, because we are all over the province anyway, so it's not that we're relying on the Department of Community Services for the Province of Nova Scotia geographically. The issue would be the number of files and that sort of thing.

We'd have to ensure that we have funding to grow the organization and grow the infrastructure for it to provide those services.

Mrs. Cathy McLeod: Thank you.

Ms. Cox, you talked about the best interests of the child, and we also had a lot of conversation about the best interests of the child in our previous committee. I don't know if you were here to hear that dialogue that went back and forth.

It sounds like there are some issues there. Can you talk a little more about your concern regarding the best interests of the child section, as it's written?

Ms. Jennifer Cox: With respect to subclause 10(3), we've asked just to add a little more wiggle room into the beginning section. Where it starts:

> To determine the best interests of an Indigenous child, all factors related to the circumstances of the child

We say it should continue with "shall first be determined by the inherent Indigenous legal and community standards". This is where I say give some room for the communities to immediately allow recognition of their standards in the best interests section.

With respect to the substantive equality and cultural continuity, those are good principles but they're not in the best interests section. They should be cross-referenced in the best interests section because best interests are given some paramountcy here, some significance within Bill C-92. Because cultural continuity and substantive equality are good principles, they should be in the more substantive piece, which is the best interests section.

Finally, my other concern that I mentioned was the family violence piece, because it's in the wrong place. I don't know what else to say other than, when we do child protection files and when we look at child protection files, we look at the reasons children should be removed from the care of their parents. Family violence is usually one of those reasons. It's not a best interest issue. It's more a reason for protection concerns. Those provisions are in the legislation across Canada. We don't need to add anything more on that factor.

I think it goes without saying that we would see that children should live without boil-water advisories, without family violence, without some of these protection factors, so it's just not in the right place.

Mrs. Cathy McLeod: You said you were given the bill a week before it was tabled. That was the full copy of the bill, was it?

Ms. Jennifer Cox: They called it a "consultation draft". It doesn't necessarily reflect exactly what's in Bill C-92 now. There were some changes that were made in that week, but there are also things that were added to it that we had never seen before. One of them is paragraph 10(3)(g), the family violence provision, which was not mentioned at all in the draft consultation bill.

● (1300)

Mrs. Cathy McLeod: Mr. Smith, it's a puzzle that things could go.... The auditor brings something up and it goes from bad to worse.

Have you any sense of how things are continuing and why they're continuing to spiral from bad to worse? Typically governments take the Auditor General's reports very seriously.

Mr. Duane Smith: I am not the government of my area. I can't answer that, but the observations and the recommendations are in the Auditor General's reports.

The reason we're supportive of this legislation right now is that we want to finally have our rights recognized to look after our own children in a process that we could come to an agreement on. That would include infrastructure and investment in our organization where we could possibly take this on, again, in a process that we can work on together, because at the very least, I don't think we can do any worse. We were doing pretty good raising our kids 150 years ago, so I think there is an opportunity here for reconciliation to be a very strong part of how Canada progresses with our obligations to implement the IFA, at the very least, as it pertains to the welfare and the well-being of the children of my region.

The Chair: We need to move questioning to MP Rachel Blaney.

Ms. Rachel Blaney: Thank you, Chair.

Thank you all for being here today. I really appreciate your time and your testimony.

We've heard a lot today about the concern around funding.

Cindy Blackstock was here earlier and her recommendation was to look at the principles of the Canadian Human Rights Tribunal, which really speak to having equity for indigenous children that's comparable to all Canadian children.

I'm wondering if you have any thoughts on having something like that being directly in the legislation.

Ms. Jennifer Cox: From my perspective, the preamble does a fairly good job of recognizing the substantive equality that came out of the Canadian human rights decision.

We don't have a lot of qualms about the wording in the bill. There's one change that we're suggesting to that preamble that speaks to funding. It just needs to move into the body of the bill.

The preamble doesn't have the same strength legally, as it does if it's in the bill. We're asking that it specifically go into the jurisdiction provisions, the recognition of the inherent right, because you need funding to assert your right and also when it comes to negotiating your coordination agreement. So when you're taking on the responsibility and you're negotiating with the territorial and provincial governments, you include the funding provision that's based on that substantive equality.

When you get a chance to see the written submissions that we've made, we've suggested text on that.

Ms. Rachel Blaney: Thank you. I think it's important that people understand that if it's in the preamble, it's not the legislation. That is the biggest gap that you're identifying for us there.

I'd like to come back to Mr. Smith.

You talked about the geographic region, section 16, in terms of the placement of children, and looking at the geographical area where they're going to be placed.

I'm wondering if you could talk about that. I think it's important to get it on the record. I represent a more rural and remote community, but you take that to a whole new level compared with my region. A lot of people don't understand just how far away that can be and what that means in terms of access to community and access to other relatives.

Could you speak to that and why that's so important in this legislation?

Mr. Duane Smith: Thanks for the question.

To give you some perspective, I always say that it's nine hours by jet to get to my community but I'm still in the same country. I think it would really help if there were regular tours by people like you, in your positions, to visit different jurisdictions of the country, so it's understood just how vast it is and the issues that Canada has to undertake on this scale.

In my area, the initial service centre would be my community, but if it can't be addressed there, then it's sent 800 kilometres south, if not more, to Yellowknife, which is the capital. From there, which still has limited ability to provide various services, the individual who needs some kind of a health service is then sent to Edmonton, which is 3,200 kilometres south of me.

Some of these children we're talking about—let's be fair about all of this—may have FASD or whatever it is, where you're not going to get that specialized service, etc., within small communities or jurisdictions like mine. At the very least, they should explore how to keep them closer to home. For children who are taken because the mother and father had a spat and the social worker doesn't think they have the ability to look after them, that's where the system is failing us, where our rights within our area are not being recognized or respected, regardless of this legislation.

We have that right and recognition already within the IFA. It's just that the governments, both federal and territorial, are not respecting it. We've not had this process to sit down like we are now, to come up with an opportunity to discuss developing improved processes that reflect our culture, our ways of addressing such issues. We need to have the opportunity to look after our own children first of all, so that they're at least kept in a cultural environment so that their identity is understood and they're exposed to the culture.

Geographically, it's a different scale here.

● (1305)

Ms. Rachel Blaney: Thank you so much for that.

The last question I have is this. Earlier you were speaking, Chief Prosper and Ms. Cox, about this not being co-drafted. I'm wondering if you can expand on what you mean by that and maybe use the example of what you've done with your province to look at how those things could be done in a more supportive way.

Ms. Jennifer Cox: I think we need to look at—and this is also something that we've attached for your information once you get the translated version—the notices that were developed.

The co-development meant we actually sat down and looked at draft forms. We all worked together and asked questions and had the ability to include what we wanted in this, especially the form that comes back from the band and what is in that form, because we wanted to generate support from the community and we wanted to ask the right questions in the form so that the community knew the court wants to know about this and the court wants to know about that, and what it can offer. That's an opportunity for co-drafting because we looked at the documents beforehand and we all had an opportunity to collaboratively determine what we wanted in them.

When it came to Bill C-92, we were given it a week before. We're all working off the corners of our desks because this is not something I can pay attention to within the scope of everything else I'm doing all the time. It's burning the midnight oil looking at Bill C-92. That's not an opportunity to really give the proper input, and we could have made some suggestions, as we have now been able to do, that maybe would have been helpful.

It would be good to even give us a month or two to actually look at a draft bill and then have some input and make some suggestions, because maybe we do have some good ideas and we could come to some sort of consensus or at least have the opportunity to feel we've been heard and not been rushed. It's just not.... Nothing's perfect. We're all under a lot of pressure, but to have the opportunity to sit down, look at something and have some opportunity to provide some input, that would be all we would have been asking for. That would have been more like co-drafting.

Ms. Rachel Blaney: Thank you so much.

The Chair: We now move to the five-minute round. No, sorry, we have one more seven-minute round with MP Robert-Falcon Ouellette.

Mr. Robert-Falcon Ouellette: Thank you very much for coming today. I very much appreciate it.

I'd like to highlight some testimony we heard from Laurie Sargent from Justice Canada. She did say this was the first time really in Canadian history that the government has made such substantive changes and speaks to such a degree to section 35 in actually starting to fill that out and breathe life into it.

I have very quick questions that I know.... I'm just going to try to go through them very quickly.

For the people who live outside the community, who should have jurisdiction? If people do not live in your community or on your reserves, who should have jurisdiction?

● (1310)

Chief Paul J. Prosper: Just as a point of clarity, do you mean Mi'kmaw people, for example?

Mr. Robert-Falcon Ouellette: Yes, of course. I'm speaking to you as the rights holder for the Mi'kmaw people. You have someone living in Toronto or in Halifax who's not living in a community. Who should be the one providing the service?

Chief Paul J. Prosper: We believe, as leadership, that we have jurisdiction not only within the confines of our respective communities but throughout our traditional territory, which would be inclusive of “off-reserve” members. We assume that jurisdiction and control over them.

Mr. Robert-Falcon Ouellette: If that were the case, what would be the legislative process that you would go through with your community? You have a large community that moves over a number of provinces. Do you have a legislative process, so that you would be able to enact laws in order to breathe life into managing those services for community members or the people who are your citizens?

Chief Paul J. Prosper: Yes, collectively within Nova Scotia we have the assembly, but we also have a variety of governance structures that support it. One of those structures involves what is referred to as a made in Nova Scotia process, where we're in negotiations with the federal and provincial governments over rights-related issues. This is governed through a framework agreement, and within that framework agreement, child welfare is one of the issues.

Certainly with legislation of this nature, this would expedite that process in terms of our coming up with laws over our respective membership, and certainly we've made inroads to do that in areas such as moose management and things of that nature, in terms of filling the legislative void.

Mr. Robert-Falcon Ouellette: I'm understanding that this could strengthen the self-government and self-determination of the Mi'kmaw people.

Chief Paul J. Prosper: Most definitely.

Mr. Robert-Falcon Ouellette: That's very good.

Mr. Smith, I want to talk about customary adoption. Obviously, indigenous people used to practise a lot of customary adoption. Many people in the southern parts of Canada do not practise this, because it's very difficult to obtain this through the courts. It's not mentioned in any Canadian law. If it were mentioned in this law, would that expedite processes with Inuit peoples who still practise customary adoption?

Mr. Duane Smith: In reality we still practise custom law. If your grandparent wants one of your children's children, then they take them. It's agreed upon, because they feel they have the better skill in life at that time to give them an adequate upbringing. I'm one of those children, just to let you know.

Custom law is recognized within my government's area, but they do not practise it, so we force it on them on occasion.

Mr. Robert-Falcon Ouellette: You force it on the courts...?

Mr. Duane Smith: We force it on the government. We hope we never have to go to the courts, but when we have to stress that a certain family wants to practise custom law, that's where we have to have a discussion rather than the GNWT, the government of my area, just exercising that process with that family.

It exists. It's just not being properly implemented.

Mr. Robert-Falcon Ouellette: I have a few more question related to courts.

Ms. Cox, you mentioned that you have to go through the court system. Would this bill prevent the Mi'kmaw people or the Inuvialuit Regional Corporation or peoples from setting up their own court system in relation to child and family services if you pass legislation saying that this is the process. They're not going to use the courts, but they're going to set up their own type of tribunal to decide these matters among themselves.

● (1315)

Ms. Jennifer Cox: No. Bill C-92 would conceivably give you the ability to set up that structure for yourself, which would include the courts, but there is going to be a gap between what we have now and what we have whenever you can get the resources and get your laws and other things in place. We have to look at that interim period of time. I make reference to some level of court being identified in the legislation to work with Bill C-92 because there is going to be a gap. Some communities are not going to be able to come forward and get their laws in place as fast as other communities. Some you're going to see do it really quickly, because they already have them, pretty much. They're just waiting for the recognition.

I don't see anything in Bill C-92 that will prohibit.

Mr. Robert-Falcon Ouellette: Mr. Smith, children who are too old...we talked a bit about prenatal care. It was mentioned a bit earlier in some of the questioning. Should we have some mention of "up to age 21"? I know that INAC or Indigenous Services often considers an education up to age 21. Should there be some provision for people who are between 18 and 21 to continue to be well set up to continue to succeed as an adult in that crucial time period?

Mr. Duane Smith: The answer is yes. A secondary response is that you can't have a blanket process for it, I would think, because every individual's case is going to be different. You have to recognize that there needs to be a potential process to assist those going into that transition period, because all you might be doing is kicking that can down the road for three more years and the situation remains the same. If the child is mentally challenged or something like that, they're going to need ongoing support. You can't just abandon them because they've hit a certain age.

The Chair: We move questioning now to the five-minute rounds. We're being generous. We're over the one-hour period because we have a robust panel. I hope it's working out for your personal schedules.

I'm going to suggest perhaps another two questioners, if I have agreement, five minutes each, and then we wrap up.

MP Kevin Waugh.

Mr. Kevin Waugh: Thank you, Madam Chair.

You mentioned that this wasn't co-drafted. Does that mean there really wasn't any discussion on the funding situation, or was there previously?

Maybe, Ms. Cox, you could pick up on that.

Ms. Jennifer Cox: There was discussion, because there was all kinds of information sought by the government through their various engagement sessions, which they list. At every one of them—although I wasn't at all of them—it was mentioned. Everybody has talked about funding. It's been front and centre, because funding is the main concern that all first nations communities have.

Did we mention that we wanted funding in the bill? Absolutely.

When we saw the draft bill the week before, absolutely we asked to have funding inserted. It wasn't inserted.

Mr. Kevin Waugh: We've heard some discussions off reserve. How does that affect your people living in communities off reserve, in terms of this bill?

Chief Paul J. Prosper: From a leadership and the assembly's perspective, they're our community members regardless of where they live. They don't stop being Mi'kmaq by virtue of leaving the boundaries of the reserve. As mentioned earlier, we would look to work towards providing some jurisdiction with respect to our membership off reserve. Obviously, that will involve discussions with our counterpart, the Province of Nova Scotia, but also from an organizational perspective, with various organizations that serve urban areas and things of that nature.

● (1320)

Mr. Kevin Waugh: Do you have the capacity to do that? Some regions in this country can't. They simply don't have the capacity.

Chief Paul J. Prosper: There's an intimate link between jurisdiction and funding, subject to what was mentioned before. As we've learned from the provincial experience, it's one thing to have legislation; it's another thing to implement it. The key there is capacity and having the appropriate funds and support and infrastructure to breathe life into the laws that are developed.

That's the caveat I would add to that.

Mr. Kevin Waugh: This bill has gone through two ministers. It's gone through quite a bit from day one. You've had some recommendations. Do you have any others?

The Mi'kmaq are really organized. I don't mind saying that. I've looked at some other regions. Ms. Cox, you said you were from Saskatchewan at one time. We have different issues from what you have in Nova Scotia, as you know. What I'm seeing here with this bill, and it does concern me, is that there are some regions that are very capable of picking this bill up and immediately hitting the ground. There are also some regions, maybe the majority in this country, that will be further behind with this bill.

How would you fit in with that?

Chief Paul J. Prosper: In terms of recognition of the difference nationally, one of the things we stress within our submissions is relationship building. There were a number of pivotal things within the history of the Mi'kmaq, not only within the Atlantic but also within the context of Nova Scotia, that facilitated a relationship on a tripartite basis with the federal, provincial and Mi'kmaw governments that we were able to carry on forward in a variety of areas. There's been a lot of water under the bridge. We were subject to litigation, like other people. We were successful in various court actions. We're engaged in a tripartite negotiation process, and obviously, our treaties of peace and friendship stress that idea of coming together and working out differences.

I only put that forward as an example for what it is, and I certainly hope that our counterparts throughout the rest of the country can work towards resolving differences for the benefit of their future generations as well.

Mr. Kevin Waugh: Thank you for that, Chief.

The Chair: Our questioning opportunity is moving to MP Will Amos.

Mr. William Amos: Thank you, Chair.

Thank you to all of our witnesses. I really appreciate the considered commentary.

Mr. Smith, it's great to see you again. The first time we interacted was around the Arctic offshore drilling review in your community of Inuvik, way back in 2011, and I can appreciate from that experience that I had how independent-minded the Inuvialuit are and how important it would be for the Inuvialuit to have control over child welfare.

Could you speak a bit to the need for capacity to collect data and to do the work necessary on the ground to inform an Inuvialuit-driven approach to child welfare?

Mr. Duane Smith: That's an excellent question. We have begun. We do work with our regional education system to gather different data in relation to the students and how well they may or may not be doing so that we can try to focus the limited resources we have to help them improve where they need to.

But what you're touching on—and it relates to MP Waugh's question as well, I think—is that you don't have the capacity until you do the research, and you're looking at passing legislation. You can't have the capacity until you have something to work with. In our view, it's a catch-22. We need this piece of legislation for us to move forward as well and/or we don't have to because, as I said, under our final agreement, we both have an obligation to work together and if the system the federal government has put in place with the territorial government, which is an administrative arm of this federal government, isn't working, then we need to revisit that issue, at least within my area.

So yes, collecting the data, working with us on how to do that and on what we can do to start to improve the services and the well-being of the children are things we have been waiting for.

● (1325)

Mr. William Amos: Would you agree then that the framework nature of this legislation creates an opportunity that allows us to change the channel, if you will, or to turn the page on the past approach and enable a more Inuvialuit-driven approach to child welfare?

Mr. Duane Smith: It finally recognizes, Canada recognizes, its obligations as well to be more adequately engaged in the proper development of this, and I do recognize this as a framework as well. I view this as something that, like any other piece of legislation, is not going to be perfect, but let's get something in place and let's work on improving it, because it's not going to be one-size-fits-all regardless.

Our region is going to have needs and views, etc., that are different from those of other jurisdictions, so yes, let's get to work, basically.

Mr. William Amos: That's very helpful. I think that's reflective of comments we've heard from the Nova Scotia Mi'kmaq. I'm not sure if I heard from the side of the Inuvialuit any specific thoughts around funding. This is an issue that has come up repeatedly, so I wanted to get your sense.

In the context of framework legislation, which is meant to open the door to a range of different approaches to child welfare in indigenous communities, with a focus on the indigenous children themselves and their families, their communities, etc., would you be seeking a more prescriptive approach to funding, which is outlined in the legislation or do you think it has to be tailor-made and dealt with outside of the legislation, pursuant to different indigenous communities or groups moving forward with whatever they want to do?

Mr. Duane Smith: That's part of what I just responded to as well. I think the legislation is clear and as vague as it could be to allow us to deal with those matters on a region-by-region basis. In terms of capacity, yes, there's going to be a need for investment with regard to infrastructure, because, as I said, right now it's a band-aid solution, under which if the government that's operating right now cannot find a foster parent, then the child is sent away and it's very unlikely that those kids ever come back until they're of age.

That's a problem we have with the system, so we would like to have infrastructure whereby we could operate on terms that we would come to an agreement on, such that the children would remain in the community or at the very least, within the region.

The Chair: Thank you.

Those are wise words. I think that's what we'd all like to see. I want to recognize that we all appreciate your patience and flexibility.

Paul, we've welcomed you.

Duane, thank you for joining this group.

Your comments will be part of the public record. We take them very seriously and really appreciate your co-operation and participation in the process. *Meegwetch*.

This session is done for now.