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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. Thank you for being here. We appreciate it. We're studying a very important bill that tries to make progress on the issue of Canada's handling of indigenous child and family services systems. The statistics indicate that we're doing a bad job, and we're looking to try to make things better, so your advice is very important.

Before we get started, we recognize that we're on the unceded territory of the Algonquin people, not just as a formality or just in somebody's speech, but as an opportunity for all of us, particularly in this committee, and for all Canadians—as we're televised—to think about it. Whether you know an indigenous family or are a settler family, I encourage you to think about Canada's history and understand the truth. As we all move forward in reconciliation, it's one of the most important things that we can do as a nation, and it is urgent.

Thank you so much for coming. You typically have up to 10 minutes. If you take less time than that, you get a reward. I'll give you a signal when we're getting close to the end of your time. After we hear from every group, we'll go into questions from the members.

We're going to begin with the First Nations Summit and Grand Chief Edward John and Cheryl Casimer.

Welcome. When you're ready, we can start.

Ms. Cheryl Casimer (Political Executive Member, First Nations Summit): [*Witness spoke in Ktunaxa*]

[*English*]

Good morning, everyone. Thank you for providing me an opportunity to share some thoughts on the bill with you. I'd like to start off by acknowledging the unceded territory of the Algonquin peoples and thanking them for allowing us to do this important work.

I'm a member of the political executive with the First Nations Summit in British Columbia. We represent those first nations involved in and supportive of treaty negotiations with Canada and British Columbia. I'm also a member of the First Nations Leadership Council, which is a political collaboration among the First Nations Summit, the Union of BC Indian Chiefs, and the BC Assembly of First Nations.

The bill before you for study is one of the most single important pieces of legislation for first nations people in a generation.

For the 204 first nations communities and tribal councils in British Columbia, and for our nations that are actively working to put in place our child and family laws and policies within our systems of government, this legislation is long overdue.

We have been working with Canada and British Columbia to prepare for implementation of first nations jurisdiction. We confirmed in 2015 that we would pursue legislative, policy and practice reform to achieve this objective. We know that the task of reform is daunting, but it is one of the most important tasks we will have.

Bill C-92 must be understood within the context of the status quo for first nations children. The reality is that there are approximately 5,000 first nations children in care in British Columbia and approximately 40,000 in Canada. This is more children than there were in the residential schools at the height of their operations.

We collectively face a humanitarian and national human rights crisis. I acknowledge the work of former minister Jane Philpott, who called a national emergency meeting in January 2018 to find a means to address this national crisis in partnership with first nations and address the issue around first nations children, family and communities.

We see Bill C-92 as a significant and important first federal step in the legislative reform necessary to support first nations in exercising their jurisdiction over child welfare. While there are opportunities to strengthen Bill C-92, the bill has many positive features.

First nations in B.C. want to take this next step of work, and Bill C-92 provides the necessary support for us to do so and to give proper footing to this work for the implementation stages. It will finally enable Canada to work with first nations in a meaningful way, based on the recognition and respect of our rights, to transform child welfare and restore indigenous systems and approaches to supporting children and families.

There are at least six major aspects of this bill that will build upon our work and take it to that next level: one, priority for prevention approaches; two, provisions on substantive equality; three, best interests of the child provisions; four, priority for placement of children with family and community; five, principles for service delivery; and, six, process rights. Yet, there will be a critical need to make sure that these concepts work on the ground, and that implementation of the legislation is effective in shifting away from the overrepresentation of first nations children in child welfare systems and toward prevention and the reunification of families.

Having said that, I would like to now focus on a number of key recommendations that we believe would strengthen the bill.

We recommend that Bill C-92 include a role for an independent children's advocate or commissioner at the federal level to support the implementation of the concepts and the rights in Bill C-92, and to monitor implementation and assist children, youth and families in navigating the systems that will be impacted by this law.

Second, we understand that there is a review period of five years to evaluate the effectiveness of the bill. We believe this time frame may be too long for the first such review. As such, we believe that the bill should be reviewed after three years and should make sure the special first review covers issues raised by many before this committee and in public comment on the bill, including the addressing of funding; jurisdiction; better outcomes for children and youth; reunification of families; and respect for women and girls, and elimination of discrimination on the basis of gender.

We'd also like to add a reference to the United Nations declaration in the purpose. I urge you to add a specific reference to the United Nations declaration in the purpose section of Bill C-92, as was done in Bill C-91 regarding indigenous languages, so that the United Nations declaration can form and provide necessary context for this work at all levels. We are proposing an amendment to consider a provision (c) to state: to implement the United Nations declaration as a progressive framework for the resolution of human rights issues impacting children, youth and families.

● (0840)

Next we'd like to address the issue of funding. We believe that we need to have statutory funding issues addressed in the bill as well. We're not sure about the mandate of the committee to recommend changes in that regard, but I do emphasize that funding is critically important to reform child welfare and to support first nations child and family services.

Next, in relation to the “stronger ties” rule, we draw your attention to the fact that some of the provisions of the bill may cause confusion with regard to our first nations laws and practices.

The provisions on stronger ties in clause 24 provide that when a conflict between two nations' rules appears to present a conflict over which first nations system applies to the decision for a specific child or family, the test in the bill is that the governing law will be that of the “community” with “stronger ties”. This kind of rule may be valuable, but it needs to be qualified to permit the first nations laws to sort out how conflicts will be handled as well. Our intertribal systems have worked this out for generations and the either-or nature of this may undermine some of our laws and practices.

For this reason, I believe there should be a section added to clause 24 which provides that “the rules for resolving conflicts between laws may also be resolved through agreements between Indigenous governing bodies or according to Indigenous laws applicable to children and families”.

I thank you for the opportunity to appear and provide feedback on this important and momentous bill, and I urge you to work with resolve to complete this task as a priority and to see this bill through to completion. It is long overdue and most urgently needed.

Thank you.

Grand Chief Edward John (Political Executive Member, First Nations Summit): Thank you, Madam Chair. Good morning, committee members.

I'd like to acknowledge the Algonquin people as well, and their traditional homelands.

We're from the same organization in British Columbia, so I won't go into that background. I do want to mention that on submitting this report, the Premier of British Columbia asked, given the significant numbers of children in care, to seek advice on what the province ought to be doing. It's close to a 200-page report with some 86 recommendations. It takes an extensive look at the impacts of laws, policies and practice standards.

I didn't start there. I started in the communities, asking them what they thought and how they felt about how these provincial laws, policies, regulations and practice standards impacted them. This story is really from their perspective. It's the practice side of this impact in our communities. The clerk has this, as well as a summary. There's another document that was tabled with the clerk with our position.

Bill C-92 represents a clear advancement for prevention, early intervention and protection services—in section 1—for indigenous children, youth and families in their respective communities while acknowledging and respecting the diversity of indigenous peoples.

The bill speaks to indigenous youth, but in the operative sections of the bill, the youth are not included. I think it's something that needs to be considered. It may be an oversight.

The national advisory committee is an advisory committee to the Minister of Indigenous Services Canada. The interim report from that committee was submitted to the former minister of Indigenous Services Canada, Jane Philpott, and the AFN National Chief Perry Bellegarde. I chaired that committee. The recommendation from that committee was that the federal government consider enacting federal legislation to address the staggering challenges faced by first nations people relating to children and families. Minister Philpott concluded that these challenges amounted to humanitarian crises. We all recall that moment.

Indigenous peoples developing their own laws, regulations, policies and practice standards will exercise their responsibilities in a modern context and uphold and act on their inherent rights to support their children and families. Their laws: by them, for them. Clause 18, read together with clauses 2 and 8 provide a necessary and critical foundation for this.

The operative principles of “substantive equality” in subclause 9(3) and “cultural continuity” in subclause 9(2) are essential for indigenous peoples. When combined with the necessary and extensive support from the federal and provincial governments, they will help to address the deeply rooted ravages of over 150 years of deliberate and misguided assimilation of Crown laws and policies. The final report of the Truth and Reconciliation Commission called it “cultural genocide”.

Bill C-92 together with Bill C-91 on indigenous languages provide a substantive framework to remedy past government policy pillars to “kill the Indian in the child” by removing the child from siblings, family, community, foods, lands, territories and resources; and providing education to Christianize and civilize the child by declaring as inferior indigenous philosophies, teachings, languages and culture.

The proposed legislation has shortcomings and is not exhaustive. For indigenous peoples, there will be both internal and external challenges, obstacles and hurdles for the full and effective realization of this significant aspect of the right to self-determination. Constructive and desperately needed changes for indigenous peoples will take time.

I have three recommendations that I want to deal with.

Clause 15 should be strengthened by ensuring the necessary support and other measures for parents, extended family and community, so that no child is removed for reasons related to poverty or the socio-economic circumstances of the child's family.

The recommendation on financing and funding is critically important. There's only one reference in the preamble. The recommendation is that the underlying substance of this acknowledgement should be moved from the preamble to the operative provisions of the bill.

● (0845)

I agree with the recommendation on amending article 8 of the UN Declaration on the Rights of Indigenous Peoples.

We are hopeful that the three bills, Bill C-262, Bill C-91 and Bill C-92, will be adopted and royal assent will be given before the end of this Parliament's mandate.

Finally, the budget implementation legislation, which contains many significant financial commitments to first nations, Inuit and Métis people needs to be adopted. We cannot have Canada's commitments die on an Order Paper. We've been through that once before.

Thank you.

The Chair: If we could only control the Senate.... No, that's a joke. There's a second House and we're not sure where that's going. They're in the process of studying the bill as well, as I'm sure you know. We're all anxious to see this bill go through the House and the Senate.

Next, we have the Nishnawbe Aski Nation, with Bobby Narcisse and Julian Falconer.

You can start anytime you're ready.

Mr. Bobby Narcisse (Director of Social Services, Nishnawbe Aski Nation): Good morning, everyone. My name is Bobby Narcisse. I'm with Nishnawbe Aski Nation, NAN, originally from the Aroland First Nation within Treaty 9 and Treaty 5. We too would like to acknowledge the territory of the Algonquin people. We are very happy to be here to do a submission to the standing committee.

Nishnawbe Aski Nation takes this opportunity to share its views on Bill C-92, an act respecting first nations, Inuit and Métis children, youth and families. NAN is supportive of the idea of federal legislation affirming first nations jurisdiction in the area of child and family well-being, but is concerned about certain weaknesses in the current drafting of Bill C-92.

Nishnawbe Aski Nation has a chiefs committee on children, youth and families, and it has deliberated on federal child and family service legislation on multiple occasions over the past nine months. Our chiefs committee members are intimately and painfully familiar with the violent failings of the current child welfare paradigm and with the harms caused by well over a century of federal and provincial interference in the lives and governance of Nishnawbe Aski Nation communities and families. Equally important, the chiefs committee members are intimately and gratefully familiar with the strengths and wisdom of our elders and ancestors and the cultural, intellectual and spiritual richness they and their communities have to draw from and build on.

This submission assesses Bill C-92 against key characteristics for legislation as identified by the chiefs committee on children, youth and families, and endorsed at a chiefs meeting on child welfare on October 2018. Federal indigenous child welfare legislation must facilitate a paradigm shift in child and family services. For too long, these services have failed our children, youth and families.

With this in mind, Nishnawbe Aski Nation advocates for federal legislation that, first, affirms inherent first nations jurisdiction in the area of child and family well-being and affirms that such jurisdiction is exclusive where so asserted by a first nation, regardless of the place of residency of a first nations child. Such affirmation recognizes that first nations are best positioned to make determinations about what is in the best interests of their children.

Second, we advocate legislation that guarantees adequate, sustainable, predictable, equitable funding for first nations to enable the exercise of inherent jurisdiction in the area of child and family well-being. The legislation ensures that the use of words such as “co-development” and “collaboration” are defined and operationalized as meaning “true collaboration”. Such concepts should be used to facilitate fulfillment of, and not replace, the duty to consult and obtain free, prior, informed consent. These concepts should also ensure a complete break in the way in which the “best interests of the child” has been used in relation to first nations children, youth and families.

With respect to jurisdiction, the first stated purpose of Bill C-92 is to affirm the rights and jurisdiction of indigenous peoples in relation to child and family services. This is a good starting point. The current drafting of Bill C-92, however, waters down first nations jurisdiction. The lack of recognition that we may exercise exclusive jurisdiction over our children, together with the retention of an overriding power by Canada and provinces and/or their service providers and judges through invocation of the best interests of the child, mean that Bill C-92 does not fully recognize our people's inherent jurisdiction over child and family well-being.

With respect to funding, Bill C-92 contains no legislative guarantee of funding for our children and families. This is deeply concerning. It is not enough that the statement in the preamble acknowledges the ongoing call for funding for child and family services that is predictable, stable, needs-based and consistent with the principle of substantive equality in order to secure long-term position outcomes for indigenous children, families and communities. This call needs to be met with legislated guarantees of such funding.

The Caring Society case at the Canadian Human Rights Tribunal has shed light on human rights violations that occur when funding for our children is not legislated.

● (0850)

In 2011, the Auditor General of Canada identified the lack of a legislative base for on-reserve programs and inadequate funding mechanisms as two of four structural impediments that severely limited delivery of public services and hindered involvement in living conditions on our first nations communities.

The deputy minister of aboriginal affairs and northern development Canada at the time testified before the Standing Common on Public Accounts, in 2012, about the Auditor General's report and explained the following:

> One of the really important parts of the Auditor General's report is that it shows there are four...missing conditions. The combination of those is what's likely to result in an enduring change. 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 is the combination of these tools....

We need a paradigm shift. We need enduring change. Legislation must come hand in hand with legislative guarantees of funding. The proposed legislation must have at least some sort of degree of funding guarantee. Ontario's new policing legislation offers a good template for what an effective legislative funding remedy might look like.

● (0855)

With respect to collaboration, since August 2018, NAN has raised several concerns with ISC about proposed indigenous child welfare legislation, including the use of co-development to describe the process. We want to ensure that given the concerns to date, Canada's process of co-development....

This provision regarding collaboration is worrisome. Canada has a constitutional duty to consult first nations when it contemplates actions affecting their rights under section 35, which the regulations under Bill C-92 would do. The duty is also articulated in the United Nations Declaration on the Rights of Indigenous Peoples, which makes it clear that Canada must obtain free, prior and informed consent of first nations.

Also, “the best interests of the child” is a concern with the way it is drafted in the bill. In a statement of principles developed in September 2018 to guide its deliberations regarding federal indigenous child welfare legislation, the chiefs committee stated, “The federal government has utterly failed our children and families. In the name of “best interests of the child”, first the Indian Residential Schools system and then the child welfare system, have ripped our children from their families, communities.... The effects of these actions are ongoing and intergenerational. Canada and its provinces have no credibility asserting a right or ability to act in our children's best interests.”

NAN is encouraged by the thought of federal indigenous child welfare legislation with the purpose of affirming the rights and jurisdiction of indigenous people in relation to child and family services. Bill C-92 should be strengthened to clearly recognize that our inherent jurisdiction in this realm is exclusive, guarantee adequate funding for the exercise of our jurisdiction in this area, avoid ambiguity introduced by the ill-defined use of “meaningful opportunity to collaborate” and discard colonial, paternalistic, damaging notions perpetuated by “the best interests of the child” provisions to ensure a complete break from the past.

We are ready for a new paradigm in first nations child and family services.

Meegwetch.

The Chair: Thank you.

We are now moving to Jeffry Nilles, as a student and an individual.

Thank you for coming.

Mr. Jeffry Nilles (Student, As an Individual): Thank you for having me here.

My name is Jeffry Nilles, as you know. I am a former foster care resident.

I was in foster care in the late 1960s and early 1970s. This is my story that I'm going to share with you.

I am from Winnipeg, Manitoba. I'm here to share some of my memories of my early childhood in foster care and afterward.

First, I'll tell you a bit about me. I'm Ojibway. My mother is from Waterhen, Manitoba, a reserve four hours north of Winnipeg. My father is from Luxembourg, Europe. As for me, I am a single father. I have five children. The three youngest live with me. I am 53 and am currently enrolled at Neeginan College and taking a training course to be a building operations technician. My being here is part of my journey in healing and having a better understanding of who I am as an Anishinabe person.

I will begin by telling you that these are my memories, good and bad. I never told anyone about my stay in foster care until last year, when I started participating in a men's healing group at the aboriginal centre in Winnipeg. I started opening up and sharing my past in my men's group, which led me here to Ottawa.

I will begin by telling you about my first memories of growing up, before I was in foster care. I will start by telling you about my first puppy, Skippy. I remember getting him from my *mishoomis*, my grandpa, in the country. My earliest memories of my grandpa are about bedtime. He would tell stories about Nanabush for me and my sisters. I still remember him fiddling in the evening, with me and my other cousins trying to jig, and everyone laughing. I also remember getting my first stitches from falling off my bike. Sadly, I also remember my parents drinking and fighting. One day, my teacher came to our house, and we were taken away. I saw my sisters crying for my mom. I was six years old that year.

I've spent over 45 years trying to forget my stay in foster care. It still makes me upset to remember my time there.

These are some of my memories. I will share them with you. One of my first memories is being yelled at by a lady. I think it was because I wouldn't stop crying. I remember wanting my mom. I was put in a corner and told to get on my knees and face the wall. I remember being in that corner until I stopped crying. There were other times when I was put in the corner. I remember that one mealtime I needed to go to the washroom, and I said it in my language. I was put in the corner, and I started to pee myself. I remember her grabbing me and taking me to the washroom, taking my clothes off and screaming at me, calling me a “dirty Indian”. I didn't understand what “Indian” was.

On another occasion, the lady made raisin biscuits. They were cooling on the top of the stove. I don't know why, but I picked a couple of raisins out. Later that day, the lady was screaming again about who took the raisins. Again I was put in a corner and was told that all Indians know is how to steal. I didn't know that what I did was wrong. There was another occasion when I was riding my bike and got lost. I remember the police taking me back to the lady's place that night. I remember her screaming and saying, “I want that Indian out of my house” and saying to take me back where I belonged. I was reminded of this statement more than once.

I don't recall how long I was in care. When I was reunited with my family, my parents moved us to B.C. in 1972. This I know because I still have the grade 2 class pictures from school. My mother started teaching me and my two younger sisters how to speak Ojibway again because we couldn't remember anything that she was saying to us. My sisters picked up what my mom was saying really fast, but not me. I always had an excuse for not learning, saying that it was too hard. I think I just didn't want to learn.

We moved back to Winnipeg in 1974, and that is where I heard “dirty Indian” again. I was in school. I was nine at the time when a bigger kid in my class pulled out my chair when I was about to sit down. I jumped up and everyone laughed. I remember him saying, “Look at the dirty Indian.” The next thing I knew, I was in my first fist fight. I don't know why I was so angry; I could just feel everyone staring at me. I asked my mom later that day what “Indian” meant. She explained to me that we were the first people of this country, and she said to be proud of who we are. I didn't understand this. I didn't feel proud.

We moved two more times before my father bought a house on Alexander Street in the summer of 1976. We went to visit my mom's dad on the reserve. I remember being teased by my cousins because I couldn't speak with them or understand what anyone was saying.

● (0900)

I didn't like this place; couldn't wait to go home. The last time I was on my mom's reserve, we buried my mom's brother in 1978. I hated everything on the reserve; the food, the water, the outhouses. I just hated the way everyone lived. The houses had broken windows. To me, everyone was drinking all the time. I don't know why, but this was the last time I ever came there.

In 1980, my parents divorced. My younger brother and I stayed with my dad, and my sisters left with my mom. The following year, I dropped out of high school and started working. I was told if I worked hard and paid my bills on time that life would be great. Looking back at the last 30 years of my life, I realize I turned my back on my family and relatives on many occasions. I didn't go to my family's weddings or events that were being held on the reserve when invited. It seems I always had an excuse not to go.

This was more evident when my mom died in 2006. Being selfish, I had my mom buried in Winnipeg instead of being buried on the reserve so I wouldn't have to go out there. This was my behaviour; always thinking about myself. I started having troubles in my own relationship. After 17 years with my partner, we separated in 2016, and my son came to live with me. The following year, my oldest daughter came to live with me too. She graduated that year with honours. She received a full scholarship from the Tallman Foundation, a proud daddy moment.

I developed a hernia at work and was let go just before Christmas of 2017. I would have to have surgery in the new year, and I got a knock on the door just before New Year's. It was child and family services asking if I could take my twin girls. I didn't hesitate; I invited everyone in. I was told the mother could not take care of them. This was January 8 of last year. I was so happy to have all my children with me and not with some stranger.

I was told I would be primary caregiver to my twin girls and that CFS would visit me every two weeks to see how I was doing. I struggled the first month, taking them to school by transit. It took two buses to get there. I didn't want to change schools because it was their last year there.

Coming home one day after dropping my girls off at school, I decided to walk home. As I was walking, I came upon the old train station on Main. I could see it was some kind of educational centre for aboriginals. I went inside and found a men's group on the directory and introduced myself to the elders. I told them a little about me and was told they had a sharing circle and a men's parental program going on, where at the end they would be going to a retreat for a sweat.

I was curious, so I signed up and starting coming to meetings of both groups. This was the first time I was introduced to my culture. I was intrigued by the stories the group shared. There were 12 strangers from their early twenties to their late fifties. Over the next 10 weeks, I learned the seven teachings regarding Mother Earth. I was also taught how to smudge and pray, as well as ask for forgiveness for myself and others.

I would go home after meetings thinking about my past, but mostly I was thinking of my mom and how she would be so proud of me. I shared some of my stories with my children. I was asked by my youngest if I knew my language. This is the first time I believe I cried in front of my children in trying to explain why I don't know my language, the feelings of guilt and my being ashamed of who I became. I loved it when my children told me it's never too late to learn, but deep down I knew what I did.

Then came the day of the sweat. I was very excited and nervous at the same time. The sweat took place in Beausejour, Manitoba. It was beautiful. I was told to strip down to my shorts and bring a towel with me. I crawled in on my hands and knees. It was a humbling experience sitting in the dark; the elder throwing water on the grandfathers, the steam sizzling, the beat of the drum was powerful, my heart beating and the singing. It was an awesome feeling.

We went around giving thanks to Mother Earth, and at the same time asking the creator to heal our sick, our addictions and praying for forgiveness.

● (0905)

When it was my turn to share, all I could think of was my mom and how I had turned my back on my culture. I was overcome by guilt. I admitted that I was angry—all the time. I had made racist comments to my mom, my family and my culture. I was ashamed of being Indian, and I didn't understand why I felt this way. I wanted to know who I was.

The elders spoke of letting go of my past, forgiving myself and sharing my stories about healing. When the sweat was over, I felt a sense of pride in understanding a little bit about our culture, our beliefs and our laughter. I found hope and a second chance at being a better father to my children. I'm not so serious all the time. I laugh, I cry, but most of all, I've learned to love myself again. I am currently enrolled in a training program at Neeginan College. I am involved in educating myself and my children about our culture. I have opened my eyes and my heart to this new way of living. I smudge every morning with my children. My twin girls' favourite saying is “sharing is caring”.

This is part of my story. *Meegwetch*. Thank you for having me here, and thank you to everyone who was involved in bringing me here, especially the aboriginal centre in Winnipeg.

If you have any questions, I will graciously answer them. Thank you very much.

● (0910)

The Chair: Thank you, Mr. Nilles. Your story is very powerful and appreciated. You're an individual who went through a horrific story. We still have, even today, 11,000 children in care in Manitoba alone, a circumstance that we must address. This committee is empowered to hopefully take a positive role in addressing some of these challenges going forward. Thank you so much for coming.

We will now open the process to questions from MPs. I see that we have just under 20 minutes.

Members, do we want to stay with the seven-minute blocks? Yes? Okay.

We will begin our questions with MP Yves Robillard.

[*Translation*]

Mr. Yves Robillard (Marc-Aurèle-Fortin, Lib.): Thank you for your testimony.

My first question is for Ms. Casimer and Grand Chief John.

In the initial stages of the bill, you mentioned in a news release how important are the smooth transition and implementation of the proposed legislation.

How do you see this transition now? Could you elaborate on the best way forward for successful implementation?

[*English*]

The Chair: Chief John.

Grand Chief Edward John: That's a very good question. It is one that will be in the forefront of all of our people's minds, about the transitions that are required. In British Columbia, we have 23 delegated agencies and 204 first nations, which is roughly one-third of all first nations in the country. We have 84 first nations that do not have a relationship with a delegated agency and are provided services by the province's ministry of children and families. The others are members of the 23 delegated agencies.

The transition will now be from the Province of British Columbia and from the delegated agencies to the communities and how that will work. That will take time and a lot of planning. Many of these delegated agencies that I'm speaking about are set up by first nations themselves. They may choose, if they wish, to continue the agencies as they are, but under their own authority.

There are very important practical problems. For me, the biggest issue, of course, is whether it's a delegated agency, a first nations agency or the provincial government under this bill. I expect that those three models will continue. The very big issue for me is the issue of financing for the services provided. That's where we've had some very serious problems across the board, with both the federal government and the provincial government. In that regard, I think the human rights tribunal has been a dispute mechanism that has been very helpful in sorting out the very difficult challenges in financial issues.

I do want to acknowledge Jane Philpott. When she was the minister responsible in this area, she was very responsive to the questions and the issues that were raised...and her successor, of course, Minister O'Regan.

[*Translation*]

Mr. Yves Robillard: Ms. Casimer, when this bill was introduced, you said that it was probably one of the most significant pieces of legislation for indigenous peoples in a generation, because it will improve the situation of indigenous children and youth by focusing on strengthening families and keeping families together instead of intervening and separating them. We are coming to the end of the legislative process on this bill. Do you think we have taken the right direction by putting the best interests of the children first?

● (0915)

[*English*]

Ms. Cheryl Casimer: I truly believe that this piece of legislation is the most important piece of work that we will do as first nations people in this country, but it is not just first nations people. I think this needs to be a collective front by both non-indigenous and indigenous peoples, in order to be able to see any success in terms of reunification and maintaining strong ties between our children and youth and their communities.

In our situation in British Columbia—and that is all I can speak to—I believe it's really important that we have a relationship with the province that kind of puts us in a unique situation. We are currently sitting at a table with a tripartite process between Canada, British Columbia and the First Nations Leadership Council. Through this process, we've been able to identify priorities, identify what's going to work in terms of moving forward and make some substantive change in our communities.

I believe that, through that relationship, we are at a bit of an advantage in terms of being able to work towards implementing the legislation once it receives royal assent.

I believe that the fact that the legislation recognizes our inherent right in our jurisdiction over child welfare issues gives us the ability to put into place protective measures, so that we're not coming from a protection focus; rather, we will be able to do it with a prevention focus.

My agency in my nation started based on that foundation of providing preventative services, so that we could address an issue as soon as it was identified and we could provide family supports and provide them with the tools necessary to keep families together, as opposed to coming to a point where children had to be removed.

This legislation will provide us with those tools to do it on a broader scale. I believe that, through that, we will keep our kids safe.

[*Translation*]

Mr. Yves Robillard: Thank you.

[*English*]

The Chair: Now we're moving to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you to all the witnesses. We've heard very compelling testimony.

As you are aware, this bill is supported on all sides of the House. It's just a matter of trying to make sure it is as good as it can be. I don't think anyone believes it is a perfect bill. I think we're trying to do our best to make it better than it is.

I'm going to start with Grand Chief John. The piece I've struggled with is there was talk about the UN declaration and embedding Mr. Saganash's Bill C-262 into the legislation. That would compel free, prior and informed consent from all the impacted first nations, indigenous peoples.

We're going to hear testimony later from the Assembly of Manitoba Chiefs and others who are not supportive of this bill. Clearly, they are not giving free, prior and informed consent. I would really appreciate hearing how you align those two concepts. You're asking us to pass a bill. We know significant communities in this country—according to the article in the UN declaration and free, prior and informed consent—would be telling us not to do it.

Grand Chief Edward John: Thank you.

As you know, I was in Geneva when the UN declaration was being negotiated. I was there for many years. I understand the context in which it was developed and the reasons the provisions are the way they are. There are 46 articles in the declaration. There are 23 preambular paragraphs all designed to do one thing at the end of the day: to ensure that the rights are the minimum standards for the survival, dignity and well-being of indigenous peoples. That's in article 43.

The issue of free, prior and informed consent is a thread woven through the entire declaration. It's not simply built into one provision but many different provisions. I want to be clear that this provision of free, prior and informed consent is not a new right. It's already in existence in other international instruments that the concept of free, prior and informed consent is an important customary international legal principle.

We see it in Canada within the context of where the courts have been on consultation and accommodation. In the Haida case, even consent in serious and significant cases, I can't think of anything where that principle will not apply.

Free, prior and informed consent of the nation, if they want to establish their own laws, that's their business. That's what I said in my opening remarks. It is their legislation for them by them. I think that's the truest form of the exercise of free, prior and informed consent.

● (0920)

Mrs. Cathy McLeod: I'll just make one further comment. Then I want to give my colleague Ms. Philpott an opportunity to ask questions.

I think article 19 does talk about laws of general application. I would see this as a law of general application. I still struggle. Maybe we can have a longer conversation over a coffee someday because I truly struggle with how we align them.

I would like to share my time with Ms. Philpott.

Hon. Jane Philpott (Markham—Stouffville, Ind.): Thank you so much, MP McLeod, for giving me an opportunity to ask a question.

I want to greet the colleagues who have come today and congratulate you on all of the work you have done on this. I thank the committee for their excellent work on what I think is possibly the most important bill the government is working on, because it will make a difference in the lives of children.

I agree with MP McLeod that the bill is not perfect. One of my questions is particularly in terms of the financing piece on this, which I think is probably one of the strongest critiques. Bobby, I think you raised some really excellent points.

The way I've argued that it would be ideal if this bill had financing is, number one, following Jordan's principle, which requires that children not be discriminated against on the basis of jurisdiction. I think there are ways to get funding for child welfare through the application of Jordan's principle, but it's not the ideal methodology. The second are the commitments that the government made related to the Human Rights Tribunal, obliging the government to pay the actual costs preventing the removal of children. Then, of course, I think there's the very pragmatic argument of the fact that in the end, financing and providing statutory funding for child and family services will save society in both financial and other measures in the future. There's no question that statutory funding is the ultimate goal.

I guess my question is, what do we do in the next seven weeks? What are your recommendations? In terms of getting this bill passed, I have proposed an amendment suggesting that the review should not be not at five years but at three years. I have also proposed that the review should specifically include an analysis as to whether the funding has been adequate, which sets obligations both on governments and agencies to ensure that these services have been appropriately funded, and hopefully will lead us in the direction of the opportunity in three years from now to move towards statutory funding.

Do you have other, better suggestions than that? I suspect that you do in terms of how we can deal with this. Some have suggested that the bill should not pass if the funding isn't there. I think that the bill should be passed, but how can we strengthen it so that we move toward a world in the very near future where statutory funding is a reality?

The Chair: There's only 45 seconds.

Please direct your question, and it has to be a very, very short response.

Who are you asking?

Hon. Jane Philpott: Mr. Falconer.

Mr. Julian Falconer (Legal Advisor, Nishnawbe Aski Nation): Thank you, member Philpott.

I want to empathize and repeat my respect for the contribution you've made as minister.

Very quickly, because of the lack of time, the first answer to when something is weak, deficient or broken is to fix it. The legislation is weak, deficient and broken when it comes to the funding issue. Simply glossing it—and I'm not saying you are—as a technique and let's move on with it is not an answer. This is precisely an example of a poor foundation leading to a stream of other problems. The answer is to provide for legislated funding.

In my view, there is no alternative to fixing something that's completely broken other than the repair.

Secondly, I want to—

● (0925)

The Chair: Sorry, we've gone over the allotted time.

Mr. Julian Falconer: That's fine.

The Chair: Maybe MP Rachel Blaney will follow up.

Questioning goes to her for the next approximately five minutes.

Ms. Rachel Blaney (North Island—Powell River, NDP): Thank you, Madam Chair.

I would first like to take this opportunity to thank Jeffry Nilles for that amazing testimony.

Thank you for bringing that here. It really gives us a foundation of the work that we're about to do, so thank you for that. I really respect that hard work.

My question always come back to money. I've lived on reserve. I've been a foster parent on reserve so that we could keep our children at home. I know how hard that can be, and I know the limitations and the lack of funding. I've lived it all.

One of the things I am proposing is that in the actual legislation, we have principles of funding. We know that tying in a dollar amount does not make sense in this legislation, but what does make sense are principles. And, of course, my support for Cindy Blackstock and the Human Rights Tribunal decision and the principles within that, which I believe should be directly in this legislation.

I would like to start with Grand Chief Ed John and ask your thoughts on that, and hopefully get to a few members before we have to move on.

Grand Chief Edward John: Thank you very much, Rachel. I really appreciate it, and I, too, want to acknowledge my brother, Jeffry, here and the tremendously difficult story that he had to talk to us about. I'm a residential school survivor as well, so I really feel that connection to the issue that you raised.

On the question of funding and the level of funding, it is one significant issue that I dealt with in my report to the province. I see in the preamble the wording in there, but I think it has to be equitable funding, as well. The foster parents over here are being paid this amount, and grandma over here is being paid substantially less. In the report I presented, I recommended that there needs to be equity.

In fact, this April 1, the Province of British Columbia has now levelled the playing field so that, if a child was removed from this foster parent over here to grandma, say for example, there's equity in funding, and that's an operating principle. The Yukon has operated in that regard, I think, since close to or maybe just over a year. I think it's worth looking at that example in answer to the question that you raised.

Ms. Rachel Blaney: Bobby, would you like to add anything?

Mr. Bobby Narcisse: With respect to Nishnawbe Aski Nation, we've been diligently working with ISC as well developing what's called a remoteness quotient through the work of the Canadian Human Rights Tribunal that looks at the actual costs of remoteness.

As you know, in the Nishnawbe Aski Nation, we represent 49 communities. Thirty-four of them are fly-in, so there are extreme challenges for our children, youth and families to access services. Those are some of the areas that we've advocated for and worked on with ISC with respect to the Human Rights Tribunal to look at access to services, the time it takes our children to access many of those services that are enjoyed by other Canadians. We want it to be equitable as well. We're still working with Indigenous Services Canada through the tribunal process to really look at that and give empirical evidence of needs-based funding for our child and family service programs. I think that's a step in the right direction to really look at some of the funding options.

In terms of implementation, resources need to be attached to an implementation plan to look at those things asserting our jurisdiction, looking at our unique position of remoteness and taking that into consideration. There needs to be a level of implementation and resources attached as well when we're moving ahead to determining the best pathway to asserting our inherent jurisdiction over child and family services.

● (0930)

The Chair: Thank you so much. We've run out of time in this panel. We wish we could stay longer. Your words were very meaningful. They will be in the public record for all Canadians to review and gain wisdom from.

On behalf of all committee members, *meegwetch*. We wish you safe travels home.

We'll suspend for a couple of minutes, and we have four panellists in our next hour.

● (0930)

_____(Pause)_____

● (0933)

The Chair: I'm going to invite our panellists to the front, please, so that we can get started.

I know that we want to have time with the previous panellists. We also want to hear from the ones who have come a long distance to speak to our committee and those on video conference.

Welcome.

We are here at the Standing Committee on Indigenous and Northern Affairs. Our panellists are David Chartrand, President of the Manitoba Métis Federation; Tischa Mason, Saskatchewan First Nations Family and Community Institute; Marlene Bugler, Kanaweyimik Child and Family Services; and Katherine Whitecloud as an individual.

We recognize that we're on unceded territory. Because we have a special guest from my hometown, I want to recognize that I come from the homeland of the Métis people and Treaty No. 1 territory, so there's a special welcome for you.

It's nice to see you, Katherine, once again. We appreciate it.

We'll start with the Manitoba Métis Federation.

● (0935)

Mr. David Chartrand (President, Manitoba Metis Federation): Thank you very much. I've given you a document to keep on file. I want to apologize to Quebec and all French-speaking people that I didn't have it translated in time. I do sincerely apologize for that. I should have had it done, but somebody in my office didn't follow up as indicated.

Honourable Chair MaryAnn Mihychuk and members of the standing committee, good morning. Thank you for giving me the opportunity to present my perspective on Bill C-92, an act respecting first nations, Inuit and Métis children, youth and families.

Today I speak to you as a leader of the Métis nation, but I also want to speak to you as a parent and a grandparent. I want to speak to you as someone who has fought for decades for the children of my nation as they were ripped from their mothers, fathers, aunties, uncles, their communities and their nation. For too long and despite our best efforts, the status quo for our children has been removal, foster care placements and adoption. Our nation has been depeopled one child at a time, through the sixties scoop, the residential school, the day school and our child welfare system.

Last year, in January 2018, I spoke at an emergency meeting on indigenous child and family services and addressed what was referred to at the time by Minister Philpott as a humanitarian crisis and a human rights crisis. This year I watched as the Manitoba government cut from the already underfunded budget for Métis child welfare. Right now in Manitoba, the children in the Métis nation are worth, in the funding arrangement, $1.39 a day. That's the only additional money we're getting. This is less than a Tim Hortons coffee.

Despite the current reality, at least in the province, there have been some positive changes. That has been through our own work and our own development. After the sixties scoop, when thousands of our children were taken, the Métis federation in 1982 developed its own plan through all kinds of fundraising events. We raised our own money to find our children and bring them home. We were fortunate to find close to 100 of them, I think, but many we will probably never find. We are still finding them today. We're still connecting with them and trying to reconnect them with their family. The stories you hear....

I'll just set this aside for a moment and speak to you as a leader. For those of you who may never have been to any of these meetings, I would encourage you to try to go to some of them. As a committee member, you especially have the power to make a difference in this country through legislation, through actions and through voting. I've been in politics close to 40 years now. I've won seven elections as president, and I've been president for 22 years. There are 400,000 Métis people in western Canada. I've chaired many a meeting in my time, not only in Canada but internationally. Throughout this time, I've had the toughest time in my life as a chair to oversee the discussions involving sixties scoop survivors. I don't know how many times I've cried on that podium, with them, hearing their stories of sexual and physical abuse—just abuse; animals were treated better than they were. In fact, Minister Philpott and I sat at a meeting and listened to the young people speak. They were child welfare survivors, and we heard their stories. Philpott and I cried along with the rest of them and promised them that we would fight and continue to fight for change, that change one day would come, that it would never happen again, and that this can't happen again.

I'm sad to say, however, that it's still happening because of the way the system is designed right now in Manitoba, even though we have a mandated child welfare system. We're the only Métis nation government in the prairies that has it. We got it through several inquiries, for which people had to die, and then the recommendations came from there. Now we're at a stage where we see a bill that will give us an opportunity to ensure that the key provisions that we speak of and fight for will be protected. These are culture and identity, ensuring that the family is the number one priority, and ensuring that the child stays within the community. We will have the federal protection that we don't have as the Métis nation. We will have something that ensures us that we will not, in fact, have to worry that our children will ripped away or taken out of their homes and placed in foster homes with those who aren't our people and don't protect our culture.

In fact, we lost one—no disrespect to the Filipino family—to a Filipino foster parent. The court ruled that the child was there too long. I think it was 18 months.

● (0940)

The child was young enough not to fully understand who his parents were. To take them from the Filipino family would have had a devastating effect on his mind. They kept him there and we lost him. We went to court and we lost based on a court decision. We can never let that happen again. I'm proud of the Jewish people, for example, who would never let that happen.. We have a Jewish Child and Family Service in Manitoba, and I applaud them for having the strength and prosperity to ensure that this does not happen to their children. But why does it happen to ours, and why do we let it happen? It can't happen anymore—this is the new millennium. This is not the 1800s, or the late 1900s. It's the time of change, and change is here.

This bill is not the perfect bill. We all know that. I heard you speak here. I heard you state again that money should be set aside. If there's anybody who should be worried about money, it should be the Métis. We don't have a system in Canada right now. The first nations offer services at different jurisdictions they're working in. In fact, two grand chiefs in Manitoba, SCO and MKO, work together with me. We're the only three that have mandated child welfare agencies in Manitoba under the auspices of the governance. Clearly, under leadership counsel we've been fighting with government trying to protect our children.

We just had meetings, the grand chiefs and I, and we're desperately moving forward on our plan to change the direction the Province of Manitoba is going in. We're left at the mercy of the province and at the whim of changes in elections. You all know what happens in elections, you guys. All of you are politicians and somehow have been involved in politics. New leaders and new ideologies come in. In my province right now, the number one issue is cutting and slaying the deficit. Everything else is secondary. With that comes cuts, and cuts came to the child welfare system. Like I said, $1.39 day is all our children will get for the next three years.

How can we change that? We're taking a system in Manitoba that used to be based on grabbing and taking possession of the child. That was the system and that's how you got funded. Now everybody is talking about prevention, including the federal government. How do you shift an entire system that was there for grab-and-take and move it to prevention, where it should have been several decades ago? Now we want to change to prevention and that's the right approach, the direct approach. Keep the child in the family, in the community. The opportunity is going to be there in this bill. I heard Cathy talk about certain things, and I know there are jurisdictional issues that come into play, but common sense should prevail. We've always had our challenges as governments, but I'm sure that if we sit together with open minds we'll come to a solution. The provinces will either opt into that solution or opt out of it.

Right now, I know the provinces don't want to pay the bill. They want the federal government to pay the bill. That's an issue we'll have to figure a balance on. When it comes to resources, I understand that there are issues around where the Métis will fit into all of this, but we trust that if we have this bill the funding will come later. We'll negotiate it. We don't know exactly what our goal or our plan will be, or how far we're going to go with it regarding prevention and expenditures. I understand there was a question posed to my president when he was here. He doesn't deliver child welfare, because he's the national president. I deliver it. There's a question of how you get notice to the community, the Métis. You have reserves, and you have a band council. We too have our political structures, and they've been around since 1967. I have one of the strongest governments in the homeland. Our system is designed to be the most democratic in the country—it ensures that we're participating. We have local leadership right across all of our villages in our urban centres, and we have offices right across the province.

There's no issue of how to get hold of the Métis and advise the people. We have one of the most robust ways of getting our people interacted and involved. That shouldn't even be a question around this table, because the system has been here for a while and it's working well.

Madam Chair, I can say to you that the Métis government in Manitoba, as well as the Métis nation, supports Bill C-92 strongly. We will stand with it and hopefully convince you...I heard you say that all of you support it. You said that. But there are some exceptions, some areas of caution. It is not the perfect bill. It's not panaboriginal. I'm hearing people say it's independent, and every nation has the right to choose. Everybody has the right to opt in or opt out. The options are there. From our perspective, we will support it because we know it's going to make changes that are going to save our families, save our children.

● (0945)

Hopefully, in the next decade or so, we'll all be proud to see that we were all involved in a massive change that took place in this country for the Métis nation, and we'll see that change actually come to where we will be able to say, “Look at the money we're saving today and at the costs that have gone down. The families are stronger because we made a decision to support Bill C-92.” You'll get that support from the Métis nation.

The Chair: Thank you so much.

We're going now to Saskatchewan on the video conference. We have two presenters.

Is it your intention to do 10 minutes each?

Ms. Tischa Mason (Executive Director, Saskatchewan First Nations Family and Community Institute): It's 10 minutes in total.

We would like to thank you for the opportunity to present today on our support for Bill C-92 as it relates to first nations children, youth and families.

My name is Tischa Mason, and I am the Executive Director for the Saskatchewan First Nations Family and Community Institute. With me is Marlene Bugler, the Executive Director of Kanaweyimik Child and Family Services. She's also one of our board members at the institute. We're presenting from Treaty No. 6 territory and the homeland of the Métis here in Saskatoon, Saskatchewan.

Here's a little background. The institute was established in 2007 as a non-profit organization. We were established at the request of the First Nations Child and Family Services executive director, who identified the need for an organization to provide support and training that meet first nations needs and are culturally appropriate. We're non-political.

The mission of the institute is to help build capacity for organizations that provide services to children, youth and families based on first nations values. We do this through research, the development of policies and standards of practice, the development of curriculum and the delivery of training. We also provide on-site support to first nations child and family service workers on their risk assessment tools and child protection and prevention.

We did a first nations community engagement research report to understand the priorities for child welfare reform in Saskatchewan. We provided a handout that cross-referenced Bill C-92 with the institute's “Voices for Reform” research report. Bill C-92 has addressed and aligned to many of the areas that Saskatchewan first nations have identified as needing reform, but we would also like to recognize that some areas need to be further addressed and strengthened in Bill C-92.

Proposed paragraph 16(1)(e) should be expanded to read “with any other adult that is committed to maintaining child' connection to the child culture and community”.

Also, the fourth “whereas” clause on page 1 excludes males and boys.

As well, proposed paragraph 9(3)(e) can be strengthened with a reference to Jordan's principle to address gaps in services due to jurisdictional disputes.

The legislation does not commit the government to fund services. It's referenced in the last “whereas” clause on page 2, but is not included in the previous “whereas” clause that states the government “is committed...to cooperation and partnership...achieving reconciliation” and “engaging...Indigenous peoples”. We hope that government can commit to funding agencies based on need.

Our final point is that more emphasis is needed on collaborative and strategic partnership support to develop interrelated infrastructure and systems that impact or are currently impacting child welfare. An example of that would be family courts. Success is based on our ability to create and maintain relationships and on working together.

I'd like to hand it off to Marlene to further explain this from a technical perspective and present to you.

Ms. Marlene Bugler (Executive Director, Kanaweyimik Child and Family Services): Thank you.

Good morning.

Thank you for the opportunity to address the standing committee as they consider Bill C-92. I'm going to speak from a technician's perspective as the Federation of Sovereign Indigenous Nations will speak from the political perspective.

I have a master's in business administration with 35 years of experience in human services and 25 years in child welfare. I've worked in first nations child welfare agencies, as well as social services child welfare in Saskatchewan. I've seen children come into care as a result of neglect caused by addictions. Parents are susceptible to addictions as they mask the pain from intergenerational trauma. We have learned that parents need culturally appropriate trauma recovery programs to break the cycles of addictions in dysfunctional families. Kanaweyimik Child and Family Services has stabilized the number of children ending up in care due to culturally appropriate, early intervention services and intensive supports provided to children and families.

We service five first nations communities and we average 50 to 60 children in care at any given time; 85% of these children are either long-term wards or person of sufficient interest orders, meaning they're in care until they're 18 years of age. The remaining 15% are new apprehensions, but we've seen that they come in and out of care in a very short time frame. Too many indigenous children are in care. Many extenuating factors cause these numbers to rise. Many of our indigenous families are suffering from decades of unresolved traumas they've experienced, and this is affecting their ability to be effective parents. Removal from parental homes is very traumatic for children. We can see this will impact the children's lives as they grow up to be parents themselves. These children always end up returning to their families when they age out of care, regardless of the history of neglect.

It's important that we consider ways to keep families together and to work towards reunification in a timely manner with culturally appropriate supports. I am in support of Bill C-92 as it will enable first nations child and family service agencies to expand culturally appropriate services to children and families living off reserve, but we must be careful in the transition of responsibilities to ensure that no child falls between jurisdictions [*Technical difficulty—Editor*] lead to the readiness of Saskatchewan first nations child and family service agencies.

We have 16 agencies in Saskatchewan, [*Technical difficulty—Editor*] 20 to 25 years of experience in delivering child protection services. Sixteen agencies have 10 years of experience in developing and delivering a range of culturally appropriate early intervention and intensive supports to children and families. Two agencies from northern Saskatchewan have entered into agreements with Saskatchewan Social Services to assume delivery of child welfare services off reserve to any resident in those areas. Three agencies have entered into agreements with Saskatchewan Social Services to deliver culturally appropriate early intervention and intensive supports to children and families involved with social services. For example, Kanaweyimik has entered into agreements to manage visitation services for children in the care of social services. In North Battleford, Saskatchewan, social services refers all the families requiring family visits to Kanaweyimik. The agency coordinates, schedules, monitors and transports children to and from visits. Kanaweyimik also provides two emergency foster homes to serve children apprehended by social services so they're in a first nations home. We provide culturally appropriate early intervention and intensive supports to children and families involved with social services, resulting in a lot of returns of children in a timely manner.

As another example, we have agreements with the Saskatchewan Ministry of Justice to deliver family violence treatment for any individuals, regardless of race, who are involved with the domestic violence court in The Battlefords. All our agencies have agreements with Saskatchewan to locate and screen families and caregivers for indigenous children in care of social services. We all have agreements with Saskatchewan, again, to case manage children in care files once children have been placed in homes that have been screened and approved on reserve. All our agencies have been trained by social services to deliver the P.R.I.D.E. foster parent program to potential caregivers, so I believe Saskatchewan is in a position to transition our prevention services to off reserve.

● (0950)

Some critical considerations for Bill C-92 are that it needs to ensure that first nations child and family service agencies' capacities will be sustained, and we need legislation that commits governments to ongoing funding for agencies based on actual needs, not only for on reserve, but also for off reserve. This is a whole new area for us.

We need legislation that addresses liability, such as the Saskatchewan Child and Family Services Act, section 79, which provides for immunity as long as an official is acting in good faith. We need legislation that requires establishment of a process for interjurisdictional transfers, similar to the interprovincial transfer protocol, so that no children fall in between jurisdictions.

Legislation must commit to Jordan's principle on an ongoing basis in order to prevent gaps in services to vulnerable children.

We need legislation that enables agencies to radically change the way child protection is done, such as removing parents versus removing children from the home. Current provincial legislation doesn't allow us to do that, nor does Bill C-92. This is an area that Kanaweyimik Child and Family Services is moving to. We've tried it in voluntary situations and it has been very effective.

Our elders have advised us to concentrate on the children and young people, as they are our future. We need to balance our modern-day techniques and traditional values and practices to strengthen our families.

● (0955)

The Chair: I urge you to wrap up.

Mrs. Marlene Bugler: All right.

In closing, I want to stress the importance of ensuring that Bill C-92 provides indigenous child welfare agencies with the capacity to deliver culturally appropriate services.

Thank you for your time.

The Chair: Thank you very much.

We're going to go to our third presentation, from Katherine Whitecloud, who is presenting as a grandmother.

Katherine, you bring wise words on many other issues, so we look forward to your comments.

Welcome.

Ms. Katherine Whitecloud (Grandmother, As an Individual): Good morning, Madam Chair, and thank you very much.

[*Witness spoke in Lakota*]

[*English*]

My relatives, it's with a glad heart that I shake your hands for the opportunity to be here in front of you. I used my language to announce to my ancestors that I am here speaking on behalf of our children, from our people and our community.

Although I would love to speak about all of the technical aspects of this bill, my learned colleagues who presented before me have done so, as have my relatives from Saskatchewan spoken to the technical aspects. I'm going to talk about and share with you the realities and what needs to be done, and what works for our people with regard to our families and our children.

Terminology is so very important, and in our culture and in our ways, we do not have a term for "child welfare". We only have a term for our children, which is *wakanyeja*, our "sacred ones". Our life is to wrap around our sacred ones as the gifts they are.

The history of child welfare is extensive. Successive governments have studied and reviewed and made recommendations for addressing the state of child welfare and therefore the state of our people and our nations. We can talk about the litany of reviews and recommendations. However, my purpose in being here today is to share with you how and what we, as [*Witness spoke in Lakota*], have committed to do to bring about family wholeness and family well-being, and in so doing, community well-being and a thriving nation.

We all are aware of the residential school effects. Our people have felt it. My family has felt it. My parents lived it. Our people have lived the sixties scoop, where whole families were decimated because of child welfare and the loss of family. I attended a funeral just before I left to come here of a girl who grew up through the sixties scoop. Her younger sister knew nothing about who her relatives are. It brought tears to her eyes when I addressed her as my relative and about how important she was to our family and how important all of us are for each other.

Many of our relatives, through the sixties scoop and the residential schools, and through the child welfare system, especially our women and young girls, have been taken advantage of and been decimated through missing and murdered indigenous women and girls. The report that is going to be presented to you shortly, also, will be coming down.

There is a direct correlation between all of those past government policy impacts—residential schools, sixties scoop, child welfare—and other government policies that removed our children from our communities and our families. It is especially the women and the girls who have been directly impacted. They have suffered, and are missing and have been murdered because of their experiences and their parental experiences through all of those policies that I mentioned.

Our people are unique. We are distinct. We have a language and a culture that is like no other. Our traditions are strong. Our spiritual life is powerful and guides us in every moment of our lives. This is the reason that I used my language to begin my presentation and to share the resurgence of our ancestral knowledge of our knowing—the knowing that runs in our blood and our veins, the knowing and understanding that our grandparents and our ancestors watch over us and guide us and that their teachings and all of their knowledge run in our veins. It's powerful, and it's alive.

We are fully cognizant that for our people to flourish, we must be whole and healthy in body and spirit. We must take care of ourselves and we must take care of each other. We must protect and care for our sacred ones, our sacred *wakanyeja*, our children.

We who have accepted the gift and responsibility of parenthood, just as all or most of you have, who have lived and thrived with the sacred knowledge of our ancestors through our language, must do this. No one can do this for us. This is to bring wholeness and well-being to our families. This is to mend the broken hoop of our families. This is to reconnect to the land, to our place, to our homes. This is to make our families and homes whole again, with our *wakanyeja* at the centre of all that we do. This is to fulfill our roles and responsibilities as [*Witness spoke in Lakota*], and to fulfill our purpose in life.

Others of our people have articulated succinctly and with great passion the history of devastation inflicted on our people, on our lands and our ways of life. The most heinous have been the atrocities inflicted on our most vulnerable, our innocent and sacred children.

● (1000)

Our children are the ones who have suffered beyond suffering. When you have stripped a mother and a father, or a grandmother or a grandfather of their purpose in life—their purpose for being—you've inflicted the greatest harm known to man.

It is within this context that Bill C-92 is viewed. Can we trust you? Can we trust your word? Can we trust the honour of your word, the honour of your purpose and the honour of your people that you represent and speak on behalf of? That is the state of the relationship between you and our people, our families and our children.

There are gaps within Bill C-92 that have been identified and brought forward. Colleagues who presented this morning have spoken to the needed changes. Those who have written the words and those who continue to argue for paramountcy inscribing this legal document must remember that our children are witnesses to the outcome. Our mothers and fathers, our grandparents, our aunts, our uncles and our siblings are silent witnesses to the outcome. They've not had the opportunity to express to you how they see their families being whole again. Those who are affected the most have no say and no input to the life decisions you are going to make.

That document you are working on is fragile. It can be destroyed, just as families have been destroyed through the loss of their children. Our children are our flesh and blood. They are our future. They are our lifeblood. They are our destiny. They are our ancestors. Only we, [*Witness spoke in Lakota*], have the responsibility for our children.

History shows that all of the efforts to help our children have failed. Our children are a gift and a responsibility provided to us by our maker. Each child is brought to us as unique human being, to teach us, to connect us to our ancestors and to our future, to provide that path for greater things to come, to carry our history and to make history. We honour our child; we uplift our child. We love and cherish, and we are all equal in purpose and design.

Sadly, our children are caught in a political firestorm. They are right in the middle of it. The reality of a child's spirit and well-being is left out of the jockeying of positions for who is going to win a legal or political battle. Our children are trapped. Not one can speak for themselves, except for our colleague and our brother who presented this morning as an adult.

A system that doesn't understand our culture, doesn't speak our language and doesn't understand our traditions and protocols cannot understand the needs of our child. That's the process we are trapped in. We know what the solution is. Our plan and intent is to transition to supports for family well-being built on our original child caring, child rearing, nurturance of the individual spirit and family-centred way of life. They will be built on understanding our kinship relationships and will re-establish the undefeatable foundation of families rooted in our language and culture and, in doing so, reconnect to our knowing the ancestral knowledge that has sustained us since time began: the power of respect, kindness, truth, honesty, integrity, sharing, helping, giving and love.

What are commonly referred to as preventative services—what we know as expressing kindness, as caring and love and providing supports to our kinship systems—means providing mentoring, guidance and support for the healing of families. It means taking responsibility for our families through our children, through our heads of families, through our family leadership, through our grandmothers and our aunties. It means committing to family and to coming together as a family. It means giving life to our laws and rules that are inherent within our language. Within our languages, our kinship system, our rules of conduct and our role in life, we are blessed with this gift of our language. It is our lifeline.

I have the utmost faith that we can and will accomplish what our children and our people have given us direction to do, that our children will come home, that our families will be whole and our people will survive. Our young people are committed and our relatives are committed and our leadership—the leaders of our families—are committed. We have no other option.

I have five pages, MaryAnn.

● (1005)

We will accomplish this with honour and integrity. We have given our word. We love our children and our relatives. No one can do this other than ourselves. No one understands our language but us. No one represents our children but us, our *tiyóspaye*.

In my childhood it was looked upon as bringing dishonour to our family and extended family, our *tiyóspaye*, if children were apprehended. If that blue government car came in your yard, people would hide, ashamed. Grandmothers wouldn't allow that to happen. That blue car is in our yard every day now, but it's driven by our own people. That practice has to stop, and we'll not allow it to continue. This is work we have to do in our homes and our communities for our people.

The legislative process we are engaged in right now has no understanding of this, the heart of our people and the legacy of our ancestors that we carry. This is where the answers lie.

Our youth are connecting to this. Our young girls are seeking out *isnati*, our coming of age. [*Inaudible—Editor*] are also seeking their coming of age. Our young men will understand their role as protectors, gatherers and providers and about their responsibilities in life. Our children will be honoured and uplifted, and our families and homes will be whole. They have to be.

The Chair: Thank you.

Ms. Katherine Whitecloud: Thank you.

[*Witness spoke in Lakota*]

[*English*]

The Chair: We move on to questioning.

Our questioning starts with MP Yves Robillard.

[*Translation*]

Mr. Yves Robillard: Madam Chair, I will be sharing my time with my colleague Mr. Vandal.

My first question is for Mr. Chartrand.

In her testimony last week, Melanie Omeniho, President of the Women of the Métis Nation, told us that jurisdictional issues meant that Métis children fell through the cracks, particularly because some have been identified as indigenous people of unknown origin.

Have you often seen cases like that in the Métis communities you represent? Can you tell us about the magnitude of this phenomenon? Do you think the bill is sufficiently clear about jurisdiction to improve the care of Métis children?

[*English*]

Mr. David Chartrand: It's a very good question. It is probably the fundamental challenge we have faced as a people, to be falling through the cracks and not to be recognized as indigenous people. Now that we've won most of our cases in the Supreme Court of Canada and that we are without doubt section 35 rights-bearing people, we believe that this will carry a greater sense of recognition and assurance by governments, whether provincial or federal, that they have to define and work with the Métis nation.

Our children were taken without identification of where they were. In many of our families, it was because they were poor. All of our children, I'm sorry, were taken because we're poor. It wasn't because we weren't good parents. We're always good parents, but because we were the working poor, child welfare robbed us of our children.

In a lot of that, we couldn't identify and find out where they were. There was no proper record-keeping of those children. Unfortunately for us, because we're off reserve, no one kept a good record base of our people and their children. That's why it was such a difficult challenge to find them in the United States, to track them down. In fact, we just found one recently who can't come home because they can't get a Canadian passport. They're no longer Canadian, and they want to come home. We're working with Canada to try to fix that issue.

You're absolutely right, the biggest challenge the Métis have faced is because nobody would define us or want to define us for fear that they might become financially responsible for us. I've always taken this position if I can, Mr. Robillard. I've taken the position that, as Canadians, we have paid billions of dollars in taxes in this country. Even as a Canadian, I'm not treated as a Canadian because I'm treated as aboriginal or indigenous, but then when I get to that side of the table, then nobody wants to recognize that I have that right. We've been definitely, probably, the biggest losers when it comes to true identification. That has caused great harm and damage to many of our families and children.

● (1010)

[*Translation*]

Mr. Yves Robillard: Thank you.

My next question is for Ms. Whitecloud. This bill proposes a new approach in many respects, its wording being one of the most significant.

Could you tell us what you think about the co-development process for this bill? Have you been consulted?

[*English*]

Ms. Katherine Whitecloud: I have been involved at the national advisory committee level, sitting on the national review of child welfare. Have I been consulted, or have my people been consulted? No.

[*Translation*]

Mr. Yves Robillard: I will let my colleague ask the next question.

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

[*English*]

Thank you very much, all three of you, for your presentations.

President David Chartrand, in the early 2000s the Government of Manitoba devolved child welfare. I believe you were still president—I was a city councillor, and MaryAnn was a cabinet minister, I believe. However, with the devolution of child welfare in Manitoba, the removal of children increased. Could you comment on that from your perspectives from the Métis federation?

Mr. David Chartrand: Without a doubt, I've been involved right from the beginning. I've been president for 22 years. Just as a background so people know who I am, I come from the Department of Justice. I worked for Department of Justice for 10 years before I became president. I was a probation officer and then I was a director in the courts division in one of the departments. I've been intervolved in the justice and child welfare system for a long time.

I took over as president in 1996. When we finally had devolution in 2003, we were transferred the mandate of the child welfare system, but larger policies did not change. As I said earlier in my comments, the system was designed to apprehend children. It wasn't designed to keep the children with their family or with the community. It was designed to take them out. Your funding formula was based on that system: to help the family, you had to take the child. People must realize this. You're taking the child, and the family has no way—if you heard Katherine speak on certain issues—of having money to defend themselves, no way of having the right to even speak or understand this complicated system. Now it was with the court lawyers and all these things were involved.

Yes, Danny, the issue has been completely the opposite. We've kept a record of all the people we prevented from being apprehended. It had no value to the province, which we thought was absolutely ridiculous, because that shows prevention. I'm talking in the thousands. When you look at it from that side, it was designed for apprehension.

Now there's a major shift. I know in Manitoba, customary care legislation, etc., has come in to work towards prevention. But the problem now lies because we're completely underfunded—data, stats and all the evidence show that—yet they're telling us we can start working on prevention with the surplus funds. How can you have surplus funds when you're already underfunded? There's no way we're going to change to the prevention side of things.

This is our hope in Bill C-92. The focus on Bill C-92 is to go to prevention, to work with the family, to keep the family at home. To ensure that the grandparents, the aunts and uncles are all involved. Let us take care of our own children. I don't know how many times we told you and outside society. Let us take care of our own.

● (1015)

The Chair: Your time is up.

Questioning now moves to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you.

Thank you to all four groups here.

We're going to continue that. Preventative care is only mentioned once here, in section 14. President Chartrand, should preventative care—you were talking to the other side about it—be given more emphasis in this bill?

Mr. David Chartrand: What I'm cautious about—you never heard me come out with recommendations to change the language too much in the legislation, and I'll tell you why first. Then I'll answer your question.

My fear is that there are going to be so many amendments and requirements to change this, to change that to answer everybody's problems, that it ends up not being resolved and passing before June. My worry is a serious worry. If it dies on the floor, what happens to it? That's a serious matter that I and my people and my children that we mentioned in the report have concerns about.

The issue of where I think an answer can be found, Kevin, is that it will give us the mandate to prioritize the importance of culture, of family, of community. We will use that as our prevention measures to make sure it's a guarantee the child will never leave our families again. I think that is protected in essence. It's an important aspect, and we will have control of that, not somebody else. Prevention will automatically kick in and automatically find itself in the policies we will create, the authoritative powers to oversee our own children.

Mr. Kevin Waugh: I do have an issue because I'm on your website and you're showing 3.5 staff members supervising 500 foster homes.

Mr. David Chartrand: That's what I go to. We just raised that with the province. I'm under provincial funding, remember that. I'm not under federal funding.

Mr. Kevin Waugh: I see only 3.5.

Mr. David Chartrand: I hope you can tell that to my premier. Because at the end of the day when I go back to Manitoba, I just echo that strongly, myself and the grand chiefs in Manitoba, that the system is designed so that we can't....

How do you expect to manage these foster homes with only 3.5 staff?

In the fact of giving us funding, let me say this to you, Kevin; it's a serious matter here for all of us to consider. I hope you will take a stand on this. I think Manitoba and one other province are the only two in the country that raked back the child allowance money. They take back that child allowance money which should be set aside for the children and their future.

But in Manitoba, the government takes it back. They clawed it back. There's a court case coming right now. But guess what they just did to us in Manitoba, Kevin, in answer to the 3.5? They shortchanged us on the total amount of that child allowance money that was clawed back before. Instead of, say, hypothetically, giving me, I think it was $53 million, they clawed it back because they used the child allowance money before. They cut back that $6 million. Now, in order for my agency to be opened they are forcing me to spend my child allowance money to run it. It's not clawing back, they're saying. Well, they are making me spend it. They are shortchanging me.

At the end of the day the first nations are going through the same thing. For the SCO, it was $17 million, I believe. When you start looking at these numbers, they are scary. That child allowance money is for those kids. That money should be put in a trust for them. That money should be used for them. A lot of them stay there for a decade or more. When they leave there one day, at least they have a head start in life. But if you're forcing them to pay for their own child care system through the federal child allowance money, that's a shame.

That's why we only have 3.5 staff right now, Kevin, because our premier is slashing and cutting right now. Child welfare is not a priority.

Mr. Kevin Waugh: Thank you.

I have to move on.

I am also from Treaty No. 6. So Tischa, thank you very much for video conferencing from my city of Saskatoon.

You mentioned Jordan's principle this morning. Where should this fall in this bill?

Ms. Tischa Mason: I think it goes with needs-based funding. I think it's about access to services for children and families and the placement of a child.

Mr. Kevin Waugh: Okay.

Marlene, I'm going to go to you because I don't know if a lot of people know, but you have one of the most difficult regions in the country. You're dealing with places like Red Pheasant, Saulteaux, Sweetgrass, Mosquito and so on.

You mentioned today the need for children to be reunited with the parents in a timely manner.

Do you think the bill adequately addresses this need? You mentioned that, Marlene.

● (1020)

Mrs. Marlene Bugler: I believe it provides an avenue for it to happen. It's going to depend on each first nation and each child and family service agency to work that out within their own legislation that they develop under this legislation. It's a priority we've always had. We do it every day. Our practice is making sure that we provide early intervention supports to children and families.

Mr. Kevin Waugh: What happens if a child becomes a government ward? Should the bill address a priority to reunite the child with their family?

Mrs. Marlene Bugler: Yes, it should be first and foremost. That's our common practice. At a first nation child and family service agency that I work with, that's always our first goal, to keep the family together. We do the intake and risk assessment and determine what level of risk there is. If the risk is low, then we will look at sustaining the family unit with intensive supports rather than removing the child and then trying to work with the family. We work with the family right away as a whole.

Mr. Kevin Waugh: Ms. Whitecloud, thank you for your presentation. Can we have your thoughts around what we've been talking about here?

Ms. Katherine Whitecloud: I haven't made a direct reference to Bill C-92; I've left it unsaid. One of the reasons is that there are so many people who are actually working in the field. My colleagues who spoke earlier this morning have spent a great deal of time and effort in addressing these matters and have done so through the national advisory committee and through the regional forums that have occurred throughout the country.

Mr. Waugh, my background is as an educator. I was a teacher. I'm a director of education and I've taught in universities. Although I do not speak directly to Bill C-92, there is a reason for that. In our culture we do not give voice to things that are real. It's like when you step out the door and it's raining. You tend to look at each other and say, “Hey, it's raining.” For us that is silly. We know it's raining. We don't have to voice it.

It's a completely different approach. In my work and my efforts in supporting our children, I live in my traditional ways and utilize the knowledge and experience I've gained throughout my entire professional life in service to our people.

The Chair: Thank you.

I tried to be very polite, but we have to move to MP Rachel Blaney for the next round of questioning.

Ms. Rachel Blaney: Thank you.

I would like to thank all of the witnesses who are here with us today. Your testimony was very valuable.

One of the major concerns that I have with this legislation is that it is framework legislation. Multiple witnesses have told us that principles within the legislation around funding are missing.

We see it in the preamble, and there have been recommendations that it be moved from the preamble into the legislation. We have also had recommendations from multiple witnesses that the principles from the Canadian Human Rights Tribunal about about equitable funding and looking at the realities as needs-based, as many of you have mentioned today, should be in the legislation so that we can hold to account whatever government is in power to make sure that indigenous children across this country are getting the resources they need to be cared for in the way they should be cared for.

I would like to start in Saskatchewan, since you're on the screen in front of us. Could you speak to any concerns you have about funding and whether you agree that the principles of funding should be right in the legislation?

Tischa.

Ms. Tischa Mason: I think that principles of funding should be in. Going back again to Kevin Waugh's comment, if we don't think it's clear enough, even with Jordan's principle, perhaps another section could be added to clarify the Jordan's principle funding more.

With funding in general, we're looking at the difference between equitable, which is equal for all children despite race or family situation, or needs-based, which I think takes into consideration the different historical contexts of colonialism, residential schools and trauma that first nations had, which may require that the needs of first nations are different from other children's. That's why we're looking at an emphasis of needs-based funding, and we're looking at the core principles.

I think the best interests of the first nations child or indigenous child are paramount. We're looking at prevention-focused versus apprehension-focused promotion of well-being of children and the need for protection by offering whatever appropriate services are designed to maintain, support and preserve the family in the least disruptive manner, keeping indigenous families together when it's safe to do so and keeping children in culturally appropriate environments and the provision of child, youth and family services that are community based and culturally relevant.

When we looked at our research report, there is this whole continuum of care when we're looking at child welfare. Part of our literature research, as well as our work with elders and other subject matter experts in doing knowledge research, was to take a look and pick apart child-centred functions, family-centred functions, community stewardship functions and guardianship functions, which are maybe more institutional, and understanding throughout those processes where the need for funding could support and lessen the trauma on children and families wherever it is in the child welfare transitions.

● (1025)

Ms. Rachel Blaney: Thank you.

Can I come back to you, David?

Mr. David Chartrand: Of course I would support a principle of having surety, because in this day and age, can we still come down to a point of trust among each other as governments? I think you said no matter which government is in place. I think it's paramount.

What I want to make clear is this. I don't want any change to the legislation if it's going to hold back the bill. If the bill is going to move forward with agreement of all parties—especially the sitting government—and they're okay to put the clause in there, and it wouldn't hold back legislation or make change, then I would support it.

However, I'll make it clear—and, Rachel, I think your question is very important—right now the formula in Manitoba, even in the mandated agency, is based completely on the whim of government.

In our agencies, the ratio is 700:1. If you have more than 700:1, a new agency should be evolving. In one of our agencies, we have over 1,200 in that agency, which is 500 over and above the requirement.

The ratio is also 25:1, client base to social worker. We're surpassing that, and we're going back to the danger zones of 30, 35 or 40:1, and that's scary stuff. Kevin raised the issue that 3.5 staff to watch all these foster homes is unbelievable.

There are no provisions in the legislation in Manitoba pertaining to funding. It's based completely on the whim of a government. If there are provisions here, as long as they doesn't hold up the act, I am all for it, and I definitely would support it.

Ms. Rachel Blaney: Speaking to that, I'm sorry, I'm going to have to take this opportunity to move a motion. One thing that happened in this committee, which was unfortunate, was that on May 2, we were supposed to have five hours and we were only able to have one hour.

My motion is asking for those four hours, because I want to make sure the testimony is done.

My motion is:

> That, given the committee did not hear four of the allotted hours of witness testimony on May 2, the committee's study of Bill C-92, An Act representing First Nations, Inuit and Métis children, youth and families, be extended by an additional four hours on May 14.

The Chair: Thank you.

Mike.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Yes, thank you, Chair.

I thank my colleague for moving the motion.

The difficulty I have is that we need to get this bill back to the House as soon as possible. I'm really concerned about delaying it any further than need be. It's very unfortunate that we weren't able to fill that hour. There was certainly more than enough notice given to different organizations that wanted to participate. I empathize with the fact we weren't able to get people for those four hours, but I really don't want to delay this any further. I want to get this to the House as quickly as possible to ensure this really important legislation gets passed.

The Chair: Cathy.

Mrs. Cathy McLeod: Thank you, Madam Chair.

It was four hours that were committed to. We have a number of people who have asked to speak who are on the witness list. We do have a date set for clause-by-clause and we've committed to long hours, but I think we have evenings. Other committees work in the evenings. Other committees work on the Mondays and the Wednesdays. This is important enough that I think everyone should be heard. Certainly, we're willing to commit to an evening; we're willing to commit to a Monday or Wednesday to hear from the witnesses who have asked to be heard and still meet the deadline for our clause-by-clause analysis.

We certainly appreciate and will be supporting Ms. Blaney with her motion.

The Chair: Dan.

Mr. Dan Vandal: I was only going to suggest that, rather than waste the time of the delegations over this, we could discuss this at the end of the meeting and decide then, and just continue hearing the delegations.

● (1030)

The Chair: It is a motion on the floor.

Ms. Rachel Blaney: My concern is that I've already brought this before the chair and asked for it to be dealt with in the last round that we had, and it wasn't. Of course I don't want to silence anyone. That's why I'm asking for these extra hours. I think it's imperative that we get this right. If there is some sort of solution that can be proposed and that's going to be dealt with today, I'm happy to have that discussion at that time.

I think it's good that you're empathetic to me, but it's really not about me. It's about the indigenous children of this country and making sure that people are heard here in this place.

The Chair: Okay. Just for basic information, we have a regular meeting on May 14, and it is scheduled to adjourn at 10:45.

Dan.

Mr. Dan Vandal: I completely agree with Rachel. It's just if we could get five minutes, we could vote on this before the end of our meeting today at 1:30. That way, we could continue with our delegations. We commit to vote on it.

Ms. Rachel Blaney: I'm fine with that as long as it's done today.

The Chair: It seems to be amenable.

We will allocate five to 10 minutes at the end of the meeting before we adjourn to discuss committee business, so nobody leave.

Sorry about the disruption. Where are we in terms of the schedule?

It's my honour, on behalf of all members, to thank you for participating, whether you're on video conference or here in Ottawa. We all want to thank you for your words. They're going to be in the permanent record of the committee for all Canadians to share and to understand this very important bill.

Meegwetch.

The meeting is suspended. We'll bring in the next panel.

● (1030)

_____(Pause)_____

● (1035)

The Chair: Good morning, everyone. We are here at the Standing Committee on Indigenous and Northern Affairs of the Parliament of Canada on the unceded territory of the Algonquin people. We are in our third panel for today.

We are honoured to have before us the Assembly of First Nations National Chief Perry Bellegarde. We are also honoured to have, as an individual, Mary Ellen Turpel-Lafond, who is Director of the Indian Residential School Centre for History and Dialogue and a professor at the Allard School of Law, UBC.

Welcome to both of you. You will have up to 10 minutes each and after that we'll have an opportunity for MPs to ask questions.

Grand Chief, you may begin any time that you're ready.

National Chief Perry Bellegarde (Assembly of First Nations): Thank you, Madam Chair.

[*Witness spoke in Ukrainian*]

[*English*]

That's little bit of *Ukrainski*. I know your background.

[*Witness spoke in Cree as follows:*]

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[*Cree text translated as follows:*]

I'm happy to be here.

[*Witness spoke in Cree as follows:*]

ᑭᓇᓇᐢᑯᒥᑎᓈᐚᐤ

[*Cree text translated as follows:*]

I thank you all.

[*English*]

As relatives and friends, I'm thanking you for acknowledging the Algonquin territory here.

This morning, I also welcome the good thoughts, mind and brain of my colleague, Mary Ellen Turpel-Lafond. She is a well-known person across Canada and an expert in child welfare, amongst other things.

The final report of the Truth and Reconciliation Commission of Canada provided many concrete proposals for moving forward on the reconciliation and human rights of first nations. The TRC acknowledged in the first five calls to action that the matter before you today, child welfare, has to be addressed.

The TRC specifically identified the need for federal legislation to launch the change needed to end the crisis of over-apprehension of first nations children. The TRC also said that meeting the minimum human rights standards of the United Nations Declaration on the Rights of Indigenous Peoples is foundational to reconciliation.

This approach informed the resolutions adopted by the Assembly of First Nations, which led to our involvement in this initiative. The reason is compelling. We have many resolutions from our chiefs in assembly. Nobody can question the mandate or ask why the AFN is doing this. You don't get a hundred per cent of everything all the time. I don't think any of your parties do. I don't think Canadians do, on any issue, and neither does the AFN, but we have a mandate and we have direction as per our process. That's why we're doing this.

When rights have been violated and children's lives have been harmed, we say that, over time in these systems, the respect for the basic human rights of children, families, communities and nations is only the proper framework.

Why is Bill C-92 important? Bill C-92 must be understood within the context of the status quo today for first nations children. I know it sounds repetitive—you've heard many witnesses—but we're going to keep saying it until people get it. There are 40,000 children in care right across Canada. Some of the provinces are worse than others.

You have two systems. There are on-reserve child and family services agencies, but now there are the provincial systems as well that need to be addressed. That's what this is trying to look at.

When we say that there are 40,000 first nations children in care in Canada, we know that there are more children in care than were in the residential schools at the height of their operations. That's a very astounding stat and figure and number. It's a human rights crisis in Canada. So we say that it's a humanitarian crisis and a national human rights crisis. It's not a challenge that will be met by federal, provincial and territorial governments continuing to impose their assumed jurisdiction over our children while ignoring the inherent rights of first nations people.

The status quo has been a clear and unconscionable failure. It has huge consequences for generations of children, families and communities. Bill C-92 marks a significant shift from the legal status quo regarding first nations jurisdiction. The bill includes several provisions that affirm the inherent aboriginal and treaty rights of first nations, including self-determination and the inherent right of self-government in relation to children and families. Many first nations are ready to operate under their own laws, and they have been pushing for this for decades.

I always say this: Occupy the field. You have federal laws. You have provincial and territorial laws, but you also can have—and should have—first nations laws in different sectors. Occupy the field and assert that jurisdiction as part of that inherent right.

Splatsin First Nation and Kukpi7 Christian—he's going to be here later on today—is a case in point. Kukpi7 Christian and the tribal council are ready, as are many others across Canada. We are being held back by the lack of legislation supporting and recognizing full first nations authority and jurisdiction over child and family services.

● (1040)

In addition to the jurisdiction and law-making affirmations in the legislation, operational principles were added to ensure that critical problems in child welfare can be addressed immediately.

Principles such as the priority on prevention and the placement of children are designed to recalibrate the child welfare system on the first day after royal assent. Prioritizing prevention over apprehension, along with the importance of culturally relevant placements, are immediate improvements available to first nations even before first nations pass their own laws.

Bill C-92 also advances substantive legal recognition of the human rights of first nations peoples by affirming collective rights, critical rights of individual children and youth, and the rights of their families and caregivers.

Bill C-92 is a good step forward. It's a step forward for first nations, and there is a pressing urgency to complete the work and see the bill passed. It's very important work of this committee. Roll it all up. You have to get it into votes and then over to the Senate. That's another avenue to look at. June is coming and there's a sense of urgency for friends and relatives.

We say that no one piece of legislation is going to reverse all the problems, but this legislation is a step forward.

It's a step forward. No single legislative instrument will be enough on its own. Starting with a national framework while regional and first nations-level innovations continue is a good first step. There's flexibility. This legislation will complement and not detract from existing self-government agreements.

The impact of the child welfare system is felt every day in first nations communities and families. You've heard constantly—and it's true—that there is no greater gift from the Creator than our children. They deserve to grow and develop within their families, with full knowledge of their culture, languages, customs and traditions, and with the love and support of their first nations.

We require a system that affirms our identity and our family systems, where we no longer are required to push and plead for support and recognition from provincial governments: governments that have merely taken their cues from the Indian Act and consequently have imposed harsh policies on us that have failed our children.

Bill C-92 recognizes and affirms what we firmly believe that we have always had: a right to raise and take care of our children according to our own practices and values and to transmit our languages and cultures across the generations and into the future.

Clause 18 of the bill is critical for us. There must be a rights-based approach that affirms our inherent rights, including self-government for child and family services. It's time that Canada shifted the system to do what should have been done years ago.

Bill C-92 is an important step forward because it affirms our jurisdiction and creates space for first nations laws and practices regarding our families. It is rights-respecting legislation within the context of implementing the UN declaration, which is the minimum standard for the survival and dignity of indigenous peoples. It sets out key principles that will prevent children from being removed from their homes unnecessarily, promotes children staying in their communities and ensures that the principle of the best interests of the child is understood and applied with a first nations lens for our children and families.

We know that Bill C-92 is not perfect.

I made my little line here: Perfection in any bill or law can be seen and viewed as an enemy of good. Begin and build perfection over time, because there are reviews, but at least start. Start. Get it passed.

This can be strengthened and we have recommendations to strengthen it. There are four areas.

Number one is funding, a very important piece. Funding should be clarified through three amendments: (a) the language on funding in the preamble needs to be more precise to affirm that Canada acknowledges the call for funding and accepts the call for funding; (b) a funding provision in the body of the bill is needed; and, (c) clause 20 of the bill on coordination agreements needs to be more precise about the fiscal arrangement needed to support first nations governments and coordinate services across systems on the reserve and off the reserve. There has to be coordination.

● (1045)

That's one piece on the funding.

Number two, the UN declaration reference in the preamble is important but must also be included in the purpose section, clause 8, to include advancing the UN declaration as a key purpose of the legislation. This provision must be done in the same manner as was done in Bill C-91, the indigenous languages bill. The UN declaration is a framework and has many important provisions for children and families, like clause 8, on preventing forced removal of children from one culture to another.

Number three, the best interests of the child sections should be amended to clarify that first nations governing bodies that pass laws prescribing the factors for determining the best interests of the children will add to the factors in the bill, creating recognition and support for our ways of caring for our children and families. This is important, because for some of our people we do not remove a child. We remove the person harming the child and keep the family intact. We believe that this is in the best interests of the child. Our laws must be affirmed and our practices supported to preserve family unity.

The fourth one, Jordan's principle, should be given explicit reference in relation to substantive equality for children to ensure that this useful legal tool is confirmed in Bill C-92, building upon the resolutions of Parliament that have adopted Jordan's principle. This can be added to the preamble and to all sections referencing “substantive equality”, including subclause 9(3).

I say all of this foremost in the interests of first nations children and families.

Madam Chair, these are the formal amendments that I have just read. I want to formally table these amendments to the committee. It will help in your report writing. They're all here.

That's it.

The Chair: I appreciate it. That's very good.

We like getting suggestions that are put in a manner that we can consider for amendments, if that's what the committee wants. That's good.

To the second presenter, welcome to our committee.

You can begin any time you're ready to go.

Professor Mary Ellen Turpel-Lafond (Director of Indian Residential School Centre for History and Dialogue, and Professor, Allard Law School, University of British Columbia, As an Individual): Thank you very much and good morning to everyone. It's an honour to be here. It's a great pleasure to join the national chief in addressing you on this significant bill and to recognize the importance of the work that members are doing. I have had the opportunity already to present to the standing committee at the Senate, so I appreciate that both Houses are working with great attention to these significant national issues, which deserve careful and thorough review and I feel have had enormous attention over a long period of time.

I wanted to also note that I have had the great privilege to be a special adviser to a number of chiefs, including the chiefs of a legislative working group of the Assembly of First Nations who have been meeting since the national emergency meeting on child welfare, which was held in January 2018. We have been working in a unity-seeking methodology, which is chiefs from all over Canada, their advisers and their child welfare experts have convened approximately 12 times with day-long meetings to evaluate what the positions are that first nations would like to bring to Canada for inclusion in a bill.

That process has been a very positive process. I've certainly enjoyed it a great deal, but when I say unity-seeking process, I appreciate that you can't always achieve complete consensus. However, it was our objective, guided by the spirit and approach of the Assembly of First Nations, to be unity-seeking, work together and build together. That was a substantial period of work and that work was shared with the Government of Canada.

We've had several meetings with the Government of Canada and I'd like to, as well, acknowledge the significant work by public servants on this matter and on this bill. There are many, and I don't want to name them all, but there are at least three who I think deserve particular attention because they've worked tirelessly on this: the deputy minister for indigenous services, Jean-François Tremblay; the assistant deputy minister who has this file and education; Joanne Wilkinson; and the director for this area, Isa Gros-Louis. Those are just three public servants who have attended to the meetings with the chiefs and listened to us and heard our positions. As well, I've had a chance to work with them as an independent expert. I just wanted to give a shout-out to the incredible, hard-working professional effort that public servants in the Government of Canada have brought to this file and their focus and determination, especially since January 2018 after the national emergency meeting, to get this work done.

I wanted to start by addressing some of the constitutional issues that have come before this committee. I have observed the proceedings and read the Hansard and I am familiar with the fact that Professor Dwight Newman appeared and raised some constitutional questions with respect to the bill. I'm also aware of the fact that probably our most eminent constitutional professor in Canada, Peter Hogg, appeared just earlier this week to address the constitutional issues regarding the bill.

I wanted to clarify that from my own position as a constitutional expert, a professor of law, a former judge, a practising lawyer who's appeared before the Supreme Court of Canada several times and as someone who now is practising again dealing with constitutional issues, I feel that it is beyond question that the bill before you is constitutionally valid.

I think it's important to note that the provincial paradigm that's in place in Canada for child welfare is not really based on a correct understanding of the division of powers as it affects indigenous people. I would direct you, of course, to the very important work also of now-Justice Sébastien Grammond, who was also the dean of law at the University of Ottawa and who has written extensively on the area of child welfare legislation. I'm in full agreement with him, and as he's in full agreement with Professor Peter Hogg, then I would say to you that the preponderance of constitutional opinion in Canada would be that the federal government is well within its authority under 91(24) to enact this legislation.

Even beyond that position, the federal government may enact a national strategy to address issues of enormous importance. You will note in Bill C-92 there is reference to the fact that this is a national project with the government working with the provinces in the preamble. This is the indication, and in the position on coordinating agreements, it is seeking to have a new national approach.

● (1050)

I read those provisions of the bill as saying that there's respect for provincial authority and jurisdiction in child welfare. There is clear authority, constitutionally, for the federal government to act. However, ideally, we would harmonize and have what we sometimes call “double aspect”, or we would have a collaborative approach to child welfare.

I would go one step further to say that based on the scholarship and jurisprudence of Canada, and the recognition and affirmation of the inherent rights of indigenous peoples and first nations, in particular in section 35 of our Constitution Act of 1982, it is important to have this legislation for the following reason.

Until recently, for whatever reason, perhaps because of the colonial history of the Indian Act and the treatment of indigenous people, the federal government took the position that it was a mere funder of child welfare and had no obligation for the people who were in child welfare systems.

We know from both cases, significant class action and civil cases, and constitutional decisions, that all governments have a fiduciary obligation to their citizens, but particularly to first nations citizens, where the honour of the Crown is at stake. Canada is well within its right to enact legislation of this sort to act in that position as a fiduciary, understanding that the honour of the Crown is at stake.

There have been some abysmal and horrific failures with respect to child welfare. They are well known. I worked as an independent child advocate for a decade in British Columbia in that capacity, with a small staff. I had 17,000 child welfare cases, most of which were indigenous children. I catalogued report after report of the incredible failures that happened because of the absence of this legislation that we're dealing with today.

I want to begin by emphasizing to you, being open to answering any questions you may have, or bringing forward to the committee any material you may require, that the paradigm we have now is flawed. In particular, the provinces have authority over child welfare, because there's a provision of section 88 of the Indian Act that allowed them to apply child welfare legislation to first nations people without their consent. That is because of the Indian Act itself, which came into effect in 1876, which was a consolidation of some of the most heinous colonial ordinances. This horrible colonial chapter in our history sought to deprive indigenous people of their identity, their lands, their culture. That Indian Act continues to be on the books and that is the vehicle through which the provincial law is applied.

The world of Canada changed somewhat in 1982 when our Constitution was repatriated. From 1982 to today, our Constitution, which is called “a living tree”, has changed. We've had 40 major decisions of the Supreme Court of Canada on the rights of indigenous people that have consistently found precisely what I am presenting today, which is that there have to be novel collaborative approaches to addressing these persistent public policy failures.

One cannot help but conclude that with respect to child welfare, this is an abysmal and total public policy failure, and a failure of our legal framework to address in a contemporary way, profound issues that need to be addressed.

The legal and/or policy position that I wish to share with the committee today is that Bill C-92 is not only constitutional. It's overdue. It's vital. It's essential. I think it certainly would withstand constitutional challenge. That is not to say that if it is passed, the application of this bill to particular cases in particular places would not always have to be carefully assessed so that it balances the rights of individuals, like children who may be facing peril, and the collective rights of their families and their nations and their peoples.

In application, there will be many issues to be worked out. All legislation, when it's new, takes time to be worked out in practise. It doesn't happen overnight. However, the shifts that are present in this bill are very significant shifts for Canada.

I have worked directly in the child welfare system on literally thousands of cases. I did the first custom adoption in Saskatchewan for a first nations *nehiyaw* child. I have represented chiefs repeatedly in courts to try to get them to at least have standing to speak for their children, which often times they have been denied that standing. I've had the opportunity, even now, to appear in child welfare matters for first nations chiefs and others, and I see the barriers.

● (1055)

In fact, we have a child welfare matter under way in a court in British Columbia, where the judge read the draft bill and said, “This is a very helpful approach. Maybe I should hold off deciding the matter until this has passed, because it would give us a new pathway forward to do things that we couldn't do before to support this family, the chief and this grandmother. We could have family reunification.”

I want to conclude my opening remarks by saying that there are technical issues, of course. No bill, as the national chief has said, on its own, is going to respond to the incredible human rights failure and policy disaster that child welfare has been, for first nations children in particular. Will this bill create new tools and opportunities to shift things in a positive direction? I think it will. Will it require very close scrutiny? Yes, it will.

Significant resources are needed, and new resources have come into the child welfare system. I feel very strongly that there has to be careful evaluation of outcomes for children. Those resources need to go to the children who need them. When we're shifting public policy like this, everything should look at the framework of being accountable to children. Are children getting the resources needed? We do know that the outcomes lens is significant.

I'll leave it there. Thank you again. I'm more than happy to answer any questions and to provide references for the matters I've identified in my testimony.

Thank you.

● (1100)

The Chair: Thank you.

We now move to MP questions. We begin with MP Yves Robillard.

[*Translation*]

Mr. Yves Robillard: Thank you, Madam Chair.

My thanks to the witnesses for their testimony.

My questions are for Ms. Turpel-Lafond.

Questions were raised last week about the fact that Bill C-92 is binding on the provinces and that there could be a court challenge. Do you think this argument is well founded? How could this legislation be challenged in court by the provinces?

[*English*]

Prof. Mary Ellen Turpel-Lafond: I think the argument is not well founded. For instance, even Professor Newman appeared before you, prior to the Saskatchewan Court of Appeal rendering the decision in the carbon tax reference, which put some of these issues into context, as well. I think the idea of a constitutional challenge to Bill C-92 by a province.... Of course, provinces can make references to any court. As we saw in the carbon tax matter, it doesn't always go the way people wish it would go. The legal reasoning and constitutional principles are very clear, as Professor Hogg and others will indicate. This is constitutionally valid legislation.

It's perfectly fine if people wish to challenge things. It's good for the salaries of the legal profession, but it isn't something that should be overly worrying to this committee, because people use strategies to address these things. Sometimes, they have other conflicts between Canada and a province, or what have you.

When it comes to these issues of child welfare, this is constitutionally valid. Moreover, because it's about children, I would hope very much that wouldn't happen. I've been involved recently in the first-ever reconciliation agreement with the Province of Saskatchewan and the Saskatoon Tribal Council. You heard from the tribal chief earlier this week. That was the first time the Government of Saskatchewan ever entered into a process to recognize jurisdiction. I was there to bear witness to the premier and speak passionately about the fact that, for the sake of children, we must not go to court and fight. They effectively buried the hatchet on a court fight that day, and said they are going to work together.

I think that's a wise strategy. I hope that any province thinking of a more aggressive stance will take that strategy.

[*Translation*]

Mr. Yves Robillard: Thank you.

In *Parents Naturels v. Superintendent of Child Welfare* et al. in 1976, Justice Martland recognized that provincial adoption laws applied to indigenous children, unless Parliament had legislated in a way that would prevent their application. Do you think this also applies to indigenous child welfare cases? What is the connection between this case and Bill C-92?

[*English*]

Prof. Mary Ellen Turpel-Lafond: First of all, that's quite an old case. It's an important case. There's actually an 1867 case called Connolly v. Woolrich, which is important for British Columbians because Sir James Douglas's wife's mother is the plaintiff's family. It was a Cree marriage of the country between a fur trader and a Cree woman. There was an issue in the Quebec court in 1867 as to whether the laws of the Cree.... There was an obligation to make sure that customary family law applied. In Connolly and Woolrich it was recognized that there was something called “marriages of the country” and aboriginal laws around family, and those were valid marriages.

There are a whole variety of cases. That's one very important one, and the case you reference is also critical. There are recent decisions as well, on issues like custom adoption and other things. We have three sources of law in Canada. We have indigenous law, civil law and common law. We must always think about how to harmonize these.

This is why I think BIll C-92 is quite positive. By focusing on children and child and family reunification, we will probably get beyond some of these concepts, like adoption, which are not necessarily indigenous concepts. We will get more into family unity. I think that's a progressive thing. I think it's consistent with jurisprudence, but we have to understand that after 1982, the jurisprudence in Canada has progressed.

● (1105)

Mr. Yves Robillard: Thank you.

[*Translation*]

My next question is for National Chief Bellegarde.

Some witnesses have shared their opinion that it is difficult to understand this bill in terms of jurisdiction. In your opinion, are there ways to clarify it?

[*English*]

National Chief Perry Bellegarde: Thank you for the question.

There is no question that things can always be made clearer. I've offered four recommendations to clear it up in four areas. You'll always look for ways to make it better and to improve it, but I'm always going to come back to that sense of urgency. Yes, let's make it better and improve it, but take it through the process as soon as possible for the appropriate votes in the House and then in the Senate. It's a timing thing.

There's a sense of urgency and an opportunity, especially in light of the upcoming election in October. You all know the legislative process. Anything can happen. There will be a throne speech. There will be a new cabinet. There will be other priorities. We don't know where this will rest with any kind of government in terms of a priority, but it's children and there's an opportunity now to do something.

I would urge you all to move it along as thoroughly, but as expeditiously, as possible.

Mr. Yves Robillard: Thank you.

I'll leave it to Monsieur Ouellette.

Mr. Robert-Falcon Ouellette (Winnipeg Centre, Lib.): I just have a quick question about subclause 9(3), which looks at substantive equality.

Ms. Turpel-Lafond, I was just wondering if you could give us a little more understanding of your interpretation of that, and whether a future government could be taken to court over it if it decided not to fund this appropriately.

Prof. Mary Ellen Turpel-Lafond: The principles in substantive equality in clause 9 are very important. They're also in the preamble.

In a way, I view part of this provision as the Jordan's principle provision without naming Jordan's principle. I'm not sure exactly why we can't. I think there are some statutory construction rules that prohibit naming people in legislation, although I'd like to suggest you'd make an exception—as the national chief has proposed—and name Jordan's principle.

On the issue about statutory funding, out of an abundance of caution and given the conflicts that have happened in the past, I think it would be very important to have a free-standing provision on funding in this bill. I think the preamble provision on the call for funding should probably be migrated into an actual provision in the bill, likely after clause 15.

The substantive equality provisions may in fact be used to argue about funding because we've had these cases—and I'm sure you are familiar with these cases, such as the CN case, the Auton case and others—where meaningful realization of equality requires resources. A railway car has to accommodate those with disabilities. Children with autism cannot not be funded and not be in classrooms.

I just raise for you the fact that there are things that allude to standards and substantive equality here. It is possible. Your question is correct. It is possible to construct an argument, but I think a provision would be preferred.

The Chair: The questioning now moves to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you to the witnesses.

I have promised to share my time, and I have two important questions, so I guess we'll need to move forward.

I appreciate your comments about the constitutionality, because that is something that I have been wondering about and having different opinions about that is, I think, very helpful. We have had one opinion, and you addressed it also, about section 88 in the Indian Act, which provides the ability for provinces to move in. I asked if it needed to be deleted within this bill to give greater clarity. The opinion at that time was no.

Do you concur with the opinion that it is unnecessary for it to be part of the bill because of the paramountcy of this legislation?

Prof. Mary Ellen Turpel-Lafond: Yes. I feel very strongly that section 88 of the Indian Act should not be mentioned in this bill. The Indian Act should not be mentioned in any way, shape or form.

Any federal initiative that seeks to rehabilitate and reform the Indian Act is so fundamentally flawed that it's just completely unacceptable. It could compromise this bill. It would compromise the support of first nations for the bill, but it could also serve to continue a system that doesn't work.

Is it required? I don't think it is required. I think the structure of the bill is adequate and that first nations laws will kick it out. There are also first nations who want to pace what they do. They don't want to just kick something out right away. That would be unstable.

● (1110)

Mrs. Cathy McLeod: I appreciate that, because it did concern me that, if it was still there, it might still apply and it might provide complications.

National Chief Bellegarde, we've had many conversations over the last year in terms of the UN declaration, and I've certainly expressed my concerns.

You've asked for that to be in the main part of the bill, and I look at clause 19 and the issue of free, prior and informed consent, and I know—I think it's on the next panel—we're going to have the Assembly of Manitoba Chiefs tell us not to pass this bill.

If you're inserting the UN declaration into the bill, and then you have article 19, the UN declaration about free, prior and informed consent, they will say, “We do not give free, prior and informed consent”. How do you align those concepts?

Can you say it in a minute? I want to make sure that my colleague has time.

National Chief Perry Bellegarde: It's a good question, again, and I know we've met with your leader as well many times and we've discussed these. I would say there are many important bills, but we always focused on C-91, languages; C-92, child welfare; and then C-262, the UN declaration.

I said that I'd be a happy national chief if they all pass by the end of June. I know the issue is free, prior and informed consent. People think, “Is it a veto?” and “Did you hear from Paul Joffe and other experts?”

I say that it's not a veto, but you have to respect aboriginal rights, inherent rights and treaty rights, and involve the rights and title holders sooner than later in any initiative. With free, prior and informed consent, when people.... You mentioned that the Assembly of Manitoba Chiefs are going to say, “Don't pass this”. That is a region and that's a regional chief. Grand Chief Arlen will be here to say that.

You know the numbers in Canada. There are 203 chiefs in British Columbia. There are 47 in Alberta. There are 74 in Saskatchewan. There are 66 in Manitoba. There are 134-plus in Ontario. There are 47 in la belle province of Quebec. There are 13 in Nova Scotia, 15 in New Brunswick, two in P.E.I., two in Newfoundland, 14 in the Yukon and 28 in the Northwest Territories.

Do you think there's unanimity?

There you go, but we have 400-plus chiefs supporting this. We have numerous resolutions to support this. I would encourage people to look at starting to fix this, because I'm going to disagree with people in a respectful way that the status quo is not acceptable, and it should not be acceptable to have 40,000 children in foster care. That's where my head goes at all times.

Mrs. Cathy McLeod: As you know, we support this bill. We think it's important and we want to move it forward, but I do believe that there would be complications relating to section 19 and relating to individuals.

I'll turn it over to my colleague. He probably has a few minutes.

The Chair: He has two.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Madam Chair.

Thank you to our guests for being here.

Grand Chief, you mentioned several times the timing of this bill and the fact of getting it going forward.

I was at your gathering on December 4 to 6, where you made an implored plea, particularly around a child, and it seemed to have worked because as soon as we got back here in February, this bill was introduced.

What's interesting to me is the fact that it took so long. We had three years. Now, one of two things could have happened. There could have been extensive consultations to bring a consensus around this, and we wouldn't have had pretty much everyone show up here with a concern with the bill. Otherwise, it means this has just been dumped at the last minute as a political tool, with the election looming.

It just seems to me that the timing of this particular bill is interesting, and perhaps I am a little cynical about it. I see the connection between your December 4 gathering here in Ottawa and the plea for this, and then the bill being introduced. The consultations happened prior to this. What was preventing this bill from being introduced two years ago?

● (1115)

The Chair: Just a short answer, please.

National Chief Perry Bellegarde: The catalyst was when former minister Jane Philpott called that emergency meeting. That was the catalyst that shed a light on this, not only nationally in Canada but internationally, and showed that something had to be done. That was the push to get something started. That's when committees were brought together, people were brought together and experts were brought together involving the national advisory committee. We embarked on that process.

It wasn't as robust as, for example, Bill C-91 on languages, but it was something. Because we wanted to meet this deadline as soon as possible, that's what happened, and that was the reality.

I don't want to be cynical about this because it's about children. We lift up the Canadian Human Rights Tribunal and the work we've done to fix the on-reserve discrimination there with more resources to meet the children's needs. This is off reserve now in another jurisdiction, so there had to be something there, and that's what this speaks to. The catalyst, however, was back in January. We're working as diligently and as quickly as we can to get this done.

The Chair: Very good.

The questioning now moves to Rachel Blaney.

If we choose to take 10 minutes for committee business, you have approximately five minutes for your questioning.

Ms. Rachel Blaney: Thank you for that very interesting statement.

I am going to start with Mary Ellen Turpel-Lafond.

Thank you to both of you for being here today.

One of the things you said really resonated with me. You said that this is constitutionally overdue. What we've heard from other witnesses is that often indigenous children, both on and off reserve, are like a hot potato that people are passing around because nobody wants to take responsibility, and that this bill actually allows for more jurisdiction and responsibility to be placed on the federal government.

I'm just wondering, with all of those comments I've made, if you could just talk about why this is constitutionally overdue and how this would address the jurisdiction so that our children aren't passed around like hot potatoes. Is there anything missing in this legislation that could prevent that?

Prof. Mary Ellen Turpel-Lafond: Yes. I think the question you're asking is a very important one in terms of whether this is enough to address that issue and to bring the proper focus here.

I would concur with the national chief and with others who have presented. I think that it is a shift. It's a big shift, and I think it's very important in Canada that we have this shift, but I also think it's important that we don't do a shift so hard that provinces and others won't work together, and we can't bring provinces and first nations together.

There will be first nations that do not want to work with the province. I have that experience myself with some clients and others in my own first nations' background. Sometimes people don't want to work with the province, but practically, if you want to get your children out of the child welfare system, you have to work with the province.

This is enough of a shift. I would be worried that if it were too harsh, it could be too directive at provinces. I like clause 20 on coordinating agreements. I also respect the fact that no one has to work with a province if they don't want to. I think this is your opportunity to put the children at the centre. I agree with you very much on the substantive equality.

I would really draw your attention to something that is just so powerful in this bill, and that's in paragraph 9(2)(d), which is about services having to be provided to indigenous children in a manner that does not contribute to the assimilation of the people, group or child, or the destruction of their culture. It doesn't matter who is taking care of the children. Services have to respect and protect culture. That provision alone is so helpful to have as an overarching lens. These are critical steps.

Is it everything? I think it's a big shift, and I think we on the ground will work with that very strongly to support first nations' children in their identities, their cultures and their communities. I think we have to remember that there are chiefs and collective rights, but there are also children's rights. We also have to stay focused on.... The children have to have their rights recognized, and these sorts of things are very critical for the rights of children.

Ms. Rachel Blaney: Another issue that's come up from other witnesses, as well, is around the best interests of the child.

First of all, I just want to say, especially to Grand Chief Bellegarde, that I appreciate your talking about having the funding aspect right in the legislation. It is something I've asked everyone, but I felt that you covered that.

I want to take this opportunity to talk about the definition of "best interests of the child". I'm concerned that if there is a colonial aspect to how it's defined, it could be problematic as we move forward. I open that up to both of you, with a minute and a half left.

● (1120)

Prof. Mary Ellen Turpel-Lafond: I'll take a quick shot at it.

Article 3 of the UN Convention on the Rights of the Child says best interests are paramount. There is a general comment on indigenous children.

The challenge with best interests in Canada is that it's been used as a weapon against indigenous families, with all those terrible attitudes about indigenous families, just as residential schools were used. That's why the Truth and Reconciliation Commission said, in its legacy, do this work that's before you today. "Best interests of the child" is a very challenging thing, but there are new concepts, a new, I would call, interpretive lens brought to it in this bill, which is very helpful.

There is one issue, and I concur with what the Assembly of First Nations has presented and with what the B.C. chiefs presented earlier. I think a small clarification on best interests is that when there are indigenous laws in place, the best interests harmonize with that, too. We have to be very careful. There's a small change, I think, we could make, if needed. If it's not made, I still feel as if we've reset the best interests of the child. The best interests of the child is no longer going to be seen in isolation from their family, their community, their nation and their culture. That's a huge advance. This will be the most progressive child welfare legislation in the G7 for children from indigenous backgrounds. This is a pretty major shift.

Will it, on the ground, be interpreted in this progressive way on the first day? No, it won't. The child welfare system is hard to change. I've been in it. There are times when we have to literally go to court to say, "Excuse me, you forgot that this child is an indigenous child and actually has a community. We want standing." We have to fight sometimes.

It's not going to change overnight. The culture.... It's going to take a lot of work by a lot of people but at least get the shift going in the right direction. Then those of us on the ground and the young people coming forward will take those tools, and I think they will work with them. They're very capable of doing that.

The Chair: Sorry to interrupt, but there has been the suggestion that we move our committee time right to the 1:30 window, rather than now.

Yes?

Please continue.

Ms. Rachel Blaney: Thank you. Sorry for that disruption.

I think my last question goes to.... I'm really trying to think of how to frame this, because I didn't know I was going to have this extra time.

When I look at the identity of a child, is this going to make sure...?

I think about my sons. For one year, when their voices changed, they had to go to the river every single day and bathe. I admire them greatly for doing that, because that's their culture. When I look at their progression as teenagers, I see the responsibility in them, the strength in them. That's who they are. That's where they're from.

Does this legislation make sure that even if it's hard to find a family member, we don't forget that they have to go back and do these traditional things and be connected to their community?

Prof. Mary Ellen Turpel-Lafond: Yes. I think what's very important to note is that for first nations families—my first nations family, others—the transmission of culture and spirituality has been very hard. I think the disruption that's been caused.... You had the witness speak earlier. It's been a horror. The revitalization of first nations culture, just like the revitalization of first nations languages, which the national chief and chiefs have promoted, these go together.

We will look back in 20 years, and I think we'll be in a much stronger place because of things like what your son is doing. Our children are learning their languages, even though their grandparents went to residential schools and they were told "don't".

Our children do hold us to account. I know my children call me regularly and ask, "Mom, what are you doing about this problem? Why is this Indian Act there?" And I'll say, "I think I've worked on it a little bit, dear." They are feisty. Young people are feisty, but they also realize that in Canada you can celebrate your first nations culture and identity, and actually, it's an answer to trauma.

This bill has a number of powerful provisions about recognizing culture, recognizing the connection to a territory, which are very important. Land-based healing is very important. There are concepts in here that I think affirm that. But it's the hard work of parents and communities to blanket their children that will really lead to the changes we need to make.

Ms. Rachel Blaney: Thank you.

The Chair: Questioning now moves to MP Robert-Falcon Ouellette.

● (1125)

Mr. Robert-Falcon Ouellette: Thank you very much.

I appreciate the opportunity to hear you both speak.

I'd like to ask the Grand Chief a few questions surrounding jurisdiction and how an indigenous nation would go about passing legislation.

Obviously, we recognize you're from Treaty 4 territory, but you're also the national chief. Treaty 4 territory also extends into Manitoba. Is that correct?

National Chief Perry Bellegarde: Yes, and Alberta.

Mr. Robert-Falcon Ouellette: I have two questions. One is related to how you go about passing legislation.

What would happen if Manitoba, for instance, was exempted from this legislation and parts of Treaty 4 territory weren't allowed to participate with the rest of Treaty 4 because they're in Manitoba?

National Chief Perry Bellegarde: A good question. Again, Kukpi7 Wayne is going to be here later on today to talk about jurisdiction. That's for that territory in British Columbia. Even our Assembly of First Nations has our charter. You have one national chief. I'm not a grand chief. I'm a national chief elected by the 634, and 60% of the chiefs have to vote for me. I have 10 regional chiefs, and they're elected by the provinces and territories. How colonial is that? Are we even structured by nations? No. Are we structured by treaty territories? No, but it's starting to move.

Treaty 1 is getting organized, the Grand Council of Treaty 3, and then we brought Treaty 4 together. Our jurisdiction extends not only in the Province of Saskatchewan. We don't have a regional director general for Treaty 4. We have a regional director general for Saskatchewan region for our Indian Affairs department, our ISC department. You have your 10 RDGs.

Everything is set up by provincial and territorial government boundaries and doesn't take into consideration ancestral lands, treaty lands, treaty territories, so there needs to be a monumental shift in that. That's not going to be addressed in this. This bill is to facilitate a coming together of governments, to respect each others' jurisdiction. That's what this is speaking to. For example, July 8, 9 and 10 is the COF, the Council of the Federation. The premiers are coming together.

I mentioned earlier on that a few years back I got the premiers of Canada to agree to focus on one item, and that was child welfare. This bill is going to facilitate that further dialogue and a coming together to work out jurisdictions, whether you're in Treaty 4 or Treaty 1 or Treaty 7. That's what this is about. That's a transformational shift that has to happen. Get down to the table and work it out. It's not going to be easy, but at least this will facilitate that to happen province by province. At some point we will have a Treaty 4 government that extends jurisdiction throughout our Treaty 4 lands. We're not there yet, but it's a good suggestion. That's where I keep urging our people to go.

Prof. Mary Ellen Turpel-Lafond: I think the point is that clause 20 of the bill talks about being able to coordinate jurisdiction with not just one province but the provinces within which an indigenous people are located. Indigenous people have indigenous governing bodies. I think the legislation left it open because we are in transition, and we have to let people make choices about who is our government. That may not be an Indian Act band council, as the national chief has said. It may be in some places I work with, the Huu-ay-aht or Nisga'a or Haida. It's a nation-based approach.

The authority for children is authority over the people. A lot of times in western Canada, as you will know, there are even a lot of children from Manitoba first nations in British Columbia. We have to repatriate them. Child welfare involves making decisions about children who are connected to people and places. It's not abnormal for us to do it. It's just we have a pretty chopped-up child welfare system now and there's a lot of interprovincial transfers of children without any rules. This will allow us maybe to be a bit more coordinated and a bit more principled, and hopefully develop some regulations on some of the very specific issues you've raised.

Mr. Robert-Falcon Ouellette: It's interesting you raised the whole issue surrounding transition. Do you see this as a final “set in stone”-type law or is this going to evolve over time as we come up with better practices?

Prof. Mary Ellen Turpel-Lafond: Absolutely, it's not set in stone.

Again, as someone who has worked really in the trenches and at the high level, I see this as a framework. It's the framing of a house. There will need to be regulations and it just discusses regulations being developed in collaboration with indigenous people. That alone is an innovation. That's a very important innovation.

Whether it's the chiefs in Manitoba.... You know, they want their own child welfare law their way for the Assembly of Manitoba Chiefs, and that's fine. I think it's important to recognize that they can do that. Under this legislation, if they want to pass their own law, they can pass their own law on the first day. They can take their time. They can work within this. There are options.

This is the higher piece, but once they decide to go with an option, they may need some regulations about what the standards are and how they will share information and make sure children are protected as they transfer from a provincial system, because sometimes you have to be able to seize a child in an emergency, no matter who you are.

That's why it mentions dealing with emergency services in this act. If the kid's in downtown Winnipeg, you can't say, “I'm sorry, we can't do anything because it's a Norway House child. Let's wait till someone gets on a plane to come here.” You have to practically work things out, and how do you practically work things out as a matter of policy? You have legislation, you have regulations and you have policy.

No doubt we will have to get into some regulations. In the U.S., under the Indian Child Welfare Act, which has been in place for almost 40 years, there are comprehensive regulations developed that are passed by Congress that detail issues, and they're worked out over time and revised. That's just part of the process. Today you're dealing with the architecture of something. How it will be in fact finished, the finishing detail, and how it will have a full realization is going to take regulations. That's important, and I do agree with what was said earlier, that it will be good to look at it in three years. Maybe don't wait for five years, because you can see how it has worked and how it will unfold. I think it will unfold in a way that we'll work things out practically like Canadians do. Peace, order and good government: we work things out.

● (1130)

The Chair: That's a good place to end because our session has run out of time. This panel has been very interesting. Thank you so much for participating and being part of what we hope to have, a transformative legislative package that makes life better for indigenous children.

Meegwetch.

We are going to suspend for a couple of minutes and bring in the next panel.

● (1130)

(Pause)

● (1130)

The Chair: I call the meeting back to order. Please come forward quickly.

On our panel we have Grand Chief Arlen Dumas, the Ottawa Inuit Children's Centre and Natasha Reimer, Director for Manitoba at Youth in Care Canada.

Everybody come forward.

I know I'm rushing things a bit but you have very important things to say on one of the most important bills that we have before us, so I'm very anxious to get started. Thank you.

Please don't mind if committee members are getting refreshments, etc. We've been on a five-hour marathon and—

● (1135)

Mr. Robert-Falcon Ouellette: Committee bingeing....

The Chair: We're committee bingeing, but it has been well worth it.

Welcome to the unceded territory of the Algonquin people, and a special recognition of Manitoba. I come from Treaty 1. That's where I live now in the homeland of the Métis people, but I've had the opportunity to be on many nations in Manitoba and across the country.

What is happening to indigenous children is a tragedy and the system is not working, so we are very anxious to hear from you and to hear your perspectives on Bill C-92. In this panel we will begin with the Assembly of Manitoba Chiefs.

Welcome, Arlen. You can start anytime you like.

Grand Chief Arlen Dumas (Assembly of Manitoba Chiefs): Excellent. Thank you very much.

I am Grand Chief Arlen Dumas from the Assembly of Manitoba Chiefs. Thanks for the opportunity to speak on this very important issue.

As our moderator said, Manitoba is ground zero for child welfare apprehensions. That validates statements made by representatives of the government who have said that it is a humanitarian crisis.

First, I want to acknowledge the land we're on, with our relatives here, and bring greetings from the Assembly of Manitoba Chiefs. I want to also acknowledge the work of the chiefs and members of the women's council, who have carried the brunt of the work for the past few years, at the behest of the chiefs. I also want to commend Manitoba for the great work it has done in child welfare for the last 40 years, to figure out innovative ways to collaborate with our partners. When you have willing partners, you're able to do tremendous things.

However, today I'm bringing forward the message that the Assembly of Manitoba Chiefs cannot support this legislation as is, and that if we continue to work down this path, it is going to do nothing but cause further complications. It will open doors for conflict. It will do away with the past 40 years of good work and collaboration we've attempted to do. Fundamentally, the problem is our province.

The Assembly of Manitoba Chiefs—our region—was never consulted to work on this legislation. We took the initiative well over a year ago to do some groundwork, build upon the successes of our past and come up with a tangible solution and concrete plan, with our own legislation to deal with the intricate nature of our province and our history. The department invested in that past practice—that good work—and we had begun quite an extensive engagement, working with our whole region to come up with a concept that would better serve everybody. That is called the bringing our children home act, which is Manitoba-made.

Therefore, it was quite a surprise when Bill C-92 was presented to us. It was almost a slap in the face, because we had invested so much of our time in bringing forward a solution that everybody could build upon.

I've heard the aspirations of previous presenters, but the reality of our lives, in our communities, is that if you don't nail things down properly, you'll have an interim agreement for 40 to 50 years. We took the initiative, as Manitoba, to bring forward a solution that everybody could build upon.

There was no consultation. This will interfere with our operations in our communities and our nations. It will bring forward more division. It will create, as I said earlier, more conflict with our partners in our region. Therefore, the Assembly of Manitoba Chiefs will not be able to support Bill C-92.

Another part of the problem with this bill is that it's pan-indigenous in nature. All of you whom I've spoken with before come from various parts of the country where you have unique agreements and relationships with your communities. This legislation will impact those individual agreements. There's actually quite a concern that you will be doing away with very important work that has been done in other regions, simply because you will be pulling the province into more of a role than they need to have. It's very problematic.

The whole issue we have in Manitoba is the province. To assume that, over time, we will have a wonderful working relationship with the very entities that are actually kidnapping our kids is wrong. We can't even get the Province of Manitoba to sign on to a carbon tax, let alone make a meaningful agreement with first nations communities or their first nations partners.

The Assembly of Manitoba Chiefs is the political apparatus for our region. There are other entities that the assembly has mandated to play specific roles in regard to working with our partners, but we represent the will of the chiefs, and the will of the chiefs is that we want to secure our own future, with our own processes and our own practices.

● (1140)

We've established our credibility over the past 40 years, and that is the direction we're going. We won't be able to support Bill C-92, as it comes with a myriad of issues and actually will exacerbate the problems that currently exist, as well as the fact that there are no fiscal guarantees in this legislation. It will continue to perpetuate the conflicts and the jurisdictional fumbling that happens. Therefore, the Assembly of Manitoba Chiefs will not be supportive of Bill C-92.

I plead with you now that we rethink this legislation and that we bring our minds together in the best way. If we don't, I guarantee we will have conflict because we will be forced to kick the provinces out of our communities. The instruments that we've attempted to work with over the past 40 years will bring conflict to our communities. They will further kidnap our children. They will further displace people from their homes and their identities, and we will all be hard done by if we allow this to go through. That's the message I'm bringing today.

If there are any technical issues, I'm happy to provide you with whatever technical expertise you want. As I said, we have a wealth of skilled people who've brought forward our bringing our children home act, and who have engaged our communities to bring forward a true representation of what we want and need to do in Manitoba. This pan-indigenous approach won't work.

[*Witness spoke in Cree as follows:*]

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[*Cree text translated as follows:*]

That is all, I thank you all.

[*English*]

I know time is precious.

Thank you very much.

The Chair: Thank you.

We are now moving to the Ottawa Inuit Children's Centre. We have Alyssa Flaherty-Spence and Karen Baker-Anderson.

However you want to split your time or whoever is going to speak is up to you, so please begin.

Ms. Alyssa Flaherty-Spence (President, Ottawa Inuit Children's Centre): [*Witness spoke in Inuktitut as follows:*]

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[*Inuktitut text translated as follows:*]

Thank you.

Good morning. My name is Alyssa Flaherty-Spence.

[*English*]

Thank you for having me here. I'm the President of what was previously known as Ottawa Inuit Children's Centre, now Inuuqatigiit Centre for Inuit Children, Youth and Families. We created this new name to reflect our community.

Thank you for having us here, members and Madam Chair. At Inuuqatigiit, we serve Inuit children, youth and families in the city of Ottawa. Our objective and mandate, in partnership with parents and the community, is to foster strong Inuit children, youth and families by providing a learning environment that will enhance the children's overall development through foster parenting, support and education, while encouraging Inuit to be proud of their Inuit culture and language.

We were established in 2005 by parents and children enrolled in the head start program in Ottawa. Today we are a multi-service Inuit organization that provides cultural, educational, recreational and social support services to children, youth and families of Ottawa's growing Inuit community. By providing equitable access to services and family support networks, Inuuqatigiit encourages Inuit children, youth and families in Ottawa to be strong, healthy and proud community members with knowledge of their cultural connection to the local Inuit community. We do this work through strong, culturally based programming and individualized services for children, youth and families, all with a view to improving their ability to live good lives. Inuit principles form the basis of all our programs and advocacy work.

Whom do we serve? As many of you may know, there is a large Inuit population in Ottawa, and they have come here for many different reasons—professional and specialist medical services and appointments, education, work, serving detention times and the needs of Nunavut children related to foster parenting, adoption and group homes. Overall, this bill will affect our Inuit community here in Ottawa and across southern Canada, because we are a service delivery agent for Inuit children, youth and families, with a focus on assisting in areas concerned with child and family services.

How will this bill affect children and youth in Ottawa? Inter-jurisdictional consequences and realities come into play here. As I mentioned, a lot of Inuit children are coming to Ottawa from Nunavut. Currently we have a large number of Inuit in Ottawa who need access to essential services simply because they are not provided in their homeland in Nunavut. This issue gives rise to inter-jurisdictional concerns that need to be addressed in this legislation. A large number of Inuit children need to access basic services here in Ottawa, and many have to avail themselves of child and family services in Ontario.

The second aspect of this legislation is data disaggregation and collection, specifically in paragraph 28(a), as Natan Obed, my colleague from the Inuit Tapiriit Kanatami, mentioned the other day. Currently we have incomplete data for Inuit children and youth in care in Ontario and in southern Canada generally. However, because we are an ongoing, on-the-ground agency focused on community partnerships, we have relationships with people like CAS, but this is not the case for all agencies and we can be taken as an exception.

Where are our children? This is what we need to know with this data collection. Inuuqatigiit knows that we have a large population of Inuit accessing services like CAS here in Ottawa, because we are on the ground assisting families day to day. However, we still need this data collection and we have Inuit-specific data needs.

● (1145)

We need provinces and territories to have exact numbers to ensure Inuit children are being serviced outside Inuit Nunangat in a way that is accessible, equitable and culturally appropriate for Inuit.

On Inuit-specific data—my colleague to my left mentioned this—we have a pan-indigenous approach right now under paragraph 28(a). Inuuqatigiit is successful because we provide Inuit culturally based programming and services for Inuit children and families, and we take pride in this. We need active and ongoing Inuit-specific data and reports to understand where the needs are for Inuit children, youth and families and to provide equitable, accessible and culturally appropriate services.

One part I will commend you for is paragraphs 9(2)(a) to (e), connection to culture and continuity. This section is vital to the well-being of Inuit children as they are involved with child and family services. Many children we service need this cultural continuity more, given the distance and isolation from their homelands in Inuit Nunangat. Homesickness and being away from their communities in Inuit Nunangat can have harsh consequences and can cause more harm than anything. Inuit are coming to Ontario and other provinces from their homelands, and this can have a strong influence on their livelihood.

Last, but certainly not least, are the funding gaps that are not within this legislation. As we are children and youth service providers, we are currently doing this work, as is, without resources. Children, youth and family agencies look to this type of legislation and wonder what this type of legislation is going to do that we aren't already doing. Inuuqatigiit and community-based organizations do this work but with little to no resources. It would be disrespectful to Inuit children, youth and families in Ottawa and within Inuit Nunangat if I did not make this a priority and speak to you about it. I'm asking for funding to be incorporated into this legislation. I'm hoping you strongly consider this and, if so, in a distinctive and equitable way for Inuit.

I will now pass the mike on to my colleague and executive director, Karen Baker-Anderson, who has been involved in the community for many, many years.

● (1150)

Ms. Karen Baker-Anderson (Executive Director, Ottawa Inuit Children's Centre): What she's saying is that I'm old.

Dear members of the standing committee, I'm honoured to be here to speak to you about a topic that I am completely passionate about, Inuit children and child protection.

As the Executive Director of Inuuqatigiit, I have walked the journey with these families who have had involvement with child welfare. I have witnessed the look in the child's eye as they leave our centre and are put in the car of a complete stranger, not knowing where they are about to go. I have seen the eyes of a mother who has lost her child and know that the pain cannot be described.

If this legislation can result in positive change for our Inuit children in this country, then Inuuqatigiit fully supports this legislation and the work, and we support the views of ITK. We support Bill C-92 in hope that it recognizes, in order for this legislation to put the rights of children at the centre of all court decisions, the change from a systemic point of view must occur at the same time and on the ground. We cannot wait for this bill to be passed. We already know what the issues are. Otherwise, this legislation just becomes an attempt to solve a problem from a political viewpoint but truly without a foot in the reality of the community and the children we see every day.

How do we as Canadians ever accept in this country that 52% of the children in care are indigenous while they only represent 7% of the population?

The connection of this legislation to the calls of actions under the TRC are to be commended. As an agency that serves Inuit children from all four land claims, we have worked with our Ottawa CAS to build a relationship with them to ensure that families stay together. It isn't perfect, but we know that real change is happening in Ottawa. Child protection services are required in this country.

Canadians need to realize the context for why we have so many kids in care. Inuit have lived experience of years and years of multiple levels of trauma. This trauma has a profound impact on them, including on their ability to parent their children. I do feel this is acknowledged in this legislation.

If trauma is the root cause, and Canadian government takes ownership of the causes of that trauma, then why are we here just talking about legislation? We need funding. We need to ensure that the healing process is happening now.

In reviewing the files of the children in care in Ottawa, we can tell you that the causes.... I have actual stats on the number of Inuit children in care and what the causes are for them being apprehended. I can you tell you that they are trauma based.

The Chair: You have run out of time so I'm going to ask you to summarize.

Ms. Karen Baker-Anderson: Okay. The last point I want to make is that we talk about this being a child welfare issue. It is a system issue. We know that children are being apprehended through many systems. We know the calls are coming from schools, police and pediatric care. We need to ensure that this is a system approach that ensures the intent of Bill C-92 to turn around the children protection situation in this country. We owe this to our Inuit children so that the story of the next generation of our children is filled with hope and not dismay.

Thank you.

● (1155)

The Chair: Thank you.

We are now at our last presenter, who is Natasha Reimer, Director for Manitoba, Youth in Care Canada and Foster Up founder. Welcome to our committee. You can begin any time you like.

Ms. Natasha Reimer (Director for Manitoba, Youth in Care Canada and Foster Up Founder, As an Individual): *Tansi*. My name is Natasha Reimer. I'm an alumna from the Manitoba child welfare system.

I want to thank the committee for inviting me to speak before you today.

I come before the committee speaking of my own lived experience and the experiences of those within my community. I do not speak for all indigenous children and youth in care, but I wanted to share my story and hopefully provide some insight on how the system has affected my life and how we should be moving forward.

I was one of the many kids who grew up in foster care. I first entered the system at the age of one. I was then adopted into a white family. My name was changed and I never got to reconnect with my biological family again.

I didn't get to grow up learning about my culture, my languages, and I spent a lot of time wondering who I was, where I came from, if my real parents were alive. This isn't uncommon for kids in care. Kids in care are being placed in homes that aren't equipped to deal with the sensitivity regarding the intergenerational trauma of residential schools that indigenous children have.

For me, growing up was kind of a living nightmare. I then re-entered the system due to my adoption failing at 14, and at that time, the message was just “Survive, kid.”

Those within the system are disadvantaged due to the challenges they have to face in the system. When you are in foster care, secondary school or even a higher level of school is not something social workers or foster parents talk to you about. The challenges you face in the system include the cost of moves, and for me, it was over seven different foster homes, transitioning from rural to urban and long transition periods when I started school. The long transition periods were due to bouncing around from foster home to foster home in the middle of semesters.

This in itself is a disruption of children's growth journey. Kids in care have really low.... In Manitoba we have a 33% rate of graduating from high school. These systems need to look at reducing the number of transitions happening to these kids.

I feel that indigenous kids are the most vulnerable children in Canada. I agree with what the bill says about ensuring that cultural and traditional practices are accessible, but I think it's more important that we make sure that.... My problem is with paragraph 16(e) when it says “other adult”. I fell into that category of “other adult”, and I don't wish that on anybody, to grow up disconnected from their community. I think that section needs to be looked at, and if you are going to have other adults outside the community who are non-indigenous taking care of indigenous children and youth in care, you need to make sure they have the adequate training and knowledge and education surrounding the legacy of residential schools, the trauma of colonialism, the harms that have been done to indigenous peoples.

As well, it's important to recognize that Jordan's principle was never given reference in this. We need to also look at what we consider the best interest of the child. Youth have a voice. They know what's good for them. They have important ideas and they know their situations better than anyone else.

The last point I want to make is about post-care. Aging out of care in Manitoba is 18. I was lucky to have an extension of care until 21. Still, there's nothing mentioning the transition to out of care and there's nothing mentioning the supports for these individuals. There's nothing acknowledging the difficulties these individuals face while in care during their youth and childhood, the fact that they may not even graduate from high school by the age of 18.

● (1200)

We need to look at how we are going to support these individuals. They should not just survive but be able to thrive. They should be able to have opportunities to access post-secondary education, to live their best lives. That is something I find a little concerning, that it is not really mentioned in this bill.

That's all I have to say. Thank you so much for listening to me today.

The Vice-Chair (Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC)): Thank you for that very compelling testimony, and to all the witnesses.

We'll start our first round, with MP Dan Vandal—

Grand Chief Arlen Dumas: I apologize. I wasn't aware of your protocol here. I actually skipped over allowing my co-witness to speak, because I assumed that she would be given her own time, her own opportunity.

The Vice-Chair (Mrs. Cathy McLeod): We're five minutes late in terms of our witness time. We could give you a couple of minutes.

Grand Chief Arlen Dumas: I appreciate that.

The Vice-Chair (Mrs. Cathy McLeod): Ms. Morgan, perhaps you could summarize it.

Ms. Cora Morgan (First Nations Family Advocate, Assembly of Manitoba Chiefs): Thank you. I'll do my best to be very quick.

I just want to acknowledge the territory and the families that we serve at the First Nations Family Advocate Office. I hope that I do justice to what we are struggling with in Manitoba.

Right now, we have over 11,000 children in care under the child welfare system in Manitoba. I think about this as a sports stadium or arena, where those seats are filled up with children who are without their parents. Of the 11,000 of them, 9,000 are first nations children. When we factor in the parents of those children, because they are suffering too, we're looking at another 20,000 people at minimum. When we factor in the grandparents, that's another 40,000. All our first nations people in Manitoba are touched by the child welfare system in one way or another.

I want to share a message from one of our elders, William Lathlin. He says the most violent act you can commit against a woman is to steal her child or take her child from her. We see that every single day at the First Nations Family Advocate Office, which is part of the Assembly of Manitoba Chiefs, who have been committed to addressing the atrocity of Manitoba Child and Family Services for the last 30 years in Manitoba.

I want to acknowledge that between 2008 and 2016, there were 546 first nation children who died in the child welfare system in Manitoba, and that rate of death is higher than the average for children in the residential school period nationally. We're talking of just our province alone.

What we have going on right now we don't like to compare to residential school, but in the days of residential school our children spent their most fundamental years of life with their parents, and that was from birth until they were four, five or six years old. Right now in Winnipeg, we have the highest rate nationally of newborn apprehensions. This Monday alone, our office responded to four newborn babies about to be apprehended in just one day. That was this week, and that happens every single day.

I want to believe that we're living in a moment where something that is comparable to or potentially even worse than residential school is going on. I want to believe that in the days of residential school, mainstream society wasn't aware of what was happening to the children, and today, we do. Although we can never fully feel those intergenerational effects, they crop up in every aspect of our lives as first nations people. The trajectory for our first nations children in care is bleak. They have high rates of homelessness, mental health issues, incarceration, suicide, post-traumatic stress, addictions, poverty, low education levels, loss of identity—and it goes on and on.

What we do today and in this moment will affect thousands of people. There's a lot at stake. One of the elders who I used to spend time with about 15 years ago had said to me, when those settlements were coming out for residential schools, “They can keep my money, just ensure that this never happens to our children again.” At the time, I didn't understand it, but I do now.

We've had lots of tragedy. I spoke about the deaths, but in 2005 we had Phoenix Sinclair, who died in the child welfare system. Eleven years later a report came out, but the Assembly of Manitoba Chiefs took action because they weren't satisfied with the engagement. They created their own engagement and precipitated the beginnings of the bringing our children home act, which was the “Bringing Our Children Home” report.

When Tina Fontaine was murdered in 2014, the Assembly of Manitoba Chiefs again responded by creating the First Nations Family Advocate Office. It opened on June 1, 2015. This got the attention of Minister Bennett. Minister Bennett came and visited the Assembly of Manitoba Chiefs and me as the first nations family advocate. She met the families we worked with and met a newborn baby who we helped prevent the apprehension of.

When INAC divided, Minister Philpott committed to honour those commitments made by Minister Bennett, and then furthermore, they committed to a memorandum of understanding with the Assembly of Manitoba Chiefs in December 2017.

● (1205)

The Vice-Chair (Mrs. Cathy McLeod): Ms. Morgan, could I get you to wrap up? We do want everyone to get at least one round in.

Ms. Cora Morgan: Sure.

At the end of the day, we do not have a great relationship with the Province of Manitoba. Their reforms over the years have been more detrimental. The number of our kids in care has continually grown. Their current reforms are really dangerous for our families. Our Assembly of Manitoba Chiefs experts, elders and women's council members have invested a lot of time in creating the bringing our children home act. I believe that our families in Manitoba deserve nothing less.

I don't believe there is going to be a will for the province to accept Bill C-92. Because the question of finance and funding is so up in the air, I could hardly see them doing a paradigm shift and, on top of that, investing in this. Because the funding isn't spelled out, you can't have the expectation that our provincial government will contribute.

Meegwetch.

The Vice-Chair (Mrs. Cathy McLeod): Thank you.

We will start now with MP Dan Vandal.

Mr. Dan Vandal: Thank you very much.

First of all, thank you for all of your presentations. They were very good.

I've worked on this for a while and the nexus point of the bill is really to affirm the inherent right of all indigenous nations across Canada, including Manitoba, to develop and to implement their own laws regarding child welfare.

I want to read directly from the bill. Clause 22 talks about indigenous nations and federal laws, stating, "If there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services" that is a federal act, "the provision that is in the law of the Indigenous group, community or people prevails to the extent of the conflict or inconsistency."

Subclause 22(3) also concerns relations with the province:

> For greater certainty, if there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services that is in a provincial Act or regulation, the provision that is in the law of the Indigenous group community or people prevails to the extent of the conflict or inconsistency.

My question is for Grand Chief Dumas. I haven't read your bill, but if there is a conflict with either the province or the federal government, your law would prevail. Based on that, I'm having a hard time understanding where the conflict is that you or the Assembly of Manitoba Chiefs have with this bill.

Grand Chief Arlen Dumas: If I may, Dan, I'm a little surprised at your question as I had called you into my office specifically with former chief Jim Bear to discuss this issue almost two years ago. I'm surprised you haven't read the bringing our children home act, as you're from our province.

If you follow the logic of the legislation, fundamentally the minister has overarching authority. I would also bring forward the examples of what I had said earlier. At this moment, this government is having a difficult time having provincial governments sign on to a carbon tax agreement that is federal law. I'm no lawyer, but I'm sure you've heard of the notwithstanding clause. I'm sure you have heard of divisions of powers and all of those arguments and all that rhetoric that's going to happen. Fundamentally, if you truly want to deal with this issue, take a look at section 88 of the Indian Act. Remove that and we'll be able to move forward. That already exists.

It's not going to work, Dan. I'm telling you that, and we're bringing forward 40 years' worth of attempts of trying to work in good faith. We developed agencies. We developed authorities, but fundamentally the province's authority is recognized before ours. The legislation can say that but the actual implementation of it is another thing.

Mr. Dan Vandal: You're saying that, in spite of the words in the bill that give you paramountcy over provincial laws and federal laws, that's not going to happen.

Grand Chief Arlen Dumas: It won't happen. You also need to have a full appreciation of the history of precedent that has been set. The whole history of all the litigation that has happened and all of those other pieces will be incorporated into the ongoing operations of our system.

● (1210)

Mr. Dan Vandal: Grand Chief, with all due respect to your opinion, we've had constitutional experts sitting where you are now, saying that the provisions in this bill shall override the provincial perspective, or even the federal perspective. We have spoken to a lot of people—constitutional experts—who have an opinion differing from yours.

Grand Chief Arlen Dumas: Well, with all due respect, Dan, I've heard constitutional experts tell me for 30 years that my section 35 rights were an empty box. Magically, within the last three years, I've been told that my constitutional section 35 rights are full. At the end of the day, we know the history and legacy of this issue, and if we don't take the opportunity to do it properly, with people who have the proper insight, then it won't move forward.

Mr. Dan Vandal: I want to read another section of the bill, paragraph 9(2)(d):

> child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people;

Can you comment on that?

Grand Chief Arlen Dumas: Yes. To cut to the chase, how are you going to be able to do any of that work if there's no financial commitment to ensure that those things happen? It's not being done right now, and it's not magically going to happen tomorrow.

Mr. Dan Vandal: Are you suggesting that there needs to be a financial commitment within the bill?

Grand Chief Arlen Dumas: Absolutely, in order to do all these things.

Mr. Dan Vandal: Natasha, thank you for your presentation. It was very powerful.

We don't have a lot of time. Do you have a recommendation on what we can do to improve the lives of young indigenous people in the child welfare system, going forward?

Ms. Natasha Reimer: Yes. I think funding is a key component. Without adequate funding, services and resources, we are failing these children and youth in care. We leave them unsupported, and unable to thrive and reach their full potential. I think it's crucial that we have legislation ensuring that there is funding allocated for this and that these resources are given the utmost that we could possibly give, because these are children's lives we're talking about. They deserve an opportunity. They are kids, at the end of the day.

Mr. Dan Vandal: Thank you very much for all for your presentations.

The Chair: Questioning now moves to MP Arnold Viersen, who is splitting it with MP Kevin Waugh, I understand.

Mr. Arnold Viersen: It depends how long the minutes you give me are. That's always how it goes.

The Chair: Go ahead. Now that it's you, I will have to check the clock twice.

Mr. Arnold Viersen: Ms. Morgan, thanks for your testimony today. You mentioned that just this week, you were intervening in four cases. I was just doing a Google search of Manitoba Child and Family Services. They were interfering in a case where some kids were playing in the backyard, unsupervised. It seems like a significant overreach, in my opinion.

Maybe it's a privacy issue or something like that, but can you tell us a little about why Child and Family Services were even there in the first place, in these four cases?

● (1215)

Ms. Cora Morgan: One of the typical practices is that if a mother has any children already in care, any child she has after that is automatically taken. When young people age out of the child welfare system and have their own children, they are often automatically targeted with birth alerts. It's a common practice.

One of the cases on Monday was a mom who was actually from Ontario. In Ontario, they have their own inherent laws and they have been guiding the way child welfare works in their five first nations in Treaty 3. Because the young mom had to deliver her baby in Winnipeg, it automatically brought her into the realm of the Manitoba child welfare system. The Ontario leadership asked us to be there, because the Manitoba child welfare system was getting involved. Their position was that the baby should easily go back with mom, but because they were in our province, it brought them issues they didn't have in their own.

Then we had a mother whose baby was sick and on medical. There was a racial profiling of her and her partner. They believed the parents weren't healthy, so child welfare intervened and took the baby away. We intervened to bring the baby back to the hospital and have them sent back north.

It's a common occurrence. Any single day in Winnipeg, there will be a newborn baby being apprehended from our hospitals.

Mr. Arnold Viersen: One of the areas of the bill is the best interests of the child. Somebody presented to us and they said we should add into that some impermissible reasoning. It appears to me that some of these cases might have.... For example, if you have survived the foster care system and you're now having your own child, it seems like CFS shows up by the way. Perhaps we could make that part of this impermissible reasoning, by saying something like that's not a good reason.

Ms. Cora Morgan: We have that right now in our current Child and Family Services Act in Manitoba, that it's in the best interests of the children. That's how Manitoba operates; it's in the best interests of the children. So when I saw that in Bill C-92, it's frightening for us because apparently we're working in the best interests of children and in our first nations' opinion that's not—

Mr. Arnold Viersen: Who decides what are the best interests?

Ms. Cora Morgan: Right. Then there are all these contorted definitions that aren't of our best interests and aren't of our first nations definition.

Mr. Arnold Viersen: That's the opportunity here. The best interests of the child is something that's grown over time through the court system, but we have the opportunity to legislate what that actually means.

Would you have a recommendation, if you were the one defining what the best interests of the child were?

Ms. Cora Morgan: Our elders ultimately have a definition of what's in the best interests of children from our inherent ways of viewing children as being our most valued and prized, and we're there to care for the children. At the end of the day, those definitions have to be fleshed out because we're not going to be any better off if we're leaving it up to other people's definitions of what's in our best interests.

Mr. Arnold Viersen: Precisely.

Chief, this discussion that we're having, fundamentally for me, is about parental rights. Has your organization worked on a bill of rights for parents or something like that?

Grand Chief Arlen Dumas: We've actually done a lot of extensive work. We've developed our own legislation. We've done engagements with communities. We've created our own laws based on the five indigenous languages in Manitoba. We've done very comprehensive things. If this committee would rather do our bringing our children home act, it would suit everybody else's needs. That's actually the way to go.

Amending anything in here, other than literally deleting it and allowing us to rewrite it for you...that's probably the only solution.

● (1220)

Mr. Arnold Viersen: I'll hand over my remaining time.

Mr. Kevin Waugh: Thank you to my colleague.

I'm going to go to the Inuit, because Natan Obed of ITK talked about the challenges that you have. I would think the Ottawa area would be the second most populated area—certainly it would be the first in southern Canada—of Inuit. This was an issue where they're spread out so much up north and then they come into your hands here in the Ottawa area.

Talk about that, because that is a concern with ITK. We don't really have a lot of family foster homes up north. When they come down here to Ottawa, I'm sure you're struggling with that also.

Ms. Alyssa Flaherty-Spence: Yes. Part of that struggle is that we get the burden of those services and what we need to provide in partnership with other agencies such as CHEO, for one example.

We have to do this work based on the type of agency we are. The vast number, as you mentioned, of Inuit come to Ottawa directly from Iqaluit and Baffin Island. We have that burden on our shoulders without the support at some times of the provinces or territories.

On our side, we take on these roles on our backs, and I think I'll let Karen also speak to that a little more extensively.

The Chair: You only have five seconds, so maybe you're going to have to save that.

We move on to MP Rachel Blaney.

Ms. Karen Baker-Anderson: I just want to say it is very complicated when the kids arrive right here in Ottawa. Right now we have approximately 60 children living in group care who are from Nunavut and 15 kids who are here for complex medical reasons.

We have applied for funding to be able to support those kids. On the medically complex kids, it was heartbreaking to know that they were here. I did not know until about a year ago, when CHEO brought it to my attention. They had not seen an Inuk face or heard Inuktitut since they had left their homeland. We are there now doing visits.

The complexity is that they arrive here without documentation and they go to the school system that says, “Where's your documentation?”, because in Ontario we document kids until they're blue in the face so that we can prove the services that they need. There's a real gap there.

We've been to Nunavut a number of times to talk about this gap, but the reality is that from a legal perspective the guardian is still Nunavut social services, yet they're living in Ontario. It is a complex issue that we have brought forward to ITK and we look forward to working with them on solutions that work for these kids.

Ms. Rachel Blaney: Thank you.

From all of you I've heard different concerns, but the one that's all the same is the issue of funding. That is what concerns me most about this legislation, although I certainly heard a lot more things that we should be thoughtfully concerned about as well.

I'm just wondering if I could have all of you speak to one of the things I've been proposing. At the very least, there should be some principles of funding right in the legislation. Right now it's outside of the legislation—it's in the preamble—so that doesn't hold anyone to account. I'm just very concerned that if this is not held to account, then it's going to be another hollow piece of legislation that doesn't really touch the core.

I'll start with you first, Grand Chief Dumas, to speak about the concerns around funding.

Grand Chief Arlen Dumas: Ms. Morgan, would you like to go first?

Ms. Cora Morgan: I think at the end of the day we did the work of the bringing our children home act, and that was something that was committed to us. We had laid out those parameters in that document and it was a first nations' approach because of the crisis in Manitoba.

We did ceremony. We had a lot of hopes in this and a lot of work in it. It covered a lot of areas that Bill C-92 doesn't, because we also need to bring all of our children home. I know that you heard from Natasha and Jeff this morning, and about all of those things that scar our young people who have already aged out. We're talking about thousands of people.

Bill C-92 is not doing anything to address those sorts of pieces. We're only looking at moving forward and not in the very short term either, because we have this provincial involvement. I can see that they are not going to let go easily.

The funding piece is huge, if you want to be able to make this extension and it be seen as genuine and legitimate that there would be resources. My concern, in Manitoba, is that right now the province contributes 60% of the $546-million budget. The feds only come in with that 40%, so I'm wondering if the funding model is somehow going to be changed completely. Is there going to be a need for the province to pony up dollars to make this fly?

If that's going to hold things up, then we'll never have Bill C-92. That's why we want that commitment for the bringing our children home act, because we want those direct relationships with Canada.

● (1225)

Ms. Rachel Blaney: Thank you.

Grand Chief Arlen Dumas: Further to that, once you address that financial component, then you will see how strong the division of authority is in Manitoba. When it comes to that financial contribution that is made off the backs of our children, you will see that this goes into the provincial coffers. Then you will see that this legislation is very erroneous and won't do what it is we think it's supposed to do.

Ms. Rachel Blaney: Thank you.

Karen or Alyssa...?

Ms. Karen Baker-Anderson: We are lucky to be in Ontario. The changes to the Child and Family Services Act did occur last year. We were very involved in that work.

We've had changes to the CFSA, but no funding put into the changes that need to happen. I guess that's why when I heard about more legislation I said, “Oh, more legislation without funding.”

I think one thing our province did that was brilliant, prior to this election, was that they allowed us, as a community and as an agency, to develop a program that was preventative for children. They gave us money to develop that.

We had the community and elders in a room. We asked, “If we were going to make a change for our children tomorrow, what would that look like?” It wasn't a huge amount of money, but it was more about the process. It was flexible funding and we decided on the line items. It was hard for the ministry staff to let go.

That is called the family well-being funding, and I highly suggest you look into it. We have one staff person doing all our work. Today I can tell you that we are supporting 35 families in Ottawa with a child welfare file.

Ms. Rachel Blaney: I just want to make sure that Natasha gets an opportunity to speak directly about the funding.

Ms. Natasha Reimer: I think funding is a huge thing that we need to be looking at, as I had said over there to Dan.

This funding is so important in order to provide supports for these communities, for indigenous people. We need to have that funding in there. Otherwise.... I remember being in care and my social workers saying that they didn't have funding to help me out. I had turned 21. I was in the middle of my second semester of university. I had exams coming up. I asked if there was any way they could help me. They said, “No, we have no funding.”

I have never felt more alone in my life. I had the stress of university, aging out of care and having no funding support. I don't want other kids to go through that. It's so abrupt and you realize how alone you are. You have no supports for your medication and your mental health—nothing. They're all cut. The response from my social workers was, “There's no funding. There's nothing to do. We're sorry. We wish you all the best.”

The Chair: That was a powerful statement.

We have maybe a minute and a half for MP Robert-Falcon Ouellette.

Mr. Robert-Falcon Ouellette: Thank you very much.

The bringing our children home act is an important piece of legislation that I think is going to do great wonders for the indigenous people of Manitoba.

One of the things that's interesting is that it talks about mediation of a family crisis support, so it's getting more into the types of regulations, but there is also the creation story, which is written out there.

Cora, you were talking about spirituality and ceremony and how that was important. It sounds like what you have done is something that probably.... I'm not sure if this place does a lot of spiritual things in that way. I think they do it in a more secular manner.

Can you describe the spirituality that went into the law you have drafted here and the potential regulations?

● (1230)

Ms. Cora Morgan: After the offer from Minister Philpott to develop the bringing our children home act, we thought it was important to bring the elders forward, the women's council and all those members. We have a ceremony person who is also a lawyer and a helper in our community. She drafted it. Before anyone saw it or went to ceremony, we had a water ceremony, pipe ceremony, sweat lodge and feast. When we did that, it was asking for the guidance that the bringing our children home act travel the good path, and that all the right people brought forward what it needed to best represent our people.

Over time, we've done several ceremonies for the bringing our children home act, because it brought together our elders. In the process, we've lost two of those elders, who had significant roles: Elder Elmer Courchene and Elder Doris Pratt.

We wanted to be able to honour them in the best way and to keep pushing for it, because it has been the will of experts in child welfare, first nations experts, for the past 30 years. We want to do justice and we want what was promised to us.

Meegwetch.

The Chair: Manitoba has numerous enormous challenges. We all hope that we find a path to resolution. There are 11,000 indigenous children in care. It's a particularly dire circumstance. I think all of us have heard you.

We understand the history and your cautions, Grand Chief.

We want to thank you all for participating in this very important discussion about the lives of our indigenous children in care in the future.

Thank you. *Meegwetch*.

We're going to suspend for a couple of minutes and bring forward our next panel.

● (1230)

_____(Pause)_____

● (1235)

The Chair: We have four panellists, and we're taking 10 minutes at the end of this session....

Do we have agreement for the 10 minutes? The end of this session will be 1:30.

Ms. Rachel Blaney: My understanding was that the 10 minutes would be at 1:30.

The Chair: You mean after 1:30.

Ms. Rachel Blaney: Yes, that was my understanding.

The Chair: Okay, we have agreement that it will go over.

We have four groups.

Welcome to the Standing Committee on Indigenous and Northern Affairs of Parliament.

We are studying a bill that attempts to redress what some would describe as being worse than residential schools, a system that has put many, many children in care and is a Canadian human rights crisis. We are engaged and listening to opinions so that we can construct the best possible bill in what we hope will be a very short legislative approval system.

The way it works is that you have up to 10 minutes to present. After all presentations are done, we will move into questions from MPs. I understand that we are starting with Chief Wayne Christian.

It's so good to have you. Welcome. Whenever you're ready, you can begin.

Chief Wayne Christian (Tribal Chief, Shuswap Nation Tribal Council) [*Witness spoke in Secwepemctsin*]

[*English*]

Hello, everyone. My Indian name is Big Voice that Speaks the Truth. I'm the chief of the people of the Splatsin Shuswap nation.

I acknowledge the ancestors of this territory, their present-day descendants and this very important issue we're talking about. I'm a father of five, a grandfather of 28 and a great-grandfather of one. I'm a former child in care from the sixties scoop. My mother was a survivor of residential school.

As I speak today, I'm honouring my past and my deceased brother, Adelard, who took his life. We came back to our community in 1977, and my mom passed shortly after him, two years later.

I became involved in this issue at age 23. I've been involved in this for 42 years in the capacity of chief and councillor for my community for 23 years and working in the healing and addictions field, helping our people for close to 20 years. That's the perspective I'm going to present to you, members of Parliament.

We all know why we're here in terms of how Canada's legislation and legislative genocide, as I call it, has created the situation we are in today. Our response to this, I think, is important, because in 1980 when I was elected chief, a young mother came to me and asked for help for her four boys who were going to be removed by the province. We asked our elders this question, “What did we do before they imposed white law on us? How did we look after ourselves?” They told us we had our own Indian court. We had our own jails. We had our own laws. We had our own systems to look after ourselves.

Knowing that, we put in place community-based legislation in over one year, working with a very young lawyer called Louise Mandell. You may know of her. She's quite well known in terms of aboriginal title and rights across the country. She worked with us for a whole year to design that process and put that law into place.

Since 1980, we've been operating under our own jurisdiction and our law that's based on our inherent right. The relationship we've had with the provincial government has been an interesting one, because they, as you know, claim alleged jurisdiction over our children but they don't have jurisdiction.

We had to mount a political campaign called the “Indian Child Caravan” in 1980, and the then deputy premier and the minister of children and family, Grace McCarthy, came to an agreement with our community to recognize our jurisdiction and return the children. We jointly planned for each child and we would seek resources from the federal government. Since 1980, that's what we've been doing.

It's really important to understand that the basis of our jurisdiction is notwithstanding residency. It's not just on reserve; it's everywhere. Wherever one of our children is in need of protection, we go. We've been to the United States, in Dallas, Texas, and in Georgia. We've been right across Canada. We've been to all the cities in British Columbia, Vancouver and the major cities. You need to have a good understanding.

Bill C-92 that has been proposed opens the door for that space of inherent jurisdiction. We've been doing this and we have some experience in this field. You've heard a lot of presentations around different aspects of what takes place. We've been doing this for 40 years, and I think it's important that people understand that. It has not gone without its struggles, because the provincial government started to try to enforce the fact that they had jurisdiction for children not in our communities.

We tabled a writ, a constitutional challenge, in 2015, challenging the provincial government's assertion of jurisdiction. We went into a negotiation with British Columbia and got an abeyance order, and we established a memorandum of understanding with British Columbia to say we would talk about the issue of jurisdiction, establish a jurisdictional process, an operational process, as well as look at a transition from where things are to where they need to go. We did that as a community, but also established that as the Shuswap Nation.

You have a written submission that explains who we are as a nation. There are 32 communities, 17 Indian Act bands, a population of about 15,000 and a territory of 180,000 square kilometres. We're bigger than 168 countries in the world in terms of our land mass.

I think you really need to understand that, in the context of Bill C-92, there are some specific fundamental issues that have to be addressed.

First is the issue of changing funding to a fiscal relationship, because we really believe it's about a nation-to-nation process with Canada. You've heard other chiefs talk about that. Stop calling it funding and move it to a fiscal relationship and, within that, move it out of the preamble of the legislation and right into the main body of the legislation. It's an easy fix. I think it's possible.

● (1240)

In the preamble, we also talk about UNDRIP. I think that needs to move out of the preamble and into the body of the legislation.

The issue of Jordan's principle is cited in paragraph 9(3)(e). We find this very interesting, simply because in our jurisdiction, for approximately 40 years, we've had situations where children are physically disabled and their parents can't look after them. In the system, they would have just been lost or they would have died, quite honestly.

In terms of what we've been able to do with children who have come into our care, we have a young girl who's now 25 years of age and is alive because we intervened and took care of her for all of her life. I think that's really an important part. That's what jurisdiction is about, having the resources and making those decisions for that child.

I think Jordan's principle is really important as to how it's addressed. It has to be addressed in terms of how jurisdiction flows from the community up, not into the community but from the community up into the process. I think that's important.

Those kinds of things are important in terms of the process.

Amend subclause 10(1) on “best interests”. The provision needs to include family, communities and cultural continuity as primary considerations in the application of this bill. That's really important. I think the issue of best interests has to be defined by the community and by the nation, not by Canada or British Columbia.

On paragraph 13(b) and the definition's inclusion of “care provider” having “party status”, we disagree with that completely. Care providers only become care providers because they have a contractual arrangement to look after the children. They shouldn't have legal standing in those processes and in those decisions around our children.

On the issue of “stronger ties”, that needs to be amended so that it's nation to nation—indigenous nation to indigenous nation working with each other to have a really clear idea of where that child belongs, so that whether it's with the Secwepemc, the Sq'ewlets, or the Tsilhqot'in—whoever—we have that ability ourselves. We have historical treaties with the nations around us, around what are called *kwséltkten*, our relatives. I think it's really important.

The last comment on the legislation is really that the five-year period is too long. It should go to a yearly review, because I think we really need to get on the ground with this stuff right away. In speaking about these issues, my experience is that in a community-based process, you can correct problems.

This was a big issue that we had with Grace McCarthy. She kept asking me, as chief, in 1980, “Can you look after your children?” What I said to her was this: “Look, when you make a mistake in your system, you can't correct it. It takes a long time to correct it.” That's what's going on right here today. Here it is, 40 years later, and the system is still the same. It has not been corrected.

We can change rules and regulations and adjust to the system on the ground. For Canada and British Columbia, in your laws, you can't, and I think that's the problem with the system. I appreciate each and every one of you. You're lawmakers. You make laws for Canada. Our laws come from our oral history and our interaction with the land. We've been on the land for 10,000 years, so it informs what we do. In our oral history, we have numerous stories that talk about children. Simply put, what they say in those stories is that the person who pays the ultimate price is usually the child. These are oral histories that go back a long way. We have to pay attention to that.

With this legislation as it goes, you will have an opportunity to change lives for literally thousands of children. I'm speaking here as a former child in care, as a father and as a grandfather. I speak on behalf of my mother and brother. Like my brother's death in 1977, there have been thousands of deaths in the system since then. Like my mother, there are a lot of mothers who have no voice in the system. You heard about them today. They're taking the children away from the mothers right in the hospitals. That is ridiculous. It has to stop.

Is Canada going to grow up? Seriously, we have to have this legislation so that it creates a space for recognition of our laws and our jurisdiction. Simply put, it's the right of self-determination. Communities can decide if they're in or they're out. It's up to them. That's what's critical to this piece of legislation.

I'm getting the high sign.

Voices: Oh, oh!

Chief Wayne Christian: Thank you very much for listening. A written presentation has been submitted.

● (1245)

The Chair: I do give signals when you're getting close.

Chief Wayne Christian: She just went, “Off with his head!”

Voices: Oh, oh!

The Chair: You're not supposed to share that.

Voices: Oh, oh!

The Chair: I understand that there's been agreement that we will move to Katherine Hensel next, even though we also have, and are honoured to have, on this panel a minister of the Province of Ontario. We appreciate that.

We'll go to Katherine Hensel.

Ms. Katherine Hensel (Principal Lawyer, Hensel Barristers Professional Corporation, As an Individual): Thank you, Madam Chair, and thanks to the minister.

[*Witness spoke in Secwepemctsin*]

[*English*]

I also am Secwepemc. I am a mother of four and a litigator. Roughly 60% to 80% of my practice is in indigenous child welfare on behalf of indigenous agencies, nations, communities, grandparents, parents and occasionally other agencies.

My initial and very brief comments are that of course I endorse and am subject to the comments of our national kukpi7, Wayne Christian, and I unreservedly agree with all of them. I would note for the committee's benefit, and it's likely not news to you, that Bill C-92 does not grant anything to indigenous people. It merely constrains and compels provincial and federal systems and governments. Our jurisdiction, insofar as it exists...our laws are inherent, and, as has been noted to you by chiefs and other technicians who have appeared before you, are not subject to federal or provincial oversight. It has been open to any indigenous nation and community in Canada to exercise jurisdiction at all times—but for the act of suppression and lack of resources and the negation of that jurisdiction, or the attempt at negation of that jurisdiction, by provincial and federal Crown agencies and governments.

That said, with regard to this bill, while there is room for improvement, as you see reflected in the submission by Kukpi7 Christian and others, it comes at a time when, as you have heard from other witnesses, the situation on the ground is so critical that the legislation must occur in a timely way for a number of reasons that the committee is well aware of. While it was always open to any nation or community to exercise jurisdiction, the room and the resources were simply not there to permit them to do so. Jurisdiction has been continuously asserted since time immemorial, but no one other than Spallumcheen and Kukpi7 Christian's communities have been able to exercise it successfully and exclusively.

I have only one other comment with respect to Kukpi7 Christian's comments, and that is with respect to care providers. I would just qualify that where *kohkom*, or *kikia7as*—grandmothers—are care providers, they also, under many indigenous systems of law, may have standing, so they should not automatically be precluded from having standing under the bill. That's my one qualification of my unreserved endorsement of Kukpi7 Christian's comments.

Thank you. *Kukwstsétsemc*.

● (1250)

The Chair: Thank you.

We'll move now to the Government of Ontario. We have with us the Minister of Children, Community and Social Services and Minister Responsible for Women's Issues, the Honourable Lisa MacLeod.

Welcome.

Hon. Lisa MacLeod (Minister of Children, Community and Social Services and Minister Responsible for Women's Issues, Government of Ontario): Thanks very much, Chair.

Colleagues, fellow presenters, my name is Lisa MacLeod. I'm the minister responsible for children and youth, community and social services; women's issues; immigration and refugee...and poverty reduction in the Province of Ontario.

Two weeks ago I had the privilege of joining my federal, provincial and territorial colleagues in Saskatoon to discuss a wide variety of issues, indigenous child welfare and Bill C-92 among them. I can assure the committee that Ontario takes indigenous child welfare seriously, which is why we have supported 12, soon-to-be 14, indigenous-led children's aid societies focusing on customary care. We have 38 non-indigenous child welfare agencies. I'm happy that both Amber and Theresa are here today.

We recognize that indigenous children are overrepresented in care and we are committed to better outcomes for these children, their families and their communities. As I said in Saskatoon, Ontario is cautiously optimistic about Bill C-92 and the desire for better support for indigenous children and youth in care.

That said, in alignment with my provincial and territorial colleagues, I do have some concerns that I'd like to share from our perspective. After consulting with indigenous leaders in Ontario, there are a number of implications for Ontario, specifically with respect to definitions, standards and requirements, paramountcy, affirmation of self-government, jurisdiction and, of course, funding.

Let me walk through some of the implications for the Province of Ontario.

Our preliminary analysis has identified a number of potential impacts in the following areas.

One is definitions. Where definitions in Bill C-92 differ from or are inconsistent with those in the Children, Youth and Family Services Act, there could be resulting implications for the interpretations of the CYFSA. For example, the roles contemplated for indigenous governing bodies in Bill C-92 may not align with those set out for bands and first nations, Inuit and Métis communities under the CYFSA.

Two is the standards and requirements. Requirements, for example, related to rights to make representations and information sharing in Bill C-92 that are different from or inconsistent with those in the CYFSA could impact how Ontario's indigenous and non-indigenous children's aid societies provide services to first nations, Inuit and Métis children and families. For example, Bill C-92 and the CYFSA contain different provisions addressing the best interest of the child. A further clarification from Canada would be appreciated on how the provision of "minimum standards" is to be interpreted in the case of conflict or inconsistency, particularly where they are lower in Bill C-92 than within Ontario's CYFSA.

Three is paramountcy. Further clarification from Canada would be appreciated on how paramountcy will operate in relation to a number of issues, including situations of conflict or inconsistency between or among indigenous, provincial and federal laws. Further analysis will be required to identify CYFSA provisions that may be rendered constitutionally inoperative under the doctrine of Bill C-92 if it becomes law. We would appreciate the constitutional law branch of Ontario working...to best address that.

Four is the affirmation of the inherent right of self-government. This affirmation by Canada in Bill C-92, that the inherent right of self-government is recognized and affirmed in section 35 and includes jurisdiction in relation to child and family services, goes beyond the current state of the law. This affirmation could support trilateral discussions on jurisdiction in order to advance indigenous aspirations. We would appreciate clarification on how we can best address that.

Five is jurisdiction and law-making. There may be implications for a bilateral process with first nations' partners on the potential implementation of laws and systems. Some partners may see federal legislation as a complication or a burden and press the province to rush agreements in advance of the legislation's coming into force.

Six is funding. Without mandated federal funding to support Bill C-92, there is no clarity on how implementation will be funded and how existing funding relationships among Canada, Ontario and first nations will be impacted. The absence of mandated funding in Bill C-92 also reinforces the existing gap in federally funded services for Inuit and Métis children and families.

Finally, I want to reiterate the chief's point on Jordan's principle. As you will see and probably hear from my provincial and territorial colleagues, we would like greater clarification with respect to that.

The positions of indigenous partners in Ontario will be represented here today, but I just want to share a few that I have received in my ministry.

First nations in Ontario have also been analyzing the intent of the bill to assess its implications and determine their support, but all have raised concerns with our ministry about the lack of a specific commitment to funding in the act. Ontario Regional Chief Archibald, in her response, noted that "Nothing guarantees funding...will be needs-based and equitable", and that without funding tied to the legislation "we risk not being able to exercise our jurisdiction". The Chiefs of Ontario has also expressed concerns that Bill C-92 will erase gains in Ontario and lower standards. The NAN Grand Chief Alvin Fiddler noted in his response that the bill fails to recognize exclusive first nations jurisdiction over children wherever they reside. The Association of Iroquois and Allied Indians Grand Chief Joel Abram noted that a lack of statutory funding could result in a lack of support from AIAI. Anishinabek Nation Grand Council Chief Glen Hare has stated that the Anishinabek Nation is "encouraged by the introduction of this bill today and see[s] a path forward to right the wrongs that continue to be endured by our families and our communities."

● (1255)

Other first nations, Inuit and Métis partners have indicated similar concerns to our ministry over the past several weeks since I arrived back from Saskatoon.

With that in mind, I would request clarity from the federal government, both for Ontario and for our indigenous partners in Ontario, on which sections would be proclaimed upon passage. Here I would reiterate the call by my provincial and territorial partners for the federal Minister of Indigenous Services to come back to the table and meet with his counterparts so that we can seek greater clarity on how this will impact child welfare in our indigenous communities throughout not only our province of Ontario, but also the rest of Canada, as we are sharing our jurisdiction here.

Thanks very much for your time and attention. It was a great honour to be here with you, Chair, as well as my esteemed presenters and, of course, with your colleagues.

The Chair: Thank you very much.

Our last presenters are from the Association of Native Child and Family Service Agencies of Ontario, Theresa Stevens and Amber Crowe.

You can start any time you wish.

Ms. Theresa Stevens (Executive Director, Association of Native Child and Family Service Agencies of Ontario): Good afternoon, committee members. Thank you for the opportunity to present on this critically important issue to the future of our children.

[*Witness spoke in Ojibwe*]

[*English*]

I'm Theresa Stevens, Executive Director of the Association of Native Child and Family Service Agencies of Ontario. ANCFSAO was incorporated in 1994 as an organization, though our agencies have been designated since 1987. In one configuration or another our agencies have been providing prevention services in one capacity or another since the 1970s. We're a provincial indigenous organization. We've been mandated to build a better life for all indigenous children through the promotion of culturally based services for our children, families and communities. We represent 13 of the 14 indigenous child well-being agencies in Ontario and our agencies serve 90% of all first nations in Ontario.

We are the technical voice of indigenous child welfare, so we are the child welfare practitioners on the ground, and we're a reference group for governments and service collaterals to consult with about indigenous child well-being. We're a membership-based organization and our job is to provide resources to our member agencies to provide quality services to our members through education and training, policy development and analysis, and research and advocacy.

Our membership was engaged by Indigenous and Northern Affairs Canada on the legislation in August 2018. During that engagement several themes did arise. First of all, as technical experts, we did share with Indigenous and Northern Affairs Canada the importance of cultural congruence and enhancement of cultural identities. We were consistent in stating that this was critical to any potential legislation to do with indigenous child welfare. We also were consistent in stating that federal legislation must recognize the cultural diversity of all of our first nations, and that cultural systems needed to be in place to form the foundation of any child welfare practice.

We were also concerned about the engagement process. We wanted to ensure that it's understood that our participation in the process could not be misconstrued as consultation as per the Crown's obligations. Then we also made recommendations around socio-economic conditions. We stated that we felt unless the legislation addressed the underlying socio-economic conditions of what brings children into care in the first place, it wouldn't go far enough. We noted the need to reduce overrepresentation and the issues of why children come into care, such as poverty, unemployment, poor housing, food instability, domestic violence and addictions.

We also did make a recommendation about funding, and that it needs to be needs-based funding and based on actual costs, while accounting for remoteness and case complexity.

Then in relation to these four themes, we also had four principles. We thought it was important the legislation reflect flexibility, as well as family, community and nation preservation and prevention, which we feel is central to indigenous child welfare practice. Then there was first nations jurisdiction and sovereignty, as well as that quality care must be based on best practice.

Just to reiterate, we receive our mandate from our first nations. Our agencies are formed by a group of first nations coming together and, through a resolution, identifying us as their service provider to protect their children on their behalf. As such, we take our direction from the leadership of our first nations and fall in line with the direction they provide to us on how they want to proceed with the federal legislation.

● (1300)

Ms. Amber Crowe (Board Secretary, Association of Native Child and Family Service Agencies of Ontario): Good afternoon.

[*Witness spoke in Ojibwe*]

[*English*]

I am from Alderville First Nation, and my name is Amber Crowe. I am the Executive Director of Dnaagdawenmag Binnoojiiyag Child and Family Services, which is the newest mandated agency in Ontario, through the Ontario ministry. We serve eight first nations.

You have our written submissions. I will highlight four key points or concerns from our submissions as the practitioners or deliverers of the services to be provided under the legislation.

As Theresa just mentioned, we receive our mandate from our first nation leadership and other indigenous communities for those agencies that serve a broader population base. As such, we will follow the political decisions and will of the first nations that belong to our agencies, but we also receive a mandate through the provincial legislation.

Because we follow our first nations leadership, we have the potential under this bill to be subject to multiple laws and jurisdictions. We serve multiple first nations who they will all have their own paths and priorities with regard to how to deliver services under this act. If that's the case, we need to ensure that the risks are mitigated in delivering services under possibly multiple pieces of first nation legislation.

We also want to raise the issue of the definition being used in this act. It is the same definition of indigenous aboriginal peoples as in the Constitution. That definition includes only Indians, Métis and Inuit. For many of our agencies, this does not reflect our current service populations. We serve more than just those who are eligible under the Indian Act as Indians. We also find that using that definition would go against the charter itself. It would require us to discriminate against our children, on the basis of status, and perhaps on the basis of where they live.

The principles put forward in this legislation include cultural continuity, best interests and substantive equality. These principles would not be the basis of the bill, if this definition of indigenous peoples is used.

A further issue we want to raise is needs-based funding. We must not have a formulaic way of funding indigenous child welfare. It must not incentivize the taking of indigenous children into care. We need it to be needs-based and flexible. It needs to be able to fund our service models, which are holistic and prevention-based. Finally, it needs to consider remoteness, the complexity of needs and the availability of resources in the area where services are being provided.

The final point we want to bring attention to in our oral submissions is the experience of practitioners delivering services under imposed standards and regulations defined and provided for us, rather than through our indigenous communities from the ground up—from the grassroots. We would be concerned that the provisions of this law would impact our ability to provide services the way our first nations direct us to. That is not to say that we disagree with anything in the bill with regard to these things, but it's not Canada's place to provide them. It's the place of the indigenous communities to provide them.

Thank you.

● (1305)

The Chair: All right.

We are now moving to the question portion of the meeting, beginning with MP Will Amos.

Mr. William Amos (Pontiac, Lib.): Thank you to our distinguished panel.

I'm most curious about the jurisdictional aspects. We've had an interesting discussion around the division of powers throughout the course of these meetings. We had one law professor from Saskatchewan assert that there may be issues around clause 7 of the bill, particularly insofar as it specifically references the provinces.

I've heard Ms. Hensel's comment around inherent jurisdiction. I take that point. Notwithstanding that, I think a Canadian constitutional question is still being brought to bear on this. I'm really curious to hear Ms. Hensel's views with regards to what the Province of Ontario asserts are some of the jurisdictional issues.

I'm also curious to hear Minister MacLeod's views on whether there is any particular issue especially around clause 7 because it specifically mentions the provinces. I would mention also that on Tuesday we heard from Professor Peter Hogg who made it abundantly clear, as has Justice Sébastien Grammond in a recently published article, that there is absolutely no constitutional jurisdictional issue that the federal government can occupy this field to enable indigenous control over child welfare.

Over to you please, Ms. Hensel.

Ms. Katherine Hensel: The minister will correct me if I'm wrong. Within the past few years, Ontario has at least tacitly acknowledged the potential for the exercise of inherent jurisdiction on the part of first nations in Ontario. In my view that is completely consistent with the content of the bill. That's what's contemplated.

With that said, under the Van der Peet analysis, section 35 of the Constitution also does not grant anything to indigenous people. It merely constrains Crown activity that infringes on any inherent or treaty rights that indigenous people may have. This is the rule of indigenous law, and jurisdiction is just an element of that.

Insofar as clause 7 imposes a constraint on a province, I would submit that it's merely Canada acknowledging its own predominant obligations to indigenous people and to take the lead in that regard. I think this bill does so.

Ministers Philpott and Bennett acknowledged the critical need to do so over a year ago in Ottawa at the inter-ministerial meeting. There may be jurisdictional challenges, operational challenges and interpretive challenges, but I stand by my earlier suggestion that the jurisdictional aspect, as Chief Christian noted, predates anything that's been happening in these territories for the last 500 years.

Absent the only potential complication in a Canadian constitutional framework and from a Canadian court is the last stage of the Van der Peet test with respect to justification, as in, is the infringement on an inherent right justified? Without resources we run the risk of having a successful challenge by a province or someone else.

● (1310)

Mr. William Amos: Hence, the need to incorporate that kind of thing into the body of the law.

Ms. Katherine Hensel: Yes.

Mr. William Amos: Thank you.

Minister.

Hon. Lisa MacLeod: In Ontario, we recognize that, constitutionally and legally, there is an intersection between the federal government and the provincial government in indigenous relations. I think my presentation was fairly clear that we're more concerned about some of the standards that we have in place in Ontario being diminished, in a sense, in many ways from the child protection aspect that we have.

As I stated to the minister when we were in Saskatoon, I was cautiously optimistic and we do hope for the success of this. I'm simply here bringing some of the concerns that we have, predominately between clauses 10 and 17 of the bill, and what they mean for our Children, Youth and Family Services Act. Will we have to make amendments to that legislation?

That's why I'm seeking some clarity in that regard of what happens when the bill passes. You have a majority; I know how this all works. Are all aspects of the bill going to receive royal assent immediately, or will there be an opportunity for the provinces and territories to take some time and work with the federal government to work out some of these details?

As I said, in Ontario we're very proud that we have 50 children's aid societies, 12, soon to be 14, of which will be indigenous-led. I think we're making great strides, and my two counterparts from Ontario at the table here today who have spoken about children and youth in that indigenous sphere speak to the possibilities we have.

We're taking, I believe, a collaborative approach between our province and the federal government with respect to this piece of legislation. I can't say it's going to be so on every piece of legislation, but we're certainly happy in this regard to make sure that the real focus here isn't between a bunch of politicians in Toronto and Ottawa, but on the child, the family and the community.

That's what we've tried to do in Ontario, and I just want to make sure that the intent of this bill, which I believe comes from a good place, looks at that little child who is going to be part of customary care in Ontario and continues to receive those wraparound supports.

That's my motivation; that's my goal. I'm not as interested in having a constitutional argument as much as I want to make sure that the standards we have in place in our legislation that have empowered Ms. Crowe's and Ms. Stevens' organizations aren't watered down. That's the challenge we all have as legislators, and that's simply where we're at.

We just want to have that clarification. As I speak on behalf of my colleagues on the provincial and territorial level, I would appreciate having an additional conversation with the minister, but I certainly welcome the opportunity to be here today and to share some of the concerns we have with respect to the legislation we already have in place and to ensure that its integrity remains intact.

● (1315)

The Chair: Thank you.

The questioning now moves to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, and I hope to share my time with MP Kevin Waugh.

Grace McCarthy is a voice from the past. I'm also from British Columbia.

I really do appreciate the forward-looking work. I've been witness to it where I live in British Columbia, where there has been significant progress, as we hear is happening in Ontario. We understand that there are other provinces where there continue to be significant challenges, but I think everyone, whether it's provincial.... Every party in the House says this is important and that we need to move forward.

I think there are concerns about how fast we're having to move forward because of where we are in the parliamentary cycle. Sometimes you make mistakes when you move things forward rapidly. The ability to hear from the provinces is a challenge when you're trying to move things rapidly, but I think everyone wants what's going to be best for the children. I think that goes without saying.

I'm going to start with Ms. Hensel. I've asked this question a couple of times, and I've had two answers.

Regarding section 88 of the Indian Act, someone said not to touch the Indian Act, which is where, of course, the province has been given authority for children on reserve. I asked if that section should be deleted. One person said not to touch it, because it's dangerous, and there was an indication from, I think, the Manitoba chiefs who thought that was something that should be done.

Do you have any comments about that?

Ms. Katherine Hensel: Under the standard interpretation—

Mrs. Cathy McLeod: It's the Indian Act.

Ms. Katherine Hensel: —of section 88, provincial law applies where the federal government hasn't expressly occupied the field or where it doesn't go to Indianness. For example, Ontario has jurisdiction pursuant to a funding agreement, really, or a physical relationship, and there's no positive delegation of authority. All that section 88 says is that provincial law applies where it doesn't go to the heart of Indianness and where the federal government hasn't expressly legislated otherwise.

That's simply not the case. The provinces merely assumed authority, and I believe it was convenient for the federal government at the time to have that authority delegated. It was done through different mechanisms in different places, but if you go back to first principles around the division of powers and provincial and federal jurisdiction, the relationship with indigenous peoples is squarely in the federal mandate and jurisdiction.

Mrs. Cathy McLeod: You have concerns about the gap in that piece.

Ms. Katherine Hensel: Because the provinces have been occupying the field, section 88 will be a lever through which provinces could challenge, or others might insist that the provinces continue to have exclusive jurisdiction over children on reserve.

I have a concern that challenges will be brought. I don't think they ought to be brought, but they might be. As to their success, I think that if you revert to first principles, nothing goes more squarely to the heart of who a people is and to their Indianness than whether, how and to what extent they govern themselves as a people in relation to the care of their children. That is a core governmental function and if we're going to have self-determination in any iteration, then indigenous nations have to have the right to make laws and enforce them.

It's not just the authority to care for their children. It's the right to make laws and enforce them, including on an involuntary basis. I think section 88 ought not apply.

Mrs. Cathy McLeod: Minister MacLeod, was the meeting that you had just a couple of weeks ago your first conversation with the ministers about Bill C-92? Have there been any other conversations?

Hon. Lisa MacLeod: We would have appreciated a dialogue in a ministers-only approach and didn't receive that. We've advocated for that. There was great leadership by my colleague from Saskatchewan, who chaired that process. We had many different voices around the table, which I thought was important and provided a good perspective.

I think when you look at child welfare—the provinces are responsible for that and we're working with our partners on the ground, and I can speak for Ontario in particular—we want to make sure that those voices in our indigenous communities are being represented. As the minister responsible for child welfare in Ontario, I got the sense that they weren't adequately consulted. My job is to make sure that their voice was heard around the table and I did express directly to the Minister of Indigenous Services that I am cautiously optimistic. I want this to succeed because indigenous children in Ontario—and I'm sure it's the same elsewhere across the country—are overrepresented in the children's aid societies, and that's heart breaking. It's the same with the LGBTQ+ children, as well as youth of colour.

How do we do a better job? Of course, we want to have a good, strong federal partner that allows us to succeed, but when we've reached out to our indigenous partners—I first started to do that in March and then we did this again in May—they didn't feel they had been heard.

I just wanted to make sure today that I came here wishing this committee and the government great success because its success means that children are protected and that we're advancing and moving forward. I think we always have to make sure that if there are higher standards in a province, we race to the top, not to the middle. I guess I would be here today because we have great success. We have incredible partners. They're doing amazing things. One of the first things I did after I was appointed 11 months ago—and I have five different ministries—was to meet with my colleagues because this is a serious issue in our province and I know it is elsewhere across the nation.

We have to continue the dialogue. I know that there are so many competing voices because there are so many jurisdictional issues, but I think that the best way for us is to hear each side and to make sure that as we have this conversation our focus is on that seven-year-old child who may be without a mom or a dad. I get that there's jurisdiction and I get that there's a Constitution. As someone who wrote a thesis on the Constitution, I understand that, but my focus is on that seven-year-old child.

● (1320)

Mrs. Cathy McLeod: I didn't take Kevin's time?

The Chair: You've already used seven minutes, so you've used up Kevin's time and all the time.

Now we're moving questions to MP Rachel Blaney.

Ms. Rachel Blaney: I'd like to thank you all for being here today.

I would like to start by asking a question of Chief Christian and perhaps it will also be relevant for Ms. Hensel.

One of the things that you mentioned in your speech to us was around the definition and understanding of a child's best interest. From the story you told about your community and the work that you have done, it feels like that has been strongly identified. One of the concerns that has been brought forward is that the definition of a child's best interest might be interpreted from a colonial perspective in this framework legislation and not really touch on the key core values of the indigenous community.

I'm wondering if you have any recommendations, thoughts or advice to give this committee about how to make sure that that definition is strong enough in this legislation.

Chief Wayne Christian: One key component is that the definition has to be expanded to include family, communities and cultural continuity as a primary consideration. The bottom line is that when we deal with this in the communities, we're dealing with it from that perspective of knowing the families who are right on the ground, historically, perhaps going back 40 years, knowing who they actually are. That's a big issue, and understanding those connections and then understanding the extended family outside of our community with the Tsilhqot'in nation. It has to have that type of definition that includes the families and the communities as a primary consideration—extended family, not just the biological family. That's really an important consideration.

Those are things that will strengthen it and give the ability in that best interest, which again, should be based on the culture and the nation itself as to how they define that. There are differences in some of the cultures in terms of what that definition might be, but there are some similarities in terms of extended family connection, and that's what's really important. That's how it can be strengthened.

That's what we noticed in the bill. It has to be strengthened in that area, because it will not cover it otherwise. It just has a definition similar to the provincial government's, which doesn't necessarily work.

Ms. Katherine Hensel: I have learned the hard way in Ontario through the previous iteration of what's now the CYFSA that if you leave a best interests test and place it before a Canadian court or with a non-indigenous agency, what happens is that it's interpreted and applied in a very culturally grounded way. It's not just culturally influenced, but what's in a child's best interest is a real, crucial, central element of culture.

Any time you apply a provision that enumerates different components of how to best ensure a child's developmental needs, for example, the culture that the child is being raised within will determine how you do that and what's in their best interests. When you place a test such as this in front of a non-indigenous court, you'll get a non-indigenous answer to how to best meet that indigenous child's developmental needs, and it often will be the wrong answer.

Ontario's act now has, partly because of the case I lost before the Ontario Court of Appeal, strengthened best interests. It says that, for indigenous children, culture is a central consideration. Ontario has strengthened that. In other parts of the country, it's irregularly applied.

Therefore, I agree with Kukpi7 Christian that it ought to be strengthened. The predominant issue of indigenous culture should be emphasized and strengthened for the best interests test in here. If you take this best interests test and you put it in the hands of or attempt to overlay it onto an indigenous nation's inherent laws, they're going to interpret it and apply it in a way that is determined by their culture and by their own laws. That doesn't render it inconsistent with those laws necessarily, which I know is a concern that has been raised by others.

It is fraught with peril. When you put best interests in the hands of a non-indigenous agency, even an indigenous agency operating under a provincial statute, and a non-indigenous court, you can have some very poor outcomes, so it does need to be constructively emphasized in the text of this bill.

● (1325)

Ms. Rachel Blaney: Thank you. I appreciate that.

Ms. Crowe, I saw you had some excitement. Do you have something you'd like to add to that?

Ms. Amber Crowe: I would start by saying that the best interests need to be defined by the first nations and indigenous communities who will be enacting laws, rather than being provided by Canada, but then I also agree with what was said, that if it's going to be defined, it needs to be there.

What I was excited about was Katherine's mention of the test for whether something is provincial or federal jurisdiction and that per the core of “Indianness”, as mentioned in the case law, I don't know how child welfare and child and family services is not qua Indianness as per those tests. Therefore, I don't know how any province could argue that they had the constitutional jurisdiction.

It's problematic because, of course, it's about Indians, which we've said in our submissions is not acceptable.

Ms. Rachel Blaney: Ms. Crowe and Ms. Stevens, I'm just going to come back to you. You talked about some of the concerns you have about implementing this as an organization overseeing multiple indigenous communities and that there are people you're afraid you're going to be leaving out.

Could you fill us in on that a little more?

Ms. Amber Crowe: I'll use my own agency, as I know it best. I have eight first nations, and they don't all belong to the same political-territorial organizations. I have a minimum of three, possibly four. They could choose not to even follow their PTOs; they could choose to do their own. That complicates it.

I also have a mandate and jurisdictional intention to serve all indigenous people within a very large geographic jurisdiction that includes both on and off reserve. It also includes self-identified indigenous persons, not only Indians, Métis and Inuit. We could have a law from the Métis Nation Of Ontario, a law from the Chiefs of Ontario, and a law from Alderville First Nation. We could have several laws, so the complexity of being able to provide the services is to know which law applies for each child. The front-line worker is going to have to know and understand multiple laws. Even with one law, the services aren't provided the way they're supposed to be.

Ms. Rachel Blaney: Thank you.

The Chair: That concludes our time available. We have an obligation to go in camera, so I'm afraid that we're a bit jammed for time. Before we get into our committee issues, on behalf of all MPs, I want to thank you for coming, presenting and providing guidance to us as we look at this very important bill.

Meegwetch. Thank you for coming.

Now we need to clear the room.

[*Proceedings continue in camera*]