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Chair

The Honourable MaryAnn Mihychuk

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● (0845)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Good morning, everyone. Welcome to our committee.

I would like to start by saying that we are on the traditional territory of the Algonquin people and that these lands are unceded.

Pursuant to Standing Order 108(2) and the motion adopted on Wednesday, October 26, 2016, the committee is resuming its study on the subject matter of Bill S-3, an act to amend the Indian Act (elimination of sex-based inequities in registration).

On another matter, we did not receive many witness suggestions from committee members for the study on specific claims and comprehensive land claims, so I propose that we extend the deadline to June 8 for you to forward, to the clerk, witnesses and site visits.

Ms. McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Madam Chair, on that particular point, as you know, of course, we're seized with Bill S-3 and the suicide study. We're not looking at the land claim initiative until into the fall. I propose that we perhaps extend that deadline even a little bit further. I think that would allow for some opportunity to get some strong witnesses. I don't see any negatives to perhaps looking at a two-week extension from your proposed date.

The Chair: The clerk is suggesting that if we have a deadline, we're more likely to meet it.

That said, we have been really very busy. Two weeks from today would make it June 20, according to the clerk. Does June 20 seem reasonable?

Mr. Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Do we so far have enough witnesses to get us started on the study?

The Chair: No.

Mr. Mike Bossio: Okay. Very good.

The Chair: MP Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): I concur with Ms. McLeod. Given our timelines, I think it's probably appropriate that we extend it by two weeks.

Then I wonder if we could maybe do a conference call on this in early July, maybe an hour call, just to figure that out. I don't think we need to actually meet. If we could all agree to a call during July, I think that might be workable.

The Chair: MP Bossio.

Mr. Mike Bossio: I was going to suggest the following. If we have witnesses, and I'm sure the clerk and the analysts can come up with witnesses for us as well, then I don't really see that there is a huge rush. It could wait until we come back, if need be. If there are suggestions from the different members in the fall, we could bring those suggestions forward at that time as well.

The Chair: I think it's about preparation, because we're on the road.

At any rate, I hear the recommendations. We'll come back with further details.

We do have witnesses in front of us. I'm anxious to respect their time and to ensure that they have an ability to present to committee.

Without further ado, then, we have in front of us the Department of Indigenous and Northern Affairs. We have four representatives from the department.

Welcome, everybody. Following the regular way in which the committee operates, you have 10 minutes for opening remarks.

I'll turn it over to you.

● (0850)

Mr. Martin Reiher (Assistant Deputy Minister, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): Thank you, Madam Chair and honourable members.

[*Translation*]

My name is Martin Reiher, and I am the assistant deputy minister of resolution and individual affairs at the Department of Indian Affairs and Northern Development. Joining me today are: Candice St-Aubin, executive director, new service offerings; Nathalie Nepton, executive director, Indian registration; as well as Karl Jacques, from the Department of Justice.

Thank you for the opportunity to give you an update on the government's response to the Superior Court of Quebec's decision in the Descheneaux case and bring you up to date on new developments since your last meeting on this bill, which was held on November 21 of last year.

[*English*]

As you will recall, in August 2015 the Superior Court of Québec ruled, in the Descheneaux decision, that key Indian registration provisions affecting 90% of the registered Indian population under the Indian Act contravened the Canadian Charter of Rights and Freedoms by perpetuating differential treatment in entitlement to Indian registration between a woman and a man and their respective descendants.

[*Translation*]

In response to that decision, the government announced a two-stage approach. The first stage involves legislative amendments through Bill S-3, which will be followed by a process on broader issues related to registration. That will be a collaborative process with first nations and other indigenous groups.

[*English*]

Bill S-3, introduced in the Senate on October 25, 2016, will remedy situations of known sex-based inequities in registration. For the purposes of Bill S-3 we refer to known sex-based inequities as situations that are solely sex-based and have been found to be discriminatory by the courts or are similar to such situations. Bill S-3 is therefore not restricted to situations in which a court has already ruled but extends to situations in which the courts have yet to rule and where it is clear that a sex-based charter would be found.

During the deliberations of your committee and of the Standing Senate Committee on Aboriginal Peoples, witnesses and members of both committees expressed concerns about whether BillS-3 addressed all possible situations of sex-based inequities, as well as concerns regarding the level of engagement with first nations and impacted individuals. The Standing Senate Committee on Aboriginal Peoples suspended the study of the bill and requested that the government seek an extension to continue engagement on issues within the scope of the bill.

[*Translation*]

On January 20, 2017, the Superior Court of Quebec granted a five-month extension to remedy the discrimination identified in the Descheneaux case.

That extension has enabled us to begin a mobilization process and ensure that justice will be done as quickly as possible for some 35,000 individuals who will become eligible for Indian registration once Bill S-3 is passed.

[*English*]

As part of a letter sent to you on February 6, 2017, we shared with you a four-tiered action plan that was developed to guide the engagement activities during the short period of time provided by the court, a plan that built on the engagement sessions held in the fall.

I would now like to provide you with an overview of additional engagement activities that were held. The government was able to conduct 10 additional engagement sessions from January through April 2017. Bilateral discussions were held with the Canadian Bar Association, the Aboriginal Legal Services, and the Feminist Alliance for International Action.

The department provided support to the Native Women's Association of Canada to design and lead a series of engagement sessions with its provincial and territorial member associations, and their report was provided to this committee. The department also provided support to the Indigenous Bar Association to complete a review of the bill to identify situations of sex-based inequities not captured originally in the bill. The report was also shared with this committee.

Finally, technical discussions were held with legal representatives from the Assembly of First Nations, the Congress of Aboriginal Peoples, the Native Women's Association of Canada, the Indigenous Bar Association, and the plaintiffs' legal counsel in the Descheneaux case.

We know that even with this extension, there was not enough time to truly consult, and we acknowledge the tremendous effort and long hours that organizations put into this work. We heard about a wide range of issues through these different fora, some within the scope of Bill S-3 and others falling outside.

● (0855)

What is evident from these discussions is that people are very passionate and committed to addressing issues of inequity in administration. At the same time, it was highlighted that jurisdiction over Indian registration and band membership should not remain under the government's control.

As mentioned earlier, we provided support to the IBA and NWAC to review the bill. In their reports, issues such as unstated paternity and the 1951 cut-off were flagged, as well as amendments to avoid inequities that would be created by Bill S-3 in its original state.

The government has heard recommendations from this extended engagement regarding outstanding sex-based inequities. During the study of the bill at the Senate committee we welcomed a number of important amendments to the bill, which now addresses some of the situations flagged.

Amendments were made to address further groups identified by the IBA that would be discriminated against based on sex if the original bill had been passed. The committee also adopted an amendment to the bill regarding the issue of unstated paternity, which will enshrine into legislation additional procedural protection as contemplated by the Ontario Court of Appeal in the Gehl decision.

The committee passed a series of amendments to report back to Parliament on a number of occasions and in a number of ways to provide an update on progress towards broader reform.

Lastly, I would like to speak to the amendment—referred to as 6 (1)(a) “all the way”—adopted in committee, adding subparagraphs (a.1) and (a.2) to a new paragraph 6(1)(a) of the current Indian Act.

The government is unable to support this amendment, first because as drafted it is unclear and in contradiction with some of the provisions of the Indian Act, and second because its intended effect puts it outside the scope of Bill S-3, which is deemed as addressing known sex-based inequities. The amendment, in fact, contradicts the current state of the law by granting a remedy explicitly rejected by the Court of Appeal of British Columbia in its 2009 McIvor decision as not being in line with charter requirements.

The amendment is also in contradiction to subparagraph 6(1)(c.1)(iv) of the Indian Act, a provision that was not struck down by the courts in the Descheneaux case and is still in the Indian Act.

Moreover, by purporting to provide an entitlement to registration to all direct descendants born prior to 1985 of individuals previously entitled under the old Indian Act, the intended effect of the amendment would affect descendants of individuals who were enfranchised not only due to marriage but also for reasons unrelated to their gender.

Finally, the amendment would not appear to grant membership to the individuals it targets.

Such a broad amendment casts the net much wider than what is required to achieve the goal of Bill S-3 and would have wide-ranging, unforeseen implications. More work is required to understand the implications, and we wish to have more discussions with first nations partners on the best way to address these broader issues.

To that end, stage two will begin, following the coming into force of Bill S-3, and will be the opportunity to examine the broader issues relating to registration, membership, and citizenship, with the objective of identifying options for future reform.

In conclusion, I would like to highlight the consequences of not passing the bill before the revised court deadline of July 3. Let's not lose sight of the individuals directly affected by this bill. About 90% of the registered Indian population is registered under one of the provisions struck down by the court in Descheneaux. As you know, if Bill S-3 is not in force on July 3, these sections will be inoperative in Quebec, and the practical implication for the registrar is that she would not be in a position to register people under those provisions in the rest of the country.

We must ensure that we do not deny justice to the plaintiffs and to the other 35,000 individuals affected by the decision, while also ensuring that meaningful consultation with indigenous groups is conducted adequately to address other complex matters. Consistent with Canada's commitment to reconciliation and a nation-to-nation relationship with indigenous people, the minister gave her personal commitment to co-designing a process with indigenous people, including communities, impacted individuals, organizations, and experts to deliver a substantive report.

Thank you.

The Chair: Thank you very much.

We now move into the questioning period of the hearing. Each questioner's period will be of seven minutes in total rotation, and we'll go through four questioners in this round, beginning with MP Massé.

● (0900)

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Madam Chair.

I want to thank the department officials for joining us to testify during the study on Bill S-3.

I would like to begin with the bill's objectives and with what led to its creation. As we all know, in August 2015, the Superior Court of Quebec ruled that paragraphs 6(1)(a), 6(1)(c) and 6(1)(f), as well as subsection 6(2) of the Indian Act violated equality rights guaranteed under the Canadian Charter of Rights and Freedoms because they created a differential treatment between maternal and paternal lines in the acquisition and transmission of Indian status. The court made a declaration of invalidity, which was suspended for 18 months and was then extended, as you mentioned, until July 3, 2017, to enable Parliament to pass the legislative amendments needed to bring the act into line with the charter.

Here's my first question. On what basis did the Superior Court of Quebec find that section 6 of the Indian Act violated the equality provisions of the charter?

Mr. Martin Reiher: Thank you for the question.

The Superior Court of Quebec was basically dealing with two situations.

The first was the situation of the plaintiff Stéphane Descheneaux, who was affected by what is referred to as the “cousins issue”. He was unable to transmit Indian status to his children in the way a descendent of a man in the same situation as his own would be able to.

The “cousins issue” was first dealt with by the British Columbia Court of Appeal, in 2009, in the McIvor case and partially resolved through Bill C-3 in 2010.

However, at the time, the situation was not fully resolved, and Mr. Descheneaux's situation was not addressed. In his situation, there remained a difference between maternal and paternal lines. The situation was deemed to be contrary to section 15, as it constituted a distinction that was not justifiable under section 1 of the charter.

The second situation is that of the two Yantha women, mother and daughter. That situation involves what is referred to as the “siblings issue”. In the legislation that preceded the act of 1985, legitimate female women and children born to an Indian father, but out of wedlock, were not eligible for Indian registration. That situation was remedied by the act of 1985, but in such a way that there remained a distinction between paternal and maternal lines. Those women's ability to transmit Indian status was different from that of their male counterparts. Once again, that distinction based on gender was found to violate section 15 of the charter. So those two situations are remedied by Bill S-3.

Mr. Rémi Massé: Can you explain to us what can happen if the proposed amendments do not come into force by the July 3 deadline? Explain to us the impacts that could have, based on the decision rendered.

Mr. Martin Reiher: As you said, the Superior Court of Quebec declared paragraphs 6(1)(a), 6(1)(c) and 6(1)(f), and subsection 6(2) to be invalid. Those provisions enable the registration of 90% of applicants every year. About 28,000 registration applications are filed per year. With those provisions being invalid, if the bill was not enacted by the end of the suspension period and the declaration became effective, the registrar would be unable to register anyone under those provisions, which cover, as I said, 90% of situations. Of course, we have heard that the decision is valid and applies to Quebec, since it was rendered by a provincial court.

That said, for a national program like the Indian Register, it would not be appropriate for the registrar to apply different rules to different provinces. That would obviously create a set of different rules and would likely be subject to litigation in the other provinces.

So the registrar cannot reasonably apply provisions deemed invalid in Quebec to people from outside Quebec. If the bill was not in force, the registrar would completely discontinue registrations, until new rules giving him the authority to continue with registrations came into effect.

● (0905)

Mr. Rémi Massé: Thank you.

How much time do I have left, Madam Chair?

[*English*]

The Chair: You have one minute.

[*Translation*]

Mr. Rémi Massé: I will be quick.

In its ruling, the Superior Court of Quebec advised Parliament not to restrict legislative changes to the exact circumstances outlined in the case, but rather to take steps “to identify and settle all other discriminatory situations that may arise from the issue identified...”.

Can you comment on the current approach of addressing only sex-based inequities, and compare it to the more general approach proposed by the court?

Mr. Martin Reiher: Okay. Thank you for the question.

In paragraph 243 of her decision, the judge said that the legislator should adopt a broader approach and quickly resolve the plaintiffs' situation. That is what the government's approach consists of. It consists of two stages, the first of which is about resolving the plaintiffs' situation and handling issues that can be remedied quickly. The second step concerns more complicated situations, which require more discussions and consultations with first nations. This is an elaborate process that makes it possible to properly and thoroughly consult first nations, as well as affected individuals.

[*English*]

The Chair: Thank you.

The questioning now moves to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

Certainly, I see some improvements from the original form of the bill, with some of the government's proposed amendments, especially reporting back on stage two and some others.

I think we really have a difficult issue before us that we need to focus on. Of course, back with McIvor, I believe that the current minister was the critic of Indigenous Affairs and actually proposed the 6(1)(a) all-in amendment, at that time. In the Senate, she told them very directly that she would not support 6(1)(a) all in, but as I understand, the Senate unanimously voted for that particular clause. We are receiving this bill with 6(1)(a) all in, so I think we need to really focus on that particular issue.

I guess my first question, before I look at 6(1)(a) all in.... With the changes you made around the issue, such as unstated paternity, how did that impact the numbers and dollars you were going to have allocated to the budget—or were those numbered crunched? If you could give quick responses, I'd really appreciate it. With the changes that have been accepted, since you presented a few months ago with numbers, did you change the projected numbers and dollars that would be transferred?

Mr. Martin Reiher: I will remind the committee that in the fall economic statement of 2016, $149 million was set aside for the implementation of Bill S-3, including $19 million for the—

Mrs. Cathy McLeod: Sorry, that's not the question. Since you have some new amendments, did the budget adapt to that?

Mr. Martin Reiher: No, there is no additional money for that.

Mrs. Cathy McLeod: Thank you.

Do you have an estimated impact of that?

Mr. Martin Reiher: No, we don't have an estimated impact with respect to—

Mrs. Cathy McLeod: For the government-approved amendments....

Mr. Martin Reiher: With respect to the unstated paternity, there is no specific estimate of how many people would be included, based on the unstated paternity amendment.

Mrs. Cathy McLeod: In terms of the 6(1)(a) all in, is it accurate to say that this includes issues that caused people to lose their status, for example, through education or military service?

Mr. Martin Reiher: That's correct. The amendment, as drafted, is very vague, very broad, and purports to provide an entitlement to descendants of anybody who would have been entitled under the previous Indian Act, including individuals who would have been entitled and then lost their status, based on enfranchisement in any situation.

● (0910)

Mrs. Cathy McLeod: It's not strictly gender-based. Is that accurate?

Mr. Martin Reiher: That's correct.

Mrs. Cathy McLeod: I understand that your department estimated anywhere from 80,000 to one million additional members? What are your estimates?

Mr. Martin Reiher: Yes, thank you.

Over the years, this amendment was proposed by others, including in litigation. In 2005 and 2012, studies were made by our demographer on the impacts of such an amendment. The information we have, based on the data and that work, is that the implications would range between 80,000 and 2 million additional members in first nations.

Mrs. Cathy McLeod: That's certainly a significant change.

In terms of the process, any section 11 bands that would have those 80,000 to one million would have obligations around....

Mr. Martin Reiher: The principle under the Indian Act is that when a first nation does not control its membership status, Indian registration automatically translates into membership in the band. That's the principle. Now, the amendment that has been proposed is unclear and vague, and it's uncertain how it would be interpreted. There's certainly a risk that a court would interpret it this way, meaning that there would be a significant influx in communities.

Mrs. Cathy McLeod: In the handout that has been provided, we have diagrams of the impacts, and they're quite well done.

Have you done a diagram relating to paragraph 6(1)(a), and if not, could you do one?

I looked at the old copy. I haven't looked through the one that was released today. I have the original.

Do you have you a diagram of paragraph 6(1)(a) and its implications?

Mr. Martin Reiher: No, we don't have a diagram for that. It's so broad that there's no diagram that we could prepare. It would just be everybody. There is no need for a diagram because it's straightforward. It's anybody who can trace direct descent from anyone who was entitled before.

Mrs. Cathy McLeod: And what date does that go to?

Mr. Martin Reiher: Again, it's unclear. It could mean under any other Indian Act in the past, since 1869.

The Chair: There is one minute left.

Mrs. Cathy McLeod: I think we have a problem here. We have a unanimous recommendation from the Senate, we have a minister who previously supported this particular amendment, and we have communities that haven't been consulted about it. Are there any discussion papers or is there any additional information you could give this committee that would further and more comprehensively describe this particular issue?

The Chair: Please answer very quickly. You have 20 seconds.

Mr. Martin Reiher: We provided to the Standing Senate Committee on Aboriginal Peoples a report prepared in the context of litigation, which is now public, and we could provide that information to you. That's all we have at this time.

The Chair: Thank you.

Questioning now moves to MP Romeo Saganash.

[*Translation*]

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): Thank you, Madam Chair.

I want to thank the representative of the Department of Indigenous and Northern Affairs for his presentation.

From the outset, I do want to reiterate my objection to any attempt at improving a piece of legislation that is so colonialist, racist, sexist, and so on. We have been hearing all those adjectives for a very long time, and that is why it is so difficult for me to have an opinion on what is presented to us today.

That being said, I would first like to get some information on the technical discussions that took place with the legal representatives of various organizations, of the Assembly of First Nations and others. Following discussions with those lawyers, have any issues or questions remained unaddressed on either side? Did your discussions with those people have unanimous results?

● (0915)

Mr. Martin Reiher: Thank you for the question.

The discussions with legal experts were fruitful and helped us make some changes to the bill. When we concluded the discussions, any questions that were raised had been answered.

That said, following discussions, Mr. Schulze, the plaintiff's lawyer, told the standing Senate committee that he had found a new approach in response to one of the questions raised. According to him, it is a matter of sex-based discrimination. It is a matter of a situation—

Mr. Romeo Saganash: Do you agree?

Mr. Martin Reiher: No, we don't agree.

In the government's opinion, that is not a situation covered by the bill. It is a complicated situation that deserves to be looked at in the context of the next stage of the consultation. It is a situation of a woman married to an aboriginal man who loses her status when her husband decides to enfranchise himself. According to Mr. Schulze, the fact that a woman is forced to be enfranchised, according to the language used in the Indian Act, at the time, after her husband makes the decision, is indicative of sex-based discrimination.

We think that the man's situation is similar to that of the woman, in that context. We have often heard it said that enfranchisement was not a choice for aboriginal individuals covered by the Indian Act, but that it was often an obligation based on social pressures or an obligation that occasionally arose automatically, under the act.

We feel that the fact that a woman is forced to be enfranchised because her husband is enfranchised does not lead to a distinction between those two situations. So in order to deal with the situation in question, we would have to deal with all enfranchisement situations in the same way. That is beyond the scope of Bill S-3, and further discussion is required with communities on how to do that.

Mr. Romeo Saganash: I understand.

Most of my questions were previously asked by my colleague, Ms. McLeod.

You talked about the second stage of consultations, and I thought I heard you say the following during your presentation:

[*English*]

registration should not remain under the government's control

[*Translation*]

The government has obviously committed to undertaking that second stage of consultations, I think, within six months of royal assent.

What is your view of the second stage, which I think will remain fairly complex? That is especially true if negotiations are undertaken on a nation-to-nation basis to establish a new relationship with aboriginal peoples. I assume that the registration issue will be taken out of the government's hands and will rather be handled by communities. The question has been asked.

Do you at least have a working paper on that? How do you as a department view that?

Mr. Martin Reiher: The minister's commitment consists in collaborating on process development. Right after Bill S-3 is passed, contracts will be awarded to various aboriginal organizations, so that the process, which will be launched within six months of the bill's passing, can be developed in collaboration.

Mr. Romeo Saganash: What do you mean....

Mr. Martin Reiher: I don't want to assume what it will be. The collaborative development will be done with first nations and groups —

Mr. Romeo Saganash: Does that mean the drafting will also be a collaborative effort?

Mr. Martin Reiher: Are you talking about the bill?

Mr. Romeo Saganash: Yes.

Mr. Martin Reiher: We are not yet at the bill-drafting stage, but we will definitely work together on developing the consultation process, after which we will hold a collaborative consultation.

We will then see what options will arise from that.

Mr. Romeo Saganash: How much time do you think the process will take?

● (0920)

Mr. Martin Reiher: It will depend on what the organizations tell us, but the minister said that it could take 18 months. She feels that would be enough time to conduct sufficiently detailed studies and, at the same time, move quickly enough.

We will listen to what first nations organizations have to say.

Mr. Romeo Saganash: I have one last question for Mr. Jacques.

Since we are dealing with issues related to the Canadian Charter of Rights and Freedoms, was section 4.1 of the Department of Justice Act applied in the case of Bill S-3?

Mr. Karl Jacques (Senior Counsel, Operations and Programs, Department of Justice): Thank you for the question.

Pursuant to the Minister of Justice's mandate to review the drafting of legislation and the introduction of bills in Parliament, it is the department's duty to verify constitutional compliance with the charter, as well as with the Canadian Human Rights Act. So in the case of every bill, as in the case of this one, that review is carried out.

[*English*]

The Chair: Questioning now moves to MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Madam Chair.

Mr. Reiher, can you advise what effects paragraph 6(1)(a) would have on specific membership in bands and what kinds of provisions exist for those if we were to go with the amendment to be able to join the individual bands, and what numbers are at play when we talk about expansion of the membership?

Mr. Martin Reiher: In terms of the impact, and I understand that your question relates to the addition of 8.1 and 8.2 in the bill in the Senate committee, the goal or the intent of this amendment is to allow registration under paragraph 6(1)(a) of any direct descendant of individuals entitled under the Indian Act in the past.

Section 11 of the current Indian Act allows individuals registered under paragraph 6(1)(a) to become members of a first nation that does not control their membership, which is two-thirds of first nations in Canada. If the intended effect were achieved, there would be an influx of members in communities.

As for the numbers, we did not specifically study that because it was not an amendment contemplated by the government. That said, similar amendments were proposed in legislation in the past and a demographer studied the issue in 2005 and updated his study in 2012. The numbers, according to his report, could range from 80,000 to 2 million individuals who would newly be entitled to registration and, therefore, to membership in first nations. That is information we do have.

These numbers, the data, are not good and the quality of the work suffers from the quality of the data. Additional work is required by demographers to improve the quality of this assessment.

Mr. Gary Anandasangaree: Is that report available and are you able to share it with us?

Mr. Martin Reiher: Yes. It was provided to the Standing Senate Committee on Aboriginal Peoples and can definitely be submitted to this committee.

Mr. Gary Anandasangaree: Yes, I think that would be helpful.

How recent was that report?

Mr. Martin Reiher: The update was in 2012.

Mr. Gary Anandasangaree: With respect to the timelines, I know we're talking about a July 3 timeline and I know that the last time your colleague was here, a representative of the department, we had similar constraints with respect to, I believe, the February 3 timeline. Someone suggested that given the enormity of the amendment before us, it may be appropriate to seek additional time from the courts. What's your thought on that? Perhaps Mr. Jacques could also comment with respect to Justice's position on obtaining more time.

● (0925)

Mr. Martin Reiher: Maybe I can start and my colleague can add to this. As you know, of course, I've said that a charter breach is significant and important to address and should not be allowed to last too long. Getting an extension is not an easy thing. The Supreme Court in the Carter decision indicated that it's only in exceptional circumstances that an extension would be provided.

We were successful in getting an extension of five months. We asked for six months. The court granted five months because the judge considered that that was the time required to pass the bill. It's always possible to go back to the court to seek additional time, but it's not guaranteed that additional time would be provided. Actually, it's an important burden to convince the court to extend a suspension when a provision has been struck down as contrary to the Constitution.

I don't know whether my colleague would want to answer.

Mr. Karl Jacques: I would add that, given the parameters set by the Supreme Court for the granting of an extension, such an amendment would probably require going back for a considerable period of time, which would basically bring us outside of the parameters set by the court. We would have to ask for a considerable amount of time, given the policy and the position of the department to consult broadly on these issues, which could not be done within a short amount of time.

Mr. Gary Anandasangaree: Mr. Reiher, there are a lot of compelling arguments with respect to paragraph 6(1)(a). There is an issue of fundamental justice, and I think over time, we've been expanding membership in a patchwork way based on Ottawa's perception of who is to be defined under the act.

What assurance do we have that this will be properly considered over time in order to ensure that we will not be back again in two or three years dealing with the same issue? One of the clear messages from the Descheneaux decision is that we can't continue to litigate this. What is the department's plan to ensure that this is addressed in a long-term meaningful way? I want to expand it from strictly discrimination on the basis of sex to a much broader perspective.

The Chair: A very short answer, please, of 30 seconds.

Mr. Martin Reiher: Thank you.

The government took to heart the injunction of the Superior Court of Québec to deal quickly with the issue before it, but also to look at broader issues. This is why a two-stage approach was proposed and will be followed. Immediately after Bill S-3 is passed, stage two will be launched to have meaningful discussions with first nations on broader issues—not only sex-based discrimination or inequities but also broader issues and how to address these issues with first nations, rather than imposing something. To avoid a patchwork approach is exactly what the government wants to do, but this requires discussions. This requires consultation with first nations and impacted individuals, which is why stage two is proposed.

The Chair: Thank you very much.

We're moving into the second round, and the periods for questioning are reduced to five minutes.

We begin with MP Yurdiga.

Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC): Thank you, Madam Chair.

Good morning.

As *The Globe and Mail* notes, this is going back to the Senate, as follows: “But the senators said, and the government agreed, that the bill as written would not remove all of the provisions that make it easier for some First Nations men to pass along their Indian status to their descendants than for women."

Can you explain how this is acceptable? How can this be remedied without the Senate amendments?

Mr. Martin Reiher: Thank you.

The Senate amendment 8.1 and 8.2 proposes the adoption of a remedy that was explicitly rejected by the Court of Appeal of British Columbia in the McIvor decision in 2009 as not required under the charter. Therefore, it's the government's position that it is not contrary to the charter to pass Bill S-3 without 8.1 and 8.2.

That said, the government is prepared to listen to and explore with the impacted individuals and first nations how to address their concerns in a way that respects both the impression that there is an inequity and, at the same time, the will of communities and first nations to control their identity and their membership. That's how the government proposes to address the concern.

● (0930)

Mr. David Yurdiga: If I understand it correctly, it's not going to solve all the issues. We're just going to take a certain level, and the rest we'll have to deal with through the court system again. Is that correct?

Mr. Martin Reiher: Bill S-3 does not address all issues relating to the identity of indigenous people; that's for sure. This is why the government proposes a second stage to talk about the identity of indigenous people more generally. Bill S-3 addresses the sex-based inequities that we know about at this time.

Mr. David Yurdiga: It's a good thing you brought up the second stage. Can you explain why you believe stage two will only take 18 months to complete? I think that's too short of a timeline. Is this a reality, or is this just throwing a number out in the air? It doesn't seem that 18 months is enough time to be able to accomplish the tasks that you desire to complete.

Mr. Martin Reiher: Thank you.

That's a legitimate concern, of course. The 18 months that has been put forward is a firm commitment to addressing these issues quickly but with significant consultation. As I indicated before, the first step is to co-design the consultative process with first nations and indigenous groups, and in fact co-design how we will consult. If we hear that more than 18 months is required, the government will adjust.

The minister indicated that she does not have a specific deadline, but she wants to move quickly. She proposed 18 months as a reasonable time frame, but subject to what we hear from first nations and the indigenous groups in general.

Mr. David Yurdiga: Thank you.

What you're saying is that 18 months is a starting point and that there is the potential to extend that for whatever period is necessary to complete the task. The last time Bill S-3 came through here, in my opinion it was a joke. The consultation wasn't there. The departmental official deceived us with the consultation process, and we were really shocked about that.

However, moving forward, when Bill S-3 passes, what are the next steps? Can you explain the process to identify and re-establish Indian status? Further, there has to be some kind of timeline. We're talking about potentially doubling the amount of individuals seeking to re-establish their status.

Can you touch on each aspect of that—

The Chair: You have 20 seconds.

Mr. David Yurdiga: —briefly?

The Chair: Be very brief, yes.

Mr. Martin Reiher: I apologize, but I'm not sure I followed the question.

Mr. David Yurdiga: Okay, once Bill S-3 passes, what are the next steps?

Mr. Martin Reiher: The next step is to start registration and launch stage two.

Mr. David Yurdiga: That's what I'm talking about: the registration and the time period.

Mr. Martin Reiher: With regard to how long it will take to register the up to 35,000 individuals, 54 people are being hired to implement Bill S-3 quickly once it's passed and in force. We contemplate that it will take over two years. We have an assessment of how many people will apply over several years, and over two or three years we think that most of the 35,000 individuals will have applied.

Maybe I can quickly turn to my colleague, the registrar of Indian Affairs.

Ms. Nathalie Nepton (Executive Director, Indian Registration and Integrated Program Management, Department of Indian Affairs and Northern Development): *Merci, Martin*.

It is a good question. If we compare it to the process that was put in place to deal with the Indian Act amendments as a result of the McIvor decision, we saw the majority of the applications come in within the first two to three years. There will be a peak, and then it will slowly start to drop in the next two years.

Overall, we're looking at probably a five-year process, but it is voluntary, so it depends on the individual coming forward and applying.

● (0935)

The Chair: Thank you.

The questioning now moves to MP Michael McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you to the presenters today. I'm watching this very closely as it moves forward.

I grew up in a small community. I still live in a small aboriginal community. I watch government classifications divide our community, cause rifts within our families, with political organizations. I'm very familiar with this. I am Métis. My wife is Dene, or what everybody in other parts of Canada call Inuit, but we call the people in the territories Dene. My children sometimes use the term Dene to describe themselves, or Métis, whatever seems to best fit best the occasion.

I've always been curious of the challenges with opening the doors for people to gain status. Lately I'm watching with interest because I keep hearing push-back against this bill, against certain areas. It seems that the Government of Canada is nervous about how many people we're going to bring in. First nations are nervous about how many people they're going to see come to the communities. Sometimes I think are they worried about having too many Indians, or is it because there's not enough funding to accommodate everybody?

The Métis, thankfully, are moving toward self-governance for almost every tribe, who have opened their doors to people who do not have status, so the Métis are included. We work as partners. I don't think the issue is going to be as big as it is in some areas.

In the proposal we're looking at, and what you've talked about in terms of stage two, we may take the 18 months and consult, but the results may be the same in the end. Is there some consideration that we may be back in this very situation in 20 months or so? What do we do then?

Mr. Martin Reiher: Thank you.

We have yet to see the options that will be developed by first nations, by indigenous peoples, and by impacted individuals, so I cannot prejudge what will happen after the process. I doubt very much that we will hear a desire to maintain the status quo. It's highly likely that the government will hear about options for reform and will look into them and come back with reports to committees first. As you know, in Bill S-3 the minister is committed not only to launch a process of consultation but also to report back to Parliament on its progress after 12 months.

Theoretically, I suppose it's possible that at the end we would be in the same place, but it's highly likely that we will have options on the table to work with and to propose reform. Of course, as was mentioned before, it's not reasonable to think that everything will be settled within 18 months and that control of this will be with first nations for the determination of their identity, etc. I think a staged response, staged reform, is highly probable, which will take a number of years to implement. At least, I think after 18 months we will have a very clear picture of the path and where people want to go.

Mr. Michael McLeod: I'd also want you to tell me how you're going to reassure aboriginal people, indigenous people, that this stage two consultation will be done for the reasons you've demonstrated and not because we're concerned about what resources are going to be required after we see the definitions grow.

The Chair: You have 20 seconds.

● (0940)

Mr. Martin Reiher: First, the government has to be responsible fiscally—that's a given. At the same time, we have heard first nations people say they are concerned about a large influx of people into their communities, not only because of the erosion of their culture and language, etc., but also because of their inability to act in certain situations. Voting thresholds were sometimes an issue for first nations when a large number of members were not living in the communities and not interested in the communities' affairs, and not participating in votes. That prevented the communities from moving forward. These are things that we have heard. I think the communities know why we're doing this.

The Chair: Thank you.

We're in the final round, and the final question will go to Cathy McLeod. We might even have to cut your five minutes down a bit because we have a packed agenda, but over to you, Ms. McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

I guess the current government regularly uses the term “nation to nation”. I don't see that term being used as you talk about the consultation process you are going to embark on and have embarked on with the Assembly of First Nations. They do lots of great work, but does the government not really need to do the work with different first nations communities in terms of a nation-to-nation dialogue? Theoretically, if the government is holding true to what it says it's going to do, then the issue around registration and memberships will be unique to each nation. If you don't have that piece defined, how are you going to do an appropriate job on the piece that you're talking about? To me, that's just a logical sequencing. I don't see step one being done, so how can you effectively do step two in 18 months, or maybe a little longer?

Mr. Martin Reiher: Thank you for the question.

Actually, the nation-to-nation relationship that the government is committed to re-establishing is the basis for stage two. This is why the government does not want to unilaterally impose broad amendments to the Indian Act in stage one, but rather to have a consultative process with the nations. If, at the end of the day, there are.... It's not a given that it will be at once

Mrs. Cathy McLeod: There are some natural communities, but they haven't come forward. Is that not...?

You can use the words “nation to nation” but until communities have defined themselves and you have agreements, you're putting out the words “nation to nation,” but you're not actually creating a structure to have specific negotiations.

Mr. Martin Reiher: The initial step is to co-design the process of consultation. We will hear from the first nations how they want to organize themselves to dialogue with the government, and that's their opportunity to shape the nation-to-nation relationship.

Mrs. Cathy McLeod: To be quite frank, if that is going to be the defining...that is going to take years in itself before you even get into the conversations around registration. I think in regard to the 18 months that we are in fact maybe talking about 10 or 20 years.

Having said that, then, I want to be quite clear on the question. The legislation as proposed, minus the proposed subsection 6(1) that the Senate put in, in your opinion, erases all gender-based inequities that you know about. That is my first question.

Mr. Martin Reiher: I would say that Bill S-3, without 8.1 and 8.2, would address known sex-based inequities.

Mrs. Cathy McLeod: I can't recall and should look it up, but when you or other officials testified the last time, was the same response given or were we looking at the unidentified paternity issue?

Mr. Martin Reiher: We actually included in Bill S-3 an amendment to address the unstated paternity issue.

Mrs. Cathy McLeod: But that was afterwards?

Mr. Martin Reiher: That was afterwards, yes. I'm talking about Bill S-3 as it stands.

Mrs. Cathy McLeod: So when you came to committee in December or whenever it was, did we have the same response around gender-based inequities that were all known, or at that time did you flag unstated paternity?

● (0945)

Mr. Martin Reiher: I was not before you at that time, so I will ask my colleague.

Ms. Candice St-Aubin (Executive Director, New Service Offerings, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): It was relevant at that current time. Since that time, we've had the Gehl decision come down from the Court of Appeal for Ontario, which has changed it. We've addressed it, and I chose to include it. We were not prescribed to include it in the appeal court's decision.

The Chair: Cathy, I'm going to ask you to wrap up.

Mrs. Cathy McLeod: The definition of “known” is when the courts have directed, as opposed to “known” by looking at the issue broadly?

Mr. Martin Reiher: Actually, as we indicated, it's what the court has decided, plus what is clear.

In the situation of the unstated paternity, at the time of the introduction of Bill S-3, we had a court decision telling us that it was not contrary to the charter. We could not consider this an inequity or a breach of the charter. We had a court decision telling us that it was compliant with the charter.

After that, we—

The Chair: Thank you.

Thank you very much for your participation.

I know that our second panel is here already, so I want to thank each and every one of you for coming out and providing this important information.

Quickly, we are going to reconvene with the second panel. We'll suspend for a couple of minutes so that we can reorganize.

• ______________________ (Pause) ______________________

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• (0950)

The Chair: Welcome, everybody. We are now moving into our second panel. I understand that the panellists have agreed to a slightly modified system today, wherein one individual will speak for 15 minutes and the other two have agreed to seven and a half minutes for their presentations. It's a total of 30 minutes for the three, which complies overall with our committee rules. I just want everyone to understand that there has been this request. If there are no objections, we'll proceed with your presentation.

Thank you for joining us, and it's over to you, Mr. Schulze.

[*Translation*]

Mr. David Schulze (Legal Counsel, Council of the Abenaki of Odanak): Thank you, Madam Chair.

Ladies and gentlemen members of the committee, I will address you today in English.

[*English*]

Thank you for inviting us. I'm David Schulze. I was counsel for Stéphane Descheneaux, Susan and Tammy Yantha, and the Abenaki of Odanak and Wôlinak in the Descheneaux case. I am joined by Chief Rick O'Bomsawin of Odanak and Mr. Stéphane Descheneaux.

Now, I know we did this before Christmas, but I offered to briefly take the committee through the status rules again so that we know what we're talking about, because these issues are not simple.

By way of context, you will recall the challenge that Madam Justice Masse put before Parliament in her judgment. She said she was disposing of Mr. Descheneaux and Susan and Tammy Yantha's case, but as she said, "Parliament is not exempted from taking [other] measures to identify and settle all other discriminatory situations... whether they are based on sex or another prohibited ground." We will look at whether this bill does that.

Briefly, how does status work? There are two subsections in section 6 of the Indian Act that give you status: 6(1) and 6(2). This chart quickly explains it to you, but it's not always easy to follow. Keep this in mind. A person registered under 6(1) will always have a status child. A person registered under 6(2) will never have a status child if they don't parent with another status Indian. It is always better, if you would like your children to have status and to be able to inherit your house on reserve, to be a 6(1) than a 6(2). That is the bottom line.

This system of 6(1) and 6(2) is the way the federal government, in 1985, tried to solve the discrimination in the Indian Act. Just as an aside: before 1985, status under the Indian Act was purely patrilineal, with one exception. Status was for Indian men, their wives, and their children. That was it. The only exception was for an Indian woman who had a child out of wedlock with an unidentified father. If they couldn't show the father was not an Indian, that child could be registered. Otherwise, there was no one on earth who had their Indian status from their mother; they had it from their father. An Indian woman lost it if she married a non-Indian man, and a non-Indian woman gained it if she married an Indian man. That's how it worked, and that had to be cured in 1985. Why 1985? Because that's when section 15 of the charter came into effect.

The government came up with what they called the second-generation cut-off. After two generations of parenting with a non-Indian, the third generation, the grandchild, has no status. If you look at the cabinet documents from the early 80s, they actually call this a 50% blood quantum. That's what they call it. It is, in effect, really a kind of grandparent threshold. Most of the time, if you have two status grandparents, you will have status, but as you'll see, it's not 100%. You see up here on the chart how a 6(1) will always produce a 6(2). If you have two 6(1)s, they each have a 6(2), and those 6(2)s marry: boom, you've got a 6(1) again. There won't be a quiz on this afterwards.

There's a sort of strength in having 6(1) ancestors, so that—as you'll see here—you can end up with a 6(2) grandchild, but it's not 100%. It won't always be enough. If you spread them out the wrong way, and if you don't have enough 6(1)s in your family tree, you can have the same number of status grandparents and end up with no status. The fact is, as I said, it's always better to be 6(1) than 6(2). The government likes to go to court and say there's no difference between 6(1) and 6(2); they're all Indians. That's very nice for everybody except somebody who is 6(2) and is facing the prospect of having children with no right to stay on the reserve.

• (0955)

Here's the other thing you absolutely have to understand. I'll just go back to one other chart. In this example, that 6(1) status doesn't mean the person was born an Indian. Remember, the non-Indian woman who married in, who married an Indian man before 1985, she got status. She is as 6(1) as anyone else. The 6(1) ancestors are counted whether or not they were born Indians or whether they acquired it by marriage.

When I said the name of the game is to have 6(1) grandparents and great-grandparents, that includes women who married in, and that's what gives us the "cousins" rule that led to the McIvor case.

That's how, in a nutshell, the grandchildren of a woman who married out before 1985, under Bill C-31, under the original amendments, weren't going to get status unless the woman's children parented with Indians. If her brother married a non-Indian, however, his grandchildren would get status. His grandchildren get counted as having two status grandparents and hers don't, because she got her status back in 1985, but of course her husband stays a non-Indian. That's the "cousins rule". That's what McIvor was about.

The government said they were solving that in Bill C-3. As they often do in the Department of Indian Affairs, however, they didn't see what they didn't want to see. They figured that, because Sharon McIvor's son married after 1985, they would only look at women who married out and whose children had their children after 1985 under the new rules. So Sharon McIvor's son had status but her grandchildren didn't.

They ignored the fact that there were generations of men and their sons and their grandsons marrying before 1985. If a man married out before 1985, and if his son then married out before 1985, he didn't have 6(2) grandchildren; he had 6(1) grandchildren. He could not have anything other than status great-grandchildren.

The comparator is Mr. Descheneaux. Mr. Descheneaux's grandmother married out, and after 1985 he was a 6(2). His children still don't have status. His great uncle would produce 6(1) grandchildren and status great-grandchildren, which Stéphane couldn't, because he traced his lineage to a grandmother who married out, not to a grandfather who married out. That's the Descheneaux part of the Descheneaux case in a nutshell. Parliament messed up. They knew exactly what they were doing. The Abenaki came before them in 2010 and pointed this out.

This is the comparator. The grandfather married out and has six status great-grandchildren. Stéphane has children without status. Under Bill S-3, they will have status. That part of the discrimination is cured by Bill S-3.

There was another case, and I won't get into it in great detail, but I want you to understand what we're dealing with. It was all patrilineal before 1985. The result was, to make a long story short, if an Indian man had a child out of wedlock before 1985, his son could be registered but his daughter could not. Post-1985, they looked at the daughter and determined that since she had only one 6(1) parent she was a 6(2). That's how we got Susan Yantha, who had a different status from her brothers. That's how the same parents could have two children, a son and a daughter, each with a different status.

I want all of you to think about the absolute absurdity of the fact that I had to go before the Superior Court and argue that this was really discrimination under the charter, when Justice Canada stood up and said it wasn't. That is how first nations and their lawyers have to spend their time. That is also cured under this bill.

● (1000)

However, Indian Affairs managed to mess it all up. They messed it up in the bill that was provided and tabled, because now they've made sure that if an Indian man had a child out of wedlock before 1985, the status can go all the way to his great grandchildren through his daughter, but they forgot about the fact that there were women who had children out of wedlock before 1985 who could have their... and if it could be shown that the father was non-Indian, that kid's status could be removed. Again, I won't go through the details, but to make a long story short, they were going to leave that woman's descendants in a worse position than Susan Yantha's children and grandchildren.

They actually told me in a meeting when Chief O'Bomsawin and I met with the staff of the assistant deputy minister and Mr. Reiher, “Yes, we saw that problem but we didn't think it was discriminatory. Then, you know, the Indigenous Bar Association pointed it out before the Senate. Then we decided it was discriminatory, and we fixed it.”

They said they fixed it. Then they had to come back before the Senate last month and fix it again, because they actually hadn't gone enough generations forward. That's where we are with Bill S-3. It's a patch on a patch on a patch on a patch on a patch.

They also cured this problem. I think we really don't have time to take you through it, but it has to do with these particular effects. If an Indian woman had a child by an Indian man but then her second husband was non-Indian, her children under the age of 21 by the first husband would lose status. Those children would end up disadvantaged relatives to their older brothers if those brothers were too old to have lost status. That is cured by this bill and that's all to the good.

This is the scenario that I brought up with Mr. Reiher and that he thinks is not discriminatory. I will try to take you through it extremely quickly as well. Before 1985, an Indian man could decide to enfranchise himself, his wife, and his children. This leads to the following situation, and this is a real situation in Odanak.

A woman was enfranchised before the age of 21, when her dad enfranchised the whole family. Her grandchildren don't have status. Her older sister wasn't enfranchised by their dad, because she was already married to a non-Indian, so she benefited from the McIvor decision; she will benefit from the Descheneaux amendments; and she will have status great grandchildren. This woman will not even have status grandchildren.

The department tells me that this is not discrimination based on sex. I say it is. I say it is for the simple reason that this woman's mother had enfranchisement imposed on her by this woman's father. Indian Affairs says that's okay, because if her brother had enfranchised himself and the sister-in-law, they would be in the same place.

My vision of equality is not that. If we end up with men who have privileges, but are treated no better than women who have no privileges, I don't think that is equality. The Department of Indian Affairs and Justice Canada do.

That's where we are with Bill S-3. That's the overview, and now we have this amendment from the Senate. I'm going to try to make a few relatively simple points about it.

The first one is this, and it's very important that you understand it. Here are the points I want to make. Without the amendments the Senate has brought, the registration rules under the Indian Act, the status rules, will continue to discriminate, and they will continue to violate the charter. There's no dispute about that.

The second point I want to make is that the Abenaki nation was not consulted and not engaged with on Bill S-3.

The third point I want to make is that there is no confidence among aboriginal communities about stage two.

The final point is that there is time right now to do this right.

I want to come back to those points. The first point is that there will be discrimination and the charter will be violated, and you might say they're the same thing. They're not exactly the same thing. The department has told you that the McIvor decision means that they don't have to do this or that, and that the Senate is going too far because it is going further than what McIvor said they had to do.

Let's be very clear on what McIvor said, and I'll try to do this without taking you to the finer points of the double mother rule, which always gives people a headache.

● (1005)

The Chair: You have 15 seconds.

Mr. David Schulze: The B.C. Court of Appeal said it is discriminatory but justified. You're not bound by that. Parliament is not bound by that. You can undo discrimination, even if a court thought it were justified. The government talks about a nation-to-nation relationship. There was no evidence of this in this process. This was the Abenaki nation's case.

The Chair: Thank you. Obviously it's very complicated. It reminds me of when I was learning about DNA at university.

Voices: Oh, oh!

The Chair: We have two more witnesses, and I don't want to cut into their time.

Please proceed in the way that you've chosen. Thank you very much.

Mr. Stéphane Descheneaux (As an Individual): Hello, and thank you again for receiving us today. It's a pleasure to see you again.

I was amazed to see, the first time I came here, how complicated it seemed to be to turn the boat around. Today I'm back again, and I can see that it's still complicated.

As David said, in December we gave them more time to get the homework done and take care of what they had to do, but it seems that it was again not enough. We're still waiting for a phone call from somebody to come to sit with us and talk about this in the nation-to-nation way we do things. It hasn't happened. But I have calls putting pressure on me to accept the last bill: “Go ahead. It's good for you. People will be waiting for registration, and we don't know about the babies and where they're going to go.” It was rushed back then and it's the same thing today. They never called us and they never consulted us. We went to Justice Masse and David did the blah-blah. We won the case and we're still waiting. That's sad. You work hard, and you try to manage stuff, but it doesn't seem enough. Time—it can fly all the way down to the river.

When I got here last year, I thought, “Oh, there are lovely trails in the woods. We're going to walk there, with no walls, and we're going to have fun. It's going to be easy.” Now we're facing a highway, and there seems to be no hands here. We need to go on. There are things that have been done, but there are other things too, and if you don't meet with us, or with the people on the floor who know what's going on, we'll never move on.

If money seems to be the problem, we're not here for the money. We don't manage that part. That's another thing: we're talking about people and about what we have been. If you would have been the other way, if you would have been—how can I say this?—a native country, all Indians, all over...and wouldn't be other races. The newspaper pages would be filled up with terrible things happening: “Indians? We don't care. Bah. It's okay. We'll let times go. The more who die, the less there'll be.” You know, that's the bad part of it.

And what, am I going to have another phone call in seven, eight, nine, or ten months to come back in here and find out that we're still marking the walk? Things have to move. We have the tools to make this move up. Just sit with the people who know where to go and where they want to see a larger plan and not just a rag placed here or there. They work on that all the time. I'm tired for them. I'm tired for them because they work so hard. Even my chief—look at all his white hair now from breaking his head all the time trying to find out a way to solve this.

That's where we are now. That's where we are—the highway, as far as I can go.

I'll give the rest of my time to Rick.

● (1010)

Chief Rick O'Bomsawin (Chief, Council of the Abenaki of Odanak): First of all, I'd like to say thank you for having me back again, but every time I come back, it just means that we haven't settled the problem, so, in one way, thank you.

I think that one of the big things that we're being misled on here is the system itself. As David pointed out to you, as you looked at the charts, status and native citizenship code and membership are not the same. They don't even belong in the same sentence. A native is always a native.

This is a government system that they put in place, which they have an obligation to. It is their system; it was not our system. Their system has sexual discrimination in it. I'm completely thrown that in this country, our country of Canada that we all love.... And as I look around this table, I see the true meaning of Canada. Many of us are from different nations from all over, with ancestry from different places, but we're all equal. When it comes to my first nations women, we have sexual discrimination, and this is okay?

It's hard to believe that we have to spend this much time on this subject to say that a woman could be disenfranchised and, because of that, she has no rights. I look around the table here, and there are women at this table. If our government disenfranchised one of you and said you couldn't sit at this table, you would be arguing about it. This is the reason we bring this argument to the government and say this is their system. Indian Affairs put this system together. All we want is equal rights for our women. Our women deserve that. This whole status system, we agree, was not correct. They like to turn around and say they consulted with communities who don't want what the Senate wants. They don't want to clear this up because of cultural erosion. No one knows cultural erosion better than me and my communities. That is our job. Our job is to take care of cultural erosion, not the government's. The government's job is to take care of sexual discrimination, and then let us do our work.

Citizenship codes and membership codes are something that our communities have the right to. We have the right to say who our citizens are. We have the right to say who our members are. In our codes, I guarantee you, we don't have sexual discrimination. Our women are the most important thing in our nations. Our women are the givers of life. They are the ones who we are supposed to be respecting. That a country that will this year will celebrate a 150th anniversary can still stand and say we can discriminate against women, I'm ashamed to say that.

For that reason, most first nations people will not be celebrating the 150th anniversary because this country still has not given our women fair rights. Sexual discrimination needs to stop. Stage one, stage two, how did we even come to the fact of saying we need to do stage two? Is discrimination discrimination?

They say they have consulted with nations that don't want to have anything to do with this and they don't want the change. Under that logic, I could say, if I consult with 15 racist people, does that mean racism is okay? Consulting is fine, but it has nothing to do with the problem that we have at hand. This is their system. They put the discrimination in the system. They need to fix their system. Why does the system not want to be fixed? Let's all be honest, we all know, it's financial commitment. We all know this is about money. This is not about being native. This is not about who's Indian or who's not Indian, who has the right to live in my community and who doesn't have the right to live in my community. This is about dollars and cents. This is about obligation. Please, listen to what the Senate has to say.

Look at this. Stage two, eighteen months. The last stage two with the McIvor case took six years. In the end, my community had to take you back to court again. I will if I have to. I will go back to court 10 years from now. I don't want to. Let's not sit at this table. Let's all do our jobs and solve this problem once and for all.

● (1015)

Thank you.

The Chair: Thank you very much for those very technical and passionate presentations.

Now we're going to move into the Q and A section. This round is seven minutes per questioner, and we will start with MP Mike Bossio.

Mr. Mike Bossio: Thank you, Chair.

Thank you all very much for being here today and for your passion. I think all of us around this table appreciate that passion and the desire to find a solution to this issue.

I have a first nation community in my riding, the Mohawks of the Bay of Quinte. I've had a number of discussions with the chief. I've known him forever; he's an outstanding chief. A number of them have expressed the concern that you just outlined; yes, funding is absolutely an issue that terrifies them. How do we provide the services given the lack of funding? But it goes beyond funding. It goes to human resources; it goes to land. That's one of the biggest concerns. They're not creating any new reserves. I guess maybe they are. I know in Alberta they're looking at it. Sorry, I take that back.

But it's the infrastructure, the land, the human resources, the finances, the building to provide resources. We're just finishing a suicide study right now, and one of the biggest issues we looked at was the social determinates of health: the lack of housing, the lack of funding, the lack of mental health services, etc. I think all of us around this table want to see this discrimination ended once and for all and to be able to bring individuals into our communities and expand that population.

But do you not see the potential here and the desire to have that consultative process? We recognize that it's of absolute importance in working with and partnering with our first nation communities in a nation-to-nation relationship. You can't do that without consultation. But if you were to delay the implementation, Stéphane Descheneaux and his children will not receive that membership until that's concluded. Who knows how long that could take?

The government has put forward a stage two that consist of 18 months of consultation. In stage one, we would begin the immediate registration of 35,000 individuals. That's a guesstimate. Do you not see the benefit of moving to that immediate implementation, with stage two timelines being written into the bill and committed to in the new, amended bill?

Mr. Schulze.

Mr. David Schulze: I want to explain. I'm on my second stage two, and if Ms. McIvor were here, she'd be on her third. Let's be very clear. This committee issued a report in 1988. They reviewed the 85 amendments. They said we need to eliminate all discrimination between brothers and sisters. We need to do it by the end of this parliamentary session. It's 30 years later.

I'm sorry. Nobody believes in stage two except the Department of Indian Affairs. It's taken 23 months for the Descheneaux decision. Do you know when the department called Chief O'Bomsawin to have a meeting about it? I'll tell you when, never. They had the meeting when I requested it. Nobody believes in stage two. Nobody believes that a department that's still fixing problems in the bill 20 months later is going to do everything they say they're going to do in 18 months. Nobody is interested.

This is the other thing. I'm sorry, but the charter is the supreme law of the land. I know what you're talking about. Sure there are concerns about land, about resources. But you either obey the charter or you don't. This department has shown no inclination to obey it until now. It's seen as very urgent to get Mr. Descheneaux's kids registered now, but it wasn't urgent for all those years that we were in court with them. We can fix this problem now or we can talk some more for another 30 years. I'm sorry, I have no reason to think that if this department is not facing a deadline, they will do anything but talk.

Mr. Mike Bossio: But you assume there will be an extension to the legal case, and if there is no extension to that case, then nobody gets registered. Even under the present situation of 35,000 individuals, they're looking at three years to just be able to register those individuals. And that's hiring 54 people. Yes, we can hire more people. Hopefully, we can find them with the skills necessary to do it.

But this is an ongoing challenge; the human resource aspect is one for which, as we've shown time and time again, we're just not there. They're just not available to deal with the present indigenous communities they're trying to deal with.

Once again, I'm concerned that the reality of the situation is that we don't have the capability today, even if we open the floodgates and accept all the amendments put forward by the Senate, to take in potentially two million. I realize that the data of the 80,000 to two million figure is flawed. The data is so flawed that we have no understanding as to what numbers will actually come forward. To me, one of the first tasks that needs to happen, through the consultation and collaboration process, is to get a better handle on those numbers.

Surely, you do have to recognize that there has to be a plan, and today there is no plan.

● (1020)

Mr. David Schulze: The first thing I should say is that the July 3 deadline is not carved in stone. You were told that you couldn't get around the February 3 deadline.

Mr. Mike Bossio: We asked for six months and were given five months.

Mr. David Schulze: I have a conference call at noon with Madam Justice Masse and the lawyers for Justice Canada. Why? Because Madam Justice Masse, unlike some people you've heard from, is proactive. She saw the deadline coming, called the lawyers, asked if they would need her, and told them she could book and start blocking time if a motion were brought. She didn't tell them she would grant the motion, but that she could block the time. At noon, I have to get on the phone and discuss that with her.

It's perfectly open to the government to ask for that additional time. They haven't asked me, as counsel for Mr. Descheneaux, what my position is on that. They love these deadlines. What they do is run around with rope they've tied around their own hands and say, I can't do anything, I can't move my hands.

Mr. Mike Bossio: Thank you.

The Chair: The questioning now goes to MP Yurdiga.

Mr. David Yurdiga: Thank you, Madam Chair. I'd like to thank the witnesses for coming back again. I'm sure we'll be seeing each other again and again, and probably my great-grandchildren will too.

It's interesting that we would like to have stage two and to do another study, and then it will be stage three, as everything is really being pushed down the road. Why? It's probably a money issue. I have a lot of people come to my office and say that we have to fix this now, that we don't need to punt it down the road to the next election or the one after. It's very troubling.

What I'd like to see is how you would fix Bill S-3 as it stands with the amendments. Is there anything more that needs to be done?

I open up the question to all the witnesses, if they want to answer.

Mr. David Schulze: I'll try to make my portion brief.

The department told you this morning about the technical meetings we had. I need you to understand that we had these technical meetings and brought forward issues. They said that those issues were very interesting, that it looked like we could have a good argument about an equality rights violation and discrimination, but that that discrimination was based on family status. They say that they couldn't deal with that now, that they're just dealing with sex discrimination.

That is absurd. In other words, the government is looking at charter violations in the face and is saying that they will only be dealing with sex-based discrimination this time. The minimum we can expect here is to address all charter violations and stop this language of known charter violations, which means that we wait to lose in court. We fight all the way in court and we wait to lose.

Do a serious analysis, whether it's sex-based, family status, or marital status, and let's do it now. The reason Chief O'Bomsawin signed a letter in support of the Senate amendments is that they make it simple: everyone born before 1985 would be treated the same. Honestly, that would keep me out of court and from arguing about all these complicated cases like you see in the chart here.

● (1025)

Mr. David Yurdiga: Are there any other comments?

Chief Rick O'Bomsawin: I definitely believe in consultation. I believe we need to sit and find out what the best way to solve this problem is, but we need to do it with facts.

You're right. When you speak to a chief and you tell him that under this new system we'll have 80,000 to two million new members—

Mr. Mike Bossio: I didn't tell him that at all. He told me.

Chief Rick O'Bomsawin: I know, and that's because Indian Affairs told him, in his consultation. If you came to me and you told me that too, I'd say that I don't have the land mass, I don't have the resources, I don't have the infrastructure. What am I going to do with all these people?

I think first, if they're going to come to us, could they come to us with facts and not fiction—not a fantasy story? I don't even know where they got this number, and when you asked them today, even they said the number was blown out of proportion and they're not sure. Tell a chief that, however, and he's asking what he is going to do with these people.

The other thing they have a tendency to tell us is that if we give status to all these people, we're going to have an influx of all these people moving home.

After the McIvor case, I had nobody move home. The people were already living there. I had no influx. If a person who is living here in Ottawa gains their status, do you think they're going to give up their job? Hopefully, they've got a good government job here. Do you think they're going to give up their job to come out to my place and farm the fields? It's all a myth.

Indian Affairs comes to the communities, they meet with the communities, and they explain all this big scenario that's going to happen. Of course the chiefs run scared. They're asking: “What's going to happen to my culture? These people don't know their culture, they have no connection to the land, they have...”. Well, that's where we have to do our homework, if the people do come home.

Our chiefs have to look at the question, will I put my land, my infrastructure, before my people? No. If these are my people, I will recognize them. If they want to come home, we will make room for them. I think more chiefs need to look at that and not discriminate against their own people. When a chief says to me that he's worried about the influx of these new people.... They are their people; they should not themselves discriminate against their own people.

I think, then, that consultation is the answer. We need time. We don't need stage one, stage two, stage three, stage four. Let's settle this. I keep saying the same thing: let's just get this over with and get it done. We definitely need to sit down to talk, but we want facts on the table and we want the truth.

Thank you.

Mr. David Yurdiga: Would you like to comment, Stéphane?

Mr. Stéphane Descheneaux: We're like those ghost busters, those old monster stories. All the time, they always “boo” something at us and try to make us scared.

If they came down to meet the band councils, they would have people there who would know who's a relative. They can figure out how many people there might be. They have questions for the people. When they get there, they ask for a citizen code or whatever they want to use. They have an idea of how many people there will be.

Take our example; we're 2,500 people. Are we going to pop up and be 25,000 the next morning? I don't think so. It's as the chief says: they work outside, they have jobs, they have careers, they have families. Are they all going to quit that and go somewhere else, in no man's land? Every day you look at the newspapers and see reservations in welfare conditions. Are they going to leave downtown Toronto to go back to them? I don't think so. We have to think about that too.

Money is the thing. Somebody else is going to fix the money; now what we're talking about is the identity of people. When those people have the chance to be registered, we'll know; then, after that, we'll fix it up. How many times have you gone to a garage or a car dealer to get your car fixed? You haven't even looked at your car, but you know how much it's going to cost you.

You have to go down to the bottom and look at it this way, and as David says, the more time flies and the more time goes by, the more people die and the fewer there are. That's what is happening.

Every morning I wake up, and the question for me is, what's the problem? It's tiny. Sit down with people and take care of it; take the time. But time flies, and we have to put a hand to this, too. We give time and we might give more time, but we have to move along somewhere.

This is what I think.

● (1030)

The Chair: Thank you very much.

Questioning now moves to MP Saganash.

Mr. Romeo Saganash: Thank you, Madame Chair.

Thank you to the presenters today. Welcome back.

I want to start by saying that there's talk about these new people coming in, the influx into our communities, and so on and so forth. When we questioned the department just a while ago, there's something pretty telling in the responses. For instance, the officials talked about what was provided for in budget 2016: $149 million; and in budget 2017, $90 million over two years. When asked if there was an adjustment to provide for this new bill, they said no. I think that was pretty telling.

We get something like 250,000 new Canadians every year in this country. I don't think 35,000 new Indians would be a problem, in my mind.

My first question would be to Mr. Schulze. You talked about a couple of things at the end of your presentation. At one point you said that this is an Abenaki case and they were not consulted. I want to ask you something about that. You also talked about time, time to do this right. I'd like you to elaborate on those two points.

Mr. David Schulze: Okay. The first point is that, you know, it is very odd to listen to the minister and her officials talk about a nation-to-nation relationship. There was no mystery about the fact that the Descheneaux case was the case of the Abenaki nation. Odanak and Wôlinak were intervenors. The case was the project of the Abenaki nation. There was no contact between this department and the Abenaki nation until Chief O'Bomsawin was at a Quebec chiefs meeting and Indian Affairs delivered the whole package, and that was that. They announced what they were going to do, they noted comments, and then they ignored them.

As we say in French, *le passé est garant de l'avenir*: what's past is prologue. Why on earth would I believe it will all be better and more nation-to-nation in stage two than it has been so far when I represent the nation that won this case, and nobody talked to that nation until they decided everything they were going to do, and all the subsequent discussions were along the lines of, “That's very interesting, but we can't do it because we decided to do something else”?

Just as an aside, I think it's important for the honourable members to understand how deeply insulting that is, because you should know that the Abenaki have been in favour of equality for their women for decades. The communities got exempted from the married-out rule before the married-out rule was taken out of the Indian Act, okay? The Abenaki intervened on Ms. McIvor's side in the B.C. Court of Appeal. They get told, “We can't look at other charter issues because we need to consult”—consult with whom, the anti-equality, anti-charter first nations? Are they more important to be talked to than the Abenaki, who say “We would like our members to have status on an equal basis in a charter-compliant manner”. Somehow that's not part of this minister's and this department's notion of nation-to-nation. I find that very striking.

You know, just to absolutely emphasize to you what Chief O'Bomsawin said, we know why that is. They like talking to first nations that don't want more status members because Indian Affairs only pays for members with status. It's very important that you understand that. Stéphane Descheneaux's children are members, but they do not have status. There is no Indian Affairs funding for his children so long as they don't have status.

Sorry, you had a second question. Go ahead.

Mr. Romeo Saganash: Just to finish on that part, do you think that the failure to consult with the Abenaki nation in this process is a fatal flaw? I'm asking it from a constitutional perspective, the duty to consult and accommodate. Failing to do that with the Abenaki nation, is that a fatal flaw?

● (1035)

Chief Rick O'Bomsawin: Yes.

Mr. David Schulze: Chief O'Bomsawin said yes, and I try not to disagree with my clients, but I would say that, yes, it's a fatal flaw because what we're asking for is for the government to respect the charter.

Perhaps if we had been saying, “Oh, please, violate the charter, Ms. Bennett”, maybe she could have said “Well, I've listened to that, but I'm not going to follow that advice.” We have to think about the absurdity of a minister who says, “It's true. You know, the Abenaki have asked me to respect the charter, but gosh darn it, there might be some first nations out there who would like me to violate it. I'd better talk to them.”

Mr. Romeo Saganash: I asked the representative from Justice Canada just a few minutes ago whether Bill S-3 was vetted against the charter to make sure of its compliance. Under the Department of Justice Act, subsection 4.1(2), they have the obligation to make sure that any legislation is consistent with the Charter of Rights and Freedoms.

The answer to that question was that, yes, they did that.

Do you agree?

Mr. David Schulze: I'm sure they believe they did that. I don't believe they did that. I believe they get that answer by how they frame the question. They get that answer by saying, “We'll only look at sex-based discrimination, and we don't see any, so it's fine.”

That's how I can have a meeting with them, as I did with Mr. Reiher and Mr. Jacques. I said, “Here's some discrimination: it's discrimination when an adopted child's descendants are treated differently than those of a natural-born child.” They said, “Gosh, you know, that's really something interesting. We're going to have to look at that, but it will have to be in phase two.”

That's how they get to that. They tell you, “Yes, we've done that analysis,” by making sure their question excludes answers they don't want to hear.

Mr. Romeo Saganash: Chief O'Bomsawin, what do you recommend to this committee? What do you recommend that we do with this proposed legislation before us?

The Chair: Please give a very short answer.

Chief Rick O'Bomsawin: Listen to the Senate. Listen to the recommendations.

Everybody's saying, “Well, you know, we don't want to stall this. We don't want to go any further.” I keep hearing the same thing, “Poor Mr. Descheneaux, his children will have to wait longer.” Has anyone ever asked Mr. Descheneaux whether he's willing to allow his children to wait longer?

As first nations people, we do not look at the individual. We look at the whole nation, so we always have to say what's best for the nation. If one child needs to wait a little longer to save a nation, that's what's important, and I believe Mr. Descheneaux would agree with me.

The Chair: Thank you very much. I'm so sorry.

Chief Rick O'Bomsawin: That's okay.

The Chair: You will have an opportunity to respond to MP Michael McLeod's questions.

Mr. McLeod, I'll turn it over to you. You will be likely the last questioner for this panel.

Mr. Michael McLeod: Thank you.

That was a very interesting presentation.

I'm from the Northwest Territories. We have five large aboriginal governments there that are working hard to be in control of what happens on their traditional lands, to govern their own people, and to make decisions on behalf of their own people. One of the most important things they bring forward is good communication.

I find it surprising that you have already decided that everybody that wants to be consulted is against this. I totally don't agree. I have responsibilities within my riding to those first nations, and I would expect that they would want to be consulted. I don't think that has happened yet.

When some of the first nations moved towards self governance, they started defining who their people are, so there's going to be a challenge there. How are we going to work that? We haven't figured that out. Some have settled. What does that mean? They opted out of the Indian Act.

There are a lot of things that have to be taken into consideration. There is great impact here.

I totally agree with some of your comments. We're not going to see communities overpopulate overnight. In fact, we're seeing the reverse. People are leaving the small aboriginal communities I represent. They are not trying to come back. There's a level of despair. They want jobs. They want to have houses. They want to have good health.

So there are a lot of things that people are saying that I don't believe.

I recognize that a lot of this may be “I want money”, but I really feel strongly about the consultation process.

First of all, I want to know why you would think we don't need to talk about these two other parts of Canada, why you would think they don't need to have a say in this.

Second, what's telling you that stage two may not even happen or is not going to work?

Maybe you could clear that up for me.

● (1040)

Chief Rick O'Bomsawin: First of all, I'll skip to why I don't believe stage two will work: McIvor, 10 years. Okay? That's why I don't really have a lot faith in it.

I think you're getting me a bit wrong when you say that I don't think all communities should be consulted. I really believe they should be. I think the problem with Indian Affairs is that they have a tendency right now to speak only about the communities who are against this. We have not once heard from Indian Affairs about the communities who support this. All I get back from them is that a community is not really for this, or a community doesn't want to be overpopulated, or a community doesn't want the influx of people. I have not heard any of the positive end of it.

I truly believe that all communities need to be consulted, but I also believe that Indian Affairs has to tell the whole picture and the whole story and not just talk about the communities that are against this system.

Thank you.

Mr. Michael McLeod: I think that was a different time. There was a different government in place. Hopefully, this is something that will be taken more seriously and done properly.

In the Senate committee, during the clause-by-clause, senators expressed some serious concerns as to whether, for paragraph 6(1)(a) all the way through the clause, it does what it's intended to do. The government has also suggested that there are problems with it and that there may be uncertainty on how this clause is interpreted. Do you think it's responsible to include a clause in this bill when there are doubts as to its legal application?

Mr. David Schulze: I'm confident that between the House and the Senate you can work out any technical difficulties, if that's what the government wants to do. There are a lot of people.... I could tell you about technical points that could be changed here and there in what the Senate sent you, but I don't think that's the important issue. I mean, it's an important issue before the bill is adopted, but that's not the first question.

The first question is whether the general principle is acceptable. Yes, I think it could be technically better, but Senator Sinclair raised valid technical concerns and then voted in favour of these amendments when the bill went back to the Senate on third reading, because he was in favour of the principle. I think we could fix those problems. We could fix them before July 3.

The Chair: You have two minutes.

Mr. Michael McLeod: I want to go back to the numbers, because I've heard people say that it's just about the sexual discrimination, so let's not worry about the numbers. Has your team—your people—looked at what kind of impact this would have in terms of the number of people who would qualify? How much of a change would that be? Is it significant? Is it marginal? Is it going to be overwhelming, as some people are suggesting? I'm curious as to what your take is on it.

Chief Rick O'Bomsawin: In my own community, no, I don't believe the numbers are going to be large at all. In my community, we welcome most of our family members, with or without status. That's the reason we have a citizenship code. I don't see a large—

Mr. Michael McLeod: You don't believe the two million or millions of...?

Chief Rick O'Bomsawin: No, I don't believe it at all. That's what I'm saying. I believe that somebody should have done actual numbers. They should not just have come up with a hypothetical number that they've created. I've asked them where they got this number, and nobody seems to want to tell me where this number came from. I don't know if it came out of thin air or somebody just invented it or what. I don't even understand how we got to that amount of people.

Mr. David Schulze: Let's be very clear on something. The Senate amendments are the ones that Ms. Bennett, when she was in opposition, said were good. She voted in favour of them. The Senate amendments are the amendments that Ms. Wilson-Raybould, when she was a regional chief for the BC Assembly of First Nations, said were good and that Harper should amend the act. That was in 2010. It's been seven years. Indian Affairs has never done the calculation.

My guess is that if it were two million you would have the study on your desk showing you where the two million are. That would be a pretty striking fact. I would also suggest that you should be a little offended that the department comes before you and says their estimates vary by a factor of 25 and they haven't bothered to do the calculation properly.

● (1045)

Mr. Michael McLeod: Yes, well, I—

The Chair: We've run out of time.

That concludes this panel. We'll suspend for a couple of minutes. Our third panel will be joining us when we reconvene.

Thank you.

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(Pause)

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● (1050)

The Chair: Welcome, all, to our committee.

I see that some of our members are still away, and I know they are on their way back very quickly, but I don't want you to be short-changed on the time you need to present to us.

We're going to get started with your presentation. Please, the time has moved over to you.

Ms. Francyne Joe (Interim President, Native Women's Association of Canada): Good morning, as I shake myself up. It's raining outside again.

Kwe, *bonjour*, and good morning to Chairperson Mihychuk, committee members, distinguished witnesses, and guests.

My name is Francyne Joe, and I am the interim president of the Native Women's Association of Canada. Alongside me is our executive director Lynne Groulx; and I am happy to introduce our new director of strategic policy, Courtney Skye.

I would like to acknowledge the Algonquin nation, on whose unceded territory we are meeting today. I would further like to recognize and honour the hard work on the part of individuals, organizations, and members of the Senate, who share our interest in moving this process forward quickly.

Through the elimination of sex-based discrimination in the Indian Act, indigenous people who have experienced generations of marginalization will achieve recognition of their disenfranchisement. It will additionally enable generations of descendants to begin the process of healing and reclaiming pride in their identities as indigenous people.

Following NWAC's presentation on the findings of the engagement sessions with indigenous women and other stakeholders on this topic, several amendments have been made by the Senate to the proposed Bill S-3 that satisfy some of our most pressing concerns. These include the affirmation of a clear process for meaningful engagement, in which we commit to participating.

NWAC continues to advocate for the removal of all sex-based discrimination from the Indian Act. Accordingly, the Native Women's Association supports the amendment of Bill S-3, known as 6(1)(a) “all the way”, as passed by the Senate. However, NWAC needs to flag the “no liability” clause as a problematic addition to Bill S-3.

It is our impression that the new amendments serve to further eliminate sex-based discrimination in the Indian Act, beginning with the removal of the two-parent rule. The two-parent rule, or presumption of parentage, is discriminatory towards many individuals. Our grassroots' engagement process revealed that Bill S-3 did not address the situations of undeclared parentage, a parent being unable to sign documents due to disappearance or death, or cases in which same-sex or two-spirited individuals are parents.

The elimination of the two-parent rule will grant Indian status to disenfranchised descendants. It restores the rights of indigenous people to love who they choose and takes a positive step towards the acceptance of same-sex relationships in the affirmation of the rights of two-spirited individuals. It does not, however, address the ways in which they have suffered due to this discrimination.

We are satisfied with the addition of a legally mandated engagement and consultation process, and encourage the initiation of stage two of this bill. NWAC is fully committed to designing and implementing an engagement process that provides indigenous women with the capacity required to fully and meaningfully participate.

Consultation must be extended to all indigenous women, youth, elders, transgendered women, and two-spirited individuals. This group is not limited to the first nation communities, first nations bands, and Métis communities, whose memberships will be affected. It needs to be inclusive of all indigenous women who are being discriminated against, in recognition of the need for strong, healthy, and loving families, and shaping pride and self-knowledge in future generations.

Canada has denied indigenous children of their right to know themselves through numerous methods of colonization, including those implemented by the Indian Act. By denying women access to their treaty rights and isolating them from their communities, the Indian Act has disrupted their ability to pass on their heritage and culture to their children. Consultations on the loss of Indian status must extend to those who have experienced the effects of the sex-based discrimination in their lives. We must hear from those who have lost their connection to their culture as a direct result of sex-based discrimination in the Indian Act and the delays to this amendment.

Meaningful consultation supports the development of a mutually respectful relationship, as recommended by the calls to action of the Truth and Reconciliation Commission. This relationship must be with those affected by sex-based discrimination in the Indian Act. Consultation must extend beyond groups whose rights are currently supported by the Indian Act, including groups who currently hold Indian status.

Additionally, the inclusion of indigenous women's perspectives must be used as a metric of the indigenous peoples' ability to claim their right to self-determination as outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

NWAC has decades of experience in exposing and addressing the root cause of the marginalization of indigenous women. We must strongly recommend that comprehensive consultation and reporting occur within a framework designed with our full co-operation and ensuring that all residual forms of discrimination are removed from the Indian Act.

I will now further elaborate on our expectations in developing this important work.

● (1055)

NWAC has serious concerns about elements of the bill, including clause 10, the “no liability” clause. Its presence supports the sexism inherent in the Indian Act and further entrenches historic discrimination against the group most marginalized and most impacted by the discrimination of the act.

The patriarchal nature of the Indian Act has survived prior amendment and continues to amplify that discrimination against women that has been felt through generations. It was drafted in an attempt to assimilate indigenous women and our descendants by erasing our indigeneity. To include a “no liability” clause essentially divorces its creators from responsibility for their knowing attempts to disenfranchise and disempower indigenous women and their descendants.

The crown is not released from bearing responsibility for this work. This is not only a question of compensation but a recognition of the degree to which the racism faced by indigenous women is intensified by discrimination based on sex. As no process has been introduced that seeks to assist those impacted by this discrimination on their own behalf, the legacy of harm continues to threaten the well-being of women and their descendants. These people will continue to bear the burden of alleviating the discrimination for themselves.

NWAC welcomes the explicit reporting of issues outlined in subclause 11(1), with particular attention on the impacts relating to adoption of children by two-spirited people and same-sex partners, the impact of unknown or unstated paternity in cases of sexual violence, and the effects of enfranchisement of women.

Please accept our input challenging the Indian Act and supportive of our combined work in removing this discrimination. We appreciate the support of this committee in ending the systemic attack on the ability of mothers to pass on our heritage and culture to our children.

The process of colonization and assimilation continues on the bodies and in the minds of indigenous women. We had no hand in writing these laws that oppress us. It is time to reclaim our identities in law and action. There is an urgent need to respect and promote the inherent rights of indigenous peoples. Our rights derive from our cultures, spiritual traditions, histories and philosophies, all of which are passed on by our mothers. These also derive from our political, economic, and social structures, all of which have been actively disrupted by the patriarchal and colonial impositions of the crown.

Canada has committed to implementing these rights as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. It is time to restore the traditional place of pride held by women, trans-gender women and two-spirited women in our communities. The Indian Act has successfully categorized and divided our people through status designations that impact us at the community level. By revoking Indian status or not awarding Indian status to women and their children, the Indian Act makes these marginalized people easy targets for continued discrimination that is felt across generations.

NWAC recently observed the 100th anniversary of the Battle of Vimy Ridge and the indigenous women who chose to fight alongside Canada for our freedom. We have supported a nation that has never supported us. It is unacceptable that today we must continue to advocate for our equal rights to dignity, respect, and freedom from fear on our own soil. Adopting paragraph 6(1)(a) “all the way” is our shared path to reconciliation, healing, and empowerment.

NWAC fully embraces the opportunity to work with Indigenous and Northern Affairs Canada in conducting stage two of the engagement process as outlined in the amendments to Bill S-3, and we commit our full participation in its design. The positive action taken in accepting these amendments will let not only first nations women but all indigenous women, their descendants and communities, know that the Canadian government recognizes and respects our right to equality.

● (1100)

The Chair: You have one minute left.

Does that conclude your presentation?

Ms. Francyne Joe: *Kukwstsétsemc*. Thank you.

The Chair: Thank you. *Meegwetch*.

We have another presenter, who is joining us by teleconference, Drew Lafond.

Mr. Drew Lafond (Director, Board of Directors, Indigenous Bar Association): Thank you.

This is a little bit of a different forum for me, so I'm just getting used to it. I'm calling in from Calgary, Alberta.

My name is Drew Lafond. I am a member of the Indigenous Bar Association. The Indigenous Bar Association in Canada is a not-for-profit organization that represents indigenous lawyers, judges, academics, students, and paralegals in Canada. Generally, our objective is to see the advancement of indigenous rights in Canada and to allow indigenous peoples to secure their ability to exercise their rights of self-determination in Canada. We have a very broad mandate, and we represent quite a few individuals. Our membership exceeds 300 members within Canada from coast to coast.

I'm speaking here today further to our presentation to the Standing Senate Committee on Aboriginal Peoples. We spoke on April 16, and we also presented on November 23, 2016 before the standing Senate committee, and we made written submissions to the standing Senate committee in April 2017.

Today, I want to elaborate a little bit more on what we provided during our previous presentations.

In terms of the bill at hand, further to our previous presentation, the issue we had encountered in terms of the text of Bill, S-3 and with section 6 of the Indian Act in its entirety, was essentially that the bill had become illegible for first nations individuals. It was very difficult to interpret who within the bill qualified for Indian status.

Now, the objective of the bill—and I refer to the title of the bill as being the elimination of sex discrimination within the Indian Act—had not been achieved by November. Subsequently, when another round of revisions to the bill was presented in May, the bill itself still included several instances of sex discrimination, which we identified only a couple of days before I presented back in May.

Unfortunately, we didn't have an opportunity to review paragraph 6(1)(a) and the “all-the-way” provision. In fact, when I was presenting to the standing Senate committee, I think it was Senator Patterson who raised it as a potential alternative to the draft bill that was before the Senate at that point. Colloquially, it's a term that's been attributed to what I think the new paragraphs 6(1)(a.1) and 6(1)(a.2) will be within the current bill. The ultimate intention of paragraph 6(1)(a) “all the way”, I think—I'd hazard a guess here, and I'm paraphrasing wildly—is to ensure that anyone prior to 1985 who had been deprived of status would be reinstated, and any descendant of a person who was entitled to status under the previous provisions, who was born prior to April 17, 1985 would also be entitled to paragraph 6(1)(a) status. Again, we didn't have the opportunity to contribute to the drafting of the paragraph 6(1)(a) all-the-way approach, but I'm operating on that assumption, and that's something I'll offer comments on later.

When we appeared before the Senate in April, we brought three general issues to the forefront. The first was with respect to pre-1951 status. The question that we raised to the Senate was more a question and more of an issue that we wanted addressed in a broader scope, which was why discussion at that time focused on the arbitrary distinction between pre-1951 and post-1951 status at that point.

● (1105)

It was a distinction drawn by the British Columbia Court of Appeal in the McIvor decision. Ultimately, however, for the claimants, the individuals who were affected by the enfranchisement provisions under the pre-1951 and the post-1951 versions of the Indian Act, it seems to be an arbitrary decision. The only basis for it was simply that we weren't in a position at that time—and we still aren't, from what I understand—to fully quantify the impact of a reinstatement on a pre-1951 enfranchisee and his or her descendants.

Without a factual basis to support an argument as to what a pre-1951 reinstatement would look like, I think we're still disadvantaged in the sense that we don't have all the information on what the full impact of this would be. Ultimately, this is an issue that will affect Canada. It's Canada's statute. We want to avoid the ramifications of a pre-1951 mass reinstatement, which would have a detrimental impact on the ability of first nation governments to administer and conduct their own affairs.

With respect to post-1951 status, we presented draft amendments and circulated those to the Standing Senate Committee on Aboriginal Affairs. As I indicated, I wasn't contacted by any members of the Senate following our circulation of those proposed amendments. It wasn't until the following day—I think it was May 17, when the clause-by-clause reading occurred—that I was made aware of the drafting of the 6(1)(a) "all-the-way" approach. I'll speak to that in a moment.

The only other item I'd like to submit would be with respect to sections 10 and 11 of the Indian Act. There's currently an ambiguity in section 10 of the Indian Act for those bands that have adopted their own band membership codes. This was underscored in a case in the Alberta Court of Appeal in 2003.

What we would have liked the Senate to do in this case, which unfortunately did not happen, was to address, in addition to the proposed amendments to section 11 of the Indian Act, the effect of reinstating essentially anyone reinstated under the additional status provisions of section 6 to a band membership list, or a membership list equivalent, maintained by the department.

There are issues with this because it renders uncertain the status of individuals reinstated today. There remains an uncertainty as to whether those individuals would be reinstated, effective April 17, 1985. The effect of this would be that they would also be entitled to band membership. Their names would be included in the band list, effective April 17, 1985. This is an ambiguity that remains.

This situation was addressed by the Alberta Court of Appeal, and we think the decision, at least in our instance, creates some clear direction for the Senate and the House of Commons in eliminating sex discrimination. It affects the status provisions of section 6 as well as how these provisions impact automatic entitlement to band membership.

Going back to the 6(1)(a) "all-the-way" approach, I haven't been made aware of the full intention of 6(1)(a). I simply assumed that this approach could well achieve the objective of the proposed legislation, which is the elimination of sex discrimination. As we indicated in our previous submissions, the draft bill added to what was already an esoteric section 6, which was becoming illogical for first nations individuals.

● (1110)

Now, the only concern with respect to the—

The Chair: I'm going to ask you to wrap up.

Mr. Drew Lafond: Okay, excellent.

Put simply, the proposed paragraph 6(1)(a) "all-the-way" approach is certainly attractive. We think that it could beneficial. Unfortunately, we didn't have the opportunity to contribute to the drafting of that section, and when we did ultimately see Bill S-3 approved by the Senate at third reading in its current form, without....

The Chair: Thank you very much.

We're going to go on to the questioning period, and I would ask members to ensure that they direct their questions, whether it is to the Bar Association or the guests we have here in person.

The first round goes to MP Mike McLeod.

Mr. Michael McLeod: Thank you, Madam Chair.

Thank you to the presenters today.

My question is for Mr. Lafond. I want to give you a chance to talk more about proposed paragraph 6(1)(a) "all the way".

I flagged in the last presentation the concerns that were raised by Senator Sinclair. He expressed concern that this may not do what it's intended to do. The government has also raised concern about how this clause may be interpreted.

I was hoping to hear that you have a clear opinion on it. It seems you haven't had a chance to really review it to give us an opinion, but you have more to say on it.

Do you think it's responsible to include a clause in a bill for which there are doubts as to its legal application?

The Chair: You can go ahead and respond, please.

Mr. Drew Lafond: What's responsible is subjective assessment. In our view, what problems would arise in connection with the 6(1)(a) "all-the-way" approach.... You'll recall that during our previous submissions to the Senate in May—and this was identified in our written submissions as well—we identified that the draft language proposed by the Liberal government in 2010 in connection with the Bill C-3 negotiations and discussions at that time.... The clause during that round of negotiations was ruled out of order, so it wasn't considered and, unfortunately, it essentially died at that point.

We have now reintroduced the discussion in our written submissions. We raised it as a possibility during our oral submissions, as a good starting point for eliminating sex discrimination within the Indian Act. What appears to have happened is that Senator McPhedran has simply taken the language from the proposed Liberal amendment back in 2010, inserted that into 6(1)(a), and then added a provision under (a.2), which is simply an interpretation provision or clarification provision, which interprets (a.1). Therefore, there really hasn't been a lot of modification of the Liberal proposal put forward back during the Bill C-3 negotiations.

We cautioned against simply inserting that in its current form. We identified it at that time as a good starting point, as I indicated. You run into technical problems with the language by simply inserting that into a bill because you run the risk of inconsistencies or some unintended consequences with that. We haven't been able to identify the full extent of those.

When I looked at it last week, the only one who came to mind was the question of who we are referring to when we refer to a person who was born prior to 1985 and is a direct descendent of the person referred to. Looking at the person referred to in paragraph (a) or a person referred to in paragraph 11(1)(a), (b), (c), (d), (e), or (f), as read immediately prior to April 17, 1985, the first issue that came to mind was, does that refer to only peoples who are alive or peoples who are deceased? Or are we dealing with descendants of people who were living immediately prior to 1985 or people who had passed away? There is a deeming provision in the Indian Act, section 6, and it reads, “(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a);“ That's under (6)(3), but, unfortunately, that reference is only in connection with paragraph (1)(f) in subsection (2).

There are these small technical problems that you will encounter when you insert a paragraph like that into a bill, and our concern stems from that. I think it echoes the concerns of senators.

Also, we don't know if we can have a proper articulation of what the 6(1)(a) “all-the-way” approach is, and then moving to the next phase, does the legislation accurately implement that intention?

Dealing with subparagraph (a.1), I understand the political strategy. This was something that was introduced by the Liberals, so shouldn't the Liberals be more inclined to adopt it? It's a very admirable approach from a political standpoint. From a legal standpoint, we still have some questions that we haven't had an opportunity to fully canvas.

● (1115)

Mr. Michael McLeod: Thank you. I certainly agree that this is an opportunity to get it right and it's important that we get it right.

My next question is for the Native Women's Association of Canada. In your presentation, you talked about designing an engagement strategy to talk about this whole issue. The government is suggesting the same thing in the stage two process. We've heard from presenters that they don't believe that it will take place, that the government won't honour their commitment, or if they do, it's going to take longer than 18 months.

I'd like to ask, how long will it take? What do you expect? How much time are you going to need to go out?

Ms. Lynne Groulx (Executive Director, Native Women's Association of Canada): We think it would take about 18 to 24 months for a full consultation at the grassroots level, throughout the communities and throughout Canada.

Mr. Michael McLeod: In the last little while, in the time that we've had to get to this point, has there been enough time to do any type of consultation? It's been rushed, I think. Everybody's in a hurry.

I have not heard back from the Native Women's Association of the Northwest Territories. Have you been able to reach out to the different parts of Canada, to talk to your membership to see what they think? Have you talked to the Native Women's Association of the Northwest Territories to get their opinion on this?

Ms. Lynne Groulx: We have engaged in a very high level consultation across Canada, with NWAC's PTMAs. It was a very short consultation, approximately over a 30-day period, so it was very limited, but very high level.

I'll let Francyne respond about up north.

The Chair: I'm sorry, but we won't have an opportunity to do that. We've run out of time for this period of questioning.

We now go to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

I want to go back to some of the cracks in the fundamentals. The legislation, Bill S-3 as presented, does respond to a significant number of concerns. I won't talk about paragraph 6(1)(a), but I'll say that the rest of the legislation responds to a significant number of concerns.

The Indigenous Bar Association still had one or two areas that it thought the bill was not adequately responding to. Could you just quickly go over those again, minus paragraph 6(1)(a)?

● (1120)

Mr. Drew Lafond: Are you referring to the provisions in paragraph 6(1)(c.01) all the way to paragraph 6(1)(c.4)?

Mrs. Cathy McLeod: I think I need to go back to school to be a lawyer.

No, sorry. It's basically the Senate amendments by McPhedran—what we call the paragraph 6(1)(a) “all the way”. If that amendment was not been in the bill, and indeed you had gone to the Senate committee unaware that it would be inserted into the bill, what had you recommended they amend?

Mr. Drew Lafond: The draft amendments that we proposed and circulated to the members of the Senate committee simply provided that if you had been born post-1951 but prior to 1985, you would be entitled to paragraph 6(1)(a) status. That essentially left the door open for anyone who was born prior to 1951 or was a descendant of somebody who had status prior to 1951. We would still need to determine a formula for reinstating those individuals at this time. We proposed somewhat of a middle ground.

As for the draft language itself, I think I have a copy of it here. If MPs are interested in having a look at it, I can certainly send it to the clerk to be circulated.

The Chair: We would appreciate that.

Go ahead, Cathy.

Mrs. Cathy McLeod: You're indicating it's a middle ground; could you differentiate between...? It sounded as if you needed a lot more time to analyze the Senate changes. How was yours that middle ground? You spoke briefly, but I'm trying to understand it in more detail.

Mr. Drew Lafond: During the prior round of amendments before Senator McPhedran's amendment, we had been dealing with a response to the decision in Descheneaux, and the idea had been to identify instances of sex discrimination that had arisen post-1951 as a result of the 1951 legislation. We were essentially, in effect, trying to identify as many factual situations as we could that could arise under the 1951 legislation as amended by the 1985 legislation. This was the approach that had been espoused by INAC and several parties they consulted with when we were discussing what Bill S-3 should look like.

When you look at the 1951 legislation as amended in 1985, there were several factual areas that gave rise to sex discrimination, and we were caught within that. We were ultimately caught within those parameters, and that's the discussion and the dialogue that we were having at that time. How do we eliminate sex discrimination under the 1951 act as amended by the 1985 act?

When we raised the possibility of going back prior to 1951 with INAC at that time, they invoked the decision of the British Columbia Court of Appeal in McIvor, stating that the court in that case had concluded that all instances of sex discrimination prior to 1951 were essentially justified under section 1 of the charter. Now, we disagreed with that because we think the British Columbia Court of Appeal hadn't had the opportunity or the benefit of subsequent case law that has interpreted the charter, which we think may have led them to lead a different conclusion.

How do we deal with this, then, for people prior to 1951? That still, in our view, remains an open question, something that needs to be looked at very critically and very closely.

Mrs. Cathy McLeod: You don't necessarily see proposed paragraph 6(1)(a) all in as the answer.

Mr. Drew Lafond: Following the dialogue on the clause-by-clause reading, what we hadn't realized is that the vast majority of the senators were actually in favour of going back to that previous era, prior to 1951, which in our view, we have to admit—I mean, we'll submit that—we thought was unattainable at this stage, and we weren't that optimistic.

Now that they've thought about revisiting the era prior to 1951, and that's open for dialogue, and we're considering reinstating those individuals and their descendants, we would certainly like an opportunity to try to figure out how we reinstate those individuals properly without running into any of the complications that we did with the prior legislation.

● (1125)

Mrs. Cathy McLeod: I want to take this to the Native Women's Association now. You talked about the consultation taking 18 to 24 months. We're talking about something that goes to the heart and soul of many communities, many bands, and many nations. I think there are going to be varied opinions across this country on how they believe we should move forward. When you're talking about 18 to 24 months, you're not talking about that sort of appropriate in-depth consultation where every community feels like they've had a good conversation around this. As I say, I can't see that as feasible at all. You sound optimistic, so share with me what you think. When you were saying 18 to 24 months, you weren't talking about full consultation with every community across this country.

The Chair: I am sorry. You're out of time—15 seconds over—but I'll give you time for a very short response, please.

Ms. Lynne Groulx: Yes, in fact, we do mean 18 to 24 months. NWAC has networks across the country. We have PTMAs. We've done extensive consultation before, and we believe that it could be done in that amount of time.

Basically, this is not a new question. The Indian Act has been there for a very long time, so this is not new. The discrimination is clear. We think it definitely can be done in that time frame.

The Chair: Thank you.

We're moving on. Questions are now going to MP Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair, and thank you to our witnesses today. It was very enlightening to hear.

I want to start by giving Francyne a chance to respond to Michael's previous question. You were going to add to the question about the membership in Northwest Territories. Have you reached out to them? Have you consulted with them?

Ms. Francyne Joe: We've recently had changes in our PTMA up in the northern communities, so we will be meeting with the new president and the board of directors up there, sharing the information we currently have, and then going into consultation with the membership in the Northwest Territories.

Unfortunately, the amount of time we had in the last fiscal year was really insufficient to try to get every territory and every province on board. Thirty days means only 20 working days, so from the information we were able to gather, I was quite pleased that women were able to voice their concerns.

There are still some other concerns that haven't been addressed by this amendment, but we are willing and we need to start working on how we can help our indigenous women get their status. It's a band-aid solution at this point, but we need to make it work.

Mr. Romeo Saganash: Thank you. That was important to hear.

You expressed concern about clause 10 and the “no claim to compensation” provision. I would like you to elaborate on that, because what we heard from INAC just a while ago was that they had multiple engagement sessions with organizations like yours, but also with the legal counsel of different organizations—I imagine with the NWAC legal counsel. Is that the case?

Ms. Courtney Skye (Director of Strategic Policy, Native Women's Association of Canada): We had an engagement session on the issues, yes.

Mr. Romeo Saganash: What was the response when you raised that concern with respect to the “no claim to compensation”? Was there any response to your concerns?

Ms. Courtney Skye: This is a recommendation that's been in a number of different pieces, and actually we've spoken to other indigenous people as well. The removal of this clause is a constant recommendation that is made on the Indian Act, but regardless of our recommendations it still remains. This amendment is constantly brought up as an issue, and continues to be put in by the crown.

Mr. Romeo Saganash: What is the argument here? If this is inserted, I have problems with it, too. If you discriminated in the past, you cannot remove that in the legislation. What happened in the past happened, and you cannot deny that. Is your recommendation to this committee to remove that clause?

● (1130)

Ms. Lynne Groulx: Yes, that is our recommendation, to remove that clause. What we heard when we did our preliminary engagement sessions was that this is a breach of human rights. It is a human right to have your identity. Therefore, if your human right has been breached, you have a right to be made whole. How do you make a person whole? You have to provide a remedy. For that reason, we feel that this clause should be removed.

Mr. Romeo Saganash: You speak to it from a human rights perspective, and that is exactly how we should consider this.

Francyne, you talked about inherent rights of indigenous peoples. This a concept I fully stand by, because when we say inherent, these rights exist because we exist as indigenous peoples. That's how I understand the concept.

You also talked about the United Nations Declaration on the Rights of Indigenous Peoples. I'd like to hear you on that particular point, because I think there's something important that this committee needs to consider. At least, we need to have that perspective whenever we discuss legislation or policy in this committee and the House. We need the proper basis to have that discussion. That has not been happening.

The new government has promised to adopt and implement the UN Declaration on the Rights of Indigenous Peoples, and promised a new relationship with indigenous peoples in this country, but we still don't have the basis to move forward. Any changes to legislation, and in particular the Indian Act, should be done with a strong framework such as the UN declaration.

Is that your opinion? What is your opinion on this?

Ms. Francyne Joe: As mentioned earlier in regard to the Indian Act, this issue has been affecting our people for the last 140 years. It is an inequity that has been applied especially to indigenous women. In order for us to make some substantial changes, just taking out that discriminatory language is a good first step.

But the Canadian government needs to recognize our indigenous people, our history, our traditions. Concerning their promises to incorporate the UN declaration, we need to have a timeline. We need to start working with the government to see how this is going to move forward. That is going to be a big step for indigenous women and indigenous people overall.

I'm not sure whether Courtney has anything else that she'd like to say.

Ms. Courtney Skye: Yes, I think that's an important piece. It's an important piece to emphasize with this, because we're talking about the indigenous-born and their rights to exist and to exist in a way that's self-determined. That's the basis of human rights. It's a key piece.

Many people will say what UNDRIP means. One thing we want to highlight from UNDRIP is that it says we have the right to be free of discrimination, including a right to be free of sex discrimination. There's a duty to consult, but there's also a freedom from individual discrimination as well.

Removal of the sex discrimination brings women and their descendants on par to begin to talk about these bigger issues around the existence of the Indian Act—all these things. Until we have women who are at the same level, we can't even begin that conversation.

The Chair: Thank you so much.

We're now moving to the next questioner, and that's MP Massé.

[*Translation*]

Mr. Rémi Massé: Thank you, Madam Chair.

I want to thank all the witnesses for joining us.

I will echo the comments of our colleague Cathy McLeod. Having heard testimony before this committee and before others, I would also like to be a lawyer. I think that will be the next step, in a future career, in order to properly understand all the ramifications.

According to the latest testimony we have heard, and according to the amendment proposed by Senator McPhedran—6(1)(a) all the way—there still seem to be some technical elements that have not been examined or clarified. So some work appears to remain before an adequate bill is created.

In this context, I would like to come back to the consultation. My question is for the Native Women's Association. Do you feel that enough consultation has been conducted in this process to make it possible to assess the impacts related to all the proposed legislative amendments?

● (1135)

[*English*]

Ms. Courtney Skye: There's no consultation that can be done on equality. You can't actually choose and seek to address equality. What is there to answer on that? What question can there be around asking communities whether or not they want equality?

We talk about how many people could potentially be impacted or be able to claim status. If anything, these huge numbers are a demonstration of the breadth of the discrimination that's been experienced by communities. More importantly, equality can't be negotiated away, and so we can't negotiate away the rights of equality for our women.

This is not a question around membership; this is specifically about who is eligible for status and whether men and women are equal to inherit and to transmit status equally. Right now, they are not. We are strictly talking about ending that discrimination and seeking equality for women.

There are many other questions that are on the table, but they are not about what this bill is specifically seeking to do. We are committed to implementing what's in the bill, but then also engaging in these other conversations as well, which have been described and are entrenched through the stage two engagements.

[*Translation*]

Mr. Rémi Massé: Unless I am mistaken, the approach proposed by the government is a staged approach that provides for a second consultation and a very clear process in terms of timelines.

Are you in favour of that two-stage process?

[*English*]

Ms. Courtney Skye: Yes, we are, and we are committed to working on it. NWAC has been committed since its inception to seeking every opportunity to advocate on the rights of indigenous women. This is another opportunity for us to engage and to advocate for the rights of indigenous women. We will take every opportunity and are glad to engage in these conversations.

[*Translation*]

Mr. Rémi Massé: Over the course of previous testimony, we have received comments stemming from concerns with regard to our government's commitment to move forward with a second stage of consultation. Witnesses clearly referred to delays during other legislative steps that took five, six, seven or eight years to complete.

Bill S-3 was developed with a set of established timelines in specific provisions. Are you confident in the fact that the process, as presented, could be put forward and completed within the set timelines?

[*English*]

Ms. Francyne Joe: I'm never confident in timelines, with this or any other government, because promises to indigenous people have been broken in the past. I think that with this change and NWAC's commitment to work with INAC, we can bring something forward that will benefit indigenous women.

It's not just me or the women here holding them accountable; it's so many women across this country. I try to trust. I will do my best to trust, but at the end of the day it's really up to the government to hold true to what they say, so...fingers crossed.

[*Translation*]

Mr. Rémi Massé: Thank you, Madam Chair.

I will share my time with Mr. Bossio, if he has any specific questions. I have no further questions.

[*English*]

The Chair: Make it very short, about a minute.

Mr. Mike Bossio: Okay.

This is to the Native Women's Association.

I heard you say earlier that you felt strongly about the consultation process and felt that we need to move forward with it and work in a collaborative way to establish a collaborative process in order to define what the consultation process should look like. You seemed to indicate that you had some level of trust in the stage two mechanism to accomplish that consultation.

Do you agree that we should try to move as quickly as we can to bring in the 35,000 who have been identified and whose status could be rectified under the bill today under stage one and then move towards stage two? Or do you feel that we should look for an extension, for the 18 to 24 months that will be required under the consultation process, and forget about stage two?

● (1140)

Ms. Francyne Joe: We've been advocating for all women for so many years. My cousin Sharon McIvor has been in this for decades. We would like to see those who are currently eligible be able to move forward and get their status, because it means so much to them, even at this time. If we continue to postpone this, we're doing such an injustice to those people who are continually waiting for this process to move forward. I would hate to make them wait.

We were speaking yesterday about how many elders have been fighting this fight, and they're passing on. Let's see some sort of....

Mr. Mike Bossio: Progress?

Ms. Francyne Joe: Progress. Yes.

The Chair: I think that's a good place to end.

Ms. Courtney Skye: May I make one more point?

Stage two spells out specific issues, and that's what we're supportive of, the specific issues. Stage two takes place after the eradication of the sex discrimination.

We are supportive of stage two with respect to those specific issues that are outlined in the bill.

The Chair: All right.

That closes the public session.

I'm going to ask committee members to stay for a very brief discussion on committee business in regard to Thursday's lineup of presenters. It will only take a couple of minutes, but it will be in camera.

Thank you so much for attending. *Meegwetch*—with three minutes left.

[*Proceedings continue in camera*]

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