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**EVIDENCE**

## Thursday, June 8, 2017

## Chair

**The Honourable MaryAnn Mihychuk**

# Standing Committee on Indigenous and Northern Affairs

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● (0845)

[*English*]

**The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)):** Good morning.

I'd like to start by indicating that we are on the unceded territory of the Algonquin people.

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

We have many panellists who have travelled far to present to our committee, so I wish to get on with the matter of business.

We have 10 minutes for each presentation. Some groups have one presenter; others have two. It's up to you how to divide your time. We will be fairly strict on time. I'll try to give you a warning ahead of time—three minutes, two minutes, one minute, cut—so have a look at me and I'll try to signal how much time you have.

Our first panel includes representatives from the Assembly of First Nations of Quebec and Labrador; Viviane Michel and Cynthia Smith from Quebec Native Women; and Lynn Gehl.

We have Chief Picard on the line, by teleconference.

In front of us is Mr. Norton.

Perhaps you could lead off and tell us how you would like to proceed.

**Grand Chief Joseph Tokwiro Norton (Grand Chief, Mohawk Council of Kahnawake):** Thank you very much.

Chief Picard and I agreed that we would divide up some of the time. He'll lead off by giving a statement on behalf of the AFNQL. From there, I will finish the presentation.

Mine will be a little more than 10 minutes, because we've agreed that he will be brief.

**The Chair:** We're going to start with you, Chief. Please, go ahead.

**Chief Ghislain Picard (Regional Chief, Assembly of First Nations of Quebec and Labrador):** Thank you very much, Madam Chair and members of the committee.

I want to acknowledge the fact that the proceedings are being held on traditional unceded Algonquin territory.

I also want to greet the other panellists this morning, and Grand Chief Norton of Kahnawake Mohawk Nation.

You heard earlier this week from Chief Rick O'Bomsawin of the Abenaki Nation and community of Odanak who presented his views on behalf of his community, understanding the case at hand, the Descheneaux case, originates in his community. This morning you will hear another point of view from another community within our region, and we understand that it's a very delicate matter, a matter that certainly is of concern to a majority of our nations, and it's been a concern for quite some time.

The sad part in all of this, and this is certainly the case in terms of identification, membership, and whatever you want to call it in the communities, is that often the government is directed by the courts. It's very sad that it has come to this, and I guess it puts in perspective the fact that too many times we seem to be cornered in a situation where there's a failure in the political process, which often leads us to the courts as the last resort.

As I said earlier, this is a very sensitive issue. Speaking on behalf of our region, we tried to facilitate meetings to deal with this in light of the court decision, understanding that as a regional entity or body, we tried to provide all the time and space needed for communities to express their points of view, and then convey the position to the government whenever possible. This is what we did following a consultation that was held in Montreal in September 2016, and we followed up with a letter to the Prime Minister in October of last year. The letter states clearly where we stand as a region, always trying to reflect and respect the positions of the different communities.

The last thing I'll say before I pass it over to Grand Chief Norton is, in spite of the different points of view, we can all agree—and this is the position we support—ultimately our communities and our leadership are the only ones who can exercise the authority of determining their membership, and this position is supported by all.

We will present a written statement to the committee before the end of the day tomorrow that will add to the comments I provided this morning.

Again, my apologies for not being there in person. I feel it is important for Grand Chief Norton to present there in person on behalf of his community and nation.

Thank you very much, Madam Chair.

● (0850)

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

**Grand Chief Joseph Tokwiro Norton:** Thank you, Ghislain.

Madam Chair, you should have by now a copy of a letter that we forwarded to you. It should have come in yesterday. It outlines our situation, our position, and our very sincere dissatisfaction with the way things have progressed. In any event, we take the position...and the reason I'm here today is just to clarify and to make sure there's an understanding that regardless of what happens here or whatever happens in courts, no one will decide for us what we are going to do.

This reconfirms the last time we were here, when my fellow chief Kahsennenhawe Sky and I made a presentation, that's what we spoke of.

It is the community's intention and decision to do what they have to do. There are people at home who, I can tell you right now, if they were here, would say, “We don't care what you do. Do whatever you want. We know what we have to do and we're doing it as we speak, and that's what's happening now.”

It's worthwhile recalling and remembering that we Kahnawake have always had a situation such that we've dealt with this matter very sincerely. There have been points in time in history when there has been some physical movement to send a message to anybody and everybody about our circumstances. I am not promoting that now. What I'm talking about is simply that we've embarked on a process, and our process is going one way and the federal government's process is going the other way. Whether those two will ever come together again, I don't know. There's not much we can say or see or do to pull you back into line. We'll have to continue on our route; there's no question about it.

We do this because we're concerned about the future of our children, the future of our nation, and the future of our languages and cultures. You have here in Ottawa a federal list that has about 5,000 names that do not meet the criteria we have established in our community. Many of those people on that list know nothing about us and probably don't care about us. The only thing they care about is the benefits they will reap once they are recognized, once they can come into Kahnawake and exercise their rights.

As it is right now, those people, just because they have a band card, can actually purchase land. They don't even have to ask us; they do it through INAC. They go to the Department of Indian Affairs. As long as they have a willing seller in Kahnawake, they can do that. I want to use this as an example of how, at this point in time, in certain sectors we do not have control. In other areas, we do.

Public pressure: that is what our intention is. We are facing court battles, we are facing constitutional or charter challenges because of the stance we've taken, but we are committed. Most of those challenges come from within, not without. There are people within our community who say, “You're not doing right. Your law is illegal. What you're doing is illegal.” On the other hand, we continue to do what we have to do.

Court cases may be won against us, but what will they gain—some dollars? Will they gain the recognition that they can come back into the community, reside amongst us, flaunt our law in our faces and tell us that we have no authority and that the authority is here in Ottawa with the federal government under the Indian Act and things of that nature?

That's what we resent. That's what we're against. That's what drives us even more than ever before: restructuring ourselves with programs, cultural activities, all the very things that are necessary for us to be able to survive culturally, and in a modern-day world at the same time.

That's about all I can say at this point, given the shortness of the opportunity. I believe you have a letter in front of you that outlines our position. That's fresh off the press.

*Nia:wen ko:wa*

● (0855)

**The Chair:** Thank you very much. I think you've expressed your position very well.

Next we can move to Ms. Lynn Gehl.

**Ms. Lynn Gehl (As an Individual):** [*Witness speaks in Anishinabe*]

Thank you for inviting me here today. Welcome to Algonquin Anishinabe territory. This is my home territory, and so I'm happy to be here.

I've been working on the issue of sex discrimination in the Indian Act for more than 32 years. In 1945 my great-grandmother, Annie Menesse was informed by Indian agent H.P. Ruddy that she became a white woman when she married Joseph Gagné who was only Indian through his mother, Angeline Jocko. That was 72 years ago, yet the sex discrimination that denied my great-grandmother continues to deny my nieces and nephews today.

When the Indian Act was amended in 1985 to bring it in line with the Charter of Rights, the very provisions that protected children of unknown and unstated paternity were suspiciously removed from the Indian Act, and it became silent on the matter.

Subsequently, INAC then began their process of discriminating against these children at the departmental level through a proof of paternity policy that assumed all unknown and unstated paternity situations were non-Indian men.

In their process of harming indigenous mothers and children through this policy, INAC claimed they lacked the ability of reason and moral judgment. In INAC's defence, the Department of Justice also argued indigenous women would take advantage of Indian status registration rights if there was a gap in the policy.

It took me 22 years to move through Canada's court system. In this process I was against many barriers, such as a mother who didn't want me to look critically at issues of paternity, a lack of funds to move the process through the court system in a good way, INAC's deep pockets of money gained through its unilateral access to indigenous land and resources, and INAC's absolute failure to disclose evidence so it could be properly adjudicated as proving rule of law.

Regardless of the misery imposed, this past April the Ontario Court of Appeal judgment came through and it was determined I won. In short, the court determined that INAC's proof of paternity policy that assumed all unknown and unstated paternity situations were non-Indian was unreasonable.

The process of defending against my quest for Indian status cost Canada more than three-quarters of a million dollars, yet I was told I was the mischievous one.

It is now clear to me that Canada is hell-bent on eliminating status Indians and the associated treaty rights through the methods of sex discrimination and off the backs of indigenous women and their descendants.

While lawyers view the outcome of my court case as a victory, I struggle with this joy. I'm happy that the court struck down INAC's proof of paternity policy, and I'm happy with the clauses that my legal representatives Emilie Lahaie and Mary Eberts put forward and the evolution of the clauses established through consultation with Minister Bennett's office. One of the clauses directs INAC to accept circumstantial evidence and the other one directs INAC not to assume non-Indian paternity in situations of rape.

That said, I'm not happy that the judges said I was only entitled to 6(2) status. This is wrong. I was born pre-1985 and, therefore, I should be entitled to 6(1)(a) status. My great-grandmother's brothers' descendants are all entitled to be registered under 6(1)(a).

With this so-called court remedy of granting me 6(2) status, I am only entitled to being “less than” because of my matrilineal ancestry.

Indigenous women have worked hard to resolve sex discrimination. Mary Two-Axe Earley, Jeannette Corbiere Lavell, Yvonne Bédard, Sandra Lovelace, and Sharon McIvor; together we took what we thought was the right path.

The Liberal government came to power on a platform of reconciliation and respecting the nation-to-nation relationship. If this government moves forward with the “6(1)(a) all the way” remedy as I hope, a remedy that addresses all the sex discrimination in the Indian Act, Prime Minister Justin Trudeau and Minister Carolyn Bennett and the rest of Canada will truly have something to celebrate. Otherwise, Canada will remain stained.

Again, it took me 22 years to move through Canada's court system where in the end the so-called remedy offered is nothing but a new form of sex discrimination. This is not fair and it's out of line with the charter and Canada can do better than this.

The first thing I want to clarify is the discussion of the need to respect the nation-to-nation consultation. This will never occur if the matrilineal descendants are missing from first nations bands. So right there it's not happening.

While INAC claims they cannot move forward with the “6(1)(a) all the way” remedy and thus remove all the sex discrimination because of the claim, they need to consult on a nation-to-nation basis.

● (0900)

At the same time, INAC prevents first nations from welcoming their members, through imposed fiscal restraints that are not rooted in generally valuing what is nation to nation, such as sharing the land and resources in an equal way and in a way such that indigenous nations are able to embrace matrilineal descendants.

On the one hand, Canada is saying it cannot resolve all the sex discrimination, as it must respect the nation-to-nation relationship; yet on the other hand, it doesn't really want the indigenous nations to enter into what are genuine nation-to-nation discussions.

The second thing that I'd really like to add clarity to is that, yes, it is true that first nations such as my grandmother's band conflate Indian status and band membership. This practice is being argued by INAC as their excuse not to resolve all the sex discrimination, as there is a need for first nations to be consulted. We need to keep in mind that first nations band memberships are within the jurisdiction of the first nations, not INAC. That said, regardless, the goal here that we're discussing today is the need to resolve sex discrimination in law, not first nations band membership codes.

Third, Canada's failure to resolve the matrilineal descent sex discrimination actually establishes a colonial and patriarchal foundation in land claim and self-governance processes in that the descendants of indigenous women are marginalized, and thus, vulnerable in the process. Genuinely respecting the nation-to-nation relationship would abolish the sex discrimination inherent in sections 6(1)a and 6(1)c hierarchy.

Fourth, in fact, contrary to the claim that there is a need to respect the nation-to-nation relationship, Canada is not doing that at all. In the Algonquin land claim and self-government process, we're being offered only 1.3% of our land and a $300-million buyout. That's not nation to nation. There is so much wrong with that.

The fifth thing I want to speak to is the argument that it would be irresponsible for Canada to implement the section “6(1)(a) all the way” remedy without further analysis. It's my position that the claim of potential irresponsibility is actually an excuse that has been carefully constructed through decades of intentional and strategic deception and manoeuvring rooted in the need for Canada to eliminate Indians. The Canadian government has been completely aware of indigenous efforts to remove all the sex discrimination. This is not new, not at all. Canada has had decades of time, as well as the deep pockets of money required to accommodate the research needed to draft legislation that would remove all the sex discrimination and bring about charter compliance.

Instead, Canada has placed its time, dollars, and efforts into crafting legislative amendments that ignore, confound, and disguise, and for that matter, craft silent forms of sex discrimination such as what we've learned from Gehl v. Canada. In this process, INAC has in fact crafted new forms of sex discrimination versus ensuring that the Indian Act is charter compliant. It is my position that Canada's claim position that it would be irresponsible to move forward without further analysis is more about disrespecting what is genuinely a nation-to-nation relationship and it is the complete manipulation of indigenous women's agency, indigenous women who are already burdened.

I ask members of the committee to support the amended version of Bill S-3. It is crucial to upholding the human rights of indigenous women and their descendants and to finally putting Indian women and their descendants born prior to 1985 on the same footing as Indian men and their descendants born prior to 1985. Please stand with indigenous women's call for charter compliance and equality.

*Meegwetch*.

● (0905)

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

The third group in our panel is from the Quebec Native Women. Welcome.

[*Translation*]

**Ms. Viviane Michel (President, Quebec Native Women Inc.):** [*Witness speaks in Innu*]

Madam Chair, vice-chairs, members of the committee, *kuei*.

I would like to begin by thanking the Anishinabe Nation for welcoming us on its vast unceded territory.

Quebec Native Women Inc., a member organization of the Native Women's Association of Canada, was founded in 1974 in response to the sex-based discrimination in the Indian Act. For over 40 years, the native women of Quebec have been joining forces to denounce this paternalistic, assimilatory and colonialist piece of legislation.

Our position has always been clear, and we remain firm in our demands. We want the Government of Canada to remove from the act any sex-based discrimination and any resulting types of discrimination. We are asking for our right to grow among our people, practice our culture and traditions, speak our languages and pass it all down to our children and future generations.

In 1982, Canada passed a so-called constitutional piece of legislation, including a Canadian charter of rights and freedoms. There is no higher law in the country than the Constitution, which provides all Canadian or aboriginal citizens with basic rights that must be respected and protected. Among them is the right not to be discriminated against based on sex and race.

When we know that such discriminatory principles in terms of sex and race are the foundation of the Indian Act, it is normal to wonder about the place of such legislation in Canada. The country is allegedly celebrating its 150th anniversary this year, but what is there really to celebrate?

Quebec Native Women Inc. attended the 16th meeting of the UN Permanent Forum on Indigenous Issues. We deplore Canada's speech at that event, according to which the country defends the rights of aboriginals, especially the rights of women, but how many aboriginal women have been uprooted, torn away from their families, their community and their identity because Canada implemented and is fighting to maintain one of the most violent laws in terms of discrimination based on sex and race.

We deplore the fact that we once again need to discuss it, in 2017, and fight against that same piece of legislation that belittles us and discriminate against us as women and as aboriginals. We are being discriminated against on two fronts. While our aboriginal communities traditionally see us as a gift of life, Canada has introduced into the imaginations of societies the idea that the life of an aboriginal woman is not as valuable as the life of a man. Our women are disappearing; they are killed, abused and sexually assaulted by state forces and the population, with complete impunity.

The UN Committee on the Elimination of Discrimination Against Women and the Inter-American Commission on Human Rights both concluded that the sex-based discrimination in the Indian Act was one of the root causes of the violence against aboriginal women and girls today.

Therefore, Quebec Native Women Inc. demands that the House of Commons ensure the respect for the Constitution for every aboriginal citizen, especially every aboriginal woman and her descendants who have been disowned, repudiated, forgotten and buried by governments wishing to assimilate them and to be done once and for all with the Indian issue in Canada, until no Indians are left.

To do this, Quebec Native Women Inc. demands, first of all, that the government accept the amendment known as "6(1)(a) all the way".

Quebec Native Women Inc. also demands en end to discrimination stemming from unstated or unknown paternity. Women have the right not to put the father's name on the birth certificate without penalizing their child. No so-called Canadian women have their child discriminated against when the father's name does not appear in the registries. The child is just as Canadian as the mother. Why would it be any different for first nations?

Quebec Native Women Inc. also demands that the government do away with the status categories defined in subsections 6(1) and 6(2) of the act. Since 1985, the categories have been giving rise to many discriminatory scenarios, including within the same family. Think about it. Would you want some of your children to be considered as Canadians and others as non-Canadians because they were born after April 17, 1985? That's completely ridiculous.

● (0910)

As many other representatives have said before us, it would be impossible to completely eliminate sex-based discrimination without those changes. Without the amendments suggested by the Senate and without eliminating the categories defined in subsection 6(1) and 6 (2), Bill S-3 continues discrimination under the Indian Act against our women.

Quebec Native Women Inc. has heard the government repeatedly insist on a second phase, which would be broader and would allow for further discussion on those demands. We think it is absurd that the government has delayed amendments to the Indian Act by five months under the pretext of failing in its duty to hold consultations and that it is once again justifying its inaction by using the same pretext. Let us be clear: we are in favour of defending the government's duty to consult aboriginal peoples, but not under the circumstances established by the government surrounding Bill S-3.

Quebec Native Women Inc. feels strongly about reminding the government that it cannot use that obligation to justify keeping provisions that are discriminatory or unconstitutional. Quebec Native Women Inc. feels that the government does not need to consult communities to find out whether it must put an end to its discrimination against women.

Let's be honest: the government knows that the Indian Act is discriminatory. It knows exactly what the solutions to end that discrimination are. This is not ignorance on the government's part, but rather inertia and a lack of political will.

What did Jeannette Vivian Corbiere Lavell, Sandra Lovelace Nicholas, Mary Two-Axe Early, Sharon McIvor, Lynn Gehl and others do but tell you about the realities and discriminations women and their descendants face?

This April, a report on the information sessions provided by Quebec Native Women Inc. during the extension of sitting period related to Bill S-3 was submitted to the Department of Aboriginal Affairs and Northern Development. The report outlines the impressions of women on Bill S-3, and we are bringing their voices before you today. They have had enough and don't want to wait for a second phase for things to happen.

The government is planning to spend about two years on the second phase. Can you tell us what you will find out in two years that has not already been revealed to you over the past 30 years. Aboriginal women are patient and resilient, as they have told you many times, and continue to be so today, but it is your duty to listen to us and to act accordingly.

Quebec Native Women Inc. reminds you that the foundations of the act are paternalistic, patriarchal, colonialist and assimilatory. We want to share our concerns with you. We are seeing our people incorporate those legislatives principles and use them against their own. We cannot deny the effects of the Indian Act, residential schools and the 1960s scoop. They are still here today, sometimes even among our own people.

The history of colonization and assimilation has left its marks, and many wounds are still open and must heal within our own people and among our people. That healing of our people will be enabled by recognizing those of us whom governments have cast aside, so that we could together imagine a future for our people and our communities.

The native women of Quebec and Canada are bringing their voices together to demand that you put an end, once and for all, to sex-based discriminations, so that our young people and the next seven generations could heal from the assimilatory and enfranchising policies, from residential schools and from this cultural genocide.

We demand that you accept amendment “6(1)(a) all the way” beginning in the 1800s and that you eliminate the categories defined in subsection 6(2). You are constantly talking about reconciliation with our people. That reconciliation starts here, by giving back to the women and their descendants the place the government has taken away from them.

Quebec Native Women Inc. demands that you think about future generations and ensure that they don't have to fight for their identity and against discrimination. Let us rather fight for a world where our young people can reconnect with what it means to be Anishinabe, Eeyou, Innu, Abenaki, Atikamekw, Mohawk, Naskapi, Wendat, Malecite, Micmac or Inuit, rather than leaving them a world where they are losing the essence of their identity by losing a bit more of themselves in the fight against a system and a colonialist and assimilatory pieces of legislation like the Indian Act.

You are not responsible for what other governments did before you, or perhaps even what your ancestors did to our peoples, but you are responsible today should you decide to be complicit in the forced assimilation of our peoples by failing to accommodate the demands that have been put to you.

● (0915)

You have the power to decide for us. You took that power. We never gave it to you. Will you listen to us once and for all?

Thank you for making a decision you would make for your own women, your own children and your own future generations.

[*English*]

**The Chair:** Thank you.

[*Translation*]

**Ms. Viviane Michel:** Be among those who will be remembered as the people who helped achieve true reconciliation between our people, and not those who worked on the disappearance of cultures, languages and the first humans from this territory.

On behalf of Quebec Native Women Inc., our ancestors and our next seven generations, *tshinashkumitin*, *meegwetch*.

[*English*]

**The Chair:** Thank you.

We are moving to questioning with a round of seven minutes. An MP will start off and will have seven minutes to ask a series of questions.

Please direct your questions either to the panellists in front of us or to Chief Picard, the individual on the phone.

MP Anandasangaree, please.

[*Translation*]

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you, Madam Chair.

[*English*]

Thank you very much, everyone, for appearing today. Thank you for your very considered submissions.

Based on the testimony of the three panellists, there appears to be a contradiction, that on one side it is not the role of the federal government or anyone else outside each community to define what membership is and who ought to be a band member; and on the other side, we're almost forced to deal with a piece of legislation and amendments to it because the Indian Act is discriminatory on many levels, as Madame Michel has outlined eloquently, but particularly with respect to sex-based discrimination.

How do we resolve that contradiction, and how do we make sure that this legislation responds to the court decision in Descheneaux, but at the same time, ensures that there is a path towards individual communities making the decision with respect to band membership?

I'll start with Chief Picard and Chief Norton, and then to Dr. Gehl.

● (0920)

**Grand Chief Joseph Tokwiro Norton:** For myself, it's pretty straightforward. What you call contradictions in position are not necessarily that. The way I view it, the Mohawk Nation is not the same as the Algonquin Nation, or the other nations. They have their own historical relationship with Canada and historical reasons for doing what they have to do, and so do we.

Our approach in recent months has been to increase our activity as much as possible. We do not want to be in conflict with anybody, any one of our fellow chiefs or representatives in any way. That's not our purpose for being here.

**Mr. Gary Anandasangaree:** Chief, just to clarify, I didn't mean that there was conflict. I mean there's a contradiction in the sense that we have to do two things at the same time, and how do we do that?

**Grand Chief Joseph Tokwiro Norton:** I understand. For me, then, to be very brief about it, you can't use a cookie-cutter approach. You have to find solutions for individual communities or nations according to what they believe in, or organizations such as the Femmes Autochtones du Québec or the national organization.

For us, the Mohawk people, it's different. It's not the same.

**Mr. Gary Anandasangaree:** Madame Michel.

[*Translation*]

**Ms. Viviane Michel:** Of course, we can see the contradiction. It is obvious. It's really the outcome of your laws. The expression “divide and conquer” applies, but we can't even agree amongst ourselves.

I can understand the challenges of aboriginal communities: their economic survival, the lack of access to housing, the lack of funding, underfunding, and so on. I can understand their whole situation. I am working with my colleagues at the Assembly of First Nations, and I understand those realities. I myself lived in an aboriginal community. So I know what I am talking about when it comes to things like language and culture.

However, today we are talking about issues that directly affect women. The existence of women is important. Why were women targeted in this piece of legislation? It's because we, as women, are responsible for transmitting language and culture.

In a different context, prior to 1985, a Quebec woman who married an aboriginal was considered a pure aboriginal. Don't you see how ridiculous that is?

The ultimate goal of the Indian Act truly was assimilation. Who was penalized? It was us, the women, as carriers of future generations and guardians of culture and language.

I know that there may be some contradictions today; that's clear. However, we will speak for women, as this act is truly founded on sex-based discrimination, and we, as women, are targeted. Nevertheless, I know that there are other issues related to life in aboriginal communities.

As part of Bill C-3, I walked from Quebec City to Ottawa and I understood why my colleagues were reluctant to support us. In fact, even though 40,000 aboriginals were registered, budgets in communities remained unchanged. That's the economic side.

Existence is truly an important issue. Why are you the ones who recognize who we are, through your laws? We are not given an opportunity to recognize ourselves. That would mitigate many issues. I believe that it would establish a better balance among our nations.

**Ms. Cynthia Smith (Legal and Policy Analyst, Quebec Native Women Inc.):** I would like to add something to what Ms. Michel just said.

She is right; we do not have the right to decide who we are. The government took that right away from us in the 1800s. Today, the government cannot absolve itself of the responsibility for what was done.

We are hearing—and we are happy to hear it—that this is our right, which is internationally defended under the United Nations Declaration on the Rights of Indigenous Peoples. However, you are responsible for undoing the harm done, especially the harm done to our women. That is where your responsibility lies.

As Ms. Michel said in her presentation, once you have assumed your responsibility, we could sit down to discuss what can be part of our communities.

*Meegwetch*.

● (0925)

[*English*]

**The Chair:** Questioning now goes to MP Yurdiga.

**Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC):** Thank you, Madam Chair, and good morning to our guests.

Once Bill S-3 receives royal assent, with or without the amendments, how do you envision phase two rolling out, and what are your expectations?

I'd like to hear from each of our presenters this morning.

**Ms. Lynn Gehl:** I don't want to comment on that. Thank you.

**Grand Chief Joseph Tokwiro Norton:** Would you repeat that?

**Mr. David Yurdiga:** Once Bill S-3 receives royal assent and it goes into phase two, how do you envision phase two rolling out, and what are your expectations from phase two?

**Grand Chief Joseph Tokwiro Norton:** I'll be saying the same thing I'm saying here today. It won't be any different for me.

**Mr. David Yurdiga:** Okay.

I'll move on to the next question.

Yes?

[*Translation*]

**Ms. Cynthia Smith:** When it comes to the second phase, I think that the position of Quebec and Canada's aboriginal women is clear: we do not need a second phase to this bill, so that we can be consulted on the existing discrimination that must be removed from the Indian Act, which is a Canadian piece of legislation. That would be tantamount to consulting people to find out whether they accept being subject to discrimination. It's illogical and ridiculous.

We don't need a second phase, which may take two years, when we have been hearing the testimony of women, communities and nations for 30 years on what is happening, on the reality and consequences of the act. Since we have been telling you for years what must be changed in the act, that must be done during the first phase.

If a second phase does take place—and I do say "if", as that is still uncertain—and the discrimination issues that must be addressed during the first phase are resolved, we could discuss how to withdraw from the Indian Act, which, at its core, is and will always be an assimilatory and colonialist piece of legislation. If a second phase does take place, those discussions could perhaps be held.

[*English*]

**Mr. David Yurdiga:** Thank you.

Does anyone else want to comment on the question?

My next question will go to Chief Norton and Chief Picard. With the potential of doubling the number of individuals with Indian status, will this be a financial burden on first nations that want to accommodate those who wish to relocate and become band members?

**Grand Chief Joseph Tokwiro Norton:** I touched on that earlier in my opening remarks. That would, in our situation, double the numbers. Now, mind you, you can take those numbers that are registered here indirectly with the Canadian government in Ottawa, INAC, in terms of the process that's in place now. Some of those people are probably eligible under our criteria. Right now our process is frozen for a time period.

A percentage of those—and I can't give you exact figures—would want to come back into the community for sure, for housing, education, land, and all the things they feel they're entitled to. There's probably a set number out there who will never show up and never come back to the community, but it's still a worrisome situation because as it is right now, we have to double our efforts in order to provide the services we do provide. It creates uncertainty for the future in terms of the people now in the community, and they have fear and concerns about people coming in who know and understand nothing about us. It's part of what we call the ethnocultural suicide—if you want to call it that—for something like this to happen.

● (0930)

**Mr. David Yurdiga:** Chief Picard, would you like to comment?

**Chief Ghislain Picard:** I'll just say it again. I think it's important for the members of the committee to know that Quebec is no different from other regions where there might be different points of view on this issue. Again, as I stated earlier, it's a very delicate and sensitive matter.

I'm tempted to say that it's been a burden since 1985. This is a reality where you have a government transferring the onus of applying, in this case, a court order to the communities, so in a sense transferring the liability to chiefs and councils. That's totally unfair.

There are probably still many arguments to be made in terms of the impacts, but if you look back 30 years, you see the kind of instability this issue has caused for the past 30 years, again, in many cases clearly pushing leadership against the wall.

Within our region, even with those chiefs who might be in favour of putting an end to discrimination against women, a big part of them say, "Okay, then what?" That's where, I guess, some chiefs find it very difficult to provide a response where they know they don't have the capacity.

**The Chair:** Thank you.

**Chief Ghislain Picard:** No matter what decision they take, they're going to be liable. That issue is here, and again, it's like it's a never-ending cycle of intervening.

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

We have to move on to another round of questioning, which goes to MP Saganash.

**Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP):** *Meegwetch.*

[*Member speaks in Cree*]

I think everyone on this committee realizes my total, absolute disdain for the Indian Act, but we still have to deal with it. It's still there until it's gone.

[*Translation*]

I would like to put a question to Ms. Michel.

I want to begin by thanking you for your testimony before the commission of inquiry in Val-d'Or on the relationship between aboriginal people and members of some public services. Thank you for your testimony. Many people really appreciated it.

During their testimony earlier this week, the representatives of the Native Women's Association of Canada raised a serious concern about clause 10 of Bill S-3. In essence, that clause stipulates that no individual who acquires the rights to register after the legislation goes into force can seek damages. So that is a legal disclaimer for the Crown.

The representatives of the Native Women's Association of Canada expressed a serious concern over that clause. I would now like to hear what the representatives of Quebec Native Women Inc. think about it.

● (0935)

**Ms. Cynthia Smith:** We support the concern expressed by the Native Women's Association of Canada. We have said so from the first interventions on the first version of Bill S-3, if I may say so. We still have reservations with regard to that provision. That was clause 8 in the previous bill, but it is clause 10 in this bill.

The concern over that disclaimer has also been mentioned by other aboriginal women and organizations. It is a very important concern, and so it is for us, as well. This is the only piece of legislation in Canada that allows discrimination without the government taking responsibility for it. That makes no sense to us.

**Mr. Romeo Saganash:** We agree on this point. Thank you for your response.

Earlier, you said we were responsible for repairing the harm done. However, I think the purpose of the clause is basically to justify today a past human rights violation, which I find totally unacceptable.

[*English*]

My second question goes to the reluctance of the present government to move forward with section "6(1)(a) all the way".

[*Translation*]

Ms. Michel also made this clear.

[*English*]

That is essentially on the basis that they want to consult further. Is there any justification to continue to consult with indigenous peoples on whether or not they would like to be discriminated against further? That is such a ridiculous pretext not to move forward with Bill S-3.

I'd like your comments on that, Lynn.

**Ms. Lynn Gehl:** Yes, I agree that it's ridiculous. Who are they going to consult with? Is it the first nations where the descendants of women are missing? That's not nation-to-nation.

We need to keep in mind that we're asking them to change the law, not band membership, and also that the only thing they really need to consult is the charter. The charter gives excellent guidelines to ensure that sex discrimination doesn't exist, and it's my understanding that in enacting laws, Parliament has a responsibility to be acting proactively versus just acting after the fact for back-end fixes. That's my comment.

[*Translation*]

**Mr. Romeo Saganash:** Mrs. Michel, do you think your most basic human rights and the basic rights of indigenous women are still debatable?

**Ms. Viviane Michel:** Some people make decisions without having really talked with the women. Some people think the changes they're making to the legislation are the best changes. However, they don't see the consequences of these changes.

Earlier, we talked about the contradictions. We're left with this legacy, and we'll need to deal with it later. For example, if the amendment is accepted, forms of reconciliation will still need to take place between us, since our rights have been so greatly violated and we've been so badly ignored.

I won't tell our own history of Canada, meaning the history of the first nations. However, I want to note that, in the past, the relationships were equal. However, after colonization, our relationships completed changed. Who is responsible? We must be granted basic rights of existence and recognition and be shown all due respect. For 30 years, women have been fighting for this and saying they face discrimination. A second phase would take another two years, but to say what? To hear the same thing said again?

I'm told that I need to stop here.

● (0940)

[*English*]

**The Chair:** I'm sorry, but that round is now over. We're moving to another questioner, MP Rémi Massé.

[*Translation*]

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

I'll ask my questions quickly. I have only five minutes, and I want to clarify certain parts of the positions taken by the witnesses.

Grand Chief Norton and Chief Picard, in the letter you submitted, which we looked at a few minutes ago, you referred to the potential significant impact of the proposed changes to the act in Bill S-3.

Are you referring to

[*English*]

section "6(1)(a) all the way"?

[*Translation*]

Are you referring to all the changes following the Senate amendments?

[*English*]

**Grand Chief Joseph Tokwiro Norton:** I'm not sure I understood all of your question, but if it is about what I would consider tinkering with the Indian Act to meet certain goals and criteria, I would simply go back to you and ask why the government doesn't recognize the fact that the Iroquoian people have their own way of identifying their people, through clan systems and through naming their own people and identifying them, and some kind of nation-to-nation understanding is reached between the parties, in order for Canada to say, "This is the way they deal with things in the Mohawk nation, or in the Iroquoian communities."

[*Translation*]

**Mr. Rémi Massé:** My next question is very specific.

We're talking about a legislative process and a Superior Court of Québec decision to make legislative changes to the act you know, an act whose title contains a term I don't like to use. In this context, do you agree with the government taking a step-by-step approach?

The approach would first involve resolving the issue put forward by the courts following the Descheneaux decision, so that the Canadian government can pass legislation that it's comfortable with. The approach would then involve undertaking a collaborative and consultative process to examine the broader issue of discrimination.

Do you agree with the government proceeding step by step?

[*English*]

**Grand Chief Joseph Tokwiro Norton:** I'll ask Chief Picard to respond.

[*Translation*]

**Chief Ghislain Picard:** Thank you for the question.

Given that we have little time, it's difficult to give a detailed answer to your question. That's why I specified earlier that, even though we're here this morning, by teleconference in my case, we're going to give the committee members a much more detailed statement by the end of the day tomorrow.

That said, your question raises concerns. I think all the chiefs in Quebec and Labrador share this perspective. We agree on certain things, despite our diverse positions.

We were contacted last Monday to give a presentation this morning. We sometimes feel that, when there's a wave of panic, people come knocking at our door.

Last year, the decision was made very early in the year. However, the first consultation session didn't take place until the following September. If action had been taken, certain questions may have been answered.

I think the step-by-step approach is probably not desirable. I think both Grand Chief Norton and Grand Chief O'Bomsawin are concerned about the potential consequences of the approach.

● (0945)

[*English*]

**The Chair:** *Meegwetch*.

That concludes the first round of questioning and presentations.

Thank you for coming out. We sincerely appreciate your efforts to come here in person or by phone. I want to thank you for participating.

We're going to suspend for a couple of minutes so that the other delegations can take their seats and get organized.

● (0945)

(Pause)

● (0950)

**The Chair:** We have many presenters who want to have their voices heard, so I'm going to ask members to grab their coffees and come back to their seats. Let's get going.

On this panel we have Sharon McIvor, Pam Palmater, and Catherine Twinn. Thank you for coming.

Each one will be allowed 10 minutes to present—that's our standard, unless I hear otherwise—and after that we'll go into a round of questioning from MPs.

According to my agenda, we start with Sharon.

Welcome.

**Ms. Sharon McIvor (As an Individual):** Good morning. Thank you for inviting me.

My name is Sharon McIvor. I am Nlaka'pamux, from south-central British Columbia. I've worked on this issue and many other issues, but on this issue for almost my entire life.

I want to start by saying that there's an understanding that the oppressed and those who have been discriminated against have never gotten their freedom or equality by asking for it from those who have oppressed them and discriminated against them, so I'm just wondering what the heck I am doing here.

This issue has been going on for many years, as you know, way longer than the 30 years. For us, we're talking about 525 years where immigration has seriously interfered with who we are. As you know, for 150 years the immigrants have had the ability to make laws that lock us into a position where we cannot move. I understand that the communities are suffering, but the communities aren't suffering because of the women. They are suffering because of the lack of their women.

I also want to say that I'm listed on the program as “an individual”. I want to make it clear that I'm speaking not only for Sharon McIvor. I'm speaking for Mary Two-Axe Earley, Jenny Margetts, Nellie Carlson, Susan Blankenship, and Edna Blankenship. The list could go on for a long time. I'm also speaking for Jeannette Corbiere, Helen Blankinship, and all of those who are still alive who have had the Indian Act and the operation of the colonial government affect their lives so badly.

I also want to talk a bit about who you are speaking for. In theory, you're speaking for the Canadians, because they've elected you and put you in place, but if you look at this historically, John A. Macdonald was a racist and a sexist. When he was prime minister, a lot of these policies got their teeth and started affecting the aboriginal communities—in particular, the Indian women. As for the bureaucrats, Duncan Campbell Scott was a very famous bureaucrat who worked very hard throughout his tenure to make sure that as many Indians as possible lost their right to be recognized as Indians.

Now we're talking about a piece of legislation today. As some of you probably know, I've been here before on this matter, with Bill C-31, Bill C-3, Bill S-3, and all of the different changes that have been forced by the court. I've also been around and involved in regard to dozens of ministers of Indian Affairs. For example, I talked to Minister Irwin about the matrimonial property issue, the matrimonial on-reserve property issue, and he said, “Sharon, I'm a family court lawyer, I know the issue and I know it well, and I know it's not good, but I can tell you, I will not touch the Indian Act with a 10-foot pole.”

We know that you're forced to be here because of Descheneaux. You were forced to be there because of McIvor. You were forced to be here because of the charter equality rights section kicking in. I think the 10-foot pole analogy has worked itself out really well, and I can tell you that until you get another court decision, you won't be back here. You can promise all the promises, because you did. You did in 1985. You promised that they would go out and consult, and apparently you have in your files, your archives, 20,000 documents that prove the communities agreed to leave the discrimination in.

When we went to court, those documents were used as a justification for keeping me out of the courtroom from July of 1989 to October of 2006. We finally were able to get to trial. We never did have disclosure of those 20,000 documents. We still have no idea of the contents of the documents that gave the justification to continue the discrimination against the aboriginal women.

When I went to court, the Government of Canada put forward that they had looked over all of my history and had decided that in fact I was entitled to status, good enough to pass it on to my son, because my son and I were in the case together. I was a subsection 6(2), which meant that on my own I didn't have the right to pass it on, and my husband was white, and my son did not have status because of my 6(2) status. They came to us in July of 2006 and said that they had looked at the records and had discovered that I was in fact entitled to better status and my son could have 6(2) status. They then said, “Now that the case is moot, let's all go home.”

● (0955)

We refused to do that, and in September 2006 they brought a motion to have our case declared moot. They did not succeed in the motion, but at that time we asked the court to declare that my son was entitled to status, because that was the justification they used to have it declared moot. The crown refused to consent to my son having status. Although they were using it as justification for having the case declared moot, they refused to consent that he could have status. Because we had not put an application in to have the declaration, we needed the consent of both parties. So he did not get status in September 2006.

When we went back to court for trial in October 2006, we did bring the motion, and it was heard first by Madam Justice Ross. We didn't have a clue how they figured out why I would have better status to pass it on to my son. We asked the Department of Justice to argue our motion for us because we didn't know how they figured it out. They said that I was entitled to status because my grandmother, who was always a status Indian for her entire life, was not married to my grandfather, therefore, my mother had status at birth. My mother was not married to my father, so therefore I had status at birth, and I lost my status in 1970 when I married my white husband. Therefore, I came back as a 6(1)(c). The married-out women got a paragraph 6(1)(c) status, and my son was entitled to a subsection 6(2) status.

That piece is the one I want to talk to you about today because in 2006 I got subsection 6(1) status, my son got 6(2), my brother, who did absolutely nothing on this issue, got 6(1)(a) status; and his first wife, in 1972, and his second wife, in 1983, both white women, were entitled to 6(1)(a) status. In fact, my sister-in-law, in 2007, got 6(1)(a) status. A white woman got 6(1)(a) status. This was in 2006, and we didn't resolve ours until 2010.

All I wanted to say is that the operation of the act is still giving white women paragraph 6(1)(a) status, and I can't get 6(1)(a) status.

● (1000)

**The Chair:** Thank you. You presented that very clearly and passionately. I think we understand.

Now we're moving on to Pam Palmater, chair in indigenous governance, department of politics and public administration at Ryerson.

Hello, Pam.

**Dr. Pamela D. Palmater (Chair in Indigenous Governance, Department of Politics & Public Administration, Ryerson University, As an Individual):** Hi.

[*Witness speaks in Mi'kmaq*]

I am from the sovereign Mi'kmaq Nation on unceded Mi'kmaq territory. I acknowledge that we are here on unceded Algonquin territory, as well, which carries a huge responsibility.

I hope that every one of the committee members recognizes what a historic moment they are in. Today, in this room alone, we have Jeannette Corbiere Lavell, who took Canada to court on this issue. We have Senator Sandra Lovelace Nicholas, who took Canada to court and won on this issue. We have Lynn Gehl, who won on this issue. We have Sharon McIvor, who won on this issue. Unfortunately, Yvonne Bédard isn't here, but we have Stéphane Descheneaux, and Susan and Tammy Yantha. As well, there are many more in the hopper.

How many more times are you going to require that indigenous women spend their entire lives trying to get equality, in a country where equality is actually the law? You don't have a choice here. This committee, in fact, should be moot.

This is a very clear message. The fact that the government or any committee would be wondering or considering delaying equality for one more day shows exactly how ingrained sexism is in this country, and for indigenous women, racism. It is the law. You have no legal choice but to pass this bill—none whatsoever.

It's not a matter of whether someone likes it. It's not a matter of whether the male organizations like it, or other people like it.

We have equality for same-sex partners in this country. There were no demographics done. There were no cost projections done. You didn't bring in people who were anti-gay. It's a matter of equality. You do it because it's the law and you have to do it. As democratic people in a just society who value equality, you come together and say, “We will bear whatever the cost, whatever the implications of ensuring that equality.”

For indigenous women, however, it's a bit different. It's a matter of life and death. That's the difference. This isn't just a matter of administration, what phase we will do, or what kind of funding agreement we will have with the AFN; this is a matter of life and death. It should be a done deal.

Here's the other historic part about Bill S-3. When have I ever come before any committee—ever—or written about any federal legislation and said, “I support this bill”? You can count the number of times on one finger, and there's a reason for that. Nobody wants the Indian Act. Nobody wants paternalistic, racist, sexist government telling us what to do anymore. Oftentimes this happens without our consultation or consent. However, this is a piece of federal legislation that is subject to equality laws. You don't have a choice here.

Bill S-3 is historic for another reason. It represents the consensus of the Senate, a non-partisan consensus. How often do we get that in this political country? I would offer, not too often.

You also have Senator Murray Sinclair, who is the head of the Truth and Reconciliation Commission, who is the expert on how to bring about reconciliation in Canada. I met with him yesterday and he told me to please remind this committee that he was in favour of this bill. In fact, he doesn't believe it goes far enough, but he is in favour of this bill and that is significant.

There is no oppositional outcry. That is also very significant, because INAC has worked very hard in the last six months to manufacture dissent. Money is very powerful. You can go to any indigenous organization and say, “Listen, support us on this, and we'll give you millions of dollars in phase two to talk and talk, something we've done a hundred times.” Well, here's the relevant part: no national or regional organization is a rights holder. They're not a government. They have no say. It's the people who are impacted who have a say.

They may sell us out for consultation money, but that's beside the point. The law still applies; and the court issue is, in fact, equality.

● (1005)

It's not just section 15 of the charter that guarantees equality between men and women, or section 3 of the Canadian Human Rights Act that specifically prohibits the federal government from discriminating between men and women. Subsection 35(4) of the Constitution Act is very important, because you often look to first nations to say, “Well, what's your view? It's your aboriginal right to determine citizenship. Do you want to discriminate against indigenous women?” Well, subsection 35(4) says that if you're going to assert an aboriginal right, by the way, it's guaranteed equally between male and female people. In case that wasn't clear, the international consensus under article 44 says that every single right in the United Nations Declaration on the Rights of Indigenous Peoples, which Canada supports without qualification, is subject to male and female equality. Most importantly, there isn't a single indigenous law or legal system in Turtle Island that justifies or sustains inequality between human beings—needless to say, male and female people.

Our treaties guarantee these rights for heirs, and heirs forever, not just the guys. Just because the male organizations have failed, and just because they're not here advocating, doesn't mean we are not entitled to that equality.

Here's the hard part that you have. If you want to continue to be racist and sexist as the government—if you really want to—that's going to be hard, because you are going to have to take a complex set of Indian registration mechanisms and make it even more complex to make sure you register the minimal number of people possible and maintain the legislative extinction dates for every first nation in this country. If that's your goal, then you don't have the ability to talk about reconciliation, nation to nation, or anything else.

What you are saying, if you don't pass this bill and if you do not stand with indigenous women on equality, is that indigenous women don't deserve equality. However, you must also accept the consequences. That means it's on you when indigenous women go murdered and missing, because the United Nations has already told Canada that it is one of the primary root causes of murdered and missing indigenous women. You're saying that it's okay for Canada to continue to steal indigenous children from indigenous women at rates that far exceed any other country in the world. Over-representation in prison.... What you're telling serial killers and rapists is that they can continue to target indigenous women at seven times the national rate because they get to do it with impunity. No one cares, or we would have acted on this already. You will also maintain the legislative extinction dates, and there's no reason for it. Enough is enough.

In 2017, Trudeau promised a new, nation-to-nation relationship based on equality and respect for aboriginal and treaty rights that would end violence against indigenous women. They would abandon the adversarial relationship and abandon forever the top-down paternalistic decision-making powers and even repeal Harper's laws, which I will remind you include the very discriminatory Bill C-3 that came out of the McIvor case.

Words mean nothing. Phases or ministerial commitments mean nothing. Actions mean everything, and there is nothing stopping you. There is nothing in the McIvor case, Lovelace case, Gehl case, or Descheneaux case that says you cannot remedy gender equality. In fact, just as Masse said, please don't do what you usually do. Please just fix this once and for all, and please do not buy into the federal government's fearmongering around millions and millions of people being registered. That is a blatant lie. It is meant to promote fearmongering amongst first nations, and it is not true.

There are fewer than 900,000 registered Indians now. Of those, 50% are women and 50% are children. Fewer than 100,000 people cannot make two million people. We may be baby-makers, but we can't make two million people.

I'm asking that this committee support the Senate's amendment and not have any more delays in granting equality for indigenous women.

Thank you.

● (1010)

**The Chair:** Thank you.

We have Catherine Twinn, the daughter of the late Walter Twinn, chief and senator. With her is Deborah Serafinchon.

**Ms. Catherine Twinn (Q.C. Lawyer, As an Individual):** Good morning, everyone.

I'm here today with my stepdaughter, Deborah Serafinchon. I prepared a genealogy. I also prepared written speaking notes but this morning I forgot them on the table. I'll provide them to the clerk.

I want to pass around, though, the genealogy of Deborah Serafinchon, to make the point that Deborah is not a registered Indian, nor is she a Sawridge First Nation band member.

On both sides of her lineage she descends from treaty signer Charles Nisoteesis. Her lineage is impeccable in terms of her first nations status, post-treaty. I invite you to compare her situation to the situation of, say, a non-aboriginal woman who married in, pre-Bill C-31 of 1985, acquired status and membership, divorced long ago from the Indian husband who himself enfranchises pre-Bill C-31, and she and her child are registered status Indians and band members under section 6(1)(a).

While Deborah is not registered at all, it is not for want of trying. In 2001, Deborah applied to the Department of Indian Affairs and she was told that there was a backlog; it was delayed.

She then applied to the Lesser Slave Lake Indian Regional Council in 2002. They administer the Indian registration program for INAC and they're governed by a board of chiefs. She submitted her application, together with DNA evidence that I and my children provided so she could prove her paternity, because my husband, her father, died in 1997. Deborah had found him just before his death, as she did her mother, just before her death. She did not know her genealogy because she was placed in the child welfare system.

The response that Deborah received was, “You need to go to some of the Sawridge First Nation members, the surviving siblings of Walter, and get them to swear a statement that you are his daughter.” That is ridiculous. She had DNA evidence. The surviving siblings had no idea who he slept with and when. Their evidence did not exist on that point. They all were students at Indian residential school, and this fractured relationships. Some of them had moved away a long time before.

To ask that is oppressive. It's a form of administrative violence. They were reluctant because they were afraid of high impact.

In March 1985, I appeared before your predecessor committee on behalf of Treaty 8. Their brief, which was provided to the clerk, spoke at length about high impact, and there was a very real concern then.

Sharon McIvor is absolutely right when she says that we have nothing but a trail of broken promises when it comes to, “Trust us, we're going to follow up.” They don't. This has happened three times. Three times, you're out.

● (1015)

I read, on June 2, that the minister is opposing the amendments that came from the Senate on the basis of a concern about impact. I want to say to you that this is disingenuous and dishonourable. The crown, Canada, the lawmakers of Canada—you—have a duty to be honourable in your dealings with our people. That is from the Supreme Court of Canada, a duty to be honourable.

It is disingenuous because after the Treaty No. 8 brief, my community, a notorious community seen as the gatekeeper.... CBC's *The Fifth Estate* did a documentary targeting my late husband as a gatekeeper. That came out in June 1997, just before we were to argue an appeal resulting from the decision that came from the Federal Court in the first trial. One of the grounds was reasonable apprehension of bias of the trial judge in making statements that Indians were childlike compared to white people, who were adult-like; that Indian men were the beads-and-buckskin boys just after the crown's shilling; and that oral history evidence was ancestor worship, propaganda at its worst.

We succeeded on the appeal, but we were forced into a second trial, and in that second trial the crown participated vigorously, aggressively, and with a great deal of hostility toward us. They brought in four special interest groups and paid them to participate. Central to the litigation was impact, as well as nature's laws, indigenous laws. What is it that we govern ourselves by? What are the legal norms that govern our behaviour toward one another and toward all life? That's documented.

I remember the crown lawyer saying, “Where is your statute book? Your laws don't exist. We have statute books.” That's the mindset.

In any event, we never got to deal with these issues, because there was an attack on the lawyers representing the plaintiffs, and I was one of them. I lived in hell for five years. I bet you, if I were to sit down with Sharon McIvor and some of the other women and we compared our stories, we would see that there has been a state-sponsored quarrel here that's gone on for way too long, and it needs to stop.

It is disingenuous for the minister, in my opinion, to now say, “Oh, we're concerned about impact.” You didn't follow up on impact in 1985 in response to the Treaty No. 8 brief. You had an opportunity to deal with us on impact in the litigation, and you refused to. Instead, you turned your guns elsewhere.

It's also disingenuous because now, under the Daniels decision, Métis are section 91(24) responsibility. We are all under the same tent, so what are we doing here? Are we moving the chairs on the deck of the *Titanic*? The feds are responsible. Section 91(24) is for all aboriginal people, so let's not play that game of whack-a-mole.

With respect to INAC's position on services and programs—

Am I done?

● (1020)

**The Chair:** You have one minute.

**Ms. Catherine Twinn:** Their long-standing position is that these are not legally obligatory; they are at the pleasure of the crown. If they really mean that, then what are they concerned about?

In any event, INAC is notorious. There have been Auditor General reports, and reports from many other informants, about the inefficiency, ineffectiveness, and waste of the programs and services they administer. The late George Manuel said that one cent on the federal dollar actually reached the grassroots Indian. INAC disputed that and said, “No, it's 10 cents.”

In any event, there are innovative solutions taking place. In Quebec, I am informed by the McConnell Foundation that they have partnered with a first nations community to address chronic housing shortages. They have developed an innovative financing formula that has led to the construction of over 400 homes, individually owned, without prejudice to aboriginal collective title. They have also built a hotel and a trade school.

Thank you.

**The Chair:** Thank you.

We've moving on to the questioning, so you'll have an opportunity to expound on your points and others that MPs can ask questions on.

The first round goes to MP Mike Bossio.

**Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.):** Thank you very much for being here again. Thank you for your patience, the decades of dealing with this issue again and again. I have a personal friend, Dr. Marlene Brant Castellano, whom you might know, who also was treated in this manner, and it was rectified under previous legislation. Regardless, I've always found it appalling that this situation even exists.

I was at a women's restorative justice symposium back in 2014. I didn't know the situation existed until Marlene and.... Memee Dawn Harvard was there, and Waneek Horn-Miller and Jeannette Corbiere Lavell, who also testified here. I got to see her again and had a conversation with her that day.

I was stunned that this situation exists. Most people out there are not aware of this at all. I still am overwhelmed by all of the discussions and Bill S-3, which was here, and then it went to the Senate, and it has come back and it has been amended. Just trying to wrap my head around this whole convoluted mess has been very difficult for a lowly MP like me, who has not dealt with it for decades as you have who understand it with every fibre of your being and are revolted by it in every fibre of your being. You can tell through your passion that this is the way you feel about it.

I also know on the other side and have heard from my own chief the deep concern that they have in their community about being overwhelmed. They're one of the reserves that is growing and growing substantially through outsiders coming in. He's concerned not just about having the funds, though the funds definitely are one issue, but the human resources to be able to deal with an influx—a large influx, potentially—of people coming in. In our suicide study, we've also seen this as one of the key aspects of dealing with the social predeterminates of health: the lack of human resources and infrastructure in place to deal with existing issues in many indigenous communities.

Then you have Senator Sinclair, who also has expressed concerns about the paragraph "6(1)(a) all the way" clause because of some unintended consequences that could result from the clause as it stands today.

We've had testimony from the Indigenous Bar Association and from NWAC as well, who have some concerns. I'm not trying to pit one against the other at all. All I'm trying to point to is that the reality of the situation may necessitate doing this in a staged fashion. There are 35,000 people who have already been identified.

I know you're not going to like this. I can see it already in your faces that, once again, you shudder at it. But if the process is there, the commitment is there, and the commitment is written into the act. It's not a case of saying that we don't recognize that the discrimination and the racism in the system is appalling as it stands right now. It is new legislation, however, and the duty to consult, the duty to prepare, the duty to ensure that the resources exist to deal with this in a...to deal with this at all, just because, in reality, the resources aren't there today....

Do you not see some level of validity in having a consultative process, not to justify that we need to rid ourselves of this once and for all, but to lay out a framework so that we can implement this in a responsible way?

I'll open it up to all, because I know all of you are just dying to jump down my throat on this, so, please, by all means go ahead.

● (1025)

**The Chair:** You have two minutes for responses.

**Dr. Pamela D. Palmater:** Thank you for your question. No is the answer. There is zero comfort in a staged process.

We've been in a staged process since the 1970s. Stage one was Sandra Lovelace, with promises of consultations and amendments to the Indian Act. That didn't happen.

Stage two was McIvor. Again, promised consultations and phases and amendments to the Indian Act didn't happen.

Stage three was Descheneaux, and then very quickly after that, there was stage four, Lynn Gehl, because now you can't keep up with the amount of litigation for the failure to deal with gender discrimination.

How many more promised but never delivered stages will we get? Also, the legislation does not say "we promise to end gender discrimination in phase two".

**Mr. Mike Bossio:** Can I add one further thing? Is there anything that could be written into the legislation to give you a sense of security that it was to going to be followed through?

Forget about just saying we're going to consult, so if there were timelines, if there were detailed commitments that we are not saying that we're not doing it, but.... Is there anything we can put in there that would give you a certain level of comfort that this was going to finally end once and for all?

**Dr. Pamela D. Palmater:** Yes. End gender discrimination and support a Senate amendment. When you get rid of discrimination, that is the guarantee. Promises of reporting are nothing. We've had those before.

Quite honestly, you can move forward in a staged process to deal with Indian registration and band membership in general by, number one, passing this amendment. That's in the short term. In the immediate term, number two, you engage in your promised process to talk about band membership and other issues. Then number three is self-determination. That's in the longer term.

Those should be the three stages, but there should be no single day left of gender discrimination. There's no excuse.

**Mr. Mike Bossio:** Thank you.

**The Chair:** We're moving on to MP Viersen.

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

I'd like to thank our guests for being here. I know that Catherine Twinn does come from the most beautiful part of the country. I might be a bit biased on that, but—

My question is for each of the guests we have here today. If the minister were sitting here right now, what questions or comments would you have for her?

I'll start with Catherine.

**Ms. Catherine Twinn:** What I would say to her is that doing the same thing over and over and expecting a different result is a form of insanity, that the consciousness that created the problem is not going to be the consciousness to solve it, and that constitutional compliance comes first, comes now, and is a separate issue from impact.

Impact, as I said before, is being used disingenuously and dishonourably. I think there should be an impact consultation, but I think it should be led by both Houses, and it should be collaborative. It should have inclusion of the people who are impacted. One of the things that has been said over and over—and I'm sure this is not new to you—is that we are dealing with a lot of historic trauma that is being intergenerationally transmitted. That trauma affects how people think and how they interact with one another. We have a complex problem that was created by colonial legislation, which means that we need to work together to solve it.

However, one of the aboriginal scholars, Dr. Peter Menzies—and this is directed to you, Mike Bossio—has said that for the manifestations of this trauma, which affects the four interacting levels of individual, family, community, and nation, one of the manifestations at the community level is an inability to reclaim community members. I know that, because if you look at the Indian register, you see that they have registered 503 people, human beings, to Sawridge. We only have 45 members, and only one of those members is a child.

Where are our children? One of the groups most impacted by Bill C-31 going forward are the children. Many of them are bandless. This is unconscionable, and it's dishonourable.

● (1030)

**Dr. Pamela D. Palmater:** I would tell her three primary things if she came and spoke to the people impacted.

One, that a rigid, non-negotiable position is not only a sign of bad faith, it's a breach of her legal fiduciary obligations to always act in the best interest of first nations, and that is supposed to include women.

Two, that her continued refusal to address gender inequality is an abusive process. It forces indigenous women to continue to keep going to court to litigate exactly the same scenario over and over again, and it's a matter of unjust enrichment. By the denial of programs and services and treaty rights, the federal government gets to keep that because they insulate themselves in the legislation from having to pay later.

Finally, Indian Affairs using the fear tactic of ballooning costs to first nations is a double hit of discrimination. They're using discriminatory, chronic underfunding to first nations as the reason to discriminate against indigenous women, and that is the epitome of what it means to be INAC. There's no excuse for it.

**Ms. Sharon McIvor:** I don't have a lot to add to that, other than the impact or the cost of an amendment is not a consideration. The courts have been very clear about that. You want to delay. You don't want to do what you're supposed to be doing, and you're using the excuse that we might not be able to afford it. It's not a justification.

**Mr. Arnold Viersen:** Deborah, did you have anything to add?

**Ms. Deborah Serafinchon (As an Individual):** I'm not a lawyer. I'm not into any of this. All I know is that I don't understand different statuses—of paragraph 6(1)(a), 6(1), 6(2), or whatever it is. As far as I'm concerned, an Indian simply is an Indian. I don't understand why there are different levels of status.

My mother was Indian enough to be in a residential school. My mother was Indian enough to hide me when I was a baby, because they would come and take unwed mothers'—Indian mothers'—children from them, so she hid with me. She left the hospital and hid with me, because she was Indian enough for that. She wasn't Indian enough, though, to get status. She had to fight for it.

What has changed in 50 years? Her daughter is now fighting for it, and I don't understand it. I'm Indian enough to be discriminated against, but I'm not Indian enough to get status.

**The Chair:** You have a minute left.

**Mr. Arnold Viersen:** One of the interesting things about this is that we're dealing with an aspect of the Indian Act. I come from an automotive background, and sometimes the vehicle is just too far gone. You try to fix the wheel bearing, but there are a million other things that need to be fixed too, and so this new wheel bearing is only going to get you another five miles down the road.

From your perspective, am I describing the situation correctly, Catherine?

● (1035)

**Ms. Catherine Twinn:** Well, I've prepared a number of amendments that I would hope this committee would consider to make the car run. They're not rocket science, but you have to have courage, you have to have independence. You can't be beholden to your party masters; you have to do the right thing here.

I will be presenting those amendments. I obviously can't speak to them, but I would hope that they would be considered, and they're easily doable well before July 3.

**The Chair:** Thank you.

The questioning now moves to MP Saganash.

**Mr. Romeo Saganash:** Thank you, Madam Chair.

Welcome, and thank you to all of you on this panel. I appreciate very much your words.

I want to start with something that you asked, Sharon. In your letter to the senators, you talked about the concerns raised by communities on the potential impacts of paragraph 6(1)(a) on the way. You said the following in one of the paragraphs:

> As I have explained in the past, I take fundamental exception to this argument. Indian bands and communities have no legitimate say in whether the Government of Canada continues to discriminate against me and other Indian women because of our sex. The Government of Canada has an obligation under constitutional and international law and a fiduciary duty not to discriminate on the basis of sex, whether Indigenous bands and communities agree or not. By now most Indigenous bands and communities do not wish to see discrimination on the basis of sex continue.

In your opening remarks you talked about the people you represent, that you're not here only as an individual. You talked about the other women you represent here, which is pretty legitimate, in my view.

Then you asked in your remarks, speaking to us, who we represent, who we speak for, which is, I think, the fundamental question here. Certainly as a member of Parliament I represent my constituents, but as a member of Parliament and as a legislator I also speak for the rule of law. I have a fundamental duty as a member of Parliament to uphold the rule of law. What does that mean? It means respecting the Constitution. In our Constitution is the Charter of Rights and Freedoms and section 35 on inherent rights. That's what we are here for. So thank you for asking that question.

Pam, you're right in saying that we shouldn't even be here discussing this. I absolutely agree with that. That is the reason for my total, absolute, and profound disdain for the Indian Act. It is inconsistent with the fundamental human rights of indigenous peoples of this country, and it shouldn't be there. I have expressed that. Whether it's in our Constitution or in international law, such as the United Nations Declaration on the Rights of Indigenous Peoples, those rights are inherent. They exist because we exist as indigenous peoples. I think that should be our starting point all the time, whether we discuss policy or legislation.

My question is fairly simple. You're recommending that we support Bill S-3 as a committee and recommend that Parliament adopt this legislation. I agree with that as well. I asked a question previously of NWAC, on Tuesday, and also of the Quebec Native Women's Association, about clause 10. That's the "no liability" clause in Bill S-3, which in my view is problematic. With this clause, we are essentially asking this committee and Parliament to justify past discrimination and past violations of human rights.

I want to hear from each and every one of you on this issue. What would you recommend with respect to clause 10 in particular?

● (1040)

**Ms. Sharon McIvor:** In 2010 this came forward as well. The amended bill came out of this committee. They amended the bill to include a clause very similar to the one we're talking about now. When it went back to the House of Commons, the Speaker ruled the changes out of order. But we had eliminated the "no liability" clause, and that was the only one that was not ruled out of order. The government's response was to scrap the bill and start all over again, because they had what they wanted. Everything else morphed back, except for that one.

Of course no one should be immune for paying for offences—of any kind. It would be great if I could say, "I'm going to do that, but I'm going to immune myself from any consequences of that." It doesn't make any sense, legal sense or just common sense. It shouldn't be there. If we could remove that kind of protection for themselves, we would probably have laws that actually follow the law.

**The Chair:** You only have a minute left for this round.

**Dr. Pamela D. Palmater:** Definitely, that clause should be deleted. We also recommended that the same section in Bill S-3 be deleted. It acts as an incentive to allow the government to continue to discriminate with impunity until they choose to address it or are forced to address it on their good old time. In my submission, I highlight that. I can resubmit it here to say specifically that it needs to be deleted, because they all know that it's discrimination.

**The Chair:** A very short answer, please.

**Ms. Catherine Twinn:** It underscores the sense of colonial entitlement. It undermines rule of law. The crown and a first nation exercising section 10 authority are fiduciaries. They owe fiduciary duties to the people. They cannot be given immunity for their conduct, because essentially then what you're enabling is breaches—breaches of the law and breaches of procedural fairness—and you're giving them a licence to do whatever they want without consequence. It's wrong.

**Mr. Romeo Saganash:** Thank you.

**The Chair:** MP Anandasangaree.

**Mr. Gary Anandasangaree:** Madam Chair, I yield my time to Mr. McLeod.

**Mr. Michael McLeod (Northwest Territories, Lib.):** Thank you.

Thank you to the presenters. I certainly appreciate your passion and dedication to this issue.

Catherine Twinn, some time ago, I took one of your sessions on lateral violence, and I did learn a lot from that session.

I don't have a lot of time, and this is a big issue for me. In the Northwest Territories, I have five large aboriginal governments that would want to have input on this.

There is a real concern on my part about why we are here talking about it. Why do we have Indian Affairs acting like a department of immigration for Indians? I think Romeo put it well yesterday when he said that there are more people being accepted into the country than people who would be impacted by this.

At the same time, aboriginal people and aboriginal governments in my riding expect to be consulted. They are very adamant about it, on every issue, and that includes this one.

Pam, I think you indicated that none of the national aboriginal organizations should be consulted. They're not rights holders.

I have two questions.

First of all, on that line, is there anybody who should be consulted as part of phase two that you see would fit.... The question is for all of you: are there any rights holders out there who should be consulted?

Catherine Twinn, you mentioned that impact consultation should be led by both Houses. Maybe you could expand on that also. How do you see that working?

● (1045)

**The Chair:** We've actually run out of time, so could your comments be very short? Thank you.

**Dr. Pamela D. Palmater:** I think you might have misunderstood what I was saying. I was saying that with regard to gender discrimination, INAC has been consulting for decades and decades, and you don't get to consult on whether or not to discriminate.

On issues like band membership, funding, and all of those other issues, of course you should be consulting with first nations, first and foremost, and all of those impacted, but what I was trying to say is that the national aboriginal organizations or the regional ones don't have a right to sell us out on gender equality for money for a phase two consultation on unrelated issues.

**The Chair:** I'm going to be quite liberal and give you a chance to speak, if you wish.

**Ms. Catherine Twinn:** I think there are certainly parliamentary precedents in relation to, for example, the Penner committee report on Indian self-government. That was a special all-party committee, but I think only of this House, not both Houses.

I think the lawmakers have to become fully engaged, and I don't think INAC can or should lead it.

**The Chair:** We're going to have to cut off the debate here.

Thank you so much for coming out. I appreciate the effort to come out on short notice to talk about issues that you have talked about over and over again.

*Meegwetch*.

● (1045)

(Pause)

● (1045)

**The Chair:** I call the committee to order. We're resuming.

First of all, I'd like to thank the department, Indigenous and Northern Affairs Canada, for coming in, and especially the minister, the Hon. Carolyn Bennett.

I believe all members have received copies of your speech, and as soon as you're ready, we'd like to get started.

● (1050)

**Hon. Carolyn Bennett (Minister of Indigenous and Northern Affairs):** Thank you, Madam Chair. It's great to be back at committee, and thank you for inviting me here to talk about Bill S-3, as we acknowledge that we come together on the traditional unceded territory of the Algonquin people.

Thank you also for understanding the urgency of this bill, and also for your work during this prestudy.

As you know, in response to the recommendations of the standing Senate committee, the government sought and was granted a five-month extension to consider Bill S-3. Through the additional time provided, there have been numerous improvements made to the original version of Bill S-3, which the government has welcomed and supported. The bill now proactively addresses further groups impacted by sex-based inequities, which were identified by the Indigenous Bar Association. The recent Ontario Court of Appeal decision in the Gehl case has also allowed the government to address the issue of unstated paternity by enshrining additional procedural protections in law through this bill.

In addition, I acknowledge the understandable skepticism of first nations, impacted individuals, and parliamentarians about whether the second stage of registration membership reform will actually lead to meaningful change. That is why in this bill we are proposing a series of amendments to report back to Parliament on a number of occasions, in a number of ways, to update you and all Canadians on our progress towards broader reform. Three separate reports to Parliament are now in this legislation.

On the stage two process, I need you to know that I am committing personally, on behalf of the government, to co-designing a process with first nations, including communities, including also the impacted individuals, organizations, and experts, to deliver substantive registration reforms, including potential future legislative changes. This will be a process in which the voices of the full range of impacted people will be represented at the table, and which will incorporate a human rights lens.

I want to be clear that in stage two, charter compliance will be the floor, not the ceiling, and there may well be areas of needed reform on which there is no consensus to be achieved. The government has made it clear that consensus will not be a prerequisite for action. However, if the government is to act absent consensus, it only increases the necessity for decisions to be based on a foundation of meaningful consultation engagement, and credible evidence about the potential impacts of reform.

Balancing the needed time to engage impacted people with that for parliamentary process has allowed only two truncated three-month engagement periods, even with the extension granted by the court.

[*Translation*]

Given the context of the limited engagement possible within the timelines imposed by the court, I think it’s important to address the intended scope of Bill S-3.

[*English*]

The goal of Bill S-3 is to remedy the known sex-based inequities relating to the registration in the Indian Act, which falls short of charter compliance.

This is not restricted to situations in which a court has already ruled but also extends to situations in which the courts have yet to rule but in which we believe a sex-based charter breach would be found. However, the government has been clear that in circumstances in which the courts have ruled that policies are charter compliant, in which situations are more complex than purely alleged sex-based inequities, government action must be based upon meaningful consultations, as is stated in the UN Declaration on the Rights of Indigenous Peoples.

● (1055)

Despite supporting numerous amendments proposed and adopted by the Senate committee, the government has made it clear that it cannot support one amendment put forward by Senator McPhedran and accepted by the Senate. The intention of Senator McPhedran's amendment to clause 1 of Bill S-3 would seem to provide entitlement for Indian registration to all direct descendants born prior to April 17, 1985 of individuals previously entitled as Indians under previous Indian Acts, possibly back to 1876. In simpler terms, this clause seeks to implement the approach commonly referred to as "6(1)(a) all the way".

[*Translation*]

While I believe this amendment was put forward with the best of intentions, the way the amendment is drafted creates ambiguity as to whether it would have the intended effect.

[*English*]

This ambiguity was highlighted by Senator Sinclair during clause-by-clause at the committee and by the Indigenous Bar Association when it testified before this committee. If this clause is interpreted in a way to implement the "6(1)(a) all the way" approach, then it could potentially extend status to a broad range of individuals impacted by a wide range of alleged inequities well beyond those that are sex-based.

The government is open to considering this approach through stage two, but we have not adequately consulted with those who could be impacted, and we do not currently have the demographic information to understand the actual practical implications of implementing such an approach. While the government is initiating that work now, preliminary estimates are not based on reliable data and contain huge ranges of numbers of potentially newly entitled individuals, from 80,000 to two million. Highlighting these numbers is not to suggest that either end of the spectrum is what the impact would be but to note the huge range of current estimates and the need for better data.

[*Translation*]

In addition to the current lack of understanding of the practical implications of the approach, it's clear that the necessary consultation hasn't occurred.

[*English*]

This clause may have profound impacts on communities, which could find themselves with huge numbers of new members with little or no connection to their community and without any meaningful prior consultation. I want to understand the perspectives and concerns of the vast number of potentially impacted people who have not yet even been asked their opinion on "6(1)(a) all the way". This particular clause was not part of any prior consultation.

I want to be clear: I stand in solidarity with the indigenous women who have been fighting on these issues for decades. I hear their pain and hurt from having received a letter in which they were told their marriage made them a white woman. Whether these remaining issues are charter issues or not, I want to be part of fixing these ongoing problems. But we must be careful not to repeat the mistakes of the past, whereby, even sometimes with admirable intentions, policies are implemented absent proper consultation or evidence and result in dire and unintended consequences. I want to work with communities, impacted individuals, and experts to ensure that we finally get this right.

The concerns expressed by many about the drafting of this specific clause show how easy it is to get this wrong if it is rushed. As many of you may be aware, the court deadline for this legislation is July 2.

[*Translation*]

If, by July 3, we don't have legislation passed that addresses the charter compliance issues outlined in the Descheneaux decision, the clauses struck down by the court will be inoperative in Quebec.

[*English*]

The practical implication would be that these provisions would then become inoperative within Canada: 90% of status Indians are registered by the federal government under the provisions that would be inoperable. In addition to the up to 35,000 individuals waiting for their rights to be granted through Bill S-3, we cannot lose sight of the thousands of individuals who will not be able to register if the court deadline passes and the provisions noted above become inoperable.

● (1100)

In conclusion, I ask you to vote against proposed paragraph 6(1)(a)—the "all the way" clause—and send this bill back to the Senate in a form that respects our duty to consult and allows us the time, through stage two, to finally get this right.

**The Chair:** Thank you.

Our first questioning comes from MP Michael McLeod.

**Mr. Michael McLeod:** Thank you, Madam Chair.

Thank you to both the minister and the delegation presenting to us today on this issue.

It really puts me in an awkward situation here to be deciding on who should be an aboriginal indigenous person and to be wrestling with this issue, which should not be in place. The process should have had prior consultation way back. We shouldn't be dealing with a government resisting change. This shouldn't have been court-induced. However, we're here in this situation.

I'm from the Northwest Territories. We have a lot going on in terms of dealing with some of the issues that have been impacting us on the aboriginal indigenous agenda. We have 10 sets of discussions going on, with negotiations on land claims and self-government. We don't have reserves. We have public communities. So the impact of in-migration certainly won't be something that concerns us as much. However, we are concerned about the impact on land claims and self-government. Land quantum compensation is all based on numbers. For us, more people means more numbers and more ability to negotiate bigger agreements. That said, we are still locked into dealing with numbers from 1970.

How does this impact people? How do we talk to the people who are in these discussions? They will determine their own membership, but they'll be starting from a base from the time they're signing. I'm a little nervous; do we wait to settle the land claims after this issue is dealt with or should we move forward? Do you have any opinion on that?

**Hon. Carolyn Bennett:** It's a great question. As I've said before at this committee, the citizenship of a nation should not be Canada's business. This is very clear in the UN declaration. Only nations can determine their citizenship. We feel that this process of getting out from under the Indian Act and being able to just fix these inequities that were enshrined in it is part of a larger process to self-determination—and to putting my friend Nathalie out of work. This is what we want to do, ultimately.

As you say, the population of a community needs to be up to them. It shouldn't be being decided by courts or Canada in this way. We feel that this is an interim step, and then phase two will be another interim step, but in the meantime, we're trying to get on with those conversations toward self-government so that communities can make their own decisions.

**Mr. Michael McLeod:** Yes. Thank you for that. I'm very happy that we're no longer fighting this piece of legislation. We're moving forward. There's an amendment that is causing concern. We've heard concern from Senator Sinclair. We've heard it from the Indigenous Bar Association that the wording may cause complications. It's not worded properly. It may clash with other parts of the bill.

We also heard that nobody trusts Indigenous Affairs. We heard that loud and clear. The 18-month plan to consult will take us into probably the next government. I might not be sitting here. We might have different people occupying these seats.

I heard today from Catherine Twinn, who brought up an interesting concept that I hadn't realized was an option. Let me ask you, what is the possibility of having the impact consultations led by both Houses, the Senate and this place?

● (1105)

**Hon. Carolyn Bennett:** I think we're open to that. I think one of the best committees I ever sat on was a joint committee of the House of Commons and the Senate.

In our commitment to co-design the process with indigenous people, those impacted, by first nations or whatever...if they think that would be a more efficient way of doing this, and not doing it twice, we're open to anything. What we're codifying in the bill is that we will report back within 12 months as to the progress we're making. We need to be efficient about the co-design within six months. We need to have a really good approach to meaningful engagement to make sure we get the people who aren't generally sitting around these tables but who would be or have been impacted by this. How do we get all those voices into the engagement sessions?

Remember: there are the three things. We report back to you within five months on the design, we launch within six months, and we have to report back to Parliament within 12 months on our progress to date.

We hear you in terms of “nobody trusts the Indian agent”. I guess I'm just saying that as a feminist, and as somebody who has spent my whole career in the doctor-patient relationship, but also with elected representatives, the community, and engaged citizens, I am serious about this being a meaningful engagement and about being able to get real results that will allow us the practical way of implementing whatever the new changes would be. How do we make sure that achieving equality and equity is actually fair, that everybody will buy into that process, and that it is a legitimate and fair process as we go forward?

**The Chair:** Thank you.

The questioning now moves to Cathy McLeod.

**Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC):** Thank you, Madam Chair.

Thank you, Minister, for joining us today to talk about a very important piece of legislation.

I want to point out first that it has been a very bizarre process. Typically in House of Commons committees we will study the bill after it's been referred from the House. In this case, way back in November, we supported it to do our due diligence, recognizing your Supreme Court of Canada deadline, and looked into a prestudy while the committee was looking at it. We're now doing another prestudy, and I understand there's a rush to clause-by-clause. Also, there hasn't been one minute's worth of debate in House. I do want to flag that as certainly a very unusual circumstance in terms of my experience as a parliamentarian since 2008.

Having said that, I have some significant concerns that relate to what was said back in November and what we're hearing now. I want to go back to November 21. I asked the departmental officials if they were confident that Bill S-3, as it stood on that day, “would eliminate all known sex-based inequities”. I was told on the record that they were “confident”.

The official said:

> In terms of your specific question for sex-based discrimination, yes, this bill is addressing everything that is wrong.

That is what was told to us then.

Today, we see a sort of amended version come back. We have, of course, the Gehl case and some other changes that have been made, and you're talking about making changes based on what the Indigenous Bar Association told you about sex-based inequities.

On Tuesday, I said:

> The definition of “known” is when the courts have directed, as opposed to “known” by looking at the issue broadly?

At that time, Mr. Reiher said:

> Actually, as we indicated, it's what the court has decided, plus what is clear.

To me, way back in November, you knew about the court case that was proceeding. You knew about these issues. When I asked again on Tuesday if this is dealing with "all sex-based inequities", how can I have confidence in the answer that it is, when clearly I was given the same answer in November and we're dealing with changes? Indeed, to me, it's inconceivable that you knew about one case going through the courts and it wasn't dealt with.

Perhaps you could explain to me how we can have confidence now when in November we were given the same information and it was clearly wrong.

● (1110)

**Hon. Carolyn Bennett:** I want to start, Cathy, by saying that the first thing we had to do was to remove the judicial review that the Conservative government had placed on the Descheneaux decision. Then we said we'd accept what was in the exact case of Descheneaux. Then we said we could add some other things that we know, and then the Gehl case was actually about unstated paternity, so we have added a number of things to what was the letter of the Descheneaux case in order to go more broadly on these issues that we believe are charter issues.

The B.C. Court of Appeal said that the McIvor "6(1)(a) all the way" was not.... We didn't have to reach back that far to be charter compliant, so now we are saying that we are doing everything that we know is a charter issue and more, but now we have to get out and consult on the things that actually are policy decisions as opposed to charter compliant.

**Mrs. Cathy McLeod:** Are you saying that the Gehl case didn't meet your criteria because it wasn't sex-based discrimination, or the years were too early in your opinion?

**Hon. Carolyn Bennett:** I think what we said at the committee in the Senate was that we believed at that point that unstated paternity would be in phase two, and I think people like Senator Sinclair and others really hoped we would be able to deal with unstated paternity in this. Because of the Gehl case, we were able to make that amendment and that change now, but we believe the rest is based on policy decisions for which there have to be consultations with first nations, following "nothing about us without us", because they are not charter issues.

**Mrs. Cathy McLeod:** I guess the statement that was made that we were dealing with all sex-based known inequities but that this one can wait until phase two caused a bit of a concern there.

I want to head to the area of my next question—

**Hon. Carolyn Bennett:** Cathy, we didn't believe that was charter, but because the court had ruled, we decided we could do this in this phase, and that's a bonus.

**Mrs. Cathy McLeod:** I know seven minutes just flies by, so I really want to get to my next question.

On the "6(1)(a) all the way", I was told on Tuesday that it could have very wide-ranging implications beyond gender-based inequities. I do note that the law clerk did add for clarity proposed paragraph 6(1)(a.2), which, for the purpose of this current vision, clarifies that it is really about the matrilineal descent and the issue of sex-based gender inequity. Are you not confident that the drafting, which actually includes more clarification than the Liberals had when they submitted the amendment—because it's exactly the same amendment the Liberals submitted for McIvor—since the clerk has created more clarity around what it's doing, creates the clarity that's needed in terms of gender-based issues?

**The Chair:** We can have a very short response. You have 10 seconds.

**Hon. Carolyn Bennett:** No, I think, as Michael McLeod said, with the ambiguity that's there, and as Senator Sinclair has said, it may well not do what it was intended to do and may actually contradict other parts of the bill, and that's why we need to consult, but we also need to consult on how we determine this fairly and put in place a process with integrity, which will be supported.

**The Chair:** Thank you.

The questioning moves to MP Saganash.

**Mr. Romeo Saganash:** Thank you, Madam Chair.

Thank you, Madam Minister, for coming before us again.

Welcome back to the others who were here on Tuesday.

You said in your remarks that government action needs to be based on meaningful consultation with indigenous peoples and you referred to the UN Declaration on the Rights of Indigenous Peoples.

What is unfortunate is that you and your government, in spite of your promises do not apply that rule across the board, and I can refer to a lot of cases in this country—just put Site C down for instance, as a case in point.

Speaking of "6(1)(a) all the way", I'm profoundly shocked and totally disturbed by the suggestion that this is a choice between human rights and dollars. That's shocking. That's disturbing to hear. In this country we call Canada in 2017, to suggest that we have a choice between human rights and dollars is unacceptable. That was the suggestion that I also heard from the other side.

I don't think we should be talking on that basis, not in this country.

● (1115)

**Hon. Carolyn Bennett:** I agree.

**Mr. Romeo Saganash:** You supported these amendments in the past when you were in opposition. The present Justice minister supported these amendments in the past as well, when she was vice-chief for British Columbia, so what has happened since then? Which Carolyn Bennett do we have before us this morning?

**Hon. Carolyn Bennett:** As you know, I was not the critic at the time and, not being a lawyer, I think it was a decision of Todd Russell at the time that it was something he would like to see.

I think what I'm saying is that it now needs to be understood that reaching equality and fairness is not an issue of money. This is an issue of fairness and putting in place a process for determining who has status or not in a process with integrity that people understand and have bought into.

Because the B.C. Court of Appeal decided this is not necessary for charter compliance, we have to get out there and consult to make sure this is done properly, and it needs to be with all of the voices, not just chiefs and council. It has to be the women and the people who have been sorely affected by this for a very long time, so that's why we set up phase one and phase two. We do need the numbers because there are going to be impacts on communities, and we have to make sure the resources are there to be able to have communities reach out to their new members and to be able to look at the voting systems on education and land claims. All of those things are based on 25% voter turnout.

These things could be seriously affected if we don't do this right and get the resources there to help communities engage with their new members, and that's why this consultation on phase two becomes so important.

**Mr. Romeo Saganash:** What is surprising in this discussion is that you, as a minister of the crown, have decided that we need to consult more on human rights.

Can you tell me if any other group in this country that you call Canada in 2017 requires that they be consulted under fundamental human rights? Do you know of any other group beside indigenous peoples?

**Hon. Carolyn Bennett:** The issue, Romeo, for even the early conversations, is that there are other inequities in the Indian Act, like enfranchisement. There are a number where we will have to get the data, and we'll have to figure out how we implement this. That is what phase two is about. We want to get rid of all of the inequities in the Indian Act. These in Bill S-3 are the ones the court told us to do, and we did even more than the court asked.

Now we have to go on and get rid of the rest of them, and I am committed to doing that.

**Mr. Romeo Saganash:** I appreciate your personal commitment. One of the things that the Human Rights Tribunal said recently, talking about you, your words, and your department, was that you say one thing, and your department does exactly the opposite.

Can you tell me who's running the show here?

● (1120)

**Hon. Carolyn Bennett:** First, I disagree—

**Mr. Romeo Saganash:** That's why nobody trusts INAC.

**Hon. Carolyn Bennett:** I want to say that the officials at INAC have done nothing but that loyal implementation that great public servants want to be able to do. The fact is that we have almost 30% indigenous people in INAC who now can see their fingerprints on better policies going forward.

I'm very proud of my department, and I think, again, it's a matter of the relationships that these amazing people have in communities. They have lived it themselves, and we have to be very careful in those kinds of generalizations because, I agree, the leadership starts at the top, but it starts with our Prime Minister. He couldn't have been clearer to every minister of the crown and every public servant that this is the most important relationship, and we have a very big steamship to turn around, but we're doing it step by step, and I am proud of the progress we have made.

**Mr. Romeo Saganash:** Can you quickly comment on clause 10 with respect to no liability of the crown? I'm firmly opposed to that provision because it invites us.... It's a proposition to justify past human rights wrongs in 2017. Is that your understanding as well?

**The Chair:** You have 15 seconds.

**Hon. Carolyn Bennett:** It's a common provision in most of what we do, but it also is intended to protect first nations communities from their liability in decisions that they have taken. I understand part of it is before the courts now, but this is what we need to protect first nations communities.

**The Chair:** Thank you.

The questioning now moves to MP Bossio.

**Mr. Mike Bossio:** Thank you so much for being here today, Minister.

I was saying in an earlier panel that I wasn't aware of this even being an issue until 2014 when I was at a women's native restorative justice symposium. Dr. Marlene Brant Castellano is a friend of mine, and I didn't even know at that time that she was impacted by this, until that day. There were a number of people. Jeannette was here as well, who testified earlier, and I had met her that day and heard their stories about the fight to right a wrong, an injustice.

To me it is appalling, I have to agree with Romeo, that in the Canada we know today this still exists. It is incredible.

I have to say that I am struck by the passion and the frustration over the decades of governments coming back again and again and again and saying, “Yeah yeah, we're going to fix this. We're going to get out, we're going to consult, and we're going to deal with it once and for all and be done with it”, and here they are again today saying, “Okay, do you know what? You're going partway to fixing a problem that's existed forever, and we're not fully fixing the problem, to deal with it once and for all”.

Yes, we're making commitments in phase two to say, yes, we have a process and we're going to follow this process, and we have timelines that we are going to dedicate ourselves toward. But they still do not have the confidence that phase two is going to fix the problem, that our government is going to, in this mandate, be able to put an end to sex-based discrimination toward indigenous women and girls and generations of siblings once and for all.

The Carolyn Bennett that I know, in your soul I know you believe and it is your desire to put an end to this for once and for all, but as you say, we have this massive steamship that we're trying to turn and trying to get moving in this direction. If we don't put an end to it, once and for all, saying that sexual-based discrimination is ending today in this bill as it is amended, and that phase two is only to deal with the non-sex based discrimination and how we implement this bill.... How do you give them that confidence if we don't have that written in the bill right now as it stands?

● (1125)

**Hon. Carolyn Bennett:** First, I want to thank you for this, because we do need to underline the women who have been fighting for this for a very long time.

We talked before about the real impacts of the Indian Act, but before that, the settlers would come and only speak to the men. The disempowering of women's voices over the generations has ended up with missing and murdered indigenous women and girls. There is no question that the loss of indigenous women's voices in their communities and the way they were dealt with by government has had disastrous effects.

I understand that, and I do believe in the commitment now to deal with pre-1951 and the second generation cut-off, and adoption and enfranchisement, people who went to university or joined the armed forces. We will have to be very intentional about dealing with all of those discriminations and inequities in phase two.

There is unbelievably serious commitment by me and our department. It is about doing what we can do now, but also honouring my commitment on the duty to consult to make sure of the process we put in place for the areas for which we have really no good records—who gets status, who doesn't get status? How do we engage and get the answers as to what would be a system that would make sure the people who get status actually are exercising rights that they rightfully hold? The integrity of the system is what people want because again we are now delving into an area—and we talked about that when I was here before, about date of birth and all of those things. It is the things in the areas where there are no good records where we have to design a real process to get this done properly.

**Mr. Mike Bossio:** The other big issue, of course, that we're trying to deal with here is, yes, we're trying to move beyond the Indian Act where it's self-determination for all indigenous communities. And on one hand we want indigenous communities to have the right to determine who's going to be a member and who's not going to be a member, and who's going to be status, and not status. But on the other side we have this discrimination that exists and has existed for hundreds of years. How do we square this circle between on the one side having self-determination and first nations making that determination, and on the other side having the Charter of Rights and Freedoms and what is, as we know, blatant discrimination?

**Hon. Carolyn Bennett:** I think it's even more complex than that, Mike. In reconstituting nations at the moment the governance is in Indian Act chiefs and council, and there's a lot of hereditary leadership that doesn't feel heard. As we reconstitute nation to nation, this is going to be complex, the way we have to go in actually doing what is meant by nation to nation and government to government. This is going to be about really moving to self-determination and having indigenous people in charge of their citizenship.

**The Chair:** Thank you.

The five-minute round begins with MP Yurdiga.

**Mr. David Yurdiga:** Thank you, Madam Chair.

Thank you, Minister, for coming before us today. It seems like we try to over-complicate everything. We say this is too complex. Gender equality is gender equality. What's good for A is good for B. You just can't legislate who you are. It's your genetics. I understand that the government's not going to be supporting the Senate amendments.

**Hon. Carolyn Bennett:** Just one.

**Mr. David Yurdiga:** Anyway, can these issues be addressed in phase two, and can you describe who's running phase two? Is it INAC? Is it the commission? Or how is it going to be made up because that's very important?

**Hon. Carolyn Bennett:** This is something we really have been discussing. Some people have suggested there could be a ministerial special representative to run it. Other people think that would be a bad idea. We are going to have to decide how we do this. It was interesting to hear the suggestion of the two Houses making sure that they knew because we have committed that we will report on the design back to Parliament within five months. We're committed to launch stage two within six months; a progress report to Parliament, both Houses, in 12 months; but also a three-year review clause to determine whether we have really gotten rid of all the sex-based inequities in terms of eliminating them.

It is my personal commitment that this engagement will be robust and inclusive of all the voices that need to be heard on this, of all the people who have been or could be impacted by this in terms of their children, grandchildren, and great-grandchildren. Again, this is going to be the hard piece of work over the next five months, because the process is one thing, the design of the process another. It's going to be imperative that people trust it and know that it's meaningful, in the same way as we spent time as ministers designing the process for missing and murdered indigenous women and girls to make sure that it was trauma-informed and that the families would be at the centre of it. The work in designing the process is sometimes as important as the process itself.

● (1130)

**Mr. David Yurdiga:** Thank you. I think this is more of a money issue than anything else because we heard from the other side... resources available, and what it's going to cost, and I think that's really the mandate of the government to push this down the road four, five, six years, or however long it takes. Did the government calculate the cost of eliminating all the sex-based discrimination? Are there numbers out there that startled the government to say, "Oh, we can't do this because it's going to cost us *x* amount of dollars"? Were those calculations ever done, because I think that's the first place to look?

**Hon. Carolyn Bennett:** Well, I'm afraid you walked into a question that is the reason why the Conservative government did the judicial review in the first place, because there were very clear numbers that there would be between 25,000 and 35,000 new status Indians. We have embraced that. We will do that, and more. That's kind of what Romeo Saganash was saying, that it shouldn't be between rights and money. We don't see that, but we do think there has to be a process with integrity to determine who has those rights.

The cases of Descheneaux and Gehl are clear as to who has rights. Phase two is to determine a process where we can get the right numbers and get the people who have those rights the status they deserve.

**The Chair:** Thank you.

You have 30 seconds.

**Mr. David Yurdiga:** That's not a lot of time.

When is phase two going to be rolling out? Obviously, we want to get Bill S-3 through the House shortly. When does phase two start?

**Hon. Carolyn Bennett:** Within the legislation, it needs to be rolled out at six months, and we have to report to Parliament at five months on the design that has been agreed upon so that we can launch at that six-month point from royal assent.

**The Chair:** Thank you.

Moving on, the questioning goes to MP Anandasangaree.

**Mr. Gary Anandasangaree:** Thank you, Madam Chair.

Madam Minister and colleagues, welcome once again.

We heard a great deal of skepticism, Madam Minister, about the approach that Canadian governments have taken in the past with respect to expanding the definition and the fight for equality within the membership of the Indian Act. The previous panel talked about Lovelace, McIvor, and Descheneaux, and all the phase twos that ought to have happened but never really happened and never followed through with future legislation. I think there is a great deal of validity to those concerns, and history has proven that this is accurate.

What is different now? What is it that makes this different—other than the fact that you are the lead in the department—and that will make sure there will be a meaningful phase two, with meaningful outcomes and proper legislation to follow?

● (1135)

**Hon. Carolyn Bennett:** The first thing is that we pulled the appeal on the judicial review that the previous government had done, and we accepted the ruling of Descheneaux. I think, Gary, that what is important to understand is that Descheneaux came only because of the gaps in the legislation for McIvor. A number of things were missed, and therefore Descheneaux went to court to say, "You missed these things in the bill responding to McIvor."

What we are trying to do now is say, "We've done this bit, but we're not done yet." We are going to design a process to make sure that all of it is done, and you, Parliament, will hold us to it that we get this thing done properly, with no unintended consequences and no gaps that are missed, and that we get this whole business of discrimination in the Indian Act dealt with.

**Mr. Gary Anandasangaree:** David Schulze testified on Tuesday, and he indicated there was a case conference, a discussion with the possibility of extending time. Given the time pressures we are facing, and given the Senate amendments, would it be appropriate for us to seek an extension? If so, are you able to update us on any developments on that front?

**Hon. Carolyn Bennett:** I think we lived what truncated engagement looks like in these pieces. I believe strongly that we need this bill passed, and we need to get those 35,000-plus people their rights. The kids of some of these people need to go to university this fall, and they need to be status by this fall when they apply to university. Drawing this out any longer for the people who clearly have court-awarded rights, and all those we have added in this process, I think would be a disservice. We need to get on and do all of the rest of it in a timely fashion, such that we can get everybody who deserves status their rights.

**Mr. Gary Anandasangaree:** If we were to pass this, do you have a process to fast-track priority registration for those who may require it, for example, those who will be applying to universities in the fall? Maybe the registrar can answer. Will that process be in place to ensure priority for those who may be in need of that additional recognition?

**Hon. Carolyn Bennett:** Absolutely. Nathalie is the registrar, and they are in the process of hiring extra resources to deal with this group of people who will receive status because of Bill S-3.

Nathalie, did you want to add something?

**Ms. Nathalie Nepton (Executive Director, Indian Registration and Integrated Program Management, Department of Indian Affairs and Northern Development):** The minister is correct, we are in the process of staffing up; $19 million has been earmarked to support the application process for additional individuals in the register.

**The Chair:** Thank you.

The final session of questioning goes to Cathy McLeod.

**Mrs. Cathy McLeod:** Thank you, Madam Chair.

Minister, we're living with the reality of a majority government, and I'm hearing that you accept this bill with the exclusion of paragraph 6(1)(a). Is that accurate? You're definitive on that?

● (1140)

**Hon. Carolyn Bennett:** Yes, we have accepted all the advice and all the other amendments from the Senate, but the one we find difficult in practical implementation, we are unable to accept.

**Mrs. Cathy McLeod:** I want to note you referenced Senator Murray Sinclair, but I believe when it came to the Senate it was unanimous there, was it not, including—

**Hon. Carolyn Bennett:** No. Senator Sinclair voted against the amendment.

**Mrs. Cathy McLeod:** Thank you for that clarification.

My next question I want to ask again, and it's my third time asking, are you confident that Bill S-3, that you are proposing the committee accept, will eliminate all known sex-based inequities in the act?

**Hon. Carolyn Bennett:** Yes. We said "known sex-based inequities", and we are taking guidance from the B.C. Court of Appeal that determined that the McIvor recommendation was not necessary for the department to operate in a charter-compliant way, but we want to deal with that in terms of second generation cut-off and pre-1951, and all those issues in phase two.

**Mrs. Cathy McLeod:** I'm going to head into your phase two process, and I've suggested this before, the concept of nation to nation, which I'm not sure is clear in many people's minds yet, but clearly as you're talking to communities, nations, bands, on something as fundamental as registration and how this phase two process moves forward, do you not believe that you need to have that definition, formal relationship, established to do that important work? To me, it's step one, step two, and I don't have any perception of how you can do step one in the time frame you've created. Given what you've said as a government in how you're going to move forward, it's a pretty logical sequence.

**Hon. Carolyn Bennett:** Whether you're talking about the AFN or whether you're talking about self-government—

**Mrs. Cathy McLeod:** Nation to nation.

**Hon. Carolyn Bennett:** The nation-to-nation piece is not as relevant in this case because there are a number of excluded individuals who will need to be consulted. We will have to deal with all of the chiefs and council, the heads of the self-governing nations, and we reached out to them. The people who we're worried about are the people who have not really had an attachment to their community because of history.

**Mrs. Cathy McLeod:** So then—

**Hon. Carolyn Bennett:** So those are the voices that need to be in the consultations.

**Mrs. Cathy McLeod:** I can see that you need to have those additional voices but I think there are many communities that have not defined who their nation is for the purposes of these discussions and you need that piece of work to be done.

**Hon. Carolyn Bennett:** That is the work that is going to take us a few years probably but we're getting there and we're very excited by the progress as these nations are reconstituting themselves in an education system or in a fishery or in all of the things that allow them to come together once again as a nation.

**Mrs. Cathy McLeod:** How can you do phase two without that work being done?

**Hon. Carolyn Bennett:** We're doing it.

**The Chair:** Twenty seconds.

**Mrs. Cathy McLeod:** Thank you, Minister.

**Hon. Carolyn Bennett:** The design is key. It's not going to be one-size-fits-all and there are going to be different kinds of engagement depending on the situations coast to coast to coast.

**The Chair:** Thank you.

Thank you to the minister and to the staff for all of you participating in this historic hearing about Bill S-3. I appreciate your attention and your co-operation, our sincere thank you, *meegwetch*.

For the committee members, I would just like to do a Bill S-3 reminder, a reminder that if members are wanting to prepare and submit amendments to get in touch with legislative counsel as soon as possible. If the committee proceeds clause by clause on Bill S-3 on Thursday, the 15th, which is in our schedule, I would ask that members submit their final amendments to the clerk by Tuesday, June 13. You can also do it on the floor but it's better if it's in a more formulated process so that the comprehensive packages can be prepared for our Thursday meeting.

Cathy.

● (1145)

**Mrs. Cathy McLeod:** Thank you, Madam Chair. I was going to ask one question in terms of whether the amendments can come from the floor.

**The Chair:** Yes.

Thank you very much. That concludes our business.

The meeting is adjourned.