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Chair

The Honourable MaryAnn Mihychuk

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● (0850)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Welcome, everybody.

We are here today on the unceded territory of the Algonquin people. We are convening to go clause by clause through Bill S-3.

I'd like to start the business of the meeting by indicating that, pursuant to order of reference of Tuesday, June 13, 2017, the committee begins its consideration of Bill S-3, An Act to amend the Indian Act (elimination of sex-based inequities in registration). We are here today to proceed with consideration of the bill.

We have with us department officials who are here to speak to any technical questions we have or potential impacts the amendments may have. They will not have an opening statement.

I'd like to provide members of the committee with a few comments on how committees proceed with clause-by-clause consideration of a bill. As the name indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote.

If there are amendments to the clause in question, I will recognize the member proposing it, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on. Amendments will be considered in the order in which they appear in the package each member has received from the clerk. If there are amendments that are consequential to each other, they will be voted on together.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond the scope of the bill, both of which were adopted by the House when it agreed to the bill at second reading, or if they offend the financial prerogative of the crown.

If you wish to eliminate a clause of the bill altogether, the proper course is to vote against the clause when it comes time to look at that clause, not to propose an amendment to delete it.

Since this is the first exercise for many new members, the chair will go slowly to allow all members to follow the proceedings properly.

If, during the process, the committee decides not to vote on a clause, that clause can be put aside by the committee so that we revisit it later in the process.

As indicated earlier, the committee will go through the package of amendments in the order in which they appear and vote on them one at a time unless some are consequential and dealt with together.

Amendments have been given a number in the top right corner to indicate which party submitted them. There is no need for a seconder to move an amendment. Once moved, you will need unanimous consent to withdraw it.

During debate on an amendment, members are permitted to move subamendments. I would prefer that you didn't. These subamendments do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Once every clause has been voted on, the committee will vote on the title and the bill itself, and an order to reprint the bill will be required, so that the House has a proper copy for use at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments, as well as any indication of any deleted clauses.

Thank you for your attention, everyone.

This is a committee that has worked on other very difficult issues, and I'm fairly certain will get through this in an efficient and co-operative manner.

Shall we begin?

(On clause 1)

● (0855)

The Chair: Mr. Viersen.

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

I would like to move an amendment as follows:

> That Bill S-3, in Clause 1, be amended by replacing line 17 on page 1 with the following:
>
> "any credible evidence, including the results of DNA analysis, that is presented by the applicant"

Do I get to speak to it?

The Chair: You get to speak to it.

Mr. Arnold Viersen: This amendment comes out of the witness testimony of Ms. Catherine Twinn. She was concerned that the bill as it currently stands may still not allow her stepdaughter Deborah, who was also here, to get status. She is concerned that up until this point, the DNA evidence they have acquired hasn't been useful enough to get her status.

We suggest that, where DNA evidence establishes the identity of an Indian parent who is unstated on the birth certificate of an applicant, the registrar shall accept the DNA evidence as conclusive that they are the parent of the applicant. There would be no obligation to apply to the court to amend the applicant's birth certificate to add the unstated parent.

That's my reasoning for this amendment.

The Chair: Mr. Saganash.

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): I'm not necessarily opposed to that amendment, but I definitely have questions, first of all, with respect to DNA evidence. Second, who determines what is credible evidence? There's no definition in the Indian Act anywhere with respect to what is credible evidence in terms of determining your status of membership to a band.

I raise the question because of the Daniel's decision of the Supreme Court. For instance, many of my constituents in northern Quebec.... I thought there were only Inuit, Cree, and Algonquin: 14 Inuit communities, nine Cree communities, and two Algonquin communities. In fact, recently there has been the creation of the Métis nation of Chapais—Chibougamau in my riding, which numbers about 400 people. When I asked them on what basis they determined their status as Métis, the answer was DNA evidence.

We're now proposing to legislate DNA evidence in the Indian Act, which is an outstanding move, I believe. It's going to have much impact on the rest of the provisions of the Indian Act in terms of membership, registration, and status of Indians.

I'm wondering if a proper analysis of that proposition was made by the mover.

Mr. Arnold Viersen: My analysis of it has been through Catherine Twinn who has spent a significant amount of time working on this subject. She is adamant that the DNA evidence is probably the most conclusive and scientific way of proving who your parent is. If you have DNA evidence, the registrar should not be able to disallow the DNA evidence in making decisions on who your parent is. That's specific in determining parent, grandparent, or ancestor, including DNA evidence. Could we have the registrar give us an indication on this as well? That would be much appreciated.

The Chair: Please go ahead.

● (0900)

Ms. Nathalie Nepton (Executive Director, Indian Registration and Integrated Program Management, Department of Indian Affairs and Northern Development): DNA evidence is used today by the department as a means of establishing genealogical link. I understand Mr. Saganash's concern about the use of DNA evidence without any type of explanation around it. What is important to note about DNA evidence is that it's the chain of custody. For example, as the department of accredited institutions we offer a list that we know will ensure that a chain of custody is not broken. It would be credible evidence in that the person goes to the institution, gets swabbed by somebody who will confirm the individual's identity, in comparison to perhaps an institution where somebody writes away and pays by cheque for a DNA test, but there's nobody to confirm that the individual who was swabbed is the individual who's submitting the evidence.

It's used today from an accredited source of information or institution, and it's also used with other evidence, such as affidavits from other people who would often provide history behind the information submitted. The applications are pretty much assessed on a case-by-case basis, because I'm sure you can all appreciate that no individual's circumstances are identical, so the DNA is just one of many pieces of evidence that could be used and deemed credible.

The Chair: Thank you.

MP Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Arnold and I had an opportunity to discuss this last night, and I've had an opportunity to give it a lot of thought since. My mother is Québécoise and her family has been here since the 1600s. I can assure you that somewhere along that way, I know I've had indigenous uncles in the past. There likely is some strain of DNA within me that could be indigenous, but I can assure you— having the blessing of being on this committee and at least having some level of education on indigenous issues and historical injustices and having a number of close friends among the Mohawks of the Bay of Quinte in my riding, and having that benefit—I am not indigenous in spirit because I was not raised that way and if there were members, it was generations and generations ago.

I would never try to get status, but my concern is that doesn't mean to say that there could be many out there who would say they had indigenous background and want status now, but culturally or historically there is no connection. The Mohawks who were here stated emphatically that those people don't understand our language, our culture, or our community.

I'd be deeply concerned about individuals trying to utilize that as a pathway into status, and I think it would be very unjustified for them to do that. I understand the spirit of what you're trying to accomplish, and I respect that, but unfortunately, it wouldn't be fair to a lot of indigenous communities.

The Chair: MP Massé.

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): I'll be brief. I think it's clear from a legislative perspective that adding DNA testing is redundant because clause 1 allows the flexibility needed to present different proof.

If we start giving examples of what is credible, we will have to create a list of them. Naming, and almost emphasizing, something like DNA testing is like giving it preference—I'm trying to choose my words—in terms of determining whether someone is Indigenous or not.

In my opinion, it's redundant on a strictly legislative basis because the purpose of clause 1 is to provide that kind of flexibility. That is how clause 1, as amended, is worded. I don't think it's required.

● (0905)

[*English*]

The Chair: MP Cathy McLeod.

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

I think my colleague Mr. Viersen and everyone else brings up very good points, and what it speaks to is, certainly in my opinion, the government's rush to move this legislation through. The ability of our committee to do the due diligence around responding to some very compelling testimony from a witness and what some of the pros and cons are was very limited. I want to flag my concern in terms of the limitations with testimony and the rapidness with which the government is advancing this legislation.

The Chair: MP Saganash.

Mr. Romeo Saganash: I just want to react to what's been said on the other side. My preoccupation and my concern with this proposal, above and beyond the fact that we're legislating DNA evidence, is that these kinds of things.... You saw, after the Supreme Court decision with respect to Métis status in this country, the number of people who came forward claiming they were Métis.

The evidence is not just in my riding with the creation of the Métis nation of Chapais-Chibougamau. There are 400 of them, and they're also claiming rights to the territory and rights to the resources of the territory, and that's what's going to happen. If DNA evidence is already used—and I think diligently as you explain it—then this addition would not be necessary in my view because, if we allow this, then we're allowing that lady in that commercial to claim Métis status, although she was shocked to learn that she was 26% indigenous. There are a lot of consequences with proposing this type of amendment into legislation, and I disagree with it.

The Chair: MP Viersen.

Mr. Arnold Viersen: This comes back to what is stated on your birth certificate, and that's really what we're dealing with, and not so much if you have.... You would need to be able to tie it directly back to a 6(1). You'd have to say that one of your parents was a 6(1) or a 6 (2) in order for you to get status. In that case, that's where DNA evidence could be used. I think that DNA evidence is the most conclusive evidence that you can give. In the case of Deborah, she can say that Walter Twinn was most assuredly her father. There's no doubt about that, and yet she has no status. For a number of reasons, she has not been able to get status despite having the clearest evidence possible. I'm going to still say that we need to put this amendment in there for the sake of Deborah.

Thank you.

The Chair: MP Massé.

[*Translation*]

Mr. Rémi Massé: In closing, Madam Chair, let's talk about Ms. Twinn's specific case. Again, the purpose of the amendment to clause 1 is broadening, and the elements that have been added will allow for greater flexibility, in that they would allow a person like Ms. Twinn to submit her application again. I think it is clear that the clause, as worded, provides the necessary flexibility. It is already set out that DNA tests can be included.

In this context—I don't know what the process should be—I ask that we vote on this amendment because we have heard all the arguments on the matter.

Mr. Romeo Saganash: I have a question.

[*English*]

The Chair: MP Saganash.

Mr. Romeo Saganash: Yes, I have a quick question. The expression used in this article is “credible evidence.” Who determines what is “credible” in your department?

● (0910)

[*Translation*]

Ms. Nathalie Nepton: Thank you for the question.

[*English*]

In terms of who determines credibility, again, obviously for applications for registration, it is my area, so through policy we would definitely define it based upon existing case law and definitions.

[*Translation*]

Mr. Romeo Saganash: You don't have the definition right now?

Ms. Nathalie Nepton: Well, I don't have an answer at the moment, but I take into consideration all the evidence I have when I consider an application. My decision is based on a balance of probabilities whereby a reasonable person can believe that someone is eligible for registration or not.

Mr. Romeo Saganash: It's at your discretion. Is that right?

Ms. Nathalie Nepton: For now, yes.

Mr. Romeo Saganash: Arnold Viersen expressed a particular concern about Deborah Serafinchon, who testified here, before the committee. How willing would you be, if it was in the interest of the case, for instance, to suggest this evidence from a DNA test?

Ms. Nathalie Nepton: If I understand your question, Mr. Saganash, I would say that DNA testing is indeed a credible source if the institution performing it is accredited, and we can guarantee—

[*English*]

the chain of custody

[*Translation*]

to make sure that the person who provided a sample is really the right person. The affidavits or testimonies of community elders are also considered credible evidence.

As you can imagine, sometimes DNA testing is not always the only solution. As I mentioned, when we talk about credible evidence, we mean a sworn statement or a record. We can even use DNA tests conducted from samples obtained from a brother and sister, or a half-brother and a possible sister. We really look at a set of credible evidence before making a decision.

[*English*]

Mr. Mike Bossio: Can I ask one quick question on what you've just said, Nathalie?

You're saying given the changes that have now been made to the act, if Deborah, or any individual who finds themself in Deborah's situation, were to reapply today, she would be caught under this and therefore would receive status.

Ms. Nathalie Nepton: I won't confirm they would receive status, because again, it depends on all of the information submitted. But I will say, in regard to anyone who will apply, for example, or who may be affected by any of the proposed amendments under this bill, they can reapply, and either they will be determined to be eligible for entitlement and therefore be registered, or they will be eligible for a category amendment. For example, someone who is now registered under 6(2) may receive a category amendment to be in 6(1).

Mr. Mike Bossio: Thank you.

The Chair: MP Viersen is last on the list to wrap up.

Mr. Rémi Massé: Madam Chair, just to clarify the process, I called a vote on this, so do we have to still go through a number of comments? I'm asking just to clarify how that works.

The Chair: In terms of procedure, members are able to ask more than one question on an amendment, and the vote isn't called until all members are satisfied.

Mr. Rémi Massé: So even though I called a vote, we have to wait for everybody to continue...?

The Chair: We are at the end of the speakers list, and we appropriately have MP Viersen, who is going to maybe summarize or make another valid point. Then we'll be ready for the vote.

Mr. Arnold Viersen: I have one more question for Nathalie.

Was “chain of custody” the term you were using? What does that mean?

● (0915)

Ms. Nathalie Nepton: Yes. The chain of custody in an accredited institution for the individual who is seeking to have their DNA to confirm, for example—

Mr. Arnold Viersen: It's the custody of the DNA sample.

Ms. Nathalie Nepton: That's right. The individual shows up personally, their identity is confirmed through various pieces that are submitted at the accredited institution, and there the swab is taken by a professional who has confirmed their identity. Then it's sealed.

Mr. Arnold Viersen: Thank you.

The Chair: All right.

I think we learned a lot about evidence and DNA.

I'm going to call the vote.

(Amendment negatived)

The Chair: Shall clause 1 carry?

(Clause 1 agreed to [See *Minutes of Proceedings*])

(On clause 2)

The Chair: MP Tootoo.

Hon. Hunter Tootoo (Nunavut, Ind.): Madam Chair, I was wondering if I could ask the witnesses a couple of questions.

The Chair: Could we—

Mrs. Cathy McLeod: Madam Chair, as I understand it, non-affiliated independent members can propose amendments off the floor, but can they engage in the debate? I'd just ask for clarification.

The Chair: Our expert indicates it's up to the chair to decide. Given the respect that we have for MP Tootoo and his participation in the committee, I'll allow a certain degree of latitude.

Welcome back. It is up to me, and I'll try to move the elements of the meeting forward. I'm fairly confident that you're not here to disrupt the proceedings.

Please go ahead.

Hon. Hunter Tootoo: Thank you, Madam Chair.

I have three quick questions for the officials in regard to some of the things in here.

My first one, given the government's commitment to working collaboratively with indigenous people of this country and renewing the relationship—

The Chair: Is this specifically to clause 1?

Hon. Hunter Tootoo: This one is specific to all of it, but there are some specific ones with regard to dates and registration.

The Chair: Because we just voted on clause 1, perhaps we could put you into the questioning.

Hon. Hunter Tootoo: I think you voted on the amendment.

The Chair: We just adopted clause 1. Could I ask you to participate in the next round of questioning?

Hon. Hunter Tootoo: Yes.

The Chair: Thank you.

All right. Moving on to clause 2, we are going to MP Saganash.

Oh, I'm sorry.

MP Anandasangaree.

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

I think Mr. Saganash was quite offended.

Voices: Oh, oh!

The Chair: My apologies.

Mr. Gary Anandasangaree: Madam Chair, thank you.

As tabled at this committee, I am moving to delete proposed subparagraphs (a.1) and (a.2) from Bill S-3, essentially lines 5 to 16 on page 2.

I cannot describe to you how troubling this piece of legislation is overall, and to me personally. Bill S-3 sets out to amend a deeply racist act, the Indian Act, a foundational document that essentially legalizes oppression of our first nations people.

Amending a deeply flawed piece of legislation, one that is centred on racism, is highly problematic. We are, however, at this juncture because of a court decision and the timeline set by the court for the government to respond to amendments to the Indian Act in order to address the issue of sex-based discrimination. We must therefore act as a government to address this issue.

At the outset I want to acknowledge the work of so many people who have fought on this issue for decades. I want to thank them for the many calls and emails and the conversations I've had in the last two weeks. I particularly want to thank the Senate for the considerable work they have undertaken in making changes to Bill S-3. I especially want to thank Senator McPhedran for her work on this issue as well as her lifetime of work in advancing rights.

I was in the House two nights ago where my friend and colleague, the member for Winnipeg Centre, spoke quite passionately about this issue and in support of the Senate amendments we're now deleting.

I think we all have received the correspondence from Senator Sinclair that outlines some of his concerns.

Based on all of this I think there is broad consensus on two points. First, the federal government should not be defining who is and who is not an "Indian". Second, in the interim the federal government needs to ensure that the definition is void of discrimination. That's the consensus that I see among all the parties.

The long-term goal of Canadians, and I think for this government, ought to be to develop a nation-to-nation relationship ensuring that each nation has the absolute right to define its own peoples and to eliminate the Indian Act altogether.

In the interim, we need to ensure that we eliminate discrimination of all forms under the Indian Act.

The issue at hand was triggered by the court decision in Descheneaux. As Senator Sinclair has pointed out, we have a court-imposed deadline of July 3. While the parties seek to extend the timeline, we as legislators have a responsibility to ensure that we make our best efforts to meet the deadline, especially since we have been given an extension of five months.

Consequently, the framework, with the proposed deletion in this bill, will ensure that we can move forward in the near term, meet the set court deadlines, and enfranchise up to 35,000 people.

Madam Chair, I want to be absolutely clear. We are committed to addressing the broader issue raised by proposed paragraph "6(1)(a) all the way". Unfortunately, the current language in the Senate amendment seeks to address a wide range of registration issues beyond sex-based inequities. These issues are beyond the scope of this bill, and there is insufficient information on how the lack of meaningful consultation would impact first nations' communities or individuals.

We are committed to co-designing a process with first nations to achieve comprehensive reform rather than a piecemeal approach, which has failed time and time again. We will launch a process on broader reform within six months of passing the bill, and we will report to Parliament within 12 months of that launch. These timelines are now in the bill itself.

Experts like the Indigenous Bar Association, whom we have heard from, have made it clear that the wording of proposed paragraph 6(1)(a) is ambiguous, contradicts other sections of the act, and could have wide-ranging, unintended consequences.

We need to address broad-based reform of the registration provisions in the Indian Act, but we need to do so with the benefit of meaningful consultations with those who are impacted, both the communities and individuals, and with the understanding of what the intended and potentially unintended consequences could be.

In the meantime, this bill will recognize the rights of up to 35,000 people we know are being discriminated against—and incidentally, it's been almost two years since the initial ruling—and provide legislated procedural protection for situations of unknown or unstated paternity.

● (0920)

We need to pass this bill to provide justice to tens of thousands of people now, and move forward with broader registration reform to address other historical registration issues the right way, and once and for all.

Finally, I know that those who have fought for this for a very long time are rightfully skeptical of the government. The government says, "Trust us. We will do the right thing." They have heard this time and again. Notwithstanding the past, I am convinced our government will do the right thing, Madam Chair.

In fact, Minister Bennett and Minister Wilson-Raybould have advocated for "(6)(1)(a) all the way" in the past. They are personally committed to ensuring that, in the near term, the government consults in a way that comes up with a proper framework for everyone involved. Together, we will ensure that our government moves swiftly toward addressing these issues.

I look forward to the conversation here, keeping in mind that we are all in a very difficult situation in trying to define the rights of people who have an inherent right and whose membership and identity are something neither I nor anyone in this committee, nor in the House, can actually in any way restrict or enfranchise.

● (0925)

The Chair: Thank you.

MP Cathy McLeod, go ahead.

Mrs. Cathy McLeod: Thank you, Madam Chair.

I want to point out that the Liberals have been supportive of this amendment since it was first proposed, as far back as 2010. For the last year and a half, you have been very aware of the Descheneaux case. You have named a bill inappropriately, and you haven't done due diligence. The Senate took an amendment and inserted.... This government had a year and a half to do due diligence. If it really supported it, it would have done the due diligence to have proper wording, proper understanding, so that today we could be voting while understanding the implications in terms of whether it deals with all the problems that we anticipate it to deal with.

We have heard time and again—in December, February, and March—that this is the answer, and then we have the Senate....

I would like to point out that I am very disappointed that something your government said it was committed to as far back as 2010 didn't have due diligence done. It is inserted by the Senate, and now we are in a very difficult position. I am concerned, and I just want to note that for the record.

The Chair: MP Anandasangaree, go ahead.

Mr. Gary Anandasangaree: Thank you, Madam Chair.

Without getting into the history of the Descheneaux decision, I'll just put it on the record that the new government was formed in October 2015. At the time, our government reviewed the Descheneaux decision. After considerable thought, it was decided that the right thing to do would be not to appeal the Quebec decision, and to set up a framework where we could address the concerns in the decision. It was in the spirit of ensuring that we expand and give justice to those 35,000 individuals who have been disenfranchised under the current legislation.

Late last year, we brought forward Bill S-3 through the Senate. It came to us, and we discussed it and sent it back to the Senate. Now, close to the deadline, we are here.

I agree with my friend that this is not optimal. This is not the way we should be legislating, but given that this is in the spirit of doing the right thing, and with a very serious commitment to following through, I think it is important that, as legislators, we deal with this in order to ensure that those people who are disenfranchised, close to two years after an actual court decision, be addressed swiftly.

The Chair: MP Saganash, go ahead.

Mr. Romeo Saganash: Thank you, Madam Chair.

I would like to start off by saying that this is perhaps the most disappointing proposal of all, in this clause-by-clause exercise that we're doing today. I think my learned friend will appreciate the fact that, for me, being asked to delay the entitlement of human rights in this country called Canada will always be unacceptable, always. I cannot bear the thought that I will be voting for something that delays the application of human rights in Canada. Let me start off by saying that.

Second, I think we need to be mindful that there may be consequences to doing what my friend is proposing. We're going back to the House. We'll eventually vote on this bill, without the amendment that was proposed by Senator McPhedran. What will be the reaction of the Senate?

That is a point of concern for me, especially when we talk about the people who are affected by all of this. I don't want to be eventually facing a standoff between the Senate and the Parliament of Canada, because the Senate approved these amendments and they sent us a bill in its entirety, as we have it before us, in its present form.

They may, at some point, consider our changes and say “No. We need 6(1)(a) all the way in the legislation, to do justice, not just to the people who are directly affected by the Descheneaux case, but also to all of the other people who have suffered discrimination because of the Indian Act.” This is what we are also facing as legislators who have a duty to uphold the rule of law. That includes human rights, and I'm sure my learned friend can relate to that. He's a human rights expert. I think that's one aspect that we need to be mindful of.

I want to ask a question to him about one of the other aspects. In Bill S-3, with the deletions that you're proposing, does it fix all of the human rights violations and discriminations in the Indian Act? I don't think so.

A lot of the witnesses who appeared before this committee don't think so. I hear you when you say that the Indigenous Bar Association was one of the only organizations that expressed concern with that clause, but the rest of the witnesses, the majority of the witnesses accepted that amendment from the Senate, and part of our duty as well is to consider what's being proposed to us as a committee.

I very much enjoy the company in this committee on both sides. I think we've been doing incredible work since we started, and we need to continue on that path.

It's not the fault of the people who have suffered discrimination in this country because of the Indian Act. It's not those people's fault if we are at this point today, but there's a sense of urgency.

I'm considering this in a larger perspective than that. I understand your sense of urgency with the July 3 deadline that's coming up, but the parties are also before Judge Masse on June 19, including the Descheneaux family, asking for an extension. I think it's because they also feel we need to do this right.

● (0930)

It's not just what was asked for by the court in the Descheneaux case, but also to address the other discrimination based on sex. That's part of our duty as parliamentarians. It's important that we consider all those aspects before approving this amendment as you propose it.

The Chair: MP Bossio.

Mr. Mike Bossio: I totally respect where the member is coming from when it comes to human rights. I don't think anyone in this committee would disagree with his position in that respect.

The difficulty we have is this timeline. I know everyone says we can get an extension, but we did that once, and we're right back where we were at the end of the first extension. If we get another five-month extension, we're going to be in exactly the same place we're in today. There's not enough time to properly deal with some of the issues that the Indigenous Bar Association and Senator Sinclair....

We're bringing about significant legislative change, and we have a duty to consult all indigenous peoples on the changes that are going to have such a huge impact on many of their communities. We just finished discussing an amendment on DNA. We, around this table, can think that we have all the answers to solve it, but we also know that there are certain complexities that need to be dealt with, and those complexities are derived within what the Mohawks had to say. They said they don't care what Bill S-3 says, and that they're the ones who are going to decide who's a member of their community, not the government.

I know in an ideal world we'd like to blow up the Indian Act and let all indigenous peoples make that determination, and I think it's the goal of all of us here to see that happen sooner than later. Until then, we have a duty to consult with all indigenous communities, and that's going to take time. Another five-month extension—or three months, or whatever it is they would give us—is not enough time to resolve this. In the meantime, if we do find ourselves back here in five months in the same situation, those 35,000 people who could have already been starting the registration process are still going to be stuck waiting to start that registration process.

As MP Anandasangaree had communicated, I do truly believe that our ministers, Minister Wilson-Raybould and Minister Carolyn Bennett, do want to see this resolved once and for all, and to get it done right, not just rush into it and get it done under what Senator McPhedran has proposed here in “6(1)(a) all the way”. There are flaws in that amendment, so there's no sense in my mind of passing something we know has flaws when we should be taking the opportunity to get it done right.

I totally respect where you're coming from, but I just think the two-phase process will enable us to get this done right once and for all. Do we wish that Bill C-3 could have done it back in 2010? Sure, but it didn't. So now we're stuck here again at this table, trying to make this determination. Let's get this done right, take the time necessary to do it, and put this behind us once and for all.

Thank you.

● (0935)

The Chair: MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Madam Chair.

Mr. Saganash, every time I come to this committee, one of the things I look forward to is the comments from my good friend. I appreciate what you said, and I agree with it. I think human rights are not something you defer.

The difficulty we have here as legislators is we have a system of government where we have checks and balances, so to your first point with respect to the Senate: we have an executive, a legislative body, and the courts. We're at a point where the courts have said the legislation under the Indian Act needs to be changed. As a result, our executive branch came up with legislation that was subsequently amended by the Senate, and it is before us as the elected part of this bicameral system.

I think it's up to us to ensure that we respond to the court decision and ultimately it'll go back to the Senate for final approval if this is deemed to be adopted. The challenge we have is we've seldom been in this position in Canada whereby the elected body sets out a piece of legislation and sends it off with the possibility of an impasse. I think the learned people in the Senate will understand that they are charged with being the body of sober second thought, but ultimately as elected members of Parliament, the House of Commons has a greater role in ensuring the will of the people is expressed through the legislation we pass.

I am mindful of where the Senate stands on this. At the same time, given the broader context, I feel that senators on the whole will understand that once the House of Commons decides, they have their opinions and their amendments have been given due consideration, it's been debated in the House, and discussed at committee, ultimately if it's the will of our House to pass Bill S-3 as amended, then the Senate will need to give it due consideration.

With respect to the issue of are we addressing all sex-based inequities, I believe the Descheneaux decision requires the government to canvas the available or known areas of sex discrimination currently under the Indian Act. I am advised that the amendment being deleted will address that. What we are trying to deal with, with regard to deleting the Senate amendment “6(1)(a) all the way”, is not to broaden the scope of discrimination in other areas, which is something we shouldn't do, but we need to do in order to (a) consult and (b) ensure that we have a workable framework that doesn't put enormous strain on many of the communities.

I know we heard from a couple of witnesses who indicated that the membership—and they're absolutely right—has a right to define their membership, who is and who is not a member of their community, and it ought to be their absolute right. For us to find that balance between the Indian Act definition and the definition within the communities, I think we need to consult.

● (0940)

Therefore, this is really a deferral. This is delaying what I believe is inevitable, what we all believe should happen, but it should happen with a great deal of consultation, with the framework. It is quite unusual for any piece of legislation to have quite a stringent timeline for the government to consult and be able to come back and report within one year.

I think, as legislators, it is our responsibility to make sure that consultation is deep and gives us the road map to ensure that proposed paragraph “6(1)(a) all the way”, comes to fruition in the near future.

The Chair: MP Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair.

After listening to both interventions on the other side, I'm compelled to wonder why we invited all these witnesses to this committee. The majority of the witnesses who appeared recommended that we accept proposed “6(1)(a) all the way”.

What was the purpose of them spending many hours with us and recommending to this committee, in good faith, that we adopt that legislation? I get the sense that we're putting that aside and we're only discussing the will of the government of the day. That's the problem I have—one of them.

You talk about due diligence, the time frame, the scope. There's nothing in the Descheneaux decision, and I reread it again this morning, that prevents us from going beyond what the court has asked us to do—nothing. If you know of any paragraph in the decision....

There's no place in the decision that precludes the government from going beyond what the court has requested us to correct. I think that's one of the reasons why I would vehemently oppose that deletion.

What is also disturbing for a person like me, being indigenous, who grew up in a residential school, partly on the reserve, and now as a member of Parliament who has a responsibility to all indigenous, but also to all Canadians, is that for more than 100 years we've been keeping track of what we're doing to Indians in this country. There's a specific department that has that job.

When you talk about the unintended consequences that these provisions might have, I don't buy that. I don't buy that at all.

The minister, when she appeared here, purposely used the number —two numbers as a matter of fact—and said that if we go ahead with this, it might mean between 80,000 people and two million people.... She has to take responsibility for that.

I read the exchange that she had with Senator Sinclair on that specific issue. Senator Sinclair said to her that by giving those numbers, it's like fearmongering. Well, it's not like fearmongering—I disagree with Senator Sinclair on that—it is fearmongering.

That's the only reason you have not to go ahead with these provisions, that we should again take time to consult. I know it's convenient for you guys to consult when you want to delay something. You didn't take time to consult for the Site C dam. You didn't take time to consult with the indigenous peoples for Kinder Morgan, because that's what you wanted. But for things you do not want to move on, you claim that you need to consult.

I think one of our problems in this country is that we've been over-consulted. We've been consulted to death, literally. You like it when it's convenient for you guys.

I think none of the reasons you gave to delete those provisions is valid for me, nor for the people who appeared before us. I would take great exception if I had appeared before this committee and the majority recommended in favour of these provisions that you're trying to delete. I would take great exception to that. It's an insult, as a matter of fact. They should be insulted.

● (0945)

That's pretty unfortunate because listening to witnesses is part of our role. That's part of consultation as well. I think a lot of people will be disappointed after this hour.

The Chair: The end of those powerful words seems like an inappropriate time to ask technical questions, but it may give us some time to reflect.

Before I call the vote, we have an outstanding request by MP Tootoo for some clarifications and an ability to comment, so I turn the floor to him.

Hon. Hunter Tootoo: Thank you, Madam Chair.

In part of it, on that topic of those amendments, the word “consultation” was used. I'm wondering if the department consulted with first nations on this bill and on these different amendments.

● (0950)

Ms. Candice St-Aubin (Executive Director, New Service Offerings, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): We provided a series of two truncated consultation periods or engagement periods, so it was not formalized consultation per se as defined perhaps here.

The first half was a series of information sessions on the case, because of the lack of information potentially at the grassroots on that case, including the first round of the bill, which you would have seen prior to this, and the proposed amendments and legislative approach going forward, as well as stage two, which would allow for a broader consultation on broader issues.

Following the recommendation by the Senate to seek an extension, and after it granted us five months, there was a second truncated period of additional engagement and consultation whereby we met not only with communities. The community sessions included a range of chief and council, community members, as well as—

Mrs. Cathy McLeod: Point of order.

The Chair: Point of order.

Mrs. Cathy McLeod: I recognize your ability to recognize independence, but this committee has always been very co-operative. When Mr. Tootoo has come, I think we have given him, through the different sessions, the ability to ask witnesses questions.

We did pre-studies back in December. We have done pre-studies now. We're in clause-by-clause, and I'm very concerned that we're going back into things that are well documented in the blues in terms of the process.

I'm wondering if, in respect for the legislative clause-by-clause process, we could ensure that the interventions be somewhat targeted.

The Chair: I'd ask the member to try to keep questions quite limited to the clauses, to the bill itself. We have had an opportunity to go through consultation questions and others.

Please, we're obviously in the midst of clause-by-clause.

We'll go back to you.

Hon. Hunter Tootoo: I appreciate that, and I think I got the response: there's no real consultation on it. I think the grand chief would agree with that.

The other question I have is about 1951 as a date. Where did that date come from?

Mr. Martin Reiher (Assistant Deputy Minister, Resolution and Individual Affairs, Department of Indian Affairs and Northern Development): This date was added in 2010 by the Gender Equity in Indian Registration Act, which is an amendment of section six of the Indian Act.

That bill was passed in response to the McIvor decision, which found that the provisions at the time of the Indian Act were contrary to section 15 insofar as it treated differently the male and female lines with respect in particular to individuals affected by the double mother rule. That rule was introduced in 1951, which is why the 1951 date was introduced in the remedy.

Hon. Hunter Tootoo: In talking with the grand chief, I think he feels that it should go all the way back if you want to deal with it.

The other quick question can be ruled out of order. I know one thing, from my discussions with the grand chiefs, is that they want self-determination. They don't feel that it should be, with all due respect, someone here determining whether you're an Indian.

As Inuit, we have that. A local group in our communities decides who a beneficiary is and who is not. Why not just do that instead of going through all of this? It was good and right for us. Why can't we extend that same leeway to first nations?

Mr. Martin Reiher: To answer your question, the minister was very clear that ultimately her will would be to put Nathalie, our registrar, out of a job, and to allow first nations to determine who they are, which is why the government has determined that a two-stage response would be appropriate for the additional decision, first to deal with what's an issue and known at the moment and then to turn to a broader discussion on how to profoundly reform the registration provisions and ultimately to find ways to get rid of a registrar.

● (0955)

The Chair: Thank you.

MP McLeod.

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

I think most of us spoke to this issue when we had the witnesses in front of us. I'm also feeling a lot like Romeo about being in a position where we have to decide who's going to be joining the ranks of the aboriginal people according to the definition in front of us, which was decided on by somebody else. Like Romeo, I'm also aboriginal and I'm also a residential school survivor, and I agree with a lot of the comments. I also agree with a lot of the comments that Cathy has made on the process up to now and how it didn't really do a very good job. However, I've listened very carefully to the witnesses who have come forward, and I'm hearing more than one person with a legal background and with more legal expertise than I have state that there are concerns over the wording of this amendment. That includes Murray Sinclair, who has said it publicly. I think we have to take that into consideration. We have to hear the voices of the Native Women's Association of Canada, who said we need to go through the phase two process.

I really have concerns when we talk about going ahead without consulting. It is the basis on which we said we would move forward. It is a reason why I decided to run for this government, for this party. I come from an area where we practise consensus government and sharing information and communicating where we're going to go, and where collaboration is very important. I think that has to be done, and we spelled that out in going into phase two. We are currently in 10 sets of negotiations. Some of those negotiations for land claims and self-government include memberships. We have to talk to those people. We cannot just say we're going to go ahead and decide this without talking to them. That really is something that is important to many people across the country. We heard many individuals say that we do this regardless, but we also heard from organizations that represent a lot of people, which said, “Be careful. It's not worded right, and we should take the time to do it properly.”

I think we're committed to addressing the issue in phase two. Phase two has spelled out the process, and it certainly is in line with the nation-to-nation approach. That's why we need to move forward on recommendations.

The Chair: MP Saganash.

Mr. Romeo Saganash: I have a technical question, but as a quick response to that, when the government announced the missing and murdered indigenous women inquiry, the minister undertook what she called a design phase, and she travelled around this country. I don't know exactly for what purpose. One must wonder how that is going because I don't think anything was given to the commissioners to start off with. So if that's the kind of consultation you're talking about, I have a slight problem with that.

I hear you on what the Indigenous Bar Association has said. With all due respect, I disagree. When someone tells me to be careful, and the government buys that, it is just a pretext to delay further, in my view. I have enough experience in politics—35 years—to know that.

I prefer hearing Chief O'Bomsawin, who told us that those are his people and they can come back if they want to, that they belong, and that there is a right to belong to a community and a right to belong to a nation. I'd rather listen to that chief, who is responsible for an entire community, who tells us to let them come back and that they are his people, than listen to someone who just says to be careful without explaining what we should be careful about.

One of the things the minister told us was that we need this legislation right away because whether some students among the Abenaki attend university this fall or not depends on this. Some have told us that even if we had this legislation today, they wouldn't be able to to be registered by the fall. I'm pretty certain about that.

What is the backlog that you have right now? If they apply tomorrow morning, the day after this legislation is adopted, how much time would it take for a student to get status?

● (1000)

Ms. Nathalie Nepton: In regard to the processing of new applications that would be coming in under Bill S-3, there has been money set aside to establish a unit, and we're currently staffing it. The unit will be composed of 54 individuals to do intake and to assess applications, so if the bill receives royal assent, we will be starting to process applications that are already in the queue.

Generally speaking, service standards, depending on if it is a complete application, can range based on complexity. These would obviously be a few months, so the average service standard is from six months to eight months, depending on the situation.

Mr. Romeo Saganash: I have difficulty understanding, then, why so many applications take years. There are some applications that do not receive an acknowledgement of receipt for about seven or eight months.

How do you explain that? How can you reassure this committee that with those 54 people in place—is that specifically for Bill S-3?

Ms. Nathalie Nepton: Yes, the 54 individuals are specifically for the purpose of applications that will be received under Bill S-3.

The Chair: All right, we're now at the point where we're going to call the vote on the amendment to clause 2.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 2 as amended agreed to)

The Chair: Is it the will of the committee to group clauses 3 to 15?

Some hon. members: Agreed.

The Chair: Shall clauses 3 to 15 carry?

MP Saganash.

Mr. Romeo Saganash: As you know, Madam Chair, I did intend to propose an amendment to clause 10 and also to clause 11. I don't know if the clerk has received them.

The Chair: All right.

To move things along, then, shall we consider only clauses 3 to 9? Okay.

(Clauses 3 to 9 inclusive agreed to)

(On clause 10)

● (1005)

The Chair: Technically, the amendment didn't get through the process that goes according to the rules. You are able to present an amendment from the floor.

MP Saganash.

Mr. Romeo Saganash: I think I spoke at length on clause 10 during the committee hearings.

The Chair: Excuse me; we first need to distribute your amendment.

Does the clerk have a copy of the amendment?

The Clerk of the Committee (Mr. Philippe Méla): It was submitted to me this morning, just as I arrived at the meeting.

I indicated to your assistant that it should have been submitted officially to the clerk of the committee, as the process is set out. We don't have a copy with us, so if we could have that we could make copies to distribute to the members.

Mr. Romeo Saganash: Can I just explain it?

The Clerk: There's still a requirement to have a written copy.

The Chair: Should we have a short suspension while the copy is being made?

Mr. Gary Anandasangaree: Madam Chair, maybe we should discuss the other matters while this is being copied.

The Chair: That seems—

Mr. Gary Anandasangaree: We could come back to clause 10.

Mr. Romeo Saganash: My proposed amendments to clause 10 and 11 are very simple, in line with the Native Women's Association of Canada and the Quebec Native Women Association. Perhaps we can come back to them sometime later.

The Chair: Agreed. We can come back to it.

Mr. Romeo Saganash: To clauses 10 and 11.

The Chair: Yes.

(Clauses 10 and 11 allowed to stand)

The Chair: So we'll come back to those.

Mr. Romeo Saganash: Perfect.

The Chair: MP Anandasangaree.

Mr. Gary Anandasangaree: If Mr. Saganash needs copies made, we can ask someone to get that done.

The Chair: Okay.

(Clauses 12 to 15 inclusive agreed to)

The Chair: We've now come to the point where we need to study the two proposed amendments. We'll suspend for a couple of minutes while we get copies of them.

● (1005)

(Pause)

● (1015)

The Chair: I'm going to ask everyone to come back and take their appropriate seats, and that we move forward fairly quickly.

This meeting is scheduled to adjourn in 26 minutes. We have more business to address, so let's please proceed.

I understand that the amendments are being distributed.

On the speakers list I have the mover, MP Saganash.

(On clause 10)

Mr. Romeo Saganash: Madam Speaker, as I said briefly earlier, this was a major concern and preoccupation that was expressed particularly by the Native Women's Association of Canada, the Quebec Native Women as well, and it is related to the no-liability clause that's provided for under proposed clause 10.

I think we need to seriously consider and acknowledge the concern that was expressed by the Native Women's Association, and in fact on behalf of all indigenous women in this country.

I can understand that there will be no liability for band councils and their employees who rejected membership requests for status. That's okay, but in the case of the crown that is the part that caused major concern for indigenous women in this country. That's why, with this amendment, I would take out the crown and its employees and agents from that no liability. It's as simple as that. That's very straightforward, so there it is.

● (1020)

The Chair: Okay.

Is there any further discussion?

(Amendment negatived [See *Minutes of Proceedings*]

(Clause 10 agreed to)

(On clause 11)

The Chair: MP Saganash, you have an amendment for clause 11.

Mr. Romeo Saganash: We're getting copies.

It's very simple. Let me just go right into that discussion and you'll understand very well the intent of that amendment.

Proposed subsection 11(2) talks about:

> The Minister, the First Nations and the other interested parties must, during the consultations, consider the impact of the *Canadian Charter of Rights and Freedoms* and, if applicable, of the *Canadian Human Rights Act*, in regard to those issues.

Mrs. Cathy McLeod: I have a point of order, Madam Chair.

Can we talk about amendments before we have amendments tabled?

The Chair: Can we talk about the amendment? We did indicate that we would like to have the amendment in written copy.

The rule indicates that the amendment must be provided to the chair in written copy. I see that I have a scripted, written copy, which we will accept.

Is it on accepting this amendment?

Mr. Gary Anandasangaree: No, that's fine.

The Chair: Fine.

The amendment that I have before me in written copy, which in my opinion complies with the rule, is “that Bill S-3, in clause 11, be amended to include the words 'and the United Nations Declaration on the Rights of Indigenous Peoples' on page 8, after the word 'freedoms'”.

That is the amendment, and I thank you for the copy.

Is there any discussion?

MP Saganash.

Mr. Romeo Saganash: Madam Chair, we've discussed on many occasions during deliberations of this committee the need to refer to the United Nations Declaration on the Rights of Indigenous Peoples.

As a matter of fact, many of the witnesses who came before us during consideration of Bill S-3 mentioned the need to recognize that this needs to be done on a proper basis from a proper framework. Many of them referred to their right to self-determination when discussing membership, registration, and other issues.

The new government has committed to implementation of the UN Declaration on the Rights of Indigenous Peoples, so it is only fitting that we include the UN declaration in that paragraph when the minister initiates the consultations with first nations and other groups. We need to refer not only to the Charter of Rights and Freedoms, as the bill suggests, and if applicable, the Canadian Human Rights Act. The important and fundamental dimension we need to include in that paragraph is the United Nations Declaration on the Rights of Indigenous Peoples.

In fact, I would argue, Madam Chair, that if you're going to undertake the process that's provided for under Bill S-3 as phase two, what we're trying to achieve here—if you carefully read the description of what's proposed to be initiated by the minister—is exactly article 9 of the UN Declaration on the Rights of Indigenous Peoples.

Article 9 of the UN Declaration on the Rights of Indigenous Peoples stipulates:

> Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

It is already a fundamental right that has been recognized by the UN Declaration on the Rights of Indigenous Peoples. It's already a human right that's provided for under that international human rights document.

In that sense, it would be only appropriate if we could include in the enumeration in clause 11, paragraph 2, the United Nations Declaration on the Rights of Indigenous Peoples. That is what the Truth and Reconciliation Commission has asked us to do as a country, as the framework for reconciliation in this country. That is what this new government has committed to do. All I'm proposing here is to assist in achieving that goal.

Thank you, Madam Chair.

● (1025)

The Chair: Thank you.

MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

We've talked about the time and the rushed process. We've even talked about an amendment that was submitted that we had a couple of days to contemplate, and we didn't understand all the ramifications.

On the surface, I can understand some of the arguments my colleague is putting forward, but certainly I have issues with a table drop at the last minute. I don't have a copy, so I can't.... It is a challenge. I truly wish we had had more time to have seen this with our package, and to at least have had an opportunity to have done a bit of due diligence before being asked to vote on it.

The Chair: MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Madam Chair.

I concur with Mr. Saganash. It's a wise amendment to section 11. I will be supporting this.

The Chair: All right.

Are we ready for the vote? We are voting on the amendment.

(Amendment agreed to on division [See *Minutes of Proceedings*])

(Clause 11 as amended agreed to [See *Minutes of Proceedings*])

The Chair: We are now moving to the title, which I understand members would like to amend, with consensus of the committee.

The proposal is from MP Cathy McLeod.

Mrs. Cathy McLeod: Madam Chair, through some of the testimony we've heard clearly there is some uncertainty. In my opinion, the bill aspires to eliminate sex-based inequities in registration.

There is some confusion. Some of our witnesses indicated this legislation did not accomplish that. We heard from the officials that it did.

I think the more appropriate title would be An Act to amend the Indian Act in response to the Superior Court of Quebec's decision in Descheneaux v. Canada. I would propose a title change.

The Chair: I understand that technically there may be some question. Given that I understand we have unanimous consent for the changing of the title, I will deem it appropriate to take that under consideration. Is there a discussion of the proposed amendment to the title?

Shall the title as amended carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: That concludes our business on Bill S-3.

I would ask members to be patient. We have a small amount of committee business to take care of.

I want to thank all the participants. We are going to move into committee business, so I'll ask you to leave the room, please.

[*Proceedings continue in camera*]